

**JOINT LEGISLATIVE FISCAL COMMITTEE**

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, May 10, 2019

**MEMBERS PRESENT:**

Rep. Mary Jane Wallner, Chair

Rep. Ken Weyler

Rep. Susan Ford

Rep. Lynne Ober

Rep. Patricia Lovejoy

Rep. David Huot (Alt.)

Rep. Erin Hennessey (Alt.)

Sen. President Donna Soucy

Sen. Lou D'Allesandro

Sen. Dan Feltes

Sen. Cindy Rosenwald

Sen. Jim Gray (Alt.)

(The hearing convened at 10:05 a.m.)

**(1) Acceptance of Minutes of the April 12, 2019 meeting.**

MARY JANE WALLNER, State Representative, Merrimack County District #10: Good morning. Call the Fiscal Committee together for the May meeting, and I want to welcome Senator Gray.

JAMES GRAY, State Senator, Senate District #06: Thank you.

CHAIRWOMAN WALLNER: Thank you for joining us. And Representative Lovejoy is joining us today.

So we'll start right out with the acceptance of the minutes of April 12<sup>th</sup>. Can I have a motion?

**\*\*** LOU D'ALLESANDRO, State Senator, Senate District #20: So move.

CHAIRWOMAN WALLNER: Senator D'Allesandro moved.

LYNNE OBER, State Representative, Hillsborough County, District #37: Second.

CHAIRWOMAN WALLNER: And Representative Ober seconds. Any discussion of the minutes? Seeing none. All in favor? The minutes are accepted.

**\*\*\* {MOTION ADOPTED}**

**(2) Old Business:**

CHAIRWOMAN WALLNER: We have one Old Business item. Do we want to -- does anyone want to take that off the calendar? Okay. Seeing no motion to take it off, we'll just leave it right where it is.

**CONSENT CALENDAR**

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

CHAIRWOMAN WALLNER: We'll move on to the Consent Calendar. That's Tab 3. And I would like to know is there consent items that need to come off the Consent Calendar?

PATRICIA LOVEJOY, State Representative, Rockingham County, District #36: On number six.

REP. OBER: We're on Tab 3. Madam Chairman, 113.

CHAIRWOMAN WALLNER: Representative Ober asks that we remove Item 113. So let's -- let's move the rest of the Consent Calendar which is only one item, and then we'll go to 113.

**\*\* SEN. D'ALLESANDRO**: So move.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves that we accept the Consent Calendar.

DONNA SOUCY, State Senator, Senate President, Senate District #18: Second.

CHAIRWOMAN WALLNER: And Senator Soucy seconds. All in favor -- any discussion? All in favor? Any opposed? Seeing none. The motion passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Let's go to Item 113 which is the Department of Business and Economic Affairs. And we have a couple of questions. Is someone available? Okay.

**\*\*** REP. OBER: Could we move to table this until the call of the Chair. Perhaps somebody will come later this morning, perhaps it will be next week. If we table to the call of the Chair, you can make that determination.

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: So we have contacted -- we contacted last night relative to a question in the House. We did make them aware there be a question today. I don't see anyone from there. I can also -- I can e-mail over to my staff to ask them to give one final. Okay. If you want to table it for now, that's fine.

So Representative Ober moves to table. Is there a second?

SUSAN FORD, State Representative, Grafton County, District #03: Second.

CHAIRWOMAN WALLNER: And Representative Ford seconds. All in favor of tabling this item until we can have someone come over? Any opposed? We'll table it for now. And, hopefully, someone can come over to answer our questions.

**\*\*\* {MOTION TO TABLE ADOPTED}**

(Senator Feltes enters the Committee Room.)

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

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

CHAIRWOMAN WALLNER: I'll move on to Tab 4 and it's the Department of Environmental Services. Authorization. Do I have a motion?

**\*\*** SEN. D'ALLESANDRO: So move.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves and Representative Ober seconds. Discussion of the item? Seeing none. All in favor? Any opposed? Passed.

**\*\*\* {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:**

CHAIRWOMAN WALLNER: Now we go into the next Consent Calendar. And I had a request from, I think, Senator Gray to take off Item 106, and from Senator --

SEN. D'ALLESANDRO: It's actually I wanted it.

CHAIRWOMAN WALLNER: Oh, I'm sorry.

SEN. D'ALLESANDRO: Senator Gray is so helpful that he brought it forth. Thank you, Senator Gray.

SEN. GRAY: You're welcome, Senator.

CHAIRWOMAN WALLNER: Senator D'Allesandro wants that one removed, and Senator Rosenwald would like to have 107 removed. Are there any -- we only have one left on there. So anybody want that one? Okay. Seeing none. I'm going to vote on the remainder on the Consent Calendar, Item 108, the only one left.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

\*\* SEN. D'ALLESANDRO: Move the item.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves and Representative Lovejoy seconds. Discussion of that item? Seeing none. All in favor? Any opposed? Item passes.

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Let's now move on to Item 106. It's the Department of Environmental Services. Thank you.

SUSAN CARLSON, Chief Operations Officer, Department of Environmental Services: Good morning, Madam Chairman, Members of the Committee. For the record, my name is Susan Carlson with the Department of Environmental Services.

CHAIRWOMAN WALLNER: And I think Senator D'Allesandro has a question.

SEN. D'ALLESANDRO: Thank you, Susan. Thanks for coming. Susan, what's the condition of the Winnepesaukee River Basin. I know that's old.

MS. CARLSON: Actually, it's in very good condition.

SEN. D'ALLESANDRO: Okay.

MS. CARLSON: It's one of the best run -- hate to brag because we own it.

SEN. D'ALLESANDRO: Right.

MS. CARLSON: One of the best wastewater treatment plants in the state.

SEN. D'ALLESANDRO: And that was built in the '70s?

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

MS. CARLSON: Yeah, mid-seventies.

SEN. D'ALLESANDRO: With money from the Feds?

MS. CARLSON: Mid-seventies, early eighties.

SEN. D'ALLESANDRO: I got a call from a Representative in Haverhill, member of the Mass. Legislature, about discharge. And when we have these rain storms evidently the water that we're pushing back into the river is contaminated. He was very concerned about that. What's the case about the downstream situation? Now, Manchester is one that I think that might be involved in that because of our location, and we after treatment, don't we discharge back into the Merrimack?

MS. CARLSON: Hum -- to the best of my understanding for Winnepesaukee, yes, we discharge into the Winnepesaukee River which then discharges into Merrimack.

SEN. D'ALLESANDRO: So what -- have you heard complaints? Further question.

CHAIRWOMAN WALLNER: Yeah.

SEN. D'ALLESANDRO: Have you had any complaints?

MS. CARLSON: Not that I'm aware of. But if you would like, I can arrange to have the superintendent of the facility call you and explain to you how things work for us.

SEN. D'ALLESANDRO: That would be great.

MS. CARLSON: Okay.

SEN. D'ALLESANDRO: Thank you so much. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you. Any further questions? Thank you for coming up. We appreciate you answering the questions. Do I have a motion on this item?

**\*\*** SEN. D'ALLESANDRO: I'll move the item.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves.

REP. FORD: Second.

CHAIRWOMAN WALLNER: And Representative Ford seconds. Discussion of the item?? Seeing none. All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Now we'll move to Item 107, Department of Health and Human Services.

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

CHAIRWOMAN WALLNER: Good morning. I think --

MS. ROUNDS: For the record, Kerrin -- yep. For the record, Kerrin Rounds, the Chief Financial Officer, Department of Health and Human Services.

CHAIRWOMAN WALLNER: Great. I think Senator Rosenwald has some questions of this item.

CINDY ROSENWALD, State Senator, Senate District #13: Thank you, Madam Chair. Good morning.

MS. ROUNDS: Good morning.

SEN. ROSENWALD: Just curious if you're projecting the same kind of impact going forward and is that reflected in the budget for the next two years?

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

MS. ROUNDS: Sure. It's a little bit of an in-depth answer, but I'll try to keep it brief. So one of the issues with any hospital is at times that you don't receive revenue from the patients that you're not able to bill them or they don't pay, then you're DSH Payment increases. So at times it can be difficult to estimate what our DSH Payment will be versus what we're going to receive in patient revenue. So we've done two things going forward to help with this.

One, if you remember in the budget presentations there's no longer a federal funds line within New Hampshire Hospital. That's now within the Medicaid Accounting Unit, and for New Hampshire Hospital it's agency income. This allows us a little bit more flexibility to be able to adjust between when it's going to be patient revenue and when it's going to be DSH.

Secondly, we are working at New Hampshire Hospital to look at the revenue cycle and look at how we're billing patients and when we're billing patients to make sure that we're doing that to the maximum effort that we can. So that's the other piece of what we're doing. So we do believe that we have budgeted in 20-21 to the best of our knowledge at this point. But there is a chance that we will be coming with a Fiscal item as those two things start to normalize, if you will, to adjust that appropriately.

SEN. ROSENWALD: If I could ask a follow-up?

CHAIRWOMAN WALLNER: Yeah.

SEN. ROSENWALD: Is this only about New Hampshire Hospital?

MS. ROUNDS: Yes.

SEN. ROSENWALD: I didn't see that as clear in the explanation that it was limited to that hospital.



MS. ROUNDS: Yes, I'm sorry about that. Yes, so this is an Accounting Unit within New Hampshire Hospital and this is New Hampshire's Hospital DSH Payment.

SEN. ROSENWALD: Thank you.

MS. ROUNDS: You're very welcome.

CHAIRWOMAN WALLNER: Further question. Thank you.

MS. ROUNDS: Thank you.

CHAIRWOMAN WALLNER: Do we have a motion on this item?

\*\* DAN FELTES, State Senator, Senate District #15: I'll move.

CHAIRWOMAN WALLNER: Senator Feltes moves.

