

JOINT LEGISLATIVE FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, May 18, 2018

MEMBERS PRESENT:

Rep. Neal Kurk, Chair

Rep. Lynne Ober

Rep. Mary Jane Wallner

Rep. Daniel Eaton

Sen. Gary Daniels

Sen. Robert "Bob" Giuda

Sen. Lou D'Allesandro

Sen. Regina Birdsell (Alt.)

Sen. Jim Gray (Alt.)

NEAL KURK, State Representative, Hillsborough County, District #02 and Chairman: Good morning, everyone. I'd like to welcome you to the May 18, 2018, Fiscal Committee meeting. Before we begin our meeting, I'd like to ask us to observe a moment of silent reflection and prayer in honor of the law enforcement officials who died in the line of duty and who are being honored outside today as we speak.

(Moment of silence)

(1) Acceptance of Minutes of the April 20, 2018 meeting

CHAIRMAN KURK: Thank you. We begin our meeting with item -- agenda item number one, the acceptance of the minutes of April 20, 2018.

DANIEL EATON, State Representative, Cheshire County, District #03: So move.

CHAIRMAN KURK: Representative Eaton moves, second by Senator Daniels that the minutes be approved. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? They ayes have it and the motions are approved -- the minutes are approved.

*** {MOTION ADOPTED}

(2) Old Business:

CONSENT CALENDAR

(3) RSA 9:16-a, Transfers Authorized:

CHAIRMAN KURK: We turn now to item number three on the agenda, the Consent Calendar for transfers authorized. Does anyone wish to remove an item from the Consent Calendar? There being none, then the motion -- is there a motion to approve?

** LYNNE OBER, State Representative, Hillsborough County, District #37: Move to approve.

CHAIRMAN KURK: By Representative Ober.

GARY DANIELS, State Senator, Senate District #11: Second.

CHAIRMAN KURK: Second --

REGINA BIRDSELL, State Senator, Senate District #19:
Second.

CHAIRMAN KURK: -- by Senator Daniels. This would approve Fiscal 18-080 and Fiscal 18-081. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The items are approved.

*** {MOTION ADOPTED}

(4) RSA 9:16-c, I, Transfer of Federal Grant Funds:

CHAIRMAN KURK: We turn now to agenda item number four, transfer of federal grants. In this case there's only one item on this Consent Calendar.

REP. EATON: Move approval.

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CHAIRMAN KURK: Fiscal 18-082, a request from the Department of Education for authorization to transfer \$90,000 in Federal funds through June 30th, 2018.

** REP. EATON: Move approval.

LOU D'ALLESANDRO, State Senator, Senate District #20:
Second.

CHAIRMAN KURK: Representative Eaton moves to approve.

REP. OBER: Second.

CHAIRMAN KURK: Seconded by Representative Ober.
Discussion? There being none, are you ready for the question?
All those in favor, please indicate by saying aye? Opposed?
The ayes have it. The item is approved.

*** {MOTION ADOPTED}

(5) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State Source:

CHAIRMAN KURK: We turn now to agenda item number five on the Consent Calendar. These are items where funds over \$100,000 from non-state sources. Does anyone have any questions or wish to remove any of these items? I wish to remove Fiscal 18-099, Health and Human Services. Are there any other items that anyone wishes to remove?

** SEN. DANIELS: Move to approve with the exception of item 099.

SEN. BIRDSELL: Second.

CHAIRMAN KURK: Senator Daniels, seconded by Senator Birdsell, moved to approve all of the items on that list except 18-099. Discussion? Are you ready for the question? All those

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in favor, please indicate by saying aye? Opposed? The ayes have it and all of the items under agenda item number five, except for Fiscal 18-099, are approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We now turn to Fiscal 18-099, a request from the Department of Health and Human Services for authorization to accept and expend \$727,757 in Federal funds through June 30th, 2019. Is someone from the Department available to answer questions?

KERRIN ROUNDS, Chief Financial Officer, Department of Health and Human Services: Good morning.

CHAIRMAN KURK: Good morning. And could you move the microphone a little bit closer. We're recording this today. Our transcriber is not here so please identify yourselves for the record.

MS. ROUNDS: Sure. I'm Kerrin Rounds. I'm the CFO at Department of Health and Human Services.

KATJA FOX, Director, Division of Behavioral Health, Department of Health and Human Services: And I'm Katja Fox, Director for the Division for Behavioral Health at HHS.

CHAIRMAN KURK: Good morning, and thank you for being here. The question is are there any performance measures by which you're going to judge the success or lack of success of this program?

MS. FOX: So, Representative Kurk, and Members of the Committee, the Student Assistance Program is primarily what this grant funds. And the request is because there are carryover funds as well as more funds that were received and anticipated in the budget process so just for background.

As far as the outcomes, we've had this debate many times. I wouldn't say it's a debate. I think it's a requirement in our

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work in progress. And I think that with all the efforts that have been taken on a number of levels, including the recent passage of -- or we expect passage after the Governor's signature of HB 1626 on cost effectiveness of programs that that's going to help refine our data. For now we do collect data that addresses this prevention program in the schools. And if we use a survey that is done and it looks at the student's reported decrease in the percentage of reported tobacco abuse, alcohol use, and marijuana use, and also looking at the use of -- non-prescribed use of prescribed -- non-prescribed use of opioids is what I should say, and then the perceived risk of binge drinking and marijuana, and risk of harm perception about not using drugs that have been prescribed to someone.

