

STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE (JLARC)



COMMITTEE MEMBERS

Senators

Randi Becker
John Braun
Annette Cleveland
Janéa Holmquist Newbry
Jeanne Kohl-Welles, *Chair*
Mark Mullet
Sharon Nelson
Ann Rivers

Representatives

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

Legislative Auditor

Keenan Konopaski

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AGENDA

August 14, 2013
10:00 a.m. – 12:00 p.m.
John L. O'Brien Building
House Hearing Room C
Olympia, Washington

1. Committee Business
 - *a. Election of Executive Committee Members
 - *b. Approval of February 20, 2013, JLARC Meeting Minutes
 - *c. JLARC Work Plan
 - d. Status Report on the Implementation of State Auditor I-900 Recommendations to the Legislature.
2. DSHS Report on Implementation of JLARC Staff Recommendations from the Involuntary Treatment Judicial Cost Study
3. 2013 Tax Preference Performance Reviews – Preliminary Report
Citizen Commission for Performance Measurement of Tax Preferences

*Action Item

Joint Legislative Audit and Review Committee (JLARC)



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REPRESENTATIVES

Gary Alexander, *Vice Chair*
Cathy Dahlquist
Kathy Haigh, *Assistant Secretary*
Ed Orcutt
Larry Springer
Derek Stanford
Kevin Van De Wege
Hans Zeiger

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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 the 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

Joint Legislative Audit And Review Committee

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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 Buchholz, 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

State of Washington

Joint Legislative Audit and Review Committee (JLARC)

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

As required by Initiative 900

July 2013



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Initiative 900 Requires JLARC Report

In November 2005, the people of the State of Washington approved Initiative 900. The initiative directs the State Auditor's Office (SAO) to conduct performance audits of state and local government agencies.

The initiative also includes the following direction with regard to performance audits of state government: "An annual report will be submitted by the Joint Legislative Audit and Review Committee by July 1st of each year detailing the status of the legislative implementation of the State Auditor's recommendations." This report represents JLARC's compliance with this requirement for 2013.

One 2012 I-900 Audit with Recommendations to the Legislature

This is the seventh annual report that JLARC staff have released on the status of recommendations to the Legislature made by the State Auditor's performance audits.¹ During Calendar Year 2012, the State Auditor released one new performance audit report with specific recommendations to the Legislature. In Calendar Year 2012, the State Auditor also issued an additional three performance audits, each of which did not include specific recommendations to the Legislature. JLARC held public hearings on all of the State Auditor's performance audits and reviews issued during that time period.

This JLARC staff report provides information on the implementation status of two specific recommendations to the Legislature included in the 2012 performance audit. In addition, JLARC staff track previous years' recommendations for four years. For example, for an SAO recommendation to the Legislature issued in Calendar Year 2009, JLARC staff reviewed legislative activity in the 2010, 2011, 2012, and 2013 legislative sessions. This report includes updated information on the status of nine unresolved recommendations to the Legislature in performance audits issued by the SAO between Calendar Years 2009 and 2011.

Implementation Status of the SAO Recommendations to the Legislature

Table 1 summarizes implementation of the recommendations to the Legislature in the SAO's performance audits issued in Calendar Years 2009 through 2012. The table uses the following reporting categories:

- **Implemented – Adopted As Presented** – Legislative action implementing an SAO recommendation in the manner that it was presented in the audit;
- **Implemented – Addressed with Different Approach** – Legislative action where the Legislature addressed the issue raised in the recommendation, but via a different approach;
- **Legislature Made Different Policy Choice** – Legislative action where the Legislature was aware of the recommendation and made a different policy choice than what the SAO recommended;
- **Bills Introduced on Topic But Not Adopted** – Situation where individual legislators introduced bills on the topic covered in the recommendation, but the Legislature did not adopt the recommendation;

¹ Many of the recommendations in the SAO performance audits are directed to state or local government agencies rather than to the Legislature. This report does not provide information on implementation of those recommendations. For local governments, Initiative 900 directs that "an annual report will be submitted by the legislative body by July 1st of each year detailing the status of the legislative implementation of the State Auditor's recommendations."

