

STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE (JLARC)



COMMITTEE MEMBERS

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John Braun, *Vice Chair*
Annette Cleveland
David Frockt
Janéa Holmquist Newbry
Jeanne Kohl-Welles, *Secretary*
Mark Mullet
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Gary Alexander
Cathy Dahlquist, *Asst. Secretary*
Tami Green
Kathy Haigh, *Chair*
Ed Orcutt
Gerry Pollet
Derek Stanford
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AGENDA

December 11, 2013

1:30 p.m. – 3:30 p.m.

**John L. O'Brien Building
House Hearing Room C
Olympia, Washington**

1. Committee Business
 - A. Action Item: Approval of February 20, 2013, August 14, 2013, and September 18, 2013 JLARC Meeting Minutes
 - B. Legislative Auditor's Annual Report *[No Handout]*
 - C. Committee Voting and Addendum Process
2. Action Item: 2013 Tax Preference Reviews – Proposed Final Report
3. Workers' Compensation Claims Management Audit – Briefing Report on Future 2015 Audit
4. Action Item: Local Infrastructure Financing Tool (LIFT): Lack of Data Hinders Evaluation and Administration of the Program – Proposed Final Report

**Please note: JLARC reserves the right to
move agenda items as needed.**



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February 20, 2013

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE REGULAR COMMITTEE MEETING MINUTES

COMMITTEE BUSINESS

- Gary Alexander, JLARC Vice-Chair, called the meeting to order at 6:00 p.m.
- Representative Alexander welcomed to the Committee new members Senator Cleveland from the 49th Legislative District, Senator Mullet from the 5th Legislative District, Representative Springer from the 45th Legislative District, and Representative Van de Wege from the 24th Legislative District.
- Representative Alexander said a thank you to JLARC's former Chair, Senator Craig Pridemore, and reviewed the JLARC rule governing the election of Executive Committee members. He explained that the Chair for the remainder of the 2011-13 Biennium would be elected from the JLARC Senate Democrat members. He opened nominations for JLARC Chair for the remainder of the 2011-13 Biennium.

Senator Nelson nominated Senator Jeanne Kohl-Welles. Motion was seconded, and the Committee elected by unanimous decision Senator Kohl-Welles as Chair for the remainder of the biennium. Senator Kohl-Welles acted as Chair for the rest of the JLARC meeting.

- *A motion was made to approve the minutes from the September 19, 2012, and December 5, 2012, JLARC meeting. Motion was seconded and carried unanimously.*
- Senator Kohl-Welles indicated that the next item before the Committee was approval for distribution of the Alternative Public Works Procedures Sunset Review Proposed Final Report. She noted that the report had been presented to the Committee the previous September and December, but that JLARC had lacked a quorum at the December 2012 meeting to take up a motion to distribute. She added that the report would not be presented again at this evening's meeting. *Representative Haigh moved to approve for distribution the Alternative Public Works Procedures Sunset Review Proposed Final Report. Motion was seconded and carried unanimously.*
- Senator Kohl-Welles reminded the Committee that it had discussed adding a study to the JLARC work plan at its September 2012 work session and had selected a study on the quality and accuracy of fiscal notes. She invited Deputy Legislative Auditor John Woolley to provide a brief overview about the process and the selected study.

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The Deputy explained that the Committee had reviewed and discussed seven different study options at its September work session as part of selecting one study to fill some available staff capacity in the Committee work plan. He reported that the Committee had decided unanimously that it wanted staff to review the accuracy and quality of fiscal notes. He added that staff has undertaken some initial work on the project, looking at the practices of other states and gaining a better understanding of the processes in this state. *Representative Alexander made a motion to add a study of the quality and accuracy of fiscal notes to the Committee's work plan. Motion was seconded and carried unanimously.*

- Senator Kohl-Welles asked Legislative Auditor Keenan Konopaski to brief the Committee on Executive Committee request legislation to extend the expiration date on the sunset review process. She added that the House version of the bill had received a public hearing while the Senate version had not yet been scheduled for one.

The Legislative Auditor reminded the Committee that this was another item discussed at its September 2012 work session. He reported that the Sunset Act has been in place since 1977 and that JLARC staff have completed 113 sunset reviews since that time, resulting in the Legislature terminating 36 agencies or programs and continuing 77. He explained that the effect of the Executive Committee request legislation (HB 1860 and SB 5734) is to extend the expiration date on the sunset review process from 2015 to 2025.

Representative Alexander commented that, in addition to the importance of the legislation itself in allowing the Committee to continue to do sunset reviews, he saw this bill as the start of something he hopes the Committee will undertake on a continuing basis: the sponsoring of legislation by the Committee as a whole rather than individual members sponsoring bills to implement recommendations. He said he hopes this is a starting point for something he feels is important.

- Senator Kohl-Welles asked the Legislative Auditor to explain for the benefit of the new members the role of JLARC's Executive Committee. The Legislative Auditor explained that the Executive Committee has a representative from each of the four caucuses and that they work on a consensus basis to help address some of the administrative and planning issues of the Committee and to bring recommendations to the full Committee.

REPORTS, PRESENTATIONS, DISCUSSIONS

Trout Production: Estimates Suggest Price Competitive Options are Available – Proposed Final Report

Tracey Elmore and Elisabeth Donner from the JLARC staff presented the proposed final report for this study. The Legislature directed JLARC to identify the availability of alternative approaches to trout production and to compare the Washington Department of Fish and Wildlife's (WDFW) trout production costs with the costs of alternatives. Alternatives are available, and WDFW currently uses five of them. The Department approaches trout production in a business-like manner, but it does not track hatchery costs by fish species and size. This inhibits the Department's ability to compare costs with alternative approaches. Based on cost estimates that JLARC staff obtained during this study, it appears that both WDFW and the private sector may be able to supply rainbow trout for competitive prices. The Legislature will not know with certainty whether these estimates apply

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more broadly until: 1) the Department collects hatchery cost information by species and size, and 2) formal bids are available showing the prices private growers would charge. JLARC staff recommend that WDFW develop a process that allows the Department to collect fish production cost data by species and size at each of WDFW's hatcheries for comparison to private sector prices.

Senator Kohl-Welles invited representatives from the Department of Fish and Wildlife to come before the Committee (Jim Scott, Assistant Director for the Fish Program, and Kelly Cunningham, Deputy Assistant Director).

WDFW staff indicated that the agency is supportive of the report's findings and its recommendation. The staff said the Department wants to make four key points: 1) maintaining a strong trout program is essential to the long-term success of the Department because 50 percent of operating funds come from fishing and hunting license sales, and about 80 percent of those who buy fishing licenses fish for trout; 2) the initial findings from the comparison in the study show that costs for catchables are about the same for the Department and the private grower, while WDFW can produce the small fish at a cost lower than the private grower; 3) hatcheries are important to their local communities, for example, through school programs or other outreach opportunities; and 4) WDFW strongly supports the report's recommendation, seeing this as a valuable tool to help make the trout program successful.

Representative Orcutt asked for a breakdown by size of fish on what the Department expended for operating costs versus capital costs. WDFW staff estimated that it is 90 percent operating.

Senator Hewitt asked, for the catchables, how many the Department buys versus what it grows in its hatcheries. WDFW staff responded that the Department's largest purchase is for triploid trout, which are larger than the catchable size, and that on average the Department purchases 50,000 of those per year. They added that the Department has purchased as many as 151,000 triploid in recent years. They explained that the Department raises 3.3 million catchable-size rainbow trout per year.

WDFW staff commented that lowland lake opening day is a cultural event in Washington. Senator Kohl-Welles noted that this same culture is present in other states as well.

Representative Haigh asked for clarification about the triploid trout. WDFW staff explained that the triploid trout cannot mature sexually and so focus their efforts on growing body mass, which makes them a nice target for fishing.

Representative Alexander moved to approve for distribution the Trout Production: Estimates Suggest Price Competitive Options are Available Proposed Final Report. Motion was seconded and carried unanimously.

