



WESTERN LEGISLATIVE OVERSIGHT HANDBOOK



West

THE COUNCIL OF STATE GOVERNMENTS

2020



West

THE COUNCIL OF STATE GOVERNMENTS

December 10, 2020

Re: Western Legislative Oversight Handbook

Dear Western legislators and legislative staff,

As co-equal branches of state government legislatures have a constitutional role to hold state government accountable by ensuring tax dollars are spent wisely, programs are achieving their intended goals and monitoring agencies as they implement laws. As such, legislative oversight is as important as passing legislation and is critical to safeguard the checks and balances in our democratic system of governance.

To ensure and promote effective oversight practices legislators and legislative staff need to continuously assess their respective protocols and tools that support them in this function. To this end, it is our pleasure to provide you this *Western Legislative Oversight Handbook*. The handbook provides an overview of the important role of legislative oversight, tips and tools to establish effective oversight processes, including “nuts and bolts” components, and highlights oversight practices in the Western region.

We recognize that all Western state legislatures have different laws, rules, protocols and capacities to conduct oversight. However, we hope you and your colleagues find the *Western Legislative Oversight Handbook* a useful resource.

The contents of the Handbook represent a culmination of the work of the CSG West Legislative Oversight Working Group which we have co-chaired during the 2019-20 biennium. We appreciate the insights and efforts of all the members of the Working Group. We are also grateful to legislative staff across the region who researched and responded to questions on administrative and financial oversight and review of existing bodies of laws in their states.

If you have any questions about the Handbook or the work of the CSG West Legislative Oversight Working Group, please contact CSG West director, Edgar Ruiz, at (916) 553-4423 or eruiz@csq.org.

Sincerely,

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We would like to give special thanks to the legislative staff in our Western states who assisted in gathering responses to the twenty-seven questions described in [Section VI](#). Thank you for your time and dedication.

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I. Overview

During the 2019-2020 biennium the CSG West officers established the Legislative Oversight Working Group for the purpose of bringing together Western state legislators to discuss and share information about legislative oversight practices in the region. The Working Group's initial conversations quickly evolved to how legislatures can better utilize legislative oversight tools to foster greater government accountability, transparency and responsiveness to the needs of their citizens. This led to the Working Group determining that an oversight handbook could serve as a valuable resource to assist western state legislators and legislative staff better understand this important function and to learn how oversight is conducted among the Western states.

During the 2019 CSG West Annual Meeting in Big Sky, Montana the members of the Working Group gathered to identify what content should be incorporated into a Legislative Oversight Handbook. The members determined that it should include not only an overview of oversight principles and types of oversight, but also a focus on three areas: financial oversight, administrative rules, and reviewing existing bodies of law. To this end, the members developed a set of questions and responses to be catalogued as part of the Legislative Oversight Handbook. These questions and their responses are captured in this Handbook, section VI.

The Western region has been heavily impacted by the COVID-19 global pandemic. This resulted in a need for legislatures to quickly respond and adapt to an evolving crisis that has upended the health and economic well-being of citizens across the globe. Given the breadth and scope of the pandemic and the varying legislative responses, the Working Group expressed the need to also highlight these efforts in this Handbook, which are referenced in Section VII.

II. Introduction to Oversight Power

Oversight is an important function of state legislatures. Constituents and their communities want government to be accountable. Tax dollars should be spent wisely, and government programs should operate efficiently. As a co-equal branch of government, it is the constitutional role of each legislature to monitor and oversee state agencies as they implement new and existing laws. Thus, conducting oversight is equally as important to passing legislation.

A way to further well-organized and effective oversight is through training and the development of tools to support this function in each state. Our democratic institutions have succeeded not only because of formal checks and balances, but also because of the great tradition of public servants working vigorously to uphold their democratic contract and make government institutions work for the people.

More than ever before, it is essential that legislative institutions work together to meet this goal. Oversight can occur in virtually any legislative activity and through a wide variety of channels, organizations, and structures. These range from formal committee hearings to informal member contacts with executive branch or other agency officials, from staff studies to support agency reviews, and from casework conducted by member offices to studies prepared by non-legislative entities, such as statutory commissions.

A strong record of oversight helps maintain public confidence in legislative institutions, but even more importantly, it helps lawmakers and our staff to better serve our constituents and safeguard their quality of life.

Maintaining focus upon community betterment is vital, because for oversight to be truly effective, the committee chairperson must be committed to the cause and understand that all oversight is founded upon well-established precedent. This power is well-established.

In *Watkins v. United States* (1957), the United States Supreme Court affirmed Congress' oversight power by stating that,

"We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Watkins v. United States*, 354 U.S. 178, 187 (1957)

Moreover, it is well-established that strong, vigorous oversight is within a Legislature's power:

"The power to investigate is an essential corollary of the power to legislate. The scope of this power on inquiry extends to every proper subject of legislative action."
Commonwealth ex rel. Carcaci v. Brandamore, 327 A.2d 1, 3 (Pa. 1974).

III. Purposes for Active Oversight

Legislative oversight of the executive branch of government is designed to fulfill a number of purposes. These include the following:

1. Ensure Executive Compliance with Legislative Intent

The Legislature, of necessity, must delegate discretionary authority to state and other public administrators. To make certain that these offices faithfully execute laws according to the intent of the Legislature, committees and Members can review actions taken, and regulations formulated by departments and agencies.

2. Improve the Efficiency, Effectiveness, and Economy of Governmental Operations

The breadth and scope of the state executive branch agencies and activities makes it imperative for the Legislature to encourage and secure efficient and effective program management, and to make every dollar count toward the achievement of program goals. A basic objective is strengthening state government operations through better managerial operations and service delivery. Such steps can improve the accountability of agency managers to citizens and enhance performance.

3. Evaluate Program Performance

Systematic program performance evaluation remains a relatively new and still-evolving technique in oversight. Modern program evaluation uses social science and management methodologies, such as surveys, cost-benefit analyses, and efficiency studies, to assess the effectiveness of ongoing programs.

4. Prevent Executive Branch Encroachment on Legislative Prerogatives and Powers

A perennial concern of public policy analysts and legislators is whether the Governor and State Administrators overstep their authority in various areas without legislative consent. Increased oversight—as part of the checks and balances system—permits the Legislature to correct this tendency to bypass and dismiss legislative prerogatives.

5. Investigate Alleged Instances of Poor Administration, Arbitrary and Capricious Behavior, Abuse, Waste, Dishonesty, and Fraud

Instances of fraud and other forms of corruption, the breakdown of intended programs operations, weak management, and the undermining of governmental processes arouse legislative and public interest in oversight.

6. Assess Agency of Officials' Ability to Manage and Carry Out Program Objectives

The Legislature's ability to evaluate the capacity of agencies and managers to carry out program objectives can be accomplished in various ways. For example, numerous laws require agencies to submit reports to the Legislature; some of these regular, occurring annually or semi-annually, for instance, while others are activated by a specific event, development, or set of conditions. Reporting requirement may promote self-evaluation by the agency. Organizations outside of the Legislature, such as offices of inspector general and study commissions, also advise Members and committees on how well state agencies are working.

7. Review and Determine Financial Priorities

The Legislature exercises some of its most effective oversight through the appropriations process, which provides the opportunity to review recent expenditures in detail.

8. Ensure That Executive Branch Policies Reflect the Public Interest

Legislative oversight can appraise whether the needs and interests of the public are adequately served by existing state programs, and thus lead to corrective action, through either legislation or administrative changes.

9. Protect Individual Rights and Liberties

Legislative oversight can help to safeguard the rights and liberties of citizens and others. By revealing abuses of authority, for instance, oversight hearing and other efforts can halt executive branch misconduct and help to prevent its recurrence, either directly through new legislation or indirectly by putting pressure on the offending agency.

10. Other Specific Purposes

The general purposes of oversight—and what constitutes the function—can be stated in more specific terms. Like the general purposes, these unavoidably overlap because of the numerous and multifaceted dimensions of oversight. A brief list includes the following:

- review the agency rulemaking process;
- monitor the use of contractors and consultants for government services;
- encourage and promote cooperation between the branches;
- examine agency personnel procedures;
- acquire information useful in future policymaking;
- investigate constituent complaints and media critiques;
- assess whether program design and execution maximizes the delivery of services to beneficiaries;
- compare the effectiveness of one program with another; and
- protect agencies and programs against unjustified criticisms.

IV. Types of Oversight Hearings

There are two types of oversight hearings: *informational* and *investigatory*.

Generally, *informational* hearings provide the opportunity for legislators to deepen their knowledge of a particular subject matter; more specifically, informational oversight hearings have an added purpose of presenting information for the purpose of improving public service and maintaining that balance between each branch of government.

Investigatory hearings are primarily conducted for the purpose of fact-finding for a particular event that has occurred, and thus have the effect of overseeing the actions of an agency, organization or individual.

To conduct a successful oversight hearing in either case requires a commitment to research.

Informational Oversight Hearings

Effective oversight is built on a foundation of thorough research. This puts a premium on strong legislative partnerships with key research bodies and institutions in each state. Typically, background research will be conducted surrounding the entity and subject of the inquiry, relevant data will be requested and analyzed upon receipt, and prospective witnesses will be interviewed beforehand by staff of the committee. Only after this work has been done will a hearing be structured where invited witnesses will be asked to share their views on the specific questions the committee wishes to explore in greater depth.

Given this jurisdictional focus, an option committee chairs may wish to consider is to convene informational hearings early in a session where they can receive a baseline overview of state agency units subject to the panel's policy oversight. Such a hearing can inform the committee of each unit's organization, programs, available resources, administrative priorities, challenges, and recent accomplishments. Beyond the information value of such a hearing, it begins to establish the concept that the executive branch's duty of program administration carries with it the prospect of periodic briefings and updates. As more law or program-specific oversight hearings are conducted the principle has been established that the relevant agencies should expect to be present and a part of the Legislature's review process.

Investigatory Oversight Hearings

Another method of exercising oversight is through investigations. Such investigations are fact-finding exercises conducted for the purposes of understanding a particular action or event that has occurred and its connection to established policy or law. The investigatory method helps to ensure a more responsible bureaucracy, while supplying a group of lawmakers with information needed to evaluate whatever it was that prompted the committee's interest.

Investigatory hearings tend to be more adversarial and confrontational. Occasionally, depending on the relevant state law, a legislative body may feel the use of tools to compel cooperation, including, if authorized, legislative subpoenas, is warranted to vindicate its oversight function. Sometimes high-profile investigations set themselves apart from more routine, accommodative facets of the oversight process. Such hearings, even if less common, sustain and vindicate the legislature's role in our constitutional scheme of separated powers and checks and balances.

V. Procedures and Protocols for Effective Oversight – The Nuts and Bolts

Successful legislative oversight is dependent on a number of institutional procedures, protocols and tools. While each legislature has their own rules and laws governing their oversight functions and roles, it is highly recommended that lawmakers get familiar with and understand their institution's oversight procedures. Moreover, lawmakers and legislative staff should work with legislative leadership and relevant committees to establish their own handbooks and/or publications and grow their institutional capacity. To this end, the following are suggested tools.

- 1. Establish committee oversight procedures and protocols laying out steps that can be taken by committee chairs and staff to effectively implement the oversight goals.** This should include an overview of:
 - a. Approval process – Understand the approval process, including from the highest legislative authority (Speaker or Senate President)
 - b. Documents/memoranda that identify the general oversight topic, focus of the inquiry, timeline for the inquiry, and projected outcome
 - c. Process of requesting hearing and hearing notice

- d. Identify potential oversight areas and general considerations – convene early information hearing to allow members of the committee to get baseline information
- e. Highlight the legislature's co-equal status to protect taxpayer funds and ensure accountability. It is vital that oversight is planned, convened and conducted primarily in reliance upon the inherent prestige of the legislative body.
- f. Examine if current statutory authority is being fully utilized to address emergent problems
- g. Research the issues and request pertinent materials, documentation, or records and develop realistic timeliness to obtain such information. Research process can proceed in both a formal and informal manner.
- h. Access staff with specialized expertise, including CPA's, legal, law school interns, and agency staff when desirable.
- i. Put together an effective group of witnesses – consider subject matter experts who can be tapped in an advisory or technical capacity to support a hearing and raise its visibility; opposing or contrasting views; interviewing witness prior to hearing; choosing the most knowledgeable and articulate witnesses; and when subpoena's should be used (if applicable).
- j. Ask the right questions –
 - i. Ask tough penetrating questions, but build them up
 - ii. Many questions should be based on the testimony that will be provided
 - iii. Know the answer before the question is asked
 - iv. Questions should be short and focused
 - v. Have techniques for members in case witnesses stray from the focus of the hearing or do not respond to the question.
 - vi. Incorporate questions from members not serving in the committee
- k. Written testimony – request advanced written testimony
- l. Media and community relations – Develop a plan. Be prepared for inquiries or publicity. If you are not prepared, others may shape discussion before you get started.
- m. Consider developing a "Summary of the Hearing Tool"
 - i. Background on the matter or problem
 - ii. Results of the preliminary investigation
 - iii. Tentative conclusions
 - iv. Suggested witnesses along with key subjects and suggested questions for each
 - v. Advanced written testimony
- n. Calendaring – To keep hearings on track and meet the priorities of the chair and the committee.

2. Develop a Checklist to prepare for hearings. The checklist should cover:

- a. The when and who
- b. Logistics before the hearing
- c. Materials for the hearing

- d. Scope of presentations
 - e. Media and community relations
 - f. At the hearing
 - g. Duties at the hearing
 - h. Chair's responsibilities
 - i. Activities After the hearing
- 3. Participants** – A legislative body may approach oversight in many ways. Legislative oversight can involve a few telephone calls, in depth financial and historical data collection, field investigations, on-site state agency visits, interviews and public hearings. It is important to consider potential jurisdictional conflicts between committees of both chambers of the legislature. Consider the role of standing committees, select or special committees, joint legislative audit committees and joint legislative budget committees.
- 4. Grow Institutional Capacity by Developing a Resource Book** – This resource book should be organized to permit easy reference to a:
- a. Complete listing of all of the various laws that touch upon the committee's scope. This should include regulations, statutory limitations on legislative action, and mandatory reports required by law. Mandatory reports are a road map into agency operations, including what the agency thinks the intent of the law they administer is, and a comparison of multiple years of reports which can establish trends and other historical data perspectives.
 - b. Create an overview of multi-faceted laws that summarize 1) scope of their operations, 2) how these provisions are intended to affect citizens of the state and 3) how these programmatic elements tie into the committee's jurisdiction.
 - c. Identify every organizational unit of state or local level engaged in administering its provisions.
- 5. Compile Legislative Rules Governing Oversight Hearings** – This should include a listing and summary of key provisions, such as the state's constitution, statutory provisions and respective manual provisions (Mason's Manual, Roberts Rules of Order)
- 6. Oversight Coordination** – Legislative oversight may need to take a broad review of an issue which could encompass multiple agencies and departments whose jurisdiction may cross over into other standing committees. As a result, committees should investigate how they can coordinate with other committees where there may be jurisdiction cross-over. These can include joint legislative audit committees, joint budget committees, accountability and administrative review committees, and sunset review committees. These committees can be an important resource as they have expertise in research and data collection and may be able to assist in your oversight activities.
- 7. Legal Issues Pertinent to Investigative Hearings** – Legislators should become familiar with the services that their office legislative counsel, legislative affairs, legal affairs, or

other pertinent nonpartisan legislative service agencies can provide in connection with legislative oversight. The following are a few areas where members and/or their staff can collaborate with the respective legislative service agencies:

- a. Framing the purpose and scope of the inquiry
- b. Preliminary investigation
- c. Witness testimony
- d. Limitations on legislative inquiry
- e. Staffing of committee hearings

Contacting relevant staff early in the hearing preparation process to collaborate on issues such as those described above can improve the prospects for successful and effective hearing.

VI. Responses to Legislative Oversight Questions – Oversight in the West

In order to obtain a better understanding of legislative oversight practices among Western state legislatures the Oversight Working Group identified [twenty-seven questions](#) to be catalogued as part of the handbook. These questions focused on the following four areas:

- [Oversight of administrative rules](#)
- [Financial oversight](#)
- [Review of existing bodies of laws](#)
- [General legislative oversight practices](#)

With the support and guidance of the members of the Working Group and their legislative staff, CSG West staff obtained answers from several of the Western states to the questions which are included in this section of the Handbook. Please note that CSG West staff will continue to work with members and legislative staff of our Western states to incorporate or update their pertinent information.

VII. Responses to COVID-19

The Western region has been heavily impacted by the COVID-19 global pandemic. This resulted in the need for Western states to quickly respond and adapt to an evolving crisis that has upended the health and economic well-being of citizens across the globe. In the wake of this crisis several Western state legislatures developed special committees or advisory groups to enhance collaboration and coordination with their governors and executive branch agencies. Given the breadth and scope of the pandemic, and the varying legislative responses, the Working Group expressed the need to also highlight some of these efforts in the Handbook. Below are examples of some of the committees or advisory groups that Western state legislatures developed in the wake of the COVID-19 pandemic.

California

[Senate Special Budget Subcommittee on COVID-19 Response](#)
[Senate Special Committee on Pandemic Emergency Response](#)
[Assembly Committee on Aging and Long-Term Care – Oversight Hearings](#)

Hawai'i

[House Select Committee on COVID-19 Economic and Financial Preparedness](#)
[Senate Special Committee on COVID-19](#)

Idaho

[Coronavirus Financial Advisory Committee](#)

Montana

[Legislative Information on COVID-19 Response](#)
[Legislative Council and Legislative Finance Committee – COVID Updates](#)
[COVID FAQ](#)

Nevada

[Finance Subcommittee to Review and Advise on Coronavirus Federal Aid](#)

New Mexico

[Finance Authority Oversight Committee \(recent meetings regarding COVID-19\)](#)

Oregon

[Joint Special Committee on Coronavirus Response](#)

Utah

[2020 COVID-19 Economic Recovery Programs Committee](#)
[Utah COVID-19 Community Task Force comprised of government, health, business, religious and community leaders](#)

Other Resources

[COVID-19 Resources for State Leaders](#)
CSG's COVID-19 website contains, among other data, information on state executive orders and reopening plans.

VIII. Oversight Quotes from Theorists and Practitioners

- **James F. Brennan, Chair New York Assembly Standing Committee on Oversight Analysis and Investigation, from “A Guide to Legislative Oversight”:**

The State Constitution, statutory law, case law, and Assembly Rules all provide the basic authority for the Legislature to conduct oversight. Even though this authority is limited at times to legitimate areas of committee jurisdiction, it is well established that the actual right to inquire and investigate into matters of public concern is a key component of the Legislature’s part in the law-making process.

- **Congressman Charles B. Rangel:**

As a member of Congress, I believe Congress must provide oversight of actions by the Executive Branch as our system of checks and balances requires.

- **Thomas P. Carr, Cong. Research Serv., RL30539, Hearings in the House of Representatives: A Guide for Preparation and Procedure 4-5 (2006):**

Committees hold legislative hearings on measures or policy issues that may become legislation... Oversight hearings review or study a law, an issue or an activity, often focusing on the quality of federal programs and the performance of government officials. Hearings also help ensure that the execution of laws by the executive branch complies with legislative intent, and that administrative policies reflect the public interest. Oversight hearings often seek to improve the efficiency, economy, and effectiveness of government operations... Investigative hearings share some of the characteristics of legislative and oversight hearings. The difference lies in Congress’s stated determination to investigate, usually when there is a suspicion of wrongdoing on the part of public officials on governmental operations or of private citizens in business or other activities.

- **From Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry I (1995) by Morton Rosenberg with the Congressional Research Service:**

The adversarial, often confrontational, and sometimes high-profile nature of congressional investigations sets it apart from the more routine, accommodative facets of the oversight process experienced in authorization, appropriations or confirmation exercises. While all aspects of legislative oversight share the common goals of informing Congress so as to best accomplish its tasks of developing legislation, monitoring the implementation of public policy, and of disclosing to the public how its government is performing, the inquisitorial process also sustains and vindicates Congress’ role in our constitutional scheme of separated powers and checks and balances.

- **John Stuart Mill (Considerations on Representative Government, 1861, p. 104), British utilitarian philosopher:**

“... the proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable....”

- **Morton Rosenberg, Fellow, The Constitution Project; former Specialist in American Law at the Congressional Research Service (CRS):**

The failure of a Member to foster and engage an inquiry to determine whether our laws are being faithfully carried out, or whether new laws or actions are needed, is a violation of a Member's oath of office, and abdication of his legislative role as a responsible Member.

- **Stanley Brand of the Brand Law Group; former General Counsel to the House of Representatives under Speaker Tip O'Neill, Jr.:**

As Raoul Berger, the late, great Harvard law professor used to say, if you look at Article I—and what he called the vast armamentarium of powers enumerated in Article I—and you put the president's powers enumerated in Article II next, the president looks like the valet of the Congress.

- **From Congressional Oversight Manual I (2011) by Fredrick M. Kaiser et al. with the Congressional Research Services:**

Throughout its history, Congress has engaged in oversight—broadly defined as the review, monitoring, and supervision of the implementation of public policy—of the executive branch.

