

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting November 17, 2011

A meeting of the Legislative Audit Advisory Council (LAAC) was held on Thursday, November 17, 2011, in Senate Committee Room A-B of the State Capitol.

CALL TO ORDER AND ROLL CALL

Senator Murray called the meeting to order at 1:38 p.m. A quorum was present with the following members in attendance:

Members Present

Senator Edwin Murray, Chairman
Senator Sharon Weston Broome, proxy for Senator Willie Mount
Senator Yvonne Dorsey, proxy for Senator Ben Nevers
Representative Cameron Henry
Representative Anthony Ligi
Representative Ledricka Thierry

Members Absent

Senator Willie Mount
Senator Ben Nevers
Senator Karen Carter Peterson
Senator John Smith
Representative Noble Ellington, Vice Chairman
Representative Charles Kleckley
Representative Ledricka Thierry

JEFFERSON PARISH GOVERNMENT PERFORMING ARTS CENTER

Mr. Daryl Purpera, Legislative Auditor, stated there were many questions regarding the building project on the Jefferson Parish Government Performing Arts Center (JPAC) which began as a \$26.5 million project, and is estimated to cost \$52.4 million so far, including about \$28 million of state funding of which about \$19 million has been spent.

Mr. Allen Brown, Assistant Legislative Auditor for Local Audit Services, gave a presentation on the Louisiana Legislative Auditor's (LLA) compliance audit issued October 12, 2011, outlining the history of the process from inception to the current status on the JPAC building. Jefferson Parish Government (the Parish) did not renew the architect contract with Wisznia and Associates, Inc. (Wisznia) and hired Perrin and Carter, Inc. (P&C) to be their representative to watch the contractor and the architect. By June 2010, the projected cost was estimated to be about \$52 million, and was working on a change order that may cost more money. Mr. Brown pointed out Mr. Joe Calderera's explanations for the lack of accurate and complete information based on the number of questions J. Calderera & Company, Inc. (JCC) had during the building process. The LLA audit was very detailed explaining all the errors made by Jefferson Parish including not having a building permit, inconsistent project management practices and noncompliance with bid specifications.

Representative Ligi said that Jefferson Parish President John Young had told him that he was unable to attend due to a personal commitment, but understood the gravity of the situation, and was willing to attend the next scheduled meeting. He said present to represent the parish, Mr. Chris Cox, Chief Operating Officer, and Ms. Debra Fouchee, Parish Attorney, who regrettably inherited the problems. Representative Ligi said the report infuriates him because so many good practices were completely ignored and unbelievable to see where things stand.

Senator Murray questioned the audit clause. Mr. Brown stated there was an audit clause between the Office of Facility Planning & Control (OFP&C) and the Parish in their cooperative endeavor agreement (CEA), but when the Parish contracted with the construction contractor they did not include a right to audit in that contract, so the Parish through that contract does not have the right to review records and charges to ensure appropriate. The Legislative Audit asked to look at the records and JCC denied access to those records. Senator Murray said we may need them to come to the council to discuss that.

Mr. Jerry Jones, Assistant Commission of Administration for the OFP&C, said there is no question that this was a local project because Jefferson Parish hired the architects and contractors and have the responsibility to administer both of those contracts. The State's assets are protected by the CEA. One thing we ensure when dollars are appropriated in capital outlay is that we have a functional thing at the end of the project. If we do not have a functional project, we have permission through the CEA to go after the parish to get our money back to protect the state's interest, and that is still in play. He said in

this project whatever could be done wrong, was done wrong. The architects should not have been fired right before awarding a construction contract because it makes open season for the contractor against the owner. When an architect is hired on a job, they are hired through a contract of agency, and become an agent of the owner and when construction begins the architect becomes the judge or interpreter of the construction contract documents. The Parish lost that, so they had a stand in firm that took on the role of the profession of record that did not exist, so they had no one to defend the documents. The contractor could then claim that the documents were wrong, and no one had vested interest in the documents to support them. So essentially they rubber stamped almost every change orders because thought it would all be paid by the magnificent benefactor to make them whole (the State of Louisiana). Mr. Jones said that his office expects all nonstate agencies to go over paperwork with a fine tooth comb, just as his office. This project was 100% funded by the State when it started, and the assumption was that the State would continue funding it until complete, which more money has been given to this project. This year language was added to the capital outlay bill that OFP&C can pay for all the change orders. Mr. Jones said his office does not hire the designer and if they mess up the documents, the costs falls to the entity that hired that designer. He said in the JPAC project the contractor claimed millions of dollars of errors and omissions on this project, and changed the foundation design and roof design. The building is no longer the same building that was bid.