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: And Senator D'Allesandro seconds. Any discussion on the item? All in favor? Any opposed? Item passes.

\*\*\* **{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 9:16-a, Transfers Authorized:**

CHAIRWOMAN WALLNER: Move on to Tab 6. And, again, it's Consent Calendar. Are there items that people would like to take off the Consent?

REP. LOVEJOY: 19-114. Still had some questions.

CHAIRWOMAN WALLNER: Okay. Representative Lovejoy asks to remove 19 -- Item 19-114. It's Department of Health and Human

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

Service item. And the other two items, anyone want those off?  
Okay.

**\*\*** SEN. PRESIDENT SOUCY: So move.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator Soucy moves the other two items and Representative Ober seconds. Discussion of either of them? All in favor? Any opposed? Items pass.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: And welcome back.

MS. ROUNDS: I should have just stayed.

CHAIRWOMAN WALLNER: You might as well just stayed. Thank you for coming back up.

MS. ROUNDS: Of course.

CHAIRWOMAN WALLNER: Representative Lovejoy has a question.

REP. LOVEJOY: Yesterday, we were looking at trying to get a little more information and being able to follow --

MS. ROUNDS: Yes.

REP. LOVEJOY: -- follow the numbers. I was wondering if you can give us any clarification trying to -- some of them are -- you can see one follows to the other.

MS. ROUNDS: Hm-hum.

REP. LOVEJOY: You know, it moves from one category to the other. But is there some crosswalk that we can follow the rest of these with?

MS. ROUNDS: So I will fully admit this is an area that I promised you when I started this job that I would find a better way to do this. I think I promised Representative Ober that. And I have yet to do that. But it is something that we absolutely are working on. I agree with you. I think it can be a little bit hard to follow. One of the challenges we have is that the Excel document that we prepare is prepared that way to meet the needs of Bureau of Accounting at Department of Administrative Services. But that doesn't always work in a format to be understandable for everyone else.

So we're -- we actually were just on a call yesterday with our business administrator there to talk about how we can both meet the needs of DOA and meet the needs of some of the questions that came up this week around the transfer. And I've also been talking with Mike Kane about that as well. So I am going to follow through on that promise to make this more readable and understandable, and we have a couple ideas that we are moving forward on.

REP. LOVEJOY: Okay.

REP. OBER: Madam Chairman.

CHAIRWOMAN WALLNER: Yes, Representative Ober.

REP. OBER: I know you've been working on it. Representative Hennessey had asked a question that Mr. Kane answered and the document that Representative Lovejoy had gave us some summary information.

MS. ROUNDS: Yes.

REP. OBER: But it led to some concerns. Some places you're transferring money that are General Funds and you're like, okay, we can move our General Funds wherever we want. Some places you're transferring money from one line item to another within, even though it's federal funds you figure it's going to match your grant.

MS. ROUNDS: Yes.

REP. OBER: But there are places where you're taking federal funds, 100% federal funds out of a unit and moving it elsewhere.

MS. ROUNDS: Hm-hum.

REP. OBER: So none of us have read all of your federal grants, but we all know from having tried to have spent some federal grant money at one time or another on something else --

MS. ROUNDS: Yes.

REP. OBER: -- that they're very tied to a purpose.

MS. ROUNDS: Yes.

REP. OBER: So our concern is we look at this and how do we determine if we're keeping the eye on that ball tying that grant money to the right purpose and not getting it seep in someplace else so you can't tell where the money is transferred to. We see very clearly where it's transferred from.

MS. ROUNDS: Yes.

REP. OBER: How do we -- how do we solve that problem?

MS. ROUNDS: So it's -- I would say two-fold. So in the actual transfer at times we're not actually transferring the federal dollar, if you will. Sometimes it's writing down the federal dollar that's somewhere. Because we're moving in General Funds it's going to earn a different federal dollar wherever we move that General Fund dollar to. Sometimes it is moving the federal funds.

REP. OBER: You do know that was clear.

MS. ROUNDS: I do, I do. I know, I know. We're working on it, I promise. So sometimes that's what's going on. Sometimes it

is, like you said, we're moving the actual federal dollar to another Accounting Unit, but it is within the allowances of the program. One of the challenges, which I know I'm preaching to the choir of those of you that sat through my finance budget presentations, but we budgeted differently for '20 and '21 and budgeted by revenue source so that I know where all of my federal dollars are, what the federal dollar is, and where it can be spent. So I think that's another way that we'll be able to transfer and provide explanations a little bit differently. Where right now it may not be that we know exactly what that federal dollar is budgeted as, but we know what we're going to use it at this point. So that's something -- that's the other piece of how we're trying to fix that.

REP. OBER: Thank you.

MS. ROUNDS: Which is going to be very challenging, by the way, but we're going to make it happen.

REP. OBER: I know, I have great faith in you.

CHAIRWOMAN WALLNER: Representative Lovejoy.

REP. LOVEJOY: Thank you. Thank you for taking my question. On Page 5 and 6 there are TANF funds. There's 654,000 moved as employment support and it seems to be almost that same amount goes into the Temporary Assistance to Needy Families. I guess that was a question whether or not that's -- it seemed like the two grants would be -- federal grants would be different, or is it just a coincidence it's about the same amount of money between the two?

MS. ROUNDS: I would have to look into it. I don't want to misspeak. It could be a coincidence. It could be, like I said, that it was a federal dollar that might have been something else over here and we're moving it, the appropriation, with the federal expenditure. But the actual federal dollar we're earning might be a different federal dollar. I know that's clear as mud as Representative Ober mentioned.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

REP. LOVEJOY: Okay.

CHAIRWOMAN WALLNER: Okay. Further questions?

MS. ROUNDS: I can definitely get that answer to you.

REP. OBER: Kerrin, if you learned anything, we do read what you send us.

MS. ROUNDS: That's great. I'm glad to hear that. We put a lot of work into it so I appreciate that you read it.

CHAIRWOMAN WALLNER: Thank you for coming up.

MS. ROUNDS: Thank you.

CHAIRWOMAN WALLNER: We have a motion on this item?

\*\* REP. OBER: Move to approve.

CHAIRWOMAN WALLNER: Representative Ober moves --

SEN. ROSENWALD: Second.

CHAIRWOMAN WALLNER: -- to approve and Senator Rosenwald seconds. Discussion on the item? Seeing none. All in favor? Any opposed? The item passes.

\*\*\* {MOTION ADOPTED}

(7) **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 21-I:30-c Reserve Fund:**

CHAIRWOMAN WALLNER: Moving on to Tab 7 in our book.

\*\* REP. OBER: Move to approve.

JOINT LEGISLATIVE FISCAL COMMITTEE

May 10, 2019

CHAIRWOMAN WALLNER: And this is Department of Administrative Service item. Representative Ober moves to approve. Do we have a second?

REP. FORD: Second.

CHAIRWOMAN WALLNER: Representative Ford seconds. Discussion of the item? Seeing none. All in favor? Opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

**(8) RSA 126-A:75 Excess Appropriation Allocation Account:**

CHAIRWOMAN WALLNER: Moving on to Tab 8. Also is a Health and Human Service item.

MS. ROUNDS: I knew it. I knew I should stay.

CHAIRWOMAN WALLNER: This is just a tiny one. Rep -- Senator Rosenwald, would you like to have Kerrin come up?

SEN. ROSENWALD: Yes, I would.

CHAIRWOMAN WALLNER: You should have stayed.

MS. ROUNDS: I should have. I knew it.

SEN. ROSENWALD: May actually be also a question for the Budget Director.

MS. ROUNDS: Yes, I would love to have the Governor's Budget Director join me here.

REP. OBER: Misery so loves company.

SEN. ROSENWALD: Thank you very much. I understand from the Department that after this item there's approximately \$20 million still in the excess appropriation account. My

question is has -- is this accounted for in the projected \$60 million lapse or not?

MAC ZELLEM, Budget Director, Office of the Governor: Thank you for that question, Repre -- uh -- Senator Rosenwald.

SEN. ROSENWALD: I'll be Representative forever.

MR. ZELLEM: No, no, I'll get that right. No, it is not. In the lapse projections that I provided to the LBA the 20 million EAAA is not included in the \$69 million.

SEN. ROSENWALD: Okay. Thank you very much.

CHAIRWOMAN WALLNER: Thank you. Senator Feltes.

SEN. FELTES: Thank you very much, Madam Chair. The -- part of what we use the excess appropriation account for were some child protection things. I assume then that voluntary services, community-based resources, Family Resource Centers, those kind of things would qualify for the excess appropriation account money?

MS. ROUNDS: So the -- the authorized appropriations that happened in the last legislative session, those all have been transferred out of the account to the appropriate accounting unit which leaves the \$20 million balance. The Department has no authority to spend any additional dollars from that excess -- the E triple A account, if you will.

As far as what those funds would be available to be used as, they'd be part of the lapse. We are required to lapse anything that is remaining in that fund. We cannot use it for anything.

SEN. FELTES: Thanks.

CHAIRWOMAN WALLNER: Further questions? Do we have a motion?



\*\* SEN. D'ALLESANDRO: Move the item.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves.

REP. OBER: Second.

CHAIRWOMAN WALLNER: And Representative Ober seconds. Any discussion of the item? All in favor? Any opposed? Item passes.

\*\*\* {MOTION ADOPTED}

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

CHAIRWOMAN WALLNER: Moving on to the Public School Infrastructure Fund.

REP. OBER: That's been withdrawn.

CHAIRWOMAN WALLNER: Is that withdrawn?

MR. KANE: Yes, the Governor's Budget Director, we have a letter on your desk, has withdrawn that item.

CHAIRWOMAN WALLNER: Oh, thank you. Thank you very much. I found it. It's withdrawn. Thank you.

