

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

Legislative Office Building, Room 212

Concord, NH

Friday, March 9, 2018

MEMBERS PRESENT:

Rep. Lynne Ober, Chair

Rep. Lucy Weber

Rep. Raymond Gagnon

Sen. John Reagan

Sen. Bob Giuda

Sen. Lou D'Allesandro

(The meeting convened at 1:30 p.m.)

1. Acceptance of the November 1, 2017, meeting minutes.

LYNNE OBER, State Representative, Hillsborough County, District #37 and Chairwoman: Okay. The time being 1:30, I'm going to call the March 9th meeting of the Performance Audit Committee together and Senator Reagan moves the acceptance of the minutes. Is there a second?

LUCY WEBER, State Representative, Cheshire County, District #01: Second.

CHAIRWOMAN OBER: Any discussion, corrections? All those in favor say aye? Minutes are done.

***** {MOTION ADOPTED}**

2. Current status of ongoing performance audits:

CHAIRWOMAN OBER: Gentlemen, current status of ongoing --

STEPHEN C. SMITH, MS, CPA, Director, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Madam Chairwoman, Members of the Committee. For the record, Steve Smith, Director of Audits, LBA. Since this Committee last met, we had one Performance Audit Report that went before Fiscal and

that was the Controlled Drug Prescription Health and Safety Program. And Steve Grady, Manager, will be giving you a short presentation on that later -- later this Committee meeting.

In terms of the ongoing audits, the DoIT, that report is complete. It was mailed to Fiscal yesterday. So our plan is to present that to -- at the next Friday, March 16th, meeting. The Air Resources Division with the Department of Environmental Services, field work has been concluded. The report is being drafted. We hope to give that to the Air Resource Division Management in the next week or two, and we're targeting the April Fiscal meeting to present that report.

The Water Division, we had an entrance meeting with them on February 6th. You'll be considering the Scope Statement here in a few minutes. And planning is under way and we're looking at sometime this fall, maybe mid to late fall for completion of that work. And the only other one that some work has begun on is the Public Utilities Commission, the Electric Company Restructuring. Some preliminary scoping is under way on that one.

There's two other audits in our queue that the Committee approved last -- last meeting; the Department of Corrections Adult Parole Board and Police Standards and Training Council. At this point, no work has begun on those two.

CHAIRWOMAN OBER: Okay.

MR. SMITH: So, with that, any questions?

CHAIRWOMAN OBER: Seeing none.

MR. SMITH: Okay.

CHAIRWOMAN OBER: We'll move to the proposed scope.

3. **Discussion and approval of the proposed scope statement For the Department of Environmental Services, Water Division performance audit.**

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

MR. SMITH: If the Committee wants to discuss it, if you would like us to present something on it, it's up to you how you'd like to handle --

CHAIRWOMAN OBER: Senator Giuda has given us some additional things he would like to have discussed. So why don't you begin and give us a summary, and then Senator Giuda can talk about where what he's presented fits in, and his reasoning behind that.

ROBERT "BOB" GUIDA, State Senator, Senate District #02: Thank you.

CHAIRWOMAN OBER: You're welcome. So who wants to give a summary?

STEVEN M. GRADY, MPS, MSS, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: I will, ma'am. I am Steve Grady. I am the designated in-charge for the performance audit for the Division of Water, Land Resources Management permitting.

In summary, we do have a scope -- draft scope statement before you in which we anticipate looking at LRM permitting effectiveness for a two-year period, State Fiscal Years 2016 and 2017. We're still working through a significant amount of material that the Department has provided us. And we are, as the Director stated, building out a plan.

Beyond that, we're not at the detailed planning stage yet as to exactly what we incorporate into it. It is a work in progress at this point. If there are any particular questions about what may be included, may not be included, I'd be delighted to entertain them or if there are any questions more broadly focused on the scope in general, I'd also like to discuss that as well.