Puget Sound Partnership's 2012 Action Agenda Update: Revised Approach Continues to Lack Key Accountability Tools Envisioned in Statute – Briefing Report

John Woolley and Eric Thomas from the JLARC staff presented the briefing report. The 2011 audit of the Puget Sound Partnership (PSP) concluded that the 2008 Action Agenda lacked critical accountability tools. The 2012 Legislature directed JLARC to review the Partnership's updated Action Agenda to determine if those recommendations were implemented. JLARC staff found that the 2012 Action Agenda improves accountability but continues to have shortcomings in three key areas: linking actions to progress toward

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goals, prioritizing actions, and monitoring effectiveness. In its response to the audit, the Partnership states that it does not believe it is always possible to identify in a quantifiable way how much proposed investments in the Action Agenda will contribute to the restoration of Puget Sound. Without this linkage, it will not be possible for the Legislature to know what restoration progress has been achieved as a result of the state's investments, and whether those investments are making progress that is sufficient to achieve the goals expected for 2020.

The Legislative Auditor reminded the Committee that JLARC had had a previous assignment about the Puget Sound Partnership and that, following that first audit, the Legislature had tasked JLARC staff with a follow-up. He explained that this is an instance where the more important part of what members are hearing about this follow-up may be in the response letter from the Director of the agency, which is included in the report. He reminded the Committee that, when the Legislature established the Partnership, it did so with a very deliberate accountability framework, including the Legislature being able to see how much progress was being made as a result of investments made in the clean-up of the Sound. The Legislative Auditor noted that the response from the agency brings into question whether it is attainable to draw cause and effect relationships between the investments and what they might produce, which if true would create a challenge for the state in being able to monitor progress.

Senator Nelson asked if, in the underlying statute, the Legislature gave the Partnership the authority to intervene, for example, if development were occurring in a sensitive area or to prevent shoreline armoring. Staff answered that the Partnership is probably not an entity that is intervening, that the Partnership is more in a role of planning and identifying what is required to restore Puget Sound.

Senator Holmquist Newbry asked about what funding the Partnership received in the state budget in the last few biennia. Staff did not have a ready figure but raised the distinction between the Partnership's budget and all the other funding from local government and state government that goes into efforts to restore Puget Sound. Senator Holmquist Newbry said she would appreciate receiving that information from the Partnership staff.

Senator Kohl-Welles invited representatives from the Puget Sound Partnership to come before the Committee (Tony Wright, Director, and Rob Duff, Puget Sound ecosystem monitoring program). The Director thanked the JLARC staff for their work and indicated that, while the JLARC staff's facts and their representation are excellent, he does not completely agree with their conclusion. He said his response letter may have been taken out of context and that it was designed to be linked to the ability to say a particular action of a particular small, discrete restoration project cannot necessarily be linked to a particular change in an ecosystem. He called the Committee's attention to the third paragraph of the agency response letter and reported that the discrete sentence quoted is accurate but is certainly not his opinion or that of agency staff. The Director indicated that he thinks they can get reasonable certainty on many of the activities and that the urgency to restore the Sound calls for making decisions without absolute certainty, just as a business person would not wait for 100 percent certainty while competitors made decisions.

The Director commented that he is happy with the report and that the report accurately states the challenges they have. He said that there are many challenges in trying to handle an ecosystem that is this complex and that across the nation other large-scale ecosystem restoration efforts also face challenges. He reported that

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development of quantitative links is underway and that this effort is tied to monitoring. He stated that they do not have sufficient monitoring to make all the necessary decisions. The Director indicated they are making decisions based on insufficient intelligence. He said that, most of the time, those are generally correct. The Director said that trying to present certainty with limited monitoring means that they have to look where the problems are and that that allocation of monitoring assets competes against their ability to look to see what the results of their actions are. He indicated that both are incredibly important and that the shortage of monitoring activity affects their ability to achieve certainty in these areas.

The Director reported that he agrees with the report's assessment regarding no evaluation of the effectiveness of existing state agency programs. He added that, for the first time, the Partnership asked for copies of agency request budgets prior to submission to the Governor to evaluate those for consistency with the action agenda. He also said that they took the various activities associated with Puget Sound restoration, evaluating and prioritizing them against the action agenda and providing this priority list to the Governor, which she used in preparation of her budget. The Director indicated these are significant steps that need to be built upon in order to have an integrated approach at a time of limited state dollars so that they are spending the dollars in the right place and associating them with the priorities.

The Director explained that the Partnership has several sets of priorities associated with the action agenda. He added that, while the priorities are in three separate lists, they have been scientifically addressed and evaluated, and that they use those in conjunction with their activities.

The Director said that everything is not in place nor perfect. He explained that this is a work in progress with what is one of the three largest ecosystem restoration projects in the nation. He said he would put up its activities, plans, and effectiveness against the other two, especially when it comes to efficiency of funds.

Representative Haigh asked about how well partners were able to break down silos and work together with all the different agencies and entities. The Director answered that working with all the different agencies was one of the biggest challenges. He noted that each agency has a specific charter, mission, and goal, and for the Partnership to step in and say how it wants to shape that mission and goal requires a collaborative environment where the agencies can participate in the development of the plan.

The Director reported that one of the things they are doing as part of Chinook recovery is developing adaptive management plans for each of the watersheds, with that work underway. He also reported that they are taking more of a project management approach in tracking all of these activities, with each activity requiring monitoring before, during, and after execution, each activity requiring resources, and each activity having an expected outcome that ought to be measured. The Director said they need to have a comprehensive plan that looks at these activities, identifies gaps either in results or monitoring or execution timeline, and weaves them into a comprehensive plan. He indicated this is something they are in the process of developing, in coordination with the Environmental Protection Agency. He explained that this is how he sees them approaching this particular problem, continuing to build on the action agenda that identifies a number of the things that need to be done, but that these need to be interwoven into a resource-identified plan that allows them to make the hard decisions about where they need to work first.

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Representative Alexander commented that the accountability issue goes back some 30 years of having goals and some way to measure the goals. He asked why we have not learned from this and why they have not focused on some specific areas in Puget Sound to see if they could find a successful accomplishment. He remembered the success with the Commencement Bay issue when we targeted resources into that one specific area rather than trying to spread resources through the large estuary. He asked why PSP does not focus on one or two areas and show their success. The Director answered that their charter is of the entire Puget Sound, with an Ecosystem Coordination Board with regional and functional representatives. He added that, without the clear criteria that he hopes to gain from the implementation plan, he would need to have a good argument to tell representatives, counties, and other stakeholders that they are not doing any work in their area and that what is most important to be done is elsewhere. He said the hard decisions require monitoring, linkages, and an overarching implementation plan that allows them to make the hard priorities.

Senator Holmquist Newbry asked what the agency's state fund budget is. The Director answered that it is about \$2.5 million per year. Senator Holmquist Newbry asked about federal funds. The Director answered that the federal funds vary and that this year's National Estuary Program dollars are about \$30 million, not to the Partnership but to the departments of Ecology, Fish and Wildlife, and Natural Resources, with a portion of that going to the Partnership for administration.

Senator Kohl-Welles asked about capital budget funding. The Director answered that they support capital budget requests for other agencies, for example, the Puget Sound acquisition and restoration activity managed by the Recreation and Conservation Office. He indicated they do have a budget request for the system-wide improvement framework to help increase people's flood protection while responding to habitat concerns.

Senator Nelson asked what the Legislature could do for the Partnership to make sure we restore Puget Sound, noting that Representative Alexander was correct that it has been 30 years and that we need to move forward. The Director responded that we need to "stop the bleeding," saying that they are not making much progress according to the gauges they have. He noted that the population continues to grow and that they have to figure out a way to protect what is there rather than restoring after degradation. He cited the impacts of upwelling and ocean acidification.

The Director further noted the need for an overall implementation plan that includes ongoing activities. He said the other agencies are rightfully cautious about how the Partnership coordinates and works with them, indicating they need continued support for comprehensive, coordinated activities for restoration. He also said there are insufficient funds to do what they need to do, at the state, federal, and local level. He indicated that, if they are not making the right decisions, they will be in trouble, and so they need a comprehensive plan that identifies their shortfalls in monitoring and where they need to focus. He said that the capital projects need to have monitoring monies applied to them. He concluded that there was insufficient time to identify the whole list of things that need to be done. Senator Kohl-Welles invited the Director to provide the Committee something in writing before his departure if he wanted to share additional thoughts.

