State of Washington

Joint Legislative Audit and Review Committee (JLARC)

LEGISLATIVE AUDITOR
Keenan Konopaski
1300 Quince St SE
PO Box 40910
Olympia, WA 98504-0910

Phone: 360-786-5171
FAX: 360-786-5180
TDD: 1-800-635-9993

SENATORS
Nick Harper
Jeanne Kohl-Welles
Sharon Nelson
Janéa Holmquist Newbry
Linda Evans Parlette, *Secretary*
Cheryl Pflug
Craig Pridemore, *Chair*
Joseph Zarelli

REPRESENTATIVES
Gary Alexander, *Vice Chair*
Cathy Dahlquist
Kathy Haigh, *Assistant Secretary*
Troy Kelley
Mark Miloscia
Ed Orcutt
Derek Stanford
Hans Zeiger

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

May 17, 2012

1

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE
REGULAR COMMITTEE MEETING MINUTES

COMMITTEE BUSINESS

- Senator Pridemore, JLARC Chair, called the meeting to order at 10:00 a.m.
- Senator Pridemore asked if there were any corrections, additions, or objections to the January 11, 2012, meeting minutes. Seeing none, he noted the meeting minutes were approved as submitted.
- Legislative Auditor Keenan Konopaski and Deputy Legislative Auditor John Woolley briefed the Committee on new assignments JLARC received from the Legislature in the 2012 legislative sessions. They presented information on the draft Work Plan for the remainder of the biennium as well as information on assignments JLARC has in the 2013-15 biennium and beyond. They noted there is a small amount of staff capacity available for one additional new study starting January 2013. Senator Pridemore invited Committee members to submit ideas for a new study for consideration by the Committee. *Representative Alexander made a motion to approve the revised 2011-13 Work Plan. Motion was seconded and carried unanimously.*

REPORTS, PRESENTATIONS, DISCUSSIONS

Involuntary Treatment Judicial Costs: Actual Cost Data Not Available; Estimates Suggest Wide Range in Average Case Costs — Preliminary Report. John Bowden, Tracey Elmore, and Eric Thomas from the JLARC staff presented the preliminary report for this study. In 2011, the Legislature provided a process, effective July 1, 2012, for counties to be reimbursed for judicial services costs associated with involuntary mental health civil commitments. The intent of the legislation (SSB 5531) is to "prevent the burden of these costs from falling disproportionately on the counties or regional support networks where the commitments are most likely to occur." In the bill, JLARC was directed to assess the direct costs counties incur when providing judicial services associated with involuntary commitments, analyze cost differences among counties, and investigate methods for and identify factors associated with the periodic updating of judicial costs. JLARC found that actual cost data is not available and that estimates suggest a wide range in average case costs. JLARC provides two recommendations for improving the expenditure and case data, and offers potential alternatives for establishing and updating reimbursement rates.

Legislative Auditor Keenan Konopaski reported that staff is distributing a revised version of the report. He explained that it contains a revision to the average case cost for Spokane County.

Representative Miloscia asked if the counties gave any reasons why they were not already collecting the actual expenditure data. Staff explained that the state had not needed this data in the past and that the counties had not needed the information at this level of detail for their own purposes.

Representative Dahlquist noted that the bill calls for individual rates for counties with 20 or more cases per year and asked if staff knew how the 20-case threshold had been determined. Staff responded that they did not know how the threshold was selected. However, the 13 counties meeting the threshold had well over 20 cases per year while the counties under the threshold held very few (perhaps three or four) cases per year. The 13 counties included in the study accounted for 98% of all hearings.

Representative Dahlquist asked how the county of residency is determined for a person receiving a hearing for an involuntary commitment, for example, if the person is not able to communicate well. Staff answered that many of the people do have homes and identified family members so residency is easily determined; in the situation where the person's stay in the area is transient, the county doing the detaining takes responsibility for residency.

