



**State of Vermont
General Assembly**

Summer Government Accountability Committee Recommendations

Report prepared for
the House Committee on Government Operations and Military Affairs and
the Senate Committee on Government Operations
pursuant to 2023 Acts and Resolves No. 53

December 13, 2023

Committee Members

Representative Jessica Brumsted, Co-Chair
Representative Emilie Kornheiser
Representative Josie Leavitt
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Table of Contents

A. Executive Summary of Recommendations for Strengthening Government Accountability	3
B. Detailed Recommendations for Strengthening Government Accountability.....	5
C. Recommendations Addressing 2023 Acts and Resolves No. 53, Sec. 2a (c)(2)–(4)	14
D. Appendices:	
• Appendix i: Committee’s Enabling Authority: 2023 Acts and Resolves No. 53, Secs. 2 & 2a	17
• Appendix ii: Legislative Counsel’s Introduction to SGAC	X
• Appendix iii: Committee Meeting Dates	X
• Appendix iv: List of Witnesses.....	X
• Appendix v: New Mexico Legislative Finance Committee Presentation on LegisSTAT	X

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EXECUTIVE SUMMARY ON RECOMMENDATIONS FOR STRENGTHENING GOVERNMENT ACCOUNTABILITY

The value of government is proven through its accountability to the people.

The intent of the Summer Government Accountability Committee (the Committee) is to reexamine the principle of government accountability by focusing on how evidence is used to inform policy, how our State laws are carried out, and how legislation can best be formed to achieve its intended outcomes.

The General Assembly's government accountability efforts should be systematized as much as possible and not rely upon individual legislators or individual committees to be effective. The Committee's recommendations strive to be simple, clear, independent, objective, and fact-based. Given the broad charge and the time allotted to address the charges required, the Committee chose to focus on government accountability issues and reserve more in-depth analysis of other issues for the committees of jurisdiction.

Summary of Recommendations for Strengthening Government Accountability:

1. Educate members of the General Assembly on the importance of government accountability.
2. Create a Joint General Oversight and Accountability Committee.
3. Add a policy, planning, and program evaluation staff function to assist the General Assembly with improved accountability.
4. Adjust the timing of the Programmatic and Performance Measure Budget Reports, as well as other reports.
5. Increase consistency and accountability in rulemaking with support from the Legislative Committee on Administrative Rules (LCAR).
6. Develop checklists and timelines to ensure all key legislative reports and deadlines are easily accessible to the General Assembly and the public.
7. Encourage committees and committee staff to regularly and formally review past legislation, legislatively mandated reports, and other materials.
8. Explore a mechanism that allows House and Senate committees dealing with issues related to appropriations, institutions, and transportation to follow up on the previous year's budget bills.
9. Identify a mechanism that makes it possible for committees to keep track of deadlines relevant to enacted legislation.
10. Require a performance note for legislation that is a priority or costs more than a threshold dollar amount.
11. Consider overall staffing for Vermont's Legislative Branch to carry out the recommendations of this report.

DETAILED RECOMMENDATIONS FOR STRENGTHENING GOVERNMENT ACCOUNTABILITY

- 1. Educate members of the General Assembly on the importance of government accountability.** Returning members should receive “refresher” trainings every biennium in their committees or as a full assembly. New members, as part of their orientation, should receive:
 - a. an overview of concepts and practices of government accountability;
 - b. training in data-informed decision-making and measuring outcomes, utilizing performance notes accompanying legislation, and procedures for developing new committees and reports; and
 - c. drafting tools meant to strengthen accountability practices, such as procedures, templates, and checklists, should be made available in plain language.

- 2. Create a Joint General Oversight and Accountability Committee.** While the political process may result in ad hoc oversight, there should be a dedicated accountability committee within the General Assembly that both dives into systemic issues and is responsible for seeing those issues adequately addressed. This Committee proposes creating a Joint Government Oversight and Accountability Committee to do the following:
 - a. Examine and explore, in relation to accountability, matters of significant public concern that affect the State as a whole, and reasons for the oversight failure. That is, in cases of significant oversight failures such as juvenile justice and EB-5, the committee would make recommendations to prevent such failures from happening in the future. This committee would make tangible recommendations to prevent future failures. Operationally, the committee would:
 - i. first work with committees of jurisdiction to provide oversight;
 - ii. then, if needed, subsequently conduct oversight itself; or
 - iii. if needed, empower an independent third-party entity to conduct oversight.