So it's a proxy. We're not going to sit here and say it absolutely is the answer to how prevention services should be delivered, but we do believe that as a result of these programs there is a correlation between reported decreased level of use reported by the students is a result of engagement in these programs.

CHAIRMAN KURK: Let me try to be more specific. Do you use control groups? That is to say, will you do the survey of a larger group of people, some of whom have participated in your programs and some of whom have not, to see if there's any statistically significant difference between the two groups? Otherwise -- that's first point -- otherwise, how will you know whether or not you're successful? And, secondly, even if there is a difference, how will you determine whether that difference was worth the cost that we're putting into this program versus taking this money and using it for some other purpose? Because if you don't have that, I don't see how you can justify either to Congress or to the State Legislature whether spending this money was desirable, effective.

MS. FOX: I do not believe that we do control groups, although that is something that we could consider and I could work with our partners at Public Health to talk about that and really look at the comparisons of the effectiveness of the programs and whether they are effective or we see any difference

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between a school that has engaged these types of programs versus those who have not. The justification, could you talk a little bit more about that?

CHAIRMAN KURK: Assuming that there's a difference between control groups and let's assume that a school that had five hundred thousand -- I don't know -- \$500,000 worth of effort put into it, one student difference between the controlled group and the non-controlled group. That tells me it cost us \$500,000 to change that one student's behavior. I think off the top of my head that's probably a poor use of \$500,000.

MS. FOX: Yeah.

CHAIRMAN KURK: That we could get a bigger bang for the buck by spending that money elsewhere. I don't want to debate this.

MS. FOX: Right.

CHAIRMAN KURK: This isn't the place for that.

MS. FOX: Right, no.

CHAIRMAN KURK: But I think the Legislature over the years has made it clear that we need to be assured that taxpayer dollars, no matter whose taxpayer, are being used for programs that are productive and not -- and being transferred from less productive programs to more productive programs. That's the point.

MS. FOX: So I agree.

CHAIRMAN KURK: Thank you.

MS. FOX: And I think longitudinal studies would be really, really helpful because you may save \$500,000 per one student but how over a lifetime would that impact that person's trajectory in life whether they use or don't use or engage in risky behavior.

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So I agree and I hope I am still here when I can come to you and say these three programs work and it's cost effective because of X. And so I'm going to probably be here a really long time so.

CHAIRMAN KURK: I certainly hope so and I certainly hope you'll come back with a very favorable report.

MS. FOX: Yes.

CHAIRMAN KURK: Thank you.

ROBERT "Bob" GIUDA, State Senator, Senate District #02:
Question.

REP. EATON: On the left.

CHAIRMAN KURK: Further questions?

SEN. GIUDA: Question.

REP. EATON: On the left.

CHAIRMAN KURK: Senator Giuda.

SEN. GIUDA: Thank you, Mr. Chairman. Do you have any metrics at all in place?

MS. FOX: Yes, the ones I just described are the ones that we use to measure the success of the programs and all of the schools are required to report data to us.

SEN. GIUDA: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. GUIDA: Would you provide a copy of those metrics and the results to the Committee?

MS. FOX: Sure, sure, yep, yep. I have them here. So yes.

SEN. GUIDA: Thank you.

CHAIRMAN KURK: Is there a motion?

** SEN. D'ALLESANDRO: So move.

CHAIRMAN KURK: Senator D'Allesandro moves to approve the request, seconded by Representative Eaton. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved. Thank you very much.

*** {MOTION ADOPTED}

(6) RSA 14:30-a, VI Fiscal Committee Approval Required
For Acceptance and Expenditure of Funds Over \$100,000
From any Non-State Source and RSA 124:15 Positions
Authorized:

CHAIRMAN KURK: We now turn to item number -- agenda item number six. There are two items on this, including dealing with funds over \$100,000 and positions authorized.

REP. OBER: I'd like to remove 18-101.

CHAIRMAN KURK: In that case, we will deal with each of these items separately. The first one to come before us is Fiscal 18-085, a request from the Department of Health and Human Services for authorization to accept and expend \$104,650 in Federal funds effective August 1st, 2018, through June 30th, 2019, and contingent upon the approval of that request continue one currently filled temporary full-time Public Health Nurse Coordinator position by extending the end date from August 1st, 2018, to June 30th, 2019. Is there a motion?

** MARY JANE WALLNER, State Representative, Merrimack County District #10: So move.

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SEN. D'ALLESANDRO: So move.

CHAIRMAN KURK: Representative Wallner moves, seconded by Senator Birdsell. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We turn now to Fiscal 18-101, a request from the Department of Business and Economic Affairs for authorization to retroactively amend Fiscal 17-062, approved April 14th, 2017, by extending the end date from April 30th of this year to September 30th of this year and to reallocate \$10,550 in Federal funds and contingent upon approval of that request, authorization to extend the Class 046 consultant through September 30th, 2018.

