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☛ Details: Audit Letter Report (August 2005) Use of Outside Legal Counsel, Wisconsin Technical College System

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee on Audit...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

# Record of Committee Proceedings

## Joint Legislative Audit Committee

### Audit Letter Report (August 2005)

Use of Outside Legal Counsel, Wisconsin Technical College System

September 13, 2005 **PUBLIC HEARING HELD**

Present: (7) Senators Roessler and Cowles; Representatives Jeskewitz, Kaufert, Kerkman, Travis and Cullen.

Absent: (3) Senators S. Fitzgerald, Miller and Lassa.

#### Appearances For

- Dennis Murphy, Beloit — Gateway Technical Education Association

#### Appearances Against

- None.

#### Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Melinda Gustafson, Madison — Legislative Audit Bureau
- Daniel Clancy, Madison — President, Wisconsin Technical College System
- Sam Borden, Kenosha — President, Gateway Technical College System
- Dennis Schultz, Kenosha — Board Chairman, Gateway Technical College
- Darnell Cole, Franklin — President, Milwaukee Area Technical College
- Christy Brown, Milwaukee — Milwaukee Area Technical College
- Lonnie Benning, Milwaukee — Gateway Technical Education Association

#### Registrations For

- Judy Robson, Beloit — Senator, Wisconsin State Legislature

#### Registrations Against

- None.



Pam Matthews  
Committee Clerk



Letter Report

**Use of Outside Legal Counsel**  
*Wisconsin Technical College System*

*August 2005*



**Legislative Audit Bureau**

22 E. Mifflin St., Ste. 500, Madison, Wisconsin 53703-4225 • (608) 266-2818

Fax: (608) 267-0410 • Web site: [www.legis.state.wi.us/lab](http://www.legis.state.wi.us/lab)



STATE OF WISCONSIN

Legislative Audit Bureau

22 E. Mifflin St., Ste. 500  
Madison, Wisconsin 53703  
(608) 266-2818  
Fax (608) 267-0410  
Leg.Audit.Info@legis.state.wi.us

Janice Mueller  
State Auditor

August 2, 2005

Senator Carol A. Roessler and  
Representative Suzanne Jeskewitz, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

At your request, we have completed a limited-scope review of the use of outside legal counsel by Wisconsin's 16 technical college districts. The districts spent a total of \$8.2 million for outside legal services from fiscal year (FY) 1999-2000 through FY 2003-04. Three districts—Milwaukee Area, Lakeshore, and Gateway—accounted for 53.4 percent of that total.

While a few of the districts, including Waukesha County and Lakeshore, used a formal request for proposals process to secure outside legal counsel, others did not. We have included a recommendation that all districts develop annual letters of engagement with their outside legal counsel that describe the services to be provided and the rates to be charged.

Two districts—Milwaukee Area and Gateway—have established retainer agreements, which establish fixed amounts to be paid monthly for legal services, without regard to the level or type of services rendered. Both arrangements appear to result in higher costs than if services had been billed directly on an hourly basis. In addition, we have serious concerns about the Gateway retainer agreement, under which a former employee is now paid \$120,000 annually, but typically provides fewer than 80 hours of legal services per month. In addition, the district is required to provide health, dental, and life insurance benefits to the former employee and his family until January 31, 2008, and to provide these benefits to his spouse in the event of his death. The inclusion of such benefits in a retainer agreement raises serious questions about the propriety of the agreement and may have future tax implications for Gateway. We have recommended that the retainer be terminated immediately.

We appreciate the cooperation of the 16 technical college districts and state board staff in completing this review.

Sincerely,

Janice Mueller  
State Auditor

JM/DB/ss

Enclosure

## USE OF OUTSIDE LEGAL COUNSEL

The Wisconsin Technical College System provides educational and training programs at 16 technical colleges located throughout the state. It is governed by the 13-member Wisconsin Technical College System Board, which establishes statewide policies and standards for educational and training services. Each technical college serves a geographical area, called a district. The technical college districts are shown in Figure 1.

Figure 1

### Wisconsin Technical College Districts



Each district is governed by a nine-member board that is appointed by a committee composed of county board chairpersons or school board presidents, subject to approval of the state system board. The district board has the authority to provide educational programs, levy a property tax, employ staff, and enter into contracts for that district.

In varying degrees, all technical college districts use outside legal counsel to review contracts, represent them in union grievances and litigation, provide advice to their governing boards, and assist in collective bargaining negotiations. Only three districts—Chippewa Valley, Gateway, and Milwaukee Area—have also used in-house attorneys for these and other purposes. To assess the nature of legal services provided and the process by which outside legal counsel is procured and monitored, we contacted officials from each district and obtained expenditure information related to their use of outside legal counsel from fiscal year (FY) 1999-2000 through FY 2003-04.

## **Expenditures for Outside Legal Counsel**

For the five-year period shown in Table 1, total expenditures for outside legal counsel ranged from \$35,500 for Chippewa Valley Technical College to nearly \$2.5 million for Milwaukee Area Technical College. A number of factors influence district expenditures for outside legal counsel, including:

- the role of outside legal counsel in providing advice for district operations;
- the number of employee grievances filed against a district;
- collective bargaining agreement negotiations with faculty and staff, which typically occur every two or three years;
- the number of properties purchased or leased by a district; and
- the number of district employees authorized to contact outside counsel for legal advice and services.

