

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

Legislative Office Building, Room 212

Concord, NH

Wednesday, September 11, 2019

MEMBERS PRESENT:

Sen. John Reagan, Chair

Sen. Jay Kahn

Sen. Bob Giuda

Rep. Lynne Ober

Rep. Richard Barry

Rep. Mary Jane Wallner

Rep. David Huot

(The hearing convened at 11:00 a.m.)

1. Acceptance of the June 12, 2019 meeting minutes

JOHN REAGAN, State Senator, Senate District #17 and  
Chairman: Okay, call the meeting to order. Can I  
have a motion on the minutes of June 12th?

1     \*\* LYNNE OBER, State Representative, Hillsborough  
2     County, District #37: Move to approve.

3  
4     DAVID HUOT, State Representative, Belknap County,  
5     District #03: Second.

6  
7     CHAIRMAN REAGAN: Second. Any additions, deletions,  
8     corrections? All those in favor? Opposed? Nothing.

9  
10    \*\*\* {MOTION ADOPTED}

11  
12    2. Current status of ongoing performance audits

13  
14    3. Vote on Draft Scope Statement

15  
16  
17    CHAIRMAN REAGAN: Current status?

18  
19    STEPHEN SMITH: Good morning, Mr. Chair, members of  
20    the committee. For the record, Steve Smith, LBA  
21    audit director.

22                    Just since this committee met last the  
23    fiscal committee did approve the four topics that

1 this committee approved at the last meeting, so they  
2 are now officially in your queue.

3 In terms of ongoing audits, the Bureau  
4 of Voc. Rehab scope statement you approved last  
5 meeting, we are in the midst of fieldwork, looking at  
6 case files, doing regional office visits, et cetera.  
7 Completion for that we're looking at probably the  
8 February time frame to present to fiscal.

9 The Liquor Commission, Division of  
10 Enforcement and Licensing, the scope statement you  
11 will be considering here in a moment, planning is  
12 near completion and fieldwork has begun, and that's  
13 roughly around the same time frame that we're looking  
14 at, the February time frame for the completion of  
15 that audit.

16 The four topics, I'll just mention them,  
17 that were approved last meeting, Department of  
18 Administrative Services, Office of Cost Containment,  
19 Health and Human Services, Sununu Youth Service  
20 Center, the Board of Dental Examiners at OPLC and  
21 Office of Profession Licensure and Certification as a  
22 whole.

23 No work -- we have not begun any work on

1 those topics as of yet. If the committee has any  
2 prioritization they'd like us to do, we would be open  
3 to that, and I would like to remind the committee of  
4 Senator Giuda's e-mail that he circulated early in  
5 August outlining his desired scope in consultation  
6 with OPLC, which is broader than what we discussed or  
7 what we took away from last meeting.

8 So if the committee may wish to revisit  
9 that, and Joe Shoemaker from the OPLC is here to  
10 answer any questions that you might have, so. That  
11 concludes my comments.

12

13 REP. OBER: I would like to see the Sununu Center  
14 pushed to the top of that queue of four that we have  
15 for a variety of reasons, and I think  
16 Representative Wallner will also agree with me that  
17 while most of these guide us on financing, the  
18 senate, so he's probably equally as aware, as is  
19 Representative Huot, for why we might want to move  
20 that one up to the top of the list.

21

22 CHAIRMAN REAGAN: Okay.

23

1           ROBERT "Bob" GIUDA, State Senator, Senate District  
2 #02: On the OPLC audit, Director Grosso was not able  
3 to be here, but he sent me an e-mail, copies of which  
4 I have to circulate to members of the committee.

5  
6 REP. OBER: Oh, good, thank you.

7  
8 SEN. GIUDA: And also to you and your staff, so just  
9 take a bunch and hand them off. I'm going to go  
10 ahead and read through it just hitting the  
11 highlights.

12                       I worked with him on the PDMP at length,  
13 in fact, we're getting ready to have a summit for  
14 potentially setting parameters for any access to  
15 that, very restricted. Started to become part of  
16 legislation, I severed that, so we said we're going  
17 to have a summit, all the players get together and  
18 talk about it, that's coming up soon.

