

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE MINUTES

March 18, 2024

The Legislative Performance Audit and Oversight Committee met on Monday, March 18, 2024 at 10:00 AM in the LOB Room 212.

Members in attendance were as follows:

Rep. Ken Weyler
Rep. Gerald Griffin
Rep. Lucy Weber
Rep. Keith Erf
Rep. Mary Jane Wallner
Sen. Cindy Rosenwald, Chair
Sen. Carrie Gendreau
Sen. Rebecca Whitley
Sen. Howard Pearl
Sen. Timothy Lang

The meeting was called to order by Senator Rosenwald at 10:00 AM.

VOTE ON ACCEPTANCE OF THE AUGUST 11, 2023 MEETING MINUTES:

On a motion by Senator Lang, seconded by Senator Gendreau, that the minutes of the August 11, 2023 meeting be accepted. **MOTION ADOPTED.**

STATUS OF ONGOING PERFORMANCE AUDITS:

Christine Young, Director of Audits, provided the Committee with brief updates of ongoing performance audits:

- Mental Health Workforce Licensing – the audit is complete and was presented to and released by the Fiscal Committee in October 2023.
- Special Education Dispute Resolution Process – the audit is complete and was presented to and released by the Fiscal Committee on March 15, 2024.
- Commission for Human Rights – we are near the end of the audit, and we expect to provide a draft report to the Commission in the next few weeks.
- State Oversight of Special Education – we estimate we are approximately halfway through the audit. The audit scope is very large, involving numerous federal and state laws. We

expect a lengthy report with over 40 observations. We anticipate having a completed draft report by the end of the year. There was a discussion of the scope of the audit, but no additional action was taken.

- Secretary of State’s Archives and Records – this Committee approved the audit at its last meeting in August, and the Fiscal Committee approved the topic in September. It was Secretary Scanlan’s position that the Archives may not be subject to a performance audit. He asked the Attorney General’s office to review whether or not a performance audit can be performed. We have not received any further information; therefore, we are unable to move forward with an audit until this matter is resolved.

After much discussion with the Secretary of State and Sr. Assistant Attorney General Christopher Bond, the Committee voted to remove the Secretary of State’s Archives and Records audit. On a motion by Representative Weyler, seconded by Senator Lang.
MOTION ADOPTED.

- Department of Education Freedom Account (EFA) Program – HB 1135 requires a performance audit of the NHED EFA Program. An entrance conference with the Department took place on January 9, 2024. During the planning phase, we encountered a scope limitation which could significantly affect our ability to move forward with the audit possibly envisioned by the legislature.

There are ambiguities in the language of HB 1135 and the NHED contract with the Children’s Scholarship Fund that has created a scope limitation for the LBA. The NHED and its AG representative have a different interpretation of the chapter law and the NHED contract than that of the auditors. The Commissioner identified a number of concerns he had with the LBA’s approach. Mike Kane, Legislative Budget Assistant, told the Committee the auditors will continue to work with the NHED to determine what can be audited.

SUSPENDED, TABLED, AND POTENTIAL AUDIT TOPICS:

- Department of Environmental Services Appeals Process – Representative Smith on behalf of the Judiciary Committee spoke, as the Department has four different appeal boards (Air Resources, Water, Waste Management, and Wetlands), leading to the introduction of HB 1614. Representatives McWilliams and Manos clarified that a potential performance audit could broadly cover the appeals process as a whole. The topic remains on the list of potential audits.
- Bureau of Elderly and Adult Services – was suspended in November 2021 due to a legal proceeding, and no update has been received. The topic remained tabled.

- Public Access to Bodies of Water – was tabled due to another committee potentially being responsible for the issue. The topic remained tabled.

Senators Lang and Pearl suggested the LBA provide a briefing regarding long-tabled topics to inform members of the committee for the next meeting.

- Interplay between DHHS Division of Children, Youth, and Families and the Bureau of Children’s Behavioral Health – remained on the list of potential audits.

DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting is scheduled for April 29, 2024, at 9:00 AM. Senator Rosenwald adjourned the meeting at 12:38 PM.

