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State Legislative Oversight: **California**



Capacity and Usage Assessment

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

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Legislative Oversight in California

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Summary Assessment

Despite cuts in staff, California still has abundant staff resources to support legislative oversight. California’s websites provide easily accessible information about audits, audit recommendations, and recommended legislative action. The emphasis is often on proactive rather than reactive oversight. The institutional structure of the Little Hoover Commission—quasi-legislative and quasi-executive branch—and its supervision of the state’s auditor is unique. Oversight appears to provide both an assessment of current performance by agencies conducted by the auditor and a policy generating link through reports on how government should operate, provided by the Little Hoover Commission.

Major Strengths

California’s legislative audit agency recommends needed legislative action and then follows up with a report on whether the legislature made efforts to pass the recommended legislation. This transparency appears to encourage proactive efforts by the legislature. The presence of the Little Hoover Commission clearly augments, and in some cases supersedes, the efforts of the auditor’s office. The commission is a powerful actor in the oversight environment, despite not being a legislative audit agency. California’s standing committees take testimony and conduct extensive hearings proactively to address ongoing problems rather than just reacting to crises. Some of their hearings, especially for standing committees, are conducted jointly with legislators from both chambers present—an efficient use of time for staff, agencies, and the public—rather than duplicating the same presentations and information sharing for each chamber separately. Legislators’ questions during these hearings indicated extensive familiarity with the reports and information presented. This could result from their full-time status, which provides them with the opportunity to delve deeply into the job of legislator, although high turnover from term limits could attenuate this strength. The knowledge in committee hearings could also result from staff efforts to prepare legislators for hearings, which is feasible given the large legislative staff available to legislators. The insight into the importance of provider rate-setting that

legislators exhibit during budget hearings underscores their knowledge of the system of relationships between government and the private for-profit and non-profit sectors.

Challenges

The legislature has an extremely limited role in administrative rules review either with respect to the promulgation of new rules or with respect to existing rules. The California State Auditor recently reported that state contract monitoring by the executive branch is lax, and legislative involvement is needed. Currently, however, there is little or no role for legislative oversight of state contracts. Moreover, the legislature does not appear to use its advice and consent powers to monitor gubernatorial appointments. This is true even during periods of divided government. Until recently, California's lower legislative chamber had extremely short term limits. Going forward, legislators can remain in the same chamber for their entire 12-year maximum tenure in office. Given California's heavy reliance on committee hearings to oversee the work of state agencies, this opportunity for legislators to acquire knowledge and expertise may improve the already strong oversight conducted in budget hearings and by standing committees. Joint budget hearings would seem to be a more efficient use of agency, staff, provider advocates, and legislators' time, especially given that many budget hearings are three hours or more.

Relevant Institutional Characteristics

California's legislature is ranked most professional in the nation (Squire, 2017). Despite its first-place ranking, the institutional capacity of California's legislature has declined in recent years. According to the National Conference of State Legislatures (NCSL), staff resources have declined. California's legislative staff peaked in 1988 at 2,865. As part of its term limits law, implemented in 1996, California cut its legislative staff by more than 300 positions. In 2015, approximately 2,100 permanent staff members help the legislature. These include non-partisan professional staffs—the chamber fiscal agencies and the Legislative Services Bureau (LSB)—in addition to partisan staff, committee staff, and personal staff.¹⁹⁷ Despite these cuts and restrictions, California's legislature still has more staff than any other chamber in the country (NCSL, 2015).

Stringent term limits reduced legislator experience as well—to only six years in the lower chamber and eight years in the upper chamber. Legislator compensation for 2017 was \$100,113 plus \$176 per session day in expenses associated with the job,¹⁹⁸ an amount that is high enough to consider the job full-time. Hence, despite their limited tenure in office, California's legislators have an opportunity to devote all their attention to learning about issues and agencies—and their abundant staff help to educate them. Although they might not be as knowledgeable as their veteran predecessors from the 1990s, they might compare favorably with legislators from states in which the job is so poorly paid that legislators need other full-time employment, leaving little time to acquire knowledge about issues and agencies. In 2012, California's voters changed the

¹⁹⁷ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 2/12/18.

¹⁹⁸ http://www.ncsl.org/Portals/1/Documents/legismgt/2016_Leg_Comp_Session_Per%20Diem_Mileage.pdf, accessed 2/12/18.

state's legislative term limits so that legislators elected in 2012 or later can serve a total of 12 years in one chamber or a combined total of 12 years in either chamber—a change that could enhance their job performance.¹⁹⁹

California's legislature consists of 80 general assembly members who serve two-year terms and 40 state senators who serve four-year terms. Considering California's large population this is an extremely small state legislature. As a result, a state senator on average represents approximately 931,000 residents, and an assembly member represents 465,000 residents.²⁰⁰ In comparison, a U.S. representative from California represents 710,000 residents as determined by the latest round of reapportionment following the 2010 census.²⁰¹

As is typical of many states with a strong legislature, California has a weak governor, ranked 44th nationally (Ferguson, 2015). California governors are limited to two four-year terms. The governor has the line-item veto for budget items, and it takes a vote by two-thirds of the elected legislators in each chamber to override gubernatorial vetoes. However, California also requires a two-thirds vote in the legislature to pass a state budget, so even in times of one-party control compromise and negotiation may be required to pass the budget. California's governor has only modest appointment powers.

Additionally, California employs a plural executive structure with numerous constitutionally elected officials: the attorney general, secretary of state, state treasurer, state comptroller, and so forth (Perkins, 2018).²⁰² The separation of executive functions into separately elected offices tends to lessen the control and influence of the governor over these key policy areas, like public education, and can lead to fragmentation in policy if these officials are affiliated with different political parties.

Despite its robust resources for elected officials and reputation as a “big government” state, California has a smaller than average share of local and state government employees as a percentage of its workforce. These state and local government employees comprise only 10.8% of California's workforce, while the national average is 11.3% (Edwards, 2006). Of these employees, a slightly lower than average share work in K-12 education (5.4% for California compared to 6.1% nationally) (Edwards, 2006).

