

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

Legislative Office Building, Room 212

Concord, NH

Monday, April 29, 2024

MEMBERS PRESENT:

Sen. Cindy Rosenwald, Chair

Sen. Timothy Lang

Sen. Carrie Gendreau

Sen. Rebecca Whitley

Sen. Howard Pearl

Rep. Lucy Weber

Rep. Mary Jane Wallner

Rep. Gerald Griffin

Rep. Ken Weyler

Rep. Keith Erf

1. Acceptance of the March 18, 2024 Meeting Minutes:

CINDY ROSENWALD, State Senator, Senate District #13: Nine o'clock, so we'll open the regular meeting of the Legislative Performance Audit and Oversight Committee. We do have a quorum. Thank you all very much. It's good to see you all. In fact, we have, I think, everyone. Great to see you. First order of business is the minutes of --

TIMOTHY LANG, State Senator, Senate District #02:
{Inaudible}.

CHAIRWOMAN ROSENWALD: No.

****** SEN. LANG: I move we adopt the minutes --

CHAIRWOMAN ROSENWALD: Thank you.

SEN. LANG: -- of March 18th --

GERALD GRIFFIN, State Representative, Hillsborough County, District #42: Second.

SEN. LANG: -- as written and presented.

CARRIE GENDREAU, State Senator Senate District #01:
{Inaudible}.

CHAIRWOMAN ROSENWALD: So -- okay. Motion by Senator Lang, second by Representative Griffin. Any corrections or comments on the minutes? Ready for a vote? All in favor of acceptance, please say aye? Any opposed? Okay. The minutes are adopted. Thank you very much.

***** {MOTION ADOPTED}**

2. Status of Ongoing Performance Audits:

CHAIRWOMAN ROSENWALD: Second order of business is -- um -- an update on the status of our ongoing performance audits, and welcome.

CHRISTINE YOUNG, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, and Members of the Committee. For the record, my name's Christine Young, Director of Audits for the LBA. And with me this morning is Jay Henry, Performance Audit Supervisor.

We'd like to provide an update of ongoing and pending performance audits. There's not much to report today, since we did the last update just about a month ago; but I'll make a few brief comments starting with the New Hampshire Commission for Human Rights.

We sent the Commission a draft report on April 9th. We'll be meeting with the Commission next week to answer any questions they have on the report. There's a monthly Commission meeting scheduled for June 6th where the members will discuss the draft responses to the report. And it looks like a July Fiscal

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Committee meeting is the earliest possible time that we'd be able to present the report.

Moving on to the State Oversight of Special Education. There are no changes to report on this audit. Work is still in process here.

Moving on to the Education Freedom Accounts. Since we last met, we continued discussions with the Department on how best to move forward with the audit, and we will continue to have discussions with the Department on this. And, as a result, we're not prepared to present the Scope Statement today. And that is it for current status.

CHAIRWOMAN ROSENWALD: Any questions from the Committee? Do you -- do you have a sense of a timing on when you will -- um -- have more updates on Special-Ed or the EFA audits?

MS. YOUNG: Special Education we probably won't have another update on that for a while. Uh -- I think our plan at this point is to try and get a chapter of observations over to the Department, and -- um -- we're still working through that right now. Uh -- I haven't reviewed that work, and -- um -- that should come in the next couple months, I would think.

JAY HENRY, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: The chapter within a month.

MS. YOUNG: Yes. So that's for Special Education. And on the Education Freedom Accounts, I don't have a great estimate on when the Scope Statement will be ready. How about you, Jay?

MR. HENRY: I think once we get -- they're supposed to finish their review of the contractor within a month or so. So that will give us something to look at. So I think at that point we'll probably have a Scope Statement after that.

CHAIRWOMAN ROSENWALD: Great.

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SEN. LANG: Follow-up.

CHAIRWOMAN ROSENWALD: Yes.

SEN. LANG: When you say they are looking at the contractor, are you talking about the Department of Ed is looking at their contractor? They're doing a review and then that summary of that review will be presented to you for your analysis?

MR. HENRY: Yes.

SEN. LANG: Thank you.

CHAIRWOMAN ROSENWALD: Representative Weber.

LUCY WEBER, State Representative, Cheshire County, District #05: Just a quick technical question. When you said that a chapter of our observations is going over to the -- um -- Department, what do you mean when you say a chapter? Is that a partial -- a part of --

MS. YOUNG: Yes.

REP. WEBER: -- the entire audit?

MS. YOUNG: Yes, it is. Yeah. That will be a lengthy report. So we're -- we're talking about presenting that to the Department in chapters.

REP. WEBER: Okay.

MS. YOUNG: Just so that we can have the process moving along, instead of giving them a whole report at the end with -- with really a lot to take in.

REP. WEBER: So -- so bite-sized chunks.

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MS. YOUNG: Bite-sized chunks, yes.

REP. WEBER: Thank you.