Representative Dahlquist asked the Partnership to provide the Committee with line-item information on where the dollars come from in the \$641 million annual Puget Sound budget. The Director indicated that some of this information is in the *State of the Sound* report and that he can provide the Committee with that information. He

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added that some of the information is an estimate, for example, estimates from counties depend on how those counties define “spending on the Sound.” He said that the predominant amount of the funds is coming from the local level based on stormwater revenue districts and other activities.

Representative Dahlquist said that she wants the information to cover every dollar, local through federal, that is being spent within the Partnership or that the Partnership is associated or affiliated with. The Director responded that her question raised an important point that these dollars are being spent on the Sound but that the Partnership does not always get a vote on where the money goes.

Senator Kohl-Welles thanked the Director for his service and asked if a representative from the Leadership Council could provide the Committee with information on the next steps to find a new agency director. Martha Kongsgaard, Chair of the Partnership’s Leadership Council, came before the Committee. She indicated that the Partnership is a work in progress. She noted that they have been at this effort for a long time and that it will take a while to get out of it. She said she would argue that the action of the Legislature in 2007 to create the architecture of the Partnership has all the pieces that are needed to get the work done and was informed hugely by the GAO report on other large watershed restoration programs. She added that the promise of the Partnership is still incomplete. She said that the Partnership is only as good as their partners, and she asked for support for the framework that has been put in place over many years such as monitoring, NPDES permits, low impact development, the Growth Management Act, the Shoreline Management Act, industrial stormwater permits, HPAs, etc. She said there is a huge web of statutes that will help them get this work done and that, without them, the Partnership could not deliver on its mandate.

The Leadership Council Chair reported that there is a firm helping the new Governor assemble his natural resources cabinet and that they are vetting and interviewing PSP Director candidates by the day. She said that the salary is low, which may be a barrier, and that the person selected must understand that the Partnership itself does not have a lot of power but that the person must be able to go toe-to-toe with the EPA, NOAA, and all the other directors in the state, be able to inspire the counties, and be knowledgeable about the sector.

Senator Hewitt commented that it sounds like everything that is happening now would continue to happen even if there were not a Puget Sound Partnership and that he is a little confused about what the Partnership accomplishes. The Leadership Council Chair responded that a lot of people do not know what the Partnership does. She said that, without the Partnership, they would not have the same coordination or the same ability to set priorities and that they would not have the same ability to talk to the federal government or to the tribes. She described the Partnership as the one-stop shop that is solely interested in whether something is good for Puget Sound. She reported that, in earlier iterations, they had stapled together the budget requests and work plans from the different state agencies and called that the Puget Sound recovery plan. She said that was not working and that the work of the Blue Ribbon Panel and the GAO report indicated what we needed - getting the science and having local communities describe what needs to be done, and have that be the lens through which they look at all of this. She said that before they also did not have an end-date and that having goals, some urgency, and something to shoot for with an end-date is much different than it has been in the past. She concluded that, if they did not have the Partnership, they would have to invent something very much like it.

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A motion was made to approve for distribution the Puget Sound Partnership's 2012 Action Agenda Update: Revised Approach Continues to Lack Key Accountability Tools Envisioned in Statute Briefing Report. Motion was seconded and carried unanimously.

2012 Tax Preference Reviews – Proposed Final Report

Mary Welsh, Dana Lynn, and John Woolley of the JLARC staff presented this proposed final report. In 2006, the Legislature enacted EHB 1069, mandating performance audits of Washington's tax preferences. JLARC staff reviewed 23 tax preferences in 2012. All tax preference performance audits place an emphasis on whether the preference has met its public policy objectives. The reports include auditor recommendations to terminate one preference, review and clarify the intent of twelve preferences, and continue ten preferences. In addition, comments of the Citizen Commission for Performance Measurement of Tax Preferences are included in the report.

The Legislative Auditor reminded the Committee about the process for the tax preference reviews. He explained that the statute has a very deliberate process that culminates in the proposed final report before the Committee this evening: back in July, the staff initially presented to JLARC the audit recommendations, and the staff subsequently presented the materials to the Citizen Commission for the Performance Measurement of Tax Preferences. He noted that this is a five-member board of citizens, with four members appointed by the legislative caucuses and one member appointed by the Governor, and that the Commission's charge is to hear the reports, take public testimony, and then develop its comments and perspectives about the reports. The Legislative Auditor said that much of the focus of this evening's presentation would be to highlight the places where the Commission's views were different from the Legislative Auditor recommendations. He noted that representatives from the Commission were in attendance this evening and available to answer Committee member questions.

Representative Dahlquist said she wondered why JLARC staff did not take into consideration the competitive disadvantage that removing the insurance producer preference would place on Washington insurance agents who compete with out-of-state agents or with those who sell insurance in a non-commission scenario. Staff answered that, in this case, the public policy objective was not necessarily competition with out-of-state firms but was instead for the reasons mentioned in the report. Staff explained that the preference was initially instituted due to a B&O tax surcharge, which it was argued they could not afford. Representative Dahlquist asked if the Citizen Commission would be available to answer that same question. Senator Kohl-Welles said that yes, they would.

Representative Dahlquist noted that there are several slides where the JLARC staff "infers" the public policy objective of a tax preference and said that it appears that staff are trying to determine what possibly the Legislature was intending. She asked, for the stevedore preference, why trade was not inferred or competitiveness between ports or possibly that a shipper would choose to go elsewhere. The Deputy Legislative Auditor noted a recurrent theme of a lack of a statement by the Legislature of what the public policy objective was. He added that the staff's work is always better informed when the Legislature has directly stated what it wants to achieve. He then explained that staff spend a lot of time going into the historical record of the bill

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discussion, amendments, newspaper articles, etc., to try to get some sense of what the public policy purpose was. The Deputy explained further that, through the review of the record, staff look for the most supportive evidence of what the public policy objective was when the legislation passed; he added that, for the stevedore preference, the evidence did not allow staff to come to that conclusion.

Representative Dahlquist commented that, when JLARC staff infer something, they are making an opinion about what previously elected officials possibly wanted, and she asked for clarification about how JLARC staff determine what to infer and what not to infer. The Deputy answered that it is a finding on staff's part as auditors that the preponderance of the evidence allows them to come to a conclusion that this is what the Legislature intended. He added that it is admittedly an inexact process and repeated that, if the Legislature directly states what the public policy objective is, staff aren't placed in the difficult position of trying to infer the purpose.

The Legislative Auditor commented that, by default, staff are very conservative in the inferring. He said that, if staff do not have evidence to point to an inference, the auditors would stop and say that they don't know, and the Legislature would have to weigh in to identify the purpose. He explained that, in the case of this preference, while the staff had enough evidence to infer a general purpose, there is still some ambiguity about the objectives, which is why the auditor recommendation is to review and clarify.

Senator Hewitt commented that this brings up the often-debated subject of legislative intent language, noting that some people think it should be tighter, and some people think it should be looser. He asked for staff's opinion on whether there should be stronger intent language. The Deputy responded that in the end that is a policy decision for the Legislature, but our job to answer these questions as auditors is made easier when the Legislature directly identifies what it wants staff to evaluate the preference against. Senator Kohl-Welles added that many bills have no intent language with this type of information.

Representative Haigh commented that, on the high tech and biotech reviews, there are other things that staff were not able to include. She recalled that, when legislators were considering the biotech preference, they knew it was an investment on the state's part for long-term economic development, and that it may not have paid off in terms of dollars and cents in a few years. She said that they felt strongly that it was the right thing to do for the state for the next hundred years. She commented that this was a very short timeframe and that perhaps we are not yet able to ask all the right questions around the technology and what it has done for this state. She said that, while the Legislature may not have stated it, she believes the intent of the preference was to bring technology to Washington and make it strong for the next hundred years in this state.

Senator Kohl-Welles observed that staff were probably not able to measure other intangibles, for example, Washington's desirable environment and arts and so forth, and how many people want to come to work in Washington not only because of the B&O tax credit but because of other factors. She asked if staff can look at any of these other factors. The Deputy answered that, to some extent, staff look at indirect job development, but in this case the focus is on whether the tax preference is having an impact on the number of people employed. He said staff would not be able to feasibly identify these other ripple effects.