Political Context

California at the state and national level is one of the most Democratic states in the country. Democrats currently control both the general assembly, state senate, the governor's office, and all major statewide elected offices. In the last presidential election, Hillary Clinton beat Donald Trump 61.7% to 31.6% or by over 4.3 million votes. California was one of Clinton's largest margins of victory in the 2016 presidential election, where she outperformed the national

¹⁹⁹ Previously the state shared with Michigan and Arkansas this extremely stringent lifetime ban. Consequently turnover, especially in the lower chamber, was extremely high, and state representatives had little time to learn the more complex parts of their job, such as oversight. Given this change, oversight could improve as more legislators have an opportunity to stay in the lower chamber for 12 years instead of six.

²⁰⁰ https://ballotpedia.org/California_state_legislative_districts, accessed 10/2/18.

²⁰¹ <https://www.govtrack.us/congress/members/CA>, accessed 10/2/18.

²⁰² <file:///F:/State%20Oversight%20Project/Resources%20for%20Summaries/Book%20of%20States%20Method%20of%20Selecting%20Top%20Exec%20Branch.pdf>, accessed 10/4/18.

Democratic vote of 48.3% by +13.4%. The last Republican to win California and crack 45% of the vote in a presidential election was George H.W. Bush in 1988, who won the state with 51.1% of the vote (Krishnakumar, Emamdjomeh, & Moore, 2016).²⁰³

Currently, Democrats have a 55-25 advantage in the general assembly and 26-14 advantage in the state senate. This gives Democrats a two-thirds supermajority, which allows for easy overrides of any gubernatorial vetoes. But more importantly, with a two-thirds majority being required to pass the state budget, Republicans have lost any leverage to prevent the implementation of Democratic spending priorities or negotiate some inclusion of key Republican initiatives in exchange for their votes.

The Democratic Party has controlled the state's legislature almost without interruption since the 1960s. In 1994, the GOP won a slim 40-39 majority in the general assembly.²⁰⁴ However, the majority was short-lived as defections from the Republican Party returned control of the lower chamber to Democrats before the next election. In the senate, the Democrats have had complete control of the upper chamber since 1992, with the smallest margin of control coming in 1994, where the Democrats held a 21-17 majority.²⁰⁵ The only other period of Republican control since 1960 in either chamber occurred in 1968, when they won control of the general assembly, which only lasted until 1970.²⁰⁶ Recent data rank California's house as the most polarized lower legislative chamber, and its senate is also the most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor & McCarty, 2015).

Unlike the state legislature where Democratic control has been the norm since 1960, control of the executive branch has alternated regularly between political parties. California had a Republican governor from 1992--1998, a Democratic governor from 1999--2003, a Republican governor from 2004--2010, and its current Democratic governor was elected in 2011. Interestingly, California governors of both parties have often governed according to the ideals of the "California Party" (Pawel, 2018).²⁰⁷ This idea reinforces elements of bipartisanship and cooperation on issues that comes with managing the world's fifth largest economy and governing an increasingly "vast and diverse nation-state (Pawel, 2018).²⁰⁸ The Party of California appeals to the ideal that California is a special and unique place that when it comes to its governors, are not easily confined to a partisan box and are expected to exhibit key pragmatic postures when pursuing their political agendas (Pawel, 2018).²⁰⁹ With younger voters increasingly refusing to register for either party, the ethos of the California Party may still shape and alter the partisan postures of future governors (Pawel, 2018).²¹⁰

²⁰³ <http://www.latimes.com/projects/la-pol-ca-california-voting-history/>, accessed 10/4/18.

²⁰⁴ https://ballotpedia.org/California_State_Assembly, accessed 10/2/18.

²⁰⁵ https://ballotpedia.org/California_State_Senate, accessed 10/2/18.

²⁰⁶ https://ballotpedia.org/California_State_Assembly, accessed 10/2/18.

²⁰⁷ <https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html>, accessed 10/2/18.

²⁰⁸ <https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html>, accessed 10/2/18.

²⁰⁹ <https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html>, accessed 10/2/18.

²¹⁰ <https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html>, accessed 10/2/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

California has an auditor general's office, the California State Auditor (CSA), that conducts audits and investigations at the request of legislators. The agency derives its authority from statute. With a budget of about \$27 million and a staff of 164, most of whom are professionals (NASACT, 2015), the CSA has ample resources to contribute to legislative oversight in the state. The CSA has three divisions: two conduct performance audits and one conducts financial audits, some of which are performance-based financial audits.

The state auditor says she and her staff “technically reside in the executive branch (but do not report to the governor and are independent of any agencies in the executive branch)” (NASACT, 2015). The specific part of the executive branch that CSA falls under is called the California Little Hoover Commission (Chapter 12, Statutes of 1993, codified at Government Code § 8543). The commission itself is described in detail below.

The auditor is appointed to a four-year term by the governor subject to confirmation by both chambers of the legislature. But the Joint Legislative Audit Committee (JLAC) provides the governor with a list of three candidates from which the governor may choose his or her appointee. Hence, although the state auditor is technically a part of the executive branch, the auditor reports directly to the JLAC and may be removed for cause by the legislature (NASACT, 2015). Legislators may request an audit either through the JLAC or by passing legislation. These audits are not limited to state agency investigations but may also examine the work of cities and counties as well as special single-purpose districts, including school districts. The annual Budget Act also includes mandated audits, which will be discussed below, in “Oversight Through the Appropriations Process.”

The CSA regularly provides reports to the California state legislature. Its website provides access to the 41 reports completed in 2017, but the website also notes that not all reports are available online. Among these posted reports, four are classified as financial reports, two are investigative reports, which appear to address potential fraud, 11 are mandatory reports, which focus again on financial issues, and 25 are described as discretionary reports, which appear to be performance reports.