REP. OBER: Question of the agency.

CHAIRMAN KURK: Is there someone here from the agency who can respond to a question? Please come forward. Thank you, sir. And if you'd identify yourself first, we'd appreciate it.

NATHANIEL NELSON, International Trade Officer, Office of International Commerce, Department of Business and Economic Affairs: Good morning. My name's Nathaniel Nelson. I'm International Trade Officer with the Office of International Commerce.

CHAIRMAN KURK: Welcome to House Finance.

MR. NELSON: Thank you for having me.

CHAIRMAN KURK: Excuse me, Fiscal Committee.

MR. NELSON: I'm in the right place. Good.

CHAIRMAN KURK: Same room, different organization. Representative Ober has a question.

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REP. OBER: Welcome to both, if I could say.

CHAIRMAN KURK: Sure.

REP. OBER: Mr. Nelson, why is this being submitted retroactively instead of in a timely manner?

MR. NELSON: Sure. So what happened is there's multiple processes -- oh.

TAYLOR CASWELL, Commissioner, Department of Business and Economic Affairs: I apologize.

REP. OBER: Good morning.

CHAIRMAN KURK: Good morning and welcome, sir. Could you identify yourself for the record?

MR. CASWELL: My name is Taylor Caswell. I'm the Commissioner of the Department of Business and Economic Affairs. I apologize for being late.

CHAIRMAN KURK: Representative Ober had a question.

MR. CASWELL: Yes, sir.

REP. OBER: Had you heard that or would you like it repeated?

MR. CASWELL: I just walked in the room.

REP. OBER: If you'd been on time, I would have asked you before; but why is this being submitted retroactively instead in a timely fashion, Commissioner?

MR. CASWELL: My -- the -- the Federal Government allowed this grant to be extended and the paperwork that came through from them took a while to get to us. Then we had to go through our own internal processes to get it appropriately budgeted in

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the right line items. So it did take longer than I would have liked to and not like bringing retroactive items before you, Representative. In this case (Inaudible) come in by choice.

** REP. OBER: I couldn't support no retroactive items myself anymore. Mr. Chairman, I would move to approve this.

SEN. BIRDSELL: Second.

CHAIRMAN KURK: Moved by Representative Ober, seconded by Senator Birdsell that the item be approved. Is there discussion, further discussion or questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved. Thank you, gentlemen.

*** {MOTION ADOPTED}

(7) RSA 9:16-a, Transfers Authorized and RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from any Non-State Source:

CHAIRMAN KURK: We turn now to agenda item number seven, two requests. Does anyone wish to remove either of these? Is somebody willing to make a motion?

** SEN. D'ALLESANDRO: So moved.

SEN. BIRDSELL: Second.

CHAIRMAN KURK: Senator D'Allesandro moved, seconded by Senator Birdsell that agenda item seven under the Consent Calendar be approved. Those are Fiscal 18-095 and Fiscal 18-096. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The items are approved.

*** {MOTION ADOPTED}

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**(8) RSA 9:16-a, Transfers Authorized and RSA 124:15
Positions Authorized:**

CHAIRMAN KURK: We turn now to agenda item number eight, again on the Consent Calendar. And there is one item here, Fiscal 18-097, a request from the Department of Administrative Services for authorization to create new class lines and transfer General Funds in the amount of \$5,000 in Fiscal 2018 and \$34,684 in Fiscal Year 2019 through June 30th, 2019; and contingent upon that approval, for authorization to establish four temporary part-time positions/interns for the period July 1st of this year through June 30th, 2019. Is there a motion?

JAMES GRAY, State Senator, Senate District #06: Second.

CHAIRMAN KURK: Representative Wallner moves, seconded by Senator Gray that the item be approved. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it, and the item is approved.

*** {MOTION ADOPTED}

(9) RSA 12-O:21, II, New Hampshire Economic Development Fund, and RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from any Non-State Source and RSA 124:15 Positions Authorized:

CHAIRMAN KURK: We turn now to agenda item number nine, Fiscal 18-102, a request from the Department of Business and Economic Affairs for authorization through December 31st, 2018, to budget and expend \$128,559 in prior year carry forward other funds and reallocate \$18,024, and accept and expend \$182,000 in federal funds, and contingent upon the approval of both of those requests for authorization to establish a Class 046 consultant position.

** REP. OBER: Move to approve.

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SEN. GIUDA: Second.

CHAIRMAN KURK: Representative Ober moves to approve, seconded by Senator Giuda. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it, and the item is approved.

*** {MOTION ADOPTED}

(10) RSA 106-H:9, I, (e) Funding; Fund Established:

CHAIRMAN KURK: We turn now to item number ten on the agenda, Fiscal 18-088, a request from the Department of Safety for authorization to budget and expend \$225,000 in other funds from prior year carry forward balance of the Enhanced E-911 System Fund through June 30th, 2018. Is there a motion?

** SEN. D'ALLESANDRO: Move the approval.

CHAIRMAN KURK: Senator D'Allesandro, seconded by Senator Giuda moves the item be approved. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved.

