

STATE OF WASHINGTON

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JOINT LEGISLATIVE AUDIT AND  
REVIEW COMMITTEE (JLARC)

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**COMMITTEE MEMBERS**

**Senators**

Nick Harper  
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# AGENDA

**NOTE: this will be an evening meeting (6PM) during the first week of the regular session – the specific date will be confirmed shortly**

John A. Cherberg Building  
Senate Hearing Room 2  
Olympia, Washington

- \*1. Approval of December 1, 2011, JLARC Meeting Minutes
2. Lottery Marketing & Incentive Pay: Jackpot and Economy, Not Advertising or Beneficiary Change, Appear to Impact Ticket Sales — Preliminary Report
3. Lodging Tax Revenues: About Eight Percent of Funds Sponsor Nonprofit Events and Facilities, But Information is Inadequate to Estimate Economic Impact — Preliminary Report
4. JLARC's Evaluation Plan for the Unemployment Insurance Training Benefits Program — Briefing Report
- \*5. Microenterprise Development: Program Meets Statutory Objectives But Department of Commerce Oversight is Inadequate — Proposed Final Report
- \*6. 2011 Tax Preference Performance Reviews — Proposed Final Report

\* Action Item

**Please note: All listed times are estimates only and the Committee reserves the right to move agenda items as needed**

1. Approval of December 1, 2011, JLARC Meeting Minutes
2. **Lottery Marketing & Incentive Pay: Jackpot and Economy, Not Advertising or Beneficiary Change, Appear to Impact Ticket Sales — Preliminary Report:** 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. 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. 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.
3. **Lodging Tax Revenues: About Eight Percent of Funds Sponsor Nonprofit Events and Facilities, But Information is Inadequate to Estimate Economic Impact — Preliminary Report:** 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 the 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, fully evaluating the economic impact of lodging tax revenues will impose costs and burdens on local governments and state agencies.
4. **JLARC's Evaluation Plan for the Unemployment Insurance Training Benefits Program:** JLARC staff will be presenting the Committee with an evaluation plan for a study that was assigned in 2011 legislation. Engrossed House Bill 1091 (2011) directs JLARC to conduct a thorough review and evaluation of the Unemployment Insurance Training Benefits Program, managed by the Employment Security Department. JLARC's study approach leverages existing resources, and has three tiers: 1) a process evaluation; 2) a gross impact analysis; and 3) a net impact evaluation with a cost-benefit analysis. A full report evaluating the program is scheduled to be presented to the Legislature in December 2015.
5. **Microenterprise Development Program Meets Statutory Objectives But Department of Commerce Oversight is Inadequate — Proposed Final Report:** JLARC evaluated the state's microenterprise development program and concluded that the Washington State Microenterprise Association (WSMA) provides business development services and grants to Microenterprise Development Organizations. These organizations in turn provide business development services to entrepreneurs and leverage state funds to attract non-state dollars. JLARC found that the Department of Commerce is not complying with its statutory obligation to provide organizational support to WSMA, and that its current contract reporting and verification process is inadequate. The report makes two recommendations to improve these areas.
6. **2011 Tax Preference Performance Reviews — Proposed Final Report:** In 2006, the Legislature mandated on-going annual audit reviews of Washington's tax preferences. JLARC reviewed 25 tax preferences in 2011. The reviews are provided in a single volume and include a summary of highlights from each review, and comments on the reviews adopted by the Citizen Commission for Performance Measurement of Tax Preferences. All tax preference performance reviews place an emphasis on whether the preference has met its public policy objectives. The reviews include recommendations as to whether each preference should be continued, reviewed and clarified, terminated, or allowed to expire.

**Joint Legislative Audit and Review Committee (JLARC)**

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 Ed Orcutt  
 Derek Stanford  
 Hans Zeiger

December 1, 2011

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**JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE  
 REGULAR COMMITTEE MEETING MINUTES**

**COMMITTEE BUSINESS**

- Senator Pridemore, JLARC Chair, called the meeting to order at 8:00 a.m.
- Senator Pridemore asked if there were any corrections, additions, or objections to the September 21, 2011, meeting minutes. Seeing none, he noted the meeting minutes were approved as submitted.