The most recent annual report from the CSA recommends that the legislature take 34 actions to address concerns identified in audits. Most of these involve changing reporting requirements for boards and agencies throughout the state. For example, the CSA reports that many state entities are vulnerable to information attacks or disruption and recommends that the legislature require that agencies report independent security assessments and moreover that the legislature should authorize agencies to redirect funds to remediate information security weaknesses. To identify follow up action by the legislature on its audit findings and recommendations, the CSA publishes a list of the status of various pieces of legislation that it follows up on or are related to subjects of audit reports. The list designates bills that have been “chaptered” (i.e., passed and become statutes) or vetoed. In the 2016 Regular Session, there were 23 such bills, 18 of which were chaptered and five were vetoed.²¹¹ This list does not include audit reports with recommendations for which the legislature made no effort to address the audit

²¹¹ <https://www.bsa.ca.gov/pdfs/reports/2016-701.pdf>, accessed 6/25/18.

concerns and findings. The report describes 34 audit reports that included recommendations that would have required one or more legislative actions.

Additionally, the CSA implements the California Whistleblower Protection Act by conducting investigations of state agencies and state employee conduct based on complaints made by state employees, the public, or on its own initiative. The CSA receives more than 4,000 of these complaints per year.²¹² The CSA publishes a biannual report on these investigations and the actions taken by state agencies to rectify any problems identified. The CSA is solely an investigatory agent. It can only recommend corrective actions. It is the responsibility of the state agency to act and respond to these recommendations. The online listing of Investigative Reports shows that of the 4,000+ complaints received, most do not rise to the level of serious offenses. The reports from 2017 include 16 instances in which state employees or agencies engaged in improper activities, such as misuse of state resources, improper overtime pay, taking extended lunch breaks, wasting university funds, disclosing confidential information, personal use of state vehicles, inaccurate attendance records, and so on. The only link between these activities of the CSA and legislature seems to be that the legislature receives the reports, which are available to the public as well. It does appear that occasionally, the CSA recommends that the legislature take action to remedy systemic flaws in state procedures, but this seems to be rare.

Findings of all audits are presented at JLAC hearings and released publicly. The agencies being audited are monitored at three intervals: 60 days, six months, and one year to ensure that they are making adequate progress implementing the recommendations in the audit report. In 2018, the CSA produced a total of 30 fiscal, investigative, discretionary and mandatory reports, suggesting it is an active auditing agency.²¹³ In addition to audits requested by legislators, the CSA conducts program evaluations and performance audits. Program evaluations may be mandated or requested by legislators. Performance audits seek to establish best practices and to determine whether there is “duplication, overlap, or conflict” between public programs.²¹⁴

The analytic bureaucracy that oversees with work of the CSA in California is the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy, referred to as the Little Hoover Commission. The Little Hoover Commission hires an auditor to audit the CSA. The Little Hoover Commission is an independent state agency that was created in 1962 with the intent to “investigate state government operations and policy, and – through reports and legislative proposals – make recommendations to the governor and legislature to promote economy, efficiency and improved service in state operations.”²¹⁵ Its mission, which is distinct from the CSA and the LAO, is to examine how state programs *could* and *should* function with the intent that its reports should trigger reform legislation. The commission is also statutorily required to make recommendations and review any government re-organization plans. The commission expressly investigates matters beyond the typical fiscal or performance reviews that are commonplace in most audit offices.²¹⁶ It has broad authority to investigate the structure, organization, function, and mechanisms for appropriating and administering funds of every state agency and department in the executive branch.²¹⁷

²¹² <https://www.auditor.ca.gov/aboutus/investigations>, accessed 6/25/18.

²¹³ http://www.bsa.ca.gov/reports/search_results, accessed 10/5/18

²¹⁴ https://www.auditor.ca.gov/aboutus/performance_audits, accessed 6/25/18.

²¹⁵ <https://lhc.ca.gov/about/history>, accessed 10/3/18.

²¹⁶ <https://lhc.ca.gov/about/history>, accessed 10/3/18.

²¹⁷ <https://lhc.ca.gov/about/history>, accessed 10/3/18.

The Little Hoover Commission is comprised of 13 members, nine public members of whom five are appointed by the governor, two by the speaker of the general assembly, and two by the Senate Rules Committee. The remaining four members are sitting members of the legislature with two coming from the general assembly and two from the senate.²¹⁸ Some of the public members currently on the board are former legislators. By statute the commission must be bipartisan, and public member terms are staggered four-year terms.²¹⁹ The commission has six listed staff members²²⁰ and for FY 2016-17, it had an annual budget of just over \$1 million.²²¹

Since 2013, the Little Hoover Commission issued 29 reports on issues ranging from fixing California's Denti-Cal program, to forest management, to improving oversight and transparency of California's independent special districts.²²² In a sign of the commission's overall effectiveness in the 2017-2018 Legislative Session, the commission supported 12 pieces of legislation that would implement commission recommendations and Governor Brown signed six of those bills into law.²²³

Vignette: The Little Hoover Commission Builds on the Work of the CSA

Oversight of the Denti-Cal program is an interesting example of overlapping efforts on the part of the CSA and the Little Hoover Commission over a period of several years. The Denti-Cal program is a \$1.3 billion state and federal program located in California's Medicaid program, Medi-Cal. Denti-Cal is designed to deliver dental services to eligible Medicaid beneficiaries, which in California, covers roughly 13 million residents, including children and physically and mentally disabled individuals.²²⁴ In December 2014, the CSA released a report highlighting the failures of the Denti-Cal program, citing an astonishingly low utilization rates by Medi-Cal beneficiaries, in particular, over half of the 5.1 million children enrolled in Medi-Cal were taking advantage of the dental program benefits.²²⁵ Complicating the utilization rates, was the lack of available providers. In 32 counties, there were either no Denti-Cal providers at all, providers no longer willing to accept new Denti-Cal patients, or a lack of providers to deliver a sufficient level of services to beneficiaries.²²⁶ The primary reason for this lack of providers was directly tied to the low reimbursement rates for services, which had not been increased since FY 2000-01.²²⁷

The Little Hoover Commission released its own scathing report on the deficiencies and inadequacies of the Denti-Cal program in April 2016.²²⁸ The commission verified many of the findings in the CSA report, but the language of the report itself is far more direct, blunt, and damning of Denti-Cal, Medi-Cal, and the Department of Health Care Services, which administers both programs. To leverage and build on the CSA report, the commission held public hearings on the failures of the Denti-Cal program, which highlighted areas where the

²¹⁸ <https://lhc.ca.gov/about/faq>, accessed 10/5/18.