- b. Systematically review the findings and recommendations of both federal and State audits and examine whether those findings have been implemented.¹ This review would be supported by specialized legislative staff.
- 3. Add a policy, planning, and program evaluation staff function to assist the General Assembly with improved accountability.** As stated by the National Conference of State Legislators (NCSL) and reiterated by the Office of the Vermont State Auditor, “[o]ver 80 percent of all state legislatures employ staff who specialize in conducting performance-based audits, or reviews, of state agencies and programs.”² These staffers produce studies and reports that focus on executive agency compliance and success in delivering programs and services that are responsive to legislative intent, public need, and generally accepted standards of efficiency and effectiveness. Two examples of successful legislatively led oversight initiatives include:
- a. New Mexico’s Legislative Finance Committee, which provided testimony to this Committee regarding its “LegisSTAT” program³; and
 - b. Maine’s recent addition of a program evaluation staff function, as well as a legislative committee dedicated to directing and reviewing its performance audits.

¹ There is no legislative committee specifically tasked with ensuring that Executive Branch agencies address the Auditor’s Office findings and recommendations. The Auditor frequently requests the opportunity to present its work before committees of jurisdiction, which seem to find the information educational and helpful. However, the Auditor’s Office cannot compel Executive Branch agencies to address the problems identified or to improve agencies’ practices as recommended. The General Assembly may be able to address concerns found in these audits. Examples from the Auditor’s Office include the Dam Safety Program and inspections of assisted living facilities by the Department of Disabilities, Aging, and Independent Living. (See testimony from the State Auditor’s Office on September 18 and October 18, 2023.)

² [National Conference of State Legislatures Report to the Vermont General Assembly Legislative on Branch Workforce Comparative Evaluation March 2019 at 35](#); written [testimony](#) provided by the State Auditor’s Office on October 18, 2023.

³ Representatives from New Mexico’s Legislative Finance Committee presented on its [“LegisSTAT” Program](#). Notable features of this program, which may be emulated in Vermont, include: how to identify priority areas and performance; review of program inventory and effectiveness of programs; conscious investment in budget development; implementation of oversight programs; outcome monitoring; outcome formats; legislative follow-up with agencies and programs; creating mechanisms to identify successful programs and replicate these successes.

The Vermont General Assembly is one of the few state legislatures that does not have dedicated staffers specializing in Executive oversight. This Committee recommends that the Joint Fiscal Office (JFO) be provided additional and adequate resources to create a program evaluation staff function to assist the Vermont General Assembly with improved accountability, preferably based on the successful accountability initiatives implemented by New Mexico's legislature.

- 4. Adjust the timing of the Programmatic and Performance Measure Budget Report, as well as other reports.** The Administration's Programmatic and Performance Measure Budget Report is presented to the General Assembly in late January. This leaves JFO or the General Assembly with insufficient time to review, absorb, and utilize the reported information as it pertains to outcomes. The timing of the information is not aligned with legislative activity and is of little use, especially in consideration of the budget. This Committee recommends that all agencies submit their latest performance data prior to the session so that JFO may perform a high-level review for the committees of jurisdiction before the session begins.

Similarly, the General Assembly receives reports well into the legislative session, leaving less time to absorb and utilize the sought-after information. This Committee recommends that [2 V.S.A. § 20 \(limitation on distribution and duration of agency reports\)](#) be amended to have the default report submission deadline for annual, biennial, and other periodic reports be changed from January 15 to the prior December 15.

- 5. Increase consistency and accountability in rulemaking with support from the Legislative Committee on Administrative Rules (LCAR).**
 - a.** Recently, as a result of LCAR discussions with the Office of the Vermont State Auditor, LCAR has asked that the Office of Legislative Counsel track new and amended delegations of rulemaking authority starting with the 2023 session. This Committee suggests that the House Committee on Government Operations and Military Affairs and Senate Committee on Government Operations take testimony

with regard to these recent changes underlining the importance of tracking rule adoption deadlines and monitoring agencies' and departments' compliance with rulemaking provisions. This Committee, therefore, joins LCAR in recommending that the Office of Legislative Counsel be formally tasked at the end of each legislative session with producing an inventory of all new rulemaking provisions that have been enacted, including the responsible agency or department and any deadlines. Such an inventory could be posted to the LCAR committee page and updated each year.

