

**Minutes**  
**Joint Legislative Program Evaluation Oversight Committee Meeting**  
**December 18, 2013**

Members Present

Senator Fletcher Hartsell, Chair  
Senator Ben Clark  
Senator Rick Gunn  
Senator Ralph Hise  
Senator Martin Nesbitt  
Senator Shirley Randleman

Representative Julia Howard, Chair  
Representative Jean Farmer Butterfield  
Representative Bryan Holloway  
Representative Pat Hurley  
Representative Marvin Lucas  
Representative Edgar Starnes

**Call to Order**

Representative Julia Howard, Chair, called the meeting to order.

Senator Hise moved to approve the November 20, 2013 *Minutes*. Motion carried.

**Presentations and Appearances**

**State Audit of NC TRACKS** . Representative Howard recognized Beth Wood, State Auditor, to present the audit of NC TRACKS Implementation—*Revolving Door Creates a Perception of Bias or Conflict of Interest.*” The Auditor noted that

- A senior program manager for NC TRACKS left DHHS went to work for CSC (contractor for DHHS) as the NC TRACKS Executive Account Director the day immediately after leaving DHHS.
- There is no law or personnel policy that prohibits a state government employee from accepting a position with a company, which that employee was previously directly or significantly monitoring to assure the State’s interest.

Senator Hise asked if there was a “cooling off period” or time span that person could not be contacted about a future job or accept a job by a company or entity that the employee was monitoring as a State employee. The Auditor said that she would provide Sen. Hise that information. Sen. Hise asked if the Auditor could explain what she meant by “directly and significantly” as to the employee’s work responsibilities. The Auditor noted that the DHHS manager in question was directly responsible for assuring that CSC performed contract requirements and was involved in negotiating contract terms, both of which constituted direct and significant responsibilities. Senator Hise asked if any legislation should require that such an employee provide notice to the State employer of an offer or acceptance of a job with an entity under that employee’s current oversight. The Auditor said that the legislation should require such notice and said that her office’s policy required employees to notify the office immediately if approached about or considering a potential job with an entity under audit.

Senator Gunn suggested that is certainly was not unique to North Carolina and asked if the Auditor knew how other states addressed this issue. The Auditor said that she had no information on that but would consult with the National State Auditor’s Association and respond later.

Representative Lucas stated that because the General Assembly thought it wise and prudent and had enacted a “cooling off period” restricting legislators from lobbying to prevent the appearance of a conflict of interest, that he believed such a policy as recommended by the Auditor for State employees should be established.



Representative Farmer-Butterfield noted that some State agencies have policies restricting former employees from serving as a volunteer for that agency for six to twelve months to prevent a disgruntled employee from returning immediately and acting adversely toward the agency.

Representative Moffitt asked staff if a statutory restriction or prohibition would violate the State's right-to-work law. Committee Counsel, Hal Pell said that such a prohibition is similar to an agreement not to compete and unless it was unreasonable and prevented an employee from gaining work in their profession, it would probably not. Representative Moffitt asked if the policy would be enforceable against current employees or only as a precondition for future hires. Counsel responded that he would have to research that point as well as whether a policy would have potential ethical issues subject to existing law. Representative Moffitt asked if the policy would apply to employees who could retire and accept, or apply only to employees not yet eligible to retire. Counsel said that it would depend upon how the policy was written, but that it would probably not make a difference if an employee resigned or retired.

The State Auditor observed that her recommendation was not to be overly restrictive on State employees unless the job currently performed involved direct and significant responsibilities with a contract or negotiating a contract with the entity potentially hiring that employee.

PED Director Turcotte noted that legislation should address types of official transactions and activities handled by the employee in question and not the position title. If the employees performed activities such as contract negotiation and oversight, the restriction may need to restrict employment during the term of the contract, which could be two years or more under some circumstances. If the employees performed permitting or inspections, the restriction may need to apply to the transaction(s) handled by that employee, which affected the potential employer. Such specific restrictions applicable to the types of duties and transactions handled by certain employees would be preferable to establishing a policy that overly restricts a class of employees that may not have had any involvement with the employer in question. He noted the difficulty that Mississippi had contending with a state constitutional restriction that was very broad and restricted both direct and indirect conflicts of interest.

Representative Moffitt observed that he agreed that the policy should contend with the appearance of impropriety, but the State should approach such prohibitions with caution. He also noted that the State is not always the prey in these situations and that there are times when the State is the predator, thus the policy needs to apply to both circumstances.

Representative Starnes asked if the federal government had such restrictions on employees. PED Principal Evaluator, Larry Yates noted that the military prohibits employees and officers from accepting jobs for the contractor on the project under the contract for a year, but may work for the contractor on unrelated projects. Representative Starnes noted that the policy should not overreach, because he know of cases where the State approached a private sector employee about a State job, which the employee agreed to perform that job for several months, but wanted to return to the private employer thereafter. The policy should not work against that type of arrangement.

Representative Howard asked that the Auditor furnish the committee with the salary of the DHHS employee while at DHHS and salary that employee received after becoming a CSC employee. Representative Howard asked if the DHHS employee was negotiating the CSC job while still a DHHS employee. The Auditor said "Yes." In response to a follow up question, the Auditor said that she did not know specifically if the employee had made key decisions about going live with NC TRACKS prematurely or contributed to defects now evident with NC TRACKS. Representative Howard asked if there had been any similar findings from audits of the NC Education Lottery, DOT or DPI or other large



agency. The Auditor said that there have not been any such findings because DHHS was the first agency where this had been encountered.