²¹⁹ <https://lhc.ca.gov/about/faq>, accessed 10/5/18.

²²⁰ <https://lhc.ca.gov/content/staff-directory>, accessed 10/4/18.

²²¹ <http://www.ebudget.ca.gov/2016-17/Enacted/StateAgencyBudgets/8000/8780/spr.html>, accessed 10/4/18.

²²² <https://lhc.ca.gov/report/list>, accessed 10/5/18.

²²³ <https://lhc.ca.gov/report/list>, accessed 10/5/18.

²²⁴ <http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf>, accessed 10/5/18.

²²⁵ <http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf>, accessed 10/5/18.

²²⁶ <http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf>, accessed 10/5/18.

²²⁷ <http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf>, accessed 10/5/18.

²²⁸ <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/230/Report230.pdf>, accessed 10/5/18.

program was failing beneficiaries and other at-risk populations. This series of hearings in September and November of 2015 demonstrated a high level of knowledge about the Denti-Cal program on the part of the commission members. Based on that knowledge, they were able to ask insightful questions relating to the failures of the program. The commission report stated the central problem in stark terms finding that Denti-Cal is stuck in a “vicious cycle of dysfunction,” where “most dentists don’t participate in Denti-Cal due to its low reimbursement rates and administrative obstructions. Additionally, fewer than half of people eligible for benefits use them in any given year because there are so few dentists who will see them.”²²⁹ The commission made twelve overall recommendations, seven short-term recommendations and four long-term recommendations to re-orientate Denti-Cal towards better service to beneficiaries and improved cooperation between providers and administration. In response to the CSA audit report, the commission’s report, and subsequent follow-up letters to Governor Brown in 2017²³⁰ and 2018²³¹ urging major reforms of the program, there has been significant legislative action. In the 2015-16 legislative session, four bills were introduced, and two were signed by the governor, and in the 2017-18 session, two more bills were introduced to address the issues with Denti-Cal.²³² Additionally, various legislative committees, for example, the Budget Committee and the Subcommittee on Health and Human Services, have held hearings to examine the long-standing issues with Denti-Cal and how best to fix the troubled program.²³³ The end result is a coordinated effort of oversight driven by key analytic bureaucracies with appropriate legislative and executive action to correct the failing Denti-Cal program. The Dental Transformation Initiative (DTI) is the culmination of these efforts. The DTI is a Department of Healthcare Services plan to transform the Denti-Cal program by 2020 by addressing four key domains that will improve dental care for children and other beneficiaries identified in the CSA and Little Hoover Commission reports.²³⁴

In addition to the CSA and its parent, the Little Hoover Commission, the Legislative Analyst’s Office (LAO) supports the legislature’s role in the budget process by providing non-partisan analysis of the governor’s budget proposal.²³⁵ The LAO reports to the Joint Legislative Budget Committee (JLBC) but provides support to any legislator who requests it. The JLBC is comprised of 16 legislators, 10 Democrats and six Republicans in 2017. The LAO employs 43 analysts who forecast state revenues, assess the fiscal impact of ballot initiatives, and produce fiscal and policy analyses. During 2017, the LAO produced 125 reports and 78 hearing handouts on a wide range of topics. Hearing handouts are bullet point summaries of information germane to the hearing that, importantly, include a list of oversight questions for legislators to pursue.²³⁶

California’s state government also provides other support services for legislators, such as the California Research Bureau (CRB), which is housed in the California State Library. The CRB provides “independent, nonpartisan, timely and confidential research or analysis for the

²²⁹ <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/230/ExecutiveSummary230.pdf>, pp. 5, accessed 10/5/18.

²³⁰ <https://lhc.ca.gov/report/letter-governor-brown-and-legislature-denti-cal-program-still-broken>, accessed 10/5/18.

²³¹ <https://lhc.ca.gov/report/letter-governor-brown-and-legislature-denti-cal-update>, accessed 10/5/18.

²³² <https://lhc.ca.gov/impact/supported-legislation>, accessed 10/5/18.

²³³ <https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2024%202017%20agenda%20Denti-Cal%20Oral%20Health.pdf>, accessed 10/5/18.

²³⁴ <https://www.dhcs.ca.gov/provgovpart/Pages/DTI.aspx>, accessed 10/6/18.

²³⁵ <http://www.lao.ca.gov/About>, accessed 6/25/18.

²³⁶ https://lao.ca.gov/handouts/resources/2018/Overview_SWP_Proposed_Contract_Amendment.pdf, pp. 6 provides an example of oversight questions, accessed 9/17/18.

Governor, Legislature, and other Constitutional Officers.”²³⁷ Its 361 public reports posted on its website cover a wide range of topics, some of which assess the performance of California laws and policies. For example, one of the reports published in 2017 assess the effect California Assembly Bill 2494 had on frivolous litigation. Datasets accompany these reports.

Oversight Through the Appropriations Process

California’s state legislature lists, separately from other committee meetings, hearings designated as oversight hearings. Recordings of these hearings are on publicly available webpages—one for the state’s Senate Budget and Fiscal Review Committee²³⁸ and another for the State Assembly Committee on Accountability and Administrative Review.²³⁹ Most of these are joint chamber hearings, and the assembly webpage appears to be updated regularly.

Meetings held by various subcommittees of the Budget and Fiscal Review Committee are prominently featured on the list of senate oversight hearings. More than half of the oversight hearings held in the spring of 2016 were conducted by these various budget and fiscal review subcommittees. During the 2017-2018 fiscal year, there were 20 oversight hearings listed on the webpage for the Senate Budget and Fiscal Review Committee.²⁴⁰ Some of these hearings appear to have been canceled, however, and some are simply descriptions of budget items. On the other hand, the Senate Appropriations Committee does not appear to have conducted oversight hearings during this time. It appears that oversight, at least in the senate during the appropriations process, is the responsibility of specific legislative committees and subcommittees rather than shared across all standing committees.

