

MINUTES
AUDIT SUBCOMMITTEE
OF THE
LEGISLATIVE MANAGEMENT COMMITTEE

The Audit Subcommittee of the Legislative Management Committee met in Room W110, State Capitol Complex, Salt Lake City, Utah, December 15, 2005, from 3:30 p.m. until 4:45 p.m.

Committee Members Present:

Speaker Greg J. Curtis, Co-Chairman
President John L. Valentine, Co-Chairman
Senator Mike Dmitrich
Representative Ralph Becker

Legislative Audit Staff:

John Schaff, Auditor General
Rick Coleman, Deputy Auditor General
Tim Osterstock, Audit Manager
Darin Underwood, Audit Manager
Janice Coleman, Audit Supervisor
Darren Marshall, Audit Supervisor
Leslie Marks, Lead Auditor
Danny Schoenfeld, Performance Auditor
Tim Bereece, Performance Auditor
Leah Blevins, Performance Auditor
Keith Cisney, Performance Auditor
Lynda Maynard, Recording Secretary

Other Interested Parties:

Mark Brasher, Director, Office of Recovery Services (ORS)
Mark H Spencer, Ph.D., Associate for Finance & Facilities, State Board of Regents
Kevin Walthers, Assistant Comm for Finance, State Board of Regents
Rachel Coplin, UPEA
Dave Buehler, Utah System of Higher Education (USHE)
Dan Becker, Court Administrator, Administrative Office of the Courts (AOC)
Myron March, Deputy Court Administrator, AOC
Brent Johnson, General Counsel, AOC
Heather Mackenzie-Campbell, Manager, Audit Service, AOC
Kelly Atkinson, Fraternal Order of Police (FOP)
Representative Julie Fisher
Richard Bradford, Executive Director, GOED

Kevin Carter, SITLA
Mont Evans
Edward Lunt, Board of Trustees, UTA
Arnold B. Combe, Vice Pres, Admin Services, U of U
Rick Allen, Utah State University
Catherine Taylor, DHS, ORS
Tracy Graham, Director, Children in Care, DHS, ORS
Juliette Tennert, OLFA
Andrea Willko, Fiscal Analyst, OLFA
Mark Andrews, Policy Analyst, OLRGC
Angie Welling, *Deseret Morning News*
Lisa Riley-Roach, *Deseret Morning News*
Kirsten Stewart, *Salt Lake Tribune*
Shinika Sykes, *Salt Lake Tribune*

1. Call to Order

President Valentine called the meeting to order at 3:30 p.m.

2. Approval of Minutes

Senator Dmitrich made a motion that the minutes from the October 13th meeting be approved. The motion passed.

3a. A Performance Audit of the Office of Recovery Services

(Report #2005-13)

Presented by Darren Marshall, Audit Supervisor

The main responsibility of the Office of Recovery Services (ORS) is to establish and enforce child support obligations on behalf of private individuals or taxpayers (if the children received public assistance support). In 2005, ORS collected \$159 million of which over \$134 million was distributed to private individuals. However, much of the child support owed is not collected. As of October 2005, ORS reported \$325 million of back child support (arrears) was owed. The amount of arrears owing would be even greater except that ORS either closes cases with debt owing or forgives debt on uncollectible cases.

The audit requestor's main concerns involved the writing off of debt by ORS that was owed to the state. Our audit scope also included evaluating the efficiency of ORS operations and reviewing

ways that child support collections could be increased. Our main findings are discussed in the report chapters II through V and include:

- The Legislature should consider giving ORS limited authority to administratively suspend state-issued licenses of individuals who have the ability to pay required child support, but refuse to do so.
- ORS should consider using some currently allowed enforcement methods more aggressively to increase collections.
- ORS should improve the performance information it has for their Attorneys General contract so they can evaluate ways to better utilize the attorneys.
- ORS debt management practices generally seem reasonable, but they raise some procedural and policy issues.

Administrative Driver’s License Suspension Program Could Increase Collections. A credible threat of driver’s license suspension could increase collections from those individuals who can afford to pay child support yet do not. Currently, license suspension is possible through judicial action; however, the Attorneys General rarely pursue this course of action. We found that 36 of the 50 states give their child support enforcement agents administrative authority to suspend driver’s licenses in some situations. According to officials we contacted in surrounding states, the ability to suspend or threaten to suspend driver’s licenses is an effective collection tool. For example, Colorado collected \$7.6 million in 2004 and has collected \$8.6 million as of September 2005 through the use of driver’s license suspensions or the threat of suspension.