**Instructions to Staff.** Representative Howard requested the State Auditor to furnish committee staff with recommendations for legislation. The Auditor said that her office would do so and include any information about other states' policies that Sen. Gunn inquired about.

**Fire and Rescue Finance Subcommittee.** Representative Howard recognized Kiernan McGorty, Principal Program Evaluator to present an update from the JLPEOC Subcommittee on Fire and Rescue Finance appointed following presentation of the first of four reports on insurance premium tax funds for fire and rescue relief, workers compensation, retirement, and grants. The subcommittee will review PED recommendations and recommend legislation to the full committee after considering all four reports.

**UNC Report.** Representative Howard recognized Pam Taylor, Principal Program Evaluator, to present *The UNC System Needs a More Comprehensive Approach and Metrics for Operational Efficiency*. Charles Perusse, Chief Operating Officer, University of North Carolina responded. The committee accepted the report and directed staff to draft legislation based on the report's recommendations. The committee also requested that the UNC system provide an update on its progress toward addressing the report's recommendations at the May 2014 meeting and a final report in December 2014.

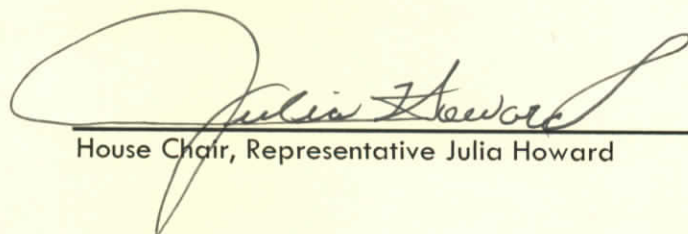
**Indian Cultural Center Land Sale.** Director Turcotte reported status on the Indian Cultural Center land sale recommended by PED's report and legislation passed as recommended by JLPEOC. The Department of Administration and the Lumbee Tribal Council have reached an agreement to sell the lands to the Lumbee Tribe for \$351,000, which was the appraised value with the restrictions placed by statute. The offer cannot be finalized until 90 days after the Department of Administration submits a transaction report with contents as specified by the law to JLPEOC for consultation. The transaction report has not been presented.

**NC Railroad Corporation Dividend.** Director Turcotte reported that as recommended by PED and the JLPEOC, the NC Railroad Corporation declared a \$15.5 million dividend, which will be paid by December 31 to the State Highway Fund for rail projects. An annual dividend will be declared and issued prior to January 15, 2014. The Company has transferred non-railroad parcels of real estate to the Department of Administration. Representative Howard requested that PED track the sale of all properties.

#### **Adjournment**

With no further business, the committee adjourned.

  
Senate Chair, Senator Fletcher Hartsell

  
House Chair, Representative Julia Howard



## NORTH CAROLINA GENERAL ASSEMBLY JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE

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Senator Fletcher Hartsell

### Members

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Senator Dan Clodfelter

Senator Rick Gunn

Senator Ralph Hise

Senator Neal Hunt

Senator Martin Nesbitt

Senator Shirley Randleman

Representative Becky Carney

Representative Jean Farmer-Butterfield

Representative Bryan Holloway

Representative Pat Hurley

Representative David Lewis

Representative Marvin Lucas

Representative Tim Moffitt

Representative Edgar Starnes

### Staff

John Turcotte, Director  
Program Evaluation Division

Doris Gilbert  
Committee Clerk

November 22, 2013

State Auditor Beth A. Wood, CPA  
Office of the State Auditor  
2 South Salisbury Street  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Dear Madam Auditor:

At the November 20, 2013 meeting of the Joint Legislative Program Evaluation Oversight Committee, a motion was passed to "Request the State Auditor to conduct a financial audit of all funds currently held by the Rural Center in order to ensure an orderly and acceptable transfer of responsibility and to determine whether the funds are state, federal, or local funds."

On October 31, 2013 the State of North Carolina entered into an agreement with the Rural Center to transfer only \$4.3 million of the approximately \$11.6 million that the Rural Center reported as remaining from the \$20 million identified by your auditors as earned in interest from state funds over the previous five fiscal years. This audit would be a retrospective independent verification of the accuracy of the financial information at the time of transfer to ensure the agreement was in the best interest of the State and its citizens. The Committee desires to obtain a full accounting of the Rural Center's funds at the time of transfer to identify the source of all liquid and fixed assets of the Rural Center. In particular, the Committee is interested in answers to the following questions:

- How accurate was the Rural Center's report that it currently holds approximately \$11.6 million in interest earnings?
- How much of the \$3 million that the Rural Center reported as being interest earnings from fund sources other than the Clean Water Partners was derived from state funds?
- Are there any additional state funds remaining at the Rural Center?

Sincerely,

Julia Howard, Chair

Fletcher L. Hartsell, Jr., Chair

cc: John W. Turcotte, Director, Program Evaluation Division  
Mr. John Hoomani, General Counsel, NC Department of Commerce  
Dr. Pat Mitchell, Assistant Secretary, NC Department of Commerce  
Rural Economic Development Division  
Ms. Ashley Jones, Legislative Liaison, NC Department of Commerce