

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

Legislative Office Building, Room 212

Concord, NH

Monday, February 29, 2016

MEMBERS PRESENT:

Sen. John Reagan, Chair

Sen. Jerry Little

Rep. Lucy Weber

Rep. Raymond Gagnon

Rep. Laurie Sanborn

Rep. Richard Barry

(The meeting convened at 1:02 p.m.)

1. Acceptance of minutes of the November 5, 2015 meeting.

SEN. REAGAN, Chairman: We'll call the meeting to order.
Have a motion on the minutes of November 5th.

****** SEN. LITTLE: Move approval.

REP. GAGNON: Second.

CHAIRMAN REAGAN: Any additions, deletions or corrections
to the minutes? All those in favor?

***** {MOTION ADOPTED}**

SEN. REAGAN: Status of ongoing.

2. Current status of ongoing and pending performance audits:

STEPHEN C. SMITH, MS, CPA, Director, Audit Division, Office
of Legislative Budget Assistant: Good afternoon. For the
record --

REP. WEBER: Could I just ask if there are printed copies to
handout?

STEPHEN P. FOX, PhD, Audit Supervisor, Audit Division,
Office of Legislative Budget Assistant: Anyone else?

REP. SANBORN: I'd love one.

MR. SMITH: Good afternoon, Mr. Chairman. For the record, I'm Steve Smith, the Director of Audits for the Office of Legislative Budget Assistant. And before I go over the status of the ongoing audits, I would like to mention that the very first bullet there, the Bureau of Developmental Services Audit that was presented to the Fiscal Committee and I believe this month and has been accepted by them.

On the next two bullets, the Business Processing Function Consolidation, we do have a draft report completed. It is with the Department of Administrative Services. They have replied with a sundry of questions on it, and we are waiting for formal responses from them. And we hope to have an exit meeting with them by the 7th of this month, and our goal is to present this to Fiscal on the 18th. So we're hopeful for that, but we'll be working with the Department to try to make that happen.

The next item there on the WorkReadyNH Program, we have completed field work. Both the report and our Observations are being drafted. And we are -- again, we are targeting the April Fiscal meeting for that presentation as well. So we're nearing the end of that audit.

The next two items on your agenda there, both of those topics were approved at your last meeting back in November. DOT Bridge Maintenance, we held an entrance meeting with them back on January 14th. The Scope Statement Steve will go over with you shortly. We have begun conducting interviews and finalizing our audit plan and other types of field work, and we are targeting completion late May, maybe June on that for presentation to Fiscal.

And the Safety -- Department of Safety, Homeland Security and Emergency Management, we held an entrance meeting with them on February 9th. We're conducting interviews, background and

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

scoping is on the way with that. We'll probably have a Scope Statement with you or at the next meeting. And, again, we are looking at the June-July time frame to finish that and present that to Fiscal.

The other two topics, DoIT and the Environmental Services, Air Resource Division, those two topics were approved at the last meeting, and we have not begun any work on those two topics at this point in time.

And the last item there is to keep that in our queue. That has to do with the -- that's the 2017 per the legislation that is when that audit will be conducted.

So those are all the approved topics' status that are in our queue at the moment. And any questions at this point? Seeing none, I'll have Steve come up and present the DOT Scope Statement.

3. Discussion and approval of Scope Statement for the Department of Transportation, Bridge Maintenance performance Audit.

DR. FOX: Good afternoon, Mr. Chairman, and Members of the Committee. For the record, my name is Stephen Fox. I'm the Performance Audit Supervisor for the LBA Audit Division. As Director Smith has already informed you, we did have our entrance conference with the Department of Transportation management personnel in January of this year. They have seen the Scope Statement, they have commented on it, and at this point there is no concern with the Department in regards to the Scope Statement as it's before you today.

Bridges are a critical component of the transportation system in the state, constitute about two-thirds of the replacement value of the transportation system.

During 2015, there were over 3,800 bridges that were owned either by the State or municipalities; 2160 of those bridges or about 56% were owned by the State. The Department's Division of

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

Operations, the Bureau of Bridge Maintenance, is responsible for in-house bridge maintenance, repair and rehabilitation of certain amounts and certain amounts related to design work. And they also have a Bureau of Bridge Design which plans, designs, and prepares plans for contracted bridge maintenance, rehabilitation, and replacement projects. That Department -- that Division or Bureau also is responsible for inspecting and rating State and municipal bridges.