*** {MOTION ADOPTED}

(11) RSA 198:15-y, III, Public School Infrastructure Fund:

CHAIRMAN KURK: We turn now to agenda item number eleven, Fiscal 18-106, a request from the Office of the Governor for approval to authorize General Fund expenditures from the Public School Infrastructure Fund in the amount of \$21,164 through June 30th, 2019.

** REP. OBER: Move to approve.

SEN. DANIELS: Second.

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CHAIRMAN KURK: Representative Ober moved, seconded by Senator Daniels, moves to approve the item. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it, and the item is approved.

*** {MOTION ADOPTED}

(12) RSA 261:97-b, I, (a) Conservation Number Plate Fund, and RSA 124:15 Positions Authorized:

CHAIRMAN KURK: We turn now to item number 12 on the agenda, Fiscal 18-089, a request from the Department of Natural and Cultural Resources for authorization through June 30th, 2019, to budget and expend other funds in the amount of \$6,416 in Fiscal Year 18 and \$38,584 in Fiscal Year 19, and establish two temporary part-time Program Specialist positions.

REP. OBER: Mr. Chairman, we had asked LBA to double-check on the last date of the Commissioner who had signed this 'cause he's no longer here.

CHAIRMAN KURK: Mr. Kane.

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: Commissioner Rose will be serving, I believe, until June 1st.

** REP. OBER: Okay. Thank you. Move to approve.

CHAIRMAN KURK: Representative Ober, seconded by Senator Daniels moves that the item be approved. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: I want to congratulate members. I think this is the first time in memory that every item was approved unanimously.

SEN. D'ALLESANDRO: And none were taken off. Isn't that something. Just one. Just one.

(13) Miscellaneous:

(14) Informational Materials:

CHAIRMAN KURK: Are there any items people would like to discuss in the information materials?

REP. OBER: Mr. Chairman, I would like to thank the members since I filled in for our clerk who's more able at this than I am.

REP. EATON: Not done yet.

CHAIRMAN KURK: Mr. Kane, anything you'd like to bring forward from the informational items?

MR. KANE: No, sir.

CHAIRMAN KURK: Then at this point I'd like to recognize the LBA staff for a Performance Audit Report of the Air Resources Division of the Department of Environmental Services.

STEPHEN C. SMITH, Director, Audit Division, Office of Legislative Budget Assistant: With your permission, my manager is not here yet. She'll be here at 10:30.

CHAIRMAN KURK: You mean we actually went faster than even most optimistic estimates?

MR. SMITH: Yes.

CHAIRMAN KURK: We'll take a break till 10:30.

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(Recess taken)

(Reconvened)

Audits:

CHAIRMAN KURK: Good morning again, folks. The Committee will resume its deliberations. Mr. Smith is recognized.

MR. SMITH: Thank you, Mr. Chairman. Appreciate the Committee's patience, although I do applaud your efficiency this morning.

CHAIRMAN KURK: We've set a new standard, sir. It'll be hard for us to live up to it as well.

REP. OBER: Don't expect it again.

MR. SMITH: For the record, I'm Steve Smith, the Director of Audits for the Office of Legislative Budget Assistant to present the performance audit of the Air Resources Division, Department of Environmental Services. With me from our office to present the audit is the in-charge manager Vilay Skidds. Also joining us from the Department is Commissioner Scott and Craig Wright, the division -- Air Division Director. So I'll turn it over to Vilay.

CHAIRMAN KURK: Welcome to all of you and thank you for being here. We look forward to your presentation.

VILAY SKIDDS, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Mr. Chairman, Members of the Committee. My name is Vilay Skidds, and this morning I'm presenting the Air Resources Division performance audit report.

The purpose of our audit was to determine whether the Division operated efficiently and effectively during Fiscal Years 2016 and '17. Our Executive Summary is on Page 1.

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Since 1998, the Air Resources Division has been responsible for administering the requirements of the federal Clean Air Act in New Hampshire. These requirements include monitoring air quality, as well as overseeing permitting, inspection, compliance testing, and enforcement of these over 600 facilities pulling air permits, as well as over another 1200 businesses not required to pull the permit but still subjected to clean air standards.

We found the Division was generally efficient and effective in carrying out its mission to protect New Hampshire's air quality. EPA officials and entities overseen by the Division reported high levels of satisfaction with its work and the professionalism of staff.

While the Division's experienced and knowledgeable staff was a great asset in performing its work, it was also its biggest risk. Staff had an average of 18 years of experience and in five years over half of those working for the Division will be eligible for retirement. Additionally, the Division's 23% vacancy rate impacted its ability to perform some activities timely.

Our Recommendation Summary starts on Page 3. Our report contains ten Observations and Recommendations. The Division concurred with all ten and none require legislative action.

The Recommendation Summary contains the page where each Observation can be found. Our first Observation addresses succession planning and workforce development. We found over half of the Division staff will be eligible for retirement in the next five years, and 70% will be eligible in the next ten years. Many occupy key positions within the Division. Despite this, we found gaps in written policies and procedures and outdated guidance posing a risk the Division could lose critical skills and knowledge when staff retire.

