

Minutes

Joint Legislative Program Evaluation Oversight Committee Meeting
January 11, 2016

Members Present

Senator Fletcher Hartsell, Chair
Senator Stan Bingham
Senator Don Davis
Senator Valeria Foushee
Senator Ralph Hise
Senator Tom McInnis
Senator Louis Pate
Senator Shirley Randleman
Senator Joyce Waddell

Representative Craig Horn
Representative Becky Carney
Representative Jean Farmer-Butterfield
Representative Nelson Dollar
Representative Pat Hurley
Representative Ted Davis

Advisory Members

Senator Ben Clark
Senator Joyce Krawiec

Call to Order

Representative Craig Horn, Chair, called the meeting to order.
Senator Joyce Waddell moved to approve the December 14, 2015 *Minutes*. Motion carried.

Presentations and Comments

Representative Horn recognized John Turcotte, Director of Program Evaluation Division, to explain the request presented by Senator David Curtis at the December 14, 2015 meeting but deferred for consideration until today's meeting. S.L. 2015-241 §11.7.(a) requires the UNC Board and the State Board of Community Colleges (SBCC) to study the North Carolina Guaranteed Admission Program (NCGAP) and submit findings by March 1, 2016 to the Joint Legislative Education Oversight Committee. Senator Curtis requested the committee amend the PED Work Plan to direct PED to assess the accuracy and methodology of the UNC/SBCC study after submission by March 1 and to report any findings to JLPEOC at its April 11, 2016 scheduled meeting.

Senator Clark asked if he was correct that PED would study the UNC/SBCC study. Representative Horn said that that was correct and clarified that PED would be reviewing only the study's methodology and accuracy and would not be conducting a separate study of the NCGAP program.

Senator Hise asked why Senator Curtis had made the request. Senator Hartsell said that the Senator and Turcotte had discussed the issue with him and that he understood that Senator Curtis wanted a "second set of eyes" on the study. Representative Horn noted that there was always a concern about any self-study and that PED's review would add further credibility to the UNC/SBCC study.

Senator McInnis said that PED's review was a great idea given the importance of NCGAP's aims – to reduce costs related to time spent working toward graduation; to improve graduation rates; and to reduce some of the burden on taxpayers and students created by low graduation rates.

Senator Waddell moved to amend the PED Work Plan to direct PED to review the NCGAP study and to report any findings to JLPEOC on April 11, 2016. Senator McInnis seconded the motion. Motion carried.

Representative Horn recognized Chuck Hefren, Principal Program Evaluator, to present the PED report ***Enhanced Oversight of Service Contracts Can Help Ensure Cost-Effective Performance.***

Senator Randleman complimented Hefren on the quality and depth of the report. She asked if PED is recommending greater value for services provided and saving taxpayer dollars. Hefren said PED is recommending that the State get better business deals. The private sector's interests do not naturally align with the State's because the private sector has to maximize profit and minimize risk. To improve negotiations and get better deals, agencies need to develop business cases before beginning procurements. Overall, the report noted that the State could have gotten better deals for \$511 million of the \$1.24 billion in service contracts PED identified, which were awarded or administered in ways that weakened competition.

Representative Horn commented that the PED report was very good. He added that the problems were long standing. The committee's mission is to see that the taxpayers get the best value and people across the country were upset and believe that they are not getting value from government.

Senator Hise said that he was concerned about timing. He did not want to recommend requiring business cases if that would delay or have a chilling effect on or provide excuses to agencies which have persisted in performing services in-house that should be contracted out for savings. He said that OSBM instead should require inventories of services and then identify those that might be contracted out and force agencies to prepare business cases. He understood that we could save on services that have been contracted out, but that the larger problem was not contracting out services that could save the State. He observed that even the \$511 million that PED said may be too costly in fact could have been actually saving the State compared to what agencies spent performing those services.

In response to a question by Senator McInnis, Hefren said that the report recommendations did not address oversight of constructing schools or county buildings nor of the services of professionals such as architects and engineers. John Turcotte added that PED did an earlier report on personal services contracts for consultants, short term labor, and architectural and engineering services. Pursuant to that report, the General Assembly enacted legislation recommended by this committee.

Representative Hurley asked if PED compared NC practices to those used by other states and if any state required business cases. Hefren said that PED identified Florida as a state that requires business cases.

Representative Dollar noted that PED focused on contracting processes and not actual results from the work contracted out. The evaluation identified contracts with an award value of \$511 million, which stemmed from conditions that PED said were not competitive. The report did not establish that the State received nothing for the \$511 million. Hefren agreed and said that PED identified systemic deficiencies that limited the State's ability to achieve best value.