CHAIRWOMAN OBER: Senator Giuda.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

SEN. GIUDA: Thank you, Madam Chair. All the input I have heard in my position as a public servant in my district indicates I have not had a single complaint for anything other than wetlands. And I don't know if it might help you allocate resources more efficiently, but I think the focus needs to be on the Wetlands Division. I haven't had one complaint and everyone I've talked to that deals with the other divisions, no problems. So it might be, you know, advisable or, again, I don't know how you would allocate the resources, but I don't think we need to look at the whole division. I think the wetlands is the problem that I'm hearing. And, specifically, I put together some thoughts on things that I think would help us drill down to exactly what the problem is or what's the cause factors or its impact on the users of that State resource.

CHAIRWOMAN OBER: For clarity, Senator Giuda, are you proposing adding these under what is on Page 4 for the audit scope?

SEN. GIUDA: You talking on this sheet here? Yes, ma'am.

CHAIRWOMAN OBER: Okay. Thank you. Please continue.

SEN. GIUDA: Sure. And, specifically, what I'm hearing is there are -- there are problems with users getting the clarity of definition as to which types of permits apply to which types of regulated activity, okay, and the incidence of required permit changes in the permitting process. Well, you have this but you need that or you have this but you also need that. And I think -- I think, and that may be a product of the peer review process in which one person is the lead, as I understand it -- and Gene, by all means, correct me if I'm not right -- but one person is usually the lead on a project. You get to a certain point they do a peer review, and everybody gets a chance to crosshatch that permitting process and so forth. And that may be the source of additional permits because this person didn't catch that. I don't know, but I'm hearing this from some people. So the need for and the impact of a peer review on projects on permitting requirements, permitting changes within the process,

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

and resultant delays, and costs to the applicant. I don't know, Gene, is every -- is every permit peer reviewed?

EUGENE FORBES, Director, Water Pollution Division, Department of Environmental Services: The thing is there's so many different kinds of permits, the answer to that question is very dependent on the level that is involved with those permits. Some larger permits might engage half a dozen people. Some of the simpler permits might just be seen by one or two people. Not all of the notices are checked every time. PBN, some of the forestry notices, some of the permits are spot checked, really, not every permit. They're oftentimes very simple ones to the very complex.

CHAIRWOMAN OBER: So, Mr. Forbes, your answer would be no, they are not. It depends upon the complexity?

MR. FORBES: They are not all the same. Yes, it depends on the complexity.

CHAIRWOMAN OBER: Okay.

SEN. GIUDA: The third item would be to analyze the organization. Who's the manager of LRM? What are the duties? Have they been fulfilled? I know that there -- as I read the document, I'm trying to find exact citation, that it appears that some stuff has not been done that's been a problem before and seems to have gone away. That may be getting addressed in the rules. I don't know that. But we're looking at up to this point in time, because the new rules aren't adopted yet. Okay. And so that would be the third one.

The fourth would be objectivity of the process and consistency of the application of the rules and the permitting outcomes for similar types of projects. I've had complaints that varies from person to person, from project to project sometimes. So that consistency, I think, is one of the problems. And that would be my input to you and request that you narrow the scope down to wetlands and let's go see what we can find out.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

MR. GRADY: And I would appreciate the input. Respectfully, what I would -- as a general response, all four of the items here that you articulate are methods that we would apply in conducting the audit.

SEN. GIUDA: Okay.

MR. GRADY: And not necessarily the scope of the audit. So the scope we are going to look at the effectiveness of LRM permitting. We're going to tease that apart. We're going to look at the complexities that Gene alluded to, that's been alluded to, perhaps, by constituents of yours and perhaps others are aware of, and we'll tease those different elements apart. We understand there are over 77 different types of permits, certifications, allowances that the Division of Water can actually issue. They don't all necessarily bear on LRM permitting, but any number of them could have a potential to impact that process which may also lead to delays.

So what we're going to try to understand is the totality of the process and try to pick on those points where other things interject. So if there is an interjection from another permitting type so, for example, Subsurface Bureau issue permits related to septic and subdivisions and whatnot. So a particular project may have to get a Subsurface Bureau permit, as well as a Wetlands Bureau permit, as well as perhaps any number of other permits, certifications, or other conditions from the Department.

So we're going to look at that with focus being try to understand how a typical or how an exemplar application gets treated and look at all those different variabilities.