- **Other Circumstances** – This category denotes recommendations where other relevant circumstances apply; and
- **Related or No Information** – Related information is provided when available.

Table 1 – Implementation of SAO I-900 Recommendations to the Legislature:
Status Following the 2013 Legislative Session

| Current Implementation Status | Recommendations | | |
|---|-----------------|-----------|-----------|
| | 2012 | 2009-11 | Total |
| Implemented: | | | |
| Adopted as Presented | 2 | 2 | 4 |
| Addressed with Different Approach | 0 | 4 | 4 |
| Legislature Made Different Policy Choice | 0 | 2 | 2 |
| Bills Introduced on Topic But Not Adopted | 0 | 0 | 0 |
| Other Circumstances | 0 | 1 | 1 |
| Related or No Information | 0 | 8 | 8 |
| Total | 2 | 17 | 19 |

Detail on Specific SAO Recommendations to the Legislature

What follows are details on the two specific recommendations to the Legislature in the one SAO performance audit from Calendar Year 2012. The details also include an update on the status of nine unresolved recommendations to the Legislature in SAO performance audits issued between Calendar Years 2009 and 2011. For each of these performance audits, this JLARC staff report provides:

- A brief summary of the subject of the performance audit;
- The text of each recommendation to the Legislature;
- The current implementation status for each recommendation;
- Identification of related legislation; and
- Where appropriate, a comment section to provide additional explanation/context about the Legislature's actions or the categorization of implementation status.

Each section ends with reporting on any additional legislative activity since last year's report such as public hearings, work sessions, and related budget activity. The audit reports are grouped by year and listed in the order in which the State Auditor released them.

Initiative 900 also states that "justification must be provided for recommendations not implemented." Since no individual or entity can singularly speak to the reason for legislative action or inaction, JLARC's auditors could not identify sufficient and appropriate evidence to make definitive conclusions about why recommendations have not been implemented to date. However, the information provided in the comment sections does, in some cases, provide a context for the Legislature's actions.

Newly Issued 2012 Recommendations

Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules

Released September 6, 2012

About the Audit

This audit reviewed Washington's business regulation activities, which are conducted by multiple state agencies. This audit is part of a series of audits designed to find opportunities for these agencies to improve their interactions with businesses. The audit found that despite endorsement from state leaders, Washington has not achieved a one-stop business portal to serve businesses as they seek to obtain a license and meet other state requirements. The audit also found that the regulatory information contained on regulatory agency websites is incomplete, and the sites are not always user friendly. Finally, the audit found that the agencies need to streamline the various rules applying to business regulation to ensure those rules are necessary, clear, and consistent. This audit issued two recommendations directed to the Legislature.

SAO Recommendation to the Legislature

The Legislature and Governor should continue to pursue a single, one-stop portal for all business transactions with state government.

Implementation Status 2013:

- ☒ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☐ Related or no information

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|----------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| HB 1757 | ✓ | | | | |
| SSB 5718 | ✓ | | ✓ | ✓ | ✓ |

Comments

SSB 5718 of 2013, which was enacted during the 2013 Regular Session (companion bill HB 1757 was not enacted), intends to monitor the development of a one-stop portal for Washington businesses. The Office of the Chief Information Officer is required to provide the Legislature's economic development committees with a plan for establishing performance benchmarks and for measuring the results of implementing a one-stop portal by November 30, 2013. The agency must submit annual progress reports to the Legislature's economic development committees until the portal has reached the performance benchmark of initial implementation.

Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules

Released September 6, 2012

SAO Recommendation to the Legislature

The Legislature should revise the law (RCW 19.02.050) to remove the two agencies required to participate but that do not issue business licenses (the Department of Commerce and the Parks and Recreation Commission), and to add the agencies that do issue business licenses but do not now participate. The Legislature should also clarify that “full participation” by agencies requires them to provide information and applications for all of their business licenses available on the BLS website.