- **James Wilson (The Works of James Wilson, 1896, vol. II, p. 29), an architect of the Constitution and Associate Justice on the first Supreme Court:**

The House of Representatives ... form the grand inquest of the state. They will diligently inquire into grievances, arising both from men and things.

- **Mickey Edwards, Vice President and Director of the Aspen Institute; former Member of Congress (R-OK) and Chairman of the House Republican Policy Committee:**

When it comes to oversight functions—of either oversight committees, or oversight subcommittees, or any other special task force; anything that is created to do oversight over the executive branch—take off your party hat. Put it in a drawer, and deal with this as somebody who has taken an oath of office—or works for somebody who has taken an oath of office—to carry out the mandates of the Constitution to function as the people's voice.

- **Bob Barr; former federal prosecutor and a former member of the United States House of Representatives:**

It is high time for some congressional oversight backbone.

- **American Jurisprudence, 2d, vol. 72, § 51 (2012), States, Territories, and Dependencies:**

The power of inquiry—with the power to enforce it—is an essential and appropriate auxiliary to the legislative function. Legislative bodies have the inherent power to conduct investigations in aid of prospective legislation and for the purpose of securing information needed for the proper discharge of their functions and powers.

- **From Dickinson v. Johnson, 176 S.W. 116, 117 (Ark. 1915):**

Now, an investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature.

- **From Watkins v. United States, 354 US 178 (Supreme Court 1957):**

We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes...

It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation. This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice.

...

But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible.

The Bill of Rights is applicable to [Congressional] investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.

- **From McGrain v. Daugherty, 273 US 135,177 and 181-182 (Supreme Court 1927):**

Congress, investigating the administration of the Department of Justice during the Teapot Dome scandal, was considering a subject “on which legislation could be had or would be materially aided by the information which the investigation was calculated to elicit.” The “potential” for legislation was sufficient. The majority added, “We are of [the] opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it.

The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating, and we think the subject matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better; but in view of the particular subject-matter was not indispensable... The second resolution—the one directing the witness be attached—declares that this testimony is sought with the purpose of obtaining “information necessary as a basis for such legislative and other action as the Senate may deem necessary and proper.” This avowal of contemplated legislation is in accord with what we think is the right interpretation of the earlier resolution directing the investigation. The suggested possibility of “other action” if deemed “necessary and proper” is of course open to criticism in that there is no other action in the matter which would be within the power of the Senate. But we do not assent to the view that this indefinite and untenable suggestion invalidates the entire proceeding. The right view in our opinion is that it takes nothing from the law object avowed in the same resolution and is rightly inferable from the earlier one. It is not as if an inadmissible or unlawful object were affirmatively and definitely avowed.

- **From In re Joint Legislative Committee to Investigate the Educational System of the State of New York, 32 N.E.2d 769, 771 (N.Y. 1941):**

The law-making power given to the Legislature authorizes it, by inquiry, to ascertain facts which affect public welfare and the affairs of government. Such power of inquiry, with process to enforce it, is an essential auxiliary to the legislative function. “A legislative body may act upon common knowledge or information voluntarily contributed. At times it stands in need of more. There is then power to investigate by subpoena under the sanction of an oath.” Upon such inquiries the Legislature may compel the attendance of witnesses and the production of documentary evidence to the end that it may perform its constitutional

functions by the enactment of laws to correct public dangers—either real or apprehended. This power may be delegated to a committee.

- **From *Eastland v. United States Servicemen's Fund*, 421 US 491 (Supreme Court 1975):**

Expanding on its holding in *McGain*, the Court declared, “*To be valid legislative inquiry there need be no predictable end result.*”

- **From *Commonwealth ex rel. Carcaci v. Brandamore* 459 Pa. 48 (1974):**

Broad as it is, however, the legislature’s investigative role, like any other governmental activity, is subject to the limitations placed by the Constitution on governmental encroachments on individual freedom and privacy.

- **From *Attorney General v. Brissenden*, 271 Mass. 172 (1930):**

The General Court has no power through itself or any committee or any agency to make inquiry into the private affairs of the citizen, except to accomplish some authorized end.

IX. Appendices

APPENDIX 1A: LEGISLATIVE OVERSIGHT QUESTIONS

Administrative Rules

1. Does your legislative body have a role in the development of administrative regulations? If so, what does that process entail?
2. Are executive agency staff permitted to interact with legislators when developing administrative regulations?
3. Does your legislature have any formal oversight of the administrative rules process?
4. Are there sunset clauses on administrative rules?
5. What authority does your legislature have to modify administrative rules?
6. What do your statutes provide about public input of administrative rules?
7. How does your legislature ensure that administrative regulations are being implemented according to legislative intent?
8. Can executive branch agencies bypass the public comment or rule making process in your state? If so, under what circumstances?
9. How are administrative rules made in your state? Are there any legal staff in your legislature that can provide you a brief reference sheet on the administrative rules process (mechanics)?
10. Explain the life cycles of the administrative rule process in your state. Make a flow chart to see where the intervention points are.

Financial Oversight

11. How are executive agencies required to report to your legislature, i.e. committees, subcommittees or task forces, on how they are spending funds that have been allocated?
12. Are executive agencies in your state allowed to start spending funds before administrative rules are in place? (focus of question is on spending funds vs. rule- making process)
13. Do you have mechanisms, or clauses in your statutes, that require executive agencies to report to the legislature on the implementation of a program to ensure accountability?
14. How does your legislature evaluate long-term programs? Is the evaluation evidence- based?
15. How are programs reauthorized in your state and do they require legislative approval?
16. What are the audit functions in your state and who conducts them?
17. Who can order an audit and who determines what areas get picked?
18. How does your legislature ensure that it's not spending money on pet projects that may not have accountability?

Overview of Existing Body of Law

19. How does your legislative body review existing statutes to determine if they may require updating?
20. How does your legislature conduct policy development? And do you have professional staff to help with policy and revenue analysis?
21. Are there graduate schools in your states that can conduct research on policy issues?

General Legislative Oversight

22. What is the authority in your state, i.e. Constitutional provisions, statutes or court rules, vesting oversight to your legislature? (i.e. administrative rules; financial oversight; and reviewing/updating existing body of law)
23. Are there any formal oversight rules or guidelines in your legislature?
24. Is there capacity to have somebody on your staff, or in your legislature, to drill deeper on specific legislative oversight issues or areas? If not, what is your legislature's challenge to conduct effective legislative oversight?
25. What resources are available in your state, like internships, courses or academic programs to conduct research on legislative oversight projects?
26. When multiple agencies are dealing with different parts of a shared state problem, what is the coordination process within the legislature?
27. Do you talk to your policy committee chairs to identify important oversight issues in your state?

APPENDIX 1B: LEGISLATIVE OVERSIGHT QUESTIONS AND RESPONSES

Administrative Rules

1. Does your legislative body have a role in the development of administrative regulations? If so, what does that process entail?

Alaska

Once legislation becomes law, agencies begin drafting proposed regulations to carry out the intent of the legislation, fine-tuning processes needed to achieve that goal. Once approved internally, legislators are notified that there are regulations available for public comment.

Individually, legislators are free to contact an agency with any questions or concerns and submit public comment. If a standing committee feels that a proposed or adopted regulation may not meet legislative intent, they can call upon the agency to appear before them and review the regulation.

Arizona

Awaiting response.

California

The Legislature passes the authorizing statute, which sets in motion the regulatory process.

Colorado

No, the Legislature does not have a role in the rule-making process itself. However, since administrative rulemaking is a quasi-legislative function, a state agency's authority to develop administrative rules must first be granted in statute by the Legislature. And, as discussed below, the Legislature retains oversight of administrative rules after they are promulgated through a legislative rule review process.

Hawaii

Administrative rulemaking lies within the jurisdiction of the Executive branch. The process is governed by the [Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes \(HRS\)](#).

As noted in the Hawaii Administrative Procedure Act (HAPA), an "agency" is defined as "each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches." (HRS Section 91-1.) Section 91-3 provides the framework for the rulemaking process. Accordingly, the legislative body does not have a direct role in developing administrative rules. Instead, it passes laws and gives authority to agencies to adopt rules to carry out those laws, in accordance with the HAPA.

Idaho

[Section 67-5291, Idaho Code \(APA\)](#), provides for legislative rules review by the standing (germane) committees of the Legislature. This provision allows for the review of temporary, pending, pending fee, and final rules that have been published in the Administrative Bulletin and the Administrative Code.

Montana

Awaiting response.

Nevada

The Legal Division of the Legislative Counsel Bureau (LCB), Nevada's nonpartisan legislative services agency, plays an extensive role in the development of regulations. Except for some agencies, the Legislative Commission must approve all Executive Branch regulations before they can become effective.

New Mexico

The Legislature does not have a formal role in the development of administrative regulations. There is a statutory requirement that notice of rulemaking be copied to the Legislative Council Service office, and copies be made available to interim and standing committees. However, the committees do not take a formal or active role in their review.

Oregon

Awaiting response.

Utah

The Utah Legislature does not have a formal role in the development of the language of administrative rules. However, the Administrative Rules Review Committee (ARRC), created in [Utah Code § 63G-3-501](#) and composed of 10 legislators, is required to “exercise continuous oversight of the rulemaking process.” Utah Code § 63G-3-501 also requires the ARRC to “examine each rule submitted by an agency” in order to determine if the rule is authorized by statute, if it complies with legislative intent, and if adoption of the rule requires legislative review or approval. The ARRC must also determine the rule’s impact is the state’s citizens, economy, and governmental operations.

In order to carry out the above duties, the ARRC may review the language of an administrative rule and request that agency representatives meet to discuss and listen to committee members’ recommendations. Occasionally, a state agency may request to present a draft administrative rule to the ARRC. In the past, the Utah Legislature has also passed legislation that required an agency to present draft rules to the ARRC before the rules became effective.

Washington

Awaiting response.

Wyoming

Awaiting response.

2. Are executive agency staff permitted to interact with legislators when developing administrative regulations?

Alaska

While it is not common practice, there is no prohibition against staff from interacting with lawmakers while developing administrative rules. As questions or concerns arise, doing so can be beneficial.

Arizona

Awaiting response.

California

There is no prohibition against staff interacting with individual legislators, though the agency is charged with interpreting and implementing the statute. The mere fact that a legislator has a strong opinion, does not determine what the agency will do.

Colorado

The Colorado State Administrative Procedure Act (APA) is silent on this. Legislators, like any member of the public may, under the APA: (1) petition a state agency for the issuance, amendment, or repeal of a rule, §24-4-103 (7); or (2) submit written data, views, or arguments and present them orally at a public hearing for the adoption of proposed rules, §24-4-103 (4)(a).

As discussed below, the Office of Legislative Legal Services reviews all new and amended rules; however, if an agency asks to review a proposed rule before it has been promulgated, the Office declines to do so on grounds that doing so would be providing the agency legal advice and, as attorneys for the legislature and not the executive branch, such legal advice would violate the constitutional Separation of Powers.

Hawaii

The HAPA does not contain an express prohibition against interactions between legislators and Executive agency staff when agencies are developing administrative rules.

Idaho

Yes, staff are permitted to do so.

Montana

Awaiting response.

Nevada

There are no statutory prohibitions against staff interacting with legislators when an executive branch agency is developing administrative regulations. On occasion, a legislator will attend workshops or adoption hearings and provide testimony regarding legislative intent.

New Mexico

There is no prohibition against agency staff interacting with legislators on administrative regulations. However, a legislator is not permitted to speak for the entire Legislature on legislative intent.

Oregon

Awaiting response.

Utah

Staff are permitted to interact with legislators when developing administrative rules. For example, executive agency staff may interact with legislators during an ARRC meeting.

Washington

Awaiting response.

Wyoming

Awaiting response.

3. Does your legislature have any formal oversight of the administrative rules process?**Alaska**

Awaiting response.

Arizona

Awaiting response.

California

The California Administrative Procedures Act created the Office of Administrative Law (OAL) to review new regulations according to a standardized process. If the Legislature passes a new statute that goes through the emergency regulation process, then the scrutiny by the OAL is reduced. OAL, at the request of any standing or select committee of the Legislature, shall initiate a priority review of any regulations that the committee deems not to meet the standards of California law. While the Legislature is not required to pass a law to initiate such a review, the action must be taken by a committee. An individual lawmaker's opinion cannot trigger such a review directly.

Colorado

The Legislature does not have direct oversight of the rule-making process itself. This is due to the fact that the Legislature's oversight does not begin until after administrative rules have been adopted and become effective. Under the APA, all new or amended rules promulgated must be submitted to the legislature for post-adoption review. The Office of Legislative Legal Services reviews all new and amended rules over a one-year review cycle from November 1 to October 31. The APA provides that all of these new and amended rules expire on the May 15 following the one-year rule review cycle unless they are extended indefinitely in the annual rule review bill that the Legislature enacts.

If the Office believes that a rule it has reviewed either conflicts with statute or was promulgated outside of the executive agency's rule-making authority, the Office will reach out to the agency to see if the agency is willing to engage in a new rule-making proceeding to fix the rule issue. If not, the Office will present the rule issue to the Legislative Committee on Legal Services and the agency may present its position as well. The Committee will vote whether to extend the rule indefinitely in the annual rule review bill or let it expire on the May 15 following the Committee's vote. In the annual rule review bill, all agencies' new or amended rules are extended indefinitely, except for those set out to expire on May 15 based on the Committee's vote to let them expire or based on an amendment made to the rule review bill after it has been introduced.

Hawaii

Awaiting response.

Idaho

Please refer to Question 1.

Montana

Awaiting response.

Nevada

For most executive branch agencies, the Legislative Commission must approve an adopted regulation before it becomes effective. In 1996, the voters of Nevada approved a constitutional amendment to the state's separation-of-powers provision, which expressly empowers the Legislature to provide by-law for legislative agencies and legislative bodies, composed of members of the Senate and Assembly, to suspend or nullify regulations adopted by executive agencies, on the basis that the regulations exceed the statutory authority of the agencies or are inconsistent with legislative intent.

The constitutional amendment provides that if the Legislature authorizes the adoption of regulations by executive agencies that bind persons outside the agencies, then the Legislature is authorized to enact laws providing for: (1) the review of such regulations by a legislative agency before their effective date to determine whether each such regulation is within the statutory authority for its adoption; (2) the suspension by a legislative agency of any such regulation that appears to exceed the statutory authority for its adoption until the regulation is reviewed by a legislative body composed of members of the Senate and Assembly; and (3) the nullification of any such regulation by a majority vote of a legislative body composed of members of the Senate and Assembly (Section 1 of Article 3 of [the Constitution of the State of Nevada](#)). When the constitutional amendment was presented to the voters, the ballot materials explained that its purpose was to ensure that the Legislative Branch had the specific constitutional power to suspend or nullify regulations adopted by executive agencies that exceed the statutory authority granted by the Legislature when it passed the laws that authorized the agencies to adopt the regulations. ([State of Nevada Ballot Questions 1996](#), Question 5 [Nevada Secretary of State 1996])

New Mexico

The Legislature does not have any formal oversight of the administrative rules process.

Oregon

Awaiting response.

Utah

In addition to the oversight duties of the ARRC detailed in Question 1, the ARRC is also required under [Utah Code § 63G-3-502](#) to annually sponsor "omnibus legislation" that reauthorizes all administrative rules. As part of the omnibus legislation, the ARRC may exempt certain rules or sections of specific rules from reauthorization.

Washington

Awaiting response.

Wyoming

Awaiting response.

4. Are there sunset clauses on administrative rules?

Alaska

Regulations stay in effect with no sunset unless specified in the originating legislation. Sometimes there may be pilot or interim programs created that have a specific start and finish times, and in those cases, new reactivating legislation must be introduced to guarantee their functions into the future. Licensing Boards, for instance, typically have sunset dates and can only continue via legislation put forth by a legislator. This allows the Legislature to periodically review the Board's activities, effectiveness, and financial health before allowing it to continue.

Arizona

Awaiting response.

California

No, unless specified in the statute.

Colorado

Not exactly, but, under the APA, all new or amended rules expire on the May 15 following the one-year review cycle described above unless the rules are extended indefinitely in the annual rule review bill. Thus, under statute, any new or amended rule not extended by the annual rule review bill will sunset on the May 15 following the bill's enactment (or, if no administrative rule review bill is enacted, *all* new or amended rules will expire on that May 15).

Hawaii

In promulgating administrative rules, an agency may determine whether it is appropriate to incorporate a sunset clause.

The Legislature has provided for the sunset of interim rules, until formal rulemaking takes place (see, Section [329D-27](#), relating to the medical cannabis dispensary system, which requires the Department of Health to adopt rules pursuant to Chapter 91; and also requires the adoption of interim rules, by no later than January 4, 2016, which shall be exempt from Chapter 91 and Chapter 201M (Small Business Regulatory Flexibility Act) and remain in effect until July 1, 2025, or until rules are adopted pursuant to the HAPA, whichever occurs sooner). The Legislature has also authorized temporary rules to regulate tax matters and to regulate financial institutions in times of emergency (see Sections 231-10.7 and 412:2-315, HRS, respectively, as used to answer Question 8).

Idaho

[Section 67-5292, Idaho Code](#), provides that all rules automatically expire on July 1st of each year, unless extended by statute each year.

Montana

Awaiting response.

Nevada

No. However, pursuant to [Nevada Revised Statutes \(NRS\) 233B.050](#), an executive branch agency must review its regulations at least once every ten years to determine whether it should amend or repeal any of the regulations. Within 30 days after completion of the review, the agency shall submit a report to the Legislative Counsel for distribution to the next regular session of the Legislature. The report must include the date on which the agency completed its review and describe any regulation that must be amended or repealed as a result of the review.

New Mexico

There are no sunset clauses on administrative rules.

Oregon

Awaiting response.

Utah

[Utah Code § 63G-3-305](#) requires each agency to review its rules every five years, beginning five years after the rule's original effective date. If after review, an agency elects to continue the rule, the agency must file a notice of review and a statement detailing the reason for continuation with the Office of Administrative Rules. If after review, the agency repeals or amends the rule, the agency must follow the administrative rulemaking process described in Question 9. An agency may make one request for a 120-day extension of the five-year review period. If the agency does not file an extension and does not comply with the requirements of the review process, then the rule expires on the day immediately after the five-year notice deadline. If an agency files an extension and does not meet the extension deadline, the rule automatically expires on the day immediately after the extension deadline.

Washington

Awaiting response.

Wyoming

Awaiting response.

5. What authority does your legislature have to modify administrative rules?

Alaska

The Alaska Administrative Procedure Act is the law governing procedures for state administrative agencies to [propose and issue regulations](#) and provides for [judicial review](#) of agency [adjudications](#) and other final decisions in [Alaska](#). It can be found in Title 44, Chapter 62 of the [Alaska Statutes](#).

The Alaska State Legislature used to have a Regulation and Review Committee whose members were appointed by the Presiding Officers. That committee functioned from 1975 until 2018. In 2018, the committee was formally abolished. See the [Adopted Regulations Memo](#).

Arizona

Awaiting response.

California

The Legislature passed the California Administrative Procedures Act, which created the Office of Administrative Law (OAL) to review new regulations according to a standardized process. If the Legislature passes a new statute that goes through the emergency regulation process, then the scrutiny by the OAL is reduced. OAL, at the request of any standing or select committee of the Legislature, shall initiate a priority review of any regulations the committee deems does not meet the standards of California law. While the Legislature is not required to pass a law to initiate such a review, the action must be taken by a committee. An individual lawmaker's opinion cannot trigger such a review directly.

Colorado

The Legislature does not have authority to modify administrative rules. The Legislature does, however, as stated above, have authority to not extend new or amended administrative rules through the annual rule review bill. Also, the Legislature can modify a statute authorizing an agency's rule-making authority at any time to (1) remove the agency's rule-making authority regarding a specific subject, (2) require the agency to adopt specific rules, or (3) prohibit the agency from adopting specific rules. Finally, if the Legislature amends statute in a manner that renders the agency's rule in conflict with the statute, then the next time that the agency's rule is amended and reviewed by the Legislature, the rule may not be extended through the legislature's rule review process

Hawaii

The Legislature has the authority to amend the HAPA as it would other statutes. It also can require or permit the promulgation of administrative rules by statute. However, the Legislature does not have authority over agencies as they proceed through rulemaking and the implementation of these rules.

Idaho

When the Legislature finds that the agency rule is inconsistent with the legislative intent of the statute being implemented or prescribed by the rulemaking, a concurrent resolution may be adopted by rejecting the entire rulemaking, or any subpart deemed inconsistent.

Montana

Awaiting response.

Nevada

The Legislature does not currently provide itself with the statutory authority to modify or nullify executive branch regulations, but the Constitution of the State of Nevada authorizes the Legislature to enact such authority.

New Mexico

The Legislature does not have authority to modify administrative rules.

Oregon

Awaiting response.

Utah

The Utah Legislature does not have specific statutory authority to modify administrative rules. However, as described in Question 3, the ARRC may elect to not reauthorize certain rules or may amend statutory language, authorizing an agency to enact an administrative rule.

Washington

Awaiting response.

Wyoming

Awaiting response.