**(10) RSA 206:33-b, Transfers From Fish and Game Fund:**

CHAIRWOMAN WALLNER: Moving on to Tab 10. This is a Fish and Game Department item. We have a motion on this item?

\*\* SEN. D'ALLESANDRO: Move the item.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves and -

SEN. FELTES: Second.

CHAIRWOMAN WALLNER: -- Senator Feltes seconds. Discussion of the item? All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

(11) RSA 215-a:23, IX, and RSA 215-C:39, X, Registration Fees:

CHAIRWOMAN WALLNER: Moving on now to Tab 11 which is also a Fish and Game item. Do we have --

**\*\*** REP. OBER: Move to accept.

SEN. ROSENWALD: Second.

CHAIRWOMAN WALLNER: Representative Ober moves and Senator Rosenwald seconds. Discussion? All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

(12) RSA 216-A:3-g, Fees for Park System:

CHAIRWOMAN WALLNER: And now moving on to Tab 12, talks about the Park System fees. Any discussion?

**\*\*** REP. OBER: I move to approve.

CHAIRWOMAN WALLNER: Representative Ober moves. I have a second?

REP. FORD: Second.

CHAIRWOMAN WALLNER: Representative Ford seconds. Discussion of this item? No discussion. All in favor? Any opposed? The item passes.

**\*\*\* {MOTION ADOPTED}**

(13) Chapter 163:9, Laws of 2018, Department of Administrative Services; Transfer Authority; Consolidation of Human Resources and Payroll Functions:

CHAIRWOMAN WALLNER: Moving to Tab 13.

\*\* REP. OBER: Move to approve.

CHAIRWOMAN WALLNER: Representative Ober moves to approve.

SEN. ROSENWALD: Second.

CHAIRWOMAN WALLNER: Senator Rosenwald seconds. Discussion? All in favor? Any opposed? Item passes.

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: And now we'll go -- if you don't mind we'll go back to the tabled item which was?

MR. KANE: 19-133.

CHAIRWOMAN WALLNER: 19-133. It was in Tab 3.

\*\* SEN. PRESIDENT SOUCY: Move to remove it from the table.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator Soucy moves that we remove it from the table and Representative Ober seconds. And I'll ask that if someone from Business and Economic Affairs could come up. Thank you. Thank you for coming over.

TAYLOR CASWELL, Commissioner, Department of Business and Economic Affairs: I apologize. I was in Manchester and couldn't get here right at 10 o'clock.

CHAIRWOMAN WALLNER: Oh, I'm sorry.

JOINT LEGISLATIVE FISCAL COMMITTEE

May 10, 2019

REP. OBER: See it worked. We tabled to the call of the Chair.

MR. CASWELL: I'm sorry, Ma'am?

REP. OBER: We tabled to the call of the Chair. Because I just came up from Manchester. It was horrible.

MR. CASWELL: Yes. Well, thank you for legitimizing my delay.

CHAIRWOMAN WALLNER: I think that --

REP. OBER: I had a question.

CHAIRWOMAN WALLNER: Yes, Representative Ober has a question on this item.

REP. OBER: Commissioner, my only question was under the explanation, Class 48, contractual maintenance building, it doesn't seem to me that fit-up really fits with contractual maintenance of a building, because you're just moving in. So I was concerned that we were not getting that put into the correct class code so you could spend it appropriately. And we couldn't get that answer yesterday. So --

MR. TAYLOR: So under the Class 48 that we requested, that's for two signs that go on the walls. It's the final bit of our fit-up in our new facility across the street and for some final painting. I think those were -- those were the purposes of that request; but there's no long-term equipment that would be included in that line item.

\*\* REP. OBER: Okay. Madam Chairman, I would move to approve.

CHAIRWOMAN WALLNER: Representative Ober moves to approve. Do I have a second?

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro seconds. Any discussion of the item? All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Thank you for coming over.

MR. TAYLOR: Again, I apologize to the Committee for being late.

CHAIRWOMAN WALLNER: Thank you very much for coming over. So I believe --

**(14) Miscellaneous:**

REP. OBER: We have Item number 14, a Late Item.

CHAIRWOMAN WALLNER: Oh, I'm sorry. Yes, that's right. We do have a late item. I almost passed over. And this is -- this is an item coming to us from the Judicial Council. Does everyone have -- does everybody have the item in their book?

REP. FORD: Yep.

CHAIRWOMAN WALLNER: Any questions on this item? Do I have a motion?

**\*\*** SEN. D'ALLESANDRO: I would move the item.

SEN. PRESIDENT SOUCY: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves and Senator Soucy seconds. All in favor of the item? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

**(15) Informational Materials:**

CHAIRWOMAN WALLNER: Thank you. Now we have Informational items. I don't know if there are questions on any of the Informational items that people would like to have more explanation of.

REP. OBER: Ken, are you going to ask about search and rescue?

KENNETH WEYLER, State Representative, Rockingham County, District #13: Yes, question on search and rescue.

GLENN NORMANDEAU, Executive Director, Department of Fish and Game: Good morning. Glenn Normandeau, Director of Fish and Game.

CHAIRWOMAN WALLNER: Thank you for coming up. I think Representative Weyler has some questions about the search and rescue item.

REP. WEYLER: Thank you, Madam Chair. Thank you, Director, for coming. I know that we were starting to get some good return on the Hike Safety Card, but I don't see it delineated in the revenue that shows up. Is it included and can you show them separately so we know the results of that Hike Safety Card?

MR. NORMANDEAU: It is included. We can, I believe, show it separately; is that correct?

KATHY LABONTE, Business Administrator, Department of Fish and Game: Absolutely.

MR. NORMANDEAU: And it is primarily responsible for our lessening of the strain, if you will, of search and rescue. That card is selling quite well.

REP. WEYLER: That's what I hoped for. I'd also like to see how much from the hunting/fishing license, how much from the boats and so on, and so we see where the revenue is coming from on the search and rescue.

MR. NORMANDEAU: Okay.

REP. WEYLER: Thank you very much.

MR. NORMANDEAU: Yep.

CHAIRWOMAN WALLNER: Thank you for coming up. Any other questions? Thank you very much for coming up. Appreciate it. We don't have to accept the item. It was just informational.

Any other items that anyone would like to have information on? Any informational items?

**Audits:**

CHAIRWOMAN WALLNER: Okay. Seeing none, let's move on to the audit. And I'm going to ask we accept the audits and release them at this time so that --

**\*\*** REP. WEYLER: Okay. I would make that motion that we accept the reports.

REP. OBER: Why are we accepting them now?

CHAIRWOMAN WALLNER: I believe we have some people that may have to leave. We have some other -- other obligations. So if we can do that now we are sure to get that piece.

REP. WEYLER: You wish to do it for all of them?

CHAIRWOMAN WALLNER: I believe you want to do it for all of them. Okay.

REP. WEYLER: All right. So the motion applies to all three audits, accept the report, place on file and release in the usual manner.

CHAIRWOMAN WALLNER: Representative Weyler moves that the audits be accepted and placed on file. Senator Feltes seconds. All in favor? Any opposed? Thank you very much.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Now we'll move into the audits. Thank you. Which item do we start with -- audit do we start? Fish and Game. Thank you. We'll start with the Fish and Game Management Letter.

STEPHEN SMITH, Director, Audit Division, Office of Legislative Budget Assistant: Thank you, Madam Chair. For the record, Steve Smith, Director of Audits for the LBA. Joining me at the table is Collin Quinn from our office and Director Normandeau, Fish and Game, and Kathy LaBonte, Administrator of Fish and Game.

This is the Management Letter related to the Fiscal Year 18 Fish and Game Fund, which was presented to you back in February, I believe. And I would like to just reintroduce Collin Quinn. He's a new manager just recently promoted. If you recall, Pam Veeder was the Manager on this audit. She retired last month. Actually, the end of March. So Collin is graciously willing to step forward and this is his first presentation to the Committee, so.

CHAIRWOMAN WALLNER: Welcome. We'll be easy on you.

REP. FORD: Yeah.

COLLIN QUINN, Audit Manager, Audit Division, Office of Legislative Budget Assistant: Yes.

MR. NORMANDEAU: Be easy on us, too.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**



MR. QUINN: Good morning, Madam Chair, and Members of the Committee. For the record, my name is Collin Quinn here this morning to present the Management Letter Report from the 2018 Fish and Game Fund Financial Audit.

The Fiscal Year 2018 Fish and Game Fund financial statements, including our Auditor's Report were presented to the Committee at its February 8<sup>th</sup> meeting. If you turn to the Table of Contents, you'll note that this report contains 18 Internal Control Observations, three of which are categorized as material weaknesses, and the remaining 15 are significant deficiencies. And at the end of the report we also have three additional State Compliance Comments.

One of these comments, Observation No. 8, you'll see as identified as suggesting legislative action may be required. The Department concurred with 18 of the comments and concurred, in part, with the other three comments.

The Observations begin over on Page 3. And the first Observation a material weakness, this is essentially a summary comment, and it notes that the Department has not established formal policies and procedures to support significant aspects of its financial operations. The lack of formal policies and procedures likely contributed to conditions underlying a number of the Observations contained within this report. And you can see those as they are identified here in the middle of Page 3.

Policies and procedures are an organization 's primary control process for ensuring that appropriate operating criteria are regularly met over time, especially during times of transition. We're recommending that formal management approved policies and procedures be established for all significant accounting and financial reporting activities.

Turning the page to Observation No. 2, we are recommending that the Department establish a formal and documented risk assessment process. Risk assessment activities consisting of

recognizing, evaluating, and responding to financial and operational risks are a critical component of effective internal controls.

Observation No. 3 is our final material weakness comment, and it notes that the Department's real property records do not report a historical cost value for approximately 5200 acres of Department land. And the Department reports that it may have either never received value information for this land or that the value information was lost in a fire at the Department's prior headquarters.