So with respect to your first point, we certainly will look at the clarity definition. We're always concerned. We want to understand the process. We want to make sure that we're clear on our understanding the process. And we spend a significant amount of time talking to management about what those words that they use in their rules, policies, procedures, and practices

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

really mean. So we'll work towards getting that understanding. And then where we see inconsistencies we call gaps actually between what the words mean and what they actually represent in practice, we'll examine that as well.

The second item we'll look at the peer review process as we understand and Gene articulated here some permits are, in fact, peer reviewed. There's a focus for that peer review. So every permit does not receive a peer review and has, again, to do with complexity. And we'll look at the organization, basic fundamental control process that all agencies should have with a known functioning organization. So that is one of the preliminaries that we look typically at every audit.

We'll examine the organization of the agency. We'll look at roles and responsibilities. We'll look at delegation of authority, who's supposed to be doing what, are they doing it, and how do we know and how does Management know? So we'll ask those kind of questions of Management so that we understand what they understand and then we'll examine where gaps may lie.

And then the fourth item, we always look for objectivity of process. And, again, that gets back also to teasing apart the various rules, policies, procedures, and practices that are in place over at the Division to understand how they bear on one another and whether there is unclarity and whether there is subjectivity in decision-making. And then we will track those through to their root cause, whether it's an unclear rule, whether it's an act on process, whether it is a misperception perhaps of the staff that might have with respect to what certain things mean. So all of these will be examined within the scope of this audit. But, again, I'd like to focus the key words in here are analyze. Those are very methodological phrases and that we will do a lot of analyzing, examining, assessing, understanding to, again, identify those gaps so that we can provide back comments to the Agency, to the Legislature, if need be, as to where opportunities to improve the actual consistency and coherency to the process may lie.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

CHAIRWOMAN OBER: I appreciate that. You seem to have glossed over what I think is a fairly significant part of his second point.

MR. GRADY: Okay.

CHAIRWOMAN OBER: And that would be the identifying the cost, if any, to the applicant so that we can understand. Because there is a permitting process fee, but there are additional costs that we're hearing about. And I think, certainly, I would like to see that added, and I noticed you didn't mention that at all and so probably wouldn't be mentioned if we didn't get it added.

MR. GRADY: I would respectfully submit that in building the plan both economic impacts are part of our work, as are administrative or agency costs associated with it. So --

CHAIRWOMAN OBER: You can do that. My point was I want to add that so it's specifically outlined.

MR. GRADY: Absolutely. We'll add anything you'd like to have in here. We'll do that.

CHAIRWOMAN OBER: What about anybody else? Representative Weber.

REP. WEBER: I was just going to suggest that perhaps the way to deal with this is to have our minutes reflect all of the specific issues that Senator's raised as a specific note on our minutes.

CHAIRWOMAN OBER: I gave Cecile a copy so it could be put in the minutes.

REP. WEBER: And a response that all of these are going to be analyzed as part of the reporting process, and that might make it clear that we all expect it to happen.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

CHAIRWOMAN OBER: Yes, but if it doesn't happen and we get an audit back that's been released to Fiscal that's a problem, in my opinion.

SEN. GIUDA: I think that, you know, historical, what I read in my short tenure here, I think that the LBA guys do a pretty good job.

CHAIRWOMAN OBER: I think so, too. I just think that's an important piece that you added in and I'm not sure that we fully ever addressed and many performance audits wouldn't even have that. So this is a little bit unusual because this animal is a little bit unusual compared to some of the other things we review.

SEN. GIUDA: Follow-up.

CHAIRWOMAN OBER: Follow-up.

SEN. GIUDA: Thank you, Madam Chair. I note in page or I guess the last page down at the bottom under Audit Scope, the third bullet point, you interview individuals with relevant responsibilities and external stakeholders.

MR. GRADY: Yes.

SEN. GIUDA: I have had expressions of concerns from individuals within the Department about retaliation - I'll put it right out there - and they're, therefore, reluctant to interview with you folks other than individually and in private circumstances.

MR. GRADY: Hm-hum.

SEN. GIUDA: So I don't know that that's part of your methodology, but I would offer that to you as a request. I don't know what you do, but this is concern within. And with external stakeholders, how do you -- how do you select them? Is this from records within the Agency itself?