19                       But OPLC is -- has a huge workload. And  
20 I'll just allow you to read through it, but I think  
21 he's got 33 agencies, 33 boards that he's got to  
22 oversee. There is really not much in the way of  
23 standardization of rulemaking for the agencies, and

1 you deal with the personalities and the persona of  
2 each profession, some of which are a little prickly  
3 when they have oversight, and so there are a lot of  
4 issues here at stake.

5           And so he is requesting, and using this  
6 document, an audit, a lot of times they're not  
7 welcome, but in this case he's very, very happy.  
8 Because as the new director, it would be a very good  
9 tool for him to have to really reshape that agency  
10 and make it work the way it's supposed to.

11           There are a lot of inefficiencies, some  
12 of that might be staffing shortages, it might be  
13 equipment shortages, but those things need to be  
14 ferreted out and a good analysis of how it performs  
15 its function or doesn't presented, and he's very  
16 happy to have that done and help him reshape that,  
17 because that was the purpose for which he was brought  
18 in.

19  
20           CHAIRMAN REAGAN: Okay.

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22           SEN. GIUDA: Anyone from the floor want to say  
23 anything?

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MR. SHOEMAKER: I'm here to answer any questions. Again, Director Grosso is traveling this week, I'm happy to be here to represent him. I think your comments captured our position very well. It's been a challenge. I've been with the OPLC for about three years now.

SEN. GIUDA: He's only 28.

MR. SHOEMAKER: The agency was created approximately five years ago, so as you've mentioned, just due to different challenges it's been very difficult up to date until now to make it go through resource-wise alone, to make some of these assessments, and we think the LBA audit will help us.

CHAIRMAN REAGAN: Okay, you'll get it.

REP. OBER: Mr. Chairman.

CHAIRMAN REAGAN: Yes.

1       REP. OBER: One of the major problems for the  
2 OPLC --

3

4       CHAIRMAN REAGAN: I don't want to talk about it.  
5 They're going to -- the auditors are going to come  
6 back with a scope statement and take it up.

7

8       REP. OBER: Well, it is something I wanted put in  
9 the scope statement.

10

11       CHAIRMAN REAGAN: Okay.

12

13       REP. OBER: And I don't remember if it was in  
14 Senator Giuda's e-mail or not, but is the fact that  
15 every board has legislative differences within the  
16 state law that the OPLC bumps up against, so I would  
17 want the scope statement to give us either a summary  
18 or an idea how we could standardize our vote. That's  
19 all I wanted to say.

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21       CHAIRMAN REAGAN: Thank you.

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23       REP. OBER: You're welcome.



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JAY KAHN, State Senator, Senate District #10:  
Mr. Chairman, one of the reasons we asked for this audit was to perhaps give some legislators, us and others, some insight into legislation that might be helpful to the department in this coming session.

I suspect that the scope that the department is going to come back with is going to be so broad that that's not going to be likely. Just -- it's what occurred to me when I saw the -- and talked to the new director about his desire.

I don't know if there's a way to triage those thoughts, maybe you could take that topic back, and as you work with the LBA staff you can see if there's a tier of topics that might inform the legislature a little bit better.

I think we were looking for those things that would be metrics and give us a better sense of volume of licensing that's taking place in different departments, and maybe that's some first cut that might be able to be shared prior to January.

CHAIRMAN REAGAN: Watch for the scope statement

1 coming to a theater near you soon. Vote on the draft  
2 scope statement for the Liquor Commission Division of  
3 Enforcement and Licensing.

4  
5 MR. GRADY: Good morning. For the record, I am  
6 Steve Grady, I am the in charge auditor for the  
7 liquor commission's division of enforcement and  
8 licensing performance audit. Do you have any  
9 particular questions for me about the scope, or would  
10 you like me to walk through the scope in some level  
11 of detail? Do you have a preference?

12  
13 MARY JANE WALLNER, State Representative, Merrimack  
14 County, District #10: Walk through it.

15  
16 MR. GRADY: Certainly. On page 1 we provide a  
17 little bit of background about regulation of  
18 alcoholic beverages in the state. We talk a little  
19 bit about the managerial framework that exists at the  
20 commission and the division. We found strategy and  
21 planning, while integral to effective management  
22 control, was done on an ad hoc basis at the division,  
23 and the division principally lacked a strategic

1 direction from the commission.

