

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE
MINUTES

June 12, 2019

The Legislative Performance Audit and Oversight Committee met on Wednesday, June 12, 2019 in Room 212 of the Legislative Office Building.

Members in attendance were as follows:

Sen. John Reagan, Chair
Sen. Jay Kahn
Sen. Bob Giuda
Sen. Lou D'Allesandro
Sen. Martha Fuller Clark
Rep. Lucy Weber
Rep. Lynne Ober
Rep. Richard Barry
Rep. Mary Jane Wallner
Rep. David Huot

The meeting convened at 10:57 AM.

ACCEPTANCE OF MINUTES:

On a motion by Representative Weber, seconded by Representative Ober, that the amended minutes of the March 11, 2019 meeting be accepted.

MOTION ADOPTED.

CURRENT STATUS OF ONGOING PERFORMANCE AUDITS:

Stephen Smith, Audit Division Director, informed the Committee three performance audit reports completed and presented to the Fiscal Committee since the LPAOC's previous meeting; the Adult Parole Board, the Department of Environmental Services (DES) Wetlands Bureau Permitting, and the Therapeutic Cannabis ID Card Timeliness.

Mr. Smith informed the Committee of two audits currently in process: the Department of Education, Bureau of Vocational Rehabilitation; and the Liquor Commission, Division of Enforcement and Licensing. Entrance meetings had been held for both audits. Scoping had begun for the Liquor Commission, Division of Enforcement and Licensing, and the scope statement for the Bureau of Vocational Rehabilitation was to be discussed momentarily for consideration and approval.

DISCUSSION AND APPROVAL OF PROPOSED SCOPE STATEMENT FOR THE BUREAU OF

VOCATIONAL REHABILITATION:

On a motion by Representative Ober, seconded by Representative Weber, that the scope statement for the Vocational Rehabilitation Program performance audit be accepted.

MOTION ADOPTED.

SEEK AND DISCUSS NEW AUDIT TOPICS:

The Committee discussed potential ideas for future audits and chose four audit topics: 1) Department of Administrative Services, Office of Cost Containment; 2) Board of Dental Examiners; 3) Office of Professional Licensure and Certification (OPLC); and 4) Department of Health and Human Services, Sununu Youth Services Center.

There was much discussion on the potential scope of the OLPC audit. Members mentioned a survey of the attached boards to collect output measures (like number of licenses issued and timeliness of their issuance). This would not be the normal "deep dive" into auditees' operations that the LBA usually does.

On a motion by Senator D'Allesandro, seconded by Senator Fuller Clark, that the four topics be added to the audit topic list.

MOTION ADOPTED.

OTHER BUSINESS:

Chairman Reagan requested clarification from the Committee as to whether they would like to receive a hard copy or a PDF copy of audit reports. The Committee members requested a hard copy of each report, with the exception of Representative Weber, who would like a PDF copy.

DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting will be at the call of the Chair.

Chairman Reagan adjourned the Committee at 11:34 AM.

John Reagan, LPAOC Chair

**STATE OF NEW HAMPSHIRE
OFFICE OF LEGISLATIVE BUDGET ASSISTANT, AUDIT DIVISION**

**PROPOSED PERFORMANCE AUDIT SCOPE
LIQUOR COMMISSION - DIVISION OF ENFORCEMENT AND LICENSING**

In October 2018, the Legislative Performance Audit and Oversight Committee approved an audit of the Division of Enforcement and Licensing (Division) within the Liquor Commission (Commission) focused on the efficiency and effectiveness of Division operations, and interaction between the Division and State, county, and local law enforcement. We held an entrance conference with the Commission and Division in June 2019.

BACKGROUND

Following repeal of national prohibition, the Legislature created the Liquor Control Commission to regulate the manufacture, distribution, and sale of certain alcoholic beverages in the State. In 1934, the Legislature changed the agency's name to the State Liquor Commission, added liquor to its regulatory purview, provided for the creation of State-run liquor stores, required all wine and liquor sold in the State to first be purchased from the State, and allowed the Commission to employ special agents to investigate violations of State liquor laws. Subsequently, the Commission was obligated to optimize profitability, maintain proper controls, ensure effective and efficient operations, and provide service to its customers. In 1997, the Commission was assigned responsibility for the regulation of tobacco sales and enforcement of related laws. The Commission was also a member of the Governor's Commission on Alcohol and Drug Abuse Prevention, Intervention, and Treatment and operated within the State's strategy to reduce the percentage of New Hampshire residents misusing alcohol and other drugs.

Managerial Framework

Management was responsible for developing a system of control designed to help the Commission achieve objectives, operate efficiently and effectively, report reliable information, and comply with laws and rules. Controls can help assure accountability and encompass the plans, methods, policies, and procedures the Commission used to fulfill its mission and accomplish strategic plans, goals, and objectives.

Strategy and planning were integral to effective management control. The Division was committed to public safety, and pledged to enforce laws in a fair and uniform manner; work towards the elimination of underage drinking, thereby reducing the problems associated with underage consumption; reduce the incidents of drinking and driving; and provide prompt and courteous service. The last published Commission document alluding to a strategy was dated 2011 and excluded the Division. Commission consolidated annual financial reports (CAFRs) did not include Division performance goals, targets, and outcomes. Division planning and the setting of goals and objectives was intermittently documented and certain output metrics were tracked, but outcomes were unmeasured. No plan or quantifiable goal or objective was clearly tied to the State's strategic goal of reducing alcohol misuse, although many qualitative Division goals appeared as though they could support State strategy.