CHAIRWOMAN ROSENWALD: As I recall, you had told us there was going to be a thick audit with 40 or so observations.

MS. YOUNG: Yes, that's correct.

CHAIRWOMAN ROSENWALD: Okay. So Fiscal will have some -- something to digest.

MS. YOUNG: Yes.

CHAIRWOMAN ROSENWALD: Okay. Any other questions on the status? Great.

3. Suspended, Tabled, and Potential Audit Topics:

CHAIRWOMAN ROSENWALD: Okay. Let's move on to Suspended, Tabled, and Potential Audit Topics. I think you all -- yes. Does everybody have this? Great.

So there's Public Access to Bodies of Water, The Doorway Program, the Appeals Process. There are a number of them. OPLC, Bureau of Elderly and Adult Services, Contract Management by HHS, Bureau of Developmental Services, and the Interplay of Division of Children, Youth and Families and Bureau of Behavioral Health. I note that we got a follow-up letter from -- bye!

SEN. LANG: {Inaudible}.

CHAIRWOMAN ROSENWALD: Yes. Bye! From some members of House Judiciary -- um -- in support of moving forward on a performance audit of the different appeals processes. I don't know if everyone's had a chance to look at that. Could you tell us how many audits you could take on right now?

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MS. YOUNG: Right now we could take on just one.

CHAIRWOMAN ROSENWALD: Okay.

MS. YOUNG: Um -- so if we could get at least one topic at a minimum today -- um -- a couple would be better, just so that we have something to work off of as we start finishing up some of these audits.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: So I'm going to go the opposite direction. I'm going to ask that we don't do number four. I think OPLC is in lurch. We've been changing the laws so much regarding them. And if I'm not understanding this, Senator Pearl could answer. I think we have a 99-page bill sitting in ED&A right now, again, around OPLC. So I think that's such a moving target that we should just leave them alone for a while until the dust settles and -- and we have a little standard there.

HOWARD PEARL, State Senator, Senate District #17: You're close. I think it's 96 pages.

CHAIRWOMAN ROSENWALD: I tried to file that bill and it was 114 pages at the time, and OLS said we can't draft it for you. So I'm glad they got it down --

SEN. PEARL: Pare it down a little.

CHAIRWOMAN ROSENWALD: -- to 96. Yeah. Um -- any thoughts about other --

SEN. LANG: If I could follow-up?

CHAIRWOMAN ROSENWALD: Yes.

SEN. LANG: So, again, we've had -- we had this conversation another agency about appeals and the overall process of appeals within the state, how we deal with it, whether it's at DES or

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any other agency. And I'm wondering whether there's -- there's a bigger topic to be had there.

Um -- I know some of the concerns were addressed around agencies having hearings officers within their own agency making them dependent upon the agency and necessarily not likely to rule against the agency, or at least it's probably not in their best financial interest to do so and keep their job possibly. And so I know that we were having a discussion. I'm trying to remember what Committee it was in. We're having a discussion about the bigger overarching idea of how New Hampshire handles hearings and appeals within agencies. And I don't know if we want to just pick on this one agency or whether we want to take a bigger, overarching, you know, big picture view of how hearings and appeals happen within the state within agencies and identify what they look like.

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: Thank you, Madam Chair. Thank you, Madam Chair. I think that's a really interesting topic. I don't think that, first of all, my first thought was making any audit bigger is probably inviting it to be less thorough because we have limited resources. And my second thought is that when you're talking about that kind of inquiry about the appeals process, that sounds to me very much like a study committee, not -- not an issue for an audit. And I think if we're looking for an audit, then something that's narrowly focused is a better choice, and that's just my view of the thing.

SEN. LANG: I agree with you. I got it was only going to be an inch deep and a mile wide. Yeah, I got that.

CHAIRWOMAN ROSENWALD: As I see in this letter we're -- this proposal actually looks at four different appeals processes to begin with.

SEN. LANG: The Agency is here if we want to talk to them.

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CHAIRWOMAN ROSENWALD: Who's here from --

SEN. LANG: Adam.

CHAIRWOMAN ROSENWALD: Oh! You guys want to come up and rearrange the deck chairs?

REP. WEBER: {Inaudible}.

CHAIRWOMAN ROSENWALD: Yes. Yes, Representative Weber.

REP. WEBER: Thank you very much. Just as a preliminary matter -- um -- I think as -- as people are addressing their comments, which I'm very interested in -- um -- am I not correct that what the audit does is look at -- and I probably should have asked this before we changed the chairs over -- but what the audit does is look at whether what's happening on the ground comports with our statutes, rather than is it a good thing generally. So I just want to be sure that we keep that all firmly in mind as we're going forward with the -- with making determinations.

CHAIRWOMAN ROSENWALD: That's the way I've always read performance audits. Good morning.

ROBERT SCOTT, Commissioner, Department of Environmental Services: Good morning. For the record, I'm Bob Scott, Commissioner with the Department of Environmental Services. I have my Assistant Commissioner, Adam Crepeau, here with us, also.