Senator Kohl-Welles invited representatives from the Citizen Commission for the Performance Measurement of Tax Preferences to come before the Committee (William Longbrake, Commission Chair, and Ruta Fanning,

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Commission member). The Commission Chair reported to the Committee that the Pew Center for the States did a comprehensive assessment of all 50 states on how they review tax preferences, and that they reported Washington is one of 13 states leading the way. He also reminded that Committee that the Citizen Commission is made up of five members, four from each of the caucuses and one appointed by the Governor, and he emphasized that the report before the Committee has the unanimous endorsement of all five members.

Senator Kohl-Welles asked if it was difficult to reach that. The Commission Chair answered no, that there was good dialogue and good give-and-take. He noted that there is a provision in the statute for minority reports but that the Citizen Commission has not needed to use them. Senator Kohl-Welles commented that that was remarkable.

Representative Dahlquist asked if members of the Citizen Commission “infer” when they decide what to do. She noted the Commission is given information by the JLARC auditors. She asked what the Commission uses to determine its decisions and if the Commission is inferring also. The Commission Chair answered that the Commission does not independently conduct research; he said that is the responsibility of the JLARC audit staff. He explained that the Commission also receives public testimony, and that there are times in the public testimony where additional information comes to light that helps clarify what the intent might have been. He said they will factor that into their decisions but that otherwise they rely on the audit staff analysis.

Representative Dahlquist asked if that meant that lobbyists could come lobby the Commission on behalf of an interest one way or the other and help the Commission understand why it might want to infer something or not. The Commission Chair answered that that other parties can provide information through public testimony. He noted a case a couple years back where there was additional information that was introduced into the hearing record that the Commission found to be substantive. He said that the Commission included a comment about this in its report. The other Commission member added that the Commission asks diligently for testifying parties to give additional information and that the Commission has changed its recommendation if there is evidence presented at the Commission meeting.

Representative Orcutt asked how the Commission looks at a tax incentive that has an expiration date. He asked if there is some assumption about the intent of the Legislature if there is one versus if there is not one. The Commission Chair answered that they look at all tax preferences in the same way. He said that an expiration date means is that they have to look at it before it expires. He added that otherwise they look at it based on the criteria outlined by the JLARC staff and that this is the legislative mandate.

Senator Kohl-Welles asked how much time the Commission spends on its task. The Commission Chair answered that they have four scheduled meetings each year, each running two to three hours, and that then there is outside time reading the 200+ page reports. The Commission member added that the Commission takes public testimony at any of its meetings if there are people in the audience who want to make a comment but that one meeting in September is set aside especially for public testimony.

Senator Kohl-Welles asked if the Commission takes electronic or written testimony at other times outside of the scheduled meetings. The Commission Chair answered that they do accept written testimony.

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Representative Dahlquist asked which caucuses the two Commission members were appointed by. The Commission Chair answered that he was the Governor's appointee, and the other Commission member indicated she was appointed by the Senate Democratic caucus. Senator Kohl-Welles asked who the other Commission members are. The Commission Chair answered that the other members are: Steven Miller, who is the representative of the House Democratic caucus; James Bobst, who is the representative of the House Republican caucus; and the representative for the Senate Republican caucus was Paul Guppy when the comments were adopted, but that that seat is currently vacant.

Representative Alexander asked, in its evaluation of the continuation or non-continuation of these tax preferences, if the Commission takes into consideration the impact on jobs created or lost, and if the Commission has that information when it is making its decisions on whether the removal of a preference would have an impact on jobs in Washington. The Commission Chair answered that, to the extent data and information are available, they take that into consideration. He added that frequently there is not information. He said for the example of the competitive impact on stevedoring, which was something asserted by the industry, the Commission had no information one way or the other. He said it was not something JLARC staff could find in the history and that the industry did not present anything.

The other Commission member added that at the hearing on the stevedoring preference there were lots of questions posed to the industry representative, such as if data are available on the profit margins, what is the tax burden, and what is the impact on the profit margin of the tax preference. She said that the answer was there is no information available on the tax burden, and that they did not know the impact on the profit margins. She said that they try very hard to see if there is any additional information that would be evidence rather than simply asserting a statement. She added that the Committee knows the JLARC staff have to rely on evidence whereas the people who come to present to the Commission can simply state something, so the Commission tries hard to see if there is validity to the assertions. The Commission Chair added that, when there is not good evidence, it leaves the Commission with questions as to what they should do, and that when they recommend either "review and clarify" or "terminate," he hopes the Legislature will hold hearings to find out more substantive information. He said that, with that more substantive information, legislators perhaps could come to a different conclusion.

Senator Kohl-Welles indicated that staff from the Department of Revenue were available if Committee members had any questions for them. There were no questions for DOR staff.

Representative Orcutt asked JLARC staff what the difference is in scheduling a tax incentive for review if there is an expiration date versus if there is not one. The Deputy Legislative Auditor answered that the Commission attempts to make certain it reviews the ones that are expiring at least two to three years before the expiration. He added that this gives JLARC staff time for analysis, time for the Commission to review that, and time for the Legislature to review that analysis. Representative Orcutt asked if this means this gives them a priority in review. The Deputy answered yes, in the queue of the ten-year review cycle.

Senator Kohl-Welles asked the Legislative Auditor to explain the process for adopting a Committee addendum. The Legislative Auditor explained that there is a process by which Committee members can seek to add a comment to the report in addition to the auditor recommendations and the comments by the Citizen

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Commission. He said it is completely within the purview of the Committee to add any comments they do want, adding that the one provision about this specified in statute is that any comments by the Committee must be in a separate addendum to the report and cannot modify the staff auditor findings. He said this is a statutory requirement that is rooted in ensuring the independence of the audit process. Senator Kohl-Welles commented that there have been suggestions that perhaps JLARC Committee members might be able to amend reports such as this one or amend State Auditor I-900 performance reviews. She explained that what they have had reinforced by House and Senate counsel is that members do not have the authority to amend any of the reports but that they do have a process for providing remarks in a separate addendum. She said the Executive Committee is moving to include this information at the beginning of future reports so that it is very clear.

Senator Kohl-Welles said the Committee has before it a motion to approve distribution of the report and any proposed Committee addenda. *Representative Haigh moved adoption of the first proposed addendum*, which was sponsored by the JLARC Executive Committee. In this addendum, the Committee notes that its action to distribute the 2012 Tax Preference Reviews: Proposed Final Report does not imply the Committee agrees or disagrees with auditor recommendations or the recommendations of the Citizen Commission for Performance Measurement of Tax Preferences. *Motion was seconded and carried unanimously.*

Senator Kohl-Welles said she believed there would be a motion to consider a second proposed Committee addendum, brought by Representative Dahlquist. Representative Dahlquist explained the sponsors of the proposed addendum said that, while they respect the work performed by the Legislative Auditor and the Tax Preference Commission, they reach different conclusions and would make different recommendations as to certain policies. Specifically:

1. With respect to the B&O Tax Rate for Stevedoring and International Charter and Freight Brokers they recommend that the rate continue without modification. These preferences lower costs and are one tool for increasing the competitiveness of our ports, which are major sources of jobs and economic growth.
2. With respect to the B&O Tax Rate for Insurance Producers, Title Insurance Agents, and Surplus Line Brokers they recommend that the rate continue without modification. This preference a) offsets the impact of pyramiding taxation on insurance producer commissions paid by locally owned and operated insurance businesses and b) minimizes the competitive disadvantages faced by Washington insurance producers who compete with out-of-state, non-commissioned direct selling insurance companies.

Representative Dahlquist asked for support for the comments to be included. Senator Kohl-Welles clarified for the Committee that these would be included as comments in an addendum and would not change any of the recommendations in the report.

Representative Alexander indicated he supports the policy of the JLARC Committee that members are not endorsing the recommendations put forth and that the action is to move for distribution of the report. He said that he thinks it is appropriate for members of the Committee to be able to add comments in an addendum to the report. He said they receive comments from state agencies, comments from local government, and in this particular case, significant comments from the Tax Preference Commission. He asked for support for the inclusion of the comments and that the Committee allow any Committee members to sign onto the comments at their discretion.