Preserving assets is a core issue and a system goal of the Department. And so in that respect when we talk about maintenance of bridges, we are not just talking about ongoing repairs. We are talking about both replacement and preservation. And since ongoing inspections are key functions in that monitoring bridges and rating them, both, they do that with the mind towards those three things, preserving, maintaining, and replacing.

The State's bridges were routinely inspected and assessed at varying intervals, depending upon their condition and their construction. Inadequate structures may have been classified as structurally deficient or functionally obsolete under Federal standards.

The Department is required to include structurally deficient bridges on what they call the *Red List*. The *Red List* includes bridges both that are in and out of service. Those that are out of service could be considered to be mostly historical structures, and a small number will always remain on the *Red List* according to the Department and still be kept in-service. Just because it's on the *Red List* doesn't mean that it is unusable. It means that it's -- it needs to be addressed. The issues with it need to be addressed sooner rather than later.

Red-listed bridges are inspected twice yearly due to known deficiencies. And in 2014 there were 153 deficient State-owned bridges or 7% of the State-owned bridges altogether. All but 24 of the *Red List* bridges were scheduled for some form of maintenance, repair, or rehabilitation, and the unscheduled bridges were awaiting action were unfunded or a low priority.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

There were another 100 -- 791 State-owned bridges on what they call the "Yellow List". The "Yellow List" is basically one or two conditions away from being on the *Red List*.

Bridges have a designed useful life and are designed based on the prevailing standards at the time that they were constructed or designed. And bridge preservation, as I indicated earlier, one of the areas that we broadly consider to be maintenance includes repair and rehabilitation actions or strategies that prevent delay or reduce deterioration, restore functionality, keep bridges in good condition, and extend their useful life.

Ongoing routine maintenance is necessary throughout a bridge's lifecycle. It can delay the need for rehabilitation and replacement, and can extend the bridge's useful life and is generally considered to be cost-effective.

Rehabilitation involves repairs beyond maintenance to sustain an appropriate level of service, can also delay the need for replacement and is generally considered to be a moderate cost.

Finally, replacement involves construction of a new structure or significant reconstruction of an existing structure, and is often inevitable and generally considered the high cost. The DOT has programs to both do all three to preserve, maintain, and replace bridges as a component of its asset management strategy.

Our audit on the bottom of Page 2, the audit scope, what we're going to -- what we propose to do in this audit is answer the following question which is: How efficient and effective were the Department of Transportation's bridge maintenance and preservation practices during State Fiscal Years 2014 and 2015? And in order to answer this question, the bulleted list on Page 3 will be some of the methodological elements that we included in this which is, of course, reviewing State Laws, the budgets, administrative rules, policies, procedures, plans and guidelines, interviewing key DOT personnel, look at other

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

audits, review, evaluation, and guidance from other states, as well as the Federal Government.

We plan to go out and observe DOT field operations, as well as their office practices, and review relevant performance data and records and compare those with relevant guidelines and accepted practices.

We don't expect to include any railroad bridges or any non-State-owned bridges in this audit. We anticipate completing the audit in May of this year and presenting our report to the Fiscal Committee at its June meeting. Be happy to answer any questions that you may have.

SEN. REAGAN: Questions.

REP. WEBER: Thank you. If you know. This is really more on the Department's side of things, but where -- in which category does a bridge that's been closed because of structural deficiency?

DR. FOX: That be a red-listed bridge.

REP. WEBER: They continue on the *Red List* even though it's been out of service for now six years or something?

DR. FOX: *Red List* bridges do include out of service bridges.

REP. WEBER: So until they fall down.

DR. FOX: For historical significance they may rebuild. The one on Route 9, for instance, the Old Stone Bridge over the Contoocook River that was one that was rebuilt.

REP. WEBER: We have one that's both historically significant and, unfortunately, historical significance is it was built out of concrete which perhaps was not the best choice in its life.

REP. GAGNON: Is this the Vilas Bridge?

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

REP. WEBER: The Vilas Bridge, yeah.

