

**MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE**  
**October 22, 2002 at 1:00 P. M.**  
**Room 303, State Capitol Building**

Members Present: Sen. Leonard Blackham, Committee Co-Chair  
Rep. Jeff Alexander, Committee Co-Chair  
Sen. Ron Allen  
Sen. Gene Davis  
Sen. Mike Dmitrich  
Sen. Karen Hale  
Sen. Peter Knudson  
Pres. Al Mansell  
Sen. Steve Poulton  
Sen. John Valentine  
Rep. Patrice Arent  
Rep. Ralph Becker  
Rep. Jackie Biskupski  
Rep. Greg Curtis  
Rep. Brad King  
Speaker Martin Stephens  
Rep. David Ure

Sen. Bill Hickman, Vice-Chair  
Rep. Ron Bigelow, Vice Chair

Members Absent: Rep. Tom Hatch

Staff Present: John Massey, Legislative Fiscal Analyst  
Michael Kjar, Deputy Director  
Linda Hansen, Secretary

Others Present:

List of Others Present on File:

Committee Co-Chair Alexander called the meeting to order at 1:20 p.m.

1. **Approval of Minutes** Pres. Mansell made a motion to approve the minutes of September 17, 2002. The motion passed unanimously with Sens. Davis and Poulton absent at the time of voting.
2. **Report on Restricted Fund Balances and Interagency Transfer Activities**

Kevin Walthers and Jonathan Ball, Fiscal Analysts, gave a power point presentation and reported on restricted fund balances and revenue transfers. A written report was distributed to the Committee.

Mr. Walthers discussed the issue concerning the amount of money carried forward in restricted accounts.

Mr. Walthers said restricted accounts isolate dedicated streams of revenue to fund programs that are directly related to users paying a tax or fee.

Given the dedicated source of funds, Mr. Walthers said only a small portion of the \$163 million aggregate fund balance can be assumed to be a potential revenue source in FY 2004.

Mr. Walthers reviewed that table at the bottom of Page 6 of the report.

Mr. Walthers said while the number and size of restricted funds has increase, each restricted fund must be considered separately in determining whether balances at a given point in time are appropriate.

The Analyst recommended that the Executive Appropriation Committee direct budget subcommittees to closely consider balances and expenditures in restricted funds prior to presenting committee recommendations for funding. The Analyst further recommended that, where appropriate, the Legislature consider placing statutory caps on unencumbered balances in restricted accounts.

**Motion:** Rep. Ure made a motion to adopt the Analyst's recommendation. The motion passed unanimously with Sen. Poulton absent at the time of voting.

Mr. Walthers reviewed the question "do agencies with restricted funds have more flexibility in establishing budget priorities?".

Mr. Walthers said that during times of revenue shortfall, restricted revenue is not available to balance statewide budgets due to statutory restrictions. He said if such restrictions are lifted, balances may have to be returned payers, and/or demand for the programs may place more pressure on the General Fund.

Mr. Walthers said that agencies receiving appropriations from restricted funds may grow more than tax fund agencies during periods of revenue contraction, but also do not grow as rapidly in times of expansion.

Mr. Ball reported on "Revenue Transfers" creating ambiguity in regard to statutory budget controls.

Mr. Ball said Revenue Transfers are appropriated as source of financing in 46 state agencies. He said the use of Revenue Transfers are more than \$250 million in FY 2003 which is almost double of FY 1999. Mr. Ball reported that between FY 1999 and FY 2001, actual Revenue Transfers exceeded appropriated levels in all years.

Mr. Ball said that the majority of Revenue Transfers occur when a single state agency acts as fiscal

agent for federal programs, leveraging other agency state funds through transfers. He said it is not clear whether these transfers are free revenue, dedicated credits, or some other revenue type and that statutory controls depend upon classification of revenue type.

Mr. Ball referred to Pages 8, 9 and 10 of the report and responded to questions of the Committee.

Mr. Ball said there is no statutory definition exists for "Revenue Transfers", making management of such funds difficult and at times confusing.

The Analyst recommended that Legislative staff, the Governor's Office of Planning and Budget, and the Division of Finance develop an acceptable definition of Revenue Transfers to be considered in the next General Session of the Legislature.

