

Legislative Performance Audit

Committee

Committee Members:
Senator John Harms, Chair
Senator Danielle Conrad, Vice Chair
Speaker Mike Flood
Senator Lavon Heidemann
Senator Arnie Stuthman
Senator Dennis Utter
Senator John Wightman

Legislative Audit Office
P.O. Box 94945, State Capitol
Lincoln, NE 68509-4945
402-471-2221

Office Staff:
Martha Carter, Legislative Auditor
Don Arp, Jr., Analyst
Clarence Mabin, Analyst
Dana McNeil, Analyst
Stephanie Meese, Legal Counsel
Sandy Harman, Committee Clerk

Scope Statement

Public Service Commission Public Advocate

Introduction

On September 25, 2009, the Legislative Performance Audit Committee directed the Legislative Audit Office to conduct an audit of the Public Service Commission's (PSC's) compliance with statutory requirements regarding the office of the Public Advocate. This scope statement briefly describes the Public Advocate position's requirements and sets forth the specific questions the audit staff will answer during the audit.

Background

By law, the Natural Gas Regulation division of the PSC must create the office of the Public Advocate, for the purpose of representing consumer interests in PSC proceedings. Rather than assigning the position of Public Advocate to a designated state employee within a separate division of the PSC, the agency has engaged the services of an outside law firm and one of the attorneys of this firm acts as the Public Advocate. The law firm bills the PSC for its legal services at a rate of up to \$245 an hour, depending on which attorney within the firm does the work.

By statute, the costs of the program are paid by the regulated utilities and passed on to customers in the form of a surcharge on natural gas bills. The amount spent on legal services by the program has ranged from \$51,000 in FY2004-2005 to \$630,000 in FY2007-2008. In the last fiscal year, FY2008-2009, roughly \$390,000 was spent on legal services. These figures raise the question as to whether there could be cost savings if this function was handled in-house by a state employee rather than contracted out.

Audit Scope

In this audit, the audit staff will address questions relating to statutory compliance and the PSC's use of an outside law firm to fulfill the duties of this position. Specifically, we will address:

- 1) Does the PSC's contract for legal services meet the duties of the Public Advocate, laid out in §§ 66-1830 - 66-1835?
 - More specifically, do these statutes allow/prohibit the use of a contracted attorney for the Public Advocate position?

2) Efficiency and Effectiveness of Current Public Advocate Contract:

- From the perspective of the PSC, what necessitates that the Public Advocate position be contracted out rather than filled with a state employee?
- What are the advantages and disadvantages, including cost and overall effectiveness, of employing an in-house Public Advocate versus contracting the position out?

Scope Statement adopted by the Legislative Performance Audit Committee January 5, 2010.

Legislative Performance Audit

Committee

Committee Members:
Senator John Harms, Chair
Senator Danielle Conrad, Vice Chair
Speaker Mike Flood
Senator Lavon Heidemann
Senator Arnie Stuthman
Senator Dennis Utter
Senator John Wightman

Legislative Audit Office
P.O. Box 94945, State Capitol
Lincoln, NE 68509-4945
402-471-2221

Office Staff:
Martha Carter, Legislative Auditor
Don Arp, Jr., Analyst
Clarence Mabin, Analyst
Dana McNeil, Analyst
Stephanie Meese, Legal Counsel
Sandy Harman, Committee Clerk

Audit Plan

Public Service Commission Public Advocate

On or before **February 16, 2010**, the Legislative Audit Office (Office) will submit a draft report of its audit findings and recommendations to the Legislative Performance Audit Committee (Committee) and the Public Service Commission (PSC).

Audit Scope

In the audit scope statement, the Committee directed the Office to address the following questions in the audit report:

- 1) Does the PSC's contract for legal services meet the duties of the Public Advocate, laid out in §§ 66-1830 - 66-1835?
 - More specifically, do these statutes allow/prohibit the use of a contracted attorney for the Public Advocate position?
- Efficiency and Effectiveness of Current Public Advocate Contract:
 - From the perspective of the PSC, what necessitates that the Public Advocate position be contracted out rather than filled with a state employee?
 - What are the advantages and disadvantages, including cost and overall effectiveness, of employing an in-house Public Advocate versus contracting the position out?

Methodology

The Office will use a standard qualitative research methodology. We will:

- Review relevant state statutes, which include but are not limited to, §§ 66-1830 to 66-1835;
- Review other applicable documents such as legislative histories, Attorney General Opinions, rules and regulations, and budget information;
- Examine agency records, which include but are not limited to, technical reports, annual reports, internal policies and procedures, plans, correspondence, contracts, and related materials; and
- Conduct interviews with PSC staff, Commissioners and others as necessary.

Audit Report Contents

Under the Legislative Performance Audit Act, the Office must provide its written draft report to the agency. That report will consist of:

- background information concerning the program;
- discussion of audit work related to the scope statement questions; and
- Office findings and recommendations.

After receipt of the report, the agency will have 20 business days to review it and provide written comments to the Office. We expect to provide the draft report to the agency on or before **February 16, 2010**; however, should extenuating circumstances occur, the Committee may extend that date. The deadline for the agency response will be included in the correspondence accompanying the report when it is provided to the agency.

Following receipt of the agency's comments, the Committee will meet to consider the draft report and the comments. The Committee may elect to adopt recommendations at that time or to hold a public hearing on the audit before adopting recommendations. The Committee's final report will include the Office's report, the agency's comments, the Committee's recommendations, and other materials specified in the audit act.

Audit plan adopted by the Legislative Performance Audit Committee January 5, 2010.