Implementation Status 2013:

- ☒ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☐ Related or no information

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|------------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| ESHB 1403 | ✓ | | ✓ | ✓ | ✓ |
| E2SSB 5680 | ✓ | | ✓ | | |

Comments

ESHB 1403 of 2013, which was enacted during the 2013 Regular Session (companion bill E2SSB 5680 was not enacted), removed the Department of Commerce and the Parks and Recreation Commission, which do not issue business licenses, from the list of agencies required to participate in the state Business Licensing Service portal. The legislation added the Board of Accountancy, Department of Archaeology and Historic Preservation, Department of Early Learning, Department of Ecology, Department of Financial Institutions, Department of Transportation, Gambling Commission, Horse Racing Commission, Office of the Insurance Commissioner, State Lottery, Student Achievement Council, Washington State Patrol, and Workforce Training and Education Coordinating Board to the list of agencies required to participate in the state Business Licensing Service portal.

Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules

Released September 6, 2012

Additional Legislative Action

JLARC held an I-900 hearing on September 19, 2012.

The State Auditor's Office made a presentation to the House State Government & Tribal Affairs Committee for a work session on November 30, 2012. The presentation included a discussion of results of the audit and regulatory reform and lean permitting efforts by local governments.

Washington State Liquor Control Board made a presentation to the House Government Accountability and Oversight Committee for a work session on January 15, 2013. The presentation included a discussion of streamlining the licensing process and a new licensee education unit.

The State Auditor's Office made a presentation to the Senate Trade and Economic Development Committee for a work session on February 5, 2013 and to the House Technology and Economic Development Committee for a work session on February 12, 2013. The presentation included a discussion of efforts to inventory and streamline information on business regulations in the state, including findings from the audit on regulatory reform.

The Governor's Office of Regulatory Assistance made a presentation to the Senate Trade and Economic Development Committee for a work session on February 5, 2013. The presentation included a description of the Office's functions and plans for improvements to the regulatory systems such as working with agencies to improve their tax, license and registration processes to make it easier to do business in Washington.

The Washington Economic Development Commission made a presentation to the House Technology and Economic Development Committee for a work session on February 12, 2013. The presentation included a discussion of why regulatory reform is important for businesses in the state and the need for streamlining and recommendations for system improvements.

The House Transportation Committee had a work session on regulations impacting taxis, limousines, and for-hire vehicles on March 20, 2013. Information presented by industry groups, the City of Seattle, and the Washington State Department of Licensing included the following:

- Plan to hire consultant to analyze demand for services in Seattle/King County to help inform the regulatory processes, study effectiveness of current system, and analyze the effect of alternate models of regulation.
- DOL evaluation of the regulatory process including registration, certification, and licensing and recommendations for improvements.

Previously Unresolved 2011 Recommendations

Department of Labor & Industries Prescription Drugs

Released May 4, 2011

About the Audit

This audit focused on the Department of Labor & Industries (L&I) prescription drug purchases for injured workers as part of the workers' compensation program. The main question the audit sought to answer was whether the workers' compensation program pays a reasonable and appropriate amount for prescription drugs. The audit found that L&I has attained a relatively high generic drug use rate, has limited the amount of drugs dispensed to injured workers, and is using many leading practices to contain drug costs. It also found that L&I has missed significant savings opportunities by not regularly updating its drug pricing schedule. The audit includes one recommendation to the Legislature to further reduce drug costs.

SAO Recommendation to the Legislature

We recommend the Legislature revise state law (RCW 69.41.190) to permit physicians to prescribe brand-name drugs only when generic therapeutic equivalents are not available. To accomplish this, lawmakers should modify the carve-out provision so it no longer exempts certain drug classes from the generic requirement, and should modify the "dispense-as-written" provision so it no longer prohibits pharmacists from substituting less expensive, therapeutically equivalent generics. If the law were changed, physicians who thought a brand-name drug was needed still could obtain prior approval from L&I to prescribe that drug. This recommendation would not result in therapeutic interchange (requiring physicians to prescribe drugs with different active ingredients).