If I could, Madam Chair? Uh -- maybe it would be helpful to explain the current status, legal status of where we are statutorily with our -- uh -- our four councils.

So going back in time to answer the Senator Lang's question -- uh -- well over a decade ago we transitioned to have not any agency staff being the hearings officer for these type

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of appeals. Uh -- we had relied on the Attorney General's Office to appoint somebody to do that for us.

In the last legislative session in House Bill 2 -- uh -- we -- we sought some further -- uh -- uh -- streamlining, if you will, of the council process. So what we had asked for was multiple things.

Uh -- we asked for the quorum that's necessary to get a council moving on appeals to be reduced to three. That is in place today. Uh -- we also asked that these councils be advisory to the hearing officer appointed by the Attorney General's Office. That did not get through the legislation. That start -- that the -- as introduced House Bill 2 had that and then that was -- that was taken out. Instead of that, in place of that was put a legislative study committee requirement was put in, which we strongly support.

Also, we did not -- we were prior to House Bill 2 last year, we were staffing -- uh -- the appeals process. We kind of had a -- a -- a firewall with some staff supporting the councils doing the -- getting the paperwork for appeals and all that ready for them. I didn't like the optics of that. That, also, was moved to the Attorney General's Office last session as well.

So there's -- what I'm here to say is I'm not sure, first of all, there's -- there's no over -- overlap with the Department in our appeals process. Rightly so. We're separated. So, you know, we issue our decisions based on the record at the time. If those are appealed, that's the only action we -- we've issued that -- that appeal -- not the appeal, the permitting action which is being appealed, and then it's entirely in the council's -- in the Department of Justice's hands. So there's no overlay with, I think rightly so, with the Department of Environmental Services.

So I think listening to Senator Lang that's -- that's the direction I think you want to be for the other -- other departments.

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So we do have a representative from the Department of Justice here, also. He's willing to speak, if need be; but I guess what I'm here to tell you, I believe we've made changes to do exactly, I think, the type of thing you want to do. We, frankly -- uh -- we would like to see these councils move quicker, also, which is why we were suggesting they become advisory to the hearings officer so they would be the subject matter experts. The hearing officer would be the final decision-maker. That didn't make it through.

I would -- I know that, again, House Bill 2 had a -- had a legislative study committee requirement, and I believe held over Senate Bill 84 had the same thing. So we strongly support that. I'm not quite sure what a audit would do, again, as -- as rightly pointed out. I believe an audit is are you following the current laws and rules; but, again, that all just changed. So I'm not quite sure what we'd be accomplishing; but we're here to answer any questions you have.

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: Do you know where we are in the study committee process at this point? Is that -- that was House Bill 2. So it should have been started already.

MR. SCOTT: I'm going to let Adam answer that; but I think nowhere is the answer. Hold on.

ADAM CREPEAU, Assistant Commissioner, Department of Environmental Services: Good morning. When we looked on the website for the HB 2 study committee, it didn't look like they had met, or at least they didn't file a report. However, I know in SB 84, which was held over from the last session, it has the same study committee in it, and I know that just recently passed the House -- um -- in January. And so that should be headed to the Senate any time now and we, like the Commissioner said, we -- we are in strong support of a study committee to look at this.

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CHAIRWOMAN ROSENWALD: Yes, Senator Lang.

SEN. LANG: Thank you. You answered all my questions, at least regarding your agency and how you handle appeals. I like the idea that's outside your agency for the hearings officer. So thanks.

CHAIRWOMAN ROSENWALD: I think that what the Representatives of the Judiciary Committee were concerned about was that all four appeals processes are different. I think.

MR. SCOTT: Madam Chair, is that a question for me? I can address that you, if you like.

CHAIRWOMAN ROSENWALD: Yes, please.

MR. SCOTT: So -- so yes. So right now the four councils are set up by statute with subject matter experts, depending on the type of permit that we're doing. So there's an Air Council for air pollution control permits. So they're more aligned to -- to understand those better. Similarly, we have one for Wetlands; again, Waste Management. So that's by design. They have synergized their rules over the years, so by and large their rules are -- are essentially similar. Uh -- again, that's out of the Department's control. We have a separation. So that's up to the councils themselves, not the Department -- uh -- but we certainly encourage that.

So -- so yes, there are four different councils. That's, again, I would argue would be fodder for maybe a study committee. Anything we had thrown out in the past is maybe a single unified environmental appeals council that perhaps could be advised by these subject matter experts in that type of thing. So, again, I think there's a lot of -- a lot of ways we can still improve the process.

CHAIRWOMAN ROSENWALD: So I guess my latest experience with the Air Permit Division is in my own district. There's a

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proposal for -- to build an asphalt plant, and DES came down to Nashua and held this very -- wasn't a public hearing, but it was public information session. But the statute that they're supposed to base their opinion -- their opinion on is a Public Health statute.

MR. SCOTT: Correct.