Table 1

**Expenditures for Outside Legal Counsel<sup>1</sup>**  
 FY 1999-2000 through FY 2003-04

District	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Blackhawk	\$ 128,200	\$ 92,800	\$ 33,800	\$ 71,000	\$ 46,100	\$371,900
Chippewa Valley	7,700	500	16,000	6,500	4,800	35,500
Fox Valley	48,200	43,600	101,400	144,300	126,100	463,600
Gateway	19,000	58,300	308,500	285,900	280,300	952,000
Lakeshore	273,000	173,700	205,100	269,800	61,500	983,100
Madison Area	132,300	165,700	232,100	193,400	146,000	869,500
Mid-State	39,800	27,600	47,500	46,200	66,600	227,700
Milwaukee Area	475,500	519,500	513,100	476,400	480,700	2,465,200
Moraine Park	28,800	42,100	55,200	42,400	59,500	228,000
Nicolet Area	7,300	4,800	13,700	33,400	9,200	68,400
Northcentral	53,100	79,700	58,200	83,700	113,900	388,600
Northeast Wisconsin	27,400	68,000	86,600	64,300	71,800	318,100
Southwest Wisconsin	38,500	32,300	35,900	3,900	24,800	135,400
Waukesha County	126,300	87,100	152,900	80,100	131,000	577,400
Western Wisconsin	9,500	12,300	11,100	11,900	25,000	69,800
Wisconsin Indianhead	42,300	13,500	9,500	6,000	13,600	84,900
<b>Total</b>	<b>\$1,456,900</b>	<b>\$1,421,500</b>	<b>\$1,880,600</b>	<b>\$1,819,200</b>	<b>\$1,660,900</b>	<b>\$8,239,100</b>

<sup>1</sup> Excludes expenditures for in-house and bond counsel and lobbying expenditures.

Although districts use outside counsel to provide legal opinions for bond issues, these expenditures were not included in the legal expenditure totals. Similarly, the cost of legal counsel used for lobbying purposes was not included in the totals. Districts reported \$195,800 in lobbying expenditures for FY 2003-04, which included services provided by both law firms and contracted lobbyists. In addition, the Wisconsin Technical College District Boards Association reported spending \$53,000 in FY 2003-04 for lobbying efforts on behalf of the districts.

Although some cost factors for legal services are outside a district's control, close monitoring of outside legal counsel can reduce overall expenditures. For example, in the past, the Lakeshore district allowed employees direct access to outside legal counsel engaged to address district issues for two days per week. When the district reduced both the amount of time outside counsel was available and the number of employees who were authorized to consult with counsel, its outside legal expenditures declined 77.2 percent, from \$269,800 in FY 2002-03 to \$61,500 in FY 2003-04.

All districts reported monitoring expenditures related to outside legal services on a monthly basis. In general, when an invoice is received, it is reviewed by district staff to determine the:

- names of legal staff with billed hours;
- number of hours billed for various projects;
- hourly rates charged; and
- charges for copies, faxes, transcripts, and other services.

Seven of the 16 districts reported that they occasionally found billing errors, but no significant overcharges were detected.

Annual or biennial reviews of expenditure trends may assist districts in planning for the most appropriate use of outside legal counsel and help to control costs. For example, several districts reported that they use their own staffs to conduct labor negotiations in an effort to reduce outside legal expenditures. Similarly, while some districts have their legal counsel review board meeting agendas and attend regular board meetings, others do not. However, none of the districts indicated they had developed written guidelines on when to assign tasks to district staff or to outside legal counsel.

#### **Recommendation**

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*We recommend that technical college districts develop written procedures to clarify the circumstances in which they will engage outside legal counsel.*

Table 2 shows the firms that provided services to the technical college districts. As shown in the table, 63.4 percent of all expenditures for outside legal counsel in FY 2003-2004 were paid to two firms.

Table 2

**Expenditures for Outside Legal Counsel Services Provided to Technical College Districts<sup>1</sup>**  
**FY 2003-04**

Law Firm	District(s)	Payment	Percentage
Michael Best & Friedrich	Fox Valley, Gateway, Lakeshore, Nicolet Area, Mid-State, Milwaukee Area, Moraine Park	\$ 801,600	48.3%
LaFollette, Godfrey & Kahn	Blackhawk, Fox Valley, Madison Area, Nicolet Area, Northeast Wisconsin, Southwest Wisconsin	251,600	15.1
William Nickolai	Gateway	136,900	8.2
Ruder, Ware & Michler	Northcentral	111,300	6.7
Quarles & Brady	Moraine Park, Waukesha County	95,800	5.8
Melli, Walker, Pease & Ruhly	Milwaukee Area	63,900	3.8
Edgarton, St. Peter, Petak & Rosenfeldt	Moraine Park	49,100	3.0
Davis & Kuelthau SC	Fox Valley, Northeast Wisconsin	42,600	2.6
Wisconsin Association of School Boards <sup>2</sup>	Waukesha County	37,100	2.2
Hale, Skemp, Hanson, Skemp & Sleik	Western Wisconsin	24,900	1.5
Weld, Riley, Prenn & Ricci	Chippewa Valley, Wisconsin Indianhead	18,300	1.1
Dow, Lohnes & Albertson, PLLC	Lakeshore, Milwaukee Area	13,700	0.8
Remley, Sensenbrenner & Stein	Fox Valley	6,600	0.4
Other <sup>3</sup>	Fox Valley, Nicolet Area, Northcentral, Milwaukee Area, Southwest Wisconsin, Waukesha County, Western Wisconsin	7,500	0.5
<b>Total</b>		<b>\$1,660,900</b>	<b>100.0%</b>

<sup>1</sup> Excludes payments to bond counsel and lobbying expenditures.

<sup>2</sup> Attorneys from the association were used for collective bargaining negotiations.

<sup>3</sup> Law firms paid \$5,000 or less.