**Motion:** Co-Chair Blackham made a motion to adopt the Analyst's recommendation. The motion passed unanimously with Sen. Poulton absent at the time of voting.

Mr. Ball reported that in some cases, Internal Service Funds more adequately control inter-agency transactions. He said that the statute includes specific controls on Internal Service Funds, and none on Revenue Transfers.

The Analyst recommended that the Legislature and Executive Branch investigate on a case-by-case basis Revenue Transfers that are generated by "internal service" and propose creation of new Internal Service Funds or new rates in existing Internal Service Funds to properly account for such transactions.

**Motion:** Speaker Stephens made a motion to adopt the Analyst's recommendation. The motion passed unanimously with Sen. Poulton absent at the time of voting.

Mr. Ball said that Revenue Transfers allow new programs and new personnel without Legislative review. Mr. Ball cited some examples on Page 11 of the report.

The Analyst recommended that the definition of Revenue Transfers limits, where appropriate, future instances in which agencies use transfers to increase personnel. The Analyst further recommended that Legislative appropriation subcommittees review Revenue Transfers on a case-by-case basis to determine those occasions in which Revenue Transfers would be more properly characterized as reallocation. In such cases, the Analyst recommended that subcommittees submit to the Executive Appropriations Committee negative appropriations from one or more line items and equally offsetting positive appropriations in other line items.

**Motion:** Sen. Valentine made a motion to adopt the Analyst's recommendations. The motion passed unanimously.

Mr. Walthers responded to questions of the Committee.

Lynne Ward, Governor's Office of Planning and Budget, responded to the Legislative Fiscal Analyst report in writing and reported on the nature of the funds transferred. She cited some examples. Ms. Ward said she is happy to work with the Analyst on a definition. She responded to questions of the Committee.

Sen. Valentine expressed concern as to the number of people or more services being provided in the Medicaid program.

Spencer Pratt, Fiscal Analyst, reported that the Department of Health Medicaid program is a fixed amount and Human Services Medicaid is transferred to the Department of Health to receive a match. The appropriation for Human Services has been low, they have been using 2 year old data and the appropriation is an out dated figure.

Sen. Hickman expressed concern as to losing control of the appropriation process.

John Massey, Legislative Fiscal Analyst, said that federal fund reports have been made to this Committee as matters come up and that the report could be enhanced.

Speaker Stephens asked about the GATSBY Rule 34 in the mid 90's concerning leave accounting which former Sen. McAllister worked on. Speaker Stephens requested information on this matter as to what other states have done and if GATSBY has been put into force. Ms. Ward will provide this information.

### **3. Legislature Auditor General - Hiring Practices of the CIO and ITS**

Wayne Welsh, Auditor General, Janice Coleman, Audit Supervisor, and John Schaff, Deputy Auditor General appeared before the Committee.

A written report was distributed to the Committee.

Janice Coleman reported on hiring practices of the Chief Information Officer (CIO) and Information Technology Services (ITS). She said their office has conducted a limited review of hiring practices surrounding former Excite@home employees. She said an anonymous letter was circulated alleging that the CIO and the ITS director have caused the manipulation of state hiring and procurement systems in order to hire former employees of the now bankrupt Excite@home organization.

Ms. Coleman said they believe favoritism towards former Excite@home employees has occurred. She indicated that two competitive procedures appear manipulated and a legitimate contract was misused to hire a pre-selected individual. Ms. Coleman reported that the competitive hiring procedure was altered to hire a pre-selected individual.

In the opinion of the Auditor General, the examples cited in the report gives the appearance of process

manipulation and candidate pre-selection.

Ms. Coleman said the state employment of two contractual employees with an Excite@home link have raised questions. She said the procurement process selecting an individual for the eREP General Manager and the product management consultant inappropriately worked for at least a month prior to any approved contractual arrangement.

Ms. Coleman said the starting salaries of five former Excite@home employees, who are new state employees, appear high. Specifically, IT new hires with an Excite@home background were hired at a greater distance above the salary midpoint than were IT new hires without such a background. Ms. Coleman reviewed Figure 2 and 3 on Pages 14 and 15.