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

MR. GRADY: That's not the only source. So we certainly do put a brain, if you will, between the Agency's records, as well as what we understand the intent of the program to be, and thus looking outside of what the State Government construct is in looking at what is out there in industry and other places. So we will look at those things and we will devise a list what we believe to be representative stakeholders to try to understand their views and perspective on things.

SEN. GIUDA: Thank you.

REP. WEBER: Just --

CHAIRWOMAN OBER: Representative Weber.

REP. WEBER: Just to try and get us over this hurdle, I wonder if the last bullet point under Audit Scope might be amended to say obtain, review, and analyze relevant state records and data, including cost to applicants and that might take care of the problem.

CHAIRWOMAN OBER: That's a good idea. Could we do that? That's an excellent idea. Thank you, Representative Weber. Senator Giuda, does that convey what I think I read here?

SEN. GIUDA: Certainly. Thank you. Thank you, Representative.

REP. WEBER: Well, I think it's an important point in the scope of this particular thing.

JAY HENRY, MPA, CIA, CGFM, Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Jay Henry. I'll just add, I'm not sure that is something the Department would capture the cost of the -- to the -- to the landowner; but if we do something like a survey of people who were permitted, we might be able to gather some of that information. At least that's what came to my mind. I don't know if you know of any other -- we talk to associations.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

MR. GRADY: Right. It would principally rest, again, preliminarily on our understanding there is no cost -- correction -- economic impact assessments conducted by the Department in discussing LRM permitting. So the economic impacts, and I'll differentiate that from the Agency costs, the fiscal impacts that the Agency incurs as a result of that, there is no economic impact associated with the permitting process. So every change does and we acknowledge that every change, every form that somebody is required to fill out, every document somebody is required to submit, every change that someone is required to attend to has an economic impact, as well as a fiscal impact at the Agency.

So our understanding we would probably not find a good body of information on the actual costs associated with that. We would have to rely on our external stakeholders to help us better understand that. So if we could get into, again, industry, folks that might know how much a response to an entire permit application costs a landowner, that would be one way for us to collect it.

CHAIRWOMAN OBER: Representative Weber, followed by Senator Giuda.

REP. WEBER: Well, I was thinking when I was talking about -- thinking about the costs, I was thinking about the actual cost of the actual permit cost. And I realized that we're actually talking about the costs of compliance with the permit.

CHAIRWOMAN OBER: Hm-hum.

REP. WEBER: So I'm thinking including costs to applicants ought to be moved up to number three, individual -- interview individuals with relevant responsibilities and external stakeholders.

SEN. GIUDA: Yeah.

REP. WEBER: Including on the subject of cost to applicants and that would go on three because it really is the applicant

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

who's going to be -- have -- oh, I had an engineering study and it cost me X.

CHAIRWOMAN OBER: Senator Giuda.

SEN. GIUDA: Thank you, Madam Chair. The applicant's cost concerns are in the cost of delays.

MR. GRADY: Hm-hum.

SEN. GIUDA: And that is something we need to try to capture, and I'm sure that the companies or the individuals who are running their businesses will have a good sense of that.

MR. GRADY: Hm-hum.

SEN. GIUDA: So that would be where I would -- permits have fees and they're required, but it's the delay or the expected to be able to dig on June 1 and was extended until July. The seasonality, of course, of the lakes, because I've got 19 of them in my district and, of course, Winnepesaukee is a huge impact on those, both the homeowners and the project owners and the construction companies themselves. So cost of delays would be something that's, I think, relevant.

MR. GRADY: Absolutely. We'll try to understand the economic impact in totality, both direct and indirect. So the direct costs being those permit fees and those payments directly to service providers doing environmental assessments or whatnot, as well as any of those less tangible, indirect costs associated with delays and any other, you know, as we tease apart what our stakeholders --

SEN. GIUDA: Tangible costs. You have an excavator sitting on the side of the lake that's costing those guys X dollars a day. So there are very tangible costs. Intangible you're much better versed at than I because you work in that realm of the attachment points of all these different factors. But concern is the cost to these companies and these individuals, the homeowners both and the companies that are doing the projects.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

MR. GRADY: Understood. And when I say indirect costs, it may have included that -- that lag in the project plan or it may also include some opportunity costs that the property owner may be incurring because their project is not complete. They're not able to open business on time so those kind of things. We'll try to understand as best we can. We'll try to quantify that. I will note that those kind of things tend to be highly qualitative because we're dealing with stakeholders. There's no real obligation on their part to do data collection for us; but we'll try to put something together so that we can try to quantify that to some degree.