2 We also found there were no plan or  
3 quantifiable goals or objectives clearly tied to  
4 state strategy related to reduction of alcohol abuse  
5 in the state.

6 On page 2 we discuss the organization of  
7 the division. In June of 2019 there were 44 full and  
8 part-time positions within the division. The  
9 division was divided into two sub elements, the  
10 administrative component and the field operations  
11 component.

12 Under the enforcement section on page 2  
13 we describe a little bit about field enforcement  
14 activities. These were the liquor investigators,  
15 police officers, if you will, policing compliance  
16 with statutes and laws.

17 Bottom of the page we talk a little bit  
18 about licensing and auditing. We note there 44  
19 license types established in statute or rule, with  
20 almost a hundred different subtypes either in rules  
21 or practice.

22 Approximately 5,500 establishments were  
23 licensed in May. Approximately 500 new licenses are

1 added to the license list every year. On page 3 we  
2 discuss education and outreach a little bit.

3 Education and outreach, both components  
4 of the division, carry out both functions, and they  
5 do that to be critical to ensuring the compliance  
6 with statutes and laws.

7 Towards the bottom of page 3 we talk a  
8 little about prior audits. The commission has been  
9 subject to prior audits, and we found mixed responses  
10 with mitigating or addressing prior audit findings.

11 Our scope, we expect to -- we are asking  
12 for approval today, is did the division of  
13 enforcement and licensing effectively and efficiently  
14 regulate alcoholic beverages during state fiscal year  
15 2018 and 2019.

16 We do describe some of the methods we  
17 plan to use, and we also note on page 4 they will  
18 examine elements of their processes outside the audit  
19 period, and if we find it necessary, we will also  
20 examine processes outside the division, that is the  
21 commission processes, to the extent that they effect  
22 the division operations

23 We do have some exclusions on page 4.

1 We're not going to look at tobacco enforcement and  
2 regulation, we're not going to look at grants or  
3 contracts, we're not going to look at the controls  
4 over the IT systems unless they hinge directly on  
5 something we're working on, and we'll also work in  
6 concert with the financial audit that will be ongoing  
7 to be sure we also don't duplicate effort, and we  
8 expect to report out on this project in approximately  
9 March of 2020.

10 CHAIRMAN REAGAN: Questions?  
11

12 REP. OBER: There are two things, one of is, to my  
13 way of thinking, there was a question missing that  
14 should be in the scope, and that would be could  
15 anybody in their right mind effectively enforce the  
16 mishmash of liquor laws that we've given them,  
17 subjective from meeting notes.

18 But I was concerned since 2013 they have  
19 six in the process of being resolved in the  
20 observations from prior audit. Are we even going to  
21 look at whether that is a realistic result, or should  
22 those have been -- and make a judgment as to whether  
23 those should have been resolved in the intervening

1 six years? There's no sense of doing this if they  
2 just say, well, we'll say it's in process and we  
3 don't do anything for six years.

4  
5 MR. GRADY: The procedures we typically apply to  
6 prior audit findings when they relate to a component  
7 of an ongoing audit is to basically disassemble what  
8 we had earlier found and what we had earlier  
9 recommended to see whether the agency that had  
10 received those recommendations had addressed them and  
11 had they effectively addressed them, and have they  
12 monitored the implementation of their changed  
13 practices to insure that they were effective.

14 So we will be going through those prior  
15 audit findings and laying those out in some level of  
16 detail and like whether they actually fixed it, and  
17 whether they fixed it well, fixed it maybe okay,  
18 didn't fix it at all, it's not effective, and we'll  
19 be opining on all of that.

20  
21 REP. OBER: And whether it should have taken six  
22 years to fix it.

23

1           DAVID HUOT, State Representative, Belknap County,  
2 District #03: Yeah, right.

3  
4           MR. GRADY: We'll have a discussion with them on  
5 that. Typically when we ask why something hasn't  
6 happened of an agency, they may come back with  
7 priorities or staff resources, or whatever. We'll  
8 take a look at that, and we'll provide that  
9 information as well.

10                           Whether we opine specifically on whether  
11 something was timely addressed, some of these things  
12 seem like maybe they should have been addressed a  
13 while ago, I will agree with that preliminarily;  
14 we'll do some work to establish that.