If we use the average value of an acre of land for the Department's properties with values, the Department's cost value of real property is estimated to be understated by approximately \$8.2 million. And we are recommending the Department review its real property records and assign an estimated value consistent with State policy to the properties currently without a supported cost value, and establish policies and procedures to ensure that all future acquisitions of property are properly valued and supported.

Over on Page 7, Observation No. 4 recommends the Department establish a formal fraud prevention detection and reporting program supported by policies and procedures.

The next four Observations we have numbers 5 through 8 address weaknesses in the Department's revenue processing. Beginning with Observation No. 5 on Page 8, we are recommending the Department segregate incompatible functions in the revenue process and, if appropriate, segregation of duties cannot be achieved due to limited staff or other various reasons, that the Department should implement mitigating controls to lessen the risk.

Observation No. 6 recommends the establishment of a front office sales reconciliation procedure supported, again, by policies and procedures that is independent of other related

activities and subject to a separate and effective review and approval control.

Turning the page to Observation No. 7, we are recommending additional control activities, including reconciliation of fees collected to registrations issued as reported by information system reports that are used to distribute the revenues.

Observation No. 8 is on Page 12, and there we are recommending the Department establish a process to better control sales of reduced fee, OHRV, and snowmobile registrations to members of approved clubs. If necessary, also requesting a change in legislation or adoption of rules to encourage the cooperation of the association and clubs in order to allow their members to purchase the discounted registrations.

Observation No. 9 begins on Page 13, and it recommends the Department include consideration of the controls in place at the service organization currently providing on-line license and registration sales for the Department. And this can be accomplished by requesting and reviewing reports that describe the controls in place at the vendor.

Observation No. 10 on Page 15 recommends the Department work with the Department of Administrative Services to implement procedures to ensure that all revenue subject to accrual are identified and revenues in accounts receivable are recorded in the proper Fiscal Year.

Observation 11 recommends the Department obtain and review support for revenues collected by and distributed to the Fish and Game Fund by the Department of Safety. And Observation 12 recommends the Department document its process for charging administrative costs to its dedicated funds. And this include reviewing and documenting the rate charged and the basis for determining which funds should be charged and which funds should not be charged.

Observation 13 on Page 18 recommends the Department strengthen its account payable controls, and Observation 14 recommends the Department review and monitor workers' compensation charges recorded in the Fish and Game Fund by the Department of Administrative Services.

Turning the page to Observation 15, we recommend the Department strengthen its contract monitoring controls, and Observation 16 recommends the Department strengthen controls over ammunition inventory.

Observation 17 recommends the Department establish policies and procedures for the periodic reconciliation of information related to items purchased and changes in inventories. And Observation 18 is over on Page 24. This is our last internal control comment. And it recommends the Department improve the segregation of duties related to data input and review and approval control responsibilities related to the Department's equipment database.

On Page 25 our -- we have our first State Compliance Comment, Observation 19, which addresses financial disclosure forms required by RSA 15-A. And we are recommending the Department continue in its efforts to have all required filers associated with the Department file the required reports.

Observation 20 addresses RSA 206:33-a and the requirement to submit gifts and donations meeting statutory criteria to Governor and Council for approval.

Turning the page to our final comment, Observation No. 21, which recommends the Department file reports required by RSA 206:33. And, with that, this concludes my presentation.

I would like to thank the Department for the assistance we received during the Audit. They were responsive to our requests and comments. And at this time we'd be happy to answer any questions the Committee may have.

CHAIRWOMAN WALLNER: Questions? Seeing none. Mr. Normandeau, would you like to comment on the letter?

MR. NORMANDEAU: Really, I would just, you know, we concurred pretty much with everything. We understand what needs to be done here, and we are intent on meeting our obligations in that respect. Some of the segregation of duties issues are difficult for us simply 'cause we have so few people in the Business Office that it's difficult to have one person whose job is to overlook another person when, in fact, you know, everybody sort of has to do everything because we don't have enough positions. But, you know, we'll figure that out.

The one Observation mentioned was relative to OHRV is that as some of you may be aware, club members get a break in their registrations. And we have absolutely zero ability to -- nor any legislative authority to get databases or information from the clubs to understand who is and who is not a current member, never mind reconciling that in our databases of registrations to figure out, you know, who's entitled to that break and who is not. If they come in with a card that they belong to somewhere, then they essentially get that break. And -- and, you know, I haven't figured out in my own head yet how you're going to take dozens of clubs, some of whom are probably keeping records on yellow lined legal pads, and actually get an up-to-date timely information that we can actually use for snowmobile and OHRV registrations, but that may be left to better minds than me. But, anyway, it's -- it's an issue and it's been an audit issue every year in our -- in the -- which is the audit we get done every year?

KATHY LABONTE, Business Administrator, Department of Fish and Game: That would be the single audit.

MR. NORMANDEAU: The single audit. This comes up every year in that, as well as this financial audit. So it's a problem that I am not sure how it's going to get solved, but it definitely sits there.

Beyond that, we are aware of Governor's order relative to having 30 days from this presentation to present a plan to solve these issues, and we will make sure that we comply with that.

CHAIRWOMAN WALLNER: Thank you.

REP. OBER: Madam Chairman.

CHAIRWOMAN WALLNER: Yes, Representative Ober.

REP. OBER: Director, I'm glad you mentioned this because this is the one that I had highlighted here, not only your concurrence but the whole thing. With the paragraph above your concurrence says, if necessary, the Department should consider requesting a change in legislation or adopting rules requiring the cooperation of the associations and clubs.

I'd like to hear from LBA exactly how you think the Department can require cooperation from volunteer clubs, many of whom have three or four people running a club but may have 50 or 60 people paying membership. I mean, exactly how do you think they're going to accomplish this, because you wanted to consider the change in legislation. But I don't see anything that guides us in what you think is going to solve their -- what you perceive as their problem. And I'm not sure it's Fish and Game's problem in this case.

MR. SMITH: I guess the concern we have is this. It's a -- Fish and Game, number one, is not -- has no information, has no ability to verify that reduced fees are righteous if you can call it that. We can't -- I would say at this point we don't know exactly or can't recommend exactly how that would happen legislatively or in the rules or whether it's even possible. But I think what we're trying to get at is at least try to pursue that to see if there is a way that they can make sure that the Department is receiving the revenue that they should receive and the discounts are being given by the -- out there appropriately, so.

REP. OBER: Follow-up, Madam Chairman?

CHAIRWOMAN WALLNER: Yes.

REP. OBER: I'm struggling to understand why an audit would put -- I mean, this was considered a material weakness so this is a major problem -- onto an agency for something that I don't think anybody knows how to resolve since we're not accepting that they show a membership card and that's enough. How do we resolve that? And why are we -- I'm struggling with why we're asking the agency to resolve something that I'm not sure is resolvable when we do have some serious issues here. Lack of policies is one. The fact he's got a very small staff and we need to divide duties is, you know, you're looking at some serious things.

This one, to call this a material weakness, I'm struggling with that as opposed to a minor change or just ignoring it if we can't come up with a real recommendation that you give to him to implement. Because this will sit out there looking like they've done nothing. How do we resolve that, Steve? I mean, you know, we are putting an agency at a real disadvantage.

MR. SMITH: I think when we raised the issue, number one, this is not categorized as a material weakness. It's a significant deficiency. This is Observation No. 8 on Page 12 that you're referring to. It's a significant deficiency, not a material weakness.

REP. OBER: You're right. My apologies. It's still a black eye for them.

MR. SMITH: I think in the team's discussion and back and forth with the Department, I believe they -- they expressed the fact that they have no authority. And so one of the ways, perhaps, that they can get authority is through legislation. If that is not possible, that kind of falls outside of our expertise, if you will. But at least explore that option to see if there is anything they can do with legislation or with rules

or with the -- the clubs themselves, as to whether they do have something. At this point there didn't appear to be any interaction whatsoever with the clubs to check, to reconcile, or to validate that discounts that are being given are proper.

REP. OBER: Thank you.

CHAIRWOMAN WALLNER: Representative Weyler.

REP. WEYLER: Thank you, Madam Chair. Thank you, Director. Thank you, Steve, for the Management Letter.

We in Division II, as you know, have the oversight of Fish and Game. We will see to it that we'd like to have copies of this distributed to the seven members of Division II - or two of us already have them - the other five. And all the members of the Fish and Game Committee will get together with them to try to come up with a solution to this. I can think of several I'd like to discuss with you offline that could work and ensure that we are following some process to maintain the fact that we're only giving discounts to the appropriate people, so.

CHAIRWOMAN WALLNER: Representative Lovejoy.

REP. LOVEJOY: Thank you, Madam Chair. Looking at the current -- current status of prior audit findings, the one that kind of disturbs me is the annual job performance evaluations. Our employees in the state are our most valuable asset and all employees deserve to have annual job evaluations, and this is from a report in 2012, and it's listed as something that's in process. You either do evaluations or you don't do evaluations. I'm not sure how it's being processed, and I don't understand why something that employees deserve to have annual evaluations, why that's not being completed?

MR. NORMANDEAU: I thought we had pretty much cleaned that up.

MS. LABONTE: We are in the process of doing that.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**



REP. LOVEJOY: It's been six years.

MS. LABONTE: And in all honesty it's much, much better than it has been in the past. And I believe if -- like someone were to go in HR and review performance evaluations --

REP. LOVEJOY: Hm-hum.

MS. LABONTE: -- it would be even much better than in process to the point of having two solid dots right there. We have a new HR administrator who -- about a year and a half, and she has strictly mandated that all supervisors conduct annual performance evaluations.

MR. NORMANDEAU: I mean, to my recollection we were up-to-date. I don't know as -- as of the last I knew. I'm not sure where that was at.