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Senator Mullet asked if this is the normal process to add a Committee addendum or if the Committee normally just releases the report. The Legislative Auditor said that there have been comments added before in the past but that it is not the majority of the reports that receive a comment appended to them. He said that it is not uncommon over the history of JLARC to have instances where the Committee elects to add a separate comment. Senator Kohl-Welles added that it is not the norm and that Committee members would not be voting to endorse this proposed language but that it could be part of an addendum.

Senator Hewitt commented that members should have the ability to do this and that he will support this addendum.

Senator Kohl-Welles said that, if the motion passes, if any members want to add their names to the addendum, to let JLARC staff know.

Representative Springer said that while this may have been a practice in years past on occasion, he could not remember seeing a Committee addendum like this before. He said his experience in the past was that if a member of JLARC had some concerns about some of the recommendations that the Auditor or the Citizen Commission had recommended, that there are other opportunities to make that clear before the other committees in the Senate or the House. He said that he is not sure what the Committee is accomplishing here and that he is a little troubled by the precedent that they may be changing the way this Committee reviews as opposed to working through its legislative authority when it gets to the appropriate committee in the House or Senate. He indicated he could not support the motion.

Senator Hewitt said it is similar to a minority report. Senator Kohl-Welles asked if it is correct that the Committee does not allow minority reports but does allow comments. The Legislative Auditor clarified that he understands the intent of the comment is for individual members to attribute their names to this comment and request that it be added to the entire report. He added that action by the Committee to do that would not necessarily represent that all members are endorsing the position, just that they are allowing the comment to be appended and attributed to those individual members.

Representative Dahlquist commented that the tax preference report is different than other reports that the JLARC Committee receives. She said the Committee can do this, that this is why they are elected and why the Committee is here. Senator Kohl-Welles said that was also the interpretation of the House and Senate counsel.

Representative Stanford commented that he was uncomfortable with this comment because if Committee members are taking the explicit position disagreeing with certain aspects of the report, he feels that it could be construed that members are then saying that they are endorsing the rest of the report. He asked, if this addendum is approved by the Committee, whether only certain members will be listed as supporting the position even though the whole committee has to vote to approve the addendum.

Senator Kohl-Welles asked two of the House and Senate attorneys (Mike Hoover, House Republican caucus, and Keith Bucholz, Office of Senate Counsel) to respond to member questions. The attorneys noted that the Committee does have the ability to add comments, and that members are voting on whether to add the comments, not endorsing the comments. They added that only the people signing the comments would have the comments attributable to them.

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Representative Dahlquist asked if there is a difference between adding comments to this type of tax preference report and other JLARC reports. The House attorney answered that they could add comments to any report. He explained that what makes this type of report complex to understand is that there is a series of statutes, one establishing JLARC and dealing with the reports, and one establishing the Commission and the process to look into the tax preferences. He said when you put those statutes together, there is a role for Commission's input, the Auditor's input, and the JLARC Committee input.

Senator Kohl-Welles asked JLARC staff to distribute a statement explaining this, which was prepared jointly by the attorneys that provide counsel for both the House and Senate. The Senate attorney noted that the ability of the Committee to add comments is contained in the broad JLARC statute, so this is an option available to the Committee with each type of performance audit. He added that there are different types of JLARC reports. However, in the statutory history of the tax preference process, tax preference reports were described by the Legislature as a particular type of a performance audit as well, even though it is not the same type of performance audit that the JLARC staff commonly perform.

Representative Orcutt indicated that he supports the motion and that he has signed on to the comments. He said that Committee action on JLARC reports can be confusing, because if the Committee puts something out with a vote, it appears that the Committee has endorsed everything in that report. He indicated that, having served on other committees that have received reports from JLARC, that is the impression he was given in the past.

Representative Orcutt said he thinks it is absolutely critical that if someone has a concern with the work or the product that has come out of JLARC staff or the Citizen Commission, Committee members voice those. He stated that members are here because they are the legislators, the ones elected by the citizens, the ones who have to make the policy decisions. He commented that he thinks staff generally does a good job but that there are times when he disagrees. He said it is incumbent upon them as legislators and members of JLARC to make sure the public knows that certain members of this body have concerns about a particular work product that the Committee is looking at tonight. He said this is why he endorses the addendum.

Senator Kohl-Welles repeated that they do have the process to add comments in an addendum. She clarified that the Committee is not taking a vote that requires each member to endorse those comments. She said that, if members want to change this process, they could seek to amend the statute.

A second was made to the motion to append the proposed comments attributed to specific members, and the Committee voted to approve the motion. Senator Kohl-Welles said that, if members want to sign on to Representative Dahlquist's comments, please let JLARC staff know.

Representative Dahlquist thanked the Chair for allowing her the opportunity to bring the addendum forward. She thanked JLARC staff and said that sometimes members ask questions and do not know where they will lead us. She thanked everyone and expressed appreciation for their patience on this complicated matter. She said what she hopes is that when members create policy, and they have JLARC do reviews, and they create legislative intent, that members are very conscientious, especially with tax preferences.

Representative Alexander moved to release for distribution the 2012 Tax Preference Reviews – Proposed Final Report, including the two addenda. Motion was seconded and carried unanimously.

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

ATTENDANCE

ILARC Members Present: Senator Jeanne Kohl-Welles, Chair; Senator Mike Hewitt; Senator Mark Mullet; Senator Sharon Nelson; Senator Janéa Holmquist Newbry; Representative Gary Alexander, Vice-Chair; Representative Kathy Haigh, Assistant Secretary; Representative Cathy Dahlquist; Representative Ed Orcutt; Representative Larry Springer; Representative Derek Stanford; Representative Kevin Van De Wege; Representative Hans Zeiger.

ILARC Staff Present: Keenan Konopaski, Legislative Auditor; John Woolley, Deputy Legislative Auditor; Valerie Whitener, Audit Coordinator; Linda Byers, Research Analyst; Elisabeth Donner, Research Analyst; Tracey Elmore, Research Analyst; Peter Heineccius, Research Analyst; Suzanne Kelly, Project Management and Research Assistant; Dana Lynn, Research Analyst; Matt Stoutenburg, Senior Committee Support Assistant; Eric Thomas, Research Analyst; Mary Welsh, Research Analyst.

ADJOURNMENT

The meeting was adjourned at 8:20 pm.

CHAIR

VICE CHAIR



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 Tami Green
 Kathy Haigh, *Chair*
 Ed Orcutt
 Gerry Pollet
 Derek Stanford
 Hans Zeiger

August 14, 2013

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE REGULAR COMMITTEE MEETING MINUTES

COMMITTEE BUSINESS

- Representative Kathy Haigh, JLARC Chair, called the meeting to order at 10:00 a.m.
- Representative Haigh explained that Committee members had conducted an election for the Executive Committee electronically after determining there would not be a quorum in attendance today. She introduced the JLARC Executive Committee for the 2013-15 Biennium: herself as Chair; Senator John Braun as Vice Chair; Senator Jeanne Kohl-Welles as Secretary; and Representative Cathy Dahlquist as Assistant Secretary.
- Representative Haigh welcomed new members to the JLARC Committee: Senator Braun, Senator Frockt, Senator Rivers, Representative Green, and Representative Pollet. Representative Haigh encouraged members to make every effort to attend Committee meetings.
- Approval of the February 20, 2013, meeting minutes was postponed due to the lack of a quorum.
- Legislative Auditor Keenan Konopaski explained the process the Committee used to update its Work Plan, noting that this process was also conducted electronically. The Committee needed to determine which studies to include in the work plan because more studies were requested than were possible for JLARC staff to conduct. A prioritization process was developed by the Executive Committee, and using this process, the full Committee chose the Public Recreation and Habitat Lands Study to add to the JLARC Work Plan. Consideration of pursuing other new studies listed in the 2013-15 operating budget are deferred to future biennia. Staff will publish and distribute this newly adopted 2013-15 JLARC Work Plan, reflecting the decisions of the Committee.

