



OFFICE OF THE STATE AUDITOR



Legislative Audit Committee January 14, 2020 Minutes

DIANNE E. RAY, CPA
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STATE AUDITOR

January 14, 2020

A meeting of the Legislative Audit Committee (LAC) convened on January 14, 2020, at 7:02 a.m. in the Legislative Services Building, Audit Hearing Room B. Senator Nancy Todd called the meeting to order. Roll was called with the following results:

Committee Members

Representative Bockenfeld, Representative Tracy Kraft-Tharp, Senator Paul Lundeen (arrival 7:08 a.m.), Representative Dafna Michaelson Jenet (arrival 7:03 a.m.), Senator Robert Rodriguez, Senator Jim Smallwood, Representative Lori Saine (Vice-Chair), Senator Nancy Todd (Chair)

The following Office of the State Auditor (OSA) staff and others attended:

OSA

Dianne E. Ray, State Auditor; Kerri Hunter, Deputy State Auditor; Monica Bowers, Deputy State Auditor; Jenny Page, Trey Standley

Other Attendees

Colorado Department of Transportation

Shoshana Lew, Executive Director

Jeff Sudmeier, Chief Financial Officer

OFFICE OF THE STATE AUDITOR
1525 SHERMAN STREET
7TH FLOOR
DENVER, COLORADO
80203

303.869.2800

Colorado State Fair Authority
Scott Stoller, General Manager
Lois Tochtrop, Board Member

Department of Agriculture
Kate Greenberg, Commission

Governor's Office of Economic Development and International Trade
Betsy Markey, Executive Director
Sonya Guram, Deputy Director Tax Credit Programs, Division of Business Funding and
Incentives
Jeff Kraft, Division Director of Business Funding and Incentives

Office of Legislative Legal Services
Bob Lackner, Managing Senior Attorney

7:03 a.m.

General Business:

Election of Vice Chair

Representative Saine made a motion to nominate Representative Michaelson Jenet as Vice-Chair. The motion was seconded and the motion passed unanimously.

Chair Recognition

Representative Saine recognized Senator Todd for her service as LAC Chair for 2019.

7:06 a.m.

Colorado State Fair Authority, Financial and Compliance Audit, Fiscal Years Ended June 30, 2019 and 2018

Representative Michaelson Jenet made a motion to release the *Colorado State Fair Authority, Financial and Compliance Audit, Fiscal Years Ended June 30, 2019 and 2018*. Representative Saine seconded the motion and the motion passed unanimously.

Ms. Hunter introduced self, staff, and contractor.

Ms. Greenberg (Department of Agriculture) introduced self, manager, and board member.

Ms. Willschau (Wall, Smith, Bateman, Inc.) presented an overview of the report.

Discussion ensued regarding the increase in the unclaimed property interest from 2018 to 2019.

7:25 am

General Business:

Minutes (As per audio recording)

Saine: ... We will be moving on to general business. And we do have Attachment A. The next item is the approval of minutes but before we make a motion, were there any changes to the minutes. Senator Lundeen.

Lundeen: Madame Chair, thank you very much. In the minutes, we, one of the items we considered was a letter that had been provided requesting that the auditor look into some financial concerns of the state. Am I on? I'm not on. There, now I'm on. In the minutes, what we considered in December was looking into some financial matters of the state. Representative Bockenfeld and I presented a letter that was fairly broad in its request. Since December, the Legislative Audit Committee meeting, more information has come to light, specifically with regard to the 9/11 fund, as it's come to be called, a federal fund that has been used in many different ways, we could say various and sundry ways, since it was provided to the State of Colorado more than 16 years ago. I see that we still have the folks from the State Fair.

Saine: Yes, they have to sit through while we go to the next attachment, which is B.

Lundeen: OK.

Saine: We like to go in order in Audit Committee.

Lundeen: Fair enough, I just...

Kraft-Tharp: I'm confused.

