

Legislative Performance Audit

Committee

Committee Members:

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Senator Jim Scheer

Legislative Audit Office
P.O. Box 94604, State Capitol
Lincoln, NE 68509
402-471-1282

Audit Staff:

Martha Carter, Legislative Auditor
Diane Johnson, Executive Assistant
Franceska Cassell, Performance Auditor
Clarence Mabin, Performance Auditor
Dana McNeil, Performance Auditor
Stephanie Meese, Legal Counsel

Scope Statement

Department of Correctional Services, Department of Health and Human Services, and Department of Revenue: Rule Making Under the Nebraska Administrative Procedure Act

Background

The LR 424 (2014) Department of Correctional Services Special Investigative Committee December 2014 final report recommended:

The Legislative Research Office and/or the Legislative Performance Audit Committee conduct an assessment/audit to determine which Administrative Regulations were promulgated in violation of the Administrative Procedures Act. ... If such an audit or assessment discloses the need for clarification of the Administrative Procedures Act, the Legislature should act.

In response, the Legislative Performance Audit Committee requested an Attorney General's opinion on this topic in January 2015 and subsequently, on February 6, 2015, directed the Legislative Audit Office (Office) to conduct an audit regarding the types of administrative regulations that need to be formally promulgated in accordance with the Administrative Procedure Act.

In addition to the Department of Correctional Services (DCS), the Performance Audit Committee also directed the Office to audit rules and regulations procedures at the Department of Health and Human Services (DHHS) and the Department of Revenue (Revenue), as concerns had been raised regarding these agencies rule making processes as well.

Audit Scope

In this audit, the Legislative Audit Office will answer the following questions:

1. In regards to the types of rules that need to be promulgated, how does the Nebraska Administrative Procedure Act compare to other states' and the federal government's procedures and to best practices as laid out in the Model State Administrative Procedure Act?
2. What are the current practices of DCS, DHHS, and Revenue in determining which rules need to go through the formal rulemaking procedures? Do these practices conform to the Nebraska Administrative Procedure Act?

Adopted by the Legislative Performance Audit Committee, April 10, 2015.