REP. LOVEJOY: This audit -- follow-up -- audit report says as of December 21<sup>st</sup>, 2018, that it was still in process.

MR. NORMANDEAU: You know, we had everybody that I'm aware of up-to-date as of the end of the calendar with the anticipation of the whole Step 9 thing coming in with the Collective Bargaining Agreement and everything. We were under a deadline to have everything done so that -- that we would, you know, be on track with that. And I thought as of basically New Year's we were totally on track.

MS. LABONTE: In order to qualify for that Step 9, they had to have a current performance evaluation on file.

REP. LOVEJOY: It may be this is as of December 21<sup>st</sup> and maybe you met it by December 31<sup>st</sup>. It's just an area that it's one of those bugaboos with me. I think all employees deserve to have annual evaluations, and we should be doing it, obviously, in all of our agencies.

CHAIRWOMAN WALLNER: Thank you. Further questions? Thank you very much for coming up and giving the audit. We've already accepted it and put it on file so move on to the next one.

MR. NORMANDEAU: Thank you.

MR. QUINN: Thank you.

REP. WEYLER: We'll be in touch.

CHAIRWOMAN WALLNER: Which one they going to do to now?

MR. SMITH: Next will be Liquor.

Thank you, Madam Chair. So the next audit we'd like to -- actually, report we'd like to present is the Management Letter which is related to the financial statement audit we performed for Fiscal Year 18 for the Liquor Commission.

Here to present the audit from our office is the Manager on the job, Jean Mitchell. And joining us from the Commission is Chairman Mollica and Tina Demers, the CFO.

JEAN MITCHELL, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, Members of the Committee. For the record, my name is Jean Mitchell. We're here this morning to present to the Committee the Fiscal Year 2018 Management Letter of the New Hampshire Liquor Commission. This report is a by-product of our Fiscal Year 2018 financial audit of the Commission. The Commission's financial statements, including our auditor's opinion, was presented to the Committee during the February meeting.

This Management Letter report contains six comments; four are related to internal control, one of which is a material weakness, and two are State Compliance Comments. The Commission concurs with five of the comments and concurs, in part, with one of the comments, and none of the comments suggest that legislative action is required.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

Observation No. 1, a material internal control weakness begins on Page 3. Management Letter since 2013 have reported material weaknesses in the Commission's core financial accounting and reporting resources. Those prior audit comments recommended the Commission enhance its operations by employing additional staff that have financial accounting reporting expertise, appropriate for the Commission's operations.

Again, in Fiscal Year 2018, the Commission's ability to prepare accurate and timely financial statements was challenged as the Commission continues to lack sufficient staff with financial accounting and reporting expertise, appropriate for the scope and complexity of the Commission's operations.

The Commission's accounting and financial reporting involves some of the more complex financial transactions and activities occurring in State Government. The Commission's a \$700 million a year operation, operating 79 stores and maintaining \$82 million of product and inventory.

As noted in the first numbered paragraph of the comment, in 2017 a consulting firm recommend the Commission add a financial reporting section to the Commission's organization. In our view, the level at which the financial reporting section was added is not at a sufficiently high enough level in the Commission's organizational structure to attract candidates with the education, experience, and other credentials necessary to meet the Commission's needs.

The second numbered paragraph of the Observation describes the Commission's continued reliance on one key financial employee being willing and able to perform significant overtime hours. Placing so much reliance on the continued performance of a single employee is a significant organizational design weakness that contributes to this ongoing material weakness. The recommendation states the Commission must commit appropriate resources to implement staff, a financial accounting and

reporting structure appropriate for the size and complexity of its operation.

As recommended since 2013, the Commission must enhance its financial accounting staff. The Commission should locate these positions sufficiently high in the organizational structure to provide resources and visibility necessary to attract candidates with the education, credentials, and other experience necessary to meet the Commission's needs.

Also, the Commission should not allow by design or default its financial operations to rely on an unreasonable amount of overtime hours being worked by one employee. The Commission should rely -- should realign work assignments to allow for greater division of responsibility and to build redundancy into critical operations.

Observations No. 2 through 4 outlines areas where the Commission should strengthen its policies and procedures, supporting financial operations. Observation No. 2 begins at the top of Page 6.

As discussed in detail in the items numbered 1 through 5 of the Observation, the Commission experienced difficulties in determining and supporting its June 2018, reported \$91 million balance of accounts payable.

We recommend the Commission review and expand its policies and procedures to promote employee understanding of both Commission and State policies and work is performed with due care, including effective review and approval controls. The weakness in the financial structure noted in Observation number 1 also played a role in the Commission's difficulty in determining and supporting its accounts payable.

Observation No. 3 speaks to the need for the Commission to review and document objectives related to its gift in promotional card programs. We recommend the Commission implement policies and procedures to meet the administrative objectives of

managing, controlling and recording the related financial activity, as well as review its gift and promotional card redemption data to determine whether the assumed redemption rate reflects the redemption pattern of sold and issued cards.

The last internal control comment, Observation No. 4 on Page 9, recommends the Commission review access controls of its information systems, including its automated time clock system. The review should ensure that the policies and procedures are appropriately -- appropriately designed and in operation to meet Management's objectives and system security needs, including notification of responsible parties of new and terminated users. The compliance comments begin on Page 10 with Observation No. 5.

This comment recommends the Commission comply with Executive Orders which require audited entities to submit and periodically state action plans addressing audit findings.

The last Observation the report is located on Page 11, and it recommends the Commission adopt administrative rules related to discounts offered to licensees as required by RSA 178:28, or that they request revision to the statute if the Commission determines the required rules are not necessary. The Appendix, beginning on Page 13, summarizes the December 21<sup>st</sup>, 2018, status of comments from the Management Letters of Fiscal Years 2017 and 2016. Of the three comments contained in the 2017 report, one is fully resolved and remediation is in process for two. Of the 14 comments in the 2016 report, eight are fully resolved, remediation is in process for five of the comments, and one comment remains unresolved.

I'd like to really thank the Liquor Commission Management staff for their assistance during the audit and this concludes my presentation.

CHAIRWOMAN WALLNER: Thank you. Questions for the auditor? Representative Lovejoy.

REP. LOVEJOY: Thank you, Madam Chair. Thank you for taking my question. One of the issues that's noted on Page 5 and for Management's response talking about, you know, that the previous comptroller was only there for a year, and then they had a new one. It sort of reminds me of an issue we had with the State's Comptroller. We were burning through those people at a pretty good clip because we were expecting too much out of them. And when we finally got an Assistant Comptroller, I think that the Commissioner of DAS would admit that it made a significant difference. We are requiring too much work out of somebody which is also related to all of these other issues that they're getting the right level of staff. I think that it's something that really needs to be done.

JOSEPH MOLLICA, Chairman, New Hampshire Liquor Commission: I don't disagree with that at all, Representative. That wasn't the case with the Comptroller that was in place that we -- that we had for a year.

REP. LOVEJOY: Okay.

MR. MOLLICA: It wasn't that. His level wasn't equal to what the Commission needed, and I think that he felt that as well. Our CFO now is, obviously, very astute and has been with the Liquor Commission many, many years, and has a great understanding of the operation. And we fully agree -- and we fully agree with the finding that we do need someone equal to the CFO in a position of an assistant. Equal to or over.

We originally when I started at the Liquor Commission I had asked for a Director of Finance and the -- the House and Senate weren't willing to make that change at the time. So we made a lot of internal changes to make the CFO the head and the COO the overseer of the CFO. That works very well. So now we're in a position where for everything that we've done we have a successful business. And we've grown by \$192 million in ten years, and we need an additional position. And we -- I couldn't agree more. So it's something that we are working on. It's something that will be done.

CHAIRWOMAN WALLNER: Further question? Representative Ober.

REP. OBER: Thank you. I want to piggy-back on Representative Lovejoy's question because it asked half the question. The CFO at DAS was turning over for two reasons, and one of them was that person was legislatively targeted to go out and help every other agency. And I know you guys got a lot of help, especially when Mr. Murphy was there. We changed that law as well as providing a person. So providing a person was half the problem. But changing the law was probably three-quarters of the problem, because that got rid of the many hours that the DAS CFO was putting in in other agencies.

So what we see in the legislation that has passed concerning you that should be changed, because that was the resolution over in DAS. It was two-sided person but changes. So what are the changes?

MR. MOLLICA: Well, internally we've made the changes. I think that the Observation says that there's -- there's a -- specifically we recommend a head of accounting and reporting position equal to or above the current financial officer. So from that standpoint, I don't feel we need any legislative changes to get this done.

REP. OBER: Okay. If I could follow-up then. We did -- Tina requested we fund in the budget two years ago additional staff in your office, including another accountant. I kind of hoped we would see some of these, when I look at Page 13 and 14, some of these 2016 recommendations go away. Because we did provide some extra staff so. And I know they're marked as in process, but I agree with Representative Lovejoy's question of the previous people, how can it be in process. It's either done or it's not done. So we have a little problem with that. Where are we with actually resolving some of those core financial accounting and reporting issues that was Observation 1?. I mean, really did hope with that additional staff we'd see some of this improved.

TINA DEMERS, Chief Financial Officer, New Hampshire Liquor Commission: I agree, and the problem has been the turnover that we've had in trying to get some continuity with that staff. We had a Comptroller that was there for a year who left us kind of in a bind. And the current comptroller only started in June of last year. So she had no opportunity to learn how the business runs. She's been there now for a year, and she's doing a great job.

As far as the AP section, part of that issue is we had a lot of turnover in the lower level positions. So the AP supervisor had to step in and help so we had the trickledown effect. So we had a couple of people in the AP Department that actually were promoted into other positions in other sections in the Finance Department. So now we have, you know, new people in the lower end that we're training and trying to take that pressure back off the AP supervisor.

