Joint Legislative Audit and Review Committee (JLARC)

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JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE
REGULAR COMMITTEE MEETING MINUTES

COMMITTEE BUSINESS

- Senator Craig Pridemore, JLARC Chair, called the meeting to order at 10:02 a.m.
- Senator Pridemore recognized the service of the previous JLARC Chair, Representative Troy Kelley. Representative Kelley thanked members and staff for their assistance during his tenure as Chair.
- Senator Pridemore asked if there were any corrections, additions, or objections to the June 23, 2011, meeting minutes. Seeing none, he noted the meeting minutes were approved as submitted.
- Senator Pridemore welcomed new JLARC members Representative Mark Miloscia from the 30th District and Representative Derek Stanford from the 1st District.
- Legislative Auditor Keenan Konopaski introduced new JLARC staff members Valerie Whitener and Lori McCleary.

REPORTS, PRESENTATIONS, DISCUSSIONS

2011 Annual Tax Preference Reviews—Preliminary Report

Dana Lynn, Mary Welsh, and John Woolley from the JLARC staff presented the preliminary report for this year's tax preference reviews. In 2006, the Legislature enacted EHB 1069, mandating audit reviews of Washington's tax preferences. JLARC reviewed 25 tax preferences in 2011. The reviews are provided in a single volume, which includes a summary of specific details pertaining to each review. All tax preference performance reviews place an emphasis on whether the preference has met its public policy objectives. The reports include recommendations as to whether each preference should be continued, modified, terminated, allowed to expire, or reviewed and clarified by the Legislature.

Representative Orcutt asked if there would be any incentive for people out of state to send their goods to Washington if we retained this tax preference. Staff explained that there would not be any additional incentive attributable to the preference because Washington sales tax would already not apply due to destination sourcing.

Representative Orcutt asked why the JLARC analysis uses the assumption that the Legislature passed a temporary tax preference for hog fuel to make hog fuel more competitive at a time of declining oil and natural gas prices, rather than because of low timber prices at the time. He added that the low timber prices were a huge disincentive for landowners to harvest timber, which would be an issue for the availability of hog fuel, and that the staff summary of testimony on the original tax preference bill stated that the timber industry was in crisis.

John Bowden with the JLARC staff came forward to respond to Representative Orcutt's questions. Staff noted that Representative Orcutt's observations on the state of the timber industry at the time are valid and that staff are aware of those conditions and of the bill documents. Staff explained that the tax preference under review benefits users of hog fuel and that the preference is not directed to the timber industry as a whole. He noted that hog fuel is a byproduct of harvesting timber, so the analysis focused on the hog fuel market in comparison to the markets for other fuels at the time the preference was enacted. John Woolley of JLARC staff pointed out that the recommendation in the report is based on the Legislature's inclusion of an expiration date for the preference, not on the fuel price comparison.

Representative Kelley pointed out that sometimes the Legislature puts in an expiration date so that the policy can be reviewed again. He commented that the expiration date may not have represented an intent that the preference be temporary.

Representative Kelley noted that the Citizen Commission for the Performance Measurement of Tax Preferences will be providing an opportunity for public testimony on the tax preference reviews at its September meeting. He asked if there would be any opportunity for public testimony at today's JLARC meeting. Senator Pridemore responded that he did not want to go around the Citizen Commission process, and the September Commission meeting would be the venue for public testimony. He also noted that there would not be public testimony at the JLARC meeting for final approval of the reviews. He added that there would certainly be a public process in the Legislature if a legislator decided to introduce bills on the subject.

Representative Orcutt asked why the recommendation is to allow the hog fuel preference to expire rather than for the Legislature to review and clarify, if there is uncertainty over the legislative intent. The staff explained they do struggle with how to identify legislative intent when it is not spelled out clearly; however, what was clear in this particular instance was the temporary nature of the preference, which is what is driving the recommendation. The Legislative Auditor also noted that, if the intent is not explicitly stated and remains unclear, staff are unlikely to suggest a statutory change, which would mean in this case that current law stands and the preference expires.