6. What do your statutes provide about public input of administrative rules?**Alaska**

Notice of the proposed regulations must be (1) published in a newspaper or trade publication; (2) furnished to every person who has filed a request for notice of proposed action with the state agency; (3) furnished to appropriate state officials; (4) furnished to interested persons; 2 (5) furnished to the Department of Law, along

with a copy of the proposed regulations; (6) furnished electronically to incumbent State of Alaska legislators; (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a) (1) and (b) and 44.62.190(a) (1).

Arizona

Awaiting response.

California

Public input is mandatory under California law, but the public comment period is shortened during the emergency regulation process.

Colorado

Under the APA, when an agency first contemplates engaging in rulemaking, the agency must establish a representative group of stakeholders with interest in the subject of the rulemaking to submit views or participate in conferences about the subject. §24-4-103 (2). Once the agency develops a proposed rule, the agency must file a notice of the proposed rulemaking and hold a hearing at which members of the public may submit written data, views, or arguments and may present them orally at the hearing unless the agency deems it unnecessary. §24-4-103 (4)(a). Additionally, members of the public may: (1) petition a state agency for the issuance, amendment, or repeal of a rule, §24-4-103 (7); (2) request that an agency conduct a cost-benefit analysis of its proposed rule, §24-4-103 (2.5); or (3) request that an agency conduct a regulatory analysis of its proposed rule, §24-4-103 (4.5).

Hawaii

Section 91-3, HRS, generally requires at least 30 days' notice for a public hearing and outlines what must be included in the notice. Under the statute, the agency must "afford all interested persons opportunity to submit data, views, or arguments, orally or in writing." The agency is required to "fully consider all written and oral submissions respecting the proposed rule." Exceptions to these requirements are provided under the statute for emergency rules (see Subsections 91-3(b) and (c)) and other specific situations (Subsections 91-3(e) and (g)).

Idaho

In instances where an agency has some control over the formulation of the substantive content of a rule and has determined that it is a feasible undertaking, negotiated rulemaking must be conducted by the agency with interested persons. This requirement of the APA is intended to improve the substance of the rule through a consensus building process.

Montana

Awaiting response.

Nevada

For permanent regulations, the public is provided 15 days' notice of workshops conducted by Executive Branch agencies and is provided the opportunity to attend and comment publicly. Public input can also be provided to the agency in writing. The public is provided 30 days' notice prior to an adoption hearing on a regulation and is again provided the opportunity to comment at the adoption hearing. Finally, the public may comment on a regulation when it is submitted to the Legislative Commission for final approval by that body.

New Mexico

The [State Rules Act](#) addresses public input, specifically, [Section 14-4-5.3](#).

Oregon

Awaiting response.

Utah

Utah Code § 63G-3-301 requires an agency to "allow at least 30 days for public comment" on a proposed rule. Utah Code § 63G-3-302 requires an agency to hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:

- a public hearing is required by state or federal mandate; or
- another state agency, 10 interested persons, or an interested association having not fewer than 10 members, request a public hearing and the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.

A public hearing must be held "before the rule becomes effective" and "no less than seven days nor more than 30 days after receipt of the request for hearing."

Washington

Awaiting response.

Wyoming

Awaiting response.

7. How does your legislature ensure that administrative regulations are being implemented according to legislative intent?**Alaska**

The new law amends AS 24.05.182, review of administrative regulations by standing committees of the Legislature. With these changes, standing committees of the Legislature “may, consistent with the committee’s jurisdiction as provided in the uniform rules of the Legislature, review a proposed or adopted regulation, amendment of a regulation, or repeal of a regulation,” to “determine if the regulation properly implements legislative intent.” The law does not require that any special notice be furnished to legislative standing committee members. These individuals will receive notice as incumbent Alaska state legislators.

AS 24.05.182(a), as amended by Ch. 7 SLA 2018, states that “a standing committee of the Legislature may, consistent with the committee’s jurisdiction as provided in the uniform rules of the Legislature, review a proposed or adopted regulation, amendment of a regulation, or repeal of a regulation.” The Legislature’s “Regulation and Review” committee was repealed in 2018. See the [Adopted Regulations Memo](#).

Arizona

Awaiting response.

California

The Legislature ensures that regulations are implemented according to legislative intent through hearings convened by the relevant subject matter committees, or in the budget process, and before the Joint Legislative Audit Committee.

Colorado

The Legislature ensures administrative rules are being implemented according to legislative intent through the rule review process described above for question #3 in which the legislature reviews all new or adopted rules each year and, by bill, directs certain rules to expire the May 15 following the bill’s enactment.

Hawaii

Implementation and enforcement of administrative rules lie with the Executive branch. If a statute is not being implemented in a way the Legislature intended, the Legislature can amend the statute. Through that process, the Legislature may clarify the intent of the statute. The Legislature may also require reporting of specific performance measures or outcomes the legislation is intended to address.

Idaho

See Questions 1, 4, and 5.

Montana

Awaiting response.

Nevada

Determining whether an adopted regulation complies with legislative intent, is a primary purpose for the Legislative Commission’s review of regulations prior to them becoming effective.

New Mexico

Please refer to Question 1. See also [Section 14-4-5.7](#).

Oregon

Awaiting response.

Utah

Under Utah Code § 63G-3-301, a state agency is required to initiate “rulemaking proceedings no later than 180 days after the day on which the statutory provision that specifically requires the rulemaking takes effect...” Under Utah Code § 63G-3-301, a state agency must appear before the ARRC if the agency does not initiate rulemaking proceedings within the 180-day time period and provide “the reasons for the delay.”

In 2019, the Chairs of ARRC requested that legislative staff follow-up with state agencies to ensure that administrative rules required by recent legislation had been initiated or implemented. A summary of these efforts was provided during the August and September 2019 ARRC meetings.

Washington

Awaiting response.

Wyoming

Awaiting response.

8. Can executive branch agencies bypass the public comment or rule making process in your state? If so, under what circumstances?

Alaska

As of August 2018, certain public corporations that notice and adopt regulations under statutes specific to those corporations, and not under the Alaska Procurement Act, do not need to submit adopted regulations to the Alaska Regulation Review Committee. This applies to the:

- a) Alaska Housing Finance Corporation (sec. 2, ch. 7, SLA 2018, amending AS 18.56.088)
- b) Alaska Aerospace Corporation (sec. 5, ch. 7, SLA 2018, amending AS 26.27.110)
- c) Alaska Gasline Development Corporation (sec. 7, ch. 7, SLA 2018, amending AS 31.25.130)
- d) Alaska Permanent Fund Corporation (sec. 8, ch. 7, SLA 2018, amending AS 37.13.206)
- e) Alaska Industrial Development and Export Authority (sec. 22, ch. 7, SLA 2018)

Also, the requirement to submit adopted regulations to the governor for review does not apply to these entities:

- a) Regulatory Commission of Alaska
- b) Board of Fisheries, the Board of Game
- c) Alaska Oil and Gas Conservation Commission
- d) Office of Victims' Rights
- e) Office of the Ombudsman

The State of Alaska also provides a path for introducing Emergency Regulations.

If a threat to the public peace, health, safety, or general welfare requires immediate action, an agency may adopt an emergency regulation without first following the usual procedures of publishing notice, waiting for public comment, and obtaining approval from the Department of Law. Although, in these rare circumstances, there is not requirement for pre-adoption, public participation in the emergency regulation adoption process, the law requires that notice of the adoption be published and distributed within 5 days after an emergency regulation is filed by the lieutenant governor's office. If notice not published and distributed by the 10th day, the regulation is automatically repealed and cannot be readopted as an emergency regulation. If the notice is published and distributed by the 10th day, the emergency regulation only remains in effect for a total of 120 days unless the agency follows the standard procedures required in order to make the regulation permanent*.

*Chapter 3 page 17 of the [Regulation Drafting Manual](#)

Arizona

Awaiting response.

California

Only according to statute if specified.

Colorado

A notice and public hearing of proposed rules is not required for temporary or emergency rules in which an executive agency finds on the record that "immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the [notice and hearing] requirements [of the APA] would be contrary to the public interest." §24-4-103 (6)(a). The temporary or emergency rules are effective for 120 days or less.

Hawaii

Certain executive branch agencies are authorized by statute to bypass the rule making process for a certain period of time.

[Section 231-10.7, HRS](#), sets forth the Department of Taxation's temporary rulemaking authority as follows:
§231-10.7 Temporary rulemaking authority for regulation of tax matters.

- a) Notwithstanding any other law in title 14, chapter 91, or chapter 201M to the contrary, the department is authorized to adopt any temporary rules as the department may deem proper as provided in this section. Temporary rules may include the adoption, amendment, or repeal of any rules concerning any matters which the department is authorized to regulate.
- b) Temporary rules shall take effect seven days after notice of the temporary rules is issued. Notice under this subsection shall require:
 - Making the temporary rules available on the department's and the lieutenant governor's websites;
 - Making copies of the temporary rules available to the public for inspection at the department's offices or copying if any required fee is paid; and
 - Providing public notice of the substance of the temporary rules at least once statewide.
- c) Temporary rules shall be approved by the governor.
- d) Any temporary rules issued by the department shall also be issued as proposed administrative rules that shall be subject to the procedural requirements of chapter 91.
- e) Temporary rules shall expire eighteen months from the date the temporary rules take effect.
- f) Temporary rules shall conspicuously provide the following information at the beginning of the temporary rules' text:
 - Notice stating the temporary nature of the rules;
 - The expiration date of the temporary rules; and
 - A statement advising that proposed administrative rules subject to chapter 91 are being simultaneously proposed for formal adoption.
- g) Temporary rules shall have the same force and effect as any other administrative rules.

The HRS does not provide any other agency with temporary rulemaking authority identical to the authority that is provided to the Department of Taxation.

However, Section 412:2-315(c), HRS, permits the Commissioner of Financial Institutions to order some or all Hawaii financial institutions to observe temporary rules that the Commission may prescribe if the Governor of Hawaii declares a state emergency.

Section 412:2-315 states, in pertinent part:

§412:2-315 National or state emergencies.

* * *

- c) If the governor declares a state emergency, by proclamation or otherwise, the commissioner may order some or all Hawaii financial institutions in the State to observe such temporary rules, limitations or restrictions as the commissioner may prescribe in order to cope with such emergency.

Additionally, while Section 91-3, HRS, does not explicitly authorize the adoption of "temporary" rules, it allows an agency to adopt, amend, or repeal rules if the agency finds certain circumstances of imminent peril or conflicting provisions of controlling federal law exist, by means of an abbreviated notice and hearing process, with durational limitations.

Section 91-3 states, in pertinent part:

§91-3 Procedure for adoption, amendment, or repeal of rules.

* * *

- b) Notwithstanding the requirements of subsection (a), if an agency finds that an imminent peril to the public health, safety, or morals, to livestock and poultry health, or to natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable to adopt an emergency rule to be effective for a period of no longer than one hundred twenty days without renewal.

- c) In addition to emergency rules adopted pursuant to subsection (b), an agency may, in a similar manner, adopt emergency rules where new federal legislation or federal and state court decisions disrupt prior practice under any statute administered by the agency and adoption of an emergency rule is urgently needed to:
- Conform existing rules to new requirements;
 - Implement newly-established rights;
 - Clarify existing rules and prevent confusion among those covered by existing statutes;
 - Stabilize a regulated industry or endeavor;
 - Avoid disruption of governmental or industrial operations;
 - Facilitate orderly agency or legislative study of the consequences of the new federal legislation or a federal or state court decision;
 - Reinforce or preserve the unmodified goals of a statute administered by the agency; or
 - Temporarily resolve any practical problems created by the new federal legislation or federal and state court decisions; provided that an agency shall not adopt any emergency rule pursuant to this subsection without conducting a public hearing; provided further that an agency shall give no less than thirty days' notice of the hearing; provided further that any emergency rule adopted pursuant to this subsection shall be effective until no later than adjournment sine die of the next regular legislative session following adoption of the emergency rule.
- d) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. This subsection shall not apply to the adoption, amendment, and repeal of the rules of the county boards of water supply.
- Section 91-3, Hawaii Revised Statutes, also authorizes the Governor in the case of the State, or a mayor in the case of a county, to waive notice and hearing requirements applicable to rulemaking, as follows:
- §91-3 Procedure for adoption, amendment, or repeal of rules.
- * * *
- e) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by:
- Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor; and
 - Posting the full text of the proposed

Idaho

Idaho's rulemaking process requires that proper and timely notice be given to the public and that ample opportunity be provided to the public to participate in rulemaking. However, a change in an agency's process or procedure requirements, a court order, or the need to simply update the rule or do some housekeeping can cause an agency to initiate rulemaking and set the process in motion.

Montana

Awaiting response.

Nevada

If an executive branch agency wishes to adopt a regulation or amend or suspend a permanent regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, it may adopt a temporary regulation. The agency is still required to conduct at least one workshop and conduct a public adoption hearing, but it is not required to submit the regulation to the LCB for drafting or obtain the approval of the Legislative Commission prior to the regulation becoming effective. A temporary regulation expires by limitation on November 1 of the odd-numbered year.

Executive branch agencies also may adopt emergency regulations, which are effective for a period not longer than 120 days, if the governor endorses the agency's statement of emergency. An opportunity for public

comment in a workshop or hearing is not required for an emergency regulation. If practicable, a copy of an emergency regulation must be made available for public review at least the day before it becomes effective.

New Mexico

See emergency rules provision in [Section 14-4-5.6](#).

Oregon

Awaiting response.

Utah

Utah Code § 63G-3-304, an agency may bypass the administrative rulemaking process if the agency finds the procedures would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

If a rule falls under one of the above exceptions (commonly referred to as an "emergency rule"), the state agency must file notice of the rule and provide a justification for the filing. Under Utah Code § 63G-3-304, an emergency rule lasts for 120 days, and if a state agency wants to continue enforcing an emergency rule beyond 120 days, the agency must file a permanent version of the rule in accordance with administrative rulemaking procedures described in question 9.

Washington

Awaiting response.

Wyoming

Awaiting response.

9. How are administrative rules made in your state? Are there any legal staff in your legislature that can provide you a brief reference sheet on the administrative rules process (mechanics)?

Alaska

Please refer to Appendix 3A: Alaska's Agency Checklist/Regular Regulation.

Arizona

Awaiting response.

California

According to the OAL, "The regular rulemaking process includes comprehensive public notice and comment requirements. It also requires that documents and information on which the rulemaking action is based are available for review and inspection. This comprehensive process is intended to further the goal of public participation in the rulemaking process and to create an adequate rulemaking record for review by OAL and the courts."

Colorado

Executive agencies adopt administrative rules after engaging in public outreach and providing notice and a public hearing of the administrative rules pursuant to §24-4-103 of the APA. The Office of Legislative Legal Services provides legislators written guidance on the post-adoption rule review process, but not on the rule-making process itself.

Hawaii

The process is outlined in Chapter 91, HRS. The Legislative Reference Bureau is an available staff resource and publishes the [Hawaii Administrative Rules Drafting Manual](#), last updated in 2016.

Idaho

Idaho has an Office of the Administrative Rules Coordinator and has published [The Idaho Rule Writer's Manual](#), a guide for drafting and promulgating administrative rules in the State of Idaho.

Montana

Awaiting response.

Nevada

The process for adopting a permanent regulation by a nonexempt agency is summarized below:

- (a) The Executive Branch agency prepares a document containing a summary of the changes, additions, or deletions that are needed to its regulations or a draft of the regulatory changes the agency would like to have made.
- (b) The Executive Branch agency determines whether the regulatory changes will have an impact on small businesses. If so, the agency must prepare a small business impact statement.
- (c) The Executive Branch agency must conduct at least one public workshop to discuss the general topic or topics covered by the proposed regulations (15 days' notice required).
- (d) The Executive Branch agency must submit the proposed regulation text and/or summary of the changes, additions, or deletions needed to the LCB.
- (e) LCB's Legal Division staff review the submission and draft the proposed regulation.
- (f) After receiving the regulation back from LCB, the Executive Branch agency reviews the regulation to ensure it captures the intent of the agency and prepares and posts a notice of intent to act upon regulations (30 days' notice required).
- (g) The Executive Branch agency conducts the adoption hearing where it receives comments from the public regarding the proposed regulation, considers comments received from the public, and decides whether to adopt the regulation.
- (h) The Executive Branch agency prepares an informational statement regarding the regulation and returns the adopted regulation, the informational statement, and the small business impact statement to the LCB for inclusion on the agenda for the next meeting of the Legislative Commission.
- (i) The Legislative Commission accepts public comment on the regulations and then decides whether the regulations should be approved. The regulations do not become effective without the Legislative Commission's approval.

New Mexico

No.

Oregon

Awaiting response.

Utah

The administrative rulemaking process is detailed in Utah Code § 63G-3-301, which requires an agency to first file the language of the proposed rule and the "rule analysis" with the Office of Administrative Rules. Utah Code § 63G-3-301, the rule analysis must contain:

- a summary of the rule or change;
- the purpose of the rule or reason for the change;
- the statutory authority or federal requirement for the rule;
- the anticipated cost or savings to the state budget, local governments, small businesses, and persons other than small businesses, businesses, or local governmental entities;
- the compliance cost for affected persons;
- how interested persons may review the full text of the rule;
- how interested persons may present their views on the rule;
- the time and place of any scheduled public hearing;
- the name and telephone number of an agency employee who may be contacted about the rule;
- the name of the agency head or designee who authorized the rule;
- the date on which the rule may become effective following the public comment period;
- the agency's analysis on the fiscal impact of the rule;
- any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
- if applicable, a summary of the agency's efforts to comply with certain fiscal analysis processes that consider measurable negative fiscal impacts on small businesses.

The Office of Administrative Rules is required to publish filed rules and rule analyses every month in the [Utah](#)

[State Bulletin](#).. A copy of the Utah State Bulletin is provided to the ARRC and available to the public and online. After a rule is filed, the public comment period described in question 6 follows. If no changes are made to the rule after the public comment period, the rule becomes effective as provided in Utah Code § 63G-3-301 on "any date specified by the agency that is no fewer than seven calendar days after the day on which the public comment period closes . . . and no more than 120 days after the day on which the rule is published." An agency must provide notice of the effective date to the Office of Administrative Rules, which is published in the next month's Utah State Bulletin.

A brief handout describing the administrative rulemaking process is attached. The legal staff at the Office of Legislative Research and General Counsel can provide additional information upon request.

Washington

Awaiting response.

Wyoming

Awaiting response.

10. Explain the life cycles of the administrative rule process in your state. Make a flow chart to see where the intervention points are.

Alaska

Please refer to Appendix 3B: Alaska's Steps in the Regulation Adoption Process.

Arizona

Awaiting response.

California

See the following [LAO Report, "Improving California's Regulatory Analysis."](#)

Colorado

After notice and public hearing, an executive agency adopts a rule. That new or amended rule is reviewed by the Office of Legislative Legal Services and either approved or flagged as a rule issue. If flagged as a rule issue, the Office will first work with the agency to see if the agency is willing to adopt new rules to fix the rule issue. If not, the Office take the rule issue to the Committee on Legal Services for a public hearing on the rule issue. If the Committee determines that the rule either conflicts with statute or was promulgated outside of the agency's rule-making authority, the Committee will vote not to extend the rule. The rule will be exempted in the annual rule review bill from the rules that are extended indefinitely. Upon passage of the annual rule review bill, the rule will then expire on the May 15 following the rule review bill's enactment.

Hawaii

The standard process is governed by Chapter 91, HRS. (The process outlined below does not apply to exceptions under Section 91-3, HRS.) In addition, the Hawaii Administrative Rules Drafting Manual produced by the Legislative Reference Bureau (pages 310 through 312) contains guidance for processing of rules beyond what is required by the HAPA. The agency shall comply with any Administrative Directive on Rulemaking issued by the Governor concerning requirements for obtaining approval to hold public hearings for rulemaking and with internal departmental requirements concerning proposed rules. The agency may request that the Legislative Reference Bureau review the proposed rules for format. The Legislative Reference Bureau may raise substantive legal questions, but resolution of those questions should be handled in consultation with the Office of the Attorney General or other legal staff assigned to advise the agency.

The agency is required to provide at least thirty days' notice of the public hearing on proposed administrative rules, in accordance with the requirements of Section 91-3(a)(1).

The agency conducts a public hearing. According to Section 91-3(a)(2), all interested persons are allowed an opportunity to submit data, views, or arguments, orally or in writing, to the agency on proposed rules, and that agency shall fully consider all written and oral submissions respecting the proposed rule. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.

Three copies of the rules shall be sent to the Governor. If approved, the Governor will sign the rules and send them directly to the Lieutenant Governor for filing. Upon receipt, the Lieutenant Governor's office will keep one copy, send one copy to the Ombudsman, and return one copy to the agency.

After receiving the returned copy from the Lieutenant Governor, the agency stamps the effective date in the source notes of all remaining sections of that copy in standard format. The agency stamps the effective date in all the source notes in the final Ramseyer version, and makes copies of the standard and Ramseyer format versions. Within 10 days after receiving the return copy from Lieutenant Governor, the agency shall send one copy of the filed standard format version and one copy of the signed Ramseyer format version to the Legislative Reference Bureau.

Idaho

Please refer to Question 9.

Montana

Awaiting response.

Nevada

Please refer to Question 9.

New Mexico

We do not have flow chart available at this point.