REP. OBER: Are you fully staffed now?

MS. DEMERS: Right now we currently have a finance associate position that's vacant, and we have one that's deployed. Somebody in AP deployed. So we are down two people.

REP. OBER: Down two people. Madam Chairman, I have one more question.

CHAIRWOMAN WALLNER: Yes.

REP. OBER: Commissioner, on Page 8 I would be very interested to know, this was a recommendation you concurred in part. What part did you not agree with?

MR. MOLLICA: Well, the policies and procedures of the gift card as with any business have changed. One of the things we constantly look at is how best to advertise our business and how best to get consumers here. So one of the things that the information we're pulling now is what type of lift do we get when we do discounts? What type of lifts do we get when we do



gift card sales, and we see initially the lift is pretty good. If we do 150, 25 off on 150, that \$25 gift card brings in about \$48 on the return sale. So that lift is good.

What we're also looking at is the way we advertise our business. So, initially, for many years we've advertised on-line, Twitter, Facebook, and we've done regular radio. Now our competition in Massachusetts, Total Wine, is almost exclusively print. So what we've changed in the last three months is doing more print ads, especially the *Boston Globe* on Wednesdays and Sundays. They're a brick and mortar business as we are. And, as I've said, they're very effective at what they do. So we're just trying to follow-up with what we do to make sure that we're running our business as effectively as we can. I don't necessarily concur with the part that we -- that we don't utilize gift cards or we don't utilize the types of sales, American wine sale, Italian wine sale. Those types of things we are looking at. I'm not sure that into the future that's the most effective way.

We're an outlet. People come to outlets for a reason, and they come to outlets for discounted name brand products. So I'm looking at a way to cement that in the 55% of the cross border consumers that come here.

REP. OBER: Thank you.

CHAIRWOMAN WALLNER: Thank you. Further questions? Seeing none. Thank you very much for the audit. And, as you know, it's already been placed on file. Thank you.

MR. MOLLICA: Thank you very much.

MS. DEMERS: Thank you.

CHAIRWOMAN WALLNER: Going to move on now to the Wetlands Bureau Permitting Audit.

MR. SMITH: Thank you, Madam Chair

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

CHAIRWOMAN WALLNER: Thank you.

MR. SMITH: As you stated, this is our performance audit over the Wetlands Bureau of Permitting. Here to present the audit is the Senior Manager who's in charge of it, Steve Grady. And joining us from the Department is Commissioner Bob Scott and also George Kimball, the Chair of the Wetlands Council. He's joined us as well. So with your permission, I'll turn it over to Steve and he can present the report.

CHAIRWOMAN WALLNER: Thank you.

STEVE GRADY, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning. For the record, I am Steve Grady. I was the in-charge auditor for the Wetlands Bureau Permitting Performance Audit. The audit's Objective was to determine how effectively the Department managed bureau permitting during State Fiscal Years 2016 and 2017. I'll be summarizing the report's seven Chapters and 60 Observations.

Of the 60 Observations and Recommendations the Department concurred with 57 and concurred, in part, with three. The Wetlands Council was the focus of ten Observations and Recommendations concurring with three, concurring, in part, with four, and not concurring with three. Sixteen Observations may require legislative action. The Executive Summary begins on Page 1.

The Executive Summary addresses the most significant concerns that we identified, which included a lack of adequate management controls to, objectively demonstrate Bureau Permitting achieved expected outcomes, prevent abuse, waste, and regulatory overreach, ensure statutory and regulatory compliance, effectuate Department strategy and continuous improvement, and resolve prior audit findings.

The Council created to oversee and advise the Department was marginalized, no longer fulfilling its statutory purpose.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

Instead, the Department utilized ad hoc bodies of select interest groups to provide detail input on Bureau operations. This subordinated the legislatively established control of formal Council oversight to informal and unaccountable ad hoc groups compromising transparency.

Most of the Management control deficiencies that we identified were rooted in long-standing, statutory requirements or were the subject of prior audit findings; some were both. Most of the Management controlled deficiencies were long-standing. Current Management did not create the control construct, but neither could current Management demonstrate how controls were improved or how expected outcomes were achieved.

Chapter 1 on Strategic Management begins on Page 23.

The Department's Management controls were the framework within which Bureau Permitting occurred. On Page 26, Figure 1 illustrates relationships between Management control systems and their interdependence. Each Chapter corresponds to a major control system. Throughout we applied a maturity model to management controls and found most controls were at an initial level of maturity, the lowest level. This is illustrated on Page 27 in Figure 2.

For those with an interest, the maturity model itself is on Page 85 in Appendix A. Absent or deficient control systems contributed to or accommodated abuse, waste and opportunity costs, regulatory overreach, persistent statutory, regulatory, and procedural non-compliance, inconsistent permitting outcomes, and no demonstrable program outcome, ineffective performance management and compromised transparency.

A control system over the operating environment and organizational culture was absent. Organizational culture depends on an operating environment and a positive culture can help Management achieve outcomes. Management lacked an ongoing systematic approach to strategy development and planning and

managing risk. Strategy was outdated, incomplete, lacked implementing plans and was not risk-based.

Prior external evaluations identified numerous Management control deficiencies. For example, we re-examined the 19 Observations from our 2007 audit and found broad non-resolution as depicted on Page 43 in Figure four.

The top bar in Figure 4 illustrates the audited status of Department efforts to resolve 2007 audit findings.

Bureau Permitting was to prevent despoliation and unregulated alteration of submerged lands. However, fixation on past accomplishments rather than linking task completion to outcomes persisted. In our 2007 audit, we illustrated for the Department the relationships between inputs, processes, outputs, and outcomes. On Page 48, Figure 5 again illustrates these relationships.

More than a decade after our 2007 audit, the Bureau lacked the system to demonstrate objectively the effects of its permitting, its outcomes.

The Council was established to implement the laws allowing the Department to permit wetlands development. However, the relationship between the Council and the Department neither reflected statutory expectations nor was it structured to fulfill statutory requirements.

In Chapter 1 we make numerous Recommendations to Department Management to improve controls, including those over the operating environment and organizational culture, strategy, planning, and risk management, and performance measurement and achievement of outcomes. We also recommend the Department leverage the Council to the fullest extent envisioned by State Law. We recommend the Council fully meet its statutory obligation.

If the Council cannot or will not fulfill its obligations, we suggest the Legislature consider dissolving the Council and apportioning its responsibilities to other entities.

Chapter 2 on the regulatory framework starts on Page 77.

The regulatory framework was the basis for the Bureau's Permitting program. Absent or deficient controls contributed to 52 Observations. Our detailed review of rules identified over 500 issues, including overreach, ad hoc rule enforcement, ambiguity, undue complexity, misinterpretation and misapplication of statutory provisions.

Our 2007 audit contained nine Observations recommending changes to rules, none of which were resolved. Rules incompletely defined jurisdiction were not constrained to their statutory purpose and were outdated. Rule thresholds were not underpinned by objective standards tied to outcomes. One of the 85 rule standards we examined had some form of scientific underpinning as illustrated on Page 88 in Table 2.

The Department lacked systematic objective methods to evaluate the cost of Bureau regulations. Extensive ad hoc requirements increased costs. The absence of controls to ensure rules were clear, coherent, and complete contributed to non-compliance and inconsistency. Despiliation central to the Bureau's reason to exist was not mentioned in rules. Remedy-known inadequacies the Bureau engaged in ad hoc rulemaking by systematically augmenting rules with numerous requirements that were not properly incorporated into rule and enforcing these non-binding requirements on the public. This widespread ad hoc rulemaking contributed to abuse, non-compliance, and inconsistency.

Policies and procedures implementing rules were inadequate further contributing to inconsistency and ad hoc rulemaking. None of the 16 policy-related recommendations made in our 2007 audit were fully resolved. We make numerous recommendations to Management, such as constrain rules to their statutory purpose,

such as preventing despoliation, simplifying regulatory framework, clearly defining jurisdiction, discontinuing ad hoc rulemaking, and ensuring policies and procedures conform to rules.

Chapter 3 on permitting outcomes begins on Page 119.

The controls necessary to effectively achieve permitting outcomes were at an initial level of maturity while subsystems maturity ranged from initial to repeatable, the two lowest levels of maturity. Absent or deficient controls contributed to 59 Observations. Customer service efforts focused on measuring customer service inputs and outputs and not outcomes. Deficient controls over permitting decision consistency contributed to inconsistent permitting outcomes, statutory non-compliance and compromised due process. Denial rates were unassessed and the potential for bias was uncontrolled.

Permit conditions were inconsistently underpinned by statute or rule, judgmentally established, subject to ad hoc change or creation, and not tied to programmatic outcomes.

The quality control process to help ensure consistency called peer review lacked clear and sufficiently detailed policy, and Management either ensured employees understood requirements nor monitored and enforced compliance. We found non-compliance with 47 of 58 applicable peer review requirements in a sample of permit application files.

Application processing was inconsistently timely. Time limits were not inclusive and some controls were ill-designed. Other controls were focused on not failing to meet statutory time limits instead of processing applications as quickly as possible. Timeliness is summarized on Page 152 in Table 8.

Red-colored cells in Table 8 indicate non-compliance. All other colors indicate compliance.

Inadequate Council rules and their inconsistent application inhibited the timely resolution of appeals. The Council did not track its own performance. Neither were remands to the Department tracked to ensure timely action was taken. One of the two remands during the audit period essentially disappeared. The appeal docket did not contain an outcome and the permitting file was missing.

We suggest the Legislature consider establishing overall time limits to the permitting process and requiring the Department develop time limits or interim steps. We recommend Management improve controls and tie customer service performance to outcomes, ensure permitting is consistent and permit conditions are reasonable.

Refine the peer review process. Timely act on appeals and remands, and monitor performance. We recommend the Council timely handle appeals and remands, revise its rules and monitor its performance.

