

# *Legislative Performance Audit*

## *Committee*

### **Committee Members:**

*Senator Dan Watermeier, Chair*  
*Senator John Kuehn, Vice Chair*  
*Speaker Galen Hadley*  
*Senator Bob Krist*  
*Senator Tyson Larson*  
*Senator Heath Mello*  
*Senator Jim Scheer*

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*Dana McNeil, Performance Auditor*  
*Stephanie Meese, Legal Counsel*

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## **Audit Plan**

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

On or before **June 3, 2015**, the Legislative Audit Office (Office) will submit a draft report of its audit findings and recommendations to the Legislative Performance Audit Committee (Committee) and the Nebraska Department of Correctional Services, the Department of Health and Human Services, and the Department of Revenue.

## **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?

The Office will review and compare administrative procedure act definitions and procedures for each of the 50 states, as well as look at the Federal Administrative Procedure Act and 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?

The Office will review each agency's rules and regulations, both those that were formally promulgated and those that were not. The Office will also look at each agency's policies and procedures for determining which rules need to go through the formal rulemaking procedures of the Administrative Procedure Act and determine if these policies follow the requirements of that Act.

## **Methodology**

The Office will use a standard qualitative research methodology. We will:

- Review relevant state statutes;
- Review the Model State Administrative Procedure Act;
- Review the Federal Administrative Procedure Act;

- Review all other states' administrative procedure acts;
- Review other applicable documents such as legislative histories, Attorney General Opinions, rules and regulations, and internal agency administrative policies and procedures; and
- Conduct interviews with agency officials and others as necessary.

### **Audit Report Contents**

Under the Legislative Performance Audit Act, the Office must provide its written draft report to the agency. That report will consist of:

- background information concerning the program;
- discussion of audit work related to the scope statement questions; and
- Office findings and recommendations.

After receipt of the report, each agency will have 20 business days to review it and provide written comments to the Office. We expect to provide the draft report to the agencies on or before **June 3, 2015**; however, should extenuating circumstances occur, the Committee may extend that date. The deadline for the individual agency responses will be included in the correspondence accompanying the report when it is provided to each agency.

Following receipt of the agencies' comments, the Committee will meet to consider the draft report and the comments. The Committee may elect to adopt recommendations at that time or to hold a public hearing on the audit before adopting recommendations. The Committee's final report will include the Office's report, the agencies' comments, the Committee's recommendations, and other materials specified in the audit act.