REP. GAGNON: Which, if I may, that's an interesting argument because that's a very key link to Bellows Falls from New Hampshire. It's been how long? How many years has it been out?

REP. WEBER: Six, I think.

REP. GAGNON: Six.

REP. WEBER: Chunks fall off of it occasionally.

SEN. REAGAN: That's something you don't kayak underneath it.

REP. WEBER: Well, people use -- although it's closed and very carefully posted as being closed, people do use it for walking all the time. And I certainly have informed all of my friends in Bellows Falls that I wish they didn't because I've seen pictures of the underneath.

REP. BARRY: Just your friends, you don't tell your enemies?

REP. WEBER: Anyway, thank you for the answer. Appreciate it.

REP. BARRY: I do have a question. You talked about repairing, replacing, or rebuilding. Is there strategy also that says that we no longer need the bridge then we ought to visit a better work around it than the bridge? Ever considered tunnels?

DR. FOX: That hasn't come up in any of the work that we have done at this point. We'll keep an eye out for that.

REP. BARRY: Well, I just every once in a while say why we got a bridge here. Thank you.

REP. SANBORN: Thank you. I have a question about the whole assessment part of it. Are we going to be looking at that at
LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

all? Are we mostly doing visual inspections? How are we assessing bridge safety?

DR. FOX: There is a set of guidelines that they use provided from Federal standards. It's more than just go out and look at it. They do testing the condition of the concrete, laboratory testing and things like that. It's not just, as I said, a visual inspection.

REP. SANBORN: Thank you.

CHAIRMAN REAGAN: Question.

SEN. LITTLE: Thank you. I have an example of a bridge replacement that's bothering me since it happened, and I don't know if your audit might look at something that could address this sort of thing.

A small, very small bridge, over a small tributary of the Piscataqua River in Weare, where I live, that went across the tributary. It's always been fine. Mother's Day flood of eight years or whatever that was, the water rose, topped over the bridge, which is a violation. When the water receded, the bridge is still there. It's inspected. It's fine. No damage to under the bridge because of the topography, very gentle hydraulics at that point in time.

Yet, because it was topped in that flood, it must be replaced, and it needs to be replaced at Federal Bridge Replacement Standards I'm told by the Town and Department of Transportation of the State of New Hampshire, which meant a \$1.3 million concrete structure that is enormous and was opposed by the only -- the bridge dead ends about 100 feet after -- the road dead ends about a hundred feet after the bridge on the other side of the river.

There's two houses on the other side. The homeowners opposed the new style of bridge that was going to be put in, but we were told that our hands are tied, that there was no way to not do a bridge replacement at Federal Highway Standard

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

Replacement. In other words, to raise the bridge up -- bridge deck up high enough so that it will never be topped again by water. It just seemed like a huge waste of money to me when the people on the other side didn't want the bridge built, that the alternative was a bridge at about a quarter of the cost, but the only way to get the State to pay for it was to do it to Federal standards. So I didn't know if there were some sort of a way to take a look and see if there were an opt-out to the State to possibly save taxpayers a bit of money when there's a small, one-lane bridge going over a small tributary of a river to a small number of houses that don't want the bridge replaced to begin with, could we simply say we are going to do this one outside of the Federal Standards and save the taxpayers money and do what's more realistic?

DR. FOX: Let me ask the team to look into this, ask some questions. Senator, tell me where the bridge is?

SEN. LITTLE: Peaselee Road in Weare.

DR. FOX: Peaselee?

SEN. LITTLE: Peaselee, P-E-A-S-E-L-E-E, Peaselee Road in Weare.

DR. FOX: Town-owned bridge?

SEN. LITTLE: It is a town-owned bridge and they received State Bridge Aid for it. I know that this says they shall not be looking at any municipal bridges. But since it was paid for with State Aid, it seems to me that it should be concern of this Committee and State taxpayers.

REP. BARRY: Mr. Chairman.

DR. FOX: Let me see what I can find out.

REP. BARRY: Might I ask a question? If there's conditions, traffic conditions, how many cars going over it, trucks, you know, what -- and maybe that has something to do with the Federal requirements so may be step levels in there that says

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

somebody saying here's what we got to go to the max full boat 20 years away.