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
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No Related Legislation

Crime Victims Programs, Department of Commerce, Department of Labor & Industries, Department of Social and Health Services

Released June 13, 2011

About the Audit

This audit reviewed the Crime Victims Compensation (CVC) program at the departments of Commerce, Labor & Industries (L&I), and Social and Health Services (DSHS). The audit found that the CVC program should be financially stable through the 2011-13 Biennium. The audit noted, however, a projected federal funding reduction in 2014 could increase future state funding requirements. The audit identified opportunities for the state to further reduce program expenses and improve efficiency by capping certain benefits and simplifying L&I's benefit payment process. The audit also found significant overlap among the crime victims and domestic violence grant programs at Commerce and DSHS and determined that consolidating these programs at DSHS could improve efficiencies, reduce operating costs, and streamline services. The audit determined that it would be cost-prohibitive to merge the CVC program at L&I with the grant programs. This audit issued five recommendations to the Legislature.

SAO Recommendation to the Legislature

The Legislature should extend or make permanent the 2010 crime victims benefit reductions. Preserving current benefits will prevent the need for the state to increase spending by \$3.6 million annually after July 2015. This action will be key to maintaining a financially stable program after the 2013-15 Biennium. Washington's current maximum benefit of \$50,000 is the ninth highest among the 50 states. The legislature should refine the new law so that all statutory references to benefit levels are consistent.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|----------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| SSB 6389 | ✓ | ✓ | | | |

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
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|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

Comments

The Department of Commerce provided an update and overview of the Department's Crime Victims programs at a work session for the House Appropriations Subcommittee on General Government on January 30, 2013.

Crime Victims Programs, Department of Commerce, Department of Labor & Industries, Department of Social and Health Services

Released June 13, 2011

SAO Recommendation to the Legislature

The Legislature should authorize L&I's director to reduce CVC benefit levels when funding levels fall short. Officials in three states said this authority was vital to effectively managing their programs. This would also maximize the number of crime victims who receive benefits.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
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No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

SAO Recommendation to the Legislature

The Legislature should cap the amount paid for sexual assault exams. Six of the eight states we reviewed set limits ranging from \$400 to \$800 per exam. Capping reimbursement amounts at \$800 could save Washington's program about \$167,000 per year.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
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No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
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No Related Legislation

Crime Victims Programs, Department of Commerce, Department of Labor & Industries, Department of Social and Health Services

Released June 13, 2011

SAO Recommendation to the Legislature

The Legislature should amend the law to require local police departments, upon request, to submit crime reports to the CVC program within a specified time. Based on requirements in other states, we recommend a period between 10 or 14 days. This change could cut CVC administrative costs by about \$49,000 annually and reduce the amount of time eligible victims must wait to receive benefits.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
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No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

SAO Recommendation to the Legislature

We recommend the Legislature consolidate the three grant programs we reviewed at Commerce and DSHS for victims of crime and domestic violence into a single program within DSHS. This merger would reduce program duplication and costs, better align program goals and agency missions, and unify budgeting and planning to maximize efficiency. It also could improve service delivery to providers by reducing the administrative burden of dealing with separate grant monitors and multiple sets of requirements.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|---------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| HB 2573 | ✓ | | | | |

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

Additional Legislative Action

- The 2012 Supplemental Operating Budget included \$50,000 General-Fund State for Fiscal Years 2012 and 2013 for the Department of Labor and Industries crime victims' compensation program to pay claims for mental health services for certain clients.

Opportunities to Reduce State Mail Volume and Costs

Released November 1, 2011

About the Audit

This audit sought to identify ways state agencies could reduce outgoing mail volumes to achieve cost savings. SAO identified the four state agencies with the largest mail volumes (the departments of Employment Security, Labor & Industries, Licensing, and Social and Health Services) and analyzed in detail 55 of the mailings the agencies sent that included more than 100,000 pieces per year. The audit found that 1) in more than half of the high-volume mailings, state or federal law required the agencies to “provide” the information, not necessarily to mail it; 2) 20 percent of the high-volume mailings analyzed provided information the agencies were not required to deliver in any form; and 3) in some cases, laws require agencies to provide information by “mail,” which limits an agency’s ability to reduce mail volumes. The audit includes one recommendation to the Legislature.