Sen. Cindy Rosenwald, Chair



State of New Hampshire

HOUSE OF REPRESENTATIVES

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April 7, 2024

Senator Cindy Rosenwald, Chair
Performance Audit and Oversight Committee
General Court of New Hampshire
State House Room 120
107 North Main Street
Concord, NH 03301

Dear Senator Rosenwald:

It was good to see you on Monday, March 18, 2024. As we presented to the Committee, a bipartisan group of Representatives on the House Judiciary Committee are requesting a performance audit of the Department of Environmental Services (DES) administrative appeals process. As you may know, under the current system, decisions made by DES can be appealed to one of four subject matter councils (Air Resources, Water, Wetlands, Waste Management), and the decisions of these councils can then be appealed to the New Hampshire Supreme Court.

Our committee has received conflicting information regarding the fairness and efficiency of the current appeals process. Some people assert that DES and the councils tend to favor development interests, particularly as concerns solid waste, at the expense of protecting the environment, while others assert the opposite – that DES and the councils are so overly protective of environmental concerns that they inhibit legitimate development of critically needed housing. We also have heard complaints that the memberships of the councils are too large, that there is a lack of continuity of members assigned to hear specific cases, that the councils do not apply their rules consistently, and that they take far too long to render decisions. In addition, some critics have asserted that the current system makes it very difficult, if not impossible, to present new evidence to the decision-makers if the facts or circumstances change after the initial DES decision. This has led some to suggest that a de novo appeal to the superior court should be available in these types of cases, or that the standard of review by which such appeals are scrutinized by the supreme court should be changed.

We wish to emphasize that we do not take a position on the merits of any of the above issues because we currently do not have sufficient information to make informed decisions regarding these matters. Obtaining such information is precisely why we believe a performance audit of the DES appeals process is so critically important.

We respectfully request that you consider this topic for a future performance audit. We and members of the committee would be happy to provide additional information that you might consider necessary in making your recommendation.

Sincerely,

Representative Robert J. Lynn, Chair, House Judiciary Committee
Representative Marjorie Smith, Ranking Member, House Judiciary Committee
Representative Joe Alexander, House Judiciary Committee
Representative Zoe Manos, House Judiciary Committee
Representative Rebecca McWilliams, Prime Sponsor, HB1614

CC: Performance Audit and Oversight Committee Members

**Legislative Performance Audit and Oversight Committee
RSA 17-N:1**

**April 29, 2024
9:00 AM
LOB Room 212**

Informational Item - Overview of Tabled Performance Audit Topics

1. Public Access to Bodies of Water

An LBA performance audit has never been conducted in this area. The topic was first proposed during the May 10, 2022 meeting based on a suggestion from a legislator. An LPAOC member identified the Public Water Access Advisory Board (PWAAB) as the likely State agency responsible for the issue, therefore the topic was tabled. Access to public waters is governed by RSA 233-A. The PWAAB is composed of 19 members representing various interests and commissions. It is responsible for coordinating activities of state agencies in public access efforts. While an audit could focus on the activity of the PWAAB, there were no specific claim of a problem.

2. The Doorway Program

An LBA performance audit has never been conducted in this area. The Doorway Program was proposed during the August 11, 2023 meeting, and has been listed as a potential topic since. The Doorway Program connects those suffering from opioid use disorder and substance use disorder with 24/7 support and resources, providing a single point of contact. The program uses federal funds from the Substance Abuse and Mental Health Services Administration’s State Opioid Response Grant. The Doorway Program was established in 2019 by the State after receiving the grant. The current grant is for over \$28 million this year and the program received third-party revenue and State funds totally approximately \$11 million.

The Doorway Program is hosted at nonprofit hospitals in nine cities across New Hampshire, “known doorways,” which provide services such as screening and crisis stabilization, evaluation and care planning, and continuous recovery monitoring. Beyond this, the Doorways also provide referrals for specialized treatment and hold trainings that relate to education and awareness of substance use disorders. The hospitals that host the program submit monthly invoices and are reimbursed based on cost by the Department of Health and Human Services. A performance audit of the Doorway Program could assess the effectiveness of the program.