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Organization

The Commission's organizational structure should help the Division achieve objectives. The Division was created in 2009 and was overseen by an unclassified Director. As of June 2019, the Division had 44 part- and fulltime positions with six total vacancies, of which 27 positions were sworn law enforcement officers. The Division consisted of two major subdivisions:

- administration - focused on licensing, auditing, tax collection, direct shipper oversight, and training; and
- field operations - focused on enforcement, internal security, loss prevention, and investigations.

The Division also had an analysis unit, responsible for collection and analysis of relevant data, and a special investigations unit, responsible for prevention, investigation, and prosecution of internal and external theft; investigating crimes and accidents occurring on Commission property; and investigating other matters as assigned by the Commission. The Division's three main functions, enforcement, licensing, and education, were reported to be so interconnected that disaggregating them would result in inefficiency and compromise effectiveness. Both major subdivisions held responsibilities for enforcing statute and rules, investigating licensee compliance, and initiating corrective actions, which included education. Through calendar year (CY) 2014, the Division was a nationally-accredited law enforcement agency, and reportedly planned to regain accreditation by CY 2021. The Division's expenditures were over \$3.9 million in State fiscal year (SFY) 2018, and nearly \$4.6 million was budgeted for the Division in SFY 2019.

Enforcement

Liquor investigators were primarily engaged in field enforcement activity. Investigators had similar authority to other law enforcement officers, but were focused primarily on the Commission's statutory mandate. Investigators responded to complaints; undertook traffic enforcement with other agencies, investigations, and crime scene processing; managed the State's drug recognition expert program; and inspected licensed establishments. Investigators also provided licensee education and training; recommended fines, revocations, and license suspensions; and collected licensing fees and enforcement fines. The Division expected to conduct 6,500 inspections in SFY 2018 and 6,550 inspections in SFY 2019. It also expected 12,800 calls for service in SFY 2018 and 12,900 in SFY 2019. Historic concerns with consistency in enforcement actions, the scope of Division enforcement activities, and segregation of licensing, enforcement, and adjudication functions were reported by management to have been recognized and addressed.

Licensing And Auditing

The Commission had at least 44 license types specified in statute and rule, and information on these licenses was spread across several websites, guidance documents, and forms. The 44 license types were additionally subdivided into nearly 100 distinct license types and subtypes. As of May 2019, 5,520 individuals and establishments were listed in Commission data as licensed,

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with three license types representing 4,020 (72.8 percent) of these licenses: restaurant licenses (1,453, or 26.3 percent of all licenses), combination licenses (1,351, or 24.5 percent), and direct shipper permits (1,216, or 22.0 percent). The Division expected to process 550 new licensee applications in SFY 2018 and 570 new licensee applications in SFY 2019. It also expected to conduct 270 licensee audits in SFY 2018 and 275 audits in SFY 2019 to ensure compliance and accurate taxation. The investigation of liquor license applicants was to help ensure only proper persons were licensed. Concerns with complexity were reportedly recognized by management and generalized discussion on how to reduce complexity reportedly occurred, with significant changes expected beyond SFY 2019.

Education

Education and outreach were seen as integral components to the Division's operations. The Division reported educating licensees, other law enforcement agencies, and the public on alcohol management by attending public alcohol-related events, training law enforcement agencies and licensees, and publishing alcohol safety related materials. The Division also maintained an online training and social media presence. The Division expected to provide live and on-line educational services to 4,300 students in SFY 2018 and 4,350 in SFY 2019. Prevention of underage consumption of alcohol was considered a key outcome to keep youths healthy and safe. Reportedly, education and training were essential to the Division reaching its goal of reducing the number of alcohol related incidents.

Prior Audits

The Commission was the subject of several prior LBA audits, including one recent performance audit, and we have annually issued management letters addressing Commission operations since CY 2013. A total of 11 observations and one other issue and concern potentially affect Division operations. The Commission's remediation of the conditions leading to these findings was mixed. Reportedly, four were resolved, six were in the process of being resolved, and none were unresolved. There was no status reported for one observation and the other issue and concern.

AUDIT SCOPE

We will design the audit to answer the following question:

Did the Division of Enforcement and Licensing effectively and efficiently regulate alcoholic beverages during State fiscal years 2018 and 2019?

To address this question, we plan to:

- review relevant State and federal laws, rules, orders, policies, procedures, plans, studies, audits, guidelines, and similar materials;
- review relevant studies, plans, audits, guidelines, and related materials from academia, interest groups, other states, and similar entities;
- interview Commission officials and staff with relevant responsibilities;
- obtain perspectives from external stakeholders; and

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- obtain, review, and analyze relevant State records and data.

We will examine relevant matters outside the audit period when they bear on Division operations during and after the audit period, and we will examine Commission management control systems when they affect Division operations.

We do not plan to examine:

- tobacco-related enforcement, licensing, or other functions;
- grants and contracts;
- general or application controls over Commission information technology systems; or
- elements of the Commission management's system of control subject to a scheduled LBA financial audit.

We expect to report to the Fiscal Committee of the General Court on this audit in the third quarter of SFY 2020.