

MAINE STATE LEGISLATURE

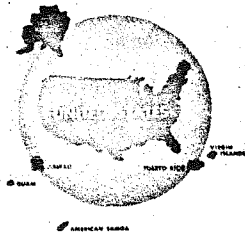
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9 February 1977

RECOMMENDATIONS FOR THE PERFORMANCE AUDIT COMMITTEE

Submitted by
Stephen Lakis

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OFFICERS: President—HON. HERBERT FINEMAN, Speaker, House of Representatives, Pennsylvania; Vice President—HON. KEVIN B. HARRINGTON, President, The Senate, Massachusetts. **DIRECTORS:** HON. B. MAHLON BROWN, Majority Leader, The Senate, Nevada; HON. GEORGE PAYNE COSSAR, Chairman, Rules Committee, House of Representatives, Mississippi; HON. PERRY B. DURYEY, JR., Minority Leader, The Assembly, New York; HON. ROBERT VANDER LAAN, Assistant Minority Leader, The Senate, Michigan.

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AUGUSTA, MAINE

Objectives

This section will set forth recommendations designed to strengthen the Performance Audit Committee. In many instances these recommendations will require no formal legislative action. Instead, they will require a clear commitment on behalf of the Performance Audit Committee, as well as the entire legislature and the agencies and departments which serve the legislature, to the principal objectives embodied in the concept of performance audit.

Complementing these informal recommendations, certain more formal rule and statute changes will be proposed. In every instance these more binding recommendations are designed to increase the Performance Audit Committee's ability to successfully fulfill its legislative mandate.

History

The 107th. Maine Legislature, by Joint Order, established a Performance Audit Committee. In doing so the Maine Legislature evidenced its recognition of the need to strengthen one of the basic functions of a legislature - oversight. Unfortunately, the legislature's action in creating the Performance Audit Committee appears to have been somewhat half-hearted. No firm direction was given to the Committee as to what its principal duties and responsibilities were to be. More significantly, very little guidance was given the Committee in helping to determine precisely how it should function. As one member of the Legislative Leadership in the 107th. remarked,

"It seemed like a good idea to create this Committee, (Performance Audit). Unfortunately, we never really defined what we wanted when we enacted the order. As a result of this there is a general reluctance on the part of most legislators to refer audits to the P.A. Committee. ... As it stands now, its a rather ineffective committee."

This sentiment that the Performance Audit Committee is largely ineffective was reaffirmed by a wide majority of those legislators surveyed in the 107th. Nearly 80% of all legislators responding in the survey indicated that, " the Legislature's performance in overseeing and supervising state administration and evaluating the effectiveness of state programs ", was only fair or poor.

What needs to be done to turn this perception around? How do we make the Performance Audit Committee more effective?

Recommendations

The first step is to establish a clear and reasonable definition of just what constitutes a performance audit. Obviously duties and responsibilities cannot be specified for the P.A. Committee without first specifying what performance auditing means.

It is a generally accepted fact that performance auditing is an important technique for the conduct of legislative review and evaluation. Lennis M. Knighton, a leading expert in the field of performance auditing has explained the technique clearly.

" A performance audit examines whether programs have been administered faithfully, efficiently, and effectively. One part is the compliance audit, which deals with the accordance of administrative behavior with legislative intent. Another part is the operations audit, which examines policies, procedures, practices, and controls to discover those areas in which funds, personnel, time, property, equipment, and supplies can be more efficiently used. Still another, and most ambitious part is the program audit, which explores the effectiveness of programs and whether and to what extent objectives are being accomplished."

The Legislative Leaders Foundation holds that the technique of performance auditing is comprised of the three types of audits - compliance, operations, and program - as noted in the above definition.

The Foundation further holds that such a definition of performance auditing should be formally incorporated into the MRSA's. The purpose behind this recommendation is to establish uniformity as to what performance auditing means and to further establish the jurisdictional framework within which the Department of Audit and the Performance Audit Committee can fulfill their assigned tasks. In summary, our recommendation is that:

- (16) The Performance Audit Committee adopt a definition of performance auditing similar in content to the definition proposed above. Furthermore, in order to assure uniformity and in order to help establish the jurisdictional framework within which the P.A. Committee and the Department of Audit function, such a working definition should be enacted into law.