REPORTS, PRESENTATIONS, DISCUSSIONS

Status Report on the Implementation of State Auditor I-900 Recommendations to the Legislature

Eric Thomas of the JLARC staff presented the annual Status Report on the Implementation of State Auditor's Office (SAO) I-900 Recommendations to the Legislature. He presented a table that shows the

status, following the 2013 Legislative Sessions, of new SAO recommendations made during Calendar Year 2012 and unresolved SAO recommendations to the Legislature made between 2009 and 2011. The report shows that the Legislature adopted both new recommendations made in 2012.

Representative Haigh invited a representative from the SAO (David Dean, Deputy Director of Performance Audit) to come before the Committee to answer any questions. Representative Dahlquist asked if the State Auditor might be able to pick up some of the studies that JLARC was unable to add to its Work Plan as a result of their recent prioritization process. The SAO representative explained that SAO is in the process right now of updating its work plan for the year, and indicated that, now that JLARC has completed its prioritization process, SAO would consider the topics that were not selected.

Representative Alexander commented on the importance of economic development as a topic for the State Auditor's Office to study. The SAO representative said he would pass that comment along to the State Auditor.

DSHS Report on Implementation of JLARC Staff Recommendations from the Involuntary Treatment Judicial Cost Study—Follow-Up Report

John Bowden, JLARC staff, provided some background information as context for the Department of Social and Health Services (DSHS) report. The state's Involuntary Treatment Act (ITA) allows for the civil commitment of individuals who pose a threat to themselves or others. There are 13 counties with Evaluation and Treatment (E&T) facilities where individuals across the state may be sent. Once at an E&T, if a civil commitment is necessary, the county incurs judicial costs. In 2011, the Legislature created a process for Regional Support Networks (RSNs) to reimburse counties for their judicial costs, using case rates based on each county's actual judicial costs. The Legislature also directed JLARC to study county ITA judicial costs, and JLARC staff found that actual cost data were largely unavailable and that types and levels of reported expenditures varied. The study recommended that DSHS report back to the Legislature on what types of costs should be allowed and how actual costs might be collected.

Representative Green asked for a brief characterization of some of the differences in what the counties included in their costs. JLARC staff explained the major components of the judicial costs: the prosecutor's office, the public defender, and the court system. Staff provided the example that, in Pierce County, the prosecutor's costs were three and a half times greater than that cost in other court counties. Staff added that King County included some additional costs for things like security at the court proceedings and EMTs for transport; and further explained that some counties use video links while others prefer to have the individuals in the courtroom.

Representative Haigh asked if the courts know that the process is handled differently in different places and if the courts are sharing that information. JLARC staff did not know if counties are sharing cost information, though staff does know that the process is done differently in different places. Staff added that each county court system makes choices about how it wants to proceed.

Representative Haigh invited staff from DSHS (Michael Paulson, Office Chief for Behavioral Health and Managed Care, and Travis Sugarman, Behavioral Health Supervisor) to report to the Committee on the

agency's implementation of the JLARC staff recommendations from the Involuntary Treatment Judicial Costs Study. In its written response to the Legislative Auditor, DSHS reports it is using a process that requires the home RSN and its ITA court system to negotiate a rate based on reasonable evidence of actual costs directly associated with allowable activities.

DSHS staff noted that there were differences in costs among the counties and that part of their job was to determine why and what to do about these differences. A DSHS work group looked at the cost differences the JLARC report had identified and determined that the differences were warranted and could be explained. He said the differences are largely due to how the courts are set up and how the E&Ts are paid for their costs. DSHS staff added that the current cost structures may change now that the reimbursement process is in place. DSHS worked with the RSNs and the counties on the different categories of costs and how to differentiate whether something is a direct court cost or a cost that is associated with the process but is already included in the rate the RSN pays to the E&T. DSHS indicated the result was a table that can be used in the rate negotiation process.

Representative Alexander commented that it did not make sense to him to have the variation in charge rates for equal services being provided to the individual. He asked how the RSNs would know how to budget for this and how they would know when they are going to send people to different areas. DSHS staff said they did not disagree with this, acknowledging that it is part of our state's system that an RSN will not know where beds will be available and where their clients will be going.

Representative Alexander asked if DSHS will reimburse for the different rates wherever they are. DSHS staff answered that their rates are based on history, so the reimbursement would take this into account if there is a history of placement. Representative Alexander commented that he has been on the budget committee for a number of years and does not recall factoring this into the budget levels for DSHS. DSHS staff responded that this is not something outside of the capitalization rate that DSHS pays the RSNs, that it is part of the RSNs' administrative costs.

Representative Alexander said he also had some experience from the provider side and that he remembers the capitalization rates being quite consistent throughout the state for the mental health services they provided. He commented that the variation here surprises him.

Representative Dahlquist asked for more information on the procurement process for services; for example, is there a process of competitive bidding where the lowest bidder provides the service? DSHS staff clarified that the RSNs do not get to determine the rates of the prosecuting attorneys in the counties. DSHS staff explained further how state law sets up the RSNs as the providers of services for the seriously mentally ill, adding that each RSN does have procurement processes for certain services, but that this would not include things like prosecuting attorneys.

Representative Dahlquist asked why Lewis County would not avoid sending any clients to more expensive Pierce County and instead send all of its clients to less expensive Yakima County. DSHS staff explained that there is not an abundance of E&T beds in the state and that the origin RSN will be looking for any available E&T bed, which could be anywhere in the state.

Representative Green reminded the Committee that the Legislature has expanded the ITA and so there will be increased costs. She commented that it is important for the Legislature to get a handle on these costs. She observed that one of the reasons policymakers wanted to expand the ITA was to ensure that the “right” people are being detained, noting there had been tragedies when people who needed to be detained were not detained. She expressed a concern that there might be a disincentive to detain people if there are varying costs around the state. She also reported on the Legislature’s intent to increase the number of E&Ts in the state and the consultation with DSHS about where to place those new E&Ts.

Representative Green asked DSHS staff if they were seeing any disincentive to detain as a result of the cost differences. DSHS staff responded that they have not seen any adverse effects from implementing the reimbursement process. DSHS staff reported that the agency is working on not only additional E&T beds but also community resources for diversion, which may be even more important than the E&T beds. DSHS staff added that the designated mental health professionals doing the evaluations do have the responsibility to detain people who need to be detained.

Representative Green also reported to the Committee on the current dilemma regarding the federal government bringing action against Washington’s RSN system, an action the state is appealing. She commented that the state will be finding out if it has to competitively bid the RSNs.

Representative Haigh commented that the health and human service policy committees of the Legislature will probably want to keep an eye on implementation of the reimbursement negotiations.

2013 Tax Preference Performance Reviews—Preliminary Report

Dana Lynn and John Woolley of the JLARC staff presented the preliminary report. In 2006, the Legislature enacted EHB 1069, mandating performance audits of Washington’s tax preferences. JLARC staff reviewed 22 tax preferences in 2013. All tax preference performance audits place an emphasis on whether the preference has met its public policy objectives. The report includes Legislative Auditor recommendations to terminate one preference, review and clarify the intent of nine preferences, and continue twelve preferences.

Dentistry Prepayments Preference

Representative Haigh asked if the Legislature’s switch of HMOs and HCSCs from taxation under the B&O tax to taxation under the insurance premium tax was intended to yield an increase in revenue or be revenue-neutral. Staff responded that the intent was to generate revenue.

Representative Dahlquist asked about the 85 percent in deductions allowed under the B&O taxation. Staff answered that it is largely a function of the actual payments going out to providers being allowed as a deduction and the interpretation of the B&O tax provisions by the Department of Revenue. Staff contrasted this with taxation under the insurance premium tax, where a lower amount is allowed for deductions, mainly Medicare and Medicaid payments.

Representative Dahlquist asked if the dentistry prepayment review takes into account the impact to those who are insured. Staff answered that, in terms of the beneficiary savings, the savings estimates are driven solely by the beneficiaries taking advantage of the preference. Staff added that, if the preference was

terminated, insurers could be allowed by regulators to incorporate tax increases into their rates charged to consumers.