3. Department of Environmental Services Appeals Process

The Department of Environmental Services (NHDES) has been the topic of three LBA performance audits, but its appeals process specifically has not been reviewed. The topic was first proposed at the LPAOC’s March 18, 2024 meeting, by legislators. The administrative appeals process of NHDES is governed by RSA 21-O:14. The appeals process is segregated between four councils – Air Resources, Waste Management, Water, and Wetlands – and which council hears an appeal depends upon which NHDES program gave rise to the decision. A performance audit of the appeals process of NHDES could examine current practices under the four councils and make

recommendations for how to improve the processes. Of course, auditors could not second guess decisions these councils made, but would focus on the councils' ability to follow laws and rules defining their process and documenting the timeliness of decisions. (Also see the letter sent to Rep. Rosenwald in the handouts.)

4. Office of Professional Licensure and Certification

The LBA has conducted performance audits, which included the Office of Professional Licensure and Certification (OPLC), of the following agencies:

- Mental Health Workforce Licensing (5 Boards, 2023),
- Board of Dental Examiners (2022),
- Real Estate Commission (2017), and
- Naturopathic Board of Examiners (2017).

The OPLC – governed by RSA 310-A – oversees the administration of 47 occupational licensing boards. The topic was first discussed during the June 12, 2019 meeting. The original intent was to look at the OPLC holistically, as the office had been in the process of reorganizing. The OPLC audit topic remained on the list of potentials until March 12, 2021, when the LPAOC voted to terminate the topic due to crossover with the Board of Dental Examiners performance audit. The topic was brought back to the attention of LPAOC during its May 10, 2022 meeting, and has been tabled ever since. A performance audit could address whether OPLC is efficient and effective in issuing licenses and providing administrative support to the licensing boards. However, the OPLC has recently taken over more control of issuing licenses and more time could be beneficial to assess its performance.

5. Bureau of Elderly and Adult Services, Choices for Independence

The LBA conducted a performance audit of the Bureau's Medicaid Long-term Care Program in 2009. *This topic was suspended* in November 2021 due to ongoing State and federal litigation against the Department of Health and Human Services' Bureau of Elderly and Adult Services (BEAS). There are two active lawsuits involving this program. One is a federal class action suit within the New Hampshire District Court, and the other is a State suit within the Merrimack County Superior Court. The federal suit had a trial notice as of February 2024. It is unknown when trial will begin. The State suit will have a trial management conference in September 2024.

The BEAS is responsible for oversight of the Choices For Independence (CFI) program. The purpose of CFI is to provide in-house care to seniors and adults with chronic illnesses who qualify for Medicaid and nursing facility services, so they may continue to live independently within their homes. In-home care is provided by contracted organizations which are reimbursed through Medicaid rates set by the State. Services include nursing, personal care, and homemaking. Current issues within this program reportedly include low wages and staff shortages.

6. Contract Management by the Department of Health and Human Services

An LBA performance audit has never been conducted in this area. A potential audit topic was discussed in August 2023 regarding the Department of Health and Human Services, Bureau of Contracts and Procurement. This topic focused on the number of different contracts and their disbursement among departments within Health and Human Services. Additionally, there was interest in who decided on deliverables, any Department follow-up, and total dollar amount to each contractor. Department personnel provided a memorandum to LPAOC members and presented an overview of the bureau and its current procurement processes. The DHHS provided information exhibiting an agency-wide approach to providing oversight of its many contracts.

7. Bureau of Developmental Services

The LBA conducted a performance audit of the Department of Health and Human Services' Bureau of Developmental Services (BDS) in 2016. In August 2023, four subtopics of a BDS audit were proposed for review: 1) the system redesign and its effects on billing and services, 2) housing practices, 3) contract process, and 4) policy implementation. Some discussion focused on housing practices, specifically on availability within New Hampshire and outplacing residents in other states at high costs. There was also a suggestion this topic (or the subtopics) might be more appropriate for a study committee, rather than an audit.

8. Interplay of Division of Children, Youth, and Families and the Bureau of Children's Behavioral Health

An LBA performance audit has never been conducted in this specific area. This topic originated from an incident in which two children from New Hampshire were placed in an improper non-therapeutic facility in Tennessee. There was interest in the interplay between the Division of Children, Youth, and Families and the Bureau of Children's Behavioral Health, which often worked with the same children, and how the out-of-state placements happened. This raised the larger question of how the two systems worked together and whether more system integration was needed. It was mentioned the Bureau had a large budget and that children were getting pushed into the Medicaid system. There was general concern private insurance was not covering what was necessary.