The LAO appears to work closely with the appropriations subcommittees. The agenda for the Subcommittee on Resources and Transportation lists each budget item and then provides a line with the staff recommendation for committee action. For example, the \$1.067 million request in the governor’s budget to relocate the Temecula Fire Station is described in one paragraph with the following: “Staff Recommendation: Approve as Budgeted,” or in some instances, the staff recommendation was “Hold Open.”²⁴¹ For more controversial budget items, the LAO comments included in the hearing minutes provide graphs and multiple paragraphs of explanation about any concerns the LAO had with the proposed activities and funds. In several of these instances the staff recommendation was labeled “Informational Only.”

A Senate Budget and Fiscal Review Subcommittee No. 3 oversight hearing, held on November 9, 2017, addressed the topic, “Achieving and Maintaining Adequate Provider Networks in Medi-Cal Managed Care.” The three-member subcommittee was chaired by a senator with an MD—a pediatrician. The video showed only two subcommittee members present. The agenda included an agency presentation, a panel of managed care organizations, a panel of patient advocates, a reply from the agency representative, and public comments. This is a pattern we observed in the written agenda of several other senate budget subcommittees. It

²³⁷ <https://www.library.ca.gov/crb/>, accessed 6/26/18.

²³⁸ <https://www.senate.ca.gov/content/senate-oversight-hearings>, accessed 9/17/18.

²³⁹ <https://aaar.assembly.ca.gov/content/2017-18-oversight-hearings>, accessed 9/17/18.

²⁴⁰ <http://senate.ca.gov/senate-oversight-hearings/search?startdate=&enddate=&committee=83596&upcoming-hearings=on&past-hearings=on&page=2>, accessed 6/26/18.

²⁴¹ [http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/March%2029%20-%20Forestry%20Fire%20Conservancies%20\(3\).pdf](http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/March%2029%20-%20Forestry%20Fire%20Conservancies%20(3).pdf), accessed 6/26/18.

appears to reflect an understanding that there is a system that depends on state government funds and that the private contractors (in this case the managed care organizations) are an important part of agency service delivery. Moreover, these private entities can be driven out of business if state government fees for service or reimbursement rates are too low. However, legislators also do not want to overpay. Thus, budgeting and appropriations decisions need to involve a dialog between the legislature and the providers as well as the state agency. Feedback from advocates who represent large groups of service recipients can provide information about service delivery performance. This way of organizing a budget oversight hearing, while apparently common in California, is not something we found with any frequency in other states. It appears to provide an opportunity for legislators to engage in oversight of service delivery of contracted entities. We return to this in the section, “Oversight Through Monitoring of State Contracts.”

This particular hearing opened with a presentation entitled, *Medi-Cal Management Care Rate-Setting and Implementation of New State and Federal Requirements*, given by the Chief Deputy Director of the Department of Health Care Services (DHCS). After her presentation, the chair questioned her extensively about the problems posed by fewer and fewer health care providers accepting Medi-Cal patients at the same time the number Medi-Cal eligible recipients were expanding. He wanted to know what portion of the rate-setting was handled by a private contractor versus handled by the department. He wanted data to compare to a cost report from 2013. The chair asked what was being done to adjust the managed care estimates, which overshot the expenses by about 50% in the initial estimates. The deputy director explained how the department was trying to recoup those overpayments. The chair expressed concern that the downward adjustment might be too much to meet pent-up demand as some beneficiaries gradually realize that they have access to services and begin to use them. The chair concluded by asking about the response time for DHCS to respond to client complaints. The deputy director thanked the subcommittee for expanded funding for the ombudsperson’s staff to improve response time. The chair pushed her to provide more personal support to people having problems.

The next item on the agenda was a panel with three presenters from Medi-Cal Managed Care Organizations: Anthem Blue Cross/Wellpoint, Inland Empire Health Plan, and Central CA Alliance for Health. Anthem Blue Cross/Wellpoint has two managed care models operating in California: a capitation model and a fee-for-service model. The Inland Empire CEO explained the problems they faced with providing care in their region within the reimbursement rates and maintaining solvency. They were working to attract providers by giving them Medicare rather than Medicaid reimbursement rates, but then trying to do more outpatient care rather than inpatient care. They are also partnering with other outside of network providers to extend the network. He says it ultimately goes back to the rates, and they must be adequate. The CEO of Central CA Alliance for Health is working to avoid provider burnout and they also pay Medicare rates to get enough providers into the system. They quizzed the three panelists about why they paid more for services to providers for commercial clients than they paid to providers for Medicaid clients. Additionally, the chair challenged the panelist about their claims that their provider pool was increasing when the state-wide number of physicians accepting Medi-Cal patient was dropping.

Next on the agenda was the “reactor panel,” consisting of six Medi-Cal Providers and Consumers. Some of the presenters discussed access for cancer patients to specialists and access to home health care, radiology, and urology. One presenter asked for more state oversight of providers ensure access to services. Wait times on the phone to report problems to the DHCS

ombudsperson were around 45 minutes. One presenter described access problems for non-English speakers and the need for translators. The chair asked about the study showing that outcomes for patients on Medi-Cal were no better than people who had no insurance. One of the presenters pointed out that timely access to care was crucial for cancer patients. Eventually the conversation moved into the potential for telemedicine to increase access and reduce costs.

The deputy director returned to respond to issues explored and raised by the two panels. Comments from the public followed. Most of these were not individual citizens, but rather representatives of advocacy groups. One, a dental health group, mentioned the Little Hoover Report on Denti-Cal and that the legislature had not included funding in the current budget for the needed dental services identified in that report. Two private citizens commented on their personal experiences with wait time and access issues. The chair promised that this topic will be part of ongoing oversight.