To determine hourly charges for outside legal services, we reviewed all FY 2003-04 legal invoices for eight districts. Because many of the invoices did not distinguish between the billable hours for attorneys and paraprofessionals, we calculated an average of the hourly charges for both. As shown in Table 3, average rates for attorneys and paraprofessionals ranged from \$122 per hour for Madison Area Technical College to \$193 per hour for Milwaukee Area Technical College.

Table 3

**Average Hourly Rates for Outside Legal Services<sup>1</sup>**  
 FY 2003-04

District	Average Hourly Rate
Madison Area	\$122
Western Wisconsin	130
Gateway	156
Moraine Park	161
Waukesha County	177
Fox Valley	184
Mid-State	187
Milwaukee Area	193

<sup>1</sup> Based on all invoices for legal services provided by attorneys and paraprofessionals to eight technical college districts in FY 2003-04.

Our review also allowed us to determine the range of legal services typically provided by outside counsel. As shown in Table 4, employment issues represented the largest amount of billable hours, at 37.9 percent. Miscellaneous issues, which represented 14.5 percent of billable hours, included addressing a tax issue with the Internal Revenue Service, helping to create a business incubator, and addressing open records requests. Although board services represented 7.5 percent of billable hours, the range of services provided to district boards varied. For example, the Mid-State and Western Wisconsin districts used outside legal counsel for limited, occasional board support. In contrast, the Madison Area and Moraine Park district boards used outside legal counsel more actively for support that included reviewing board agendas and minutes and attending board meetings to respond to requests for legal advice.

Table 4

**Outside Legal Services Provided<sup>1</sup>**  
**FY 2003-04**

Type of Legal Service	Billable Hours	Percentage
Employment Issues	2,604	37.9%
Labor Negotiations	1,135	16.5
Miscellaneous <sup>2</sup>	995	14.5
Property / Real estate	529	7.7
Board Services	515	7.5
Litigation	436	6.4
Immigration Issues	196	2.9
Intellectual Property	149	2.2
Contract Issues	108	1.6
Student Issues	92	1.3
Training	70	1.0
Federal Communications Commission Issues	38	0.5
<b>Total</b>	<b>6,867</b>	<b>100.0%</b>

<sup>1</sup> Based on all invoices for legal services provided to eight technical college districts in FY 2003-04.

<sup>2</sup> Includes issues such as addressing tax issues and helping to create a business incubator.

**Procurement of Outside Legal Counsel**

Districts obtain outside legal counsel by following their general purchasing and procurement policies, which typically allow for competitive selection of professional services if it is in the best interests of the district. We found that districts have used a variety of procurement methods to acquire outside legal counsel. For example, a formal request for proposals process for outside legal services was used by the Waukesha County district in 2002 and the Lakeshore district in 2004. In addition to specifying the legal services to be provided and the hourly rates to be paid, this procurement method allowed each district to solicit proposals from several firms. The Madison Area district uses the law firm identified in a Dane County Procurement Bulletin. Most districts, however, have developed long-standing relationships with particular firms that have familiarity with district issues. The firms provide legal services to the districts on a regular basis, but because the financial structures of these relationships are not actively reviewed and evaluated by the districts, their cost-effectiveness is difficult to assess.

While it may be cumbersome for districts that make only limited use of outside legal counsel, a formal request for proposals process would appear to be the best method of identifying law firms that can provide comparable legal expertise at the best rates. For example, the Waukesha

County district's request for proposal process clearly identified legal needs, formalized the types of legal services to be provided, established set fees for services, and required notification of fee changes. We believe that all districts could, at a minimum, benefit from developing an annual letter of engagement with their outside legal counsel to establish the types of services that will be provided and the rates that will be charged.

### Recommendation

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*We recommend technical college districts that do not use a request for proposal process develop annual letters of engagement with their outside legal counsel that describe the types of services to be provided and the rates the district will be charged.*

## **Retainer Agreements**

All but 2 of the 16 technical college districts pay for outside legal counsel through direct billing on a fee-per-hour basis. In contrast, the Milwaukee Area and Gateway districts have entered into retainer agreements to pay fixed amounts to their outside legal counsel each month, regardless of the amount of services rendered. Under its retainer agreement with Michael Best & Friedrich, the Milwaukee Area district's FY 2003-04 payments were \$36,000 per month from July through December 2003, and \$34,200 per month from January through June 2004. In July 2004, the district's monthly payment was renegotiated to \$27,950 because an Assistant General Counsel was hired to reduce the need for outside counsel. Under another retainer agreement with a law firm based in Washington, D.C., the Milwaukee Area district also spent \$350 per month in FY 2003-04 on issues related to the Federal Communications Commission.

The Gateway district's retainer agreement began in October 2002 and expires January 31, 2006. However, the retainer agreement can be extended for up to two additional one-year terms upon mutual agreement by all parties. This agreement is with a former district employee who is to provide a range of services, including property, student and board issues, and contract review. Gateway's FY 2003-04 expenditures under the retainer agreement totaled \$136,896, which includes a \$10,000 monthly payment to the attorney, as well as the costs of various fringe benefits. The Gateway district also obtains legal services from another firm that bills the district on an hourly basis.

Some contend that retainer agreements can reduce costs when the types of outside legal services needed are consistent and ongoing. However, based on our review of monthly invoices submitted by the firm on retainer with the Milwaukee Area district, we determined that, in FY 2003-04, the Milwaukee Area district would have paid only \$347,239 under direct billing, or 17.6 percent less than the \$421,200 it paid under a retainer agreement. We also found that under direct billing, the Gateway district would have paid 18.7 percent less, or \$111,313 at an hourly rate of \$125, rather than the \$136,896 it paid under its retainer agreement.