SEN. GIUDA: Thank you.

CHAIRWOMAN OBER: Mr. Forbes, do most of the permits in this area have a set number of days for the issue of the permit from the original application? So I submitted an application on March 1st. Do you have 60 days to complete it?

MR. FORBES: Yes, yes. They're all statutorily set, and it even starts with the first determination of administrative completeness.

CHAIRWOMAN OBER: So one thing that the audit could look at is whether those deadlines are met.

MR. GRADY: Oh, I can assure you we --

CHAIRWOMAN OBER: Yes, and that would get Senator Giuda some of his stuff. Any other comments?

MR. SMITH: Just a question of clarification. This is good discussion for some new members like yourself, Senator. This is what we're looking for to make sure that we are focusing on what you want us to focus on. But going back to your -- you mentioned that there was only the wetlands where your concerns lie. Our focus right now is, and correct me if I'm wrong, Steve, is the LRM in totality. So if you are not really -- the Committee's not really concerned about the terrain and subsurface bureaus and

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

just want us to focus on wetlands, I mean, there is -- there may be some overlap of those. But the focus of our -- then feel free to let us know that and that can, obviously, perhaps change the scope of.

CHAIRWOMAN OBER: What is the preference of the Committee?

MR. SMITH: Is that a fair statement, Steve, or am I missing something?

CHAIRWOMAN OBER: This was originally, I believe --

SEN. GIUDA: Talked to homeowners and contractors and so forth hasn't had a single problem with alteration of terrain or subsurface. Not a one. But I have had numerous complaints in writing and verbal and otherwise and some of which we've taken to the Department and they're responsive in trying to help, but we are trying not to be able to have to solve problems. We are trying to prevent them. And so all of the complaints I've gotten are wetlands, and I would ask the Committee to consider focusing on just the Wetlands Bureau.

CHAIRWOMAN OBER: Anybody have an objection or strong feeling?

REP. WEBER: No. If wetlands are the issue, let's narrow the scope and get it done and get on to something else.

CHAIRWOMAN OBER: Senator Giuda moves to narrow the scope to wetlands. Senator Reagan seconds. Any further discussion? All those in favor, please raise your hand. We are unanimous in narrowing the scope.

***** {MOTION ADOPTED}**

SEN. GIUDA: Thank you, Madam Chair.

CHAIRWOMAN OBER: Given that the scope is narrowed, can we also give the gentlemen a preliminary approval, because

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

basically all you have to do is narrow from the whole area just to wetlands and move on. Would you agree?

** REP. WEBER: I would so move, Madam Chair.

SEN. GIUDA: Second.

CHAIRWOMAN OBER: So move. Representative Weber moves, Senator Giuda seconds. Anymore discussion? All those in favor?

*** {**MOTION ADOPTED**}

CHAIRWOMAN OBER: Gentlemen, you're done. Thank you.

4. Other Business

CHAIRWOMAN OBER: Next topic is Other Business. Mr. Henry, did we get any response? What happens to performance audits after they're accepted by the Fiscal Committee?

MR. HENRY: I did send out an e-mail to everyone with the two pages of what happens. I do have copies if you wanted to talk about it; but it was more you just wanted that information from the last meeting.

CHAIRWOMAN OBER: Yeah.

JOHN REAGAN, State Senator, Senate District #17: Right.

CHAIRWOMAN OBER: You guys want copies of what he's got?

SEN. REAGAN: I've got mine.

CHAIRWOMAN OBER: You got yours. We're all set. Thank you.