15                           But beyond that I have not seen a plan  
16 that set a specific date for their remediation of  
17 these things, and as a consequence, it would be a  
18 little bit subjective on our part to say whether they  
19 should have done a better job, be more timely or not  
20 be more timely.

21                           But, again, we'll investigate that fully  
22 before we get to a final report.

23

1           REP. OBER: Well, no, because I know how many more  
2 people we've given liquor, and I know Mr. Mollica has  
3 been reappointed, so it's now at least his fifth year  
4 if not his sixth year. So there are just some  
5 concerns I have given those two facts, because we  
6 dumped people into him via the budget process.

7                         So it will be what it is, John. I mean,  
8 you can't hold their feet to the fire, I understand  
9 where they're coming from, but I'm not sure that  
10 we're going to get it.

11  
12           CHAIRMAN REAGAN: Representative Wallner.

13  
14           REP. WALLNER: I was just wondering why the  
15 decision was made or where it was made, maybe it was  
16 made right here, about not looking at the tobacco  
17 enforcement.

18  
19           MR. GRADY: We discussed it with the requester, the  
20 initial requester, and vetted it through the  
21 requester, and we also examined other concerns that  
22 had been expressed about the commission and the  
23 division specifically. And the majority of the



1 publicly stated concerns, whether it was through a  
2 legislative hearing process or in other venues,  
3 related to liquor related enforcement concerns.

4           So that is why we have accepted a little  
5 bit of risk there by stating we're not going to look  
6 at tobacco enforcement, because we want to spend the  
7 time that we do have available to us focusing on the  
8 stated priority concern, if you will.

9  
10       REP. WALLNER: Thank you.

11  
12       CHAIRMAN REAGAN: Representative Barry.

13  
14       RICHARD BARRY, State Representative, Hillsborough  
15 County, District #21: Thank you. I'm assuming under  
16 auditing, if this commission has 44 types of them and  
17 some are never used, is there a way to compare that  
18 with other states that says that we've got seven, and  
19 that was enough, will that be part of it?

20  
21       MR. GRADY: We haven't built out that component of  
22 work yet, we actually had a discussion with the  
23 auditor is it possible for complexity in the

1 licensing process this morning.

2 We still have some work to figure out  
3 exactly what procedures we're going to apply at the  
4 detail level on that particular component, but we are  
5 going to be looking at the complexity component of  
6 the licensing and try to come up with usable  
7 recommendations for the commission, possibly for the  
8 legislature, as to how complexity could be reduced,  
9 and how possibly licensing could be simplified, and  
10 that might include reducing those low density license  
11 types or eliminating them altogether.

12  
13 REP. BARRY: My concern is barrier to entry,  
14 because a whole bunch of new beer manufacturers, wine  
15 manufacturers, all kinds of things, and if these wind  
16 up being very specific and they are a barrier to  
17 entry without any major reason for that control, that  
18 would concern me.

19  
20 MR. GRADY: We would share those concerns, and we  
21 have preliminarily identified some concerns along  
22 those lines. We do see, again, some of those low  
23 density license types where there's maybe zero

1 licensees or one licensee.

2 We do see a tendency to create a custom  
3 or unique license type based upon a particular  
4 establishment's application or request for a license,  
5 which in one respect is reflective of good customer  
6 service perhaps on the division's part in ensuring  
7 that that applicant gets a license and they can  
8 operate the way they envisioned it; on the other  
9 hand, it does add to the license types and subtypes  
10 that are out there that increases that complexity  
11 without a really good reason, you know, describing  
12 why the division did not fit that new applicant into  
13 an existing license type. So we will be parsing  
14 those things out as best we can.

15 We will note that approximately 44 of  
16 those license types are actually codified in  
17 statutes, so some of it does begin at statute;  
18 however it does get amplified in rule and practice.

19  
20 REP. BARRY: And if I may just follow up on the  
21 various entries. I also believe they do not have a  
22 one-stop shop. If you want a liquor license, not  
23 only do you have to go to the commission, but you

1 also have to go to the city or town and the health  
2 department, and there's some confusion as to which  
3 entity has control over which piece of it.