The Gateway retainer agreement indicates the attorney will be available for a minimum of 80 hours per month for legal services. However, our analysis indicates that between January 2003 and December 2004, the number of hours the attorney actually worked in each month typically was less than stipulated in the agreement with Gateway and ranged from

44 to 92, which is equivalent to an hourly rate ranging from \$227 to \$109. In July 2004, the attorney on retainer provided Gateway with 73 hours of service, the most hours provided in any month in 2004. Gateway officials stated that the number of hours declined because the district's legal needs diminished.

**Recommendation**

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*We recommend technical college districts ensure the cost-effectiveness of any retainer agreements they enter by carefully monitoring the types and amounts of outside legal services provided under these agreements.*

The salary and fringe benefit provisions included in Gateway's retainer agreement raise additional concerns, because they exceed what the former employee was paid for legal services while a district employee. Gateway's records show that during his last year as a full-time district employee, the attorney under retainer spent 50 percent of his time on district-related legal work, and his full-time salary and fringe benefits equaled \$135,568. The retainer agreement, which was negotiated while this individual was still an employee, paid him \$136,896 in FY 2003-04 for legal services on a half-time basis.

Under the terms of the retainer agreement, the district also provides family health, dental, and life insurance to the attorney through January 31, 2008, which is two years beyond the term of the contract. The agreement indicates this benefit will remain in effect until the attorney reaches age 65, and it retains the benefit for his spouse in the event of the attorney's death before age 65. The agreement also contains a non-performance clause that indicates these benefits will remain in effect regardless of whether the attorney performs his contractual obligations. The inclusion of such benefits in a retainer agreement raises serious questions about the propriety of the agreement and whether state and federal taxing authorities would consider the attorney to be an independent contractor, as the agreement states. Were he to be found by these taxing entities to be an employee, and not an independent contractor, there may be Social Security and tax implications for the district.

**Recommendation**

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*We recommend Gateway Technical College District immediately terminate the retainer agreement negotiated with its former employee and seek a more cost-effective means to meet its needs for outside legal counsel.*

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## WISCONSIN STATE LEGISLATURE

### Joint Legislative Audit Committee

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

For Immediate Release

August 2, 2005

For More Information Contact:

Representative Suzanne Jeskewitz  
Senator Carol Roessler

(608) 266-3796  
(608) 266-5300

### Audit Suggests Strategies to Better Control Tech College Legal Costs

(Madison) Today, the nonpartisan Legislative Audit Bureau (LAB) released a limited-scope review of the use of outside legal counsel by Wisconsin's 16 technical college districts. The review was initiated at the request of Joint Legislative Audit Committee co-chairpersons Representative Suzanne Jeskewitz (R-Menomonee Falls) and Senator Carol Roessler (R-Oshkosh) in response to questions about expenditures for outside legal counsel by Milwaukee Area Technical College, and includes four recommendations to improve oversight and control of outside legal counsel expenditures.

LAB determined that the 16 technical college districts spent a total of \$8.2 million for outside legal counsel services from fiscal year (FY) 1999-2000 through FY 2003-04. During this period, total expenditures for outside legal counsel ranged from \$35,500 for Chippewa Valley Technical College to nearly \$2.5 million for Milwaukee Area Technical College.

"I will be closely following the implementation of the four LAB recommendations," stated Jeskewitz. "I think it's ludicrous to place attorneys on contract retainers that pay as much as \$36,000 per month just so they can be available if needed. I am convinced this is not the best use of the taxpayers' money and at a minimum deserves close scrutiny."

LAB found that Milwaukee Area Technical College and Gateway Technical College each entered into retainer agreements for outside legal counsel that were more costly than if the legal services had been paid on an hourly basis. LAB determined that Milwaukee Area Technical College would have paid 17.6 percent less had it obtained legal services on an hourly basis.

LAB also raised serious concerns about the retainer agreement between Gateway Technical College and a former employee. Under the terms of the agreement, the former employee is now paid \$120,000 annually to provide 80 hours of legal service per month and also receives a fringe benefit package that provides family health, dental, and life insurance through January 2008.

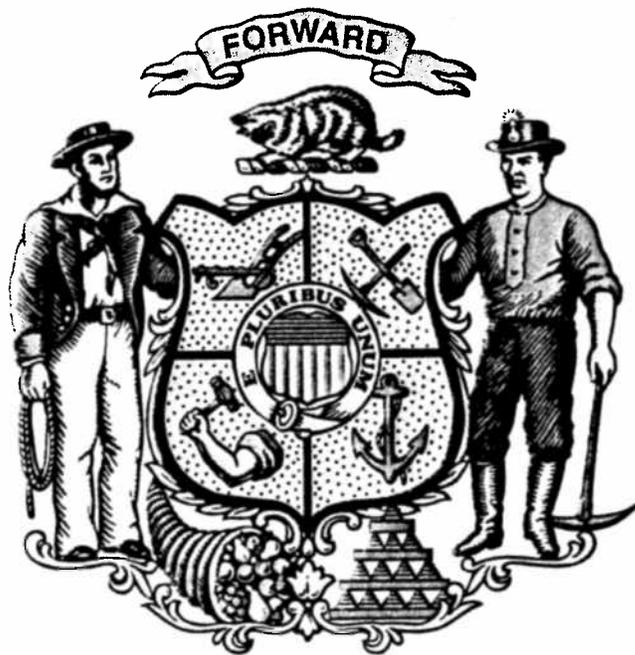
"The use of outside legal services by technical colleges needs to be more carefully monitored. Developing written procedures, preparing annual letters of engagement, and taking steps to ensure overall cost effectiveness are all important tools for technical colleges to carefully monitor the types and amounts of outside legal services provided," Roessler said. "These recommendations for accountability and cost control will be discussed at our Audit Committee hearing this fall."