Oregon

Awaiting response.

Utah

Awaiting response.

Washington

Awaiting response.

Wyoming

Awaiting response.

Financial Oversight

11. How are executive agencies required to report to your legislature, i.e. committees, subcommittees or task forces, on how they are spending funds that have been allocated?

Alaska

Through Finance subcommittee work, department overviews, the Legislative Budget and Audit Committee, and annual reports.

Arizona

Awaiting response.

California

Agencies report to relevant subject matter committees, the budget process, and the Joint Legislative Audit Committee as requested.

Colorado

In general, an executive agency is not required to report to the General Assembly as it spends money that has been appropriated to the agency. Although, there may be specific reports required of a state agency about a particular program that may include this information.

Hawaii

A reporting requirement may be included in a measure that appropriates funding to an executive agency. For example, Act 265 (2019), appropriated funds for Fiscal Year 2019-2020 for the University of Hawaii Cancer Center to determine the etiologies of the high incidence of liver and bile duct cancers in Hawaii. The Act required the University of Hawaii Cancer Center to submit to the Legislature a report of its findings that also indicates how funds were spent, no later than twenty days prior to the convening of the Regular Session of 2020.

Idaho

The Idaho Legislature has a joint committee on finance and appropriations, that agencies are required to report in front of each legislative session.

Montana

Awaiting response.

Nevada

Nevada's budget process requires that agencies report actual expenditures for each even-numbered year in a part of the biennial budget submission to the Legislature that meets every odd year.

During the interim between legislative sessions, the members of the Assembly Committee on Ways and Means and the Senate Committee on Finance from the previous legislative session meet approximately every six to eight weeks, as the Interim Finance Committee, which is responsible for:

- Administering the Interim Finance Committee Contingency Account;
- Reviewing and taking action on requests for budget revisions,
- Reviewing and approving the reclassification of positions from one occupational group to another; and
- Reviewing informational reports submitted in accordance with letters of intent issued by the money committees or as required by statute.

Other interim committees also receive financial and program updates, such as the Interim Retirement and Benefits Committee and the Committee on Industrial Programs.

Additionally, the LCB's Fiscal Analysis Division continually monitors state agencies' fiscal and program activities, on behalf of the Legislature, primarily during the interim period between legislative sessions.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

For the purpose of preparing the governor's recommended budget, agency and department heads are to provide itemized estimates of changes in revenues and appropriations. The governor may also require other information related to program productivity and performance measures. The Governor's Office of Management and Budget is required to provide, no later than 30 days before the annual general session, data and analysis used in preparing the governor's budget recommendations, including:

- actual revenues and expenditures for the fiscal year ending the previous June 30;
- estimated or authorized revenues and expenditures for the current fiscal year;
- requested revenues and expenditures for the next fiscal year;
- detailed explanations of any differences between the amounts appropriated by the Legislature in the current fiscal year and actual revenues and expenditures;
- a statement of agency and program objectives, effectiveness measures, and program size indicators; and
- other budgetary information required by the Legislature in statute.

Spending authorization automatically expires at the end of a fiscal year. The Executive Appropriations Committee (EAC) assigns base budgets to appropriations subcommittees for review. State agencies are required by statute to provide budget information to subcommittees as requested. There are eight appropriations subcommittees:

1. Infrastructure and General Government;
2. Business, Economic Development, and Labor;
3. Executive Offices and Criminal Justice;
4. Social Services;
5. Higher Education;
6. Natural Resources, Agriculture, and Environmental Quality;
7. Public Education; and
8. Retirement and Independent Entities.

After review, which includes presentations by agencies, the subcommittees report back to the EAC. The EAC then makes any final adjustments to the base budgets.

During the interim, the EAC is required to meet at least every other month on the day before interim meetings. The appropriations subcommittee chairs may attend these meetings and provide input regarding their budget.

Appropriation subcommittees must meet at least once during the interim and may hold additional meetings if authorized by the Legislative Management Committee (LMC).

Each interim, each appropriations subcommittee is required to create an accountable process budget for approximately 20% of the budgets that fall within the appropriation subcommittee's responsibilities. Each subcommittee must ensure that each of the budgets for which the appropriations subcommittee has responsibility is the subject of an accountable budget process at least once every five years.

The EAC may, based on a legislator's or citizen's complaint, review any appropriation, whether in an appropriations bill or otherwise, to ensure that the entity to which the funds were appropriated complies with any legislative intent expressed in the legislation appropriating the funds. If the EAC finds that an entity has not complied with any legislative intent concerning an appropriation expressed in the legislation appropriating the fund, the committee may make a recommendation concerning the appropriation to the entity receiving the funds and the LMC.

The Office of the Legislative Fiscal Analyst also issues a budget item [follow-up report](#) which is submitted to the EAC. This report reviews certain fiscal notes and budget items from past legislative sessions to assess the accuracy of earlier estimates, report the current status of associated initiatives, and recommend potential future budget actions.

Washington

Awaiting response.

Wyoming

Awaiting response.

12. Are executive agencies in your state allowed to start spending funds before administrative rules are in place? (focus of question is on spending funds vs. rule-making process)

Alaska

Executive agencies may spend funds in accordance with appropriations made by the Legislature.

Arizona

Awaiting response.

California

Yes. Funds may be spent when authorized by the Legislature.

Colorado

Yes. Appropriations may be used by a state agency to promulgate rules, if so required by statute, but an appropriation to a state agency is generally not contingent on the state agency promulgating rules first.

Hawaii

Yes, absent an explicit restriction otherwise (see, for instance, [Subsection 91-3\(e\), HRS](#)).

Idaho

Yes.

Montana

Awaiting response.

Nevada

Unless required to implement a new program or changes in an existing program, administrative regulations are not typically adopted in order to begin spending funding approved by the Legislature. Agencies begin spending funds at the beginning of each fiscal year in accordance with the legislatively approved budget, language that provides specific instruction included in funding bills, and Title 31 ("Public Financial Administration") of NRS. In addition, the [State Administrative Manual](#) (NRS 232.004), serves in a similar manner to administrative regulations; however, it is not subject to review and approval by the Legislature. The Manual is a compilation of policy statements concerning the internal operations of state government. The policies are based on authorizing statute or other approved regulations, although policies may be established in the absence of specific statutes where particular guidance and instructions are necessary for agencies to conduct business. The director of the Department of Administration or the director of the Office of Finance, Office of the Governor, compiles and publishes any policies and procedures adopted or amended by the [State Board of Examiners in the State](#)

[Administrative Manual](#). The State Board of Examiners (NRS 353.010) consists of the governor, secretary of state, and the attorney general.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

Yes, there is nothing that would prohibit an agency from spending funds before administrative rules are in place. Utah Code § 63G-3-301 requires an agency to submit the proposed rule to the appropriations subcommittee and interim committee over the agency for review, if the proposed rule, over a three-year period, has a fiscal impact of more than \$250,000 to a single person or \$7,500,000 to a group of persons. The appropriations subcommittee or interim committee that reviews a rule may recommend to the ARRC that the ARRC not recommend reauthorization of the rule in the omnibus legislation described in Question 3.

Washington

Awaiting response.

Wyoming

Awaiting response.

13. Do you have mechanisms, or clauses in your statutes, that require executive agencies to report to the legislature on the implementation of a program to ensure accountability?

Alaska

While it is up to the sponsor of the enacted legislation or the Legislature itself, some programs are required to issue an annual report to the Legislature on a specified date outlined in the originating legislation. Those annual reports are sent to the House Chief Clerk and Senate Secretary who then formally notify their corresponding bodies during scheduled floor sessions, that the report has been made available to them.

Arizona

Awaiting response.

California

Agencies report to the Legislature through the budget process and when specified in statute.

Colorado

Yes. In general, part 2 of article 7 of title 2, C.R.S., is the state measurement for accountable, responsive, and transparent (SMART) government act. Specifically, executive agencies annually report to the legislature (to the joint committee of reference that each executive branch agency is assigned) in the first two weeks of the regular legislative session. The presentation is regarding the executive branch agency's performance plan described in section 2-7-204 (3), C.R.S., its regulatory agenda, and its budget request and associated legislative agenda for that legislative session. The "performance plan" serves as a guide to a department's major functions and as a tool to evaluate performance goals over time.

Hawaii

A reporting clause can be included within a statute that requires executive agencies to report to the Legislature prior to the convening of each regular session or by another fixed deadline. Requirements for the report may vary. For example, Section 196-10.5, HRS, establishes the Hawaii Clean Energy Initiative Program. Subsection 196-10.5(c), establishes a reporting requirement, as follows:

§196-10.5 Hawaii clean energy initiative program.

* * *

- c) The department of business, economic development, and tourism shall submit a report to the Legislature no later than twenty days prior to the convening of each regular session on the status and progress of new and existing clean energy initiatives. The report shall also include:
 - The spending plan of the Hawaii clean energy initiative program;

- All expenditures of energy security special fund moneys; and
- the targeted markets of the expenditures, including reasons for selecting those markets, the persons to be served, specific objectives of the program, and program expenditures, including measurable outcomes.

Idaho

Yes, especially in appropriations legislation.

Montana

Awaiting response.

Nevada

Legislation that implements new programs often includes reporting requirements to interim committees and/or the next Legislature regarding program implementation and outcomes. Further, the money committees may issue letters of intent that include reporting requirements to the Interim Finance Committee regarding the implementation of new programs.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

Yes, there are many instances where an agency is required to report to an interim committee, an appropriations subcommittee, the LMC, or the EAC. See [Utah Code § 9-22-109](#) as an example.

Appropriations acts include performance measures and targets and require reporting usually in October of each year.

Washington

Awaiting response.

Wyoming

Awaiting response.

14. How does your legislature evaluate long-term programs? Is the evaluation evidence-based?

Alaska

The Alaska State Legislature typically reviews the status and progress of programs annually via the Department overviews that are held by standing committees and/or the finance subcommittees.

Arizona

Awaiting response.

California

Yes. Generally, through audits and evaluation of program data and trends of operations.

Colorado

There is no specific method, but the Legislature does evaluate programs as part of the budget process. The General Assembly is reactionary based on evaluations made by others (such as the state auditor's office, the joint budget committee staff, executive branch agencies through their performance plans, or the department of regulatory agencies' review of programs as part of the sunset program described in Question 15 below). The evaluation is not evidence-based.

Hawaii

For certain programs, the Legislature can include within the Act establishing the program a requirement to report to the Legislature, annually or at another fixed frequency, the progress or outcomes of that program.

The Legislature can also utilize the Office of the Auditor to conduct audits and report on the departments, offices, and agencies of the State, which are detailed in Question 16. In addition, the Auditor submits a report annually to the Legislature following up on recommendations the Auditor has made that are more than one year old and that have not been implemented by the audited agency.

Idaho

Evaluation of long-term programs are mostly left up to the agencies, and presumably they are evidence-based. The Legislature does evaluate long-term programs through the committee hearing process, and they are mostly evidence-based. For example, a wildlife agency may give periodic updates on hunting and fishing regulations and the impacts to game species and people.

Montana

Awaiting response.

Nevada

Nevada does not currently have an evidence-based program evaluation process in place on a statewide basis. However, some agencies have implemented evidence-based programming. The governor is required to include in the proposed biennial budget to the Legislature certain information concerning the continued operation of state government programs, including a summary of the long-term performance goals of the Executive Department, identification of each long-term performance goal of the Executive Department, and an explanation of how the proposed budget would provide adequate funding toward achieving those long-term goals.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

Please refer to Questions 16 and 17.

Washington

Awaiting response.

Wyoming

Awaiting response.

15. How are programs reauthorized in your state and do they require legislative approval?**Alaska**

Typically, a program runs in perpetuity unless otherwise specified with a sunset date in the enabling legislation or if the Legislature decides to effectively end it by defunding the program.

Arizona

Awaiting response.

California

Programs can be reauthorized by general statute or the budget adoption process.

Colorado

Statutorily created programs that establish a termination date require legislative approval for reauthorization. There are two ways that a program can be drafted to repeal in Colorado. One option is a straight repeal, in which the program repeals on a date certain. The other option is a repeal that establishes the date certain but requires a sunset review prior to the repeal. In both scenarios, the program will not be reauthorized unless the general assembly acts by bill.

If a program were drafted to require a sunset review prior to repeal, sections 2-3-1203 or 24-34-104, Colorado Revised Statutes would require the department of regulatory agencies to review the program and prepare a report detailing its recommendations. A committee of the general assembly would be required to hold a public hearing to discuss the report and take public testimony. If the committee chooses to introduce a bill, the bill will through move the legislative process as any other bill.

If the program was drafted to establish a repeal without a sunset review, the program still would not be reauthorized unless the general assembly were to act by bill, but the department of regulatory agencies would not be required to review the program or prepare a report prior to the repeal, nor would a legislative committee be required to meet to discuss the program.

Hawaii

The Legislature may appropriate funding for programs to allow them to continue to function. In Hawaii, the Legislature approves a budget for the biennium, which may be supplemented in the second year of the biennium.

Idaho

This is a broad category, but all programs are funded through the appropriation process. To the extent programs are funded they require legislative approval. Some other programs may not need legislative approval annually since they are discretionary.

Montana

Awaiting response.

Nevada

The vast majority of programs in Nevada do not require reauthorization. However, at times, the Legislature does include program end dates in statute in order to have the opportunity to consider certain programs for continuation.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

Programs continue unless statute provides for a repeal date. Programs with a repeal date in [Utah Code Title 63I, Chapter 1, Legislative Oversight and Sunset Act](#), may be reviewed by an interim committee which recommends whether to reauthorize the statute. Utah Code § 63I-1-103(4) states "it is the responsibility of any agency scheduled for termination or any agency which has oversight responsibilities for a statute scheduled for termination to seek its reauthorization with the Legislature."

Programs with a repeal date in [Utah Code Title 63I, Chapter 2, Repeal Dates by Title Act](#) repeal automatically without review by an interim committee.

Washington

Awaiting response.

Wyoming

Awaiting response.

16. What are the audit functions in your state and who conducts them?**Alaska**

The [Alaska Division of Legislative Audit](#) serves as one of the Legislature's most significant "checks" in the balance of powers with the executive and judicial branches of government. The Division's primary responsibility is to hold government agencies accountable to the laws enacted by the Legislature. All audits conducted by the Division are done in accordance with government auditing standards. As required by those standards, the Division also participates in a peer review process to assure compliance with those standards.

Special Audits: Any member of the Legislature may request a special audit through the Legislative Budget and Audit Committee. A special audit can cover many things. It can be an audit that is restricted to one part of an agency's operations or it can be an audit reviewing financial transactions for a period of time shorter or longer than a fiscal year.

Sunset Audits: The Division of Legislative Audit is required to conduct audits of boards, commissions, and agency programs subject to termination under AS 44.66. The audit report, along with other reports and testimony, is considered by the Legislature when determining if there is a continuing public need for a board, commission, or program.

Statewide Single Audits: A Statewide Single Audit is required by the federal Office of Management and Budget (OMB) Circular A-133. The audit includes an opinion on the financial statements of the State of Alaska, recommendations on financial and compliance matters, required auditor's reports on internal controls and compliance, and the Schedule of Expenditures of Federal Awards.

Information Technology Audits: An Information Technology Audit collects and evaluates "evidence" of an

organization's information systems, practices, and operations to determine if the information systems are safeguarding the information assets, maintaining data integrity, and operating effectively and efficiently to achieve the organization's business goals or objectives.

Arizona

Awaiting response.

California

The State Auditor independently audits executive agencies on a specified timetable or at the request of the Joint Legislative Audit Committee. Additionally, a financial oversight law, The Financial Integrity and State Manager's Accountability Act of 1983, is overseen by a collaboration among the California Department of Finance, the State Controller, and the State Auditor (see [Government Code section 13400 et seq](#)).

Colorado

The State Auditor is a constitutionally established position within the Colorado's Legislative Branch. The General Assembly appoints the State Auditor, without regard to political affiliation, to serve a 5-year term. The State Auditor must be a certified public accountant licensed to practice in Colorado. The State Auditor oversees the Office of the State Auditor (OSA), which is a staff agency of the General Assembly.

Colorado statutory law gives the State Auditor broad authority to conduct performance, financial, and IT audits of all state departments and agencies, public colleges and universities, the state's Judicial Branch, most special purpose authorities, any state entity designed as an enterprise, and other political subdivisions of the state as required by law. The State Auditor also has responsibility for ensuring local governments' compliance with the Local Government Audit Law, evaluation all State tax expenditures on a five-year cycle, and oversee the State fraud hotline.

The OSA comprises approximately 78 nonpartisan staff who perform audits and other activities in support of the State Auditor's constitutional and statutory responsibilities.

Hawaii

Article 7, Section 10, of the [Hawaii State Constitution](#) provides for an Auditor, as follows:

The Legislature, by a majority vote of each house in joint session, shall appoint an auditor who shall serve for a period of eight years and thereafter until a successor shall have been appointed. The Legislature, by a two-thirds vote of the members in joint session, may remove the auditor from office at any time for cause. It shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions, to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor's findings and recommendations to the governor and to the Legislature at such times as shall be provided by law. The auditor shall also make such additional reports and conduct such other investigations as may be directed by the Legislature.

Subsection 23-4(a), HRS, provides:

§23-4 Duties. (a) The auditor shall conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. The postaudits and all examinations to discover evidence of any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds or other improper practice of financial administration shall be conducted at least once in every two years after the close of a fiscal year, and at any other time or times during the fiscal year as the auditor deems necessary or as may be required by the Legislature for the purpose of certifying to the accuracy of all financial statements issued by the respective accounting officers and of determining the validity of expenditures of state or public funds.

In addition, Subsection 23-5(a), HRS, authorizes the Auditor to "examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision" with certain restrictions relating to tax return information. Subsection 23-5(c) authorizes the Auditor to issue subpoenas.

Idaho

The Legislative Audits Division of the Legislative Services Office, under the direction of the Legislative Council, is charged with the responsibility to audit the State of Idaho's Comprehensive Annual Financial Report (CAFR),

perform the Statewide Single Audit for federal funds expended, and perform management reviews of each executive department of state government at least once in three-year period.

Montana

Awaiting response.

Nevada

There are two primary audit functions in the State of Nevada:

1) The LCB's Audit Division conducts performance audits of state agencies under the United States Government Accountability Office's Generally Accepted Government Auditing Standards. Performance audits address the operational efficiency and effectiveness of programs in relation to their intended goals and objectives, sufficiency of internal controls, and compliance with laws and regulations. The

Audit Division is also responsible for auditing the state's federal programs and financial statements that are contracted out to a public accounting firm. Other significant responsibilities of the Audit Division include an annual count of money in the State Treasury and monitoring statutory compliance relating to school district reviews, certain child welfare responsibilities, special license plate reviews, and audits of certain state boards. The Audit Division's reports are confidential until presented to the Audit Subcommittee of the Legislative Commission, at which time they become a public document. Statutes provide for a robust follow-up process to help ensure agencies implement the audit recommendations. Many of the recommendations address ways to eliminate waste, increase collection of revenues, enhance program effectiveness, improve accountability, and ensure compliance with state laws and regulations.

2) The Division of Internal Audits, Office of Finance, Office of the Governor, performs internal audits of executive branch agencies. A more detailed explanation of its services is described on [its website](#).

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

Office of the Utah Legislative Auditor General – “The Legislature shall appoint a legislative auditor to serve at its pleasure. The legislative auditor shall report to and be answerable only to the Legislature and shall have authority to conduct audits of any funds, functions, and accounts in any branch, department, agency or political subdivision of the state” [see Utah Constitution Article VI, Section 33]. “The legislative auditor general shall appoint and develop a professional staff within budget limitations and shall conduct comprehensive and special purpose audits, examinations, and reviews of any entity that receives public funds” [Utah Code § 36-12-15].

Utah Office of the State Auditor – “The State Auditor is elected to hold office for four years and performs financial post audits of public accounts” [Utah Constitution Article VII, Section 1 and 15]. “The state auditor shall be the auditor of public accounts and is independent of any executive or administrative officers of the state” [Utah Code § 67-3-1(1)].

Certain state departments are required by statute to conduct various types of auditing procedures as determined by the agency head or governor ([Utah Code Title 63I, Chapter 5, Utah Internal Audit Act](#)). Internal audit programs are further required for the Administrative Office of the Courts, the State Board of Education, Dixie State University, the University of Utah, Utah State University, Salt Lake Community College, Southern Utah University, Utah Valley University, Weber State University, and Snow College.

Washington

Awaiting response.

Wyoming

Awaiting response.

17. Who can order an audit and who determines what areas get picked?

Alaska

Please refer to Question 16.

Arizona

Awaiting response.

California

The State Auditor independently audits executive agencies on a specified timetable or at the request of the Joint Legislative Audit Committee. Individual lawmakers can suggest audit topics, but the audits undertaken must be approved by the Joint Legislative Audit Committee.

Colorado

Under state statutory provisions, any member of the General Assembly or the Governor of the state may request the Legislative Audit Committee (LAC) to direct a special audit of any department, institution, or agency of state government. Upon the vote of a majority of the LAC, the State Auditor shall undertake or cause the audit to be undertaken. The LAC is comprised of 8 members, 4 from the state Senate and 4 from the state House of Representatives divided equally between the majority and minority party in each chamber. The LAC provides oversight duties and activities for the State Auditor and the OSA. In addition, under the Rules of the LAC, a member of the LAC may request the State Auditor to provide information useful for determining if a full audit is warranted and if such request does not involve an undue amount of time -- normally not to exceed 40 hours.