Representative Haigh commented that oral health is very much a part of one's overall health. She observed that basic health should cover basic oral health but that, on the other hand, there are many things in dentistry now that have to do with cosmetics. She indicated that, if the Legislature were to make a change in taxation, it may need to consider what aspects of dentistry are part of basic health and make some exemptions for that.

Representative Green commented that she can appreciate the recommendation to terminate the dentistry preference based solely on what the policy was originally intended to do. She added that the Legislature should also take into consideration that health care has really changed since 1993, particularly on the physician side of health care. She commented that many physicians are now integrated into systems while many dentists have stand-alone operations, so the B&O may make more sense there. She also observed that there are problems with dental access. She said the Legislature will have a lot more to consider than whether the policy does what it was originally intended to do.

Representative Haigh commented that we need to remember that we are not dealing with the dentists but rather with the insurance. She observed that there was more work to be done but that she appreciated the enlightenment from the report because she was not aware before of the different taxation, adding that this is the point of having the reviews.

Prescription Drug Administration Preference

Representative Haigh commented that, when drugs are infused in-clinic, there is often a charge, and that charge may cover the cost of someone doing the infusing or giving the injection. She explained that they had this situation in veterinary clinics, where anything that went out the door had a sales tax on it, while things administered in-hospital were taxed under the B&O tax. She observed that it is very complicated and that it will be a challenge if the Legislature decides to change this. Staff added that the preference is only for the cost of the drug and not any service charge.

Artistic and Cultural Organizations Preference

Senator Rivers asked if the 1981-82 funding cuts for artistic and cultural organizations were ever restored. Staff answered that the cuts were restored and directed members to two charts in the report that show information on funding levels for a 30-year period. Staff added that the funding levels have fluctuated over the years.

Representative Pollet asked for information about the difference between the federal taxation of artistic and cultural organization business income versus state taxation. Staff answered that the federal government taxes "unrelated business income" while these organizations are exempt from Washington's B&O tax on this income, explaining that this is the area where Washington's exemption is more broad than the federal government's.

Nonprofit Youth Recreation Services and Local Government Physical Fitness Classes Preference

Representative Dahlquist asked if there is a direct correlation between childhood obesity and publicly subsidized health clubs. Staff answered this is not something they looked into.

Representative Dahlquist asked if there is a definition of “character-building.” Staff responded that the term “character-building” is defined in statute.

Representative Alexander asked if the participants in the local government physical fitness classes had to be local government members. Staff answered that there was no discussion about having to be a “member” or a citizen to participate. Representative Alexander commented that this was an interesting issue for him, remembering a bill about private laundry services for nonprofit hospitals. He noted that he is not concerned when we provide a B&O exemption for the benefit of individuals and families but that he is concerned when the exemption is given to entities that are competing with private businesses that do pay the B&O tax.

Representative Pollet asked about the value of the personal services like escort services and tanning services receiving the exemption. Staff clarified that those services would have to be provided by a nonprofit youth organization in order to receive the exemption, adding that the point the review is trying to make is that these do not seem to be the kind of services that nonprofit youth organizations typically offer. Staff explained that they do not know why the Legislature did not specify physical fitness services in the statute rather than including all of the personal services classified as retail sales.

Legislative Auditor Recommendations on Tax Preferences

Legislative Auditor Keenan Konopaski noted that JLARC staff receive questions every year on the status of implementation of previous auditor tax preference recommendations. He explained that, in the members’ packets, there is a handout that shows a snapshot of the Legislature’s action on prior recommendations as of the conclusion of the 2013 Sessions. He walked through how to read the table. He also noted that much more information on the prior reviews is available on the Citizen Commission website (www.citizentaxpref.wa.gov).

Representative Haigh asked the Legislative Auditor to walk through the different roles of the participants in the tax preference review process. The Legislative Auditor explained that:

- The audit staff do not take policy positions on the tax preferences. Staff work hard to identify what the Legislature intended to do when it originally set up the preference and whether the preference is meeting that objective. This is what the Legislative Auditor recommendation is based on. This does not mean that views of legislators about the underlying policy may not have changed since the preference was first started.
- After the presentation to JLARC today, the reviews go to the Citizen Commission for Performance Measurement of Tax Preferences. There are five members on the Commission, one appointed by each of the four legislative caucuses and one appointed by the Governor. The Commission takes public testimony on the tax preference reviews. Subsequent to that, the Commission adopts its own comments. Since the Commission does not serve in an audit function, Commission members

have the prerogative to take a policy position on the preferences. The public testimony informs what comments they might want to make as a body.

- The Commission comments are appended to the report, and the report comes back to JLARC. JLARC members have the option of appending comments to the report if members wish to take a position. These comments do have to be appended as a separate addendum to the report, so that the audit findings and recommendations stand alone and the Citizen Commission comments stand alone.

The Legislative Auditor explained that this last step completes the process in front of JLARC, and then any action taken on the recommendations would go through the fiscal committees.

Representative Haigh reminded Committee members of the JLARC I-900 Subcommittee meeting later that afternoon.

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

ATTENDANCE

JLARC Members Present: Senators Annette Cleveland and Ann Rivers; Representatives Gary Alexander, Cathy Dahlquist, Tami Green, Kathy Haigh, and Gary Pollet.

JLARC Staff Present: Keenan Konopaski, Legislative Auditor; John Woolley, Deputy Legislative Auditor; Valerie Whitener, Audit Coordinator; and John Bowden, Linda Byers, Peter Heineccius, Rachel Murata, Dana Lynn, Audrey Phillips, Matt Stoutenburg, and Eric Thomas.

ADJOURNMENT

The meeting was adjourned at 11:40 a.m.

CHAIR

VICE CHAIR



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 Mark Mullet
 Ann Rivers

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 Tami Green
 Kathy Haigh, *Chair*
 Ed Orcutt
 Gerry Pollet
 Derek Stanford
 Hans Zeiger

September 18, 2013

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE REGULAR COMMITTEE MEETING MINUTES

COMMITTEE BUSINESS

- Representative Kathy Haigh, JLARC Chair, called the meeting to order at 10:00 a.m.
- Representative Haigh welcomed Senator Frockt to JLARC.
- Due to the lack of a quorum, Committee action on the meeting minutes was postponed.

REPORTS, PRESENTATIONS, DISCUSSIONS

Forensic Accounting Audit of the Columbia River Crossing Project—Scope and Objectives

John Woolley from the Joint Legislative Audit and Review Committee (JLARC) staff presented the Scope and Objectives for this study. He was joined by Chris Cortines, staff with the State Auditor's Office (SAO). The 2013-15 Transportation Budget called for a forensic accounting audit of the Interstate 5/Columbia River Crossing project to investigate possible misuse of public funds. A forensic accounting audit is an audit that specifically looks for whether there has been financial misconduct or abusive or wasteful activity. The Legislature authorized JLARC to contract with SAO to conduct the audit. The primary focus of SAO's audit will be expenditures for architectural and engineering services (A&E). The audit will determine whether the state has been overcharged for A&E services, charged for services that are beyond the scope of the original contract, or charged for unauthorized services.

Representative Haigh asked about the timeline for the project. JLARC staff noted a planned completion date of April 2014.

Senator Frockt said he assumes that the state of Oregon has spent some money on its part of the project. He asked whether Oregon has conducted any kind of forensic audit on the project for the expenditures it has had. SAO staff responded that they have been told Oregon has not done so.

Representative Orcutt asked if the scope includes a review of the amount of money WSDOT included for contingency on the project. SAO staff responded that since the focus of a forensic accounting audit is actual expenditures, a review of the budget for contingency is not included in the current scope.

Review of How the Washington State Department of Transportation (WSDOT) Assesses Highway Preservation and Maintenance Needs—Scope and Objectives

Mark Fleming from JLARC staff presented the Scope and Objectives for this study. The 2013-15 Transportation Budget directed JLARC to conduct a review of the methods and systems used by WSDOT to develop asset condition and maintenance service level needs and subsequent funding requests for highway preservation and maintenance programs. Maintenance begins when a highway asset such as a pavement surface is placed in service and includes activities that keep the asset in service over its lifetime. Preservation occurs at the end of the asset's service life when, even with the best routine maintenance, the asset must be replaced. The Legislature directed JLARC to conduct this review in two parts. Phase 1 will provide an overview of the methods and systems used by WSDOT to estimate highway maintenance and preservation needs and costs. Phase 2 will examine whether the methods and systems WSDOT uses for estimating highway preservation and maintenance needs and costs are consistent with industry practices and other appropriate standards. Staff will present the Phase 1 report at the January 2014 JLARC meeting. Staff will present the Phase 2 report at the December 2014 JLARC meeting.