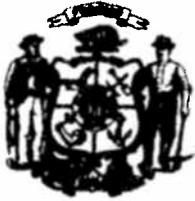
In June 2004, the Joint Legislative Audit Committee held its second public hearing on LAB's evaluation of the Milwaukee Area Technical College District (report 03-4). At that time, co-chairs Roessler and Jeskewitz indicated that the Committee would conduct additional follow-up in 2005. A hearing is planned for September, at which time the Committee will also review implementation of LAB's four recommendations to improve oversight and control of outside legal counsel expenditures, and explore the troubling disclosures about Gateway Technical College.

###

SENATOR ROESSLER  
P.O. Box 7882 • Madison, WI 53707-7882  
(608) 266-5300 • Fax (608) 266-0423

REPRESENTATIVE JESKEWITZ  
P.O. Box 8952 • Madison, WI 53708-8952  
(608) 266-3796 • Fax (608) 282-3624





# Wisconsin State Legislature

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August 2, 2005

Senator Carol Roessler, Co-Chair  
Joint Committee on Audit  
State Capitol, 8 South

Representative Suzanne Jeskewitz, Co-Chair  
Joint Committee on Audit  
State Capitol, 314 North

Dear Senator Roessler and Representative Jeskewitz:

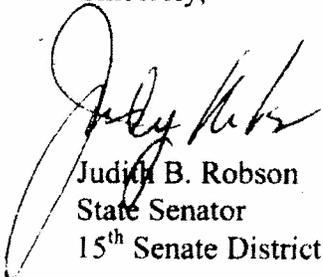
We respectfully request that you schedule a public hearing on the audit of the use of outside legal counsel by Wisconsin technical colleges. The audit report was issued today.

We have grave concerns about the use of tax dollars for an extremely generous retainer agreement with a former employee of Gateway Technical College. The auditors reported that the attorney is paid \$137,000 annually in pay and benefits, and typically worked fewer hours per month than required under the retainer agreement. Gateway is one of only two technical college districts that pay for legal services on a retainer basis. Fourteen districts pay on a fee per hour basis. In addition to the former employee, Gateway also uses the services of a law firm.

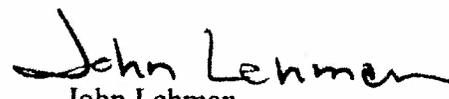
The audit covered the fiscal years 1999 through 2004. We request that the committee direct the Audit Bureau to look at Gateway's legal fees in the current fiscal year, 2004-05, as well.

Thank you for your attention to these requests.

Sincerely,

  
Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District

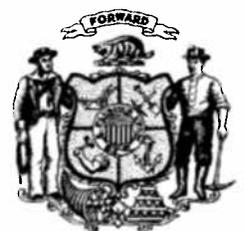
  
Bob Wirsch  
State Senator  
22<sup>nd</sup> Senate District

  
John Lehman  
State Representative  
62<sup>nd</sup> Assembly District

JBR:jss



# WISCONSIN STATE LEGISLATURE





# WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

FOR IMMEDIATE RELEASE  
August 2, 2005

Contact: State Senator Judy Robson  
608-266-2253  
State Senator Bob Wirsch  
608-267-8979  
State Representative John Lehman  
608-266-0634

## **Legislators Demand Accountability to the Taxpayers**

*Urge closer look into Gateway Technical College Legal Fees/Contracts*

(MADISON)—In response to an audit critical of Gateway Technical College's use of outside legal counsel by the Legislative Audit Bureau, State Senators Judy Robson (D-Beloit) and Bob Wirsch (D-Kenosha) along with State Representative John Lehman (D-Racine) are sending a letter to the co-chairs of the Audit Committee requesting a further look into the money spent by Gateway Technical College on legal fees.

"At a time when Gateway has been forced to cut classes and services for students, to hear that the Gateway Administration is spending outrageous amounts of money on high-priced attorneys certainly is a cause for concern," said Wirsch.

According to the Audit Bureau, Gateway Technical College has gone from spending \$19,000 in legal fees in 1999-2000 to spending \$280,300 in 2003-2004; a grand total of \$952,000 in a four year span. As part of their expenses a part time attorney was retained for \$10,000 per month. He is also to receive health benefits, dental benefits, and even life insurance for 2 years after the terms of his contract. The inclusion of these benefits remain in effect regardless of whether the attorney works. This raises serious questions about the propriety of this arrangement.

The letter to the co-chairs of the Joint Audit Committee asks for a public hearing on the data released today in the report. In addition, Robson, Wirsch and Lehman requested further information on the amount of money spent on legal fees in 2004-2005 in the wake of concerns from taxpayers regarding BioCATT and CATI, Inc.

"All of us have been huge supporters of Wisconsin Technical colleges and the opportunities they provide," said Robson. "I taught nursing at a technical college, and have seen first hand the economic benefit a well run college can provide, but this report raises additional concerns about administration of Gateway. We are simply asking for accountability."

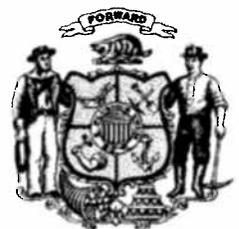
The audit was a limited-scope review of the use of outside legal counsel by all of Wisconsin's 16 technical college districts. In total, \$8.2 million was spent on legal fees. Three districts, Milwaukee Area, Lakeshore, and Gateway account for over half of the total amount spent.