**REPORTS, PRESENTATIONS, DISCUSSIONS**

**Puget Sound Partnership: Processes Required to Measure Puget Sound Restoration Are Not Yet in Place – Proposed Final Report**

Eric Thomas from the JLARC staff presented the proposed final report for the Puget Sound Partnership study. This first of two audits directed by statute (the second audit is due in 2016) focuses on the accountability directives included in the statute that created the Partnership. JLARC found that accountability mechanisms were largely not in place in the Partnership's plan for restoring Puget Sound—the 2008 Action Agenda—but work currently underway in revising the Action Agenda appears to be more in line with guidance in statute. JLARC's report also describes other key work that remains after the 2012 Action Agenda is delivered. The report offers three recommendations for the Partnership to enhance accountability and communication of restoration strategies. The Partnership concurs with each of the recommendations.

Representative Orcutt asked if there is now a definition of a restored Puget Sound. JLARC staff answered that the Partnership has adopted 19 benchmarks that indicate what a restored Sound would look like in 2020.

Senator Pridemore invited the representative from the Puget Sound Partnership (Gerry O'Keefe, Executive Director) to come before the Committee. Partnership staff thanked JLARC for its excellent work in conducting the review, noting that the purpose of such reviews is to learn from the past and then improve.

The Partnership noted the efforts by its staff and others in the region to create the first (2008) Action Agenda in the window of time established in the legislation. Partnership staff reported that, at the time, the agency was praised for its efforts by those involved in the process. He indicated that, given the window of time, it is not surprising that some things were not accomplished but can be improved on now, as identified in the JLARC report. He noted an increase in federal funds for the cleanup of Puget Sound compared to the four years before the creation of the

agency and that funds flowing to the state as a result of the Action Agenda have created more than 14,000 jobs for 693 projects. He added that this particularly matters at a time when every job counts.

Partnership staff stated that the framework the Legislature established creates a smart agency that uses adaptive management to address challenges and incorporate new information; he reported staff are currently working on improving the action agenda. He indicated that, while the report does not reflect the work progressing over the last couple of years, the 2012 Action Agenda will make clear linkages between actions, targets, and the statutory goals and will set funding priorities. Partnership staff identified three core messages about what the Partnership does that makes it unique: 1) setting science-based priorities for the recovery of Puget Sound; 2) spurring implementation of priority actions; and 3) reporting progress and ensuring accountability for action.

Representative Alexander commented that, even though the Partnership is a relatively new agency, there was a lack of accountability and benchmarks by the agency's predecessor, and this was not a new responsibility of government. He noted the Partnership could have addressed this shortcoming much earlier than it did. Partnership staff responded that setting benchmarks and targets was the number one priority for the newly appointed director and was accomplished this year.

Senator Pridemore asked the Partnership staff if they see any barriers to or problems with bringing the agency into full compliance with the statute. Partnership staff responded that the Legislature was very thoughtful with the framework in the statute, drawing from what was learned in the Chesapeake, the Great Lakes, and the Florida Everglades. Partnership staff reported that the framework can be implemented, though it will take work, and that there are no fundamental barriers other than funding over time. Legislative Auditor Keenan Konopaski reminded the Committee that one of the report's recommendations is for the Partnership to identify any barriers it encounters in implementing the legislation.

Representative Miloscia asked how the agency was progressing with its quality management assessment that must be completed by 2012. Partnership staff answered that the work was underway right now, by the agency performance manager. Representative Miloscia asked the agency to send him a copy of its completed application.