Saine: Representative Kraft-Tharp.

Kraft-Tharp: I am confused about what we are talking about. Are we talking about the State Fair?

Saine: No, we moved on to the next item agenda, which was Attachment A. And we asked the State Fair to sit through until we go back to Attachment B so we can go in order.

Lundeen: So, thank you, Madame Chair. To be clear for my colleagues, at this point I'm speaking about the minutes of the prior Audit Committee meeting. OK, fair enough, so we're all on the same page. So, since that committee meeting, there have been a number of reports in the media about the use, of the various and sundry uses, of the 9/11 fund. In fact, I'm somewhat embarrassed that we, as the representatives of the people at the helm of leadership of the state government, are not necessarily doing our job as I perceive it, I think as many of us on this

committee perceive it, to be accountable and transparent in what's going on in state government. I believe, that in fact, government must police itself first and foremost and it's always wonderful to have the fourth estate keeping us on track, but in fact we must do our job. In fact, it's gotten to the point where the Denver Post editorial board, the august paper of record of our state, has said and opined, in fact, it's there's been potentially inappropriate use of federal funds and called out this committee and asking us to do our job. And I could walk through, if you haven't all had an opportunity to see that editorial, it simply says, that in fact, allocating the resources of the State of Colorado, as provided through the many sources in which we get funds, is the responsibility of the General Assembly. And, that in fact, we don't, as a matter of department, after department, after department, maintain independent funds for the discretion and use of those departments, but at the end of the day, it's the job of the General Assembly to define how the taxpayer's dollars shall be used in Colorado. In fact, the critical point, the crux, if you will, of the opinion piece offered by the Post, is, "We don't think it's appropriate for a governor to use federal money in this way," referring to the 9/11 fund. "It would be wise for lawmakers to audit this fund, not only to look back how it was used, but to learn how to shut down similar funds that may exist throughout state government." The reality is what I brought, and Representative Bockenfeld joined me in bringing, was a letter requesting what we thought was a good government request and it flipped, and became something that was challenged to become perhaps partisan, and I don't think that's appropriate. This committee has been good about staying away from things of that nature. And so, I would like to offer, and request support from my colleagues, a motion that is rooted in exactly what those people outside the building are asking us to hold ourselves accountable to, and that is I move this committee direct the State Auditor to, exactly as it says in the editorial, to audit this fund, not only to look back at how it was used, but to learn how to shut down similar funds that may exist throughout state government, which as we all know, of course, is not in accordance with how we manage our funds. And, I would ask that be in the motion as part of the state-wide audit which is currently underway. So, Madame Chair, I so move.

Saine: Just to be clear, we're on the approval of the minutes from December 9, 2019, meeting. Are you making a motion to amend the minutes?

Lundeen: I am, I guess, making a separate motion.

Saine: Oh, OK. So not within the actual approval of the minutes. So I might ask that you hold that motion.

Lundeen: Madame Chair, I would be happy to hold that motion.

Saine: And I would suggest holding that, until maybe, after...

Lundeen: So, to be clear to the motion before the committee, Madame Chair...

Saine: Go ahead.

Lundeen: *I do acknowledge the minutes of the prior meeting to be correct in fact. This is kind of an audit we're doing here. Yep, they're reported as correct; however, my point of view is that perhaps we made a mistake in judgement and should revisit that. So, to the motion on the table, the approval of the minutes, I would say yes, it is appropriate that they be approved as presented. However, I would call this committee to backup and reevaluate a judgement we made that is reflected in the course of those minutes.*

Saine: *OK, so, I'm, let's go to this motion after Attachment A...*

Lundeen: *OK.*

Saine: *and do that. But first there is a change in the minutes. I think I pointed this out to Representative Bockenfeld. I think there is a vote taken. I think you're the prime sponsor on the bill. Where, let's see, it's on page four. I believe it's on page four, and I believe that Representative Beckman had made a bid to be on the Uses of Motor Vehicles Draft Bill but she pulled back and asked if Representative Bockenfeld would like to be that prime sponsor instead. So I just want to have that reflected in the minutes from December 9, 2019. OK, do we have a motion to approve the minutes as amended?*