Senator Pridemore asked what feedback staff had received on the counties' collection of more accurate cost data in the future. Staff replied that the feedback varied, with some counties willing to capture more accurate data if doing so allows them to adjust their rates, and some counties preferring not to have the burden of tracking more data. Staff indicated they cannot report a percentage of which counties are willing and which ones are not.

Senator Pridemore asked if counties currently track judicial costs for other types of hearings or cases. He said that he did not recall Clark County tracking any of this kind of information. Staff answered that most counties have not had the need to track this kind of information. Senator Pridemore noted that the legislation did not require the counties to track these costs.

Representative Miloscia asked if any of the counties were collecting qualitative data on how well they were performing any of the four ITA judicial functions. Staff provided one example of this: an analysis conducted by the King County Office of Public Defense, which was a study of how they conduct their business and how they might improve it.

Representative Alexander asked if there is a specific definition of an ITA case. Staff answered that the bill did include a specific definition. Representative Alexander commented that there had been an issue in the past with RSN reimbursement rates years ago in the administration area. He noted the great variation among the rates for the counties described in the report and noted whether there should be standardized definitions and a specified range of costs. Staff acknowledged there is wide variation, and standardizing would be a policy choice by the Legislature.

Senator Pridemore noted that the study's recommendation calls on DSHS to develop criteria for allowable ITA judicial costs and asked if the agency is receptive to that. The Legislative Auditor answered that DSHS would likely provide its view next month in its agency response.

Representative Kelley asked if staff knew why the Pierce County prosecutor costs were so much higher than prosecutor costs in other counties. Staff answered that they had numerous communications (phone and email) with Pierce County staff trying to learn what accounted for those differences. Staff explained that the information in the report is what was supplied by the county's budget and finance office and that JLARC staff were unable to learn what accounted for the differences. Representative Kelley asked if it might be related to the types of cases. Staff answered that Pierce County does have a higher average number of hearings per case, but that the other three judicial functions are also in attendance at those same hearings, and the estimated costs for the other three functions were not significantly different from other counties.

Representative Dahlquist asked staff what ITA judicial costs would qualify as "reasonable." Staff explained that the word "reasonable" is the wording within the statute, but it is not defined. Staff said that, in the course of their work, they learned that counties had different interpretations of that term, such as whether costs for a court scheduler, security, and translators should be included. In addition, while these functions are a part of the hearings, depending on the county these costs could be borne by the court, the local E&T, or the RSN. This variation in local practices may explain some of the cost variation.

Workplace Safety & Health Program: Activities Are Responsive and Preventative, Using Data-Driven Approaches — Preliminary Report. Elisabeth Donner from the JLARC staff presented the preliminary report for this study. JLARC reviewed the state's workplace safety and health activities at the Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH). The report concludes DOSH complies with federal and state law, and it allocates resources for data-driven prevention activities. Further, research shows a reduction in claims after DOSH activities, and cautions policy makers about comparing injury and illness rates across states. The report does not make recommendations.

Senator Kohl-Welles asked a question about musculoskeletal injury claims related to a situation where a person works on an especially hard surface. Staff from the Department of Labor and Industries commented that this circumstance would be considered a musculoskeletal disorder claim.

Senator Pridemore invited staff from the Department of Labor and Industries (Anne Soiza, Assistant Director of DOSH; Janet Kenney, Operations Manager of DOSH; and Barbara Silverstein, Research Director of SHARP) to come before the Committee to answer questions. L&I staff indicated they were pleased with the report, noting that they work hard to prevent injuries and illnesses around the state.