Our next two Observations address permitting. Over 70% of the permitting applications we reviewed were not processed according to the Division's internal rules. Most were renewal

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applications. Factors, such as staffing levels, the timing of when renewal applications were required to be submitted, and delays in assigning applications to staff may have contributed to untimely processing.

Additionally, we found requiring the same amount of time for public comment regardless of application type may have unnecessarily prolonged the permitting process. That's only 3% of permits a year who actually received (Inaudible).

The next three Observations, numbers 4 through 6, discuss the inspection process. We found some facilities were not inspected according to the Division's schedule, with some going over 15 years between inspections. Some permitted equipment was also not seen in operation during inspections with some going at least two inspections without being seen operating. This hindered the Division's ability to determine compliance with some of its standards.

Additionally, we did not find the process to ensure issues that did not warrant a referral to the Enforcement section were actually corrected.

Our next three Observations, number 7 through 9, address stack testing. The Division required a staff member to be present at all stack tests conducted in New Hampshire, despite minimal evidence this was necessary for all tests. We also found not all testing procedures aligned with administrative rules, and the need for follow-up after a test was not consistent with (Inaudible).

Our last Observation addresses the enforcement process. We found staffing may have contributed to some delays in closing out enforcement cases. Almost half of the cases we reviewed were not assigned to enforcement staff until three months after they were referred, with some going six months before being assigned. Additionally, we found delays in closing out cases where facilities had already come back into compliance with their requirements.

Starting on Page 47, we identify two other issues and concerns addressing dissemination of enforcement information and reviewing fees paid by mobile sources.

This concludes my presentation. I'll now turn it over to the Air Resources Division Director and the DES Commissioner.

CHAIRMAN KURK: Thank you. Commissioner.

ROBERT SCOTT, Commissioner, Department of Environmental Services: Good morning. Again, Bob Scott, Department of Environmental Services Commissioner. I just wanted to thank Steve and Vilay and their staff on their good work, as I hope you understand the Commission and I hope all State Agencies appreciate any efforts to point out things that we can improve on so we're pleased with that and thank you for the time and effort. And, with that, Craig Wright is the Director of the Air Resource Division so if there are any other comments.

CRAIG WRIGHT, Director, Division of Air Resources, Department of Environmental Services: Thank you, Mr. Chair, Members of the Committee.

First of all, I just want to say thank you to Vilay and the staff at the LBA. We found them throughout this process to be very thorough and very efficient, and we really appreciate that. They were actually very -- recognized the struggles and challenges we face with manpower, and we were able to work very effectively with them.

From day one we view this as an opportunity to learn, an opportunity to have a third set of eyes. We know we're not perfect. They came up with ten Recommendations. We intend to look at those Recommendations. We concur with their findings. We intend to implement a process where we're going to track our performance against those Recommendations and what steps we take to make changes in our operations. And two things I'll just point that I found extremely helpful to the process.

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Vilay and her staff were very responsive to us. We had to figure out meetings, I think, every three weeks or four weeks. I found those meetings to be extremely helpful. There were no surprises at the end of this audit. They were very upfront with us and we were able to discuss things. Whenever we had a thought or a comment, they were willing to sit down and listen to us. And then, two, I don't know how they did it. They surveyed all our permitted sources and they got like a 36% response rate. We send out surveys with all of our departments and our response rate is in the single digits. So I don't know what magic they pulled, but we found those surveys to be very helpful and, with that, we're certainly willing to answer any questions.

CHAIRMAN KURK: Thank you. First, Commissioner, this is unusual for us in the sense that the auditee concurs with all of the Observations so congratulations on that. Just part of a wonderful day here.

There are two issues that I'd like to bring up. One is succession planning and the vacancies. I take it there's a connection between the fact that timeliness of some of your activities is impaired by the fact that there are vacancies. Could you tell us what you're doing to deal with these vacancies, whether it's budgetary pressure that's put on you or whether you just can't find the people in a very low unemployment economy?

MR. SCOTT: Mr. Chair, that is a continuing problem. As you just alluded to it's exacerbated by the -- it's good and bad. It's great we have a low unemployment rate, but it's becoming even harder to find people. I think we're lucky in the agency. We do get good people. But it's -- we're -- and I'll digress a little bit.

I know Senator Giuda's involved a lot with our Wetlands Program. We've had a Labor Grade 35 position open for seven months now trying to find the right candidate. And, as you know, that's the highest labor grade, you know, classified labor grade. It's a tough market right now. So, I mean, I'm not

answering your question; but I guess I am concurring that it's difficult market conditions right now.

I think the -- one of the -- historically, and I do want to let the Director answer a little bit more, we've been able to recruit in the past from industry. The good news is we have -- we're not asking people to work 68 hours a week -- 60 or 80 hours a week. We're able to pull some people when we get lucky from industry, typically consulting, that type of thing. So we are challenged, but we've had some good success which is why we have the good people; but we're still working on that is the short answer. I don't have a silver bullet on that. Craig, I don't know if you have --

MR. WRIGHT: Sure, I'll just add. I mean, the vacancies are largely a function of budget pressures. If we don't have the revenue, we obviously can't fill the position so that is one challenge.

