



**STATE OF VERMONT  
OFFICE OF THE STATE AUDITOR**

To: House and Senate Committees on Government Operations  
Date: 19 February 2021  
Re: Audit Recommendation Follow-Up

Each year we review prior audits to determine the extent to which the auditees have implemented our recommendations. We cannot compel state entities to do so, but we hope the recommendations are sufficiently clear and evidence-based to persuade managers to see their value. We look back one year and three years. The links will take you to the reports.

**Department of Buildings and General Services – Capital Projects (2017)**

[Audit](#)   [Rec. Follow-up Report](#)

When we first looked back in 2018, the Department had implemented 12 of the 17 recommendations (5 fully and 7 partially). Since then, BGS has made progress (now 7 full and 6 partial) and is in the process of procuring a Workplace Information Management System that will allow it to fully implement 4 more recommendations.

With one exception, the remaining recommendations not yet implemented are about reporting and internal protocols. The exception relates to how the Department deals with leased property. We think that lease arrangements should be subject to Bulletin 3.5, but BGS asserted that leases are not contracts and are therefore not covered by Bulletin 3.5. We have asked the Attorney General to weigh in on this matter.

**DHR and AHS – Employee Misconduct (2017)**   [DHR Audit](#)   [Rec. Follow-up Report - DHR](#)  
[AHS Audit](#)   [Rec. Follow-up Report - AHS](#)

DHR: As we first reported in 2018, DHR and the five entities reviewed (AOT, BGS, DOL, DPS & VVH) implemented only 4 of 25 recommendations from the 2017 report. The situation has improved somewhat and is now 11 of 25.

DHR implemented two additional recommendations and is now at 6 of 10. However, DHR has indicated that it does not intend to implement the remaining four. Those recommendations flow directly from our findings, which themselves were derived from the evidence obtained during the audit. They are sensible and not terribly onerous. We disputed DHR's objections to

adopting the recommendations and responded in detail in Appendix IV of the audit [report](#) (see pages 52 – 56).

Here are three of the four recommendations DHR has chosen not to implement.

- #5: Require that Appointing Authorities or designees document their rationale (e.g., analysis of the 12 factors) for the decision to impose a particular type of discipline.
- #6: Develop a mechanism to maintain a comprehensive and easily accessible record of all discipline and stipulated agreements for all employees and make this information available to appointing authorities and designees.
- #10: Develop a target for when AAs or designees are expected to finalize the disposition of a case and track the extent to which this target is being met. There could be separate targets depending on the type of expected outcome (e.g., unsubstantiated, suspensions, or stipulated agreements).

We also made recommendations to five entities whose misconduct-related activities are overseen by DHR (AOT, BGS, DOL, DPS and VVH) and they informed us in 2018 that DHR advised them “that the recommendations in question not be implemented.” Since that time, one of the three joint recommendations has been implemented, which leaves these two remaining.

- #2: When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.
- #3: Develop a process in conjunction with DHR to notify DHR of all employee misconduct allegations and resolutions.

All five entities reported that they follow DHR guidance, advice, policies and procedures with respect to employee discipline, and associated procedures/processes and that DHR advised them in 2018 that the recommendations in question not be implemented.

Note on relief from duty (RFD): There are circumstances where management believes it is in the best interest of the parties to remove an employee from the workplace while allegations are investigated. In such instances, the employees are paid while the process plays out.

Our audit found that the State paid almost \$3 million in salaries and benefits to employees in temporary RFD status for alleged misconduct during our scope period (2014 – 2016). Another \$5,952,856 was paid during 2017 - 2019 (**totaling almost \$9 million**).

It appeared that some employees remained in this status longer than necessary. In some cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—sometimes for months while the appointing authorities considered disciplinary options—even though the allegation was determined to be unsubstantiated or disposition of the

case did not involve removing the employee from employment. If the State intends to return an employee to work, it is not fiscally prudent to continue to pay the salary and benefits of a non-working employee for weeks and sometimes months as decisions are made on the final dispositions that are less than dismissal.

DHR acknowledged the problem and stated that “DHR agrees that additional steps may be taken to ensure that employees are removed from RFD status as soon as possible.”<sup>1</sup>

To be clear, there are many reasons for these delays, some unavoidable. But we found reason to believe that DHR and the appointing authorities could improve the process and save taxpayers’ money. I encourage you to invite DHR to explain what steps are being taken to reduce these expenditures.