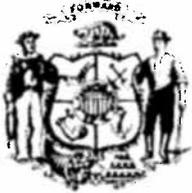
“There are a lot of people who have come forward with concerns about how their taxes are being spent,” said Lehman. “We are simply trying to get them some answers.”

State aid payments made to Gateway Technical College in 2003-2004 totaled \$7.6 million. The technical college board levied a 9.54% increase to property taxpayers this year.



WISCONSIN STATE LEGISLATURE





# Wisconsin State Legislature

---

August 8, 2005

Senator Carol Roessler, Co-Chair  
Joint Committee on Audit  
State Capitol, 8 South

Representative Suzanne Jeskewitz, Co-Chair  
Joint Committee on Audit  
State Capitol, 314 North

Dear Senator Roessler and Representative Jeskewitz:

We write to express our concern over the Gateway Technical College's potential use of generous retainer agreements, back-up positions, and exceptionally lucrative retirement plans for the current Chief Operations and Academic Officer Bryan Albrecht, retiring Gateway Board President Sam Borden, former President John Bucholz, and other Gateway executive officers.

In light of the recent Legislative Audit Bureau audit that specifically criticized Gateway Technical College and based on information that we have received informally regarding generous retirement plans for executive staff, we respectfully request that you instruct the Legislative Audit Bureau to audit the Wisconsin Technical College system's use of retainer agreements, paid leave of any type for administrators, and executive retirement benefits and plans.

Thank you for your attention to this request.

Sincerely,

Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District

Glenn Grothman  
State Senator  
20<sup>th</sup> Senate District

Bob Wirth  
State Senator  
22<sup>nd</sup> Senate District

John Lehman  
State Representative  
62<sup>nd</sup> Assm. District

JBR:jss





WISCONSIN STATE LEGISLATURE

**Joint Legislative Audit Committee**

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

August 29, 2005

Dr. Sam E. Borden, President  
Gateway Technical College  
3520 30<sup>th</sup> Avenue  
Kenosha, Wisconsin 53144

Dear Dr. Borden:

The Joint Legislative Audit Committee will hold a public hearing on the Legislative Audit Bureau's letter report entitled, *Use of Outside Legal Counsel*, on Tuesday, September 13, 2005, at approximately 11:30 a.m. in Room 411 South of the State Capitol.

As this audit report relates, in part, to the activities of Gateway Technical College, we ask you to be present at the hearing to offer testimony in response to the audit findings and to respond to questions from committee members. Please plan to provide each committee member with a written copy of your testimony at the hearing.

Please contact Ms. Pam Matthews in the office of Representative Suzanne Jeskewitz at (608) 266-3796 to confirm your participation in the hearing. Thank you for your cooperation and we look forward to seeing you on September 13<sup>th</sup>.

Sincerely,

Senator Carol A. Roessler, Co-chair  
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair  
Joint Legislative Audit Committee

Enclosure

cc: Janice Mueller  
State Auditor





WISCONSIN STATE LEGISLATURE

**Joint Legislative Audit Committee**

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

August 29, 2005

Mr. Daniel Clancy, President  
Wisconsin Technical College System  
345 West Washington Avenue  
Madison, Wisconsin 53703

Dear Mr. Clancy:

The Joint Legislative Audit Committee will hold a public hearing on the Legislative Audit Bureau's letter report entitled, *Use of Outside Legal Counsel*, on Tuesday, September 13, 2005, at approximately 11:30 a.m. in Room 411 South of the State Capitol. At approximately 12:30 p.m., the Committee will conduct a follow-up hearing relating to Legislative Audit Bureau report 03-4, *An Evaluation: Milwaukee Area Technical College District*.

As these audit reports relate to the activities of the Wisconsin Technical College System, we ask you to be present at the hearing to offer testimony in response to the audit findings and to respond to questions from committee members. Please plan to provide each committee member with a written copy of your testimony at the hearing.

Please contact Ms. Pam Matthews in the office of Representative Suzanne Jeskewitz at 266-3796 to confirm your participation in the hearing. Thank you for your cooperation and we look forward to seeing you on September 13<sup>th</sup>.

Sincerely,

Senator Carol A. Roessler, Co-chair  
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair  
Joint Legislative Audit Committee

Enclosure

cc: Janice Mueller  
State Auditor





WISCONSIN STATE LEGISLATURE

**Joint Legislative Audit Committee**

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

August 29, 2005

Mr. Dennis R. Schultz, Chairperson  
Gateway Technical College District Board  
3520 30<sup>th</sup> Avenue  
Kenosha, Wisconsin 53144

Dear Mr. Schultz:

The Joint Legislative Audit Committee will hold a public hearing on the Legislative Audit Bureau's letter report entitled, *Use of Outside Legal Counsel*, on Tuesday, September 13, 2005, at approximately 11:30 a.m. in Room 411 South of the State Capitol.

As this audit report relates, in part, to the activities of Gateway Technical College, we ask you to be present at the hearing to represent the Gateway Technical College District Board, to offer testimony in response to the audit findings, and to respond to questions from committee members. Please plan to provide each committee member with a written copy of your testimony at the hearing.

Please contact Ms. Pam Matthews in the office of Representative Suzanne Jeskewitz at (608) 266-3796 to confirm your participation in the hearing. Thank you for your cooperation and we look forward to seeing you on September 13<sup>th</sup>.