But we are -- we are -- we do struggle with also when we do have positions we're able to fill, getting that next generation in there's a real challenge. I don't know if it's a function of what the next generation's looking for in terms of employment. I don't think they're coming out of school saying I want to work the next 10, 15, 20 years at one place. I think, you know, they're looking for opportunities to advance and grow. So we need to work on that. We need to create an environment where the next generation does, in fact, want to come work for us.

One of the things we have been doing the last couple years, DES is big on hiring summer interns, and we've actually had a couple of those interns in the Air Division become full-time employees. That seems to be an effective way to try to build the next generation.

CHAIRMAN KURK: Great.

REP. OBER: I have a question.

CHAIRMAN KURK: Senator Giuda, then Representative Ober.

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SEN. GUIDA: Thank you, Mr. Chairman. Craig, Bob, good to see you here. Are you linked at all with UNH or Community College System as far as a pipeline to bring people from their graduating programs, and particularly in technical specialties right into your agency?

MR. SCOTT: Yes. And, again, that's -- Craig mentioned the internship program. That's typically a nice pipeline that gives the potential employee or student at the time generally an opportunity to see what we do. Do they want to be there to give us a chance to get a look at them and, bluntly, do we want them as an employee, also. So that's a help.

The other thing, if I could, and I'll give kudos to Charlie Arlinghaus, Commissioner Arlinghaus, I don't think the State's historically done a great job of selling these positions. You know, there's a range of, as you know, of salaries. And, historically, we've advertised at the lowest salary range. So it almost leads people not even to come in the door because they see that lower salary and not realizing the potential. I don't think we've done as great a job in the past. I think we're doing better now with the benefits, beyond just the salary for the State. I think that's important and it helps. And the other thing, again, for new folks out of college, certainly not something we're offering directly, but we're also trying to get the word out that I know a lot of people carry huge amounts of -- coming out of college huge amounts of --

SEN. D'ALLESANDRO: Debt.

MR. SCOTT: -- debt. And being working for a state agency, at least currently, qualifies for loan forgiveness act for ten years. You work for us for ten years that loan forgiveness program kicks in. Those are the type of things, to me, we haven't historically been selling and that's -- we're trying to do those type of things now. So maybe -- of course, salary isn't what should attract you, but there's other things and I think we're doing, as a state, doing better at that now.

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CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you. Commissioner, when I look at recommendation number two, which is about the on-line permitting process, do you do any permits anywhere in your agency on-line?

MR. SCOTT: Uh -- no, I'll let Craig talk about the Air Division, but our subsurface program in our Water Division is mostly on-line now. And that's something we hope and are trying to expand upon. So the short answer is yes, but it's not universal yet. And as you may imagine to get the core systems in a mode that you can then put them into on-line permitting, it takes a lot of time and effort. So we're in the middle of those processes right now, and perhaps for the Air Division I can let --

CHAIRMAN KURK: Follow-up.

REP. OBER: Craig, before you answer let me ask my follow-up and then you can respond to both at the same time. Because one of the things I was thinking is if you're doing anything on-line, is it possible to add a module to incorporate this? So I think when Craig answers he's probably going to answer both those questions anyways. So I wanted to put it out before he talked. Thank you.

MR. SCOTT: Sure.

MR. WRIGHT: Thank you. This is a great area because this is one of these areas where we need to work smarter and work better. We have in the Air Division implemented what we call a general state permit for certain source categories. For example, emergency generators it used to be you file the paperwork, we issued a permit. Now it's all totally on-line. The only thing we haven't crafted on-line is the payment of the fee, but we're very close to crafting that. So that's strictly an on-line system.

We also have permits by notifications where simply they notify us that they want to comply under the rules and

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regulations, and we've implemented that as well. We continuously are looking in this area. I actually have on staff a business systems analyst that I brought on about seven years ago. May have actually been under Director Scott at the time. I was the Assistant Director. And the sole goal of that position is to help identify these potential electronic tools to help us do better. So yes, we are certainly going down that avenue.

REP. OBER: Thank you.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you. Thank you very much, Mr. Chairman. There are two things, I think, that should concern everybody in this room. First is the vacancy rate. That's a significant number, a very significant percentage. But, secondly, the majority of the workforce in the State of New Hampshire will be retiring within the next five years. So you got a huge vacancy rate and a retirement situation that could be catastrophic. So succession planning becomes a key element. A, where you going to find them, and that's number one. But, number two, because people are working longer, will they stay or will you -- how will you induce them to stay a little bit longer, particularly with the lack of availability of people in the workforce.

I -- I think that the State right across the board has to face this. This retirement situation that's forthcoming is very, very disconcerting to me, very troublesome. But the fact that you got a vacancy rate that represents almost 20% of your workforce these are things, hey, you can -- you can do something about on-line purchasing of getting permits and so forth and so on; but if nobody's at the other end that's a real problem. And I think we have to -- we have to face reality as far as that's concerned and how are we going to address that across the board, across every Department in State Government. That, to me, is the real serious issue. We could be more efficient. We could be more effective, but if there's nobody there to do it, it doesn't -- it just doesn't happen. Thank you, Mr. Chairman. Real concerns.