SAO Recommendation to the Legislature

The Legislature should remove from state law all requirements to “mail” documents. This action would provide all state agencies with greater flexibility to use the most appropriate and cost-effective methods of delivering documents and information.

Implementation Status 2013:

- ☐ Adopted as presented
- ☒ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☐ Related or no information

Opportunities to Reduce State Mail Volume and Costs

Released November 1, 2011

2011 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|-----------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| HB 1040 | ✓ | ✓ | ✓ | ✓ | ✓ |
| ESHB 1725 | ✓ | ✓ | ✓ | ✓ | ✓ |
| SSB 5067 | ✓ | ✓ | ✓ | ✓ | ✓ |

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|------------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| SHB 1259 | ✓ | ✓ | ✓ | | |
| ESHB 2197 | ✓ | ✓ | ✓ | ✓ | ✓ |
| HB 2206 | ✓ | | | | |
| E2SHB 2253 | ✓ | ✓ | ✓ | | |
| HB 2293 | ✓ | ✓ | ✓ | ✓ | ✓ |
| SHB 2316 | ✓ | ✓ | | | |
| HB 2393 | ✓ | ✓ | ✓ | ✓ | ✓ |
| HB 2400 | ✓ | ✓ | ✓ | | |
| HB 2401 | ✓ | ✓ | ✓ | | |
| HB 2419 | ✓ | | | | |
| 2SHB 2452 | ✓ | ✓ | ✓ | ✓ | ✓ |
| HB 2505 | ✓ | | | | |
| SHB 2638 | ✓ | ✓ | | | |
| SB 6149 | ✓ | | | | |
| ESSB 6150 | ✓ | ✓ | ✓ | ✓ | ✓ |
| SB 6151 | ✓ | | | | |
| ESSB 6180 | ✓ | ✓ | ✓ | | |
| SSB 6198 | ✓ | ✓ | | | |
| SB 6222 | ✓ | ✓ | | | |
| SB 6347 | ✓ | ✓ | | | |
| SB 6349 | ✓ | ✓ | ✓ | | |
| ESSB 6607 | ✓ | ✓ | ✓ | | |

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|-----------|-----------------|-------------------------|------------------------|--------------------|--------------------|
| EHB 1013 | ✓ | | ✓ | | |
| HB 1032 | ✓ | | ✓ | | |
| HB 1057 | ✓ | | | | |
| HB 1118 | ✓ | | | | |
| SHB 1370 | ✓ | | ✓ | ✓ | ✓ |
| ESHB 1400 | ✓ | | ✓ | ✓ | ✓ |
| ESHB 1467 | ✓ | | ✓ | | |
| SHB 1568 | ✓ | ✓ | ✓ | ✓ | ✓ |
| HB 1576 | ✓ | | ✓ | ✓ | ✓ |

Opportunities to Reduce State Mail Volume and Costs

Released November 1, 2011

| | | | | | |
|-----------|---|---|---|---|---|
| HB 1797 | ✓ | | ✓ | | |
| HB 1966 | ✓ | ✓ | | | |
| SHB 2033 | ✓ | ✓ | | | |
| SSB 5008 | ✓ | | ✓ | ✓ | ✓ |
| ESSB 5034 | ✓ | ✓ | ✓ | | |
| SB 5136 | ✓ | | ✓ | ✓ | ✓ |
| ESB 5221 | ✓ | | ✓ | ✓ | ✓ |
| SB 5260 | ✓ | | | | |
| SB 5277 | ✓ | | | | |
| SB 5360 | ✓ | | | | |
| SB 5704 | ✓ | | | | |

Comments

Legislation in 2013

The State Auditor recommended that the Legislature remove all requirements for agencies to “mail” documents. The Legislature has not undertaken a comprehensive effort to remove statutory requirements to mail something, but has instead done so on a case by case basis. In 2013, legislators considered several instances in which entities were required to “mail something” and has provided agencies with the authority to use electronic mail as an option. Due to the broad scope of bills that include some mention of mail, the bills included in the list of “2013 Related Legislation” should not be considered comprehensive.