SEN. LITTLE: Yeah, that was to get the water flow under the bridge.

DR. FOX: It sounds like if it's a road that dead ends shortly after the bridge --

SEN. LITTLE: Hundred feet after.

DR. FOX: -- traffic conditions would not be a concern, especially heavy truck and things like that. I will make some inquiries, Mr. Chair, and see what we find out.

SEN. LITTLE: Thank you.

DR. FOX: You're welcome.

REP. GAGNON: Mr. Chair, can I ask why, what is the reason for not looking at railroad bridges? It's privately-owned property, is that why?

DR. FOX: It's a -- we have to basically be economical with our efforts, felt that the biggest -- the most effect that we could have out of this audit would be the bridges that receive the largest amount of vehicle traffic, which would be the highway bridges, the State road bridges, things like that, rather than include railroad bridges.

CHAIRMAN REAGAN: Is there some agency that --

DR. FOX: DOT does own -- they have, of course, the section that is concerned with railroads. Also, they have, you know, section concerned --

SEN. REAGAN: Well, couldn't there be some railroad bridges or do we own all the railroad --

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

DR. FOX: I couldn't answer that at this point. I'd have to find out.

REP. GAGNON: Well, I guess the reason I ask because isn't the bridge over in Portsmouth, isn't that a very key, crucial bridge to maintaining the viability of the shipyard? And there's been a lot of concerns regarding that particular bridge, you know. So maybe that's been addressed already, I don't know. But when you said railroad bridge, I thought why wouldn't we look at that, you know.

DR. FOX: As I said, on our part, it's an effort to keep our --

REP. GAGNON: Yeah. Okay.

DR. FOX: -- most time-effective process for us.

REP. GAGNON: Thank you.

SEN. REAGAN: Okay. The other business --

REP. WEBER: Do we need a motion?

SEN. REAGAN: Yes, we need a motion.

** REP. WEBER: I would move that we approve the Scope Statement as presented.

SEN. LITTLE: Second.

CHAIRMAN REAGAN: Any further discussion? All those in favor? Opposed?

*** {MOTION ADOPTED}

DR. FOX: Thank you.

SEN. REAGAN: The motion carried.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

4. Other Business.

CHAIRMAN REAGAN: And I've a request from Representative Rosenwald for an audit of the Board of Naturopaths.

REP. WEBER: I can speak to that.

SEN. REAGAN: Sure.

REP. WEBER: Did she provide you with more information there?

CHAIRMAN REAGAN: Okay. She said it's never been done before. They are able to set their own prescribing formulary which includes controlled substances, and I believe they have had issues filling positions on the Formulary Committee and having people outlasting their statutory tenure, so.

REP. WEBER: And I believe the other thing is that they haven't -- they haven't, if I'm correct, adopted rules. There's a certain amount of laxity in getting that done. And part of this may or may not have been overtaken by opioid crisis issues. And I know that, certainly, Health and Human Services currently has a bill in front of it that would set some new requirements in terms of just prescribing. But this is -- it's a broader area than just the prescription of opioid medication. And so it seemed like a useful thing to look at.

And I think the other thing that I know several people have expressed a concern to me about, and this might be a good vehicle, is the various licensing boards and how that -- that Department is put together, because there's not a lot of oversight there. It's a very small group of people, but it's sort of a free-floating department that doesn't seem to answer too much to anybody. So that was the concern that I'd been hearing.

REP. SANBORN: Didn't we just reorganize that and put it all into one building?

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

REP. WEBER: And that's why it might be a good time to start looking at it a little more carefully.

SEN. LITTLE: So is that two audits? You looking at Board of Naturopathy and the Joint Licensing Board?

REP. WEBER: I wouldn't frame it that way. I think I would go for doing the Board of Naturopathy and then see what we see and let the whole Joint Board have awhile to percolate, because they have been reorganized relatively recently; but I think it's something it ought to be looked at at some point.

CHAIRMAN REAGAN: Okay. We have a motion and a second to place the Board of Naturopath on the list. Further discussion? That was motion by Weber and second by Gagnon. All those in favor?