Further, in addition to a majority vote of the LAC, by statutory enactment adopted in the regular manner, the State Auditor may also be directed to undertake or to cause to be undertaken other types of performance, financial, or IT audits, including audits of various political subdivisions, state programs, fees assessed to fund state programs, and the use of money to fund particular state programs. Finally, the State Auditor has discretionary authority, without approve of the LAC, to conduct audits within their authority.

Hawaii

In addition to the Auditor's statutorily required audits, the Auditor also undertakes other studies and investigations as directed by the Legislature through an Act or as requested by resolution.

Idaho

The Legislative Council reserves the right to audit or examine any institution, association, board or other defined entity created by, or that receives an appropriation from, the Legislature.

Montana

Awaiting response.

Nevada

Each biennium, the Legislative Commission approves the audit program of the legislative auditor. State agencies listed on the audit program are selected by the Audit Division using a risk assessment process. This process considers such factors as the length of time since the last audit, amount of agency revenues and expenditures, legislative and public interest, prior problems, and agency or program complexity. During the interim, state agency audits can be added to the program if approved by the Legislative Commission. The Legislature may also direct the legislative auditor to conduct special audits or investigations through legislation. The scope and objective of an audit is generally determined by the legislative auditor and staff through a survey process of reviewing key agency processes and controls. When audits originate from legislation, the objective(s) of the audit may be defined in the bill.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

- a) [Office of the Utah Legislative Auditor General](#) - Any legislator or group of legislators can make an audit request simply by writing a letter to the Legislative Audit Subcommittee. This letter should identify specific issues of concern that should be addressed by the requested audit. Once the request is received, the Legislative Audit Subcommittee will prioritize it in the order that subcommittee members determine to be appropriate. Audit subcommittee members can also, by motion, request an audit be conducted.
- b) [Utah Office of the State Auditor](#) - The state auditor shall annually examine and certify financial statements and audit each permanent fund, special fund, the General Fund, and accounts of any department of state

government or any independent agency or public corporation on a regular basis as the auditor shall determine necessary or upon request of the governor or the Legislature [Utah Code § 67-3-1(2) and (3)].

Washington

Awaiting response.

Wyoming

Awaiting response.

18. How does your legislature ensure that it's not spending money on pet projects that may not have accountability?

Alaska

Through the legislative committee process via annual department overviews and through the Legislative Budget and Audit Committee.

Arizona

Awaiting response.

California

The formalities of the budget process, including its preparation by the two houses of the Legislature and action by the executive branch in signing it into law.

Colorado

For capital construction projects, the General Assembly avoids unaccountable pet projects at the front end by having a separate committee, the Capital Development Committee, review all proposed projects and make recommendations to the Joint Budget Committee, which likewise reviews the projects and includes only those it deems necessary in the annual general appropriations bill. For other projects, the General Assembly avoids these expenditures through the work of the Joint Budget Committee staff who analyze the Executive and Judicial Branch budget requests and make recommendations about whether such a project should be funded.

After the fact, there may be review of the project if it is included in the performance plan included in the SMART Act hearings, as described in connection with Question 14. If a legislator is concerned about an agency spending on a pet project, he or she could request an audit be conducted of the state agency as described in response to Question 17. Finally, there is accountability through transparency, as governmental expenditures are included in state website.

Hawaii

The Legislature may include within a bill appropriating funds or the budget bill provisions requiring an executive agency to submit to the Legislature a report which includes details such as the amount of funds expended, the purpose of each expenditure, and how those expenditures are used for the purpose of the project.

Idaho

Vigilance.

Montana

Awaiting response.

Nevada

The mission of LCB's Audit Division is to improve accountability and the effectiveness of state government. Audit objectives often include determining whether funds are being spent as intended. Objectives may also include determining whether an agency is operating in an economical or efficient manner or determining the extent to which a program achieves a desired level of program results. Additionally, audit objectives may include evaluating agencies' compliance with laws and regulations and determining whether appropriate information technology security controls are in place to protect sensitive information against unauthorized use.

New Mexico

Awaiting response.

Oregon

Awaiting response.

Utah

The budget and audit processes described in this section describe the checks that are in place. Each appropriation request is vetted by an appropriations subcommittee during the annual session and the Legislative Audit Subcommittee can authorize review of expenditures or programs. Further, before a legislator request for appropriation is scheduled for a subcommittee hearing, the requesting legislator must provide an explanation of statewide public purpose, a detailed budget, and information on deliverables or performance metrics.

Washington

Awaiting response.

Wyoming

Awaiting response.

Overview of Existing Body of Law

19. How does your legislative body review existing statutes to determine if they may require updating?

Alaska

Agencies can bring statute updating needs to Legislators or Administration. Members of the public can sometimes contact legislators after discovering inefficiencies in a state process or system that can often be remedied by a statute change.

Under AS 01.05.035 and 01.05.036, the Revisor of Statutes is required to edit and revise laws without changing the meaning, to “systematically review[ed]” each title of the Alaska Statutes every two years, and to make recommendations to the legislative council concerning “deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of” the statutes.

Arizona

Awaiting response.

California

The Law Revision Commission recommends technical updates to clean up the code. Legislative policy committees regularly review relevant subject areas for technical cleanup of the code. Additionally, the Legislative Counsel Bureau (LCB) drafts legislation at the request of Legislators. When drafting proposed legislation, LCB suggests relevant technical updates to the proposed law. These reviews are for technical rather than substantive updates.

Colorado

There are two processes that prompt the legislative review of existing statutes: the Statutory Revision Committee and sunset review. The Colorado General Assembly created the Statutory Revision Committee in §2-3-901, [Colorado Revised Statutes](#), for the purpose of reviewing existing statutes to determine if the statutes need updating. The committee consists of eight legislative voting members and two non-legislative nonvoting members. The committee is charged with making an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

In order to examine the statutes as thoroughly as possible, the committee receives, solicits, and considers proposed changes in the law recommended by the American law institute, any bar association, or other learned bodies. The committee also receives, solicits, and considers suggestions from justices, judges, legislators, and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.

The committee meets periodically throughout the year to consider suggested revisions and to recommend legislation to the General Assembly, as a whole. The bills are then introduced and go through the legislative process like any other bill under consideration by the General Assembly.

The second prompt is through the sunset review process, specified in Sections 2-3-1203 and 24-34-104, [Colorado Revised Statutes](#). Section 2-3-1203 limits the existence of each newly created advisory committee to no more than ten years. Likewise, Section 24-34-104 limits the existence of a newly created agency or function in the department of regulatory agencies to no more than ten years. The Department of Regulatory Agencies mostly regulates professions and occupations, although over the years, many other regulatory functions outside of the department of regulatory agencies have been added to the schedule of sunset review.

The Department of Regulatory Agencies is statutorily required to review the advisory committee, agency, or function prior to its scheduled date of termination and prepare a report detailing its recommendations. A committee of the General Assembly holds a public hearing to discuss the report and take public testimony.

If the General Assembly chooses to continue the committee, agency, or function, it must do so by bill. If the committee chooses to introduce a bill, the bill will through move the legislative process as any other bill.

After the initial review, an advisory committee may be extended indefinitely. An agency or function, however, may be extended no more than an additional 15 years before another review will be required. If the General Assembly fails to act, the regulation provided by such state agency goes into a one-year wind up period. If the General Assembly fails to act by bill to continue an advisory committee, the committee is automatically repealed on the scheduled sunset date.

Hawaii

Section 23G-11, HRS, establishes the position of the Revisor of Statutes of the State as either the Director of the Office of the Legislative Reference Bureau, or a member of the Bureau delegated by the Director.

In addition, Subsection 23-5(a), HRS, authorizes the Auditor to "examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision" with certain restrictions relating to tax return information. Subsection 23-5(c) authorizes the Auditor to issue subpoenas.

The HRS requires the revisor of statutes to continue to examine and revise existing laws of Hawaii as follows: §23G-20 Continuous statutory revision.

The revisor of statutes shall conduct a systematic and continuing study of the laws of Hawaii for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, unnecessary repetitions and otherwise improving their clarity. For these purposes the revisor shall:

- Prepare and submit to the Legislature, prior to each regular session thereof, a report as to defects in the laws and statutes of Hawaii, and draft in the form of bills and resolutions proposed legislation to carry out the recommendations contained in the report; and
- Prepare for submission to the Legislature, from time to time, a rewriting and revision, either complete, partial, or topical of the laws of Hawaii.

Idaho

Some legislation may include a sunset clause which would require a review of existing statutes; some existing statutes may get reviewed through the administrative rules review process; some existing statutes never get reviewed. Attempts have been made to require ongoing periodic review of existing statutes, especially tax statutes, however, there are few examples.

Montana

Awaiting response.

Nevada

The Legislature does not have a process dedicated to reviewing existing statutes to determine whether they may require updating. The Legislature has, however, created ongoing statutory interim study committees that conduct in-depth reviews of state and local programs during the period between regular legislative sessions. The Legislature also creates one-time interim study committees to study certain issues that are of interest. Ongoing statutory committees and interim study committees generally receive a certain number of bill draft requests, that can be used to address changes that are necessary in statute.

The Legislative Counsel and LCB's Research Division are also statutorily tasked with developing recommendations for the elimination of obsolete or antiquated provisions contained in NRS. The recommendations are considered by the Legislative Commission, which may request a bill draft to address the recommendations.

New Mexico

There are approximately 22 interim committees that review existing statutes, particularly the Courts, Corrections and Justice Committee. There is no formal process, although legislators are fairly active in updating statutes.

Oregon

Awaiting response.

Utah

A formal review process does not exist. Instead, portions of code are updated to conform with present drafting standards and styles as sections are amended. Drafters may also seek permission from a legislative sponsor to conduct "clean up" on a section, part, or chapter, depending on necessity. Entire titles are re-codified from time-to-time depending on workload and necessity; this tends to be a multi-year process.

Washington

Awaiting response.

Wyoming

Awaiting response.

20. How does your legislature conduct policy development? And do you have professional staff to help with policy and revenue analysis?**Alaska**

The following entities employ professionals with state-wide historical perspective and/or expertise in policy and finance:

- a) Office of Management and Budget
- b) Legislative Finance Division
- c) Legislative Budget & Audit Committee
- d) Legislative Legal Department
- e) Department of Law

Arizona

Awaiting response.

California

Yes. Full-time policy and revenue staff write analyses for each legislative bill that comes before their committees. Each member has a legislative staff in their personal office that helps develop policy ideas and research relevant issue areas. Additionally, policy committee staff provide recommendations on policies coming before them. Research arms of the Legislature, and independent reports on specific issue areas, can help in the development of policy ideas.

Colorado

Awaiting response.

Hawaii

Individual legislators may propose policy through legislation, or they may propose policy in collaboration with other legislators, agencies, task forces, other investigatory bodies, or the public. The House Majority Staff Office, House Minority Research Office, Senate Majority Research Office, and Senate Minority Research Office provide legislative services to address the needs of the legislators in their respective chambers and parties. The Legislative Reference Bureau also provides nonpartisan support to all members of the Legislature. The Auditor may also provide revenue analysis.

Idaho

The Legislature has a professional staff of bill drafters and financial analysts to help with some policy issues, at the request of legislators. Professional staff do not provide opinions on policies. Legislators are responsible for the development of a Statement of Purpose and Fiscal Impact Statement on each piece of legislation.

Montana

Awaiting response.

Nevada

Legislators and legislative committees are the primary developers of policy in Nevada. The LCB's Research Division employs policy analysts who are responsible for conducting policy analysis and research at the request of legislators, legislative committees, other state and local officials, and citizens of Nevada.

New Mexico

Interim committees do a lot of work on policy development, as does the Legislative Finance Committee and the Legislative Education Study Committee.

Oregon

Awaiting response.

Utah

Yes, the Legislature has professional staff to help with policy and revenue analysis. The Office of Legislative Research and General Counsel's nonpartisan staff support legislative committees, conduct policy and legal research, and analysis as requested by legislators, committee chairs, or committees. The nonpartisan Legislative Fiscal Analysts staff appropriations subcommittees, and conduct fiscal research and analysis, as requested by legislators, appropriations chairs, or appropriations subcommittees.

Policy development is conducted on two primary fronts: by legislative interim committees and through individual research, or bill requests from legislators.

Each interim committee adopts a list of study items at the beginning of each interim, which guides the committee's activity throughout the interim. Legislative staff provides information, conducts research, and coordinates with state agencies and other stakeholders, to facilitate presentations and discussions with the committee. At the end of the interim, the interim committee reports on the outcome of each study item to the LMC, including recommendations of draft legislation to address an issue.

When a legislator opens a bill file, the attorney and policy analyst assigned to the subject area, discuss the legislator's policy goal(s) and work with them to provide policy and legal research and analysis, to assist the legislator in accomplishing their goal. This often includes facilitating meetings with stakeholders at which policy ideas are discussed and refined.

Washington

Awaiting response.

Wyoming

Awaiting response.

21. Are there graduate schools in your states that can conduct research on policy issues?**Alaska**

a) [University of Alaska Anchorage](#)

b) [University of Alaska Fairbanks](#) - Located just 200 miles (320 km) south of the Arctic Circle, the Fairbanks campus' unique location is well situated for arctic and northern research.

The value of scientific research includes direct investment in local economies and improvements in community life. Our research engages undergraduate and graduate students, so they gain skills and knowledge to become tomorrow's leaders.

Arizona

Awaiting response.

California

Yes, there are many.

Colorado

Awaiting response.

Hawaii

The Legislature can request that studies be conducted by the University of Hawaii (UH) system through a resolution, or in matters of statewide concern, direct UH or one of its research or academic departments to conduct studies in collaboration with executive departments.

Idaho

Yes.

Montana

Awaiting response.

Nevada

Although there are graduate schools at the state's two higher education research institutions, the Legislature only occasionally seeks input from the universities, through a contract or interlocal agreement to conduct research on policy issues. The Legislature primarily relies upon its staff for such services.

New Mexico

State universities have offered to conduct research on policy issues and the Legislature has had a few contracts with them for specific policy areas, e.g., health care.

Oregon

Awaiting response.

Utah

Brigham Young University's Marriott School of Business has a Masters of Public Administration Program and a Marketing and Behavioral Research Lab to conduct academic research.

The University of Utah's Program of Public Affairs has a Masters of Public Administration and Masters of Public Policy program. Additionally, the Kem C. Gardner Policy Institute offers opportunities for undergraduate and graduate students to work with Gardner Institute staff on a variety of research projects.

Although Utah State does not have a public administration or policy graduate program, it is a research university that conducts research on relevant topics that drive policy.

Utah Valley University has an Office of New Urban Mechanics that conducts research for legislation at the request of individual lawmakers.

Washington

Awaiting response.

Wyoming

Awaiting response.

General Legislative Oversight

22. What is the authority in your state, i.e. Constitutional provisions, statutes or court rules, vesting oversight to your legislature? (i.e. administrative rules; financial oversight; and reviewing/updating existing body of law)

Alaska

AS 44.62.020 and 44.62.030 both limit rulemaking authority of an agency to regulations that are expressly or implicitly within the authority conferred to the agency by the Legislature.

AS 44.62.040(c) provides that the governor may return a regulation before filing to the adopting agency if it is inconsistent with the governor's constitutional obligation to faithfully execute the laws.

Chapter 9 of the [Legislative Drafting Manual](#) covers the issue of authority.

Arizona

Awaiting response.

California

[Article IV of the California Constitution](#), especially sections I and II.

Colorado

The Statutory Revision Committee updates the existing body of law, but the committee is limited in its scope as stated in §2-3-902, Colorado Revised Statutes. The charge of the committee is limited to discovering defects and anachronisms in the law and making legislative recommendations based upon these recommendations. The committee recommends legislation annually to effect changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions. The committee is limited to proposing legislation that streamlines, reduces, or repeals provisions of the Colorado Revised Statutes.

The sunset review process is another source of authority for legislative oversight. Sections 2-3-1203 and 24-34-104, Colorado Revised Statutes, require the Legislature to review each newly created advisory committee, and each agency or function in the department of regulatory agencies, within the first ten years of its existence. After

the initial review, an advisory committee may be continued indefinitely. On the other hand, each agency or function may be extended no more than 15 years at a time. Therefore, section 24-34-104 provides the legislature with ongoing and periodic oversight over each agency or function in the department of regulatory agencies.

Hawaii

Under the Hawaii State Constitution, Article III, Section 1, the legislative power of the State is vested in a Legislature, which shall consist of two houses, a Senate and a House of Representatives. A brief overview of the Legislature and agencies attached to the Legislature is provided at pages 1 through 11 of the ["Guide to Government in Hawaii"](#) (14th ed.), published by the LRB.

Article III, Section 15, of the [State Constitution](#) provides that "No bill shall become law unless it shall pass three readings in each house on separate days."

a) Financial oversight:

Article VII of the State Constitution generally discusses taxation and finance, and the powers of the Legislature in enacting laws in the area. See, e.g., Section 2, relating to income tax; Section 6, relating to tax refunds or credits; Section 7, relating to the Council on Revenues; Section 8, relating to the budget; Section 9, relating to legislative appropriations and the general fund expenditure ceiling; and Section 12, relating to issuance of indebtedness, including the Legislature's power to authorize the issuance of general obligation bonds, special purpose revenue bonds, and other forms of debt.

Article VIII, Section 1, authorizes the Legislature to create counties and other political subdivisions within the State, and provides that the political subdivisions shall have and exercise such powers as shall be conferred under general laws. Article VIII, Section 3, reserves the taxing power to the State, except as delegated by the Legislature to the political subdivisions and except as it pertains to taxation of real property. Article VIII, Section 5, states that if any new program or increase in level of service under an existing program is transferred by the Legislature to any political subdivision, the Legislature shall provide that the State share in the cost. Article VIII, Section 6, provides that Article VIII shall not limit the power of the Legislature to enact laws of statewide concern.

Chapter 37, HRS, relates to the Budget. As it relates to the Legislature's responsibilities, Section 37-66, HRS, provides that the Legislature shall:

- Consider the long-range plans, including the proposed objectives and policies, the six-year state program and financial plan, and the budget and revenue proposals recommended by the governor and any alternatives thereto.
- Adopt programs and the state budget, and appropriate moneys to implement the programs it deems appropriate.
- Adopt such other legislation as necessary to implement state programs.
- Review the implementation of the state budget and program accomplishments and execution of legislative policy direction. Implementation of the state budget and program management, execution, and performance shall be subject to post-audits by the auditor who shall report the auditor's findings and recommendations to the Legislature as provided in Chapter 23.

Section 37-71, HRS, provides for the formulation of the proposed budget, while Section 37-73 provides for legislative review of the Governor's budget and program proposals. ("The Legislature shall consider the governor's proposed program and financial plan and budget; evaluate alternatives to the governor's recommendations; and adopt programs and determine the state budget. It may, from time to time, request the department of budget and finance and any agency to conduct such analysis of programs and finances as will assist in determining the State's program and financial plan and budget.")

With respect to taxation, see Title 14 of the HRS.

b) Reviewing/updating existing body of law:

The State Constitution, Article XVII, Section 1, provides that, "Revisions of or amendments to this constitution may be proposed by constitutional convention or by the Legislature." Article XVII, Section 2, authorizes the Legislature to submit to the electorate the question of whether to hold a constitutional convention; Section 3 discusses the process for the Legislature to propose amendments to the State

Constitution; and Section 5 covers the process to resolve conflicts in constitutional amendments. Statutory revision and publication are covered in HRS Chapter 23G, Part II. Section 23G-11, provides that the Director of the Legislative Reference Bureau or the Director's designee is the Revisor of Statutes of the State. The duties of the Revisor are outlined in Section 23G-12, HRS, in order of priority, as follows: In performing the function of statute revision and publication of session laws, and supplements, and replacement volumes, the duties of the revisor of statutes, in the order of priority shall be:

- The publication of the session laws;
- The publication of supplements to the revised statutes;
- The publication of replacement volumes of the revised statutes;
- The review of annotations to the revised statutes;
- The continuous revision of the statutes of Hawaii;
- The publication of the Hawaii administrative rules index and supplements thereto; and
- The preparation of rules of format to be followed by all state agencies in the compilation and publication of their rules and the distribution of copies of the format rules to all state agencies.

On May 28, 2019, the Director of the Legislative Reference Bureau transmitted the "[Hawaii Administrative Rules 2018 Table of Statutory Sections Implemented and Directory](#)" to the Legislature. As noted in the correspondence, the table enables the user to determine whether state agencies have adopted rules that purport to implement or interpret statutory sections. The directory lists the chapter numbers and headings of the administrative agency rules that have been adopted in the prescribed uniform format.

Idaho

The [Idaho Constitution](#) and Idaho Code.

Montana

Awaiting response.

Nevada

Primarily, authority for legislative oversight is set forth in statute. There are numerous statutes that require reports to be submitted to the Legislature or its committees and, as described above, committees are created by statute to perform oversight functions.