Mr. Jones said he had warned the parish officials to not fire the architect because the parish cannot defend themselves from the contractor against making attacks on the plan. He explained that the hired architect to protect their interest had no vested interest in the plans, so he could sit back and criticize the original architect. The one that gets hurt is the parish because no one is defending the original design, so the contractor makes change orders to "make it right".

Senator Murray asked how they were able to build at all without a building permit. Mr. Jones said the building was by local government and it was the parish's responsibility to get the building permit. He said for every non-state entity project, his offices does not get involved in their local permit office because it is the non-state entity's responsibility. Mr. Jones said the parish considering it to be a state building because funded by capital outlay is bull, because more projects have been done in Jefferson Parish with capital outlay dollars and they have always gotten permits to do that.

Senator Murray pointed out in the report that Mr. Savoy stated that the parish did not inspect or permit the construction of the Alario Center or Zephyr Stadium. Mr. Jones said those are state buildings, and for those we serve as the building official for state owned building and do not have to have local permits. Mr. Jones said that is a summary, and the question is how can something like this go so wrong without it being stopped. Frankly, he could not answer why the parish would allow it other than they must have assumed that that state would give more money for the job to be finished.

Senator Murray asked for the current status on the project and how close to being completed. Barry Hickman, Senior Project Manager of OFP&C, said as of August 2011, they received request for disbursement #50, and have paid \$20,802,280 out of the almost \$28 million available, so approximately 74% of funds have been paid through regular disbursements. He said the local contractor invoices which include all the change orders and they were billing for 86%, probably because a lot of the change orders were early in the project for the foundation, and so on. Mr. Hickman said they pay on the base contract and the limited change orders that they could participate in.

Mr. Hickman said the original project bid pre-Katrina was supposed to cost \$20 million then came to the \$22 million, and that was when his office sent them back to redesign. Then Katrina hit and it was bid again at \$28 million. As Mr. Jones said, he was at the meeting right before construction began when they warned the parish. The parish said they knew what they were doing and had it under control, and did not renew the architect's contract which construction administration is typically 25% of your basic services as an architect, so construction administration is something they are always supposed to handle and is not an added service.

Representative Ligi asked if any of the Jefferson administration responsible for the problems were still there. Mr. Hickman said Tim Whitmer was at the meeting, and Tom Wilkinson was the attorney, and Deano Bonano was at least one or two meetings, and Reda Youssef was the Director of Capital Projects. Mr. Jones stated that most are gone now. Mr. Jones said the contractors often times will come up with suggestions on how to improve your building, but actually reduce the costs and never give a credit for that. That is why you need a designer there to ensure the credit is captured for any reduction of costs, and to protect your interests.

Mr. Hickman pointed out that the architect professional on record knows why things are being done, and very difficult if that is a third party to try to defend the decisions of the original architect. Mr. Jones said we call this the perfect storm - that if it could go wrong it did.

Representative Ligi asked in this tragedy of errors, and still needing to move forward on this project, how is OFP&C interacting with new parish people. Mr. Hickman said that Jefferson Parish is handling things as they were before, but it is all on them for any change orders. He said in the CEA there is a hold harmless clause and OFP&C cannot interject themselves since not signed on any contracts. If

OFF&C interjects and try to play a role that they do not have, the contractor or Jefferson Parish can blame them.

Representative Ligi asked if there was any lack of clarity that this should have been permitted by the parish. Mr. Jones said this did not go through the state architect selection board, and his office did not bid the project which clearly shows that it is not a state building. He said he would never allow Jefferson Parish to bid out or hire the architects who work on state buildings, or advertise for the bids for a construction contract for a state building. Every municipality and even the smallest towns in this state understand that when they bid it - it is their project. Mr. Jones said on a non-state project, that state is providing the funds and certain things we look for – if they follow the public bid law, and have a CEA to protect the state's interests. He said there is no question that this is a local project.

Representative Ligi asked what can be done to protect the state interests, beyond the CEA. Mr. Jones said they will continue as before determining at what level of participation the capital outlay funds can be used for, but to get involved in reviewing their change orders, his project managers cannot interject into managing the JPAC contracts. The parish needs to do the same as his office and it is the public entity's job to review every change order to ensure not paying for the same tools repeatedly. If his office interjects they would take on the responsibility and liability for the state. The parish needs to handle it like it is their money for this project. The legislators corrected the problem statutorily in 2008 requiring 28% match from local parish, because generally if not their own money spent - they do not check as closely. The Capital Outlay Reform bill requires everyone to have some buy in to their own project so they will watch closely change orders.