Representative Alexander raised an issue about potential differences between federal OSHA standards and state WISHA standards. He asked whether the agency's emphasis was on education about such differences or penalization for not knowing about them. L&I staff explained that, under federal law, Washington must adopt regulations that are at least as strict as OSHA's. L&I staff explained further that L&I takes all proposed state regulations through the Administrative Procedure Act process, during which business or labor stakeholders may indicate they want something different than what was promulgated by OSHA. L&I staff said this can result in Washington-specific rules that are different from OSHA rules based on what local citizens and stakeholders have asked for. L&I staff indicated they have extensive education and outreach to get information to employers, particularly new employers and small employers. L&I said it uses advisory committees as one way to get information to people as quickly as possible. Representative Alexander encouraged L&I to continue to use these approaches, commenting that he thinks most employers want to comply and will do so if they receive the education and information.

Senator Kohl-Welles asked what the agency is doing to communicate to employers on new regulations about the safe handling of hazardous drugs. L&I staff explained that this was a state-specific standard that the Legislature directed L&I to adopt. L&I staff indicated the agency has taken the stakeholder information from the rule-making process and has established an advisory committee, which has met twice already. L&I staff reported that the agency is launching work groups for different kinds of businesses, such as pharmacies and hospitals, and that these work groups will develop model programs. L&I staff said they can then share the results of these work groups with others who were not able to participate. L&I staff explained they focus on getting information to the parties as quickly as possible so that they can come into compliance and prevent worker injuries and illnesses.

Senator Parlette asked for an example of where both business and labor had jointly asked for a state standard that was more strict than an OSHA standard. L&I staff provided the example of Washington's fall protection standard. L&I staff reported that, in the early 1990s, business and labor came together and approached the department in an effort to respond to 30 fatalities that had occurred in the previous 18 months. In response, L&I created a construction advisory committee and the advisory committee recommended a thorough fall protection rule that has since been adopted by others across the United States.

Lottery Marketing & Incentive Pay: Jackpot and Economy, Not Advertising or Beneficiary Change, Appear to Impact Ticket Sales — Proposed Final Report. Peter Heineccius and Stephanie Hoffman from the JLARC staff presented the proposed final report for this study. In 2010, the Legislature changed the primary beneficiary of Lottery revenue from school construction to higher education scholarships and early learning. The 2011-13 Operating Budget directed JLARC to analyze the impact on ticket sales caused by this recent beneficiary change, as well as the impact of advertising in general on sales. JLARC found that jackpot amounts and economic conditions were the strongest predictors of ticket sales in the last biennium, while advertising and the beneficiary change did not appear to have an impact on sales. In addition, JLARC reviewed Lottery's incentive pay program for sales representatives and found that it is currently limited in size and shares some similar characteristics with other state lotteries. JLARC recommends that Washington's Lottery report to the Lottery Commission with a plan on how to evaluate and improve the effectiveness of its advertising budget in generating ticket sales. Both Lottery and OFM concur with this recommendation.

Senator Pridemore asked staff how they reached the finding that advertising does not impact Lottery ticket sales. Staff explained that they used linear regression to try to isolate the impact of weekly advertising on weekly ticket sales and that they found no statistically significant relationship between the two.

Representative Orcutt asked about the different advertising media analyzed in the study and specifically whether the analysis included the Portland media market. Staff explained that the review included various media for advertising including radio, TV, print, and on-line, and that the Portland metro area advertising was included.

Representative Miloscia noted that the study did not use any focus groups and instead relied on statistical analysis to reach the study conclusions. He commented that he monitors a billboard showing the jackpot amount and that he buys a Lottery ticket when the amount gets over a certain amount. He commented further that maybe there is advertising like that that is very effective. Staff confirmed that we did not use focus groups and added that the purpose of the recommendation is for Lottery to do the further analysis that would identify which forms of advertising might be more effective than others.

Senator Pridemore invited staff from Washington's Lottery (Jean Flynn, Director of Marketing; and Arlen Harris, Director of Communications and Government Affairs) and the Office of Financial Management (Tristan Wise, Acting Senior Budget Assistant) to come before the Committee to answer questions.