- b.** This Committee understands that State entities are working with limited resources and have competing priorities. If, however, it becomes clear that an agency or department will not adopt a rule by the legislatively mandated deadline, it should be incumbent upon the agency or department to inform LCAR, along with the chairs of the committees of jurisdiction and any designated supporting staff, of:
 - i. which rule will be late;
 - ii. why the rule will be late; and
 - iii. when the rule will be adopted.
- c.** Understanding that LCAR has already produced model rulemaking considerations⁴ and shared these with committees of jurisdiction, this Committee reiterates the importance of those considerations here. This Committee recommends that when members, committee chairs, and attorneys in the Office of Legislative Counsel are drafting and revising bills entailing the adoption of rules, that LCAR's model rulemaking considerations and tools be followed. That is:
 - i. "Considerations for Requiring Rulemaking:
 - 1. Whether a rule or rules are necessary in the near term.
 - 2. Whether there is sufficient detail in statute for necessary regulation without any rules.
 - 3. Cost/staffing necessary to adopt a rule or rules.
 - 4. Whether a guidance document, policy, practice, procedure, etc. is more appropriate.

⁴ See "[LCAR Memo on Rulemaking Considerations](#)." April 11, 2023, LCAR Meeting.

ii. Considerations for Establishing Rulemaking Timeline:

1. Statutory length of time to complete the process (100+ days), which does not include outreach or drafting the rule prior to prefiling with LCAR.
2. Other variables (dependent on federal review, promulgation of a federal regulation, adoption of a rule in another state, etc.).
3. Whether there is an actual need for rule(s) to be adopted by a particular date.
4. What happens if there is a decrease in staff capacity.
5. What step the rulemaking timeline should be linked to (prefiling with LCAR, one of the intermediary filings, adoption, etc.).

iii. Considerations for Requiring Checkback(s):

1. Timing for when checkback(s) should be required (no matter what, if there is going to be a delay, at designated intervals, etc.).
2. Form of the checkback(s) (oral v. written).
3. Recipients of the checkbacks(s).
4. Contents of the checkback(s).
5. Whether something with more ‘teeth’ is necessary (consult with Legislative Counsel).”⁵

6. Develop checklists and timelines to ensure all key legislative reports and deadlines are easily accessible to the General Assembly and the public. This Committee recommends that IT be afforded additional and adequate resources to centralize information regarding key legislative reports and related deadline information for the shared utilization of both the General Assembly and the public.

⁵ From “[LCAR Document on Rulemaking Considerations for Chairs.](#)” April 11, 2023, LCAR Meeting. See also the embedded flowchart.

- 7. Encourage committees and committee staff to regularly and formally review past legislation, legislatively mandated reports, and other materials rather than rely on institutional knowledge.** This Committee, to promote a culture of continuous quality improvement, recommends that a process be explored for which current acts, previous legislative proposals, and any relevant data are reviewed before considering new legislation.
- 8. Explore a mechanism that allows House and Senate committees dealing with issues related to appropriations, institutions, and transportation to follow up on the previous year's budget bills.** Using new JFO accountability staff, legislators could better examine whether past funds have been spent as intended. And if not, then why not? The Appropriations, Institutions, and Transportation Committees should ensure that for any recipient of State funds, performance data be recorded, publicly available, and relayed in a timely manner. The Committee recommends New Mexico's method, LegisSTAT, as a model.
- 9. Identify a mechanism that makes it possible for committees to keep track of deadlines relevant to enacted legislation.** This Committee recommends that the Office of Legislative Operations create a mechanism to track the status of legislatively mandated deadlines for rules and reports. See Recommendation #5. These deadlines should be discussed as a part of regular committee meetings so that assigned members can be encouraged to review rules and reports from the Administration, State Auditor, and the federal government, and therefore prioritize follow-up on these items.

This Committee understands that State entities are working with limited resources and have competing priorities. If it becomes clear that an agency or department will not submit a report by the legislatively mandated deadline, it should be incumbent upon the agency or department to inform the receiving legislative committee's current chair, along with any designated supporting staff, of:

- a.** which report will be late;

- b. why the report will be late; and
- c. when the report will now be submitted.

10. Require a performance note for legislation that is a priority or costs more than a threshold dollar amount. Performance notes, as created by JFO, would include:

- a. a clear statement of legislative intent, overall goals, and changes anticipated;
- b. a description of expectations, and timelines for these expectations;
- c. data that needs to be collected to measure results and evaluate whether the statute is having the intended impact;
- d. an entity designated by the General Assembly, preferably one that is independent and nonpartisan, to be responsible for data collection, monitoring, and reporting back to the General Assembly on the progress associated with the policy changes and investments; and
- e. a description of the financial costs associated with any data collection, monitoring, and reporting by an entity.