Section 1 of Article 3 of the [Constitution of the State of Nevada](#) provides that the powers of the government for the state are divided into three separate departments (Legislative, Executive, and Judicial), and no persons charged with exercising the powers of one of those departments shall exercise any functions, appertaining to either of the others, except in cases directly permitted in the Constitution. Judicial decisions have been issued over the years confirming that the Legislative Branch may direct which acts the Executive Branch shall or may not perform and that laws enacted by the Legislature are to be construed in favor of the legislative power.

Section 1 of Article 3 of the Constitution of the State of Nevada expressly authorizes the Legislature to provide by law for the review of Executive Branch agency regulations, the suspension of any existing regulations that appear to exceed the statutory authority for its adoption, and the nullification of such regulations.

New Mexico

It's generally understood that the Legislature has inherent and constitutional authority to oversee the agencies, programs and functions to which it appropriates funding.

Oregon

Awaiting response.

Utah

Courts have held that the Legislature may exercise investigatory powers in order to properly make laws and appropriate state funds.

The constitution provides for the Legislative Auditor and State Auditor. See responses to Questions 16 and 17. Specific oversight provisions in statute include:

- a) [36-12-5](#) Duties of interim committees, including to "investigate and study possibilities for improvement in government services within its subject area."

- b) [36-12-8](#) Legislative Management Committee – Research and General Counsel Subcommittee – Budget Subcommittee – Audit Subcommittee
- c) [36-12-8.1](#) Legislative Management Committee – Subcommittee on Oversight
- d) [36-12-12](#) Office of Legislative Research and General Counsel established
- e) [36-12-13](#) Office of Legislative Fiscal Analyst established
- f) [36-12-15](#) Office of Legislative Auditor General established
- g) [36-12-15.1](#) Budget and appropriation audits. Legislative Auditor General is required to perform an audit of at least one executive branch entity each year.
- h) [36-12-19](#) Investigatory powers of the Legislature. The Legislature, either house, or any committee may administer oaths and issue subpoenas.
- i) [Title 36, Chapter 14](#) Legislative Subpoena Powers
- j) [Title 36, Chapter 17](#) Legislative Process Committee
- k) [Title 36, Chapter 24](#) Legislative Review of New Programs or Agencies
- l) [Title 63I](#) Oversight
- m) [Title 63G, Chapter 3](#) Utah Administrative Rulemaking Act
 - [Part 5](#) Legislative Oversight

Washington

Awaiting response.

Wyoming

Awaiting response.

23. Are there any formal oversight rules or guidelines in your legislature?

Alaska

- a) [Regulations: The Alaska Administrative Code](#)
- b) [Drafting Manuel for Administrative Regulations](#)
- c) [Alaska State Legislature Uniform Rules](#)

Arizona

Awaiting response.

California

Committees require prior approval by the leader of the respective house to conduct oversight hearings. This ensures the topic is in furtherance of a legislative purpose and fits within budgetary or other guidelines.

Colorado

No, other than those already described.

Hawaii

Rules 13 through 16 of the [House Rules](#) for the current legislative session define the responsibilities of the standing committees, special committees, committee of the whole, and conference committees.

Rules 17 through 20 of the [Senate Rules](#) for the current legislative session define the responsibilities of the standing committees, leadership committees, and special committees on accountability:

Idaho

[Senate](#) and [House](#) rules.

Montana

Awaiting response.

Nevada

The standing rules do not contain anything that is specific to oversight, but the Code of Ethical Standards included in the Joint Standing Rules would apply to a legislator's conduct with regards to performing any oversight function in the same manner as it would apply in any other situation.

New Mexico

See generally the enabling legislation for the [Legislative Council Service](#), the [Legislative Education Study Committee](#) and the [Legislative Finance Committee](#).

Oregon

Awaiting response.

Utah

Please refer to Question 22.

As significant oversight issues have arisen, the Legislature has adopted rules to guide oversight functions for each issue.

Washington

Awaiting response.

Wyoming

Awaiting response.

24. Is there capacity to have somebody on your staff, or in your legislature, to drill deeper on specific legislative oversight issues or areas? If not, what is your legislature's challenge to conduct effective legislative oversight?

Alaska

This depends on depth of staff pool and/or use of legislative interns. The Majority members have more available staff. There is also the Legislative Research Division that can dive deep on specific topics at the request of a legislator or committee, however, it can take some time for them to release their findings and research.

Arizona

Awaiting response.

California

Such staff capacity is available within the California Legislature.

Colorado

The staff of the Office of Legislative Legal Services assists the statutory revision committee created in §2-3-901, Colorado Revised Statutes, in their legislative oversight activities. As the staff drafts new legislation throughout the year and prepares newly enacted legislation for publication, staff examines the statutes to spot specific antiquated, redundant, or contradictory laws. The staff brings these laws with specific recommended changes to the statutory revision committee for consideration. If the statutory revision committee agrees to the suggested changes to the law and the changes fit under the charge of the committee, the committee can recommend legislation for introduction.

Hawaii

The Legislature has different options at its disposal to conduct oversight. As noted in the response to Question 16, the Auditor is responsible for conducting post-audits of transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. The State Constitution also provides that the Auditor shall make such additional reports and conduct such other investigations as may be directed by the Legislature. Section 23-12, HRS, requires the Auditor to review special, revolving, and trust funds established to provide services rendered by any state department. Chapter 23, HRS, also specifies other audits and reviews to be performed by the Auditor, including: a management and financial audit of contracts and agreements awarded by the Hawaii Tourism Authority to a major contractor every five years; an annual review, through 2031, of any rapid transportation authority in the State with specified responsibilities and criteria; specified reports relating to proposed mandatory health insurance coverage; and a review of certain tax exemptions, exclusions, and credits.

In addition to reports generated by the Auditor, the Legislature may request or require, through legislation, that reports be generated by other entities.

Individual members' offices have their own staff to assist with various issues and areas. In addition, as noted in response to question 20, the Legislature has professional offices including the Legislative Reference Bureau,

House Majority Staff Office, House Minority Staff Office, Senate Majority Staff Office, and Senate Minority Staff Office, to assist in specific legislative areas, including research and drafting and committee staffing.

Idaho

The Legislature has access to analysts and librarians in the Capitol building to assist with specific legislative oversight issues.

Montana

Awaiting response.

Nevada

Leadership often tasks individual legislators or committees with detailed review of particular areas of interest. Legislative Counsel Bureau staff is able and ready to assist in that process, at the direction of the Legislature, its committees, or upon the request of an individual legislator.

New Mexico

- a) [Legislative Council Service](#) – Raúl E. Burciaga, Director
- b) [Legislative Education Study Committee](#) – Rachel Gudgel, Director
- c) [Legislative Finance Committee](#) – David Abbey, Director

Oregon

Awaiting response.

Utah

Yes, there is legislative staff with expertise on a variety of oversight issues that are available, if asked, to research specific issues.

Washington

Awaiting response.

Wyoming

Awaiting response.

25. What resources are available in your state, like internships, courses or academic programs to conduct research on legislative oversight projects?

Alaska

The University has a legislative internship program for interns to come to Juneau for the legislative session and work for legislators for 3 months. However, the legislator has the leeway to assign the intern whatever task they feel is essential to their office. They could assign the intern a research project on legislative oversight, but it would be their prerogative.

Arizona

Awaiting response.

California

All the above, including participation by law schools, institutions of higher education, and various specialty 501(c)(3) organizations.

Colorado

Unknown.

Hawaii

The University of Hawaii at Manoa offers a course that allows students a field placement at the Legislature, which is integrated with academic study of political institutions and practices. Internships also may be arranged through professors and individual legislators.

Idaho

The State of Idaho has an Office of Performance Evaluations. As a nonpartisan, independent office of the Legislature, they evaluate whether state government programs and agencies are operating efficiently and cost-effectively and are achieving intended results. Also, members of the Legislature use college interns.

Montana

Awaiting response.

Nevada

We have not identified any internships, courses, or academic programs available for such research at this time.

New Mexico

None. We do have internships, but not for legislative oversight projects.

Oregon

Awaiting response.

Utah

Please refer to Question 21, regarding graduate academic programs in the policy/public administration field. The Office of Legislative Research and General Counsel administers a college-level intern program to provide legislators assistance with their legislative-related duties during the general session. The program is designed to provide legislators with the assistance they need to achieve their legislative goals, as well as provide the interns with a learning experience that will enhance their university education.

Students from Brigham Young University, Dixie State University, Salt Lake Community College, Southern Utah University, University of Utah, Utah State University, Utah Valley University, Weber State University, and Westminster College apply for the intern program through their respective schools each fall. Those selected to participate in the intern program become paid employees of the Office of Legislative Research and General Counsel and are assigned to one or two legislators full time during the 45-day general session.

Washington

Awaiting response.

Wyoming

Awaiting response.

26. When multiple agencies are dealing with different parts of a shared state problem, what is the coordination process within the legislature?

Alaska

Typically, that would occur in a couple of ways. One way would be for a legislator to identify a problem and the affected agencies/constituencies. They would then bring representatives of those groups together, in an informal manner, to discuss possible solutions. The problem may be resolved through this discussion, or the legislator may consider introducing a piece of legislation aimed at solving the problem. That legislation would then go through the committee process.

Arizona

Awaiting response.

California

That is achieved within the Legislature by coordination among committees.

Colorado

Unknown.

Hawaii

There is no central coordinating agency in the executive branch. Legislation can designate a lead agency where multiple agencies are concerned, or in the absence of a specified lead agency, the agencies involved may determine how best to coordinate dealing with the problem. In addition, the Legislature may create a task force to investigate the problem, then determine how best to address it through legislation.

Idaho

Depending on the issue, these problems are coordinated through germane and sometimes, the finance committees.

Montana

Awaiting response.

Nevada

Often such coordination is driven by legislative committees, during the interim or during legislative sessions, after the shared state problem is brought to the attention of the legislative committee, by a member of the Legislature or a member of the public. There also have been instances when Executive Branch agencies have recognized the shared state problem and have submitted coordinated proposals to address the shared problem.

New Mexico

There is no formal process, as it depends on the issue. Oftentimes, the agencies will be asked to report to a legislative interim committee.

Oregon

Awaiting response.

Utah

There are formal and informal avenues for coordination. Informally, a legislator addressing a shared problem would invite representatives from applicable agencies to meet and discuss the problem and potential solutions. This can, but does not have to be, based on pending draft legislation. Legislative staff is available to help schedule, coordinate, and facilitate the meeting, if necessary, and provide any information at the request of the legislator.

Formally, the Legislature has created boards, commissions, and task forces in statute. The composition of each can vary, depending on the issue, but very often involves representatives from multiple state agencies. There is typically a requirement that these entities report to a legislative interim committee or the LMC. Examples include:

- a) Quality Growth Commission: The commission is composed of:
 - the director of the Department of Natural Resources;
 - the commissioner of the Department of Agriculture and Food;
 - six elected officials at the local government level, three of whom may not be residents of a county of the first or second class; and
 - five persons from the profit and nonprofit private sector.
- b) Veterans and Military Affairs Commission: The commission is composed of:
 - five legislative members;
 - the chair of the Utah Veterans Advisory Council;
 - the executive director of the Department of Workforce Services or the director's designee;
 - the executive director of the Department of Health or the director's designee;
 - the executive director of the Department of Human Services or the director's designee;
 - the adjutant general of the Utah National Guard or the adjutant general's designee;
 - the Guard and Reserve Transition Assistance Advisor;
 - a member of the Board of Regents or that member's designee;
 - three representatives of veteran service organizations recommended by the Veterans Advisory Council and confirmed by the commission;
 - one member of the Executive Committee of the Utah Defense Alliance;
 - one military affairs representative from a chamber of commerce member, appointed by the Utah State Chamber of Commerce; and
 - a representative from the Veterans Health Administration.

Washington

Awaiting response.

Wyoming

Awaiting response.

27. Do you talk to your policy committee chairs to identify important oversight issues in your state?

Alaska

All legislators are welcome to approach committee chairs on any policy topics they feel are important to the state. Also, through the majority and minority caucus system, there are opportunities to bring forth emerging policy topics with colleagues and make decisions on their advancement.

Arizona

Awaiting response.

California

Yes, on an as needed/as opportune basis.

Colorado

The Office of Legislative Legal Services provides the staff for the Statutory Revision Committee and is in contact with the committee throughout the year, to provide recommendations for legislative changes. The staff presents the recommendations to the committee, provides a memo describing the legislative recommendations, and drafts proposed legislation for the committee's consideration. The staff makes recommendations based upon the scope of the committee's charge as stated in §2-3-902, Colorado Revised Statutes.

Hawaii

Yes.

Idaho

Legislators and legislative staff frequently communicate with policy chairs during and in between sessions.

Montana

Awaiting response.

Nevada

When a proposed bill comes before a policy committee that impacts legislative oversight, a member of the committee can raise their concern(s) over any exemptions from oversight. Legislators can also address oversight issues at policy committee hearings on bills, or through agency or judiciary presentations.

New Mexico

Committee chairs work with legislative staff to develop a work plan for interim committees.

Oregon

Awaiting response.

Utah

Policy committee chairs meet at the beginning of each interim with the Senate President and Speaker of the House to develop a list of potential study items which the committee formally adopts at its first interim meeting. The committee chairs then report back to the LMC at the end of interim on how the committee studied the issue and its recommendation for future action.

Washington

Awaiting response.

Wyoming

Awaiting response.

APPENDIX 2A

STATE LEGISLATURES

TABLE 3.25

Legislative Review of Administrative Regulations: Structures and Procedures

<i>State or other jurisdiction</i>	<i>Type of reviewing committee</i>	<i>Rules reviewed</i>	<i>Time limits in review process</i>
Alabama	Joint bipartisan, standing committee	P	If not approved or disapproved within 45 days of filing, rule is approved. If disapproved by committee, disapproval may be appealed to the lieutenant governor.
Alaska	Joint bipartisan, standing committee and Legislative Affairs Agency review of proposed regulations.	P, E	...
Arizona	Joint bipartisan	P, E	...
Arkansas	Joint bipartisan	P, E (f)	...
California	Standing committee	P, E	The Legislature may study and make recommendations regarding existing or proposed regulations. Comprehensive regulation review conducted by independent executive branch agency.
Colorado	Joint bipartisan	E	Rules continue unless the annual legislative Rule Reviews Bill discontinues a rule. The Rule Reviews Bill is effective upon the governor's signature, however, the governor needs to sign the Rule Review Bill on or before midnight on May 15 or all of the rules and amendments to rules adopted during the year before will automatically expire pursuant to statute.
Connecticut	Joint bipartisan, standing committee	P	Submittal of proposed regulation shall be on the first Tuesday of month; after first submittal committee has 65 days after date of submission to review/take action on revised regulation. Second submittal: 35 days for committee to review /take action on revised regulation.
Delaware	Joint bipartisan, standing committee	P, E (e)	...
Florida	Joint bipartisan	P, E	...
Georgia	Standing committee	P	The agency notifies the Legislative Counsel 30 days prior to the effective dates of proposed rules.
Hawaii	Legislative agency	P, E	The legislative reference bureau assists agencies to comply with a uniform format of style. This does not affect the status of rules.
Idaho	Germane joint subcommittees	P, E	There is no set time limit for rules review other than by the end of session. Typically they review rules during the first 3-4 weeks of session. Proposed rules: Reviewed pursuant to I.C. § 67-454. Existing rules: "The legislature may review any administrative rule to ensure it is consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement or enforce. After that review, the legislature may approve or reject, in whole or in part, any rule as provided by law." (Idaho Const. art. III, § 29).
Illinois	Joint bipartisan	P, E	An agency proposing non-emergency regulations must allow 45 days for public comment. At least five days after any public hearing on the proposal, the agency must give notice of the proposal to the Joint Committee on Administrative Rules, and allow it 45 days to approve or object to the proposed regulations.
Indiana	.....	No formal rule review is performed by both legislative and executive branches.	
Iowa	Joint bipartisan	P, E	...
Kansas	Joint bipartisan	P	Agencies must give 60-day notice to the public and the Joint Committee of their intent to adopt or amend specific rules and regulations, a copy of which must be provided to the committee. Within the 60-day comment period, the Joint Committee must review and comment, if it feels necessary, on the proposals. Final rules and regulations which differ in subject matter or in any material respect from the rules and regulations originally proposed or which are not a logical outgrowth of the rules and regulations originally proposed must be resubmitted to the Joint Committee as part of new rulemaking.
Kentucky	Joint bipartisan statutory committee	P, E	45 days.
Louisiana (a)	Standing committee	P	All proposed rules and fees are submitted to designated standing committees of the legislature. If a rule or fee is unacceptable, the committee sends a written report to the governor. The governor has 10 days to disapprove the committee report. If both Senate and House committees fail to find the rule unacceptable, or if the governor disapproves the action of a committee within 10 days, the agency may adopt the rule change. If the committees of both houses fail to find a fee unacceptable, it can be adopted. Committee action on proposed rules must be taken within 5 to 30 days after the agency reports to the committee on its public hearing (if any) and whether it is making changes on proposed rules.
Maine	Joint bipartisan, standing committee	P (d)	One legislative session.
Maryland	Joint bipartisan	P, E	Proposed regulations are submitted for review at least 15 days before publication. Publication triggers 45-day review period which may be extended by the committee, but if agreement cannot be reached, the governor may instruct the agency to modify or withdraw the regulation, or may approve its adoption.
Massachusetts (a)	Public hearing by agency	P	In Massachusetts, the General Court (Legislature) may by statute authorize an administrative agency to promulgate regulations. The promulgation of such regulations are then governed by Chapter 30A of the Massachusetts General Laws. Chapter 30A requires 21 day notice to the public of a public hearing on a proposed regulation. After public hearing the proposed regulation is filed with the state secretary who approves it if it is in conformity with Chapter 30A. The state secretary maintains a register entitled "Massachusetts Register" and the regulation does not become effective until published in the register. The agency may promulgate amendments to the regulations following the same process.

See footnotes at end of table

STATE LEGISLATURES

TABLE 3.25

Legislative Review of Administrative Regulations: Structures and Procedures (continued)

<i>State or other jurisdiction</i>	<i>Type of reviewing committee</i>	<i>Rules reviewed</i>	<i>Time limits in review process</i>
Michigan	Joint bipartisan	P	Joint Committee on Administrative Rules (JCAR) has 15 session days in which to consider the rule. JCAR may waive the remaining session days, object to the rule, propose that the rule be changed, or decide to enact the subject of the rule into law. (1) If JCAR does not object or waives the remaining session days, the rule goes into effect. (2) If JCAR objects, a member of the JCAR shall introduce bills in both houses to rescind the rule, repeal the authorizing statute, or stay the effective date for up to one year. If the legislation does not pass within 15 session days, the agency may file the rule. (3) If the JCAR proposes the rule be changed, the agency has 30 days to change the rule and resubmit or decide to not change the rule. If the agency agrees to change the proposed rule, it withdraws the rule and resubmits it. If the agency does not agree to change the proposed rule, it notifies the JCAR which again has 15 session days to consider the rule. (4) If the JCAR decides to enact the subject of the rule into law, the JCAR chair or alternate chair shall introduce legislation in both houses to do so and the agency may not file the rule for 270 days after the introduction of the legislation. The JCAR can also meet between legislative sessions and suspend rules promulgated during the interim between sessions.
Minnesota	Joint bipartisan, standing committee	P, E	Minnesota Statute Sec. 3.842, subd. 4a
Mississippi	No formal rule review is performed by both legislative and executive branches.		
Missouri	Joint bipartisan, statutory 536.037 RSMo.	P, E	The committee must disapprove a final order of rulemaking within 30 days upon receipt or the order of rulemaking is deemed approved.
Montana	Germane joint bipartisan committees	P	Prior to adoption.
Nebraska	Standing committee	P	If an agency proposes to repeal, adopt or amend a rule or regulation, it is required to provide the Executive Board Chair with the proposal at least 30 days prior to the public hearing, as required by law. The Executive Board Chair shall provide to the appropriate standing committee of the legislature, the agency proposal for comment.
Nevada	Ongoing statutory committee (Legislative Commission)	P	Proposed regulations are either reviewed at the Legislative Commission's next regularly scheduled meeting (if the regulation is received more than 10 working days before the meeting), or they are referred to the Commission's Subcommittee to Review Regulations. If there is no objection to the regulation, then the Commission will "promptly" file the approved regulation with the Secretary of State. If the Commission or its subcommittee objects to a regulation, then the Commission will "promptly" return the regulation to the agency for revision. Within 60 days of receiving the written notice of objection to the regulation, the agency must revise the regulation and return it to the Legislative Counsel. If the Commission or its subcommittee objects to the revised regulation, the agency shall continue to revise and resubmit it to the Commission or subcommittee within 30 days after receiving the written notice of objection to the revised regulation.
New Hampshire	Joint bipartisan	P	Under APA, for regular rulemaking, the joint committee of administrative rules has 45 days to review a final proposed rule from an agency. Otherwise the rule is automatically approved. If JLCAR makes a preliminary or revised objection, the agency has 45 days to respond, and JLCAR has another 50 days to decide to vote to sponsor a joint resolution, which suspends the adoption process. JLCAR may also, or instead, make a final objection, which shifts the burden of proof in court to the agency. There is no time limit on making a final objection. If no JLCAR action in the 50 days to vote to sponsor a joint resolution, the agency may adopt the rule.
New Jersey	Joint bipartisan	...	...
New Mexico	-----	No formal review is performed by legislature. Periodic review and report to legislative finance committee is required of certain agencies.	-----
New York	Joint bipartisan commission	P, E	...
North Carolina	Rules Review Commission; Public membership appointed by legislature	P, E	The Rules Review Commission must review a permanent rule submitted to it on or before the 20th of the month by the last day of the next month. The commission must review a permanent rule submitted to it after the 20th of the month by the last day of the second subsequent month.
North Dakota	Interim committee	E	The Administrative Rules Committee meets in each calendar quarter to consider rules filed in previous 90 days.
Ohio	Joint bipartisan	P, E (c)	The committee's jurisdiction is 65 days from date of original filing plus an additional 30 days from date of re-filing. Rules filed with no changes, pursuant to the five-year review, are under a 90-day jurisdiction.
Oklahoma	Standing committee (b)	P, E	The legislature has 30 legislative days to review proposed rules. The legislature reviews all agency rules submitted prior to April 1st. Any rules submitted after April 1st are to be reviewed the next legislative session.
Oregon	Office of Legislative Counsel	E	Agencies must copy Legislative Counsel within 10 days of rule adoption.
Pennsylvania	Joint bipartisan, standing committee	P	Time limits decided by the president pro tempore and speaker of the House.
Rhode Island	-----	No formal rule review is performed by both legislative and executive branches.	-----
South Carolina	Standing committee. Submitted by General Assembly for approval	P	General Assembly has 120 days to approve or disapprove. If not disapproved by joint resolution before 120 days, regulation is automatically approved. It can be approved during 120-day review period by joint resolution.
South Dakota	Joint bipartisan	P	Rules must be adopted within 75 days of the commencement of the public hearing; emergency rules must be adopted within 30 days of the date of the publication of the notice of intent. Many other deadlines exist; see SDCL 1-26-4 for further details.