Representative Alexander asked if Lottery staff have discussed with the Lottery Commission ways to determine if advertising is affecting sales and how to measure that. Lottery staff responded that they plan to bring forward their Fiscal Year 2013 plan at the next Commission meeting and that part of that plan is a more rigorous analysis of marketing effectiveness. Lottery staff said that this analysis will look beyond year-to-year sales since connecting to players is something that happens over time. Lottery staff reported that they have assembled a list of key performance indicators that goes beyond sales and profit. Lottery staff indicated that they want to do this not just in response to JLARC but because they want to be better stewards of the marketing budget. Lottery staff added that the reason people know about the jackpot amount is due to advertising.

Senator Pridemore asked if Lottery funds the posting of the small signs in local stores of what the current jackpot amounts are. Lottery staff confirmed they do fund that.

Senator Pridemore asked what the total amount is that is spent on advertising. Lottery staff answered that it is about $11.2 million this year, about 2.2 to 2.3 percent of total sales. Senator Pridemore asked about the distribution of funds among the different kinds of advertising. Lottery staff answered that they continue to use a mix of media because their target market uses a mix of media. Lottery staff said that the agency uses more than TV and radio because more tactics are now available, such as on-line advertising, but that TV is predominant in terms of expenditures because it is expensive. Lottery staff added that four to five months ago they began using social media, such as Facebook.

Representative Dahlquist asked whether the sales representatives have territories and receive incentive pay in relation to sales volume. Lottery staff answered that each sales representative has 120 retailers and that they try to visit 12 retailers per day. Lottery staff explained that the incentive payment is based on achieving a percentage increase in sales, recognizing that some stores have higher volumes than others. Representative Dahlquist commented that she wanted to make sure the incentive is doing its job. Lottery staff indicated it is, noting that the one person making the higher amount is working closer to 60 hours per week instead of the standard 40 hours and is also working Saturdays and Sundays.

Representative Orcutt asked Lottery staff to provide a table showing how much money is spent for each different type of advertising and breaking it down by different media markets for the TV, radio, and newspaper ads. Lottery staff said they can provide this information.

Representative Alexander made a motion to approve for distribution the proposed final report - Lottery Marketing & Incentive Pay: Jackpot and Economy, Not Advertising or Beneficiary Change, Appear to Impact Ticket Sales. Motion was seconded and carried unanimously.

Lodging Tax Revenues: About Eight Percent of Funds Sponsor Nonprofit Events and Facilities, But Information is Inadequate to Estimate Economic Impact — Proposed Final Report. Mark Fleming from the JLARC staff presented the proposed final report for this study. SSB 5647, enacted in 2007, authorizes local governments to use lodging tax revenues to support events and facilities sponsored by certain nonprofit organizations. The legislation includes a June 30, 2013, termination date and requires JLARC to evaluate the economic impact of lodging tax expenditures. JLARC's review finds that many local governments have not reported on their use of lodging tax revenues and those expenditures' impact on tourism. As a result, JLARC cannot evaluate the economic impact of local government use of lodging tax revenue. However, review of reported data shows that approximately 8 percent of lodging tax revenues was used to support nonprofit events and facilities. Although reporting can be improved, there would be costs for local governments and state agencies to fully evaluate the economic impact of lodging tax revenues.

Senator Pridemore noted that there are a number of studies about the economic impacts of various types of events; he asked if this kind of information can be used to generalize about impact and thereby avoid events having to bear the high cost of an economic impact study. Staff responded that some jurisdictions have conducted studies about the economic impact of particular events or facilities but most have not.

Senator Pridemore invited staff from the Department of Commerce (Nick Demerice, Government Affairs Director) to come before the Committee. Commerce staff reported that the agency agrees with the JLARC report and the difficulties it notes. He also reported that, in 2007, Commerce was not involved in any of the discussions until the day before the bill was passed. He explained that local jurisdictions were concerned about the reporting requirements. At that time, Commerce had a robust tourism program that helped develop the report form and the reporting guidance.