Ms. Coleman reports that in their opinion the information in the report, taken as a whole, shows a pattern or practice which yield strong concerns about favoritism toward former Excite@home employees. Two competitive selection procedures appear manipulated to hire pre-selected individuals. Significant concerns surround other former Excite@home employees who were hired contractually. New hires who are former Excite@home employees appear to receive higher starting salaries than other new hires.

Ms. Coleman responded to questions of the Committee.

John Schaff said that trust and moral are issues and problems in an atmosphere of change.

A written response to the Legislative Auditor General's Office report on hiring practices was submitted to the Committee.

Camille Anthony, Executive Director Department of Administrative Services (DAS), Phillip Windley, Chief Information Office (CIO), Karen Suzuki-Okabe, Executive Director Department of Human Resource Management (DHRM), appeared before the Committee.

Camille Anthony said they will be responsive to any questions and to shed more light on the matter. She concedes mistakes were made and regrets the morale issues.

Karen Okabe said she wanted to provide information to properly understand the issues addressed in the Auditor General's report. She discussed employment status concerning merit and exempt.

Ms. Okabe said that two conclusions can be drawn regarding merit employees: that resumes from Excite@home employees did not always rise to the hiring list when the data base was searched for viable candidates; and there is not enough data to declare a pattern of favoritism in hiring of merit employees.

Ms. Okabe discussed salary concerns, and exempt positions. She said her staff conducted a detailed

analysis of each hire listed in the report. The review generated two findings. The salaries paid were within the range authorized by DHRM, and in every case those hired were well qualified IT professionals.

Ms. Okabe reviewed conversion of a schedule B position to a schedule A. She maintained that the procedure used by DAS was in compliance with criteria set by statute.

Ms. Okabe said that the Personnel Management Act was not violated by any of the hires addressed by the report.

Ms. Okabe responded to questions as to her involvement and approving exempt positions and hiring above mid point salary range.

Ms. Anthony responded to questions of the Committee.

Sen. Valentine asked about the difference between Figure 2 and 3 on Pages 14 and 15 of Excite@home experience of the Auditor General's Report.

Ms. Anthony responded to questions and said the information is incomplete.

Rep. Becker said some employees were threatened and were concerned about job security. Ms. Anthony assured the Committee there was no gag order issued.

Doug Richins, Director of Division of Purchasing, said there were three areas where the Legislative Auditor's report was critical of ITS relative to contracting issues. They were: Rightface, LLC sole source contract; ITS' use of a MC 1014 contract to utilize the contractual services of STG; and the potential bias in the selection of ClearPing, LLC as the eRep General Manager. He said he would like to believe that the report, conclusions and recommendations relative to the contract issues are accurate and fair.

Mr. Richins said the report on Rightface, LLC is accurate. He said while he thought that the sole source justification was not very strong, in balancing the customer service role with the regulatory role, he approved the contract. He said as to a remedy for this contract, the records show that this contract ended on April 16, 2002, ITS made the final payment to Rightface, LLC on July 19, 2002.

Mr. Richins indicated that the report on ITS use of MC1014 is accurate. He indicated that ITS acknowledges that actual terms and conditions of the MC1014 contracting process were not reviewed prior to awarding the contract, and he said it is clear to him that ITS now understands how to appropriately use MC1014. Mr. Richins feels that no further education or punitive action on ITS would be productive.

Mr. Richins feels the appropriate option would be to have this contractor complete the project he was

contracted to do which will be completed by December 1, 2002.

Mr. Richins believes the report on eRep Contract with ClearPing, LLC is accurate with some minor wording changes.

Mr. Richins said the report criticizes Phil Windley for being an evaluator when he had formerly employed one of the applicants at Excite@home. Mr. Richins said he looked at the RFP evaluation committee scores and if he eliminated Phil's scores, because of the appearance of conflict, it does not change the award decision. ClearPing, LLC was evaluated by both of the other evaluators as submitting the most advantageous proposal.

Mr. Richins doesn't believe that discontinuing the contract with ClearPing, LLC is necessary or prudent.