11. Consider overall staffing for Vermont's Legislative Branch to carry out the recommendations of this report. Based on 2021 research from the National Conference of State Legislators (NCSL)⁶, Vermont has the third-smallest legislative staff during the legislative session. Insufficient staffing capacity may limit the General Assembly's ability to use data to inform policy and implement new accountability procedures. Below is a recitation of the various recommendations in this report that involve either additional support by existing legislative staff or advice for increasing staffing levels to meet government accountability objectives:

- a. Legislative Joint Fiscal Office:
 - i. Recommendation #3 (add a policy, planning, and program evaluation staff function). The Vermont General Assembly is one of the few state

⁶ See "Size of State Legislative Staff" from NCSL, published at: <https://www.ncsl.org/about-state-legislatures/size-of-state-legislative-staff>

legislatures that does not have dedicated staffers specializing in Executive oversight. This Committee recommends that JFO be provided additional and adequate resources to create a program evaluation staff function to assist the Vermont General Assembly with improved accountability, preferably based on the successful accountability initiatives implemented by New Mexico's legislature.

- ii. Recommendation #7 (encourage committees and committee staff to regularly and formally review past legislation, legislatively mandated reports, and other materials rather than rely on institutional knowledge).
- iii. Recommendation #8 (explore a mechanism that allows House and Senate committees dealing with issues related to appropriations, institutions, and transportation to follow up on the previous year's budget bills). Using new JFO accountability staff, legislators could better examine whether past funds have been spent as intended. And if not, then why not? The Committee recommends New Mexico's method as a model.

b. Legislative Office Information Technology:

- i. Recommendation #6 (develop checklists and timelines to ensure all key legislative reports and deadlines are easily accessible to the General Assembly and the public).

c. Office of Legislative Counsel:

- i. Recommendation #5 (increase consistency and accountability in rulemaking with support from LCAR). Legislative Counsel to encourage the following of LCAR's model rulemaking considerations.
- ii. Recommendation #7 (encourage committees and committee staff to regularly and formally review past legislation, legislatively mandated reports, and other materials rather than rely on institutional knowledge).

d. Office of Legislative Operations:

- i. Recommendation #7 (encourage committees and committee staff to regularly and formally review past legislation, legislatively mandated reports, and other materials rather than rely on institutional knowledge).
- ii. Recommendation #9 (identify a mechanism that makes it possible for committees to keep track of deadlines relevant to enacted legislation). The Office of Legislative Operations should create a mechanism to track the status of legislatively mandated deadlines for rules and reports.

e. To-be-created staffing positions:

- i. Recommendation #2 (create a Joint General Oversight and Accountability Committee). Systematically review the findings and recommendations of both federal and State audits and examine whether those findings have been implemented. This review would be supported by specialized legislative staff.

Recommendations Addressing 2023 Acts and Resolves No. 53, Sec. 2a. (c)(2)–(4)

[2023 Acts and Resolves No. 53](#) gave the Summer Committee on Government Accountability (SGAC) a very broad charge⁷ and, initially, only three meetings. The Committee focused its initial meetings on the first charge (*see* Sec. 2a(c)(1)) of creating systems within the General Assembly to increase accountability. The second through fourth charges (*see* Sec. 2a(c)(2)–(3)) focus on the composition, appointment, and compensation of boards and commissions and are an entirely separate body of work from the first charge. The Committee is grateful for the attention and effort of the Office of Racial Equity’s (ORE) Executive Director, Xusana Davis, for bringing these issues into stark relief for the Committee at its November 3, 2023 meeting.

This Committee wants to recognize its role in perpetuating harm by not being able to get to the entirety of Sec. 2(a) in allowing a system that is not equitable to continue to persist without reform. This Committee recognizes and affirms that ensuring all people can serve without harm is a legislative responsibility and we advocate for a systemic solution that must be undertaken this year. However, given the limited time available to meet the ambitious legislative charges by the mandated deadline, and the profound importance of these volunteer positions to our State’s functioning, the Committee recommends the following next steps:

1. The questions posed in charges 2 through 4 have profound implications for who can and cannot participate in the governance of our State. The Committee recommends that the

⁷ For the charges of SGAC, see [2023 Acts and Resolves No. 53](#), Sec. 2a(c) (powers and duties): “The Summer Government Accountability Committee shall consider the issue of accountability in the Legislative Branch, including the following:

- (1) ways to ensure that the Legislative Branch is accountable to the people of Vermont by creating new processes and metrics by which to measure accountability;
- (2) ways to ensure equity in pay across commissions, boards, and joint legislative committees based on the nature of the service and required skill level;
- (3) ways to ensure equitable participation on boards and commissions and in any public engagement process mandated by the State or General Assembly by providing appropriate compensation and material support; and
- (4) codifying mechanisms for controlling and restraining the increasing number of commissions, boards, and joint legislative committees.