The assembly budget subcommittee hearings share some but not all of the same features of the senate budget subcommittee hearings. The assembly budget subcommittees include agency staff, advocacy requests, and public comments. They add a presentation from the LAO and another from the Department of Finance. They do not seem to the contracted service providers specifically in the hearings agenda, but representatives of the providers could use the public comment period for input.

The Assembly Budget Subcommittee No. 1 on Health and Human Services met on March 1, 2017, to consider 14 different issues related to the Department of Developmental Services Community Services Program. Five legislators were present for the hearing. The first issue was a survey the department initiated to determine rate-setting for group home providers. The public commenters were primarily advocates for group home providers and for group home residents. The LAO staff pointed out the impact of changes in minimum wage and other labor law requirements that need to be considered in rate-setting discussions. The LAO made recommendations to the legislature as well as to the agency. For example, she said that LAO recommended that the legislature set more specific goals and tasks for a newly funded research unit in the department. The chair asked that the LAO work with the department to “pinpoint” issues with the service providers and get back to the committee by the May meeting with the information. The chair asked most of the questions of the witnesses but one other legislator also asked questions.

It appears that the interface between state agencies and private-sector entities (including non-profit organizations) that provide service, whether it is development disabilities care or access to health-care professionals, is a major issue in California’s state budget—and we suspect could be in many other states’ budgets as well. Some of the payment rates probably involve federal guidelines and mandates. Thus, legislators need to determine appropriate rates (not too high and not too low) in order to determine how much money to appropriate to some departments. The subcommittee chair asked very specific questions about shifts in funds from the developmental centers to the community centers. Legislators wanted to know if the money the development center receives follows a client to the community centers. The chair (a Democrat) and a committee member (a Republican) followed up on each other’s questions until they received detailed enough information to follow the money. The LAO staff and the agency director both tried to explain how the money, services, and individual’s needs were connected. The committee members collectively were knowledgeable, persistent, and precise in their questions. The LAO and agency provided detailed evidence to respond to committee questions.

Oversight Through Committees

The CSA reports directly to the JLAC, and JLAC approval is required for any state audits. In 2016, the JLAC considered 33 audit requests, approved 28 audits, denied two, and held its decision on three audit requests.²⁴² Thirteen audits conducted by the CSA were mandated audits. The optional audit requests were generated by legislators, while the CSA proposed the two high-risk audits, which target agencies or programs with high risk of fraud or similar issues. The CSA administers the state's whistleblower act, so recently the legislature granted it the authority to propose high-risk audits (NASACT, 2015). The JLAC also holds hearings on some audit reports (seven hearings in 2015-16), and some of these hearings (four of seven in 2015-16) are held jointly with other relevant appropriations subcommittees and/or standing committees. This is a small proportion of the 30-40 audit reports released by the CSA annually.

According to the Rules of the Chamber (Assembly Rules 2017-18,²⁴³ see also Joint Rule 36), all standing committees in the assembly, which include standing committees with jurisdiction over a substantive policy area, are automatically empowered as investigative committees over the issues that fall under the committees' jurisdictions. A standing committee may also request permission from the Rules Committee to initiate an investigation in another topic area outside its jurisdiction. California's senate also conducts oversight hearings through its regular standing committees. The senate webpage includes a list of upcoming and past oversight hearings by committee. Oversight is listed separately from other committee work on this separate webpage. For each committee conducting an oversight hearing, there is an agenda that lists the topic of the committee's oversight hearing, along with the location and date of the hearings. Hearings that have already occurred include a video of the hearing itself. There are dozens of these hearings. Additionally, the senate has a committee specifically charged with investigations and oversight. It is called the General Research Committee and consists of all 40 members of the senate, but it operates primarily through subcommittees tasked with specific investigations. This committee is constitutionally required. It may not duplicate investigations being conducted by the standing committees, but if the standing committee has not initiated an investigation then the General Research Committee may form a subcommittee appointed by the Committee on Rules to conduct that investigation. However, subpoenas issued by these subcommittees require approval from the Rules Committee.

A randomly selected joint standing committee hearing conducted by the Natural Resources Committee listed among the oversight committees, held on February 17, 2017, featured four speakers who gave the committee members more than an hour of presentations about fire and forest management in the state. Questions from committee members were generally insightful, particularly questions from the senators, most of whom exhibited more knowledge than many of the representatives about the issue. The second hour of the hearing consisted of other speakers presenting information on this issue. This hearing is an example of police patrol oversight, addressing an ongoing issue in California (fire and forest management) during a time of year (winter) when crises are unlikely. The time horizon of the solutions discussed was long-term, and the focus was on ongoing program options.²⁴⁴

²⁴² <http://legaudit.assembly.ca.gov/sites/legaudit.assembly.ca.gov/files/Digital%20Copy%20-%20JLAC%202015-16%20Complete%20End%20of%20Session%20Report.pdf>, accessed 6/26/18.

²⁴³ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180HR1, accessed 6/26/18.

²⁴⁴ <http://www.calchannel.com/video-on-demand/#>, Joint Legislative Informational Hearing on Tree Mortality, Forest Health and Prescribed Fire, February 27, 2017, two hours and 20 minutes, accessed 6/26/18.

In addition to oversight by the substantive standing committees, the assembly's Committee on Accountability and Administrative Review (AAR) is responsible for a wide range of overarching oversight activities. This committee has jurisdiction over the state's Administrative Procedures Act and the state's Office of Administrative Law. The committee consists of seven members, distributed across the two political parties based on their proportional representation in the Assembly. In 2017, there were five Democrats and two Republicans on the committee. There were three staff members assigned to this committee, and several hearings were posted for this committee. An example of the type of oversight work performed by this committee is described in a letter from the AAR Chair.²⁴⁵ According to the letter, the committee worked closely with the LAO to examine the effectiveness and efficiency of special districts in California.²⁴⁶ Special districts are used to deliver a wide array of services in California ranging from mosquito control to libraries to sanitation. The committee held hearings and requested information from the LAO. The chair expressed his intention to continue the "conversation" with the potential for legislative action in the coming year. These include monitoring state government efficiency and costs, property acquisition, state government organization and reorganization, state printing and binding contracts, as well as state procurement and state government oversight, more generally. Here again, the California Legislature appears to engage in police patrol oversight. The committee website provides a list of a few oversight hearings per year designated as oversight hearings (typically fewer than five), among its other committee meetings.²⁴⁷ These oversight hearings are typically conducted jointly with other standing committees.