***** {MOTION ADOPTED}**

REP. GAGNON: Chair, could I -- the Chairman of our Committee ED&A also requested that we look at the -- an audit for the Realtors Board. Representative Hansen is here today, if possible to also speak to this. He's also requesting the same audit and, if possible, perhaps he might want to speak to it. It's primarily that the Committee -- the Board, hasn't been audited in a very long period of time. But if you permit, maybe Representative Hansen might want to add a few comments to this request.

CHAIRMAN REAGAN: What do you have to offer?

PETER HANSEN, State Representative, Hillsborough County, District #22: I'd be glad to speak. I just -- I really just came to reinforce what I think you all gotten a letter regarding the situation with the Board of Realtors. It's been over 20 years according to their testimony since they have had an audit. They're newly -- they have newly been put into the Joint Board and which depending on what you might find in an audit, would put the Director of the -- Executive of the Joint Board into an embarrassing situation where she was forced by the Legislature to take on a Board without a -- without an audit

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

before responsibility was handed over to her. So I was merely just here to reinforce the letter and to explain the fact that there are issues not only just with the Board itself but with probably maybe some fiduciary issues that may or may not come up for the Director of the Joint Board.

CHAIRMAN REAGAN: Okay.

REP. SANBORN: I did not get that letter, so.

CHAIRMAN REAGAN: I didn't either.

REP. WEBER: I didn't either.

REP. GAGNON: I believe it was only sent to me as the Committee Member on this Board. I'm not sure it was shared with everybody, but this is what we were referring to. And the Chairman of the Committee also signed off on it.

And we recently had some legislation, a bill filed before us that it was very obvious to, I think, all of us on the Committee that there seems to be some internal issues that perhaps need to be addressed with the Board and with their relationship to the Joint Board and addressed partly to what you're leaning to. But it just seems that it probably wasn't fair to -- to hand over this new entity, say, here, take it, and there's really no baseline. And I think what we're suggesting is that an audit should be conducted that would perhaps provide a baseline of information and establish maybe better lines of communication. Is that fair, do you think?

REP. HANSEN: And process as well, yes. Process as well.

REP. BARRY: Mr. Chairman, the only comments I've heard from other folks, realtors, is that there are times when it seems that the Board is raising barriers entry to the field unnecessarily.

CHAIRMAN REAGAN: That would be information that they -- that they would want to put in the Scope Statement. If it doesn't go in the Scope Statement, it doesn't -- the

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

questions don't get asked. So anybody that suggests an audit and has suspicion, you want to relate that to the auditors.

REP. BARRY: Thank you.

CHAIRMAN REAGAN: Or it could be just missed.

** REP. BARRY: I guess I'm saying that I'd like to make a motion that we do audit the Board.

CHAIRMAN REAGAN: The motion.

REP. SANBORN: Second.

REP. GAGNON: Seconded by me.

CHAIRMAN REAGAN: Further discussion? All those in favor?

*** {MOTION ADOPTED}

CHAIRMAN REAGAN: We -- I want to acknowledge that there's folks here that came here about requesting an audit on the Sex Offender Registry, which is the subject of legislation that apparently has passed the House and has not surfaced in the Senate yet but it will. And I appreciate making this effort, but I don't know why you would think that you would do this this way at the same time that it's the subject of legislation?

WANDA DURYEA, Board Member, Citizens for Criminal Justice Reform - New Hampshire: It's our belief that your Board did the audit the last time.

CHAIRMAN REAGAN: Okay.

MS. DURYEA: Also, Chris Dornin, the Founder of Citizens for Criminal Justice Reform tried to get the audit authorized earlier this year. Whether this was done maliciously, unintentionally, or mistakenly, Chris was told to leave a hearing where they were going to be hearing testimony on requesting an audit of the Sex Offender Treatment Program. Chris

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

left that hearing because he was told that they would not be hearing our issue. Chris is a very busy man and understands that legislators are, too. I do not know the legislator's name that told him that it was not being heard, but it was heard and Chris was not there to speak on behalf of Citizens for Criminal Justice Reform.

Mary here has driven all the way from Vermont, three hours, to speak with your Committee. I have driven from Farmington, New Hampshire, to speak with your Committee. I was up until 1 o'clock a.m. last night re-verifying information because I have new information from the Department of Corrections that was not heard by the House. If we get it through the House and the Senate says no, you guys can still say yes.