Upon adopting such a definition, the P.A. Committee should next move to establish appropriate operating procedures and guidelines. In this regard the first step should be to clarify the relationship between the Department of Audit and the Legislature.

The Department of Audit was created to assist the legislature in carrying out its oversight responsibilities. Over the years however, the relationship of the Department to the Legislature has become increasingly less clear. In the first instance, there are no clear cut reporting requirements specifying who is to receive Departmental Audits^(report) and what is to be done with them. In addition to this absence of reporting requirements the staff role of the Department in serving the Legislature has never been expanded beyond the few lines presently contained in section 243:6 of the MRSA's. Finally, at least in some legislators' minds, there is a real question as to whether the Department of Audit is responsible to the Legislature, the Executive or both.

In response to these cited deficiencies and ambiguities, we recommend that the following actions be taken:

- (17) The Performance Audit Committee should develop regulations for the Department of Audit which clearly identify the Department's duties and responsibilities to the legislature.

These regulations should in turn specify reporting requirements for the Department of Audit. The Legislature should establish the time frame for every audit it requests of the Department of Audit. Additionally, the results of any audit conducted by the Department should be made known first to the legislative entity which requested the audit. Only the legislature should determine how audit reports are to be used and distributed.*

A further recommendation designed to strengthen the relationship of the Dept. of Audit to the Performance Audit Committee, (and the legislature as a whole), relates to the Department's role of staff agency as defined by Section 243:6. This section states that the Department of Audit shall, "serve as a staff agency to the legislature, or any of its committees, or to the Governor in making investigations of any phase of the state's finances."

Because the Department of Audit was created to serve the Legislature and because any division of the Department's responsibility between the Legislature and the Executive would tend to weaken the overall effectiveness of the Department as an overseer of executive agencies and departments; we recommend that the reference in 243:6, "... to serve the Governor in making investigations of any phase of the state's finances", be deleted.

* In line with this recommendation refer to the enclosed Draft Legislation.

While we believe that the Department of Audit should provide staff assistance to the Executive in making investigation of any phase of the state's finances, we do not believe that such assistance to the Executive should be mandated in the law. By requiring the Department of Audit to give staff support to the Executive, at the discretion of the Executive, the ^{LEGISLATURE'S} governing authority of the Department is blurred.

If the legislature is the sole governing authority of the Department than this should be clearly reflected in the law. We therefore recommend that:

- (18) Section 243:6 be amended to read as follows, " 6. Staff agency. To serve as a staff agency to the Legislature, or any of its committees, OR AT THE DISCRETION OF THE LEGISLATURE, TO SERVE THE GOVERNOR IN MAKING INVESTIGATIONS OF ANY PHASE OF THE STATE'S FINANCES.

We have discussed at length the role of the Department of Audit in conducting performance audits for the Legislature. We must now consider in detail, the role of the Performance Audit Committee.

Auditors cannot, nor should they be required to, judge program performance. Auditors in the Department of Audit are best qualified to judge the accuracy of reported data that purports to show the results of programs in terms of accomplishment. It is up to the Legislature's Performance Audit Committee and the staff on Performance Audit, to assess program performance.

In a number of states such as Massachusetts, New York, and Connecticut, joint audit committees provide some supervision and guidance to auditing studies. In others, appropriations and finance committees are aware of audit information. This is the practice in Idaho, Maryland, New Hampshire and West Virginia. In some states investigating committees turn to the auditors for assistance. And in at least one state,

New York, there is a special statutory agency with its own staff, including auditors as well as others. New York's Legislative Commission on Expenditure Review was established in 1969. It is charged with the duty of determining whether state departments and agencies fulfill legislative intent and whether they have "efficiently and effectively expended the funds appropriated by the Legislature for specific programs."

In varying degrees, the Maine auditing system appears to reflect aspects of each of these organizational structures, save the New York statutory auditing agency. We recommend that this current practice of permitting all standing committees to request audits of programs within their jurisdiction be continued and strengthened. Performance auditing should not be compartmentalized in one committee.