Programs to Administratively Suspend Other Licenses Could Increase Collections. ORS could also increase collections by establishing a credible threat to suspend nonpaying NCPs’ recreational licenses, such as hunting and fishing licenses, or professional licenses. Currently, recreational and professional license suspensions are allowed through judicial action, but we found no cases where suspension occurred. Administrative license suspension authority would serve as an additional tool for ORS agents to collect from nonpaying NCPs who have the ability to pay their child support. Other states reported that their recreational and professional license suspension programs are effective.

Effective Controls Would Be Needed to Guide Administrative Suspension Program. If the Legislature grants ORS administrative suspension authority, it should consider establishing criteria for its use. ORS would then need to develop procedures to effectively implement the program within the limits established by the Legislature. Controls are important to insure that license suspension is acted upon for good cause and that the due process rights of NCPs are protected.

1. We recommend that the Legislature consider changing the *Utah Code* to allow ORS to administratively enforce child support collection by the suspension of driver’s, recreational, and professional licenses.
2. We recommend that the Legislature consider specifying the conditions and limitations under which ORS may initiate administrative suspension actions.
3. We recommend that if ORS is granted authority to administratively suspend licenses they focus the program on those individuals with the ability to pay as they develop policies and procedures.

ORS Bank Account Seizures Could Be Improved. One administrative enforcement tool that ORS

utilizes to encourage payments from nonpaying NCPs is bank account seizure. Currently, the minimum balance required in Utah before seizure is much higher than all of the surrounding states. By reducing the balance required in a checking account before seizure, ORS could improve collection rates. Currently, a checking account must have at least a \$2,000 balance for an ORS agent to begin lien/levy proceedings on funds above the \$2,000 limit. However, most surrounding states only require a \$500 checking account balance or lower before seizing the bank account.

Access to Greater Tax Information Could Aid in Enforcement and Collection. ORS should reconsider their decision not to receive federal 1099 tax information. Although ORS has other data sources that are more valuable in most cases, 1099 information can be particularly useful when an NCP is self-employed and does not receive a W-2 tax form. Also, we think ORS could protect the confidentiality of the information at a relatively low cost by limiting how their staff access the data.

ORS Should Make Enforcement Efforts More Public. Although we have not studied the issue in depth, we think publicity could be used more effectively in Utah. Other states make their enforcement actions and results more public than Utah. Publicizing enforcement actions could have an important deterrent effect on some NCPs who have the ability to pay child support, but might try to avoid it if they do not believe ORS will take enforcement actions.

1. We recommend that ORS consider lowering the amount required before agents seize a checking account.
2. We recommend that ORS reconsider its option to receive federal 1099 tax information.
3. We recommend that ORS consider making their enforcement methods and successes more public to help encourage NCPs to pay their child support.

ORS Should Evaluate Effectiveness of Civil Enforcement Referrals. The Attorney General's (AG's) office is under contract with ORS to provide legal services on cases referred to it by ORS. However, ORS has little information about the civil enforcement actions taken or the outcomes of those actions. At a cost of \$3.1 million, attorney services represent an expensive resource that should be more effectively managed. If civil enforcement actions do not get an NCP to continue paying on a case, ORS may want to consider changing how the AGs are used.

ORS Should Evaluate Use of Attorneys in Modification Procedures. ORS should consider ways to simplify their child support order modification process, particularly through the increased use of stipulation agreements. Though our review of the modification process was limited, we found three other states that appear to have implemented procedures that reduce their reliance on attorneys to complete judicial modifications. However, we could not obtain reliable data from ORS to make definite conclusions about order modifications.

1. We recommend ORS track or require the AGs to track the amount of child support collected as a result of civil enforcement proceedings as well as the actions taken on the case.
2. We recommend ORS evaluate and determine the best utilization of the civil enforcement AGs.
3. We recommend ORS evaluate their modification process and consider using other states' methods as a model to increase efficiencies.
4. We recommend ORS improve their modification data and develop modification performance measures.

Closing Cases as Unenforceable is Appropriate but Some Concerns Exist. The audit requestor was concerned with ORS' debt elimination practices, particularly public owed debt written off prior to case closure. ORS has developed case closure criteria for determining whether a child support debt is considered unenforceable. We agree that debt needs to be written off when it is uncollectible. However, we found that ORS agents don't always follow ORS' closure criteria on unenforceable cases. Several cases we reviewed should have remained open. Also, ORS should not manually write-off debt prior to closing a case.