See footnotes at end of table

TABLE 3.25

Legislative Review of Administrative Regulations: Structures and Procedures (continued)

<i>State or other jurisdiction</i>	<i>Type of reviewing committee</i>	<i>Rules reviewed</i>	<i>Time limits in review process</i>
Tennessee	Joint bipartisan	P	All permanent rules take effect 90 days after filing with the secretary of state. Emergency rules take effect upon filing with the secretary of state and may be effective for not longer than 180 days.
Texas	Standing committee	P, E	No time limit.
Utah	Created by statute (63G-3-501).	P, E	Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires May 1 of that year unless it has been reauthorized by the legislature. (UCA 63G-3-502)
Vermont	Joint bipartisan	P	The Joint Legislative Committee on Rules must review a proposed rule within 30 days of submission to the committee.
Virginia	Joint bipartisan, standing committee	P	Standing committees and the Joint Commission on Administrative Rules may object to a proposed or final adopted rule before it becomes effective. This delays the process for 21 days and the agency must respond to the objection. In addition or as an alternative, standing committees and the Commission may suspend the effective date of all or a part of a final regulation until the end of the next regular session, with the concurrence of the Governor.
Washington	Joint bipartisan	P, E	If the committee determines that a proposed rule does not comply with legislative intent, it notifies the agency, which must schedule a public hearing within 30 days of notification. The agency notifies the committee of its action within seven days after the hearing. If a hearing is not held or the agency does not amend the rule, the objection may be filed in the state register and referenced in the state code. The committee's powers, other than publication of its objections, are advisory.
West Virginia	Joint bipartisan	P, E	...
Wisconsin	Joint bipartisan	P, E	The standing committee in each house has 30 days to conduct its review for a proposed rule. If either objects the Joint Committee for the Review of Administrative Rules has 30 days to introduce legislation in each house overturning the rules. After 40 days the bills are placed on the calendar. If either bill passes, the rules are overturned. If they fail to pass, the rules go into effect. As an alternative, JCRAR may make an indefinite objection and the agency may not promulgate the rule unless a bill authorizing the promulgation is enacted.
Wyoming	Joint bipartisan	P, E	An agency shall submit copies of adopted, amended or repealed rules to the legislative service office for review within ten days after the date of the agency's final action adopting, amending or repealing those rules. The legislature makes its recommendations to the governor who within 15 days after receiving any recommendation, shall either order that the rule be amended or rescinded in accordance with the recommendation or file in writing his objections to the recommendation.
American Samoa	Standing committee	E	...
Guam	Standing committee	P	45 calendar days
Puerto Rico	.....	.....	No formal rule review is performed by both legislative and executive branches.
U.S. Virgin Islands	.....	.....	No formal rule review is performed by both legislative and executive branches.

Source: The Council of State Governments' survey, March 2019.

Key:

P—Proposed rules

E—Existing rules

...—No formal time limits

- (a) Review of rules is performed by both legislative and executive branches.
- (b) House has a standing committee to which all rules are generally sent for review. In the Senate rules are sent to standing committee which deals with that specific agency.
- (c) The Committee reviews proposed new, amended, and rescinded rules. The Committee participates in a five-year review of every existing rule.

- (d) Major substantive Rules (as designated by the Legislature) are subject to legislative review and approval; Routine Technical Rules are not subject to any formal legislative review and approval process.
- (e) The chair of a standing committee can call a hearing to review the rule during the interim. The Joint Legislative Oversight Committee can order a review of an agency's rules during regular session.
- (f) Amendment 92 to the Arkansas Constitution, which passed in 2014, and laws enacted by Act 1258 of 2015 provided the General Assembly with the power of review and approval of all administrative rules and regulations.

APPENDIX 2B

STATE LEGISLATURES

TABLE 3.26

Legislative Review of Administrative Rules/Regulations: Powers

State or other jurisdiction	Reviewing committee's powers			Legislative powers:
	Advisory powers only (a)	No objection constitutes approval of proposed rule	Committee may suspend rule	
Method of legislative veto of rules				
Alabama	...	★	★	If not approved or disapproved within 45 days of filing, rule is approved. If disapproved by committee, disapproval may be appealed to the lieutenant governor. If the lieutenant governor doesn't approve rule, it is disapproved. If lieutenant governor approves rule, rule is suspended until final adjournment, next regular session. Rule takes effect upon that final adjournment unless committee's disapproval is sustained by legislature. The committee may approve a rule.
Alaska	★	...	(b)	Constitution and Statute
Arizona	★	N.A.	N.A.	N.A.
Arkansas	(gg)	★	...	A motion may be made in the Legislative Council or its Administrative Rules and Regulations Subcommittee to not approve the rule. If such a motion is made, the legislator making the motion must state the basis for not approving the rule. The only two valid reasons for not approving the rule are that it is inconsistent with state or federal law or inconsistent with legislative intent.
California	★(cc)	...	...	Statute
Colorado	...	★	...	Rules that the General Assembly has determined should not be continued are listed as exceptions to the continuation.
Connecticut	...	★	...	Statute CGS 4-170 (d) and 4-171; (c)
Delaware	★(ff)	...	...	N.A.
Florida	★(ee)	...	...	Statute
Georgia	...	★	...	Resolution (d)
Hawaii	★	...	...	...
Idaho	(ii)	★	(jj)	Concurrent resolution. All rules are terminated one year after adoption unless the legislature reauthorizes the rule.
Illinois	...	(e)	★(f)	(f)
Indiana	...	...	...	(g)
Iowa	...	...	(h)	By constitutional majority vote of each house, by joint resolution, with approval of governor not required.
Kansas	★	...	...	Statute
Kentucky	(x)	(y)	(z)	Enacting legislation to void. (z)
Louisiana	...	★	(i)	Concurrent resolution to suspend, amend or repeal adopted rules or fees. Proposed rules and emergency rules exist (i).
Maine	★(aa)	★(bb)	...	(j)
Maryland	★(k)	...	...	...
Massachusetts	...	...	...	The legislature may pass a bill which would supersede a regulation if signed into law by the governor.
Michigan	...	...	(l)	Joint Committee on Administrative Rules (JCAR) has 15 session days in which to consider the rule. JCAR may waive the remaining session days, object to the rule, propose that the rule be changed, or decide to enact the subject of the rule into law. (1) If JCAR does not object or waives the remaining session days, the rule goes into effect. (2) If JCAR objects, a member of the JCAR shall introduce bills in both houses to rescind the rule, repeal the authorizing statute, or stay the effective date for up to one year. If the legislation does not pass within 15 session days, the agency may file the rule. (3) If the JCAR proposes the rule be changed, the agency has 30 days to change the rule and resubmit or decide to not change the rule. If the agency agrees to change the proposed rule, it withdraws the rule and resubmits it. If the agency does not agree to change the proposed rule, it notifies the JCAR which again has 15 session days to consider the rule. (4) If the JCAR decides to enact the subject of the rule into law, the JCAR chair or alternate chair shall introduce legislation in both houses to do so and the agency may not file the rule for 270 days after the introduction of the legislation. The JCAR can also meet between legislative sessions and suspend rules promulgated during the interim between sessions.
Minnesota	★	...	...	(m)
Mississippi	.....	.....	.....	.....(n).....
Missouri	...	★	★	Concurrent resolution passed by both houses of the General Assembly.
Montana	...	...	★(o)	Statute
Nebraska	★	★	...	...

See footnotes at end of table

TABLE 3.26

Legislative Review of Administrative Rules/Regulations: Powers (continued)

State or other jurisdiction	Reviewing committee's powers			Legislative powers: Method of legislative veto of rules
	Advisory powers only (a)	No objection constitutes approval of proposed rule	Committee may suspend rule	
Nevada	N.A.	★	★	Proposed regulations are either reviewed at the Legislative Commission's next regularly scheduled meeting (if the regulation is received more than 10 working days before the meeting), or they are referred to the Commission's Subcommittee to Review Regulations. If there is no objection to the regulation, then the Commission will "promptly" file the approved regulation with the Secretary of State. If the Commission or its subcommittee objects to a regulation, then the Commission will "promptly" return the regulation to the agency for revision. Within 60 days of receiving the written notice of objection to the regulation, the agency must revise the regulation and return it to the Legislative Counsel. If the Commission or its subcommittee objects to the revised regulation, the agency shall continue to revise and resubmit it to the Commission or subcommittee within 30 days after receiving the written notice of objection to the revised regulation.
New Hampshire	★	(q)	...	(r)
New Jersey	★	...	...	(s)
New Mexico	N.A.	N.A.	N.A.	No formal mechanism exists for legislative review of administrative rules.
New York	(hh)	...	...	There is no legislative veto of administrative rules outside of bill process in New York.
North Carolina	★	★	★	...
North Dakota	...	★(t)	...	...
Ohio	★	...	...	Concurrent resolution. Committee recommends to the General Assembly that a rule be invalidated. The General Assembly invalidates a rule through adoption of concurrent resolution.
Oklahoma	★(p)	★(p)	★(p)	The legislature may disapprove (veto) proposed rules by concurrent or joint resolution. A concurrent resolution does not require the governor's signature. Existing rules may be disapproved by joint resolution. A committee may not disapprove; only the full legislature may do so. Failure of the legislature to disapprove constitutes approval. Pursuant to HB 2055 enacted in 2013, legislature shall adopt omnibus resolution approving all proposed permanent rules except those listed in resolution which are to be disapproved.
Oregon	★	★	(dd)	By passing statute that overrides terms of rule.
Pennsylvania	...	★	★	Upon vote of General Assembly
Rhode Island	.....	.....	.....	(n).....
South Carolina	...	★	...	...
South Dakota	...	★	★	The Interim Rules Review Committee may, by statute, suspend rules that have not become effective yet by an affirmative vote of the majority of the committee.
Tennessee	...	...	★	The Government Operations committee of either house may stay a permanent rule for up to 60 days, and may request an agency to repeal, amend or withdraw. In accordance with statutorily-imposed termination dates, all permanent rules filed in one calendar year expire on June 30 of the subsequent year unless the general assembly enacts legislation to extend the rules to a date certain or indefinitely.
Texas	★	...	...	N.A.
Utah	★	...	...	All rules must be reauthorized by the legislature annually. This is done by omnibus legislation, which also provides for the sunset of specific rules listed in the bill.
Vermont	.....	.....	.....	(u)..... Statute
Virginia	...	...	(v)	The General Assembly must pass a bill enacted into law to directly negate the administrative rule.
Washington	★	★	★	N.A.
West Virginia	★	...	...	(w)
Wisconsin	...	★	★	The standing committee in each house has 30 days to conduct its review for a proposed rule. If either objects the Joint Committee for the Review of Administrative Rules has 30 days to introduce legislation in each house overturning the rules. After 40 days the bills are placed on the calendar. If either bill passes, the rules are overturned. If they fail to pass, the rules go into effect. As an alternative, JCRAR may make an indefinite objection and the agency may not promulgate the rule unless a bill authorizing the promulgation is enacted.
Wyoming	★	★	...	Action must be taken by legislative order adopted by both houses before the end of the next succeeding legislative session to nullify a rule.
American Samoa				The enacting clause of all bills shall be: Be it by the Legislature of American Samoa, and no law shall be except by bill. Bills may originate in either house, and may be amended or rejected by the other. The Governor may submit proposed legislation to the Legislature for consideration by it. He may designate any such proposed legislation as urgent, if he so considers it.
Guam	N.A.	N.A.	N.A.	Legislation to disapprove rules and regulations.
CNMI*	★	★	★	
U.S. Virgin Islands	.....	.....	.....	(n).....

See footnotes at end of table

STATE LEGISLATURES

TABLE 3.26

Legislative Review of Administrative Rules/Regulations: Powers (continued)

Source: The Council of State Governments' survey, March 2019.

*Commonwealth of Northern Mariana Islands

Key:

★—Yes

...—No

N.A.—Not applicable

- (a) This column is defined by those legislatures or legislative committees that can only recommend changes to rules but have no power to enforce a change.
- (b) Authorized, although constitutionally questionable.
- (c) Disapproval of proposed regulations may be sustained, or reversed by action of the General Assembly in the ensuing session. The General Assembly may by resolution sustain or reverse a vote of disapproval.
- (d) The reviewing committee must introduce a resolution to override a rule within the first 30 days of the next regular session of the General Assembly. If the resolution passes by less than a two-thirds majority of either house, the governor has final authority to affirm or veto the resolution.
- (e) The Administrative Procedure Act is not clear on this point, but implies that the Joint Committee should either object or issue a statement of no objections.
- (f) Joint Committee on Administrative Rules can send objections to issuing agency. If it does, the agency has 90 days from then to withdraw, change, or refuse to change the proposed regulations. If the Joint Committee determines that proposed regulations would seriously threaten the public good, it can block their adoption. Within 180 days the Joint Cmte., or both houses of the General Assembly, can "unblock" those regulations; if that does not happen, the regulations are dead.
- (g) None—except by passing statute.
- (h) Committee may delay or suspend object to rules, and has authority to approve emergency filed rules.
- (i) If the committee determines that a proposed rule is unacceptable, it submits a report to the governor who then has 10 days to accept or reject the report. If the governor rejects the report, the rule change may be adopted by the agency. If the governor accepts the report, the agency may not adopt the rule. Emergency rules become effective upon adoption or up to 60 days after adoption as provided in the rule, but a standing committee or governor may void the rule by finding it unacceptable within 2 to 61 days after adoption and reporting such finding to agency within four days.
- (j) No veto allowed. If Legislature wishes to stop a rule from being adopted, it must enact appropriate legislation prohibiting the agency from adopting the rule.
- (k) Except for emergency regulations which require committee approval for adoption.
- (l) Committee can suspend rules during interim.
- (m) The Legislative Commission to Review Administrative Rules (LCRAR) ceased operating, effective July 1, 1996. The Legislative Coordinating Commission (LCC) may review a proposed or adopted rule. Contact the LCC for more information. See Minn. Stat. 3.842, subd. 4a.
- (n) No formal mechanism for legislative review of administrative rules. In Virginia, legislative review is optional.

- (o) A rule disapproved by the reviewing committee is reinstated at the end of the next session if a joint resolution in the legislature fails to sustain committee action.
- (p) Pursuant to HB 2055 enacted in 2013, the legislature shall adopt omnibus resolution approving all proposed permanent rules except those listed in resolution which are to be disapproved. Full legislature may suspend rules.
- (q) Failure to object or approve within 45 days of agency filing of final proposal constitutes approval.
- (r) The legislature may permanently block rules through legislation. The vote to sponsor a joint resolution suspends the adoption of a proposed rule for a limited time so that the full legislature may act on the resolution, which would then be subject to governor's veto and override.
- (s) Article V, Section IV, par. 6 of the NJ Constitution, as amended in 1992, says the legislature may review any rule or regulation to determine whether the rule or regulation is (s) Article V, Section IV, par. 6 of the NJ Constitution, as amended in 1992, says the legislature may review any rule or regulation to determine whether the rule or regulation is consistent with legislative intent. The legislature transmits its objections to existing or proposed rules or regulations to the governor and relevant agency via concurrent resolutions. The legislature may invalidate or prohibit an existing or proposed rule from taking effect by a majority vote of the authorized membership of each house, in compliance with constitutional provisions.
- (t) Unless formal objections are made or the rule is declared void, rules are considered approved.
- (u) JLCAR may recommend that an agency amend or withdraw a proposal. A vote opposing rule does not prohibit its adoption but assigns the burden of proof in any legal challenge to the agency.
- (v) Standing committees and The Joint Commission on Administrative Rules may suspend the effective date of all or a part of a final regulation until the end of the next regular legislative session with the concurrence of the governor.
- (w) State agencies have no power to promulgate rules without first submitting proposed rules to the legislature which must enact a statute authorizing the agency to promulgate the rule. If the legislature during a regular session disapproves all or part of any legislative rule, the agency may not issue the rule nor take action to implement all or part of the rule unless authorized to do so. However, the agency may resubmit the same or a similar proposed rule to the committee.
- (x) The promulgating agency's proposed language may be amended upon agreement of the committee and the promulgating agency.
- (y) The committee does not approve or disapprove administrative regulations. It reviews them and can propose amendments that will be made, if the promulgating agency agrees to the amendment.
- (z) The committee may make a finding of deficiency. If that happens, a letter is sent to the Governor requesting the Governor's determination whether the administrative regulation should be withdrawn, withdrawn and amended, or put into effect notwithstanding the finding of deficiency. The finding itself does not stop the rule from going into effect. If the Governor determines that the administrative regulation should go into effect notwithstanding the finding of deficiency, the General Assembly will usually address that issue

TABLE 3.26
Legislative Review of Administrative Rules/Regulations: Powers (continued)

in its next regular session, either by its own finding that the administrative regulation found deficient is null, void, and unenforceable, or by amending the authorizing statute to restrict the need for the administrative regulation.	(ee) Joint Administrative Procedures Committee, with approval of the president and speaker, may seek judicial review of validity or invalidity of rules.
(aa) Committee makes recommendations on Major Substantive Rules, but approval or disapproval is by the full Legislature (the instrument used is a resolve).	(ff) A standing committee can recommend a special session to consider committee's recommendations.
(bb) Under very specific circumstances the answer is yes with respect to Major Substantive Rules: if the rules are submitted in accordance with the timelines established by law, and the Legislature fails to act on them, the rules may be adopted as if the Legislature approved them.	(gg) Amendment 92 to the Arkansas Constitution, which passed in 2014, and laws enacted by Act 1258 of 2015 provided the General Assembly with the power of review and approval of all administrative rules and regulations.
(cc) Executive branch agency has more than advisory power.	(hh) Commission may hold hearings, subpoena witnesses, administer oaths, take testimony, and compel the production of books, papers, documents and other evidence.
(dd) Negative rule determinations are made public and remain on website until rule is modified to comply with statutory authority, statute is modified to establish validity of rule or court case upholds validity of rule.	(ii) Germane joint subcommittees can submit a report of objection to a rule to the germane standing committee and the Legislature. The Legislature as a whole has the final say in the rejection of rules when voting on the concurrent resolution of the rejection.
	(jj) Final rules previously approved by the Legislature, can still be rejected in a subsequent session.