CHAIRWOMAN ROSENWALD: And it was not clear to me that your Department interacts with HHS on how that statute is supposed to be interpreted --

MR. SCOTT: Hm-hum.

CHAIRWOMAN ROSENWALD: -- when you're evaluating an air permit. So it seems like maybe that's the kind of thing a performance audit could look at.

MR. SCOTT: Potentially. Uh -- so 125-C -- uh -- it is a Public Health statute, but explicitly says the Air Resource Division of the Department of Environmental Services shall. There's a lot of that language in there. So that's where the air pollution control regulations are -- are housed and that's where the expertise is in the Air Resources Division.

That Division also has environmental public health group, also, and their job is to liaise with the HHS Public Health. And as you're probably aware, we're in the same building. So it's pretty easy to do that. So they do that fairly frequently.

CHAIRWOMAN ROSENWALD: Thank you. Other -- yes, Representative Erf.

KEITH ERF, State Representative, Hillsborough County, District #28: Thank you, Madam Chair. I just don't understand this because I haven't been involved with DES; but are the councils part of DES or part of the AG's Office?

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MR. SCOTT: The councils are separate -- they're administratively attached as far as we do -- the only involvement we have right now is we'll have secretarial support that can help them take minutes of hearings so -- not hearings, excuse me. But one of their jobs is to advise our divisions. Again, these are subject matter experts from the communities, some are from industry, some are from environmental groups, depending on how the statute's set up. And one of their roles is to advise us on our administrative rules, and that's a process we go through to get help -- get a little bit more context as we go through our rulemaking process. So the -- that's the largest involvement we have.

So we'll have staff appear before them, present rules, and we'll have somebody help them with notes, with minutes. But when it comes to an appeal, they're totally separate. We have no involvement with them whatsoever.

REP. ERF: Follow-up, Madam Chair.

CHAIRWOMAN ROSENWALD: Yes.

REP. ERF: So where do they come from? How do councils come to be?

MR. SCOTT: Uh -- they're nominated for the Governor and Council process, and then reappointed as their terms come up.

REP. ERF: May I follow-up on that?

CHAIRWOMAN ROSENWALD: Hm-hum.

REP. ERF: This might be a better question for the auditors, but I'll just ask you. So this seems to imply that a lot of the issue's with the councils. You must have seen the letter from the --

MR. SCOTT: Correct.

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REP. ERF: -- Judicial Committee. Do I understand that correctly?

MR. SCOTT: That --

REP. ERF: That the -- the -- the concern of the Committee seems to be with regard to the councils and their decision-making.

MR. SCOTT: I believe so. But as I was pointing out though, we've tried to streamline the law to help answer some of those questions.

REP. ERF: No, I get that. So my question -- so my question is, is -- is it your opinion that they really don't really fall under the auspices of the Department of Energy?

MR. SCOTT: Environmental Services.

REP. ERF: Environmental Services, excuse me.

MR. SCOTT: Correct.

REP. ERF: And thus wouldn't even come under the audit.

MR. SCOTT: Correct. If auditors were coming to ask us about it we'd say we've issued a permit and, you know.

REP. ERF: Thank you.

CHAIRWOMAN ROSENWALD: Yes, Senator Lang.

SEN. LANG: So, again, but I think to -- to your point Keith, Representative Erf, the audit is about the council, right, not about the agency. At least that's what Representative Lynn is asking and -- and the Committee seems to be like the auditing the four councils and their -- probably their administrative proceedings relative to appeals is what they're looking to do, at least as I read this.

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REP. ERF: May I respond, Madam Chair?

CHAIRWOMAN ROSENWALD: Yes.

REP. ERF: And, again, this is probably needs to be posed to the auditors, but the question is do they even come under our legislator's -- auditor's ability to do that auditing?

CHAIRWOMAN ROSENWALD: Let's ask the AG. Come on up.

MR. SCOTT: Would you like me to stay up, also?

CHAIRWOMAN ROSENWALD: Sure.

MARK DELL'ORFANO, Assistant Attorney General, Office of Attorney General, Department of Justice: Good morning, Madam Chair. For the record, my name is Mark Dell'Orfano. I'm an Assistant Attorney General from the Department of Justice in the Civil Law Bureau.

CHAIRWOMAN ROSENWALD: So, Representative Erf, would you like to ask that question?

REP. ERF: So my question is -- um -- we've had discussions in the past over what the boundaries are of the LPAOC, the auditors, basically the performance auditors. Do they -- do those boundaries include auditing the councils, which it seems like maybe a significant part of what is being asked of us here?

ATTORNEY DELL'ORFANO: I would have to take a look at the statute that governs audits. I didn't do that in preparation for today's meeting. I can tell you, though, that each of the environmental councils are governed by their own statute under 21-0.

For instance, the Wetlands Council is established under RSA 21-0:5-a, and in each of the other -- other four have their own provisions in 21-0. So they fall under, from a organizational

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standpoint statutorily, within the DES department; but each of those councils is only administratively attached. So the DES doesn't have oversight over those different councils. They are independent of DES in that regard.