Mr. Richins responded to questions of the Committee.

Pres. Mansell asked if basically there are no consequences for this behavior.

Mr. Richins said the first contract has ended and he is allowing them to continue with the contract that ends in December. If ITS wanted to continue with one of the contractors Mr. Richins said he would not allow them to continue.

Phillip Windley, Chief Information Officer, said state government can offer enhanced services and greater efficiencies through the increased use of IT. He said Utah has made progress and continuing this progress and extending it to the realm of cross-agency cooperation requires significant changes to a large, decentralized IT organization.

Mr. Windley said the state's talented, long-term IT professionals are the core asset enabling this change. They are dedicated, well-qualified employees who truly provide a public service.

Mr. Windley responded to the audit and said that in every case those who were hired were qualified IT professionals and in every case were paid appropriate salaries.

Mr. Windley said that he regrets that some feel that they have been treated unfairly and denied opportunity. Mr. Windley apologized for the extent to which his action created a perception of bias.

Over the next several months, Mr. Windley will be meeting with every IT department to talk to each IT employee about the Governor's vision and answer questions.

Ms. Anthony said achieving the state's ambitious and worthwhile IT vision requires the best effort of state employees and their leaders. We will only be successful if we manage and communicate effectively.

Ms. Anthony said in a series of meetings, that have been held the last two days, the vision is to enable people to conduct business with government 24 hours a day, seven days a week. She said this will be accomplished through an enterprise approach, not a consolidation.

Ms. Anthony reported that the strategies to accomplish this vision include: encourage frequent and meaningful communication on IT issues; provide opportunity for training on managing personnel in a time of change; the Department of Human Resource Management will develop an organizational development plan for ITS and the CIO's office; and work collaboratively with the Legislature to explore the need for third-party review.

Mr. Anthony expressed heartfelt desire to address issues and concern and answer any questions.

Speaker Stephens asked Ms. Okabe if the audit is accurate concerning favoritism toward former Excite@home employees. Ms. Okabe said she is not sure.

Co-Chair Blackham expressed concern that while people hired were qualified, in some cases a large difference exists between years of experience for those hired at the same wage.

Rep. King expressed concern as to how to regain the trust of IT employees.

Co-Chair Blackham suggested comments from the public employees.

Fred Van Der Veur, Executive Director of the Utah Public Employees Association, said there is great concern about the favoritism and lack of communication. He said these are very critical issues for public employees and they rely on the Executive Branch of Government. Mr. Van Der Veur said the Public Employees Association should be involved in the process when changes are made.

Mr. Van Der Veur indicated that some public employees have been told that they cannot talk to Legislators.

Mr. Van Der Veur said that it is critical to restore confidence to the state employees concerning favoritism, that government is open and above board, and their voices will be heard.

Mr. Van Der Veur responded to questions.

Co-Chair Alexander said that remaining issues of Item 4 on the Agenda will be heard tomorrow in the Public Utilities and Technology Interim Committee.

Sen. Poulton expressed concern about state employees thinking they are not able to talk to a Legislator. He asked Mr. Welsh what outstanding issues remained.



Wayne Welsh mentioned two issues concerning an audit on conflict of interest and procurement of software.

**Motion:** Sen. Poulton made a motion for an audit on conflict of interest in ITS contracting; procurement of unnecessary software; gag orders to state employees; violation of DHRM rules; additional legislation that might be proposed; and assurance of protection for state employees should they speak with the ombudsman. The motion passed unanimously with Rep. Biskupski absent at the time of voting.

**Motion:** Sen. Blackham made a motion to adjourn the meeting. The motion passed unanimously.

The meeting was adjourned at 3:45 p.m.

Minutes were reported by Linda G. Hansen, Secretary.

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Sen. Leonard Blackham, Co-Chair

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Rep. Jeff Alexander, Co-Chair

Handouts:

*Requested Budget Issues: Restricted Fund Balances and Revenue transfers*

*State Revenue Transfers by Governor's Office of Planning and Budget*

*Legislative Auditor General Report - Hiring Practices of the CIO and ITS*

*Response to Legislative Auditor General's Office Report on Hiring Practices of CIO and ITS*