Other ORS Debt Management Practices Appear Reasonable, but Raise Policy Issues. The audit requestor expressed concern with other ORS practices where public debt was not pursued. While the concerns raised in the audit request are valid, ORS also has reasonable rationale for its policies and arrears management practices. If the Legislature disagrees with these practices, it should provide additional policy guidance.

1. We recommend ORS discontinue eliminating public owed arrears debt through manual write off on cases closed as unenforceable.
2. We recommend that the Legislature consider whether it wants to provide additional policy guidance to ORS regarding several debt management practices.

Discussion following presentation:

Mark Brasher, Director, Office of Recovery Services (ORS), thanked the Audit Subcommittee for the opportunity to respond to the audit and thanked the audit team for what he believes is a reasonably fair audit. Mr Brasher said that ORS concurs with the recommendations and welcomes all tools to help them be more aggressive and welcomes advise and legislation which could assist ORS; however, ORS needs to be cautious in their approach.

Mr. Brasher said ORS realizes that there is a need to improve the tracking of the Attorney General's work product. ORS will continue to review current procedures regarding checking account seizures and will compare their practices to those of surrounding states.

Motion: Representative Becker made a motion that the **Performance Audit of the Office of Recovery Services** (Report #2005-13) be accepted and referred to the Health & Human Services Standing Committee and the Health and Human

Services Appropriation Subcommittee for further action. The motion passed unanimously.

3b. A Review of Higher Education's Post-Retirement Benefits

(Report #2005-12)

Presented by Janice Coleman, Audit Supervisor

Utah higher education's post-retirement salary stipends and health insurance benefits, offered in addition to employee pensions, have not yet been fully acknowledged. Just as with the state's post-retirement benefits, higher education has probably amassed a large, unfunded liability that should be addressed to prevent future educational funding problems. This audit addresses a legislative request for an estimate of both accrued and future liabilities for higher education and, if needed, recommendations for an appropriate course of action to resolve concerns with higher education's benefit liabilities.

Higher Education Post-Retirement Benefit Programs Have a Potential Liability of \$979 Million. About \$633 million of this liability is committed to current employees with prior years of service and is, for the most part, unfunded. An unfunded liability increases the risk of an inability to pay future benefit obligations. The remaining \$346 million represents the additional costs that will result if the programs are allowed to continue unchecked.

Higher education may need to modify or eliminate offered benefits and then develop a plan to fund the remaining liability without compromising educational services or requiring additional taxpayer assistance. The 2005 Legislature's passage of House Bill 213 established a clear policy position to modify the cost of post-retirement benefits and improve the fiscal integrity and soundness of its benefits package. It is important that higher education do likewise.

Although Large Potential Liabilities Exist, These Costs Can Be Reduced and Better Managed. Primary control of higher education's post-retirement benefits rests within each institution. However, there may be a tendency to address short-term funding needs rather than these post-

retirement potential liabilities that could be years or decades away. The Legislature can play a vital role helping institutions to promptly address the growing liability problem created by these benefits.

Again, it is critical that each institution evaluate if they should reduce their liability by modifying or eliminating these benefits. Once modified, each institution must develop a viable funding plan for its remaining liability. Modification or elimination of these costly post-retirement benefits is a challenge, but can be done. The Legislature can also assist institutions by requiring actuarial studies and specifying reporting requirements for institution cost control and funding plans.

1. We recommend the Legislature require colleges, universities and applied technology centers to assess their full liability by having actuarial studies completed by the 2007 General Session on all post-retirement benefits including stipends, insurance to age 65 and insurance after age 65.
2. We recommend the Legislature require colleges, universities, and applied technology centers to standardize key actuarial assumptions such as the medical inflation rate and the discount rate and report these assumptions during the 2006 Interim.
3. We recommend the Legislature require the Board of Regents to provide for the compilation and reporting of all actuarial study results to the Legislature during the 2007 General Session.
4. We recommend the Legislature require colleges, universities, and applied technology centers to evaluate their post-retirement liabilities and, if necessary, modify or eliminate post-retirement benefits to a level that is affordable, sustainable, and more comparable with the state's costs.
5. We recommend the Legislature require colleges, universities, and applied technology centers to develop plans to fund post-retirement obligations by modifying or eliminating benefits instead of requesting additional funding from the taxpayers or students and without negatively impacting educational services. These plans should be reported to the Legislature during the 2007 General Session.
6. We recommend that the Legislature consider fiscal sanctions or other appropriate measures if the progress reported by higher education during the 2007 General Session is not satisfactory.