Senator Bingham asked about slide 19 and specifically if PED knew whether the State's costs were lower for doing the work before the contracts identified were awarded. Hefren responded that because there were no cost baselines required or available for agency costs of activities before the contracts, it

would have been impossible to determine. He added that unless such baselines are determined through business cases before future contracts, savings will continue to be nearly impossible to gauge.

Senator Waddell noted that the report identified the stage at which P&C approved contracts. Did PED know the number of occasions when contracts were not approved? She also asked if there were any penalties imposed on agencies for failing to comply with approval requirements. Hefren said that PED was not necessarily concerned with whether P&C appropriately approved contracts, but that P&C approval is performed too late in the process. PED was not as concerned with legal compliance, but rather that the system is not ensuring that the State is saving money or getting better performance through contracting versus doing the work in-house.

John Turcotte noted that the State Auditor reported on a flawed Elections Commission contract. Because of poor wording, the State had to pay the contractor \$1,000,000 for doing absolutely nothing.

Turcotte added that there were other underlying systemic issues. Because the State has no web inventory of all state services and their costs as well as contracts and expenditures on those contracts to date, a potential private vendor has no way to search for opportunities to suggest that agencies bid out the service.

Representative Dollar asked if PED knew if the agencies were using "Best and Final Offers" (BAFO) during contract negotiations. He noted that BAFO was valuable and should be used whenever possible. Hefren said that PED did not review BAFO as part of the evaluation but that some agencies used BAFO and that BAFO was common in the private sector.

Senator Bingham asked what was meant by "contract amendments." Hefren said that amendments were changes made to contract terms after award but during the course of the contract. Although amendments are appropriate for circumstances that could not have been anticipated, PED found that most amendments resulted from inadequate and poorly worded "Statements of Work" in Requests for Proposals (RFPs). Once a contract was awarded to a contractor, an amendment was necessary to make the contractor do additional or different work. However, unlike when competing for the contract after the RFP, the contractor has no competitors when asked to amend a contract and so the State is at a competitive disadvantage. PED is not asserting the amendments were inappropriate but that P&C should ensure that Statements of Work are sufficient to minimize potential amendments after contracts are awarded.

Senator McInnis noted that he has done government work and agencies overcomplicate work necessary to an extent that vendors have to bid higher. He also noted that because there was no inventory of state services, there was not enough public disclosure of the nature and costs of those services sufficient for businesses to find opportunities to offer cost savings to agencies.

Senator Don Davis asked if PED may have underreported the number of service contracts comprising the \$1.2 billion. Hefren said that the \$1.2 billion did understate number and cost because some contracts in progress before the PED starting point were not considered because PED only examined new contract awards during the review period.

Senator Hise suggested that the Contract Management System (CMS) PED recommended had already been anticipated as part of the Enterprise Resources Planning system proposed by the State CIO and asked why PED recommended a component system now instead of waiting for the ERP system currently in planning.

Hefren explained that while ERP is pending and awaiting funding, many new contracts would be awarded and not have sufficient oversight. CMS can be procured now and does not need to be done in conjunction with development of ERP. Although it would be ideal if ERP could start soon with the CMS capability, ERP is still uncertain and will cost hundreds of millions. By comparison, the CMS that PED is recommending will cost a few hundred thousand dollars. PED does not believe that CMS needs to include costly provisions for data migration and integration with existing systems. CMS should instead track and manage all new contracts awarded and as a benefit aid in the development and training of contract administrators and managers.

Senator Randleman moved to instruct staff to draft legislation based on recommendations in the report as well as Senator Hise's suggestions for OSBM to require agencies to inventory services and develop business cases when OSBM or agencies identified savings opportunities, and for PED to refer the report to the Government Operations Committee and Chairs of the General Government Appropriations Subcommittees. Senator Louis Pate seconded the motion. Motion carried.

Update on actuarial data on Retiree Health Insurance Liability

Representative Horn recognized Kiernan McGorty, Principal Program Evaluator, to present draft legislation to implement recommendations from the July 2015 PED report on Retiree Health Insurance. She explained that the draft now addresses the concerns reported to PED by retirees that there should be an appeals process for those who wished to continue State Health Plan coverage instead of being required to participate in the Medicare Advantage plan as PED proposed in its report. The draft establishes the Joint Legislative Committee on the Unfunded Liability of the Retiree Health Benefit Fund, which is charged with examining options for reducing the unfunded liability of the fund. Instead of requiring retirees to enter into an Advantage Plan, the bill omits that specific requirement and directs the proposed joint committee to develop a wide range of proposals for consideration by the General Assembly.

Senator Hartsell moved that the Joint Legislative Program Evaluation Oversight Committee recommend the draft legislation for consideration in the 2016 Session. Representative Hurley seconded the motion. Motion carried.

Adjournment

With no further business, the committee adjourned to meet again February 8, 2016.

Senate Chair, Senator Fletcher Hartsell

House Chair, Representative Craig Horn