As to your question, Representative, regarding whether or not audit -- an audit can be performed of those councils, that's something that we'd have to go back and look at the statute on, because -- and as I said, unfortunately, I didn't prepare for that question today.

CHAIRWOMAN ROSENWALD: Okay. Well -- um -- that would be good to know.

ATTORNEY DELL'ORFANO: Okay.

CHAIRWOMAN ROSENWALD: Thanks.

ATTORNEY DELL'ORFANO: Yeah.

CHAIRWOMAN ROSENWALD: Okay. Let's -- Representative Weber, question.

REP. WEBER: I'm just trying to figure out if I'm missing something here. They're statutorily created.

ATTORNEY DELL'ORFANO: That's correct.

REP. WEBER: And I guess if you're doing the review, my question would be could we divide it into two parts, one of which is I can't figure out why we wouldn't be able to audit them, but perhaps you'll let -- let us know. But the second part is how would we word an audit to properly include those things that we're trying to get at, and that would be helpful.

CHAIRWOMAN ROSENWALD: Commissioner.

MR. SCOTT: Again, I'm not an attorney so take it for what you will. I know in the past when we've had an audit done with

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the Department -- uh -- at least on one occasion they looked at the related council, also.

REP. WEBER: {Inaudible}.

ATTORNEY DELL'ORFANO: Representative, the trouble is is as an attorney I can't guess on those sorts of things. So -- um -- and -- and that's why -- that's why, you know, my -- my answer may have sounded a bit evasive, but that wasn't the intention. The intention was to communicate that I don't know the answer right now, but I will try to get it for you.

CHAIRWOMAN ROSENWALD: Senator Pearl.

SEN. PEARL: Thank you. Commissioner, I'm trying to make sure I have my head around these councils. Did I hear you correctly that they only serve in an advisory? They don't really have any authority to make an adjudicated decision. They're just an advisory; is that correct?

MR. SCOTT: No. So what I was trying to relay is our initial request in the House -- House Bill number -- House Bill 2 as introduced last year, that was the language.

SEN. PEARL: Okay.

MR. SCOTT: So -- so we reduced the quorum to three to make it a little bit more -- uh -- easier to happen. And -- and -- and we also had language in there that would make them advisory, again, to the subject matter experts to the hearing officer who would make the decision.

SEN. PEARL: Okay.

MR. SCOTT: That did not make it through the legislative process. But -- but, again, I -- that's one of the reasons why we're encouraging -- encouraging -- I think there's more work to be done there legislatively and that's why we're encouraging the study committee.

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SEN. PEARL: If I may?

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. PEARL: If there's an appeal, then they decide the appeal and issue a ruling.

MR. SCOTT: Correct. So the hearing officer from the Department of Justice will rule on matters of law, and they will -- the council themselves rule on -- on the facts of the case.

SEN. PEARL: Thank you. Just trying to get my head around, make sure I had it correct.

CHAIRWOMAN ROSENWALD: But-- but do I understand that what's being suggested by the members of the Judiciary Committee is not the initial decision process but the appeals. Because these councils issue an opinion and then the appeal is to the Superior Court -- Supreme Court.

MR. SCOTT: Yes, ma'am, the Supreme Court.

CHAIRWOMAN ROSENWALD: So I'm not exactly sure what part of the appeals process is being recommended.

REP. ERF: I thought the appeal was to the councils.

MR. SCOTT: Correct.

REP. ERF: Not the Supreme Court first.

MR. SCOTT: Correct. If I may? Exactly, I think that's what the Senator was saying. So the initial appeal, if there's a -- somebody's appealing one of our permitted decisions would go to the council.

CHAIRWOMAN ROSENWALD: Okay.

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MR. SCOTT: If they're aggrieved by that, then it would go to the Supreme Court. And then I think there's been some discussion in some of the bills that perhaps there should be an intermediate step with the Superior Court; but, again, I would argue that is fodder for legislative process, not whether, you know, I -- I -- my opinion, if I may, Ma'am, Madam Chair, auditing this at this point, first of all, we have a brand new law that's been placed, and I think a lot of the things raised in these letters are things that they would like to see changed in the law. I don't know how an audit does that. But that's, again, obviously the Committee can do what they will.

ATTORNEY DELL'ORFANO: Madam Chair, if I could just add to --

CHAIRWOMAN ROSENWALD: Yes.

ATTORNEY DELL'ORFANO: -- Commissioner Scott's statement. So over at DOJ, because of the passage of HB 2, we've started taking over the functions of the appeals clerk. And we're working on putting in place a permanent full-time hearing officer, because some of the -- the funding that was at DES for dealing with that position has been transferred to the Department of Justice.