Lundeen: *So moved.*

Smallwood: *Second.*

Saine: *Madame Former Chair.*

Todd: *Thank you, and I guess what I would say is I think they are two separate issues. I think we need to approve the minutes.*

Saine: *Yes*

Todd: *And then I think if you want to make another proposal, then that needs to be treated separately. But I think the minutes need to be approved as read.*

Saine: *That's exactly, yes, that's correct. Yes. So...*

Todd: *Not amended. But as read.*

Saine: *Just the one motion, the one amendment I made for Representative Bockenfeld...*

Todd: *OK.*

Saine: *...being the prime sponsor. That's the only amendment on the table for the minutes. OK, with that understanding, I'll just do a voice vote. All in favor?*

Committee members: *Aye.*

Saine: *Any opposed? OK.*

Bockenfeld: *Madame Chair, one abstention. I was not here last month. Representative Beckman was in my place, so I can't approve what has happened.*

Saine: *OK. Abstained. Noted. Alright, we'll move to the motion made by Senator Lundeen. Can you go ahead and explain the motion again, Senator?*

Lundeen: Thank you very much, Madame Chair. I appreciate the opportunity to restate this and I appreciate the committee's forbearance in getting the procedures and process in order. So, to make clear, now that we've approved, as accurate, the actions we took at our December meeting, since that December meeting, more facts have come to light. Those facts, quite frankly, are being presented in a way that challenges potentially the structure and the use of various funds within state government. This is about how we spend money. We all know, as members of the General Assembly, it's the General Assembly's responsibility at the end of the day, to guide and direct the use of funds. And that, as the Denver Post says in their opinion piece challenging this 9/11 fund and its use over the past years, they say, "We will stop short of calling this a slush fund." Well, you know how that happens. When you stop short of calling something something but you call it that, it raises the question exactly what's going on. And so, I believe that it is appropriate for the Auditor, and appropriate for this committee to direct the Auditor, into evaluating exactly how we are managing the funds of the State of Colorado. And, not only does this one specific fund, the 9/11 fund that theoretically should have been shut down perhaps 16 years ago but is still in use in a rolling basis, not only is it incumbent upon us as the Legislative Audit Committee to evaluate that particular fund, but to ask, are there other funds of this nature out there that we should be looking into as well. And so, I move, to be clear before my colleagues on the committee, that this committee direct the State Auditor to audit this fund, the 9/11 fund, not only to look back at how it was used but to learn how to shut down similar funds that may exist throughout state government as a part of the state-wide audit that is currently underway. It is a good government motion, in my opinion. Thank you, Madame Chair.

Saine: There is a motion on the table. Madame Vice-Chair.

Michaelson Jenet: Thank you, Madame Chair. Just a, neither a comment on the request itself. A procedural question? Should the request have been renewed and submitted on letterhead? Is there, do we have a policy around this process perhaps, Auditor?

Saine: Auditor Ray.

Ray: Thank you, Madame Chair. Madame Vice-Chair, yes, there is a policy that for a request from a legislator or the governor's office, it needs to come in on letterhead, and, which this one did, if, and so if this is being reconsidered as it was written, then that needs to be stated. If it's changed, it needs to be submitted as a new request.

Saine: Senator Lundeen.

Lundeen: So, I would be more than happy to engage in a conversation with my colleagues about this. I could renew it as submitted. The letter was fairly broad in the way it was characterized but it essentially, and I can read from it, I have a copy of the prior letter, I can read the action items involved in that if that would...

Saine: Quick question. Are you moving to reconsider the letter as written?