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CHAIRMAN KURK: You're welcome. I think House Bill 1817 is going to address this part that deals with the state demographer.

SEN. D'ALLESANDRO: Yes.

CHAIRMAN KURK: Senator Daniels.

SEN. DANIELS: Thank you. I've a couple questions pertaining to your survey in Section D, particularly on question 22, which was looking for feedback when someone responded that they were somewhat unsatisfied or unsatisfied as part of the compliance and the inspection process. Had a real concern that there were two -- two comments that came back that said that the ARD staff was unprofessional or arrogant. And I'm curious as to how you dealt with that or what process you are using to follow-up.

MR. WRIGHT: Well, I think that's a matter of us, you know, working with our staff. We do a lot of training in-house. We expect professional behavior. I don't know the particular company, and I don't know if we have that information. 'Cause if I did, I would certainly reach out to that company, try to understand why they responded the way they did; but to make the bottom line, we expect our people to be professional and courteous when they're out in the field.

SEN. DANIELS: Okay, so --

CHAIRMAN KURK: Follow-up.

SEN. DANIELS: Follow-up. So your -- your feedback responses do not identify who's submitting them?

MS. SKIDDS: When we send out the surveys we actually offer the entities that are responding confidentiality. So our language, in part, with them is we're not going to be sharing any responses with the agency, because we want as candor a

response as we can. So that's why we try to protect them so that the agency doesn't get a hold of who answered what basically.

SEN. DANIELS: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. DANIELS: Understanding the need for that, how do you go about addressing an issue like this when you can't identify that the person, if you will, who is perceived to be unprofessional?

MS. SKIDDS: I don't know that we, as an office, have a process to be able to provide that information to the agency. So I think it would be something that we'd have to discuss internally given the parameters that we've already given the entities that we wouldn't be disclosing who answered what.

SEN. DANIELS: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. DANIELS: My second question has to do with the next one down that there was no formal close out, with surprises in the inspection report. Do they identify what those surprises are or why are there surprises? Why would -- why would a company be surprised about something?

MS. SKIDDS: Again, those are responses that came out of our surveys. So, basically, we ask them to identify any areas that they had issues with. I can't speak directly right now to the specifics of what those surprises were, 'cause we try to take comments that are similar and kind of group them together. So I'll certainly go back through and see if we can parse that out a little bit more.

SEN. DANIELS: Okay. I just think it would be helpful if you can identify what those were that that be communicated to the Division so it could be rectified in the future.

MS. SKIDDS: Okay.

SEN. DANIELS: Thank you.

CHAIRMAN KURK: There was one other issue that I'd like to raise. There was some statistic that said 70% of the people were dissatisfied with the speed at which the agency responded.

MS. SKIDDS: Was that in the survey or --

CHAIRMAN KURK: I don't remember but the 70% number just --

MS. SKIDDS: I think in my presentation I had --

CHAIRMAN KURK: No, not in your presentation. It was in the report. But it -- in any event, we can find that statistic. The point is this. Would it be possible to save labor and, therefore, reduce the need for as many employees and speed things up by having renewals done on the basis of a simple certification by the permittee that I'd like to have my permit renewed. There have been no changes since it was initially issued and so, therefore, there would be very little paperwork would be done.

Obviously, you could check, spot-check to make sure nobody's lying and set up a different system for -- but a similar system for those people who said yes, nothing has changed except this little bit and a very different system for those who say yeah, there have been major changes and you guys really need to come and review it or that's your judgment. The point is can we set up systems that would avoid unnecessary work that is taking Department time in creating some of the complaints about how long it takes to get things done?

MR. SCOTT: Obviously, the Air Director should respond; but a couple things to be aware of is I think given the -- just like any other division, there's a triage done on what's the impact to the regulated community. Typically, renewal permits, and this is all based on federal requirements, as long as an application comes in in a timely manner, the existing expired permit is

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still -- still in effect. So the triage that would happen, if you will, is typically a new permit application comes in gets buried because you don't want to stop development and stop somebody from being able to do something where that renewal -- well, granted, ideally we would get right on it, sometimes will purposely sit longer because it did not negatively impact it as much. So I just wanted --

CHAIRMAN KURK: I appreciate the triage. I'm suggesting that you might consider eliminating a lot of unnecessary work in the case so that they're immediately approved or no approval is necessary. It's a self-certification process.

MR. WRIGHT: Yes, thank you, Mr. Chair. One of the things we are currently looking at is the length of our permit terms. We're hamstrung on some levels because of the federal requirements on the Title V permits. But on the "State only" sources we are currently -- and this is one of the recommendations that came out of the audit -- we are looking at increasing our permit term a little bit, possibly up to ten years.

Now, one of the risks there is a lot can change in ten years. So to your point, I understand the concept of a certification, so that's certainly something we can think about. I think the biggest challenge for the sources would be they know what they have changed on their end. The question is do they necessarily know what's potentially changed on the regulatory side of things and that's kind of where we step in at that point and look at what is new, what has changed since the last time they filed for a permit so -- but we can certainly think about what you suggested; but there are some challenges and we are certainly going to try to address the whole issue.

