

Approved: March 2, 2012

(Date)

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 10:30 a.m. on Tuesday, January 24, 2012 in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Alan Conroy, Director, Legislative Research Department
J. G. Scott, Chief Fiscal Analyst, Legislative Research Department
Michael Steiner, Senior Analyst, Legislative Research Department
Bobbi Mariani, Fiscal Analyst, Legislative Research Department
Jill Wolters, Office of the Revisor of Statutes
David Wiese, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jan Lunn, Committee Assistant
Melinda Gaul, Chief of Staff, Senator McGinn's Office
Eli Johns, Intern, Senator McGinn's Office

Conferees appearing before the Committee:

Zulma Toro-Ramos, Dean of the College of Engineering, Wichita State University
Shauna Woody-Coussens, Director, BKD CPAs and Advisors
Jim Snyder, BKD, LLP Forensics and Valuation Services
Steve Browne, Meara Welch Browne

Others in attendance:

See attached list.

There were no bill introductions.

Update on Kansas Engineering Initiative Act

Zulma Toro-Ramos, Dean of the College of Engineering, Wichita State University (WSU), provided an update on the progress achieved on the implementation of the Kansas Engineering Initiative Act, which was passed during the 2011 legislative session. (Attachment 1) Dean Toro-Ramos discussed the transformation within the WSU College of Engineering to an experience-based engineering education model, which is projected to increase by 60 percent the number of engineering degrees awarded by the college. She emphasized the importance of collaboration among the Kansas Department of Commerce, the Kansas Board of Regents, and other constituents such as WSU faculty, students, and industry leaders. Dean Toro-Ramos reported partnerships for resource leveraging have secured over \$9 million in matching funds for this initiative. In the future, performance

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metrics will be used to assess the effectiveness of not only the experience-based educational approach but also all processes within the Wichita State University Engineering Initiative.

Overview on Kansas Bioscience Authority (KBA)

Jim Snyder, BKD, LLP Forensics and Valuation Services and Shauna Woody-Coussens, CFE, AVA, Director, BKD CPAs & Advisors, provided an overview of the Kansas Bioscience Authority forensic audit completed in December 2011. (Attachment 2) The audit, in its entirety, can be found at:
http://www.kansasbioauthority.org/about_the_kba/KBA_AuditResults.aspx.

Mr. Snyder reviewed the background of engagement including its scope and approach; he noted the original scope of the forensic audit was finalized, with input from Governor Brownback's representative, Secretary of Agriculture Dale Rodman. During the early stages of the forensic audit, the initial scope expanded, and the reporting process changed to include interim drafts of the report, which were provided to KBA representatives and certain State of Kansas representatives. BKD used the services of 16 professionals including eight certified fraud examiners, and three forensics specialists during the course of the investigation. Approximately 2,800 man hours were spent on the investigation which included interviews, extensive review of documents and data at KBA's offices, forensic analysis of computers and a variety of other investigative techniques and procedures.

Ms. Woody-Coussens was recognized to report on BKD's investigation process, which included review of the investment process and the Investment Committee; the role of the Board of Directors and its Executive Committee in the investment process; KBA's conflict of interest policies; the Bioscience Growth Fund and access to venture capital; and the level of documentation, organization, and completeness of files related to third party contracts. Mr. Snyder reported on identified issues related to the leadership and activities of former KBA president, Tom Thornton, which included failure to disclose a personal relationship with a staff member; removal of content from his KBA-issued laptop computer; receipt of personal travel expenses purchased by KBA; personal use and gifting of KBA-owned artwork; and receipt of inadvertent duplicate expense reimbursement and overpayment on a car allowance. Both Mr. Snyder and Ms. Woody-Coussens confirmed that other than the identified issues concerning Mr. Thornton's behavior and actions, there were no material adverse findings related to the KBA or its investment process, and there were no grants or investments to client companies that were deemed inappropriate or in violation of KBA's conflict of interest policy or the Kansas Economic Growth Act of 2004.

Following the presentation, Senator Vratil disclosed that he and Jim Snyder, BKD, LLP Forensics and Valuation Services, had a previous pre-existing relationship as partners in the same law firm; Senator Vratil indicated he was no longer with that firm, and he indicated he

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had no knowledge of Jim Snyder being involved in the forensic investigation until the presentation this date.

Responding to committee members' questions, Mr. Snyder or Ms. Woody-Coussens indicated that:

Because Mr. Thornton's computer was wiped of information, the scope of the investigation was expanded to ensure as exhaustive an audit as possible; there was no instance of interference (by the wiping of Mr. Thornton's computer) on any core KBA business records. There was one allegation that related to a server file, which prompted investigation with the KBA's internet service provider. The allegation was close to the date Mr. Thornton accepted another position in Cleveland, Ohio. BKD requested the server backup file. Unfortunately, the computer backup procedure contained a 30-day rolling backup, which meant this file was unavailable. Interviews were expanded and additional imaging of KBA computers was performed; no additional adverse findings or evidence was discovered.

