

Minutes
LEGISLATIVE AUDIT COMMISSION
June 28, 2023

Members Present:

Representative Patti Anderson
Representative Rick Hansen
Representative Steven Jacob
Representative Fue Lee
Representative Duane Quam
Senator Calvin K. Bahr
Senator D. Scott Dibble
Senator Steve S. Drazkowski
Senator Mark W. Koran
Senator Ann H. Rest

Members Absent:

Representative Emma Greenman
Senator Tou Xiong

Other Legislators Present:

Representative Frank Hornstein

Representative Rick Hansen, Chair, called the Legislative Audit Commission meeting to order at 9:00 a.m. Chair Hansen said the purpose of the meeting was to hear the Office of the Legislative Auditor's (OLA's) presentation of the program evaluation report, *Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors*.

Chair Hansen welcomed Judy Randall, Legislative Auditor, who briefly explained the work OLA has done and is continuing to do related to Southwest Light Rail Transit (SWLRT) construction. Ms. Randall then introduced David Kirchner, Project Manager of the evaluation, to present the key findings and recommendations of the report. After the presentation, the meeting was opened to questions from members.

Members asked questions about the negotiating position of the Metropolitan Council with its contractor, how change orders were used on the project and impacted costs, and the relationship between the Council and their Independent Cost Estimator. Members discussed the impacts of SWLRT cost overruns and the lack of enforcement of some contract details by the Council, which impacted the ability of the Council to hold the contractor accountable for certain construction issues. Members expressed concerns regarding SWLRT project delays and cost increases, the Council's willingness to accept feedback, and the lack of documentation for project decisions.

Members asked OLA whether laws were broken by the Metropolitan Council in its oversight of SWLRT construction. Mr. Kirchner replied that federal requirements for change order processing are vague, saying that there should be a "fair and reasonable" determination of costs, but what that means is up to the Council. He added that there are FTA regulations that are recommendations and are not binding, and that not following recommendations is not against the law. Members asked several additional questions regarding the Council's oversight of the construction contractor and its relationship with the Independent Cost Estimator, among other topics.

Chair Hansen then welcomed Charles Zelle, Chair, and Nick Thompson, Deputy General Manager of Capital Programs, of the Metropolitan Council to the table. Chair Zelle thanked members for the meeting and gave the Council's presentation. Chair Zelle said the Council is making ongoing improvements in its project management and construction issues. He said the Council has adopted a transit advancement policy, and that before the Council starts or engages in new transitway projects, the Council will do a full assessment of risks. He added that the Council is developing a new division, the Regional Transit Infrastructure Division, which will be project-management based.

Chair Zelle said that the project's delays and cost overruns stemmed from the unseen and unknown issues, largely with the Kenilworth corridor, and that the project was underbudgeted originally, with corridor issues going back to its purchase in the 1980s. Chair Zelle said that along with the Council's new dispute resolution process, there is a cap on the Council's liability. Regarding the documentation OLA received from the Council, he said that the Council will have a more focused and robust process to ensure the Council is doing change orders the correct way.

Chair Zelle and Mr. Thompson responded to several questions posed by members.

With no further discussion, Chair Hansen adjourned the meeting at 11:47 a.m.

Representative Rick Hansen, Chair

Maureen Garrahy, Recording Secretary