AHS: The story is much the same here. One significant change since our audit is that the AHS Investigative Unit was dissolved in December 2018 and the staff was transferred back to DHR. As a result, some of the recommendations directed to AHS and the departments (DCF, DOC and DMH) are no longer applicable. Of the 10 remaining, 6 have been implemented and the remaining 4 will not be implemented, presumably at the instruction of DHR.

#### **Department of Environmental Conservation – Environmental Compliance (2017)**

[Audit](#)   [Rec. Follow-up Report](#)

When we first reviewed the Department’s actions in 2018, it had implemented all 7 of the recommendations (2 fully and 5 partially). DEC has continued its efforts and the count is now 6 full and 1 partial (which is still in process). We would like to thank DEC for addressing the issues raised.

#### **City of St Albans - Tax Increment Financing District (2019)**

[Audit](#)   [Rec. Follow-up Report](#)

Part 1 – City of St Albans: The audit report included 9 recommendations for the City, but 2 are no longer applicable (see #s 3 and 9 in the Report for details). Of the remaining 7, the City implemented 4 (3 fully and 1 partially).

The City challenged the need for the procedures recommended in two of the three remaining (see #s 5 and 7 in the Report). We disagreed.

The last recommendation outstanding involves the City’s use of TIF bond proceeds to pay TIF debt, which was not allowed by statute according to an [opinion](#) from the Attorney General’s Office (see pages 67 – 69). As a result, we found that the City should repay the TIF Capital

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<sup>1</sup> SAO Employee Misconduct audit report, Appendix IV (p.45): DHR Management comments.

Projects Fund approximately \$1 million for the debt proceeds used for TIF district debt service, which should have been used for public infrastructure improvement projects.

Ignoring the opinion from the Attorney General, VEPC relied instead on a memo from ACCD's inhouse attorney and retroactively authorized the City's use of debt proceeds to pay debt service and resolved that the City's TIF Fund did not need to be repaid.

We brought this matter to the attention of the Joint Fiscal Committee and the issue is before the Legislature.

### **Medicaid Dr. Dynasaur Program - Department of Vermont Health Access (2019)**

[Audit](#)   [Rec. Follow-up Report](#)

DVHA indicated initially that it expected to address our three recommendations as part of planned upgrades to the billing system. However, the Centers for Medicare and Medicaid Services has allowed the State to stop collecting Dr. Dynasaur premiums for the duration of the COVID-19 public health emergency. Therefore, even if the planned changes were completed, they couldn't cure the problems identified because the billing system is not being used. DVHA expects to have the changes completed in 2022.

### **Child Protection Registry – AOE and AHS (2019)**

**AOE**   [Audit](#)   [Rec. Follow-up Report](#)

**AHS**   [Audit](#)   [Rec. Follow-up Report](#)

Part 1 – AOE: We made 4 recommendations and the Agency of Education implemented all of them (1 fully and 3 partially). We commend the Agency for acting promptly.

Part 2 – AHS: Three recommendations were directed to DCF, which has fully implemented 2 of them. The third requires rulemaking and the Department has started the planning process.

Part 3 – Legislature: We learned in the course of the audit that existing classified State employees and former employees exercising their re-employment rights under the State's collective bargaining agreement are not subject to CPR checks before appointment to positions providing care, custody, treatment, transportation, or supervision of children. We were informed by DHR that absent legislation, the matter would have to be bargained with the VSEA. Therefore, we recommended that the Legislature consider taking action to cure the problem. As far as we know, the issue has not yet acted on this recommendation.

### **City of Winooski - Tax Increment Financing District (2019)**

[Audit](#)

At this point in Winooski's TIF district life cycle, the City is 1) no longer incurring new debt; 2) not undertaking new TIF projects; and 3) using tax increment appropriately to pay down the existing TIF debt. As a result, we made no recommendations and have no follow-up.

However, we did note one matter for legislative consideration, which is whether tax increment should be used for the payment of interest for financing arrangements that operate like interfund loans. See "Matter for Legislative Consideration" on page 10 of the [audit report](#).