Lundeen: *I'm moving, that in fact, the committee direct the Auditor to investigate, to look into, to audit this. And, I'm just trying to get to the proper process. I think that request is inherent in the letter that's previously been provided. I'm, I guess I'm deferring to the Chair as to whether we need to resubmit new letters with new dates or whether we can move on the letter that sits in the file.*

Saine: *Auditor Ray.*

Ray: *Thank you, Madame Chair. If it has changed from the original request, then that would be a new request and it needs to come in on letterhead.*

Saine: *Senator Smallwood.*

Smallwood: *Thank you, Madame Chair. Could we take a recess?*

Saine: *Absolutely. Let's take a two minute recess.*

Recess

7:38 a.m.

Additional Discussion (As per audio recording)

Slight delay in recording restarting:

Lundeen: *...I may enunciate my words with clarity. Madame Chair, I move the letter that is in the file. It's broad, it requests that the State Auditor evaluate in it. You've all had it. You've had the opportunity to review it. We could review it now should you choose to do so. I believe that, in fact, it embodies the request. Look into this particular fund. Let's understand what is going on and it would be appropriate to do it as a matter of the state-wide audit. So, I move consideration of the letter that is in the file.*

Saine: *There is a motion on the table. Is there a second? Representative Kraft-Tharp.*

Kraft-Tharp: *No, I'm not seconding it.*

Saine: *Oh, OK. OK.*

Smallwood: *Second.*

Saine: *We have a second. Let's take a roll call vote.*

Kraft-Tharp: *Madame Chair.*

Saine: *I'm sorry. You have discussion.*

Kraft-Tharp: *Yes, I move to table this motion. We don't have a copy of this letter in front of us. I certainly disagree with the description of the letter as given by Senator Lundeen but need to have it in front of me. I voted no last time because I felt the letter was beyond the statutory guidelines of this committee but do not have the letter in front of me.*

Saine: *Senator Todd.*

Todd: Thank you and I would agree with that because two of us were not present at the meeting. I wasn't there and Representative Bockenfeld was not here. And, that was the December 9th meeting, and so, as a result of that, we have not had a chance to discuss it and be a part of. Both of us had replacements on that audit committee. And so, I would agree with what Representative Kraft-Tharp suggested; we table it, get a copy of it, look at it, and that also permits Representative, or Senator Lundeen an opportunity, that if he wants to, amend it, or augment it, before we address it again. I think that would be very advantageous.

Saine: Senator Lundeen.

Lundeen: Thank you very much. I appreciate my colleagues' concerns. It's a letter that's been in our files now for 30, 40 days. I'm more than happy to recite the necessary active parts of the letter. The letter simply says, "The funds at question are the Jobs and Growth Tax Relief Reconciliation Act of 2003, commonly referred to the Federal Tax Relief Act of 2003, which according to the State of Colorado Executive Order D02103, are to provide essential government services or to cover the cost of certain unfunded federal mandates." The letter goes on to say, "We request and encourage immediate action by the Legislative Audit Committee to launch an investigation, i.e. audit, into the inappropriate, potential inappropriate, use of these funds." So, the letter is simple and direct. Certainly it's been a matter of our record and the public record for 40 plus days. And therefore, valid for consideration at this point.

Saine: Representative Bockenfeld.

Bockenfeld: Thank you, Madame Chair. I am quite familiar with the record, the letter, because I'm a signer on the letter and helped in the preparation of that letter. So, it looks like Senator Lundeen does have a copy on his system here, and it should be pretty easy for us to run a hard copy of it off and pass it out if they need another hard copy at this time. Or we can deal with the electronic copy if we want to send it to someone.

Saine: Representative Kraft-Tharp.

Kraft-Tharp: Thank you. I did move to table this motion. And I know that it hasn't been seconded but Chair did not acknowledge that motion.

Saine: OK, so as a part of parliamentary procedure, there was a first motion on the table made by Senator Lundeen. It was seconded by Senator Smallwood. We do have to take a vote on that first.

Kraft-Tharp: Before a motion to table?