5. Presentation of the Controlled Drug Prescription Health And Safety Program audit.

CHAIRWOMAN OBER: How about a short presentation for the PDMP Performance Audit.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

RAYMOND GAGNON, State Representative, Sullivan County, District #05: Could we just for a second though in regards to the topic. I sit on ED&A. We had a State Representative come in with a bill this season, this session, and to a person, Democrat or Republican, the first question to the Rep was are you aware that there are performance audits done and the Performance Audit Committee meets regularly and they are prepared to come and brief the Committee that needs it. And I have to -- and I don't remember the Representative's name. He was a young freshman. But it was deer in the headlights. We might as well been speaking Greek. And I think that's the issue, somehow to get information across to people that, indeed, you exist, this is what you do, and this is the kind of information you can provide.

CHAIRWOMAN OBER: Well, the interesting thing since I sit on this and have for a while, is I typically e-mail my Republican colleagues and say, listen, we're looking for topics. I think Representative Weber does the same on her side of the aisle. Anybody got any topics they would like to have addressed? That's how we got from a Representative of Police Training and Standards one that we're moving forward with now. Representative Weber, I think you were doing some outreach?

REP. WEBER: Yes, I regularly talk to folks on the Finance Committee and, of course, people on the Finance Committee are not shy about bringing stuff to us anyway when they see issues.

CHAIRWOMAN OBER: No.

REP. WEBER: Because they're more keyed into the process. But as a follow-up to what was being said before, at least once every -- every year we get a bill to have a Performance Audit Report and somebody goes all the way through the bill process, and I don't know whether it's maybe a discussion that ought to be had with OLS, and just remind them that it would be a heck of a lot quicker for somebody to send an e-mail to one of us so we can send an e-mail to the Chair and say, hey, what about doing a performance audit of wetlands?

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

CHAIRWOMAN OBER: I think that's a great idea. I will speak to the new Director of OLS. He seems to be very amenable about that.

REP. WEBER: I know that there was one maybe a year ago that got snarled up in one of the committees because they said, you know, we're not going to do this because Performance Audit does this. And then they said, oh, well, we have to wait until the bill goes through. You know, it was just a mess.

CHAIRWOMAN OBER: Yeah.

REP. WEBER: And it's just inappropriate to do that by a bill as far as I'm concerned.

REP. GAGNON: I think it's very interesting that when the Rep was proposing the legislation almost everyone on the Committee was saying, well, wait a minute. We have the performance audit folks come in several times to give us briefings on particular issues, particular concerns. And so the Committee is aware of it, which is good. And I'm just thinking that I think, you know, we have 400 something people to talk with. I'm just saying that let's put it in the back of our heads a way of reaching out to them. That's all.

CHAIRWOMAN OBER: The current Director of OLS was a seven term Rep so is very familiar with the process. And I will speak to him and then he can work with his staff, because it would be good if they could stop that at that level.

SEN. REAGAN: How about the orientation process?

REP. GAGNON: Yeah, something like that.

CHAIRWOMAN OBER: A lot of people don't come to that.

REP. WEBER: The other problem with orientation is we already throw so much stuff at them in a very short time that for people to take it in, you know, they're finding their

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

materials three months later and going, "Oh! That's what that was!"

CHAIRWOMAN OBER: Yeah, but -- all right. That Director could help if he were a stop-gate, also. And since we now have a rep, a former rep sitting there it will help. I'll do that.

REP. WEBER: I just think that would be good a check.

CHAIRWOMAN OBER: That's a good idea.

REP. WEBER: But letting people know they're there at some point in the process.

SEN. REAGAN: There's other ways we do things than filing legislation.

REP. GAGNON: Yes.

CHAIRWOMAN OBER: Okay. PDMP audit.

MR. GRADY: Good afternoon. For the record, I am Steve Grady. I was the in-charge auditor for the Performance Audit of the Pharmacy Board's Prescription Drug Monitoring Program. The Audit's objective was to determine how effective was the PDMP through State Fiscal Year 2017. I will be summarizing the Report's 26 Observations. Of the 26 Observations and Recommendations, the Board concurred with 21 and concurred, in part, with five. The Office of Professional Licensure and Certification was affected by seven Observations and Recommendations, concurring with six and concurring, in part, with one. Eight Observations may require legislative action, depending upon how the Board resolves our Recommendations.