Senator Zarelli asked how an out-of-state bank is defined with regard to a preference on real estate loans. Staff answered that residency is based on the location of the corporate office.

Representative Orcutt asked if the depiction of current law for the preference on shared real estate commissions includes a change the Legislature made in 2011. Staff indicated that the 2011 statutory change is included.

Representative Orcutt reminded the Committee of a bill passed in the 2011 session that gives the Citizen Commission additional flexibility in scheduling the tax preference reviews. He asked if the provisions of that legislation affect JLARC. Legislative Auditor Keenan Konopaski identified the legislation as SB 5044 and affirmed that the bill did give the Commission more flexibility with regard to scheduling and also with regard to which criteria to include in the individual tax preference evaluations. Representative Orcutt noted the bill also referred to evaluating whether preferences created jobs, and he asked if using that criterion would change the JLARC staff recommendations. Legislative Auditor Keenan Konopaski noted this criterion only applied in future reviews of preferences with a specific economic development purpose. Representative Orcutt noted he would like to discuss the effect of this new criterion further with JLARC staff.

Senator Pridemore thanked the staff for their work on the tax preference reviews, and he also thanked the members of the Citizen Commission for their work over the years. He remarked that the Legislature has taken action on some of the recommendations. The Legislative Auditor distributed a summary of what has happened to date with the four years of recommendations from the tax preference review process.

State Risk Management Practices in Washington—Proposed Final Report

Stacia Hollar from the JLARC staff presented the proposed final report for this study. JLARC reviewed Washington's tort liability laws and how they compare to those of other states. Additionally, JLARC examined the risk management practices of the Office of Financial Management's Risk Management Division and the three agencies with the highest tort and defense cost payouts in the past seven years: the departments of Transportation, Corrections, and Social and Health Services. JLARC concluded that all of the agencies were employing some risk management best practices. The report contains recommendations to the departments of Corrections and Social and Health Services to strengthen their practices. The departments concur with the recommendations.

Senator Pridemore invited representatives from the audited agencies to come before the Committee. Scott Blonien, Assistant Secretary with the Department of Corrections, thanked the Legislature for commissioning this report and reported that the Department is in the process right now of implementing the recommendation. He noted that JLARC staff's work on the report was accurate, fair, and thorough. He also noted that it is the Legislature's responsibility to set the parameters for tort liability in the state, and that, different from other states, Washington has a "perfect storm" of tort issues: the waiver of sovereign immunity, no cap on tort liability, and joint and several liability. Corrections pointed out that the litigated amounts of tort payouts for the Department between 2004 and 2010 can be attributed to four or five cases per year, as compared to 30,000 offenders on supervision. He explained that the Legislature has taken action to reduce the total number of offenders on supervision by removing some of the less violent offenders, but he noted this means the ones that remain under supervision are the worst of the worst – who may have a greater likelihood of committing additional crimes while on supervision. He likened Corrections' responsibility to protect the public to the responsibility of law enforcement agencies, but added that law enforcement agencies are seldom held liable for not being able to predict that a person will commit a crime.

Representatives from the Department of Social and Health Services (DSHS) came before the Committee (Tracy Guerin, Chief of Staff, and Denise Revels Robinson, Assistant Secretary for the Children's Administration). Ms. Guerin testified that risk management is called out as part of the agency's Strategic Framework for the Future and is a major focus of the Secretary. She reported reductions in some areas of risk as a result, such as reductions in reported employee injury incidents, workers' compensation filings, and assault benefit claims. She highlighted four risk management initiatives currently under way: 1) child and vulnerable adult fatality reviews and reduction in risk of fraud and abuse of program benefits; 2) review and revision of the critical incident reporting policy; 3) development of an overall risk management policy for the agency; and 4) the Secretary has instituted a review of each tort claim with a potential payout over $250,000 in order to identify root causes and take steps to reduce future risks. She reminded the Committee that Washington law extends the statute of limitations for claims for sexual abuse to three years from the date of discovery or the date of a linkage of systems to an earlier event; for example, she reported the agency currently has eight cases where the incident itself occurred in the late 1950s or the 1960s. She explained that this is an example of how tort payouts may not be a good measure of how the agency is managing its risk today, a point made in the JLARC study.