Saine: Yes. I believe that's correct. If there is a motion and a second, that has to be acted on first before any...I don't believe a motion to table proceeds or supersedes that. Representative Kraft-Tharp.

Kraft-Tharp: I will yield to you on that. Let me just point out, number one, not only do we not have the letter, people were not here, but also, I think this is an important issue. But the Joint Budget Committee is currently looking into this issue, of not only this fund but other such funds, and looking

at how those funds are spent, and that we are going to see action from the Joint Budget Committee this year. There is also an Ethics Committee hearing that's coming up in March so it's not like this issue is not being able, being taken care of in a number of different fronts. So, we need to acknowledge that. The letter, and I do not have it in front of me, as I read into the record was not about auditing this particular fund, it was about investigating a previous governor. So, I certainly would suggest, and I know that you have ruled that my motion to table is not relevant at this time, I think we need to stop. There's time to be able look at this. We all need to be able to read the letter. I don't know, Senator Rodriguez, have you read the letter?

Rodriguez: I'm..no.

Kraft-Tharp: So, I think we need to stop, pull it all out of our files, be able to look at it, and be able to carefully consider it.

Saine: Senator Lundeen.

Lundeen: Thank you very much. I appreciate very much my colleague's concern about process. I would simply say, and I don't want to put anybody on the hot seat by asking. The word investigation, which essentially in my experience in 30 years of business, is what an audit is. It's an evaluation, it's an investigation, it's an understanding of what has happened. I think that particular word is triggering some people. It may be was in artfully used in the letter. It's essentially and is directly a request for an audit, a look into, investigate, understand, audit what these funds were used for. So, I just want to be, you know, call that fact out. The fact that the Joint Budget Committee is considering, do we have various discretionary, i.e. slush funds, lying around state government in an appropriate way, I think that's meaningful and important. The Joint Budget Committee should be aware of that, the 100 members of the General Assembly should be aware of that and look into that further. But I think it is also incumbent upon us, specifically as the watchdogs with the authority of the State Auditor who has unique skills and abilities to look into and understand in a forensic way, the way no other committee and no other staff is capable of doing. It's incumbent upon us to, in fact, give the Auditor that purview, that authority, that call, that request to look into and understand something as interesting as a 16-year-old set of federal funds that has been used, potentially refunded by state dollars, used again in an in and out, back and forth way, unlike any other state fund. I think it is completely appropriate that the Auditor look into that. So, yes, I'm grateful that the Representative has pointed out that the JBC has concerns about this but I think it is the purview of this committee and the staff of the State Auditor to truly be the people with expertise to look into this matter. So, the motion is on the table, Madame Chair. I do encourage my colleagues, in the effort to support good transparent government, that we move this forward.

Saine: I think there's something afoot to test me on my first day as Chair. Senator Todd.

Todd: Thank you. And, in all due respect, I do believe that if this was an urgency, that boy, we better just do this right now, I would say yes, go forward. The minutes show that that proposal died

on a tie vote. And so, again, two of us were not present. We now have another person here who was not present to have that full understanding. Yes, I remember reading the letter but in terms of really saying I'm going to support that right now, I can't stand with you on it without having it in front of me. That's just my, my way of referencing and looking at it again. That doesn't mean that I won't support it down the road. But it does mean, that right now, I think in terms of saying I think we should pursue this, I think we should have an action on it today, I think would be inappropriate without having a hard copy in front of us and being able to have a full discussion. So, that is my recommendation. I, too, would have preferred that we just table it, but if that is not the choice of the sponsor of the proposal, then we go ahead and vote, and I'll be a no vote.

Saine: OK, I'll wrap it up before we take a vote. As a Chair, I'm your servant, so if you want to make any motion that fits within the purview of what we're doing or what we're reviewing from last committee, that's fine. But, if there is a motion and a second, we do have to take action on that. So, with that, we'll have the roll call vote. Ms. Watson, would you please take the roll call vote?