4 Is any of that -- would any of that be  
5 reviewed so we can say we want to help people avoid  
6 the bureaucracy?

7

8 MR. GRADY: We are not looking outside the bounds  
9 of the liquor's commission's authority at this point.  
10 If that's something you'd like us to do, we'd  
11 probably have to examine to what extent other  
12 regulatory authorities impinge upon a licensee's  
13 application.

14 As you stated, I'm sure the Department  
15 of Health and Human Services group protection section  
16 might have a role in that, the local health  
17 inspector. Any number of folks could have an effect  
18 on a particular applicant's license application, but  
19 we are currently limiting it to Title 13 enforcement.

20

21 REP. BARRY: Okay.

22

23 SEN. KAHN: Thanks, Mr. Chairman.

1           So if I think of three headline stories  
2 that relate to the Liquor Commission, one is related  
3 to \$9,999 sales in multiple locations, a second is  
4 related to vaping products and deaths, and a third is  
5 related to an IT contract that was recently canceled.

6           It doesn't sound like -- at least the  
7 last two doesn't sound like you're going to get to  
8 them.

9  
10       MR. GRADY: I would say that's a fair statement,  
11 yes.

12  
13       SEN. KAHN: And the first one I assume you will  
14 because it's a part of current statute.

15  
16       MR. GRADY: We have examined it, and it is  
17 incorporated into our field work at some level, yes.  
18 And whether an observation specifically comes out on  
19 that threshold and the commission's activities  
20 related to it or not is another matter, it's going to  
21 be borne out by the evidence.

22           But I will note that the Department of  
23 Justice has opined on that topic as well, so we are

1 working within those limitations, or within those  
2 parameters to understand that process.

3  
4 SEN. KAHN: So, Mr. Chairman, this may not be the  
5 body that is going to ask those questions of the  
6 Liquor Commission, but I think that the -- some  
7 transparency from the legislature on those two topics  
8 of are we inspecting the vaping products? We've now  
9 incorporated that into the tobacco statute, so what  
10 type of inspection takes place.

11 And the -- and then the IT contract,  
12 which I know is a very large one, I know is very  
13 important to the commissioners, and that we've  
14 canceled it I guess causes some concern of how do we  
15 get back on track and what are we sacrificing in this  
16 process.

17  
18 CHAIRMAN REAGAN: So this almost has begun a  
19 subject of a different performance audit. Because  
20 the danger is always as you start to develop the  
21 scope statement it gets broader and broader and  
22 broader.

23

1   \*\* REP. OBER: Well, Mr. Chairman, if I might. The  
2   IT contract certainly is not part of enforcement's  
3   purview, so it wouldn't really be part of this.

4                   I mean, you may have questions, but it's  
5   not part of enforcement. We can't blame them for  
6   something that they really have nothing to do with.  
7   To investigate them for not being -- for having done  
8   something that somebody else was responsible for.

9                   That said, I would move to approve the  
10  scope statement, Mr. Chairman.

11  
12           CHAIRMAN REAGAN: Motion to approve.

13  
14           REP. HUOT: Second.

15  
16           CHAIRMAN REAGAN: Second. Any discussion? All  
17  those in favor. Opposed? The motion carries.

18  
19           \*\*\* {MOTION ADOPTED}

20  
21           CHAIRMAN REAGAN: Do we have any other business?

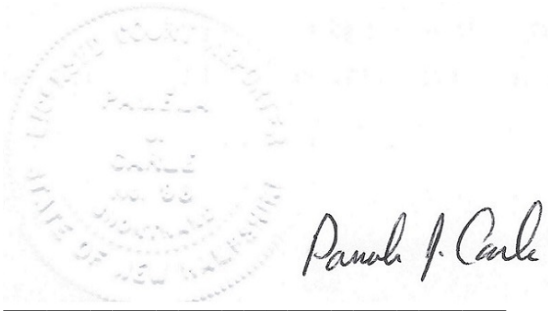
22                   The meeting is adjourned.

23                   (Meeting adjourned at 11:23 a.m.)

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**CERTIFICATE**

I, Pamela J. Carle, Registered Professional Reporter and New Hampshire Licensed Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes to the best of my ability, taken at the place and on the date hereinbefore set forth.



Pamela J. Carle, RPR, CRR  
State of New Hampshire  
License No. 98



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