Sincerely,

Senator Carol A. Roessler, Co-chair  
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair  
Joint Legislative Audit Committee

Enclosure

cc: Janice Mueller  
State Auditor





Sam E. Borden, Ph.D.  
President

August 31, 2005

**ADMINISTRATION CENTER**

3520 - 30th Avenue  
Kenosha, WI 53144-1690  
262.564.3300  
262.564.3301 FAX/262.564.2816 TTY

**AVIATION CENTER**

4940 - 88th Avenue  
Kenosha, WI 53144-7467  
262.564.3900  
262.564.3901 FAX

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380 McCanna Pkwy.  
Burlington, WI 53105-3622  
262.767.5200  
262.767.5201 FAX/262.767.5206 TTY

**ELKHORN CAMPUS**

400 County Road H  
Elkhorn, WI 53121-2046  
262.741.8200  
262.741.8201 FAX/262.741.8206 TTY

**KENOSHA CAMPUS**

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Kenosha, WI 53144-1690  
262.564.2200  
262.564.2201 FAX/262.564.2206 TTY

**COMMUNITY CAMPUS**

3520 - 30th Avenue  
Kenosha, WI 53144-1690  
262.564.2996  
262.564.2161 FAX/262.564.2816 TTY

**OPEN LEARNING CAMPUS**

3520 - 30th Avenue  
Kenosha, WI 53144-1690  
262.564.2994  
262.564.2999 FAX/262.564.2816 TTY

**WGTD-FM/91.1**

3520 - 30th Avenue  
Kenosha, WI 53144-1690  
262.564.3800  
262.619.6800  
262.564.3801 FAX

**RACINE CAMPUS**

1001 South Main Street  
Racine, WI 53403-1582  
262.619.6200  
262.619.6201 FAX/262.619.6206 TTY

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Sturtevant, WI 53177  
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262.898.7501 FAX

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Kenosha, WI 53144-1690  
262.564.3600  
262.564.3601 FAX

**LakeView Advanced Technology Center (LATC)**

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Pleasant Prairie, WI 53158-2216  
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Senator Carol A. Roessler  
Wisconsin Senate  
8 South, State Capitol  
Madison, WI 53702

Representative Suzanne Jeskewitz  
Wisconsin Assembly  
314 North, State Capitol  
Madison, WI 53702

Ms. Janice Mueller  
State Auditor  
Legislative Audit Bureau  
22 East Mifflin Street, Suite 500  
Madison, WI 53703

Re: Gateway Technical College Response to LAB Letter Report on Use of Outside Legal Counsel in Wisconsin Technical College System

Dear Senator Roessler, Representative Jeskewitz and State Auditor Mueller:

Gateway Technical College ("Gateway") has received and reviewed the August 2005 Letter Report of the Legislative Audit Bureau ("LAB") on "Use of Outside Legal Counsel, Wisconsin Technical College System" (the "LAB Report"). The Board as well as the administration looked at the review as a source of valuable input on the operation of the College. While we find that legal fees are necessary in carrying out the College's mission, the Board and administration, however, are also concerned about legal costs.

At its meeting on August 25, 2005, the Gateway Technical College District Board took several steps to implement or address the recommendations of the LAB Report as follows:

1. LAB Recommendation That Districts Develop Written Procedures to Clarify Circumstances in Which Outside Legal Counsel will be Engaged. Even though Gateway has a policy whereby only certain administrative employees are authorized to contact legal counsel, the Board felt it was important to add another officer and the Board Chair to the list of those who may contact legal counsel. In addition, the Board also created an overview committee to meet as necessary to review the scope of legal services provided to Gateway; required legal counsel to meet quarterly with Gateway staff concerning a review of pending matters, budgeting and oversight responsibilities; and also required that any legal matters estimated to be over \$2,500 be accompanied by an estimate from legal counsel.

2. LAB Recommendation that WTCS Districts use an RFP Process for Legal Services. Prior to the issuance of the LAB Report, Gateway employed an RFP process for legal services. An RFP was distributed on March 7, 2005. The Gateway Board Chair signed a new contract for legal services on August 12, 2005 and the District Board ratified that decision at its August 25 meeting. The engagement letter from legal counsel describes the types of services and the rates the District will be charged.
  
3. LAB Recommendation to Terminate the Retainer Agreement with William Nickolai. Mr. Nickolai's retainer agreement has been the only legal retainer agreement the College has entered into and was a special circumstance. The College administration with Board approval eliminated the office/position that Mr. Nickolai occupied as per Board meeting minutes of September 26, 2002. As notes from that meeting indicate the office was costing approximately \$260,000 per year and that the agreement replaced this cost with a combination retainer-severance agreement, the value of which per the audit was \$136,896. The agreement was reviewed by outside legal counsel and was presented by the firm to the Board.

However, the Board decided that the advice given by the Legislative Audit Bureau was appropriate and therefore, based on that advice, a settlement was reached resulting in the termination of the retainer agreement with Mr. Nickolai, effective August 25, 2005. The Gateway District Board, at its August 25 meeting approved a separate severance agreement which is a bridge to provide family medical and dental insurance benefits until January 2008, at which time Mr. Nickolai will be eligible for the College's early retirement benefit package, allowing him to continue to receive family medical and dental insurance benefits until he reaches age 65. The College does not intend to engage in a retainer agreement with any other firm.

We sincerely appreciate the input and recommendations of the Legislative Audit Bureau report. This review, both external and internal, has been an exercise in discovery for us. I believe Gateway is and will be a better community because of your direction and review of our processes and procedures. If I can provide any further information, please do not hesitate to contact me.