Discussion following presentation:

Mark H. Spencer, Ph.D., Associate for Finance and Facilities, State Board of Regents, referred to the response from the State Board of Regents found at the back of the audit and explained that they are committed to maintaining a benefit policy that is appropriate for higher education employees and affordable for the taxpayers of Utah and the students who pay tuition.

Dr. Spencer reported that they intend to do an actuarial study and recognize a need for it, and he believes they will fully comply with the recommendations.

Motion: Senator Dmitrich made a motion that the audit, **A Review of Higher Education's Post-Retirement Benefits** (Report #2005-12), be accepted and referred to the Higher Education Appropriations Subcommittee, the Education Standing Committee and the Executive Appropriations Subcommittee. The motion passed unanimously.

3c. A Survey of Management Controls in the Governor's Office of Economic Development (Report #2005-14)

To be released without presentation or discussion

In accordance with a statutory directive, we conducted a limited-scope review of the recently created Governor's Office of Economic Development (GOED) to assess whether management controls are being instituted. GOED has formally existed since July 1, 2005. As we conducted our survey, GOED's reorganization was well underway, with changes to its organizational structure being implemented and new or revised program activities being developed. Overall, we believe that much progress has been made. For example, GOED's divisions of Business and Economic Development (DBED) and Office of Tourism and Film have vision and mission statements in place; however, some management controls are still in process and little actual performance data are available as of yet. Furthermore, any data that are available would only represent performance over a fairly limited time span.

Scope and Objectives. This survey is not a traditional performance audit, which looks at an organization's past performance to evaluate efficiency and effectiveness or address concerns raised by a requester. Instead, we performed a limited-scope review at the onset of agency operations to determine whether management and financial controls were being put in place at GOED as the organization geared up. Assessed controls include organizational structure and governance, strategic planning, policies and procedures, performance standards, and financial controls.

Some Administrative Controls Can Be Improved. We reviewed office-wide administrative controls as well as controls in the two divisions. The report section on agency-wide controls includes information on a change in options for legislative oversight, the lack of long-term administrative support for GOED, the need for formalized agency-specific policies and procedures, and the need to strengthen some budgetary and financial controls.

Management Controls in the Division of Business and Economic Development Are in Process. Changes to the organization's structure have been made and many staff are new to government. We found that strategic planning is in process but the issue of sustainability needs to be addressed, performance standards need to be refined, and the division's financial controls over contracts will need to be reviewed in the future. In addition, the division's request for a large budget increase for the next fiscal year is unsupported by performance data since such data are not yet available.

We Focused on Tourism's Management Controls Because of the Large Funding Increase. In the Office of Tourism and Film, the tourism program is being reorganized and has seen staffing changes. The film program remains largely unchanged. We found that a new organizational structure is in place for tourism, its strategic plan is being rewritten, and policies and procedures are in process. There are performance standards and financial controls included in the major contracts recently put in place for tourism marketing, cooperative marketing with local entities, and a sports promotion organization. We have not yet reviewed the effectiveness of these controls.

Postponing Full Audit Would Allow GOED to Compile Performance Data. GOED has made significant progress in restructuring and initiating programs. However, a number of management control areas still need to be addressed. With a full performance audit mandated to begin in just under three months (March

2006), GOED would be unable to provide sufficient data for the typical in-depth audit we conduct. In our opinion, it would be to GOED's benefit, and would also allow a more meaningful audit, if more time were given for completion of both the reorganization and the implementation of necessary management controls. A postponement would likely mean that a report on the full audit would not be available for the 2007 General Session of the Legislature. Our recommendations are found below.

1. We recommend that GOED continue to implement management controls outlined in this preliminary review in preparation for a full legislative performance audit.
2. We recommend that the Legislature amend the uncodified language in HB 318, sect. 169 (2005 General Session) to postpone the GOED performance audit's starting date until adequate performance data are available, which may be a year or more.

Discussion following presentation:

Richard Bradford, Executive Director, Governor's Office of Economic Development (GOED), told the Audit Subcommittee that GOED is a work in process, having only been officially created in July 2005.