The audit excluded any assessment or verification of number of jobs created within the State of Kansas. The process relating to documentation of successful outcomes and job enhancement has been improved; Ms. Woody-Coussens disclosed that recent audits have resulted in a decline in the number of jobs reported.

Governor Brownback's office was heavily involved in developing the scope of the forensic audit, in recommending specific procedures, and in providing oversight. Typically, changes in the scope of a forensic audit occur frequently.

Other than violations by Mr. Thornton relating to his expenses, generally KBA demonstrated compliance with business policies, conflict of interest policies, and investment policies.

KBA personnel provided access to all audit requests and did so expeditiously and completely.

Mr. Thornton reimbursed KBA in the amount of approximately \$4,800 for funds he used inappropriately. The reimbursement covered expenses for a trip to Cleveland, two instances in which he had been reimbursed twice inadvertently, a partial month's car allowance, and for art work purchased with KBA funds.

The district attorney is in possession of the forensic audit report. There was no one else, other than Mr. Thornton, on the staff at KBA implicated in any wrong doing.

All of the investment documentation, including significant e-mail correspondence, between KBA and companies receiving funding is contained in KBA's Biz Tracker software system.

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Audit investigators traced investments from the written recommendation through the approval process and signing processes, all milestone performance payments and tracked that back through KBA's accounting software. Information was complete and well organized, which allowed a thorough tracking. There were no identified discrepancies.

BKD made no recommendations for amendments to the Kansas Economic Growth Act.

Chairperson McGinn recognized Steve Browne of Meara Welch Brown, who presented information concerning forensic investigation services on behalf of KBA relating to KBA's previous financial commitments to the Center of Innovation for Biomaterials in Orthopedic Research (CIBOR) and its fulfillment of those commitments. He explained there were two primary points involved in the investigation: what had been financially committed to CIBOR, and the period of the award. Mr. Browne described the audit process and concluded there no documents, correspondence, or e-mails indicating a KBA firm commitment beyond the \$4 million contained in the cooperative agreement between KBA and CIBOR. Mr. Browne referred to various exhibits attached to the audit representing the electronic evidence and search protocols; a chronology of funding, correspondence and related events; the record of performance milestones under the cooperative agreement and related amendments; and the document index. Auditors also compared CIBOR (KBA's Center for Innovation) with other Centers of Innovation to evaluate CIBOR funding relative to others. Specifically, auditors evaluated Heartland Plant Innovations (HPI), which had similar experiences with regard to milestone requirements and delays in funding. The conclusion was that CIBOR was treated consistently with other Centers of Innovation.

Responding to questions, Mr. Browne indicated:

The process for the CIBOR award follows: KBA released a Request for Proposal (RFP) for Kansas Bioscience Centers of Innovation Planning on August 14, 2007 (to determine viability); on December 1, 2008, the KBA released a RFP for the Kansas Bioscience Centers of Innovation (2009 RFP); a cooperative agreement with CIBOR was reached in early in 2009; initial funding was distributed in summer of 2009. Exhibit B in the report represents the funding delays from the time the award funding was requested and the time the funding was received by CIBOR received. Cost of accounting issues delayed some payments as well as an internal struggle related to CIBOR's control.

A series of e-mails (within the chronological exhibit) was described in which it was indicated that then CEO, John Moore, understood the contract language and the cooperative agreement was an award \$4 million. To date, KBA committed \$7.5 million to CIBOR; as of December 31, 2011, CIBOR has received \$6,050,000 which does not include \$750,000 received from Wichita State that was carved out by the legislature last spring.

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There was no evidence found in e-mails, documents, correspondence, etc. that indicated the award was \$20 million. All the KBA Centers for Innovations were treated consistently, with a cooperative agreement containing milestone requirements.

There was no information or evidence resulting from the audits performed that would indicate there was any fraud committed by KBA. A personal opinion was offered that encouraged the public to read and place into context the audit reports; his personal conclusion was that KBA has contributed to jobs creation, to growing the Kansas economy, and to advancing scientific knowledge.

Mr. Snyder responded to questions as follows:

As a result of the forensic audit, there no identified issues that could not be addressed through policy recommendations; there were no legislative recommendations.

The cost of the audit was \$960,000, which excluded legal fees KBA has used.

David Vranicar is KBA's interim president and CEO.

Chairperson McGinn requested clarification from Alan Conroy, Director of the Kansas Legislative Research Department, concerning the legislative appropriation to KBA. Mr. Conroy confirmed that \$15 million has not been transferred to KBA. Typically, the first appropriated transfer (\$15 million of the \$35 million total appropriation) occurs in November. There was no explanation offered related to the deviation from the typical funding transfer process.

The meeting was adjourned at 11:39 p.m.