Sincerely,

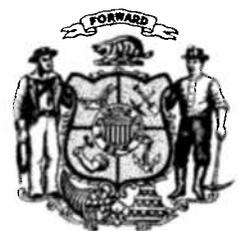
  
Sam E. Borden, PhD  
President

seb:jw

c: Dennis Schultz - Gateway District Board Chairperson  
Daniel Clancy - WTCS  
Greg Wagner -- WTCS



# WISCONSIN STATE LEGISLATURE





WISCONSIN STATE LEGISLATURE

*Joint Legislative Audit Committee*

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

For Immediate Release

September 1, 2005

For More Information Contact:

Senator Carol Roessler

(608) 266-5300

Representative Suzanne Jeskewitz

(608) 266-3796

*Audit Co-Chairs Question Action by Gateway Technical College Board*

(Madison) Senator Carol Roessler (R-Oshkosh) and Representative Suzanne Jeskewitz (R-Menomonee Falls), co-chairpersons of the Joint Legislative Audit Committee, wrote to members of the Gateway Technical College District Board today to express their serious concerns about the Board's recent decision to provide a former employee with fringe benefits through January 2008.

"With all the public outcry on the generous outside legal counsel contracts, I want to know why the board only went half way in dealing with a former employee," demanded Jeskewitz. "Only canceling his contract payments, but not the generous benefits extended to him and his family through January 2008 is simply not reasonable, not sensible and certainly not acceptable."

In its August 2<sup>nd</sup> review of the use of outside legal counsel by Wisconsin's 16 technical college districts, the nonpartisan Legislative Audit Bureau (LAB) raised concerns about a retainer agreement between Gateway Technical College and a former employee. Under the terms of the agreement, the former employee was paid \$120,000 annually to provide up to 80 hours of legal service per month and also received a fringe benefit package that provides family health, dental, and life insurance through January 2008. Although actions taken by the Board in August will, in effect, end payments to the former employee, the Board chose to continue to provide the fringe benefit package through January 2008.

"I strongly question the Board's decision to provide an exorbitant benefit package to a former employee for 29 more months. It will be important for the Board to describe their rationale to provide this lucrative post-employment benefit at the September 13 Audit hearing," Roessler requested.

The Joint Legislative Audit Committee will hold a public hearing on the LAB report on Tuesday, September 13<sup>th</sup>. In their letter to the Board, co-chairs Jeskewitz and Roessler indicated that they expect the Board chairperson to attend the public hearing and that he will be prepared to explain the Board's decision to grant such a generous benefit package to a former employee.

###

SENATOR ROESSLER  
P.O. Box 7882 • Madison, WI 53707-7882  
(608) 266-5300 • Fax (608) 266-0423

REPRESENTATIVE JESKEWITZ  
P.O. Box 8952 • Madison, WI 53708-8952  
(608) 266-3796 • Fax (608) 282-3624





WISCONSIN STATE LEGISLATURE

*Joint Legislative Audit Committee*

Committee Co-Chairs:  
State Senator Carol Roessler  
State Representative Suzanne Jeskewitz

September 1, 2005

SENT VIA ELECTRONIC MAIL

Mr. Dennis R. Schultz, Chairperson  
Gateway Technical College District Board  
3520 30<sup>th</sup> Avenue  
Kenosha, Wisconsin 53144

Dear Mr. Schultz:

With great interest, we have read media accounts reporting the recent decision of the Gateway Technical College District Board to terminate a portion of the retainer agreement it entered with a former employee for legal counsel services. We have also received a letter by President Borden describing the actions of the Board.

The nonpartisan Legislative Audit Bureau first raised concerns about this retainer agreement in its August 2<sup>nd</sup> report on the use of outside legal counsel by Wisconsin's 16 technical college districts. We recognize that the Board's recent actions will, in effect, terminate payments to the former employee. As described by President Borden, the Board also took other action to increase oversight of the use of outside legal counsel by the district, such as:

- forming an ad hoc committee to review outside legal services and costs;
- obtaining cost estimates from outside legal counsel before securing their services; and
- requiring quarterly meetings between counsel and top administrators.

Although these steps signal positive progress toward needed reform, we question the Board's decision to continue provide a former employee with a fringe benefit package that includes family health, dental, and life insurance through January 2008.

As described by the enclosed public hearing notice, the Joint Legislative Audit Committee will conduct a public hearing on the Legislative Audit Bureau's report on the use of outside legal counsel on Tuesday, September 13. Under separate cover, we have asked you, President Borden, and President Clancy, to be present at this hearing to testify before the Committee and respond to our questions about this issue. At the hearing, we expect that you will be prepared to speak specifically to the rationale used by the Board to justify the continuation of such generous benefit package to a former employee.

SENATOR ROESSLER  
P.O. Box 7882 • Madison, WI 53707-7882  
(608) 266-5300 • Fax (608) 266-0423

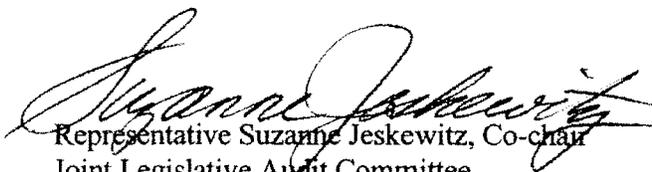
REPRESENTATIVE JESKEWITZ  
P.O. Box 8952 • Madison, WI 53708-8952  
(608) 266-3796 • Fax (608) 282-3624

We eagerly anticipate receiving your testimony on September 13<sup>th</sup>.

Sincerely,



Senator Carol A. Roessler, Co-chair  
Joint Legislative Audit Committee



Representative Suzanne Jeskewitz, Co-chair  
Joint Legislative Audit Committee

Enclosure

cc: Members, Gateway Technical College District Board

Sam E. Borden, President  
Gateway Technical College

Daniel Clancy, President  
Wisconsin Technical College System

Janice Mueller  
State Auditor