*A motion was made to approve for distribution the Puget Sound Partnership: Processes Required to Measure Puget Sound Restoration Are Not Yet in Place proposed final report. Motion was seconded and carried unanimously.*

### **Microenterprise Development Program Meets Statutory Objectives But Department of Commerce Oversight is Inadequate – Preliminary Report**

Fara Daun from the JLARC staff presented the preliminary report for the Microenterprise Development Program study. JLARC evaluated the state's microenterprise development program and concluded that the Washington State Microenterprise Association (WSMA) provides business development services and grants to Microenterprise Development Organizations. These organizations in turn provide business development services to entrepreneurs and leverage state funds to attract non-state dollars. JLARC found that the Department of Commerce is not complying with its statutory obligation to provide organizational support to WSMA, and that the agency's current contract reporting and verification process is inadequate. The report makes two recommendations to improve these areas.

Representative Alexander asked about the concept of transferring the state funds to the MDOs and having them provide the benefits of this program. Staff replied that the statute is clear in setting up the state program as an infrastructure program, with the state association providing services and managing the grants to the MDOs. Staff

explained that many of the MDOs are small, with a focus on serving local entrepreneurs, and that we did not look at whether the MDOs would have the capacity to manage the state program outside of the association. Representative Alexander commented that he may look into the concept.

Senator Pridemore invited representatives from the Washington State Microenterprise Association (Teresa Lemmons, Executive Director) and the Department of Commerce (Nick Demerice, Director of Government Affairs) to come before the Committee. The WSMA representative explained that the Association was originally an all-volunteer organization of microenterprise development practitioners that came together in 2004, so the Association had some infrastructure in place when it received the state contract in 2007. She reported that, in the past, the Association had a good relationship with Commerce, with Commerce being instrumental in establishing the program, the criteria for awarding grants through the program, the performance objectives, and the scope of work. She indicated that she is pleased with the performance of the Association and the MDOs and that she looks forward to working with Commerce to identify what the program benchmarks should be and what organizational support from Commerce should look like.

Commerce staff indicated that the agency is happy to lend support to this program and that Commerce is pleased the audit shows this is an effective program. He explained that Commerce was very involved with the program early on, with agency staff serving on the board and helping this organization get started; he said this added to the agency's level of confidence in the Association as Commerce moved into its oversight role. He reported that the agency does not concur with the two findings of the JLARC staff regarding Commerce. In terms of organizational support, he stated that the agency did provide a good deal of support early on in the program and received a small appropriation to provide that support. He explained further that the agency responded to a budget cut to the program in 2010 by cutting the amount spent on administrative support rather than reducing the amount passed through to WSMA. He added that this was a management decision and that the agency thought this was an appropriate responsibility for the agency.

In terms of oversight, Commerce staff stated that the agency is dedicated to performance-based contracting. He explained that managing contracts is largely what they do at the Department of Commerce, with an open contract portfolio of 4700 contracts with values over \$4 billion. He added that there is always room for improvement and that he looks forward to working with WSMA to make this one a better performance-based contract. He explained that Commerce retains 2 percent of pass-through funds to administer this contract, a little over \$6000 per biennium or 10 to 15 hours of staff time per quarter, which does put a limit on the ability of staff to spend time. He explained further that, as part of a risk assessment the agency does on contracts, the agency has a familiarity with WSMA that gives Commerce a level of confidence that the agency's oversight is adequate. He indicated that the agency asks the Association to retain relevant documents to support the activities it is reporting to Commerce but does not require WSMA to submit this material with its reporting in order to reduce the exchange of paperwork between the entities. He added that this also minimizes the amount of time that WSMA has to take with regard to the contract, allowing it to spend more time doing its work, and that the report found no indication of fraud or misuse of state funds. His final comment was that perhaps this was just luck, but perhaps it is part of Commerce's experience with contracts as well.