The Executive Summary starts on Page 1, the Recommendation Summary starts on Page 3, and the section on effectiveness encompassing Observations No. 1 through 4 starts on Page 15.

PDMP was established in 2012 to help address the abuse, misuse, and diversion of Schedule II through IV controlled

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

drugs. The PDMP and supporting systems remained at an initial stage of maturity through State Fiscal Year 2017 due to inadequate planning and implementation. We found no empirically demonstrated PDMP outcomes or effects.

Expected outcomes and effectiveness measures framed in State Law were never examined by the Board for validity or practicality. We found the outcomes and effectiveness measures contained in State Law spanned a continuum from plausible, to somewhat plausible, to less plausible.

Plausible outcomes included improved patient care and treatment, and changes in prescribing practice and doctor shopping. The effect could likely be measured through the analysis of current PDMP information, regulatory board and law enforcement investigations, and surveys of PDMP's registered prescribers and dispensers.

Somewhat plausible outcomes included improved practitioner-patient relationships, changes in patient morbidity drug abuse and the types of drug deaths, and select indicators of diversion. Measuring effect might be possible by selecting specific and valid indicators and analyzing information currently collected by other State Agencies linked to analyses of current PDMP information, regulatory board and law enforcement investigation, and surveys of PDMP registered prescribers and dispensers.

We examined a significant amount of State Agency data and some Agency data appears amenable to analysis and disaggregation to permit quantification of overdose deaths attributable to prescription drugs and illicit substances. Further, disaggregation might also be possible to quantify prescription drug deaths by drug types. We found the least plausible outcomes were related to patient mortality, changes in the number of drug deaths, and select indicators of diversion. It was unlikely the Board would be able to measure effect given limitation in the data collection, and the difficulty in demonstrating a causal relationship.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

Additionally, the influence of known and unknown external factors on all outcomes would complicate any effectiveness measurement. Changes in data purportedly representing intended PDMP outcomes could actually represent the combined effects of PDMP and other known and unknown external factors, such as other efforts to curb drug abuse. None of these complexities were resolved by the Board. And given the difficulties in obtaining stable and mature PDMP operations, as well as significant limitations in monitoring and analyzing PDMP information, it was unlikely the Board could develop a useful evaluation framework during the audit period.

Our recommendations here include clarifying how the PDMP can reasonably be expected to affect validated outcomes and when outcomes and effects could be expected; integrating available data from other State Agencies to assess PDMP effectiveness; develop it, implementing, and refining a system to empirically demonstrate PDMP effects related to each validated outcome. Identifying and developing methods to mitigate unintended consequences and qualifying or eliminating outcomes and measures, as necessary, seeking legislative changes to rationalize State Law with validated outcomes and measures.

CHAIRWOMAN OBER: The bottom line though is you can prevent doctor shopping. You can find out who's prescribing a lot of opioids; but other than that, you really can't from a system where you're putting in prescription data get a lot of stuff out.

MR. GRADY: Shall I continue?

CHAIRWOMAN OBER: Sure.

MR. GRADY: We found inadequate control over the systems and subsystems necessary for effective PDMP operations. The PDMP was implemented and operated since its inception without a strategy or overarching plans, strategic goals, or objectives. There was no performance measurement system. The large volume of data collected since 2014 essentially went unanalyzed and was

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

never systematically used to create knowledge or improve understanding of PDMP outcomes and effectiveness.

Criteria and thresholds essential to objectively identifying potential abuse, diversion, and violation of professional standards were undeveloped. PDMP requirements were not incorporated into investigative and enforcement processes and compliance was unmonitored and unenforced.

No functioning system of controls and routine interactions between the Board and other regulatory boards whose licensees were subject to the PDMP occurred. Confusion surrounding when and how law enforcement could access or receive PDMP information was not formally clarified and reconciliation between limits on law enforcement access and the level of access necessary to achieve certain PDMP outcomes did not occur.

No system existed to ensure all individuals required to register were registered. Those ineligible to register were deregistered or enforcement was carried out. Utilization requirements were unmonitored and non-utilization was unenforced. PDMP data quality and security and confidentiality lacked adequate controls. We make a number of recommendations to include that the Board develop multi-year risk-based strategy to address all of these systems.