So, so far we have a new appeals clerk in place. We have appointed another Assistant Attorney General from our Criminal Appeals Division to work as the interim hearing officer until we identify a permanent hearing officer. So there have been a lot of changes over the last six months. And, you know, to I guess reiterate what Commissioner Scott said, there isn't much to audit at this point because we're still kind of putting these things in place.

One thing I will -- will state though is that the councils, to the extent that we were able to do this, have adopted procedural rules for appeals, which are more or less uniform. Okay. There are some numbering differences. There are some

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idiosyncrasies among the councils; but, for the most part, this process started two years ago. Uh -- first it was Wetlands. They were the first to have the new rules. Then Air, and then last fall Waste, and then this past month Water. So they've, you know, gone through. They've been extensively changed. We've held public hearings. We've been to JLCAR a few times. And, you know, so now those are in place.

So I think that if -- if the consideration now is an audit, it kind of seems as if, well, anything that would be audited might be something under the old system. But because we have this new system, it just kind of doesn't seem timely at this point.

CHAIRWOMAN ROSENWALD: Hm-hum. Representative Weyler.

KENNETH WEYLER, State Representative, Rockingham County, District #14: Thank you, Madam Chair. I'm convinced that we're not ready to move forward on this audit, and I'm ready to put forth another topic when we finish with this one.

CHAIRWOMAN ROSENWALD: Is there any further discussion?

SEN. LANG: I agree.

CHAIRWOMAN ROSENWALD: Yeah. I -- I don't feel like we're ready to go on this one. Um -- we do have some other potential ones. Do you want to raise yours --

REP. WEYLER: I do.

CHAIRWOMAN ROSENWALD: -- first.

REP. WEYLER: I'm looking at number six. And, again, I don't want to really dig into the contractors, but when we do the DES budget, so much of each Department goes out to contracting, roughly 20%, and since this Department is almost half of the budget, this -- this represents a sizeable amount that we know

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so little about in the -- uh -- Health and Human Services Department.

So just kind of a list of how many contractors, what the total cost is, and -- and perhaps how the process works so that is there really -- is it competitive or are they just looking for the same contractor year after year? Is it just kind of single bids, and it just goes through year after year to the same contractors and do the same contractors have several different contracts with -- with HHS?

I don't think this is something where you really need to dig very deep into who the contracts are and what are they doing. But has the same contractor got five or six different contracts and, you know, there was -- uh -- and the receivables, I'm interested in knowing who's looking at the receivables, and, you know, how -- how complete are they.

I mean, some years ago going back quite a while, we had a contract that was supposed to reduce teenage smoking. And we spent a couple million dollars year after year to reduce teenage smoking. Finally, somebody looked at it and said teenage smoking is increasing. Why we -- why we paying these people a million dollars a year or two million, whatever it was, to reduce teenage smoking when nothing seems to happen? So we cancelled that contract in the budget. That contractor probably spent all that money putting out ads saying the State is not doing enough to stop teenage smoking. It was on all the radios and I don't know if it made TV. But all the money that they hadn't spent doing what they said they were going to do they seemed to spend in advertising telling how evil the State was for not following up.

But, anyway, so ever since then I've been wondering why don't we know more about where the contracts are going. Are they going to several different people? Is there a real bidding process or are the same people getting them year after year and the same people may be getting multiple contracts. So I don't need to dig into really what's going on, but just kind of the

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process. And I'm hoping that we get more better information. Thank you.

CHAIRWOMAN ROSENWALD: Discussion. Representative Weber.

REP. WEBER: Isn't that something that could be requested of LBA by -- I mean, it's information. It's not an audit. And isn't that something that could be requested now, either of the LBA, either by -- um -- one of the Finance Committees or by Fiscal, requested by Fiscal? There's no need for an audit.

REP. WEYLER: I would envision it being a little wider. 'Cause, you know, if the process is more complicated than just saying, okay, you have the contract. Who bid for it? Where were the bidders? Did you choose the lowest bidder? The same person do it last year? What were the receivables? Were they satisfactory? Have we really seen any progress from this contractor, that sort of thing. I don't think that's -- it's just a little wider in my mind than what LBA would do. Thank you.

CHAIRWOMAN ROSENWALD: I mean, I guess we could certainly seek to understand why it takes so long to get a contract to the Executive Council. I mean, 'cause it takes five, six months. Um -- I -- I know they've had vacancies in the contracting unit. Um -- what's the will of the Committee? Do you want to discuss some of these other ideas for -- yes, Senator Lang.

SEN. LANG: So out of the eight on the list, I had two I wanted to take a look at. One was The Doorways Program. The other one was the Interplay of DCYF and the Bureau -- and number eight. So number two and eight were my concerns.

Eight, as you know, Senator, you and I had to deal with an issue this January through March with a -- with a child that was stuck in the emergency room for almost 60 plus days not receiving services -- um -- that had a problem. So I'm interested in was there a bottleneck? I -- I will say, you know, DCYF, the Department of Health and Human helped me -- they

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were responsive. They just didn't have an answer to this problem.