CHAIRMAN KURK: It's always helpful when an agency takes a fresh look at things and this kind of an audit sometimes inspires that and things that we've always done maybe we don't really need to do in the future. Thank you.

REP. EATON: On your left.

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CHAIRMAN KURK: Senator Giuda.

SEN. GIUDA: Thank you, Mr. Chairman. Specifically with respect to item number seven, Observation 7 on Page 4, I heard this, Craig, during the revamping of the fee structure that you send a staff person to every stack test. That, to me, seems redundant since you have certificated professionals doing those tests anyway. So there's an immediately place we might be saving staff time and money.

The other question, and I heard this from a number of my constituents, we hear from you and this is not to say it's not the case, but we hear that the EPA is the 800-pound gorilla, okay, that if you don't do this. And my question is how much push back do you give to the EPA saying, wait a minute, that might work in a grand scheme of things but in New Hampshire we have a little bit different scenario. We want some restrictions changed or some times changed or whatever, you know, standards changed. How much push back do you do as an agency to the Feds?

MR. WRIGHT: So to your first question about stack testing. I think you probably heard me state this before. That's certainly something we're going to look at. That was one of the findings in the report. We'll look at there's different types of stack testing. Where do -- where should we spend our resources in those types of situations?

I will comment one of the things we -- this has been a long-standing policy of the Division. I think part of the reason is the fact that you're right. The company typically hires a third-party professional to do the testing, but they are hired by the company. When we get into public meetings and public formats, one of the things we often hear about as a concern the company's hiring the testing company. Who's watching the testing company? That's one of the reasons we do what we do, but it's certainly something we are going to look at.

We push back on EPA Region 1 all the time. I think Commissioner Scott will verify that. In particular, we negotiate

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an annual work plan with Region 1 in terms of who we're going to inspect, how many inspections we're going to do. There's a laundry list of things that we negotiate with EPA. We develop what we call Priorities and Commitments list every year with Region 1. I think we actually have a fairly good working relationship with Region 1 in the Air Division. We do push back. They push back on us sometimes. It's a balancing act sometimes. We try to stress to them why it's important to New Hampshire and why they need to think about why it's important to us so I don't know if you want to add more.

MR. SCOTT: Two things and, again, the stack testing side of things, as Director Wright mentioned, absolutely want to look at that. When I was director we were looking at that. It's a reoccurring question that we have. We do often have, as you may be aware, Senator, when the stack testing is going on the company typically needs to alter their -- what they're doing. So it has an impact while it's happening on the company. And often what people will tell you, including the companies, is it's very helpful to have our staff there because if they need to finagle things to make it work while they're doing their production having our folks on-site to say yes, that's okay, is very valuable to them.

You know, I will say the staff there that do that they'll be out, you know, if things aren't going right in the set up and they know that it really impacts the company they'll be out there past 9, 10, 11 o'clock at night working with the stack tester and the company. So, by and large, when we ask the question, we will again, we get from industry is no, no, no, this is very valuable to us. Please do it. So that's that simple, we've got in the past. We will certainly look at it again.

On the Clean Air Act side requirements, especially the large sources of Title V requirements, is pretty restrictive the federal requirements that we're implementing. Part of that is -- is not to say this is overriding, but there's -- there's mechanisms built into the Clean Air Act almost encouraging citizen complaints and lawsuits. So we also have that fine line.

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You don't want to put industry in the position where, yeah, this makes sense to us and go, but yet they're being sued on the back end, too, So there's always a balance is what I'm getting to.

SEN. GUIDA: Thank you.

CHAIRMAN KURK: No further questions --

MR. WRIGHT: Oh -- okay.

CHAIRMAN KURK: Sorry. Please go ahead.

MR. WRIGHT: I was just going to add one point. I mean, it is one of the goals, the Clean Air Act is a federal standard, but it is the goal of DES that if a regulated source has to deal with the federal requirements they come to DES, that they don't deal with EPA. That's a fundamental goal that I have as Director of that. We administer the Clean Air Act in New Hampshire.

CHAIRMAN KURK: Chair recognizes Senator Daniels for a motion.

****** SEN. DANIELS: Thank you, Mr. Chairman. I move that we accept the report, place on file, and release in the usual manner.

REP. OBER: Second.

CHAIRMAN KURK: Seconded by Representative Ober. Discussion? There being none, are you ready the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it, and the motion is adopted.

******* {MOTION ADOPTED}

CHAIRMAN KURK: Thank you all very much. This was very helpful. I'm glad it worked out so well for both the auditee and auditor.

With that, I'd like to announce that our next regular meeting is scheduled for Friday, June 15th, 2018, at 10:00 a.m. in this room. And there being no other business to come before us, we stand adjourned. Thank you all.

(Meeting adjourned.)

CERTIFICATION

I hereby certify that I transcribed this committee meeting from an audio CD, and it is a true and accurate transcription from said audio CD to the best of my ability, skill, knowledge, and judgment.

Cecelia A. Trask
Court Reporter #47
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