Watson: Senators and Representatives,

Bockenfeld - Yes

Kraft-Tharp - No

Lundeen - Aye

Rodriguez - No

Smallwood - Aye

Todd - No

Madame Vice Chair - No

Madame Chair - Yes

Saine: And that motion...

Watson: The motion dies on a tie vote.

Saine: Motion dies on a tie vote. OK, very good. Senator Lundeen.

Lundeen: I just want to thank my colleagues for the conversation in pursuit of transparency and good government. I sincerely appreciate your engagement in this matter.

Saine: OK, I think we had some conversation about moving the approval of minutes to the end of the meeting next time. It's usually not that exciting so thank you from everybody on the State Fair for being patient and waiting for us...

7:49 a.m.

Colorado State Fair Authority

Ms. Page introduced self and presented an analysis of the Colorado State Fair Authority By-Laws and presented an overview of the proposed letter to the Joint Budget Committee requesting that funds be withheld from the Authority until it complied with statute.

Representative Kraft-Tharp moved to approve the letter and send the letter to the Joint Budget Committee expressing the LAC's concern about lack of compliance with meeting the audit recommendations and statutory requirements. Representative Michaelson Jenet seconded the motion and the motion passed unanimously.

7:58 a.m.

Enterprise Zone Annual Report, State Fiscal Year 2019

Ms. Markey (*Governor's Office of Economic Development and International Trade*) introduced self and staff.

Ms. Markey and Ms. Guram presented an overview of the report.

Auditor Ray added that the tax expenditure team performed an analysis of the tax expenditures related to enterprise zones and that report will be released in January.

8:07 a.m.

Proposed Unclaimed Property Notification Letter to the State Treasurer

Ms. Hunter presented an overview of the letter.

Representative Kraft-Tharp made a motion to send the letter to the Treasurer's office requesting that they provide their process to the Legislative Audit Committee as to how individuals will be informed about their unclaimed property. Senator Smallwood seconded the motion and the motion passed unanimously.

8:12 a.m.

Status Report

Operational Risk Areas Performance Audit, Department of Transportation, Transportation Commission, May 2019

Ms. Bowers introduced self and staff.

Shoshana Lew (*Colorado Department of Transportation*) introduced self and staff.

Mr. Standley presented an overview of the report.

Ms. Lew provided a status update of the Department's implementation of the recommendations, noting that 15 of the 18 recommendations were fully implemented, while three related to budget and annual spending were partially implemented, with full implementation on track for this year. Discussion ensued regarding the public's access to the department's dashboard, how the Department planned to sustain the culture to ensure the long-term continuance of the implemented processes, and how projects were awarded.

8:47 a.m.

Legislation

OSA Attorney-Client Privilege Bill Draft

Auditor Ray provided an overview of the history of the OSA Attorney-Client Privilege Bill Draft. As a result of discussions with stakeholders, the bill draft had changed significantly since originally presented and approved by the LAC in September.

Discussion ensued regarding access to documents beyond financial information if the department does not provide attorney-client privilege documents to the Auditor's office.

Mr. Lackner clarified that the vote in September was to move the previous version of draft to bill paper. However, since the newest version had changed substantially from the one originally presented, the vote the LAC would take would be to pull the original version back from bill paper while discussions were ongoing.

Representative Michaelson Jenet made a motion to reconsider the OSA Attorney-Client Privilege Bill approved in September. The motion was seconded and the motion passed unanimously.

9:00 a.m.

Reports Released Without a Hearing

Auditor Ray asked that the Reports Released Without a Hearing be amended to remove the Colorado School of Mines NCAA report from the list.

Representative Michaelson Jenet made a motion to release the Reports Released Without a Hearing, as amended. Senator Lundeen seconded the motion and the motion passed unanimously.

Hearing adjourned at 9:04 a.m.

Minutes submitted by:

Jayne Watson

Executive Assistant, Office of the State Auditor