Representative Orcutt asked how JLARC staff plan to do the analysis, for example, by comparing to other states or looking at specific costs or a range of life-cycle costs. Staff answered that, at this point, they have not expressly defined how staff will conduct Phase 2. Staff noted that they would typically look at other states but would also look to see what engineering practices are in place and if anyone is developing new approaches. Staff added that Phase 2 is where they would use the funding JLARC received for a consultant.

Legislative Auditor Keenan Konopaski commented that staff will have a better idea about the approaches to be used for Phase 2 of the project after the completion of Phase 1.

Representative Haigh noted the need to be cautious when comparing to other states. She noted that she has gotten valuable insights by actually driving the roads and speaking with users.

Local Infrastructure Financing Tool (LIFT): Lack of Data Hinders Evaluation and Administration of the Program—Preliminary Report

Peter Heineccius and Eric Whitaker of JLARC staff presented the preliminary report for this study. The Local Infrastructure Financing Tool (LIFT) is a state program designed to help local jurisdictions fund public infrastructure projects, which are in turn intended to foster economic development. There is insufficient data for JLARC staff to evaluate the LIFT program and projects. While gathering information about the LIFT program for this report, JLARC staff observed two aspects of the LIFT statutes that may be of interest to the Legislature. First, the LIFT statutes do not assign any ongoing oversight or guidance responsibilities to a state agency. Second, the statutory formula to calculate state contributions may not reflect whether a specific project has revenue growth or economic growth from within a Revenue Development Area (RDA). This performance audit includes two Legislative Auditor recommendations.

Representative Dahlquist asked about the legislative intent and whether the bill was designed for a specific project that met the bill's criteria. Staff answered that there were three projects listed in statute that were

identified as demonstration projects, and that the remaining projects were selected in a competitive process. Representative Dahlquist asked which projects were the demonstration projects. Staff identified the projects in Bellingham, Spokane County, and Vancouver. Staff reported that the project in Bellingham is the revitalization of a former industrial area, the LIFT funds in Vancouver are for a parking garage, and in Spokane County and the City of Liberty Lake for roads and utilities.

Representative Dahlquist noted the Legislature passed a bill in 2013 to extend the timeframe for a LIFT project in Vancouver and asked if it was for the same Vancouver LIFT project. Staff affirmed that it is the same project.

Representative Orcutt said that the staff analysis on property tax and property values is correct but wanted to point out some other issues that could occur with projects. He indicated that, if a jurisdiction gets new growth from a LIFT project, that amount will be added to the total amount of property tax that can be collected. He said that getting growth in assessed valuation on an existing property does not do anything but new investment would. He noted that the Legislature considered LIFT because they could not do a traditional tax increment finance program. He explained that new construction is added to property taxes, which can then exceed the 1 percent limit in a jurisdiction's property taxes. He asked if the staff looked at whether new construction had occurred. Staff answered that the report has more coverage of this topic, with even more detail in an appendix. Staff agreed that the formula does capture tax revenue increases based on new construction within each of the RDAs. Staff explained that, if the Legislature's interest is limited to capturing new growth from new construction, then the current formula works to that extent. Staff clarified that the point being emphasized in the report is that the current formula does not, however, capture economic growth due to increases in assessed values.

Staff observed that they did talk with county assessors about the new construction that was occurring within each of these RDAs. Staff explained that generally the increase in tax caused by that new construction within the RDAs is relatively small. Representative Orcutt noted that the amount of new construction is retained each year and asked if staff had looked at the value of those amounts over several years. Staff agreed that the tax on the value of any new construction would carry forward but the RDAs had not experienced large value increases.

Representative Haigh expressed concern about laying cause and effect of economic activity on a project, for example, the provision of a new parking garage may be providing parking spaces for growth that was already happening. She indicated that the Committee should hear the final report and that members of the Legislature should then have a conversation about how practical these evaluations are for JLARC to attempt. She said it looks like at least some of the statutory language needs to be changed. Representative Orcutt agreed, adding he was just concerned that it should be clear that the intent of the LIFT program included looking at the new growth being put in, both the one-time sales tax as a building goes in and the on-going property tax. Representative Haigh expressed a concern that most of the projects are along the I-5 corridor and whether rural areas are missing out in the way the dollars are being distributed. She added that it looks like there are several things for legislators to look at again.

Representative Green noted the report says that gathering the data necessary for the JLARC reporting would require "substantial resources," and she asked if the final report would include an estimate of that cost. She also asked if any of the statutory changes would save money. Staff answered that they did not

do a full cost estimate of what it would take to get the data, but costs could be large compared to the cost of the LIFT program itself.

The Legislative Auditor reminded the Committee that the LIFT program is \$7.5 million per year. He commented that some of what members are looking for to inform possible statutory changes could depend on what the Departments of Commerce and Revenue bring in as recommendations.

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

ATTENDANCE

JLARC Members Present: Senators David Frockt and Ann Rivers; Representatives Cathy Dahlquist, Tami Green, Kathy Haigh, and Ed Orcutt.

JLARC Staff Present: Keenan Konopaski, Legislative Auditor; John Woolley, Deputy Legislative Auditor; Valerie Whitener, Audit Coordinator; Linda Byers, Tracey Elmore, Mark Fleming, Peter Heineccius, Suzanne Kelly, Matt Stoutenburg, Sarah Unbehaun, and Eric Whitaker.

ADJOURNMENT

The meeting was adjourned at 10:45 am.

CHAIR

VICE CHAIR

Joint Legislative Audit and Review Committee (JLARC)



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Gary Alexander
Cathy Dahlquist, *Assistant Secretary*
Tami Green
Kathy Haigh, *Chair*
Ed Orcutt
Gerry Pollet
Derek Stanford
Hans Zeiger

December 2, 2013

To: JLARC Members

From: Keenan Konopaski

Re: Recap of Process for Committee Comments on JLARC Reports

The Committee will hear the 2013 Tax Preferences Performance Review ***proposed final report*** at our upcoming December 11, 2013, JLARC meeting. Since JLARC members often ask about their role related to preliminary reports, proposed final reports, and final reports, I have prepared the following Q&A to address commonly asked questions.

Question: What's the difference between a ***preliminary*** JLARC report and a ***proposed final*** report?

Answer: A ***preliminary*** report is a completed staff report. When JLARC staff present this to the Committee, it will be the first time the report is discussed by the Committee. A ***proposed final*** report is the second step in the process, and this report, when presented by staff, will include separate comments on the report from other parties, such as the agencies under review.

In the case of the 2013 Tax Preference Performance Review, JLARC heard the preliminary report in August. The proposed final report for the December meeting now includes comments on the report adopted by the Citizen Commission for Performance Measurement of Tax Preferences.

Question: What action does the Committee take on ***proposed final*** reports?

Answer: After hearing the presentation and discussion, the Committee is asked to "distribute" the report. This announces to the Legislature and the public that the report process has now been completed by JLARC. Further action by the Legislature, if any, would take place before the appropriate policy and fiscal committees. NOTE: Voting to distribute a report does NOT mean the Committee is taking a position on any recommendations by the Legislative Auditor; this point is included in the report's cover pages.

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Question: May the Committee comment on *proposed final* reports?

Answer: Yes – if it wishes, the Committee can take action to adopt comments on the report. Comments must be approved by a vote by the Committee and added as a separate addendum. However, the Committee cannot change the underlying staff report. Any comments, once adopted by the Committee are included in the report, which then becomes a *final report*.

Question: What is the process for Committee members to propose comments?

If a member has a comment they would like to propose for adoption by the full Committee, it is very helpful to provide them to the Legislative Auditor in advance of the Committee meeting so staff can format them and make them available to the other members.