APPENDIX 2C

STATE LEGISLATURES

TABLE 3.27

Summary of Sunset Legislation

<i>State or other jurisdiction</i>	<i>Scope</i>	<i>Preliminary evaluation conducted by</i>	<i>Other legislative review</i>	<i>Other oversight mechanisms in law</i>	<i>Phase-out period</i>	<i>Life of each agency (in years)</i>	<i>Other provisions</i>
Alabama	C	Dept. of Examiners of Public Accounts	Standing Cmtes.	Perf. audit	No later than Oct. 1 of the year following the regular session or a time as may be specified in the Sunset bill.	(Usually 4)	Schedules of licensing boards and other enumerated agencies are repealed according to specified time tables.
Alaska	C	Budget & Audit Cmte.	...	...	1/y	...	...
Arizona	C	Legislative staff	Joint Cmte.	...	6/m	10	...
Arkansas	D	...	...	...	...	...	...
California	S	Jt. Legis. Sunset Review Cmte. (a)	...	Perf. eval.	...	Established by the Legislature	...
Colorado	R	Dept. of Regulatory Agencies	Legis. Cmtes. of Reference	Bills need adoption by the legislature.	1/y	Up to 15	State law provides certain criteria that are used to determine whether a public need exists for an entity or function to continue and that its regulation is the least restrictive regulation consistent with the public interest.
Connecticut	D (b)	Committee of cognizance of program/entity being reviewed.	...	per CGS 2c-21: unless otherwise provided, a provision of law creating board/commission/ other body on or after Jan. 4, 1995, with primary purpose of issuing report, is deemed repealed 120 days after the date of required submission of such report	...	...	...
Delaware	C	Agencies under review submit reports to Joint Legislative Oversight Cmte. based on criteria for review and set forth in statute. Cmte. staff conducts separate review.	...	Perf. audit	Dec. 31 of next succeeding calendar year	4	Yearly sunset review schedules must include at least four agencies.
Florida	S (f)	...	...	...	...	...	...
Georgia	R	Dept. of Audits	Standing Cmtes.	Perf. audit	...	...	A performance audit of each regulatory agency must be conducted upon the request of the Senate or House standing committee to which an agency has been assigned for oversight and review. (d)
Hawaii	R	Legis. Auditor	Standing Cmtes.	Perf. eval.	None	Established by the legislature	Schedules various professional and vocational licensing programs for repeal. Proposed new regulatory measures must be referred to the Auditor for sunrise analysis.
Idaho	S (e)	...	...	...	...	...	...
Illinois	R,S	Governor's Office of Mgmt. and Budget	Cmte. charged with re-enacting law	(g)	...	Usually 10	...
Indiana	...	...	...	...	...	...	...
Iowa	No program						
Kansas	(h)	...	...	...	...	...	...
Kentucky	R	Administrative Regulation Review Subcommittee	Joint committee with subject matter jurisdiction.	Perf. Eval.	...	...	...

See footnotes at end of table

TABLE 3.27

Summary of Sunset Legislation (continued)

<i>State or other jurisdiction</i>	<i>Scope</i>	<i>Preliminary evaluation conducted by</i>	<i>Other legislative review</i>	<i>Other oversight mechanisms in law</i>	<i>Phase-out period</i>	<i>Life of each agency (in years)</i>	<i>Other provisions</i>
Louisiana	C	Standing cmtes. of the two houses with subject matter jurisdiction.	...	Perf. eval.	1/y	Up to 6	Act provides for termination of a department and all offices in a department. Also permits committees to select particular agencies or offices for more extensive evaluation. Provides for review by Jt. Legis. Cmte. on Budget of programs that were not funded during the prior fiscal year for possible repeal.
Maine	S (w)	Joint standing cmte. of jurisdiction.	Office of Program Evaluation & Government Accountability	...	...	Generally 10 years	...
Maryland	R	Dept. of Legislative Services	Standing Cmtes.	Perf. eval.	...	Varies (usually 10)	...
Massachusetts	No program						
Michigan	(e)	...	...	...	...	...	...
Minnesota	S (e)	...	...	...	...	...	...
Mississippi	(i)	...	...	...	...	...	...
Missouri	R	Oversight Division of Cmte. on Legislative Research	...	...	...	6, not to exceed total of 12	Can be extended.
Montana	(e)	...	...	...	...	...	...
Nebraska	D (e) (j)	...	...	...	...	...	...
Nevada	C (e) (c)	Sunset Subcommittee	Legislative Commission, Full Legislature	...	...	...	...
New Hampshire	(k)	...	...	...	...	...	...
New Jersey	(e)	...	...	...	...	...	...
New Mexico	S	Legis. Finance Cmte.	...	Public hearing before termination	1/y	Varies	...
New York	(e)	...	...	...	...	...	...
North Carolina	(l)	...	...	...	...	...	...
North Dakota	No program						
Ohio	C (m)	Sunset Review Cmte.	...	Perf. eval.	(n)	6	...
Oklahoma	S, D	Stndng cmtes. with jurisdiction over sunset bills (Senate) Jt. Cmtes. With jurisdiction over sunset bills (House)	Appropriations and Budget Cmte.	...	1/y	6	...
Oregon	D (o)	...	(o)	(o)	...	...	...
Pennsylvania	R	Leadership Cmte.	...	...	...	Varies	...
Rhode Island	(p)	...	No	...	...	...	...
South Carolina	(q)	...	...	Perf. Eval.	1/y	...	...
South Dakota	(r)	...	...	...	...	...	...
Tennessee	C	Office of the Comptroller	Government Operations Committees	...	1/y	Up to 6 years	...
Texas	S	Sunset Advisory Commission staff	...	...	1/y	12	...
Utah	S	Interim cmtes., then Legislative Mngmt. Cmte.	Standing cmtes. as amendments may be made to bill	...	(v)	(v)	...

See footnotes at end of table

STATE LEGISLATURES

TABLE 3.27

Summary of Sunset Legislation (continued)

<i>State or other jurisdiction</i>	<i>Scope</i>	<i>Preliminary evaluation conducted by</i>	<i>Other legislative review</i>	<i>Other oversight mechanisms in law</i>	<i>Phase-out period</i>	<i>Life of each agency (in years)</i>	<i>Other provisions</i>
Vermont	(s)	Legis. Council staff	Senate and House Government Operations Cmtes.	...	...	...	...
Virginia	S (e)	...	...	...	...	...	Sunset provisions vary in length. The only standard sunset required by law is on bills that create a new advisory board or commission in the executive branch of government. The legislation introduced for these boards and commissions must contain a sunset provision to expire the entity after three years.
Washington	D	...	...	Perf. Eval.	1/y	...	...
West Virginia	S	Jt. Cmte. on Govt. Operations	Performance Evaluation and Research Division	Perf. audit	1/y	6	Jt. Cmte. on Govt. Operations composed of five House members, five Senate members and five citizens appointed by governor. Agencies may be reviewed more frequently.
Wisconsin	(e)	...	...	...	...	...	...
Wyoming	D (t)	Program evaluation staff who work for Management Audit Cmte.	...	Perf. eval. (u)	...	...	...
CNMI*			No	Perf. Eval.	1/y		

See footnotes at end of table

TABLE 3.27

Summary of Sunset Legislation (continued)

Source: The Council of State Governments' survey, April 2019.

*Commonwealth of Mariana Islands

Key:

C—Comprehensive—requires all statutory agencies to be subject to a sunset review once per review cycle.

R—Regulatory—review focus is on regulatory and licensing agencies and bureaus.

S—Selective—selective implementation and reviews are concentrated on entities such as occupational licensing and administrative agencies such as highway, health and education departments.

D—Discretionary—sunset review board has the ability to select which entities will face review.

d—day

m—month

y—year

...—No provision

(a) Jt. Legis. Sunset Review Cmte.—Review by the Jt. Legislative Sunset Review Cmte. of professional and vocational licensing boards, pursuant to Government Code 9147.7. Sunset clauses are included in other selected programs and legislation.

(b) No longer comprehensive—in 2016, funding for Legislative Program Review and Investigations Committee and staff eliminated; in 2017, provisions of law requiring decennial review of certain programs/entities repealed.

(c) The 2011 Nevada Legislature created the Sunset Subcommittee of the Legislative Commission with the enactment of Senate Bill 251 (Chapter 480, Statutes of Nevada). The Subcommittee is to conduct reviews of all boards and commissions not provided for in the Nevada Constitution or created by Executive Order of the Governor, and is charged with determining whether those entities should be terminated, modified, consolidated, or continued. The Subcommittee must review each entity no less often than once every ten years. After making its initial recommendations no later than June 30, 2012, the Subcommittee must submit all subsequent recommendations to the Legislative Commission on or before June 30 of each even-numbered year. The Legislative Commission may accept or reject the recommendations in whole or part and may then request that legislation be drafted for consideration by the full Legislature.

(d) The automatic sunset of an agency every six years was eliminated in 1992. The legislature must pass a bill in order to sunset a specific agency.

(e) While they have not enacted sunset legislation in the same sense as the other states with detailed information in this table, the legislatures in Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Virginia and Wisconsin have included sunset clauses in selected programs or legislation.

(f) Comprehensive agency sunset review and repeal was repealed in 2011. Florida does have Open Government Sunset Review of public records and meetings exemptions with a 5-year review period.

(g) Governor is to read GOMB report and make recommendations to the General Assembly every even-numbered year.

(h) Sunset legislation terminated July 1992. Legislative oversight of designated state agencies, consisting of audit, review and evaluation, continues.

(i) Sunset Act terminated December 31, 1984. House and Senate Rules are available at *billstatus.ls.state.ms.us*. New Rules were adopted in January 2012.

(j) Sunset legislation is discretionary, meaning that senators are free to offer sunset legislation or attach termination dates to legislative proposals. There is no formal sunset commission. Nebraska. Revised Statutes section 50-1303 directs the Legislature's Government, Military and Veteran's Committee to conduct an evaluation of any board, commission, or similar state entity. The review must include, among other things, a recommendation as to whether the board, commission, or entity should be terminated, continued or modified.

(k) New Hampshire's Sunset Committee was repealed July 1, 1986.

(l) North Carolina's sunset law terminated on July 30, 1981. Successor vehicle, the Legislative Committee on Agency Review, operated until June 30, 1983.

(m) There are statutory exceptions.

(n) Authority for latest review (SB 171 of the 129th General Assembly) expires December 31, 2016.

(o) Sunset legislation was repealed in 1993. No general law sunset rules or agencies. Oversight mechanisms, including auditing, reporting or performance measures, are discretionary but may be included in specific bills as determined by legislature.

(p) No standing sunset statutes or procedures at this time.

(q) Law repealed by 1998 Act 419, Part II, Sect. 35E.

(r) South Dakota suspended sunset legislation in 1979. A later law directing the Executive Board of the Legislative Research Council to establish one or more interim committees each year to review state agencies was repealed in 2012.

(s) Sunsets are at the legislature's discretion. Their structure will vary on an individual basis.

(t) Wyoming repealed sunset legislation in 1988.

(u) The program evaluation process evolved out of the sunset process, but Wyoming currently does not have a scheduled sunset of programs.

(v) Default is ten years, although years may be decreased by legislative decisions.

(w) Sometimes programs or agencies are subject to sunset provisions; this is entirely ad hoc as the Legislature determines appropriate. There is a general law, however, called State Government Evaluation Law that provides for regular reviews of agencies and boards by committee of jurisdiction; the committees can recommend termination (sunset) but, again, this is ad hoc.

APPENDIX 3A: ALASKA'S AGENCY CHECKLIST/REGULAR REGULATION

DRAFTING

- _____ Discuss the project timeline with Legislation and Regulations Section if the project has an effective date deadline, urgency, or is lengthy or complex. (See Step 2 in Ch. 2).
- _____ Proposed regulation is drafted and reviewed by agency in accordance with law and this manual (See Step 2 in Ch. 2).
- _____ Prepare fiscal note, if required (See Ch. 4 and 14) (Appendix F).
- _____ Decide whether to use the Alaska Online Public Notice System to receive comments on the project.
- _____ Prepare the Notice of Proposed Changes and the Additional Regulation Notice Information. Public notice must include: (1) references to statutory authority and statutes being implemented, interpreted, or made specific; (2) informative summary (*not* text) of the regulation; (3) summary of fiscal information; (4) deadline and address for submission of written comments (if an oral hearing is held, the time, date, and place of the hearing); and (5) any information required by the relevant program statute (See Ch. 4) (Appendices D-1, D-2, D-3, E-1, and E-2).
- _____ Request the regulations attorney to open Department of Law file (Appendix G). Agency attorney reviews the draft regulation and public notice (See Steps 3 and 4 in Ch. 2).

PUBLICATION AND DISTRIBUTION OF NOTICE (See Ch. 4)

- _____ Published in newspaper of general circulation or trade publication; request return of affidavit of publication from newspaper or trade publication.
- _____ Furnished to the head of the department in which adopting agency is located (if adopting agency is not a principal department).
- _____ Furnished to all persons on the interested-persons list and others thought to be interested.
- _____ Furnished to the regulations attorney in the Department of Law (along with proposed regulation).
- _____ Furnished electronically to all incumbent Alaska state legislators.
- _____ Additional regulation notice information sent with notice to interested persons, legislators, and regulations attorney (Appendices E-1 and E-2).
- _____ Notice and additional regulation notice information posted on the Alaska Online Public Notice System.
- _____ Prepare affidavit of notice of proposed adoption of regulation (Appendix H).

PUBLIC COMMENT/QUESTIONS

- _____ Prepare for questions during the comment period.
- _____ Answers to questions made publicly available on the Alaska Online Public Notice System.
- _____ Written comments collected (See Step 6 in Ch. 2).
- _____ Oral public hearing, if any, conducted; prepare affidavit of oral hearing (See Step 6 in Ch. 2) (Appendix I).
- _____ Written comments and any oral comments received before deadline are carefully considered, including comments on costs of compliance to private persons (See Step 7 in Ch. 2).
- _____ Use or rejection of written and oral comments is documented (See Step 7 in Ch. 2).

ADOPTION OF REGULATION

- _____ Final version of regulation is prepared in proper final format (see Ch. 7 and sample regulation in Appendix C).
- _____ Agency formally adopts the regulation by signing the adoption order; or, for a board or commission, voting to adopt during a properly noticed public meeting; certification order prepared, if appropriate (Appendices J and L). Delegation attached, if required (Appendices O and P). Designation as acting commissioner attached, if required (See Step 7 in Ch. 2).
- _____ Relevant portion of minutes of board or commission meeting and staff affidavit prepared, *if* a certification order was signed (See Step 7 in Ch. 2) (Appendices M and N).

- _____ Affidavit of agency record of public comment prepared (Appendix K) (not applicable to exempted boards and commissions) (See Step 7 in Ch. 2).
- _____ Agency furnishes adopted regulations to the regulations specialists at the Office of the Governor, and the Office of the Lieutenant Governor using gov-regs@list.state.ak.us (this requirement does not apply to the RCA, the AOGCC, the Board of Fisheries, or the Board of Game, or to non-APA regulations).

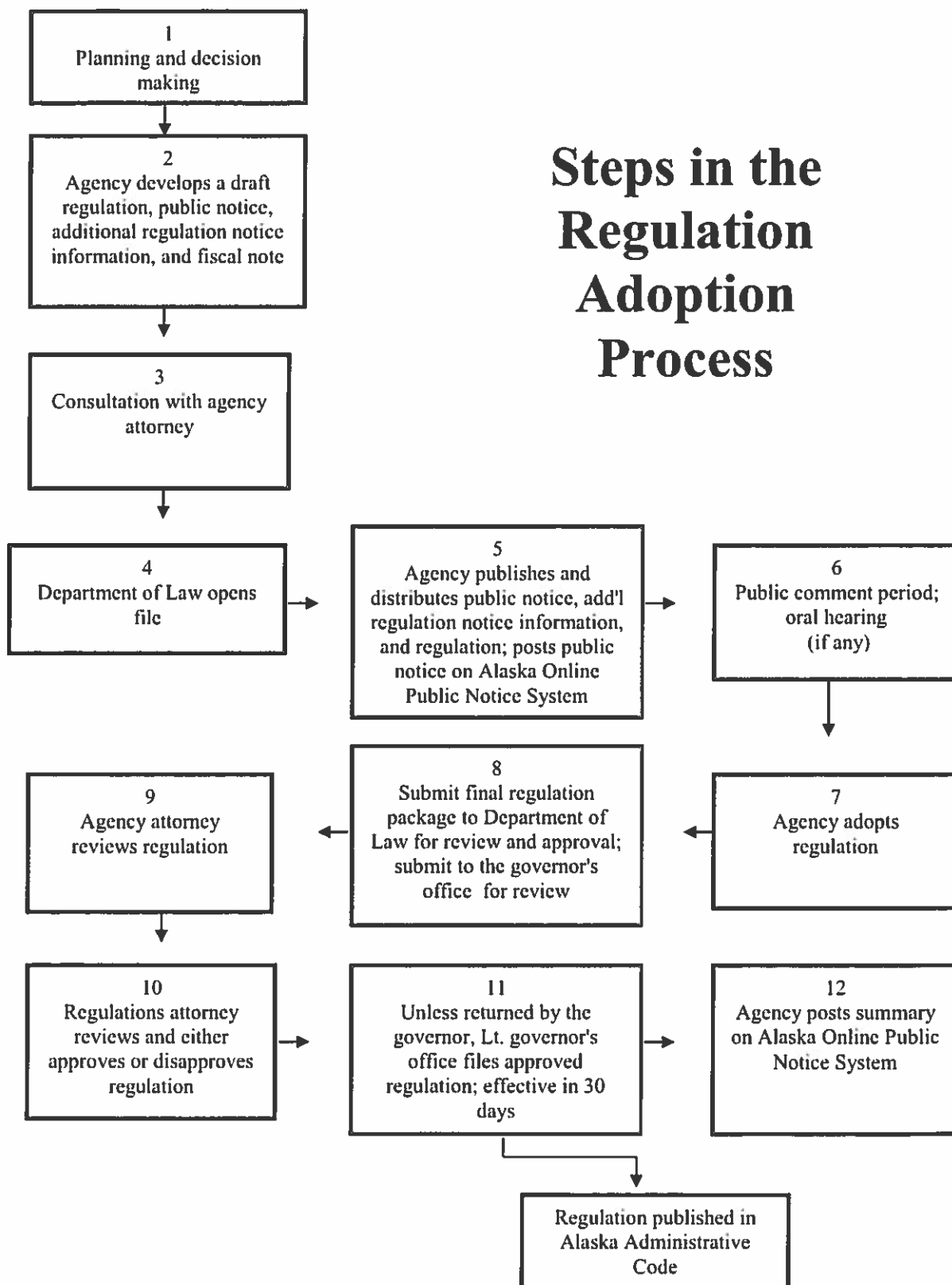
TRANSMITTAL TO DEPARTMENT OF LAW

- _____ Completed project is **sent to the regulations attorney** in the Department of Law. (See Step 8 in Ch. 2). Transmittal must include
- _____ (1) Cover memo to the regulations attorney stating the Department of Law file number, noting any particular issues regarding the project, any urgency or requested effective date, stating the date the adopted regulations were furnished to the governor's office (furnishing adopted regulations is not applicable to the RCA, the AOGCC, the Board of Fisheries, or the Board of Game), and requesting review and approval (Appendix Q);
- _____ (2) Original and one copy of final version of regulation for Department of Law's use;
- _____ (3) Original signed adoption order or certification order;
- _____ (4) A copy of any delegation of authority or acting commissioner designation;
- _____ (5) Relevant minutes of board or commission meeting and staff affidavit, *if* a certification order is being submitted;
- _____ (6) An original or copy of public notice;
- _____ (7) Additional regulation notice information form that was distributed with the public notice;
- _____ (8) Fiscal note, if required;
- _____ (9) Original affidavit of notice of proposed regulation adoption;
- _____ (10) Original publisher's affidavit of publication;
- _____ (11) Original affidavit of oral hearing, if one was held;
- _____ (12) Original affidavit of record of public comment (not applicable to exempted boards and commissions);
- _____ (13) Any other relevant documents (such as material adopted by reference).

FILING AND EFFECTIVE DATES

- _____ Date Department of Law approved regulations (See Steps 9 and 10 in Ch. 2).
- _____ Date regulation filed by the lieutenant governor's office, unless returned under AS 44.62.040(c), if applicable (See Step 11 in Ch. 2).
- _____ Effective date of regulation (See Step 11 in Ch. 2).
- _____ Summary of text of filed regulation, indicating the effective date, posted on the Alaska Online Public Notice System as soon as possible after filing of the regulation (See Step 12 in Ch. 2).

APPENDIX 3B: ALASKA'S STEPS IN THE REGULATION ADOPTION PROCESS





APPENDIX 4A

How to Conduct Fact-Based Bipartisan Oversight: Training & Best Practices

[The Levin Center](#) at Wayne Law's mission is to strengthen the integrity, transparency, and accountability of public and private institutions by promoting and supporting bipartisan, fact-based oversight; advancing good governance, particularly with respect to the legislative process; and promoting civil discourse on current issues of public policy.

Oversight Training & Resources

The Levin Center offers customized [oversight training sessions](#) for both legislators, and their staff. In addition to in-person or virtual trainings, there are several [online tutorials and resources](#) available as well. To learn more about the Levin Center's oversight training and resources, contact Ben Eikey, State Training & Communications Manager, at (810) 569-0747 and benjamin.eikey@wayne.edu.

Legislative Oversight Across the 50 States

In 2018, the Levin Center commissioned a study of each state legislature's capacity to conduct oversight and the extent to which each state uses that capacity. The Center for Urban Studies (CUS) at Wayne State University gathered data for 18 months, and analyzed this data while focusing on six specific dimensions of oversight:

- I. Analytic bureaucracies
- II. Appropriations processes
- III. Committees
- IV. Administrative rules processes
- V. Advice and consent
- VI. Monitoring of state contracts

CUS then created an overall rating for the capacity and use of oversight in each of the 50 states. [This interactive map](#) allows you to see the ratings for each of the six dimensions as well as the overall ratings and full state reports.

In 2020, the Levin Center issued a [report](#) on state legislative oversight of emergency COVID-related contracts, using three case studies affecting ten states. It includes factual findings and recommendations.