Senator Pridemore said the audit suggests there is no one for the Association to call with questions and no link to the program on the agency website and asked if this is accurate. Commerce staff responded that the agency's website can be difficult to navigate and that the agency hopes to re-do its website soon. He indicated that the agency produces some small business resources on a couple of different sites and forums, and that WSMA is always linked within those. When he receives calls from legislators, Commerce staff indicated that he often refers them to

WSMA's website as a resource for their constituents as well as to the SBA network. He reported that the Association has a specific contract manager who can be contacted about questions related to the contract. In terms of other kinds of support, he explained that the number of FTEs in the section has been reduced from 72 to 26, so the Association may no longer know who to call with questions as it lost its earlier contacts.

Senator Pridemore asked how many contracts or programs Commerce oversees and how many of these have faced the same kinds of cut-backs. Commerce staff answered that the agency has over 100 programs that it directly administers and that there are a number of contracts like this one where the agency just acts as a pass-through of funds and does not really administer a program. He added that, when reductions have come down in an across-the-board fashion, the agency has tried to take the cut out of its administrative oversight while still providing a level of accountability to try to get the money where it will do the most good.

Representative Miloscia asked Commerce to clarify if the agency disagreed with the finding that performance measures are not clearly defined, that there are not minimum performance thresholds for compliance, and that required documentation is not adequate to support progress statements made in the progress report. Commerce staff said he did not necessarily disagree and that there is always room for improvement. He said that in the agency's view, the question is, "Is the level of oversight appropriate, given the size and scope of the contract?" He added that perhaps it is not so much disagreeing as trying to explain why they are where they are in terms of the level of support and oversight.

Representative Miloscia asked if the agency is happy right now with its performance metrics and whether there is compliance with the contract or not. Commerce staff replied that, as they look deeper into it, they will continue to improve this contract.

Representative Orcutt suggested to Commerce that, when its technical people are finished with re-doing the website, it should test the re-design with some users. He noted that it was worse and harder to navigate DNR's website after it had been "improved." He recommended making the website user-friendly rather than techno-friendly. Commerce staff acknowledged the point, noting all the different kinds of users that interact with the agency's website.

Senator Pridemore asked the representative from WSMA if she thought the program was receiving adequate oversight and organizational support. She responded that they miss the support they had in the beginning. She explained that initially there had been a lot of energy, support, and enthusiasm about their supporting the small business community. She explained further that there have been a lot of changes since the program began, with a loss of some of their champions within state government. She added that things are not adversarial but that the support for assisting small businesses has waned from their perspective. She concluded by saying that she looks forward to redefining what that relationship should be and redefining what organizational support should look like.

Senator Pridemore commented to Commerce that having an agency point of contact and a link on the agency website seems like at least a minimal level of organizational support to provide.

### **Manufacturing Innovation Sunset Review: Legislature Should Allow Unused Program to Expire – Proposed Final Report**

John Woolley, Deputy Legislative Auditor, presented the proposed final report for the Manufacturing Innovation Sunset Review study. The Washington Manufacturing Innovation and Modernization Extension Service (MIMES) Program was created to increase the availability of innovation and modernization services to Washington

manufacturers. The Sunset statutes direct that, absent specific action by the Legislature, the MIMES Program will cease to exist on June 30, 2012. Because no manufacturers are using the MIMES Program, JLARC recommends that the Legislature allow the Program to expire. The Department of Commerce concurs with the recommendation.

Senator Pridemore invited the representative from the Department of Commerce (Nick Demerice, Director of Government Affairs) to come before the Committee. Commerce staff commented that initially this was thought to be a program with a lot of promise. He explained that the original bill for the program included a tax credit for businesses but that once that provision was removed, this became a regular loan that a business would get from the government rather than from a bank or a regular lending institution. He explained further that, even in difficult economic times, credit-worthy businesses retained their relationships with the regular lending institutions and could access credit that way while the businesses that came to Commerce had problems with being credit-worthy and were not in a position to take on additional debt. He added that, while well-intentioned, there just was not a market for the program.