The assembly rules also provide an additional avenue for legislative oversight thru the Assembly General Research Committee.²⁴⁸ This committee is chaired by the assembly speaker and described in the chamber rules as a permanent fact-finding committee. The speaker may create subcommittees from the membership of the full committee to launch investigations of anything that other assembly committees are not already investigating. The investigations are chosen in collaboration between the speaker and the Rules Committee. Funds are provided from the Assembly Operating Fund to support investigations undertaken by this committee. Witnesses called by any of these various assembly investigative committees are paid for their time and effort based on a schedule established by the Rules Committee.

Vignette: Fixing a Potential Gap in Oversight: Homeschooling and Child Abuse in the State of California

One example of "fire alarm" oversight was the legislature's attempt to monitor homeschooling practices in California. This effort followed a high-profile child abuse case in Riverside, CA, that drew national attention, when 13 children were discovered locked up and

²⁴⁵ <http://aar.assembly.ca.gov/sites/aar.assembly.ca.gov/files/Special%20district%20letter.pdf>, accessed 6/26/18.

²⁴⁶ California uses special districts to provide a wide range of service. There are airport districts, water districts, community service districts, sanitation districts, fire protection districts, library districts . . . These districts are described in the state senate report, https://web.archive.org/web/20130203160416/http://www.calafco.org/docs/TimetoDrawLine_03.pdf, accessed 9/17/18.

²⁴⁷ <http://aar.assembly.ca.gov/content/2017-18-oversight-hearings>, accessed 6/26/18.

²⁴⁸ http://www.leginfo.ca.gov/rules/assembly_rules.pdf, pp. 12, accessed 9/17/18.

chained in their rooms in extremely foul living conditions (Riley, 2018).²⁴⁹ Since many cases of abuse are discovered and reported through public schools, some legislators argued that the lack of state oversight of homeschoolers was part of the problem when attempting to understand how the Turpin's abuse could have gone on for so long undetected (Phillips, 2018).²⁵⁰ In California, all parents need to do is register with the state informing them of their intention to homeschool their children.²⁵¹ The general assembly sought to tighten the regulations surrounding homeschool oversight by initially pushing legislation that would have required the state to collect and publish a list of families that homeschool their children.²⁵² After three hours of testimony by organized homeschooling groups concerned over government intrusion into their homes, Assemblyman Jose Medina's bill, AB 2756, was not even voted on.²⁵³

This is an interesting case of attempted oversight by the assembly's Education Committee. It serves as a reminder that not all oversight efforts, by definition, are successful in solving the problems identified. Moreover, we note that in other states, the legislature might work with the Department of Education to promulgate rules governing homeschooling. But in California, as we learn in the next section, the legislature is almost completely shut out of the rule review process.

Oversight Through the Administrative Rules Process

The legislature has no advisory powers over existing or proposed rules, other than indirectly through approval of gubernatorial appointees to the Office of Administrative Law (OAL). Additionally, there are no committees listed in either the general assembly or senate that have any jurisdiction over rules review. Although the Book of the States (2015) classifies California as a state in which the legislature has advisory powers only (Table 3.26), it acknowledges that the executive branch has "more than advisory powers." According to the Office of Administrative Law website, the California Legislature is not part of the flowchart for the regular administrative rules process.

There are only two indirect ways that the legislature can influence administrative rules. First, any standing committee of the legislature can ask the OAL to review an existing rule if any legislative committee believes that the regulation "does not meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication" (Schwartz, 2010). However, the legislature has no further role in the OAL review. Second, the state's senate has authority to confirm or reject the gubernatorial appointee directing the OAL.

Beginning in 1980, the California Administrative Procedures Act (APA) established responsibility for overseeing administrative rules promulgation with the OAL, a unit within the executive branch, which is responsible for coordinating public hearings and comments on proposed rules as well as training state agencies in how to write rules. The OAL is regarded as a

²⁴⁹ <http://www.latimes.com/opinion/op-ed/la-oe-riley-turpin-child-welfare-law-20180206-story.html>, accessed 10/3/18.

²⁵⁰ <http://www.latimes.com/local/la-me-ln-perris-home-school-20180116-story.html>, accessed 10/3/18.

²⁵¹ <https://www.responsiblehomeschooling.org/policy-issues/current-policy/>, accessed 10/3/18.

²⁵² <https://aedn.assembly.ca.gov/sites/aedn.assembly.ca.gov/files/AB%202756%20%28Medina%29.pdf>, accessed 10/3/18.

²⁵³ http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=5433, accessed 10/4/18.

well-funded, activist review body that disapproved 150 agency rules in the decade between 2000 and 2010 (Schwartz, 2010). Additionally, the OAL disapproved 47 rules between 2016 and 2018.²⁵⁴ Yet, it is an independent part of the executive branch and not an agent of legislative review.

Oversight Through Advice and Consent

Most state agency heads require senate confirmation of gubernatorial appointments. California separately elects the attorney general, secretary of state, and the state treasurer, but the governor may appoint candidates to fill vacancies in these positions until the next statewide elections, subject to confirmation by the senate. However, there are numerous other appointed positions. The senate must act to confirm or reject these appointments, and a majority vote is required for confirmation.

It is exceptionally rare for the California senate to reject these nominees, even during periods of divided government. During the five years from 2005 to 2010, a period of divided government in the state, the senate only rejected three of Governor Schwarzenegger's appointees (Hindery, 2010).²⁵⁵ The rejection of two Gov. Pete Wilson's nominees in 1994 was the most recent previous use by the state senate of its confirmation authority. Furthermore, that was the first time ever that an appointee to the State University Board of Trustees was rejected and the first time in more than a century that the senate rejected an appointee for the University of California Board of Regents. The last Board of Regents appointee rejection by the senate dates back to 1883. We found no evidence that the senate has rejected cabinet-level appointees.