We have a few more comments on general controls. And we found that the volunteer Board was responsible for and struggled with a wide variety of general controls. We found significant non-compliance with several statutes, including the right-to-know law and financial disclosure law. Additionally, the Board failed to resolve prior audit findings and lacked relevant management controls.

We make a number of recommendations that the Board comply with State Law and that the Office of Professional Licensure and Certification make a number of changes to services it provides to the Board.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

This concludes my remarks. Do you have any questions for me on this particular project?

CHAIRWOMAN OBER: Senator Giuda.

SEN. GIUDA: Comment. I used that report to introduce legislation to take the PDMP away from licensure and give it to HHS. And Mike Bullek, who's a constituent and former supporter, I'm sure, was incest that I had done so and insisted that they were, in fact, putting in place all the measures that they need to do all the things they need to do. I will believe that when I see it. Because that, in my opinion, is the single most scathing report I have ever seen at six years in the House a number of years ago, and my year and a half in the Senate. I've never seen such a condemnation of ineptitude, willing or otherwise. And because of that, I felt it was important to go ahead and try to move that whole Department, that whole function out of licensure with short staff and as well, as you said, virtually did nothing since 2012 to implement the things that they were caused to do.

CHAIRWOMAN OBER: That was not a question. That was a comment so there's that dead silence.

SEN. GIUDA: Would you believe?

CHAIRWOMAN OBER: Would you believe. Would you believe if you want to read a worse report read the performance audit on shared services, which has now been disbanded because of the audit.

SEN. REAGAN: Yep.

CHAIRWOMAN OBER: So actions are taken, gentlemen, from your work in case you don't ever see or think we don't do anything with it that you do all this and nothing happens, this is not true. All right. Do we have anything else?

SEN. GIUDA: I would just like to say that I consider what you do the single most important function of State Government.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

It gives us the feedback we need to find the deficiencies in agencies and operations. And if we're doing our job, we take that input and fix it. And this, I think, drives to what we were talking about earlier, most people don't even know this Committee exists or that you folks do what you do.

CHAIRWOMAN OBER: Senator Giuda and I have a bill that he filed because it came after the House filing period that I co-sponsored on some of the issues of the Real Estate Board Performance Audit as well. So we do use the information. It is useful.

REP. WEBER: A lot of the information is used in ways that don't necessarily lead to legislation either but will lead to significant issues being addressed.

CHAIRWOMAN OBER: Well, Senator Reagan took the Community College one and did a lot of work with, so.

SEN. REAGAN: They're still reporting.

CHAIRWOMAN OBER: Still working on it.

SEN. REAGAN: They're still reporting.

CHAIRWOMAN OBER: And they're still reporting.

REP. GAGNON: That was the most -- I mean, I'm not saying -- that was terrible. That was shocking. It was a shocking report, you know.

CHAIRWOMAN OBER: You are easily shocked.

REP. GAGNON: No, no. I don't want to get into it. But so much of it was applied to the problems dealing with the River Valley Community College and Claremont letting in and Keene Campus and that's my territory. So I was extremely upset by that. And I just, you know.

SEN. GIUDA: Extremely motivated.

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

March 9, 2018

6. Date of next meeting and adjournment

CHAIRWOMAN OBER: So, as always, ladies and gentlemen, next meeting is kind of the call of the Chair when we get some information from LBA that we need to move forward or they have something they wish to review with us. Motion to adjourn. Senator Reagan, Senator Giuda. All in favor? Thank you, gentlemen, for coming. Thank you for the report.

MR. SMITH: Thank you.

(The meeting adjourned at 2:06 p.m.)

***** Attachment 1: Handout from Senator Robert Giuda.**

ATTACHMENT 1

Analyze clarity of definition as to which types of permits apply to which types of regulated activity, and the incidence of required permit changes during a project

Analyze the need for and impact of peer review on projects on permitting requirements, permitting changes, and resultant delays, and cost to the applicant

Analyze organization — who is manager of LRM, what are the duties of that position, and have they been fulfilled?

Analyze objectivity of process and consistency of rules application and permitting outcomes for similar types of projects

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