*Representative Alexander made a motion to approve for distribution the Manufacturing Innovation Sunset Review: Legislature Should Allow Unused Program to Expire proposed final report. Motion was seconded and carried unanimously.*

#### **Assessment of Involuntary Commitment Judicial Services – Proposed Scope & Objectives**

John Bowden from the JLARC staff presented the proposed scope and objectives for the Assessment of Involuntary Commitment Judicial Services study. In 2011, the Legislature provided a process, effective July 1, 2012, for counties to get reimbursement for certain judicial services costs associated with involuntary mental health civil commitment hearings. 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 certain judicial services. Additionally, JLARC is to analyze cost differences across counties and investigate methods for and identify factors associated with the periodic updating of judicial costs.

#### **Alternative Public Works Sunset Review – Proposed Scope & Objectives**

Mark Fleming from the JLARC staff presented the proposed scope and objectives for the Alternative Public Works Sunset Review study. The 2007 Legislature revised statutes that allow public agencies to use alternative procedures for public works construction projects (2SHB 1506). Alternative procedures depart from the traditional design-bid-build process for selecting construction contractors by allowing agencies to select contractors who will participate in the design process. The statute includes a sunset provision; if the Legislature does not renew the authority for alternative public works procedures in 2013, the authority will expire. Under Washington’s Sunset Law, JLARC must conduct a sunset review. That review will examine the extent to which alternative public works procedures: 1) comply with legislative intent; 2) provide for efficient and economical public works construction, with adequate cost controls in place; 3) achieve expected performance goals and targets; and 4) duplicate the activities of another agency or the private sector. JLARC will make a recommendation on whether to terminate, modify, or continue alternative public works procedures.

Representative Haigh noted the concern about whether contractors and subcontractors have access to public works projects under this new system and asked if the study will be looking at this question of access. Staff responded that we will be looking into that topic.

Representative Haigh asked if a review of cost overruns would include the costs of lawsuits that occur when a project is not done correctly. Staff noted that this topic had not come up in our preliminary work but that we can certainly keep an eye out for it, adding that the study will look at what was proposed and what actually happened. Representative Haigh commented that it may take a broader look than construction costs to find costs associated with lawsuits.

Representative Alexander asked if there are certain demographics that limit certain jurisdictions from being able to use the alternative procedures. Staff explained that the main limitations are the size of the project and the capability of the organization to manage the project.

Representative Orcutt noted that the traditional process makes a contractor hiring decision based on lowest responsible bid, while the alternative procedure makes a contractor hiring decision based on qualifications. He reported that he has heard complaints from contractors in Southwest Washington that WSDOT has hired contractors from Oregon without Washington contractors having a chance to seek the projects. He asked if the study will be considering the fairness to contractors. Staff noted that this is the same topic that Representative Haigh asked about, which is the contractor access to the projects. He explained that there is debate about whether this process does unfairly limit access by contractors and selection of subcontractors and that this is one of the topics that the study will address.

Representative Orcutt again noted that the alternative procedures do not use lowest responsible bids and asked if the result is higher-cost projects. Staff answered that the study will be looking at the actual costs of the different projects. Senator Pridemore asked if the study will look into the cost differential between the RFP and RFQ processes. Staff explained that the study will look at the cost differential between traditional design-bid-build projects and projects using the alternative procedures.

Representative Haigh noted that the CPARB process does not include WSDOT transportation projects. Legislative Auditor Keenan Konopaski confirmed that the JLARC study will not include WSDOT projects because that agency works under a separate authority. He added that the study will look at whether the Legislature's inclusion of a project review process has helped provide an appropriate threshold for determining when to authorize alternative methods and how to avoid unintended consequences.

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

## ATTENDANCE

JLARC Members Present: Senators Nick Harper, Jeanne Kohl-Welles, Linda Evans Parlette, and Craig Pridemore; Representatives Gary Alexander, Cathy Dahlquist, Kathy Haigh, Mark Miloscia, Ed Orcutt, and Hans Zeiger.

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

## ADJOURNMENT

The meeting was adjourned at 9:05 a.m.



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CHAIR

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VICE CHAIR