Commerce staff acknowledged the difficulty in assessing economic impact of an event in a credible manner. He indicated that the Department no longer has the in-house expertise in this area due to the closing of the tourism office. Commerce staff added that the legislation did not give Commerce any enforcement provisions to compel reporting.

Senator Pridemore expressed his concern that only half of the jurisdictions were reporting how they spent their lodging tax revenues. JLARC staff clarified that, by and large, the localities do have information on how much lodging tax they collect and how much they spend in their own financial records and data from the Department of Revenue. But they may not be reporting it to Commerce.

Representative Dahlquist asked Commerce staff what the department plans to do to ensure consistent data collection if the Legislature decides to continue this authorization. Commerce staff answered that this was a concern of the agency when a bill to reauthorize was introduced in 2012. With that bill there had been discussions with the Association of Washington Cities to play a role in updating and distributing the form and following up with local jurisdictions to ensure they report. He noted that the 2012 bill did not pass and that currently the authorization is scheduled to expire in June 2013. Commerce staff said they would work to find a better way to collect this data if the Legislature decides to extend the authorization.

Senator Pridemore commented that, if local governments want this authorized use of funds to continue, they need to let the Legislature know soon, since there is only one more legislative session before expiration.

Representative Alexander asked if the tourism advisory committee still existed. Commerce staff indicated it did not.

Representative Alexander made a motion to approve for distribution the proposed final report - Lodging Tax Revenues: About Eight Percent of Funds Sponsor Nonprofit Events and Facilities, But Information is Inadequate to Estimate Economic Impact. Motion was seconded and carried unanimously.

Higher Education Tuition-Setting Authority and Opportunity Scholarships & Expansion Program — Proposed Scope & Objectives. Deputy Legislative Auditor John Woolley from the JLARC staff presented the proposed scope and objectives for this study. In 2011, the Legislature enacted two major pieces of legislation related to higher education. E2SHB 1795 granted tuition-setting authority to the public baccalaureate institutions for eight years, through academic year 2018-19. ESHB 2088 created Opportunity Scholarships and the Opportunity Expansion program, partly to mitigate the effect of potential tuition increases. Both bills require a JLARC study in 2018, and JLARC plans to combine the two studies in one report. JLARC plans to evaluate the impact of institutional tuition-setting authority on student access and affordability, as well as on institutional quality. JLARC will also evaluate the impact of the Opportunity Scholarships and Expansion Program on student access and affordability. In addition, JLARC will evaluate the institutions' compliance with specific provisions of E2SHB 1795.

Senator Pridemore commented that this would likely be a topic of great interest to the Legislature for the next several years, so receiving interim reports will be appreciated.

Senator Kohl-Welles asked if this study would be looking at the GET program and its viability, given the levels of tuition increases. Staff answered that it is not part of the scope of this audit but that the State Actuary may be looking into that topic. Representative Alexander added that it is an important question that is perhaps worthy of its own audit. Legislative Auditor Keenan Konopaski offered to contact the State Actuary's office and provide the Committee with more information about what aspects of the GET program that office is studying.

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

ATTENDANCE

JLARC Members Present: Senators Jeanne Kohl-Welles, Linda Evans Parlette, Craig Pridemore, and Joseph Zarelli; Representatives Gary Alexander, Cathy Dahlquist, Kathy Haigh, Troy Kelley, Mark Miloscia, Ed Orcutt, and Derek Stanford.

JLARC Staff Present: Keenan Konopaski, Legislative Auditor; John Woolley, Deputy Legislative Auditor, Valerie Whitener, Legislative Audit Coordinator, Curt Rogers, John Bowden, Linda Byers, Elisabeth Donner, Tracey Elmore, Mark Fleming, Peter Heineccius, Stephanie Hoffman, Eric Thomas, Lisa Hennessy, and Suzanne Kelly.

ADJOURNMENT

The meeting was adjourned at 11:50 a.m.

CHAIR

VICE CHAIR