Chapter 4 addresses permitting process deficiencies. We found numerous deficiencies existed. Several Observations were repeats from our 2007 audit or had central elements in common with prior audit Observations. Typically, prior audit Observations were not fully resolved. The issues we identified contributed to 40 Observations and led to inconsistency and some compromised due process. Others resulted in opportunity costs.

We recommend numerous process improvements, including adopting relevant rules, aligning rules with statute, developing and improving policies and procedures, measuring and monitoring performance, and reviewing fees and avoiding over collections.

Chapter 5 on organization, administration, and staffing begins on Page 225.

Employees were instrumental to achieving outcomes. Permitting decisions were dependent upon their knowledge, skills, and abilities. Employee effectiveness rested upon the

control's management design, implemented, monitored, and approved. However, the maturity of the controls necessary for effective organization, administration, and staffing range from an initial to repeatable level.

Absent and deficient control systems contributed to 52 Observations and contributed to waste in several areas, and inadequate focus on permitting as we depict on Page 243 in Figure 13.

Using unaudited Department data, the top bar in Figure 13 illustrates the Bureau expended 25% available staff time on the task most closely associated with permitting.

Inadequate controls over credentials in the application of judgment left only six of the 33 Bureau employees with permit application technical review responsibilities holding related professional certifications or licenses.

We make numerous recommendations to Management to improve Management controls over workforce planning, strategy, administration, and staffing.

Chapter 6 addresses Knowledge Management. Effective Knowledge Management can facilitate data-informed objective decision making, help managers achieve objectives, and ensure, transparency. Five audits dating back more than two decades address related topics; but deficiencies persisted and continued -- and contributed, excuse me, to 53 Observations, confusion, inconsistency, non-compliance and a lack of transparency. We make numerous recommendations to Management to improve related controls, comply with statute, improve data quality, and evaluate effectiveness.

Chapter 7 addresses Wetlands Council Management. A largely volunteer Council was responsible for and struggled with a wide variety of controls. Inadequate or absent controls led to significant non-compliance with federal statutes, including the Right-To-Know Law, external reporting statutes, the Financial Disclosure Law, and the Administrative Procedure Act. We



recommend the Council improve or develop adequate controls to help ensure the achieved expected outcomes and complies with statute.

To conclude, properly-based reasonable rules could establish the basis for the policies and procedures necessary to operate a consistent transparent permitting program. Proper utilization of the Council could help improve objectivity, consistency, and transparency. Proper implementation of strategic management, including comprehensive performance management, could help demonstrate Bureau outcomes more than three decades after the permitting program was formalized in its current construct. Until clear, data-informed connections are made between permitting and outcomes, determining whether the Bureau achieved its purpose of preventing despoliation and regulating development of protected shorelands will likely be impossible. Developing and implementing a consistent transparent regulatory program has huge expected outcomes would appear to be a multi-year undertaking, requiring investment of considerable effort by the Department's newly-formed Management team.

The Department has committed to publishing an outcomes focused Corrective Action Plan 30 days after this audit is released, an important early step. However, the Legislature may wish to exert additional oversight of the Department's efforts due to the extensive number of unresolved prior audit findings, the current lack of a detailed time phase remedial action plan making it clear what the Department actually intends to do and when, and the diminished oversight role of the Council which appears likely to continue.

I would like to thank the Department, the Council and numerous stakeholders for their assistance during this audit. Unless there are any questions from me, I'll be followed by Commissioner Scott.

CHAIRWOMAN WALLNER: Questions for the auditor?

REP. OBER: I have a question for the LBA.

**JOINT LEGISLATIVE FISCAL COMMITTEE**

**May 10, 2019**

CHAIRWOMAN WALLNER: Yes, Representative Ober.

REP. OBER: Mr. Kane, he appeared to have been reading his report, which was excellent. Could a copy of that report be e-mailed today to all members of the Performance Audit Board?

MR. SMITH: Yes.

MR. KANE: Yes.

MR. Smith: I'll take care of that.

REP. OBER: Thank you. Thank you for your report.

MR. GRADY: Yes, Ma'am.

CHAIRWOMAN WALLNER: Further questions of the auditor? Seeing none. Mr. Scott.

ROBERT SCOTT, Commissioner, Department of Environmental Services: Thank you. Again, for the record, I'm Bob Scott, Commissioner with the Department of Environmental Services.

CHAIRWOMAN WALLNER: Pull the microphone over to you.

MR. SCOTT: So, first, let me state the Department is appreciative -- I'm appreciative of the State resources spent. The team spent over a year looking at the Wetlands Bureau, and we do believe this effort will improve the Department as well as the -- certainly the Bureau. Obviously, we don't agree with every -- every word in the report. Having said that, we obviously concur, by and large, with the recommendations and are committed to the corrections. That's my most important thing I want to communicate.

I will note that most of the Observations ultimately point to Management deficiencies. And since the reporting period, and if I could, I want to point out a couple people we've put on

staff here. Since that reporting period, we've created a Labor Grade 35 in charge of the Land Resource Management Unit, which includes the Bureau in question. Our intention was to provide more management and more management oversight. We were able to fill that position finally in February and Sarah Yuhus Kirn is doing that.

Similarly, we have three divisions in the Department. We've had the Division Director position had been vacant for almost a year. We were very fortunate, in my opinion, in March to get -- have a new have Division Director, Tom O'Donovan. He brings a wealth of experience. He retired from the Army Corps of Engineers. He used to be District Commander in Portland, Oregon. He spent six years at the Bonneville Power Authority and many other big projects. He's not only an engineer, he has vast management experience. He's been in charge of more than 5,000 people, I believe, over a time frame. So that's an important addition to the management team. And from my own -- for your edification, since the reporting period I'm the new Commissioner. I'm not new anymore, but since that reporting period. So you have a lot of different people in place, also. I wanted to point that out.

We -- another thing I'd like to point out is the administrative rules for the Wetlands Bureau, wetlands permitting, we are just finishing up. We were in JLCAR last Friday, had a very good meeting, and with some minor corrections we expect this coming Friday those will be approved. That was a major undertaking.

An advantage of the audit was they were able to do a deep dive into the current rules and current practices to make sure that these new rules do what they need to do and answers not all the management issues clearly, but a lot of the inconsistencies being talked about. The ad hoc rulemaking we believe are answered in that rulemaking which is a major undertaking. That's something that has been ongoing, but we feel the timeline is interesting. We're before you today and we think we'll finish up that next Friday.

The other thing I definitely wanted to mention, also, is Corrective Action Plan. So as the auditor team mentioned, we had unresolved audit Observations from prior years. I -- you know, again, this is a "trust me" question issue for you, I guess. We have Tom and his staff have already started. In fact, we can pass this out if you want. This is just a metric for -- for the tracking and implementation. We have a charter, internal charter, making sure we include the appropriate resources for Corrective Action Plan. We have tracking in place. We'll have a more fleshed out plan, obviously, within the 30 days of this report out. And, most importantly, I think -- I shouldn't say most importantly -- as important to having a Corrective Action Plan is making sure that we -- this is a lasting impact. We don't, obviously, the corrections we need to do we understand need to be lasting and that perhaps was lacking in the past, also.

So, with that, we're certainly happy to put questions for you. I also mention to the extent for the Council's involvement, we're very committed to continuing to work with the Council in any capacity that serves them.

CHAIRWOMAN WALLNER: Questions? Yes, Representative Ober.

REP. OBER: Commissioner, thank you. I can't remember when you last left the agency, but you were actually in air, weren't you, not in water?

MR. SCOTT: That's correct.

REP. OBER: On Page 100, you had responded -- and I'm glad you mentioned rulemaking -- your response was we'll address them through current and future rulemaking. And I appreciate that, because on Page 99 we see a number of bullets and, unfortunately, these were about rules. And it says -- I mean, the third bullet says the statute did not provide for such a limitation and that's on a dock. And above it you used rules established to prove standard dimensions for all docks that

could not be exceeded, but used a temporary seasonal dock threshold which didn't require a permit.

So when you talked about rules, have every one of these things where you had rules that exceeded statutory authority been removed and replaced so that we will when you get back to JLCAR next time quickly see an improvement here?

MR. SCOTT: By and large, I believe so. I say by and large, obviously, we have our legal staff look at all these. So I believe -- so, first of all, unequivocally every one of these have been addressed to our satisfaction. I'm not sure a hundred percent sure to the LBA's satisfaction; but my understanding to your question is absolutely yes.

REP. OBER: So are we going to include LBA so we make sure the next audit you guys don't -- we don't see this again as part of that review process?

MR. SCOTT: I don't want to speak for Steve, but I think they were very involved in tracking the rulemaking process. Is that a fair statement?

MR. GRADY: We tracked the rulemaking process, that's correct.

REP. OBER: Okay. Thank you.

CHAIRWOMAN WALLNER: Further question. Representative Weyler.

REP. WEYLER: Thank you, Madam Chair. It's the worst audit I've seen in 20 years. Mr. Grady has done a very thorough job of showing us the failure of an agency, and especially because it goes back for decades. When I sat on the Planning Board in the '90s, all I heard was complaints from the developers over all the rigamarole they had to go through and delays they had with getting dredge and fill permits. If there's anybody challenges

you in court, you're going to lose. Just going to put this down as evidence, and the case is going to go against you.

This is really serious. Nobody's taken any serious action in 20 years as detailed in here. There's waste, there's such a problem with someone whose job is permitting spending only 25% of their time on permitting. That's outrageous.

