

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes

November 14, 2024

Call to Order and Roll Call

The 6th meeting of the Legislative Oversight & Investigations Committee was held on November 14, 2024, at 1:00 PM in Room 131 of the Capitol Annex. Senator Brandon J. Storm, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon J. Storm, Co-Chair; Representative Adam Bowling, Co-Chair; Senators Julie Raque Adams, Donald Douglas, Gerald A. Neal, and Michael J. Nemes; Representatives John Blanton, Lindsey Burke, Ken Fleming, Jason Petrie, Steve Riley, Scott Sharp, and Pamela Stevenson.

Guests: Joni Upchurch, executive director, and Kerry Harvey, board chair, Board of Cosmetology.

LRC Staff: Committee Staff Administrator, William Spears; Committee Analysts McKenzie Ballard, Jacob Blevins, Christopher T. Hall, Taylor Johnston, Valentina Osunmade, Austin Sprinkles, Shane Stevens, Joel S. Thomas, and Holly Tracy; Committee Assistant DJ Burns; and Graduate Fellow Ralph Banchstubbs.

Approve Minutes from October 10, 2024

Upon motion by Senator Raque Adams and second by Senator Douglas the minutes for the October 10, 2024, meeting were approved without objection.

Staff Report on Board of Cosmetology Oversight Functions

Committee analysts Jacob Blevins and McKenzie Ballard and graduate fellow Ralph Banchstubbs presented the staff report "Board of Cosmetology Oversight Functions." The study resulted in findings and recommendations related to policies for inspections and inspectors, determination and issuance of fines, and underlying organizational issues that interfere with inspections and oversight. Staff's full presentation is available on the Legislative Oversight and Investigations Committee webpage.

In response to a question from Representative Stevenson regarding the increase in average fines from \$402 in 2019 to \$2,115 in 2023, Mr. Blevins responded that fines are left to the discretion of the board. The board increased fines because it did not believe the board was being taken seriously by practitioners.

Representative Blanton was concerned with "unsolicited funds" being offered to cosmetology inspectors and asked for clarification as to who receives the funds. Ms. Ballard responded that the gifts were usually given to inspectors when they are at a facility or left on the inspector's car. Inspectors sometimes do not feel safe returning the gifts.

In response to questions from Representative Burke regarding appeals of board fines, Ms. Ballard explained there is no listed formal appeal process but there is an informal process whereby the board will reexamine a case. Practitioners may also appeal a board decision to the Franklin County Circuit Court.

Representative Bowling requested a map of the 68 schools licensed by the Board of Cosmetology to see if there are locations where the large increase in fines had a large effect or if there are areas not served by cosmetology schools. Committee analysts agreed to provide the map.

Representative Bowling asked about a laptop and cell phone from a cosmetology school that had been seized by an inspector and whether those items had been returned. Ms. Ballard reported that staff did not know what happened with those items but the inspector involved was no longer employed by the board.

In response to Representative Bowling's question about tracking of unsolicited gifts, Ms. Ballard said there is no formal policy in place yet for these gifts and the board's strategy has been to hold the gifts at its office.

Response from the Board of Cosmetology

Joni Upchurch, executive director, and Kerry Harvey, board chair and consumer representative, introduced themselves. Ms. Upchurch noted that she had been executive director for six weeks and that most of the board and staff were newly appointed or hired. In response to Representative Blanton's prior question regarding "unsolicited funds," Mr. Harvey reported that the board recently adopted a new policy which requires inspectors to turn down any gift offered, return any gift received, and turn in any anonymous gifts to the board office which will later be donated to charity. Mr. Harvey discussed the changes that were being made by the board and reported that the board agreed with most of the report recommendations but not all.

Mr. Harvey stated that the recommendation of establishing continuing education requirements would not be possible for the board at the moment because there would be too many licenses, at approximately 33,000, and not enough staff or resources. The board will consider implementing the recommendation in the future.

Mr. Harvey then discussed how the board handles fines and the appellate process. Appeals are largely set by KRS Chapter 13B. Regarding the finding that fines have not been deposited in the general fund, Mr. Harvey said the Board is working with the Finance and Administration Cabinet to return the fines to the general fund and creating procedures to ensure the proper transfers continue in the future.

Mr. Harvey noted that the report recommendations address two types of concerns: problems where the agency is objectively in error and more subjective issues where the board needs to change the tone of how it works with licensees. The appointment of Ms. Upchurch was an example of this tone shift. With respect to objective problems like not inspecting facilities twice a year and properly depositing fine funds, the board must either comply with regulation or change regulation. With respect to more subjective concerns, the board would be changing the tone to build better relationships with licensees.

Mr. Harvey said the board is working with the Public Protection Cabinet to improve operations. The cabinet is providing additional expertise in budgeting and information technology, and helping the board develop a better understanding of its finances.

Mr. Harvey reported that the board has preliminarily approved a comprehensive set of regulatory amendments. One example increases the duration of licenses from 1 year to 2 years to relieve workload burden on staff by extending the amount of time that inspectors have to inspect facilities. The board is working with the legislature to recommend statutory amendments for the upcoming legislative session.

Mr. Harvey noted that the board is understaffed and overworked. When he began working with the board, there were 4 staff positions of 16 vacant. The board has now filled three of those four positions. Another concern is the physical facility of the board is inadequate and too small. The board is using Public Protection Cabinet facilities that are more conducive to board work and public meetings. The board is working on new training for inspectors.

Mr. Harvey explained that the board will need time to make changes because it is a small agency. It faces several challenges ranging from lawsuits against the previous administration to responding to open records requests. These challenges will delay the board's broader goals. The inadequacy of the board's information technology systems must also be addressed before major improvements can be made.

In response to Representative Blanton's questions regarding the 33,000 licenses overseen by the board, Ms. Upchurch confirmed that the number represents individual workers in addition to facilities. Given that the board only has seven to eight inspectors, Representative Blanton agreed that inspecting every facility twice a year was probably unrealistic.

Upon motion by Representative Bowling and second by Senator Raque Adams the staff report "Board Of Cosmetology Oversight Functions" was approved without objection.

Representative Petrie noted that commissions and boards generally do not have general fund support but instead use restricted funds. Recent budget requests for this board have asked for extended authority to access restricted funds for improving information technology systems for records. He noted that there should be sufficient funds for the board to implement an improved records system.

Representative Petrie said the purpose of the board is to protect the public health, not to collect fees and fines. He criticized that there are no standards for levying fines or evaluating licenses. Mr. Harvey responded that the board will be adopting ranges for fines of different levels. The board will investigate the issues with the agency's record system.

Representative Petrie said this discussion raised questions about the standards and practices of other boards.

Adjournment

Upon motion by Senator Raque Adams and second by Representative Bowling, the meeting was adjourned.