Mr. Bradford agreed that the audit observations and analysis are essentially accurate and said GOED looks forward to the audit in 2006 where they will be able to provide a much better defined package in terms of policies and procedures.

John Schaff, Legislative Auditor General, explained that although HB318 requires a compliance audit of GOED in March 2006, he believes that the auditor general's staff needs at least a year of data in order to measure performance and to give GOED the opportunity to perform and is hoping that someone in the Legislature will sponsor legislation to move the date for the compliance audit to September 2006.

Motion: Representative Becker made a motion that the audit, **A Survey of Management Controls in the Governor's Office of Economic Development** (Report #2005-14), be accepted and referred to the Workforce Services and Community and Economic Development Standing Committee and the Executive Appropriations Subcommittee for further action. The motion passed unanimously.

4. Special Presentation

Court Recording System Purchases, Installation, and Maintenance - FY1992 - FY2005, Internal Audit Report.

Presented by: Brent Johnson, General Counsel, Administrative Office of the Courts

Heather Mackenzie-Campbell, Internal Auditor, Administrative Office of the Courts

Brent Johnson, General Counsel, Administrative Office of the Courts (AOC), thanked the audit subcommittee for the opportunity to present their internal audit and gave a brief background of the circumstances for the audit.

Mr. Johnson said that this audit relates to purchases of recording equipment for the courtrooms at the Matheson

Court House. The following is an overview of ACO's actions prompting the internal audit:

- The Judicial Counsel has ultimate responsibility for the recording equipment purchases. However, they created a technology committee to assist them in decision-making.
- The initial decision, several years ago, was to buy video recording equipment as the best mechanism for recording court proceedings. However, that decision was replaced with a later decision to use digital audio equipment as a more efficient and cost-effective recording mechanism. AOC has been implementing this decision as recording systems have been phased out and new court rooms have been built.
- Based on questions about past purchasing practices and the decisions that lead to these previous purchases, AOC believed that an internal audit was necessary to review and determine whether procurement policies had been followed.

Heather Mackenzie-Campbell, Internal Auditor, AOC, reported to the Audit Subcommittee that she was able to obtain contract file and background information relative to the purchases of court recording systems from FY1992 thru FY2000. She talked with the AOC purchasing agents, the Administrative Services Director and Courts Services Director who were responsible for procurements, as well as the vendor, Court Vision Communications, Inc., supplier of the court recording equipment.

Heather determined that two contracts were co-referenced in the purchases of court recording equipment; PA417, dating from December 1998, and an agency contract No. 976404, for \$2 Million beginning in fiscal year 1999. She determined that \$269,124.58 in add ons and upgrades were purchased that were not included in the price agreement.

The following recommendations were made in the internal audit:

- It is recommended that the AOC purchasing agents receive formal training and meet with the Division of State Purchasing to learn about state contracts.
- It is recommended that once the AOC purchasing agents are trained, they develop a training for all court employees that are involved in purchasing and that their training be documented in their personnel files.
- It is recommended that all Judiciary employees be made aware of policies and procedures in the State Accounting Manual and the Utah State Court Accounting Manual.
- It is recommended that the AOC Purchasing Department review payment documentation to ensure the invoices detail unit costs and items that are purchased will provide a complete and clear audit trail.

Motion: Senator Dmitrich made a motion that the internal audit of **Court Recording System Purchases, Installation, and Maintenance - FY1992 - FY2005** be sent to the Executive Offices and Criminal Justice Appropriations Subcommittee. The motion passed unanimously.

5. Audit Requests

John Schaff, Auditor General gave a brief overview of the new audit requests to the Audit Subcommittee

Motion: Speaker Curtis made a motion that the following five new audit requests and one previous audit request be accepted and prioritized as follows—
1) UTA; 2) Local Government Compliance with Impact Fees; 3) Department of Corrections Personnel Practices; 4) Utah Species Recovery Program; 5) P-Card Use by State Employees; and 6) Public Education Vending Machines. The motion passed unanimously

5. Other Business

John told the Audit Subcommittee that there will be a new look for the Annual Report that the Auditor General is required by law to publish. The Annual Report will be presented to the Legislature at the beginning of the General Session and will be simpler and more user-friendly.

7. Adjournment

President Valentine adjourned the meeting at 4:45 p.m.