I'm going to ask that copies of this be given to the Executive Departments and Administration Committee in the House and I don't know if they're willing to take on this project with 60 different or 16 different findings that have to be corrected legislatively. So there's going to be a lot of work with them between the legislators and your Department because this -- this is -- this is some long-standing thing that nobody has done any corrective action on and I hope you have the right managers and you probably need to replace some more. But I'm hoping that within the next six months we see some real changes here. And I hear about it from developers that things have been smoothed out and timelines are met. We've put in legislation through the years where time lines were always being late. I believe they still are. So got a real challenge ahead of you here.

This is -- this is very detailed on what the thing is and I've seen Mr. Grady's work before. I don't think he's being particularly negative. I think he's really delineating things that have been going on for a long time and I appreciate his work. I wish you well in your efforts going forward. Thank you.

MR. SCOTT: If I could, and I'm -- not to be argumentative but, for instance, at the JLCAR last week, including the developers, they were all supportive of the rules that went in place. We are actually in, as you likely know, for a fee increase to make sure we can maintain the staffing at the, you know, the wetlands program. Excuse me. I went off for a second.

And even in that, if you look, the developers are either supportive or not taking a position on the fee increase for a reason. So the feedback we've been getting of late, at least

I've been getting, is permitting times are being met, is the level of satisfaction has gone up. But as you allude to, you can't change history either. So I'm not for a moment suggesting there's not work to be done.

REP. WEYLER: Just to reply, though, at one point someone in the Department said that you were flexible in your hiring because, obviously, when the economy is down there's very little developing going on. There's very little request for permits. When the economy goes up, it's -- they're rushing in there with a hundred permits a day. And we have to be very flexible. Supposedly the permitting fee was paying for hiring the personnel from what I heard in the past.

MR. SCOTT: Again, I don't want to -- I don't know if the Chair wants to go into fee. One of the problems with the fee structure change is over the years slightly different than the audit report obviously.

REP. WEYLER: Right.

MR. SCOTT: Is over the years the program has lost General Funding and federal funding to the tune of 11 positions. So that the fee structure which was set in statute a dozen years ago was based on those assumptions. Those assumptions have changed. And as you're aware, House Bill 1104 truncated times which -- which caused other issues. So I would argue that in that dozen years since the last fee structure change, the landscape has changed considerably, the assumptions that went into that.

REP. WEYLER: The legislation we anticipate should also reflect that to help you there.

MR. SCOTT: If I understood the response, I believe so, yes.

REP. WEYLER: Thank you. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Further questions or comments for Mr. Scott? And I do know that Mr. Kimball is here who is the Chair of the New Hampshire Wetlands Council. I didn't know if he would like to also say something.

GEORGE "TIP" KIMBALL, Chair, New Hampshire Wetlands Council: Yes. My name is Tip Kimball -- George Kimball. I want to thank you all for having me here and taking time to listen to all this. And the -- we did pass out an addendum to our response and the only purpose of that addendum is that pagination changed in the report. There was slightly expanded things and really no change in our position; but we just didn't want people wandering around looking for pages that don't exist anymore.

And before I get into my comments, I just want to remind everybody that there is a federal statute called the Clean Water Act. And that the most important thing that this Bureau does for the citizens of the State of New Hampshire is that we have what's called a State General Permit. And when you get a permit from the State of New Hampshire in almost all cases, not really major projects, but when you get the permit from the State of New Hampshire, you do not have to go and argue with the Army Corps of Engineers in Concord, Mass. I think they are still, and attempt to get another permit from them to do the same thing, such as some people in other states have to do.

So when you talk about changing or making dramatic efforts and talk about how poor this process is or what the rules are or aren't, these are at least also a set of rules and a set of operations that have been approved by the Army Corps and, in fact, that's been re-upped a couple years ago. So I think we want to keep that in mind.

And moving on to a couple items from our point of view. In addition to what we said in our response, we were kind of shocked by the practices here. We're all business people on the Council, almost all in technical fields. And some of the things that were done here simply, you know, aren't the types of things



that are done in business. And it seemed like it was sort of what I'll call prosecutorial in approach. So that was a little bit of a surprise to us.

And the second thing I want to talk about and just mention is this non-public requirement for the audit. Now, in our case and the Department's everything is non-public. All our meetings -- I mean, public, excuse me. We never go into non-public session. Okay.

CHAIRWOMAN WALLNER: Yeah.

MR. KIMBALL: In fact, the error that Steve pointed out, and he's correct, that we occasionally have to go into non-meetings with our attorneys and we categorize those as non-public in error. The only time we've ever gone into non-public session was twice, since I've been there in 2007, was twice with Mr. Grady. And, in fact, I'm now pretty convinced personally that the actual part of statute 91-A that we use really wasn't a clear legal reason for us to do that; and I could get into that but I won't bother. And this non-public requirement also can hide their performance and our performance and our responses. I was -- so that's, you know, that's an issue.

Mr. Grady said that he might recommend that the Council be disbanded. Well, he included that in a statement which is maybe non-public in his product so he just said it so I will say it. We took that as a threat, because the way it was written was that if we don't agree with Mr. Grady, he would say we should be disbanded. I could see that he could say if what you believe, and I'll get to what we believe in a minute, is correct, we should change the system. If you want to, that's up to you.

So -- and, also, to my way of thinking protect -- prevent discovery of errors in the auditee are that it's our errors. For instance, I really didn't see anything from the Department coming back through Mr. Grady that were errors that they think we may be making. And I also didn't feel we had necessarily the fullest opportunity that we expected to comment on their

process. But he found a lot so maybe he found everything, more than everything.

And the thing that I say is the biggest failure here isn't a failure of Mr. Grady or a failure of us, but it's a failure of this whole system that we've got operating is that you're not capitalizing on these audit findings from past audits. And this was clearest when we had in the fall this dispute about the 15-A:6 financial requirements.

Now that had been discovered before in an audit of DRA apparently in 2014, somebody told me; but -- and in another audit. That error which is a simple clerical error, and we thank Mr. Grady for finding some of these errors, there about four of them that are simply statutes that we were completely unaware of. So that should be dispensed now to say the 60 other groups, councils, boards that are like us, and it should be dispensed to the agencies. And then even just in a simple letter say, hey, those turkeys over at the Wetlands Council haven't been filing an organizational chart that's required by 15-A:4.

Well, as one of my members said, we have been to training four years on 15-A, no one mentioned the organizational chart. So I think that's something that needs to be picked up on. And, obviously, that kind of follow-up is a thing that people do in industry all the time.

When I was a member of the Board of Directors of New Hampshire Electric, I was on Seabrook Joint Owners Committee, and they pick up every little thing after they have an incident. They also look at instances from other places, and they really dig into it. And I think we could, you know, serve to expand these a little bit.

I just had a few comments based on what Steve said on -- he mentioned one remand had disappeared and this is part of the problem that we felt with the audit. It's mentioned, but we were not told which docket number they were referring to, and we asked for it. So we really didn't have a way to know what this

is. I have a suspicion what it is, which was an interesting situation. We won't mention it, but -- so that's a problem.

The other thing, if you look at what we're commenting on, much of our disagreement has to do with the audit's claim that we have oversight. Oversight is not mentioned in the statute. The words are consult and advise, not oversee and advise as Steve says. And when you interpret a statute as that's what we do all the time, you look at the words that are in the statute. You don't decide that this is oversight. This constitutes oversight. You say this is consulting and advising or whatever it is.

So that's been a problem and there are several other areas where we had disagreements in the legal interpretation of our requirements. It seems that at some point, and maybe you don't want to do this, I can see reason for having two different opinions, but the advice that we get from the AG Civil Division should be made consistent with what the LBA is saying, particularly in something as simple as meeting minutes. It seems you can come to an agreement as to what constitutes a legal set of meeting minutes in the whole process, which is not clear to me either. We did, given that we went to training in late March, and we still couldn't figure out what a couple of the items were and why what we were doing wasn't correct. I'll stop.

CHAIRWOMAN WALLNER: Thank you. Do we have questions for Mr. Kimball? Yes, Representative Lovejoy.

REP. LOVEJOY: Thank you, Madam Chair. Thank you. You stated at the beginning that by doing the permitting ourselves people, developers, don't have to go to the federal level. If we do such a poor job of administering our permits, would our businesses be better off not going through New Hampshire and just going to the federal level?

MR. KIMBALL: No, no, no.

REP. LOVEJOY: I mean -

MR. KIMBALL: The answer is that we probably don't do as poor a -- we definitely don't do as poor a job in the eyes of the Corps of Engineers, okay, as -- as the audit has shown. I say we. They. We just say whether they're right or wrong.

CHAIRWOMAN WALLNER: Further question.

MR. KIMBALL: If you want to have unhappy constituents, send them to Concord, Mass.

CHAIRWOMAN WALLNER: Further questions? Further comments? Seeing none. Thank you very much for appearing before us. As you know, the report has already been accepted and put on file. Thank you. Unless there's other business to come before the -- yes. The next meeting is going to be June --

MR. KANE: I think it's 10<sup>th</sup>.

CHAIRWOMAN WALLNER: I have it in my phone.

MR. KANE: Second Friday in June.

REP. LOVEJOY: Second Friday in June.

CHAIRWOMAN WALLNER: Second Friday in June.

DAVID HUOT, State Representative, Belknap County, District #03: The 14<sup>th</sup>.

MR. KANE: The 14<sup>th</sup>, that sounds --

CHAIRWOMAN WALLNER: The 14<sup>th</sup>. Next meeting will be June 14<sup>th</sup>. Friday, June 14<sup>th</sup>.

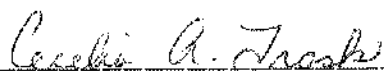
MR. KANE: Yes.

CHAIRWOMAN WALLNER: Unless there's other business, I'll adjourn the meeting. Thank you.

(Meeting adjourned at 11:46 a.m.)

## CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

  
\_\_\_\_\_  
Cecelia A. Trask, LSR, RMR, CRK  
State of New Hampshire  
License No. 47