CHAIRWOMAN ROSENWALD: The kid wasn't involved with DCYF.

SEN. LANG: Right, right. And so the question is whether there's any benefit that would have in that particular one family's instance with 60 days, is there -- was it an interplay issue between the agencies trying to find -- between Behavioral Services and DHHS to try to find placement or was it just we don't have services. And then on the other --

REP. WEBER: Did we bring number eight forward?

SEN. LANG: On the Doorway -- I'm sorry.

REP. WEBER: Did we bring number eight forward?

CHAIRWOMAN ROSENWALD: Wait, we have questions.

SEN. LANG: So on the Doorway Program, again, we're seeing a significant amount of money flow into the opioid and we're having discussions now about marijuana and potentially increasing more drug-related things going on within the state. And so the question is should we take a look at our existing substance abuse programs and see if they're -- they're functional, if they're working for our citizens, are they getting the services. And Representative Weyler's point, the receivables, are we seeing less recidivism relative to people who have gone into treatment with given all the money we're spending? So those are the two I want to see, talk about, and move forward.

CHAIRWOMAN ROSENWALD: Senator Whitley.

REBECCA WHITLEY, State Senator, Senate District #15: Thank you, Madam Chair. I agree particularly with number eight. Um -- my concern is as we are, you know, continue to build our children's mental health system that our systems are talking to

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each other. There's a lot of overlap between DCYF and the Bureau for Children's Behavioral Health, and I just want to make sure that -- that those systems are consistent.

For example, many children are placed out-of-state. Not by DCYF but by the Bureau of Children's Behavioral Health, and I think there are differing levels of due process when that happens and notification. And so -- um -- I know that we are working towards decreasing the amount of children who are placed out-of-state. I think that is critical and should be a top priority. I think we need to look at it though.

You saw the situation in Tennessee and so the scope would be, I think, starting to look at how those out-of-state placements are made. And then secondary, how those out-of-home decisions are made, particularly when it's involving the Children's Behavioral Health Bureau. I think we have sort of more information about how DCYF does that.

Something that is very much related to that system integration piece is who's paying for it. Um -- we know that there is a very large budget. Folks who are on Finance know that the budget for Children's Behavioral Health is really large and that's, in part, because of residential placements. It's also, in part, because there are children that are getting pushed into the Medicaid system, perhaps because they're not getting coverage for services by their private insurance companies. And so we do know that there is a level of -- um -- sort of, you know, is it appropriate for the State System to be providing so much services for children that should be getting coverage in the private insurance. So I am very interested in that question.

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: I -- I would just second all of that. Um -- I really think that understanding where -- where -- where the limits are -- where the interstices are, how -- how -- how the two agencies mesh, and how those decisions are made. I think

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they're -- I think there are larger policy questions involved as well, but understanding how the process works at the moment and how they're dealt with I think would be really helpful.

So I would at any appropriate time, I would be glad to either move or second a motion that we bring number eight forward -- uh -- as that -- of the two of them, that would be my first priority certainly going forward.

CHAIRWOMAN ROSENWALD: I'm also -- I'm interested in that one, but also The Doorways because -- uh -- we spend millions on this program, and we've no idea really what we get for that. I mean, they're open 8 to 5 Monday through Friday, I think. How many clients are they serving? What is the time between client showing up and treatment or interaction with a provider, being maintained? How many of the interactions are with the phone line versus the physical place? But -- um -- I think those two are really important. But if we want to entertain a motion, I'd recognize someone. Senator Lang.

****** SEN. LANG: Madam Chair, I move we move number eight in position one and as a backup number two.

SEN. WHITLEY: Second.

CHAIRWOMAN ROSENWALD: Second by Senator Whitley on motion by Senator Lang. Further questions? Discussion? Comments? Senator Whitley.

SEN. WHITLEY: I just want to make sure you all have enough guidance on that letter on number eight because it is a big one. Do you need any sort of -- sort of what we think the largest problem is and move down from there?

MR. HENRY: Hello. My name is Jay Henry. I'm the Performance Audit Supervisor for the LBA Audit Division. I think what we'll need is just time to get into that topic. I mean, it sounds like there's two. There's a Bureau and a Division within the Department of Health and Human Services. Um -- we have to

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look at the laws and how that connects, and also just how many children are -- are seen by both agencies.

So I think we probably need to do more background. We're going to come back with -- we'd come back with a Scope Statement, and that's probably where we can really fine tune what you're interested in, what -- what's there. At least, that's my -- my sort of gut reaction.

SEN. WHITLEY: Follow-up.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: Not the -- to the second point of that question, though. While you're dealing with the interplay, but also the question is the funding, right? So the last -- the last question and sentence in line eight, right?

MR. HENRY: Oh, the private insurance?

SEN. LANG: Is there a general concern the private insurance is not covering the necessary need, right?

MR. HENRY: That -- that's sort of another issue.

SEN. LANG: The secondary issue.

CHAIRWOMAN ROSENWALD: Senator Whitley.