House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations (the Government Operations Committees) both work with the Office of Racial Equity to explore these issues more extensively.

2. The Government Operations Committees should engage in community conversations throughout the State, through hearings, surveys, and focus groups, and seek to engage people who are not actively participating in the activities of boards and commissions and determine what prevents people from participating.
3. The Government Operations Committees should work with boards and commissions to explore reforms by soliciting recommendations. This Committee is aware of the following boards and commissions that have active conversations around these issues: the Environmental Justice Advisory Council, the Commission on Women, the Climate Council, and the Land Access and Opportunity Board.
4. The Government Operations Committees should explore strategies and research from other states offered to this Committee from the National Conference of State Legislatures (NCSL):
 - a. September 18, 2023 presentation to Committee regarding [measuring performance across the states](#).
 - b. October 18, 2023 presentation to Committee regarding [follow-up information to committee questions](#).
 - c. October 18, 2023 presentation to Committee regarding [state legislative audit offices](#).
 - d. November 3, 2023 presentation to Committee regarding [government accountability](#).
 - e. November 3, 2023 presentation to Committee regarding [creation of agencies, boards, or commissions](#).

5. The Government Operations Committees should consult community-centered resources in the formation of policy changes regarding equity issues in Vermont's boards and commissions, including the two following resources recommended by ORE:
 - a. Hawn Nelson, A., Jenkins, D., Zanti, S., Katz, M., Berkowitz, E., et al. (2020). [A Toolkit for Centering Racial Equity Throughout Data Integration](#). Actionable Intelligence for Social Policy, University of Pennsylvania.
 - b. González, R. (2020). [The Spectrum of Community Engagement to Ownership](#).
6. When a new legislatively mandated study, commission, or workgroup is created, a template should be made available that informs or requires a certain make-up of members, including a strong emphasis on representing individuals with lived experience relevant to the legislative intent.

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Appendix i — Committee’s Enabling Authority:
2023 Acts and Resolves No. 53, Secs. 2 & 2a

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Appendix ii – Legislative Counsel’s Introduction to the Summer Government Accountability Committee

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Appendix iii – Committee Meeting Dates

- September 18, 2023
- October 18, 2023
- November 3, 2023
- November 9, 2023
- December 13, 2023

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Appendix iv – List of Witnesses

Witnesses:

1. Building Bright Futures:
 - a. Morgan Crossman, Executive Director–10/18/2023
2. National Conference of State Legislatures, Center for Legislative Strengthening:
 - a. William Clark, Program Principal–9/18/2023; 10/18/2023; 11/3/2023
 - b. Mari Henderson, Senior Policy Specialist–11/3/2023
 - c. Carrington Skinner, Senior Policy Specialist–9/18/2023
3. New Mexico Legislative Finance Committee:
 - a. Charles Sallee, Director–10/18/2023
4. Vermont Legislative Joint Fiscal Office :
 - a. Catherine Benham, Chief Fiscal Officer–11/3/2023
5. Vermont Office of Legislative Counsel:
 - a. Jen Carbee, Acting Director of the Office of Legislative Counsel–10/18/2023
 - b. Tim Devlin, Legislative Counsel–9/18/2023; 11/3/2023; 11/9/2023
6. Vermont Office of Racial Equity:
 - a. Xusana Davis, Executive Director–11/3/2023; 12/13/2023
7. Vermont Office of the State Auditor:
 - a. Doug Hoffer, State Auditor–9/18/2023
 - b. Tim Ashe, Deputy State Auditor–9/18/2023; 10/18/2023

Additional resources provided to the Committee by:

- Vermont Agency of Administration:
 - Justin Kenney, Chief Performance Officer
- Vermont Office of Legislative Operations:
 - Mike Ferrant, Director

Appendix v – New Mexico Legislative Finance Committee Presentation on LegisSTAT

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