Previously Unresolved 2010 Recommendations

Mid-Columbia Public Utility Districts

Released May 19, 2010

About the Audit

This audit focused on three mid-Columbia public utility districts (PUDs) that own and operate hydroelectric facilities on the Columbia River. They are Chelan County PUD, Douglas County PUD, and Grant County PUD. The audit objectives covered the nine elements of a performance audit included in I-900 as well as five specific objectives related to providing citizens useful and accurate financial, performance and policy information; achieving effective and efficient planning, designing, and construction management; efficiently soliciting, procuring and managing contracts; effectively managing administrative operations; and efficiently managing operational expenses. An overarching recommendation from the audit includes one recommendation to the Legislature.

SAO Recommendation to the Legislature

We recommend the Legislature consider increasing the threshold for Chapter 54.04.070(2) RCW. Specifically: *(2) Any work ordered by a district commission, the estimated cost of which is in excess of twenty-five thousand dollars, exclusive of sales tax, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding one hundred fifty thousand dollars in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project.* (Emphasis added in SAO report)

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2011 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

Previously Unresolved 2009 Recommendations

Eight Counties' Building Permit and Inspection Fees: Clark, Klickitat, Pacific, Pend Oreille, Skamania, Walla Walla, Whatcom, Yakima

Released December 29, 2009

About the Audit

As required by legislation enacted in 2009 (SB 5120), this audit focused on the reasonableness of building and inspection fees imposed by eight counties in the state. The audit includes one recommendation to the Legislature.

SAO Recommendation to the Legislature

The Legislature should develop legislation that:

- Allows for thresholds of working capital from surplus building permit revenues;
- Defines building permit processing activities and allowable expenses; and
- Specifically allows for appropriate indirect costs for all permit types.

Implementation Status 2013:

- ☐ Adopted as presented
- ☐ Addressed with different approach
- ☐ Made different policy choice
- ☐ Bills introduced on topic but not adopted
- ☐ Other circumstances
- ☒ Related or no information

2010 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2011 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2012 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

2013 Related Legislation

| Bill # | Bill Introduced | Out of Fiscal Committee | Out of House of Origin | Passed Legislature | Signed by Governor |
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|
|--------|-----------------|-------------------------|------------------------|--------------------|--------------------|

No Related Legislation

Joint Legislative Audit and Review Committee (JLARC)



E-mail: JLARC@leg.wa.gov
Web site: www.jlarc.leg.wa.gov

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Derek Stanford
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August 2, 2013

TO: Members of the Joint Legislative Audit and Review Committee

FROM: Keenan Konopaski, Legislative Auditor 

RE: Follow-up to JLARC Report 12-5 "Involuntary Treatment Judicial Costs: Actual Cost Data Not Available; Estimates Suggest Wide Range in Average Case Costs"

The August 14, 2013 JLARC meeting will include a presentation by DSHS on the agency's response to JLARC staff recommendations in the July 2012 report "Involuntary Treatment Judicial Costs: Actual Cost Data Not Available; Estimates Suggest Wide Range in Average Case Costs" (Report 12-5). The written response from DSHS, and the Executive Summary from the July 2012 JLARC report are attached.

JLARC staff recommended that DSHS provide the Legislature with a plan and timeline for implementing the ITA judicial cost reimbursement process outlined in SSB 5531 (2011). The plan was to address collection of actual cost data and determine what costs should be allowed for inclusion in reimbursement rates.

At the JLARC meeting, JLARC staff will provide a brief overview of this prior study from 2012, emphasizing the recommendation to DSHS. Then, DSHS staff will discuss their approach and answer questions from JLARC members.