SEN. WHITLEY: Yeah, I see this actually not secondary. I see it as part of a symptom of the problem. You know, for example, there is a door into Medicaid, eligibility door into Medicaid we used to call Katie Beckett, and children entered that door based on the severity of their, you know, of their symptoms and their disorder. And so there is a general sense that children are getting pushed into Medicaid through Katie Beckett because they are not getting what they need early on, and that's the issue that I'm very, very concerned in.

The Department of Insurance is doing a lot of work about thinking through what is covered, what is not covered, what should be covered. So I'm less concerned with that. I'm more concerned about, you know, that acuity that is leading kids to get into that system and how much we are paying for that instead of the private insurance companies. That make sense?

CHAIRWOMAN ROSENWALD: Okay. So we have a motion to put first number eight, then number two into the queue. Any further discussion or all in favor say aye? Any opposed?

***** {MOTION ADOPTED}**

CHAIRWOMAN ROSENWALD: Okay. So probably the next time we meet you might have a proposed Scope Statement, at least for number eight.

MS. YOUNG: Can I make a comment?

CHAIRWOMAN ROSENWALD: Of course.

MS. YOUNG: Madam Chair, are there any topics on this list that we want to remove or is the Committee interested in keeping all of them on the list for future consideration?

CHAIRWOMAN ROSENWALD: Well... Senator Lang.

SEN. LANG: So, again, three and four, we had a pretty extensive discussion around three, and I think that's a moving target right now. Probably be delayed for a couple years and then we can come back and look at it and see whether or not that appeal process needs to be dealt with.

And number four, as I said, again, moving target. I think that could be taken off the list for a couple years and be brought back if someone sees a problem. But we're making some dramatic changes in both those areas. I think we can take them off the list for now, it be my opinion.

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CHAIRWOMAN ROSENWALD: Senator Pearl.

SEN. PEARL: I'd also add number one to that list, public access to bodies of water. I'm not aware of any real concerns there in that area.

CHAIRWOMAN ROSENWALD: I don't know how long that's been on this --

SEN. PEARL: Yeah.

CHAIRWOMAN ROSENWALD: -- list.

MR. HENRY: It came from the prior Committee. It was just a topic that was brought up and -- but without a complaint. We didn't know exactly what was wrong. It was just sort of more of an issue that we never looked at.

CHAIRWOMAN ROSENWALD: Okay. So we're talking about taking off one, three, and four for now. Five is still in litigation. So I think probably we'd be interested in this when the dust settles. Um -- contract management we should keep on. BDS -- um -- I think it's been a while. Senator Lang.

****** SEN. LANG: Madam Chair, I move -- I make a motion we remove one, three, and four off the -- take it off the table and dispose of it.

SEN. PEARL: Second.

CHAIRWOMAN ROSENWALD: Discussion? Okay. If you're in favor of removing one, three, and four, knowing that they can come back, please say aye? Opposed? Okay.

******* {MOTION ADOPTED}

CHAIRWOMAN ROSENWALD: So we have one and two -- I mean, eight and -- eight and two. And the others --

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SEN. LANG: Five, six and seven.

CHAIRWOMAN ROSENWALD: Five, six and seven stay.

MS. YOUNG: Excellent. Thank you.

4. Other Business:

CHAIRWOMAN ROSENWALD: Do we have any other business?
Representative Erf.

REP. ERF: May I just ask a question?

CHAIRWOMAN ROSENWALD: Of course.

REP. ERF: Regarding number six. Um -- it states at the end there Department of Personnel provided, dot, dot, dot. Is it possible to either tell me when we will receive that and maybe I'll have it or just resend that information, because that might be of interest.

MS. YOUNG: Sure. We can resend that.

REP. ERF: Thank you.

MS. YOUNG: That was discussed at the August meeting.

REP. ERF: Which I missed.

MS. YOUNG: And I believe Nathan White made a presentation on that and provided handout with a couple of parts.

REP. ERF: I may have it then. Thank you.

MS. YOUNG: Sure.

5. Date of Next meeting and adjournment:

CHAIRWOMAN ROSENWALD: Anything else to come before us? Okay. So the next meeting will be when Jay tells us.

SEN. LANG: Jay has the power.

****** CHAIRWOMAN ROSENWALD: When Jay is ready. When Jay and Christine are ready. And -- um -- other than that, I think we can stand adjourned.

SEN. LANG: Second.

CHAIRWOMAN ROSENWALD: All in favor? Thank you all very much.

***** {MOTION ADOPTED}**

(Meeting Adjourned.)

C E R T I F I C A T I O N

I, Cecelia A. Trask, a Licensed Court Reporter, do hereby certify that the foregoing is a correct transcription from the YouTube video of the proceeding in the above-entitled matter. I was not physically present at the meeting and have transcribed the video to the best of my professional skill and ability.

Cecelia A. Trask, RPR, RMR, CRR
NH Licensed Court Reporter - #00047

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