CHAIRMAN REAGAN: Yes, and you can come and then you can have --

MS. DURYEYEA: You guys could say yes now and save the time of the Senators.

CHAIRMAN REAGAN: No, we are not going to change the Constitution and the whole legislative process.

MS. DURYEYEA: That would change the Constitution?

CHAIRMAN REAGAN: You don't like how things are being done, ma'am, I'm sorry, but we are not going to change --

MS. DURYEYEA: No, sir, I'm asking.

SEN. REAGAN: We are not going to change the way things are done now. It's in a process. You have a Representative who's entered the process. It's been successful in the House.

MS. DURYEYEA: Yes.

SEN. REAGAN: And it sounds like it will be successful in the Senate and then that will be law. Then it will be ordered.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

MS. DURYEYEA: I think I'm just more upset that people drove down here believing that we were going to have a hearing and we're not. And I don't know who didn't let Rep. Verschueren know, and he didn't let us know but this woman drove all the way from Vermont.

PAT WALLACE, Citizens for Criminal Justice Reform: We do realize that's not your problem. We're very sorry for interrupting.

CHAIRMAN REAGAN: I mean, I appreciate you taking that amount of interest, but it's like out of our process. This is not something that --

MS. DURYEYEA: Okay. So I'm just going to sit here and watch the hearing to make sure that I'm not leaving a hearing that something's going to be heard in.

THE COURT REPORTER: Mr. Chairman, may I have the women who spoke their names, please? Identify yourself. Would you give me your name, please?

MS. WALLACE: Pat Wallace.

THE COURT REPORTER: Thank you.

MS. DURYEYEA: My name is Wanda Duryea, D-U-R-Y-E-A.

THE COURT REPORTER: Thank you.

REP. BARRY: Representing?

MS. WALLACE: Citizens for Criminal Justice.

MS. DURYEYEA: Citizens for Criminal Justice Reform.

CHAIRMAN REAGAN: Any other business before we adjourn?

MR. SMITH: Mr. Chair, if I can just clarify. We do have a potential audit topic list. That's two, the Board of Realtors and the Board of -

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

CHAIRMAN REAGAN: Naturopathy.

MR. SMITH: -- Naturopathy. Do you want those added to that list or these are approved topics that we put in our queue so that as we have resources become available --

CHAIRMAN REAGAN: I would place them in the queue.

MR. SMITH: In the queue. I wanted to verify.

CHAIRMAN REAGAN: The Naturopaths -- the Joint Board has an excellent way to promulgate rules that will get done, you know, in short order. We know that on the rules side, the Realtors Board. Anything else?

REP. BARRY: I do have a comment on the tunnel. We took the scenic route going down to Florida one time. If you go down that way you go underneath the Chesapeake Bay.

SEN. REAGAN: The Bay Bridge.

REP. BARRY: Back up and over an opening and then back down and under the bay and --

REP. WEBER: I would die.

REP. BARRY: You can see large freighters going across and that's going to go across the same time I'm going to be underneath it.

CHAIRMAN REAGAN: Wonders.

REP. WEBER: I think that's the one where you can rent a driver if you can't do it yourself and I can see that.

REP. GAGNON: Is that the one that there's two -- actually two bridges?

SEN. LITTLE: Yes.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

February 29, 2016

REP. GAGNON: East, West and on Fridays they'll actually shift it so there's actually three lanes going this way. There's a curve in the bridge almost like so you're driving and you're seeing cars coming at you and, oh, it's horrible. It's the scariest bridge I've ever driven. Are you going that way?

REP. BARRY: I did it intentionally.

REP. GAGNON: Oh, you've done it.

REP. BARRY: I've done it intentionally. I thought it was great.

SEN. LITTLE: I think the scariest bridge is the Thousand Islands Bridge up in northern New York.

REP. WEBER: I've done Prince Edward Island which is seven miles, but they've got jersey barriers so you can't see over it.

REP. SANBORN: Are we adjourned?

CHAIRMAN REAGAN: I'm just waiting for everybody for the chatter to stop. Meeting is adjourned.

(The meeting adjourned at 1:38 p.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

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