Referencing these cases dating from the 1950s and 1960s, Senator Zarelli asked if it has only recently been discovered that the abuse occurred. DSHS staff explained that sometimes the cases result from realization of suppressed memories. Senator Zarelli commented that perhaps the statute of limitations has now been opened too far.

The Assistant Secretary for the Children's Administration provided the Committee with information on three changes the Administration is implementing to mitigate future risk to children: 1) new policies, procedures, and protocols to mitigate risks and to perform a "lessons learned" following each critical incident that occurs involving a child; 2) a request for technical assistance and training from the National Resource Center on Child Protection with regard to assessing the safety of children, both for children in their own homes and those in foster care; and 3) implementing a new requirement for screening and investigation of non-mobile children when concerned citizens call the child abuse reporting hotline. She noted that many of these calls come from medical professionals who may be seeing evidence such as bruising of the child.

Lottery Marketing & Incentive Pay—Proposed Scope & Objectives

Stephanie Hoffman from the JLARC staff presented the proposed scope and objectives for this study. The 2011-13 Operating Budget directed JLARC to review the impact of marketing on ticket sales, the contracting process for marketing vendors, and the employee incentive pay program at Washington's Lottery. JLARC will also examine the impact on sales from a 2010 change in Lottery's primary beneficiary from the Education Construction Account to the Washington Opportunity Pathways Account. The review will include a comparison of contracting procedures and incentive pay programs used in other states.

Senator Pridemore asked for clarification on the role of the marketing vendor versus state employees doing ticket sales. Staff explained that the marketing vendor is primarily responsible for advertising such as TV ads, while the sales staff are involved with the actual distribution of tickets to customers.

Senator Pridemore asked whether payment to the marketing vendor can be for less than the total amount. Staff responded that the amount paid can be less than the total possible amount and that this is a topic staff are studying in the report.

Senator Zarelli expressed an interest in whether we have reached a saturation point in the market: are we paying for services that do not amount to much in new ticket sales because the market area is already saturated?

Representative Miloscia indicated he is interested in having a metric that could be used to hold the entire Lottery sales force accountable, such as maximizing sales per capita. He also indicated an interest in knowing if there are unintended social consequences to such a goal. Senator Pridemore noted that getting at the social impacts is probably beyond the scope of this study. He said he assumes performance metrics are part of the incentive pay arrangements. Staff responded that they are looking into incentive pay.

Representative Orcutt noted that part of lottery revenues are used to address problem gambling but expressed the concern that promoting sales may be increasing problem gambling. Senator Pridemore noted that he shares the same concerns but that the social issues are likely outside of the scope of this particular study.

Senator Pridemore reminded Committee members of the I-900 Subcommittee meeting later that afternoon. He asked members to consider whether the regular I-900 meetings could be moved from 1:00 p.m. to 1:30 p.m. in the future.

With no further business before the Committee, the Chair adjourned the meeting.

ATTENDANCE

JLARC Members Present: Senators Craig Pridemore, Joseph Zarelli; Representatives Kathy Haigh, Troy Kelley, Mark Miloscia, Ed Orcutt, Derek Stanford.

JLARC Staff Present: Keenan Konopaski, Legislative Auditor; John Bowden, Linda Byers, Stephanie Hoffman, Stacia Hollar, Suzanne Kelly, Dana Lynn, Diane Place, Curt Rogers, Michelle Shea, Mary Welsh, Valerie Whitener, John Woolley.

ADJOURNMENT

The meeting was adjourned at 11:44 am.

CHAIR

VICE CHAIR