In conjunction with this recommendation that the current practice of permitting all standing committees to request audits be strengthened, we further recommend that:

- (19) Reports by the Department of Audit be presented to the Performance Audit Committee. The Performance Audit Committee shall, in turn, be charged with the responsibility of assessing the significance of the findings disclosed by the audit and determining what action should be taken with the audit results.

In assessing the significance of findings disclosed by audit studies and more significantly, in helping to define the scope of audits and the types of questions which must be asked, the Performance Audit Committee must establish sound working relationships with the Appropriations Committee and the staff to the Appropriations Committee in the Office of Legislative Finance. Suffice it to say that it is practically impossible to have a meaningful performance audit of administrative activities without first establishing a clear picture of what the program objectives are in a particular department or agency.

In line with this, we recommend that:

- (20) The Performance Audit Committee and the Department of Audit establish sound working relationships with the Appropriations Committee and the Office of Legislative Finance.

Our final recommendation in this section relates not to the Performance Audit Committee or the Department of Audit but rather to the question of statements of legislative intent. " Clearly enunciated policy statements which define legislative intent in explicit and unambiguous language are the crux of an effective system of legislative control of the executive branch."¹ Put more simply, the criteria for measurement in performance auditing are based upon stated program objectives. Without such program objectives the task of performance auditing becomes futile. Accordingly, we recommend that:

- (21) All legislation with program and/or budgetary provisions must be accompanied with a precise statement of legislative intent before final enactment by the Legislature.

¹C. Lynwood Smith, Jr., Strengthening the Florida Legislature, (New Brunswick, New Jersey: Rutgers University Press, 1970), p.200.

Appendix E
Draft Legislation

AN ACT To Clarify The Powers Of The Department Of Audit
When It Is Acting As A Legislative Staff Agency.

Be it enacted by the People of the State of Maine, as follows.

Sec. 1. 5 MRSA § 242-B, sub-§ 3, is amended by adding a new sentence at the end to read as follows:

When acting under the order of the Legislative Council or request of the Joint Standing Committee on Performance Audit, the State Auditor shall exercise only those powers authorized under section 243-A.

Sec. 2. 5 MRSA § 243, sub-§ 6, is amended by adding a new sentence at the end to read:

When serving as a staff agency to the Legislature or any of its Committees, the Department of Audit shall exercise only those powers authorized under section 243-A.

Sec. 3. 5 MRSA § 243-A, is enacted to read as follows:

§ 243-A. Legislative staff powers.

The State Auditor or Department of Audit shall provide assistance as authorized under section 242-B, sub-§3, or serve as a legislative staff agency under section 243, sub-§ 6, only when authorized to do so in writing by the Legislature, Legislative Council or a legislative committee. The written authorization shall specify the scope of the review and analysis, the manner in which it is to be undertaken, and the authority of the Department of Audit or State Auditor to make recommendations or reports, or to release documents to the public. No reports or documents prepared under the authority of

this section shall be released to anyone other than the body authorizing the Department's study, without the permission of the authorizing body. No member of the Department shall make recommendations or suggestions to the agency or department under study without prior approval from the authorizing body.

When undertaking a study, review or analysis under this section, section 242-B, sub-§ 3, or section 243, sub-§ 6, the Department shall exercise only those powers authorized by this section or the written authorization; and the Department, when so acting, shall be deemed to be a "legislative agency" under Title 1, section 402, sub-section 3.

Statement of Fact

The purpose of this bill is to enact the recommendations of the Performance Audit Committee's study of the State Lottery, H.P. 2173. A detailed statement of the intensions, purposes and provisions of this bill is contained in the Committee's narrative report. Generally, this bill does the following:

1. Requires the Department of Audit to act as a legislative staff agency only on the written authorization of the Legislature, Legislative Council or legislative committees.
 2. Prohibits the release of reports or documents prepared as part of a legislative study, unless the authorizing body approves the release.
 3. Prohibits the Department from making recommendations to the agency or department being studied, without the prior approval of the authorizing body.
 4. Makes the Department a legislative agency under the "right-to-know" law, when undertaking a legislative study, and limits its powers to those granted in the written authorization.
- records - are not considered "public records" during biennium in which report is prepared.*