According to the Council of State Governments, gubernatorial executive orders in California are not subject to legislative review (Perkins, 2017).²⁵⁶ In any event, executive orders do not appear to be a preferred method for policy-making by California's governors. During Governor Brown's administration, he has only issued 63 executive orders, mostly pertaining to emergencies related to drought or wildfires, or more ceremonial orders honoring someone or raising awareness of a particular issue.²⁵⁷

On issues of executive reorganization of government, the legislature has delegated this authority to the governor through the California Constitution, Article V, Sec. 6, and through statute under Gov. Code Sec. 12080. In this process, the governor has fairly wide discretion to reorganize the executive branch by consolidating responsibilities, transferring responsibilities to other agencies, or even by abolishing and creating new agencies. However, the governor cannot create new functions or powers for agencies and commissions through the reorganization process.²⁵⁸ The reorganization process involves both the Little Hoover Commission, whose role and function are described in the analytic bureaucracy section, and the legislature. The commission's role is established by statute in Gov. Code Sec. 8523 and is responsible for reviewing the governor's plan 30 days prior to submitting his plan to the legislature.²⁵⁹ While the commission's role is technically only advisory, and its recommendations are non-binding, the

²⁵⁴ https://oal.ca.gov/publications/disapproval_decisions/, accessed 10/3/18.

²⁵⁵ <http://www.sandiegouniontribune.com/sdut-calif-senate-rejects-govs-education-board-choice-2010apr29-story.html>, accessed 9/17/18.

²⁵⁶ <http://knowledgecenter.csg.org/kc/system/files/4.5.2017.pdf>, accessed 6/28/18.

²⁵⁷ <https://www.gov.ca.gov/2018/09/?cat=13&jalid=27>, accessed 10/6/18.

²⁵⁸ <https://lhc.ca.gov/about/governors-reorganization-plan>, accessed 10/6/18.

²⁵⁹ <https://lhc.ca.gov/about/governors-reorganization-plan>, accessed 10/6/18.

stature and independence of the Little Hoover Commission gives its recommendations a great deal of influence on the final plan. Once the commission has reviewed the plan and offered its recommendations, the plan is submitted to the legislature for review. The legislature has 60 days to review the plan and if it takes no action, the plan automatically goes into effect. However, if the senate or assembly by a majority vote rejects the plan, it cannot be implemented.²⁶⁰

The latest report by the commission to examine a reorganization plan was in May 2012. In this report, the commission recommended the legislature adopt the governor's plan with the understanding that a reorganization this large would require regular oversight through the budget and appropriations process to ensure that agencies affected continued to carry out their duties and conformed to the new reorganization.²⁶¹ The plan reduced major state agencies from 12 to 10 and consolidated the duties of dozens of agencies that were considered duplicative and spread throughout state government (Gotten, 2012).²⁶² The plan was automatically adopted when the legislature did not vote on the governor's plan (Gotten, 2012).²⁶³ While this might suggest a lack of oversight on the part of the legislature by not voting on the plan, it is more likely that the unanimous approval of the Little Hoover Commission and the long needed reorganization of executive agencies resulted in a broadly accepted plan that required little formal review by the legislature. Readers are reminded that the leaders of the two chambers are members of the Little Hoover Commission and appointed two other legislators and four other non-legislators to the commission. Thus, the commission itself is quasi-legislative, with only five of its 13 members appointed by the governor.

Oversight Through Monitoring of State Contracts

The Department of General Services Procurement Divisions administers state contracts. The CSA recently published a report complaining about lax oversight of no-bid contracts by state agencies. The CSA also advised the legislature to become involved in contract oversight. It appears that state agencies oversee their own contracts, and that they do not do so vigorously (Douglas, 2017).²⁶⁴ As we noticed in the section, "Oversight Through the Appropriations Process," much of the time spent on oversight by the two chambers' finance subcommittees concerned rate-setting for private sector entities that provide public services. This is part of the contracting process that California's legislature monitors to some extent through the appropriations process. More than most other states, California's legislature seems to realize that outsourcing government increases the importance of these providers and the way government pays them.

²⁶⁰ <https://lhc.ca.gov/about/governors-reorganization-plan>, accessed 10/6/18.

²⁶¹ <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/211/Report211.pdf>, accessed 10/6/18.

²⁶² <https://californianewswire.com/calif-governor-browns-government-reorganization-plan-becomes-law/>, accessed 10/6/18.

²⁶³ <https://californianewswire.com/calif-governor-browns-government-reorganization-plan-becomes-law/>, accessed 10/6/18.

²⁶⁴ <http://www.govtech.com/policy/Following-Audit-California-State-Agencies-Update-Policies-Around-Noncompetitive-Bidding.html>, accessed 6/28/18.

Oversight Through Automatic Mechanisms

According to Baugus and Bose (2015), California permits the addition of sunset clauses to state legislation selectively.²⁶⁵ There is no mandatory sunset review process.

Methods and Limitations

The California Constitution (Article 4, Section 7(c)), requires that the committees of each chamber provide video and audio of their hearings. The senate additionally provides agendas and some transcripts.²⁶⁶ Although agendas themselves are not required, hearing notices are required, and the Senate Daily Journal reports committee votes, reports, and proceedings relating to bills (interview notes, 2019). One interviewee said they do not recall seeing meeting minutes for the senate (interview notes, 2019). For the assembly, committees choose to publish their agendas on The California Channel, but they are not required. The assembly does not have transcripts or meeting minutes (interview notes, 2019). For California, five people were interviewed out of the 17 people that were contacted.

²⁶⁵ <https://www.mercatus.org/system/files/Baugus-Sunset-Legislation.pdf>, accessed 6/28/18.

²⁶⁶ <https://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/committees/2017-18/sagri.senate.ca.gov/node/62.html>, accessed 1/3/19.

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