Please let me know if you have any questions in advance of the August 14 JLARC meeting.

Attachments

Cc: Valerie Whitener, JLARC Audit Coordinator
John Bowden, JLARC Research Analyst



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Behavioral Health and Service Integration Administration
PO Box 45050, Olympia, WA 98504-5050

June 25, 2013

Keenan Konopaski
1300 Quince St SE
P.O. Box 40910
Olympia, WA 98504-0910

Dear Mr. Konopaski:

Keenan

This letter and status update is in response to your letter dated February 20, 2013, regarding your concerns about the Department of Social and Health Services (the Department) and its report to the Legislature on judicial costs. The Department continues to work towards a process to establish future rate updates.

Since July 2012, when the statute was changed to allow county courts dealing with civil commitments to bill Regional Support Networks outside their county for costs, Regional Support Networks (RSNs) have been paying court costs to each other based on the initial rates proposed by JLARC. To date, the Department has not dealt with any disputes regarding this process.

The Department worked with the RSNs to determine parameters around appropriate costs. This was necessary to avoid shifting costs that are currently built into Medicaid rates or evaluation and treatment facility rates. Attached you will find a table listing the parameters.

DBHR is utilizing 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. While the report suggested that DBHR would need a statutory change to implement our recommended process for updating rates, we believe after continued review that it can be done under current construction.

The timeline submitted with the report to JLARC in January has been changed to establish new negotiated rates in the RSN contracts for January 1, 2014.

If you have any questions regarding our plan, please do not hesitate to contact Travis Sugarman, RSN Oversight Supervisor, at 360-725-2042 or via email at travis.sugarman@dshs.wa.gov.

Sincerely,

Jane Beyer
Assistant Secretary

Hope this addresses your questions.

Enclosure

cc: Travis Sugarman, RSN Oversight Supervisor

Allowable Judicial Costs

| Description of ITA Court Activity | When allowable for inclusion in Court Cost |
|---|---|
| Transportation should be allowable in the following instances: | In general, the cost of transportation should be allowable for the transportation associated with administering the court and it can be identified as strictly a cost of the court. |
| For Clients | When a court requires the client to be transported to the court from the E&T and the costs are not built into the E&T rates or transportation to a Video Link Site. |
| For Court Staff | If the court is set up to require the court to transport itself to the E&T for conducting ITA related business or transportation to a Video Link Site. |
| Video Link in lieu of actual transportation | Cost of Video Link court system if identified and attributable to ITA related business only |
| Security Detail | If the security is dedicated to ITA related business or can be accurately apportioned to the ITA piece of the work. Costs should only cover personnel associated with a hearing and not general building security. |
| Expert or Statutory Witness | Only if the person's time is not already paid for through some other system (RSNs generally pay this cost now). It must be a true cost to the court and not an indirect cost of hearing a case. |
| Interpreters and Translators | Only if the person's time is paid for by the court and not by any other means such as built into E&T costs. Interpreters must be court certified. |
| Medical Technicians | Only if the cost is currently being paid for by the court system. Indirect costs of the RSN or its E&T cannot be billed to another RSN as court costs. |
| Personnel Costs, to Include the following: Court Scheduler Public Defender(s) Prosecuting Attorney(s) Judicial Officer County Clerk | To the extent that a court can clearly attribute the costs of the individuals to ITA related business. This could be done based on an attribution model if accepted by the RSN. For staff dedicated to ITA court, all costs associated with their positions could be covered. |

**ITA Judicial Costs:
Actual Cost Data
Not Available;
Estimates Suggest
Wide Range in
Average Case Costs
Report 12-5**

July 18, 2012



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

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John Bowden
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PROJECT SUPERVISOR

Valerie Whitener

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Involuntary Treatment Act (ITA) Allows Involuntary Civil Commitments

The state Involuntary Treatment Act (ITA) is designed to:

- Prevent inappropriate involuntary commitments of mentally disordered persons;
- Protect clients' rights while providing treatment in a timely manner and in a community-based setting when appropriate; and
- Protect the public safety.

Under this Act, individuals are entitled to a court hearing to determine if a commitment should occur. These hearings are held in county Superior Courts, most frequently in one of the 13 Washington counties that have psychiatric evaluation and treatment (E&T) facilities. The individual may or may not be a resident of the county in which the hearing is held. These counties incur judicial expenses each time they handle an ITA commitment case.

Legislature Creates Reimbursement Process

Legislation in 2011 (Substitute Senate Bill 5531) created a process in which counties can be reimbursed for their actual judicial costs associated with the county-prosecuted ITA cases. Counties can bill their Regional Support Network (RSN). RSNs are responsible for the delivery of mental health services within designated geographic areas. The reimbursement process becomes available July 1, 2012.

The same legislation directed JLARC to:

1. Assess the actual direct costs of providing judicial services for involuntary civil commitments in each county;
2. Review and analyze the reasons for differences in costs among counties; and
3. Identify issues and methods for updating the costs to reflect changes over time.

JLARC Provides Initial Estimates to Start Reimbursements, But Case Cost Data Needs Improvements

Twelve of the 13 counties do not have processes in place to capture the actual ITA expenditure data necessary to calculate average case costs. JLARC used the best possible cost and case number information available to estimate average case costs for each county.

Based on county estimates, the average case costs range from \$282 in Skagit County to \$1,124 in Pierce County.

Case Costs Vary Among Counties Due to a Variety of Factors

Average ITA case costs vary among the counties due to personnel-

related factors and to other judicial services some counties provide. Personnel-related differences include differences in salaries and benefits paid to the county participants in ITA cases (judge or commissioner, public defender, county prosecutor, and county clerk), differences in the number of cases each of these participants handles, and differences in the amount of time each participant spends on ITA cases. Factors that influence the total amount of time spent include the number of times the person appears in court, the mix of different types of ITA hearings that each county handles, and the number of contested cases.

The provision of other judicial services also resulted in variations among the county ITA costs. Some but not all of the counties reported expenditures for other services such as transportation, security, witnesses, and interpreters. These other judicial service expenditures differed due to:

- Different approaches or needs counties have in conducting cases;
- Whether a county reported a cost it has; and
- Whether the county or another entity such as an E&T or RSN paid the cost.

To Comply with Statute, Counties and State Agencies Need to Track and Audit ITA information

From our efforts to gather actual expenditures and ITA case count information and to analyze the estimates provided by the counties, we have two recommendations. We have issued these recommendations so that counties can be accurately reimbursed by RSNs in accordance with statute, and rates can be appropriately updated to reflect changes over time.

Recommendations

Recommendation 1 – By January 1, 2013, the Department of Social and Health Services should report to the appropriate committees of the House and Senate a plan and timeline for implementing the ITA judicial cost reimbursement process under RCW 71.05.730. The report should include what should be done to:

- Determine allowable ITA judicial costs for inclusion in reimbursement rates;
- Establish contract provisions with RSNs that limit ITA judicial cost reimbursements to counties for their actual ITA judicial costs;
- Assure that actual cost data is collected, and reviewed or audited;
- Implement a method for updating rates; and
- Ensure that Maintenance of Effort as required in RCW 71.24.160 is met.

If applicable, DSHS should identify any resource needs, and may wish to comment on any alternate approaches to reimbursing counties for ITA judicial costs.

Recommendation 2 – The Administrative Office of the Courts should, consistent with RCW 2.56.030, take steps to ensure county Superior Courts and County Clerk's Offices are consistently applying the definition of an ITA case contained in RCW 71.05.730.

Pursuing Alternative Methods for Establishing and Updating ITA Reimbursement Rates Would Require Statutory Changes

Complying with statute will require counties and state agencies to take on new tasks to track and confirm actual judicial costs. JLARC has identified some alternative approaches currently used by other programs within the state to establish and update reimbursement rates that may be less resource-intensive to implement than the requirements in current law. However, adoption of any of these alternatives would require a change in statute. The alternatives are described in Appendices 3 and 4.