Senator Murray questioned the State Fire Marshall listing 20 deficiencies and 52 recommendations before the building can be occupied, asking if those items were taken care of. Mr. Hickman said the Parish can respond, but to clarify the Fire Marshall gave approval but there were a few items to be corrected, but the recommendations do not mean that something is necessarily wrong.

Mr. Jones said the deficiencies must be corrected before occupying the building. If a plan is bad enough that must be totally fixed, the Fire Marshal will put "not in compliance" on the review letter. If they believe the architect can fix it before gets too deep in construction, they will issue a Subject T letter which is subject to correct of these things, and they are counting on the designer fixing the design before occupying the building. Mr. Jones said the Fire Marshall will verify all repairs are done for the provided list of deficiencies. Mr. Hickman pointed out that the architect of record must sign a statement when he asks for an occupancy certificate that the facility was built in accordance with the plans and specs approved by the Fire Marshall's office.

Senator Murray said that if JCC would not submit the records to the state auditor, then should they be allowed to keep getting work if issues with this contractor. Mr. Jones said JCC also built the Alario Center, the Ogden Museum and Zephyr Stadium because they have the lowest bid. Senator Murray said so they bid low and have change orders. Mr. Jones said if they bid low and are a qualified company who holds a license; unfortunately they can get the bid. He said in order to disqualify a contractor it takes going through the contractor licensing board.

Representative Ligi questioned the construction bond not being provided for a period of the project which was part of the contractor's bid, and assumes it was state money that pays for that contractors bid that includes the bond. Mr. Jones said it is state money that pays for the bond through the contractor. Representative Ligi asked if anyone has approached the contractor and requested an adjustment. Mr. Jones said he must have a bond or the Parish will shut him down because they are not protected and that is a performance bond. Representative Ligi said the bond is in place now, but was not in place during the duration of the project where it should have been. Mr. Jones said if it was our project, we would not have signed the contract without the performance bond. Mr. Hickman said there was a performance bond for JPAC contract when they allowed the parish to award the contract. Mr. Jones said he is not sure what the bond issue was then.

Christopher Cox, Chief Operating Office; and Deborah Foshee, Parish Attorney; and Mr. Chris Tankersley with the firm of Burglass & Tankersley, outside council, represented Jefferson Parish. Mr. Cox said there is significant litigation involved on this project – both on going and certainly anticipated, so based on advice of counsel very reluctant to address any of the specifics involving the project. Ms. Foshee said as Representative Ligi stated while this problem does not have our face on it, we are Jefferson Parish and has the obligation to find out what happened and take steps to resolve it. She said not for just this project but Jefferson Parish must ensure it does not happen on other projects. From the beginning it was a design error project and could never have been built as designed. She could not comment upon why and at what point the decision was made to terminate this particular design professional was made but based upon the information given by those who have attempted to construct this, that the design could not be been constructed without the significant change orders that came along. Mr. Foshee said they have engaged in litigation over the design elements themselves, and that is the part that she cannot discuss further and does expect a substantial settlement with being able to allow those proceeds to go back into the construction project which will offset at least in part some of the state funds which have gone into the project at this point.

Mr. Foushee agreed that they do not have a building permit, and it was our interpretation at the Parish that it was a state project, and we do not inspect state projects. Now is that a good idea? Well perhaps on a going forward basis it is a better idea for us to do so. She said we have proposed legislation for their local council that will authorize us to do code inspections on projects that we do under our ordinances of state projects, so on a go forward on this project and any new projects there will be code enforcement and inspections by the Parish.

Ms. Foushee addressed the manner in which they acquired this particular architect, which she noted they have design issues with. The process is to put all potential design professionals through an evaluation and present those to the council who are qualified and competent. While I recognize the comments made earlier that the selection was not competent and qualified because he was four out of five -all five selections submitted to the council were deemed by the committee at that time to be competent and qualified. She said going forward they will ensure that no name is submitted to the Parish Council for selection of the design professional unless that design professional does in fact meet the criteria and the qualifications as competent and qualified.

Ms. Foshee said the next issues were the lack of documentation for the \$5.6 million change order and the \$2.85 million that was initially approved. The difference between the \$2.85 million which Mr. Youssef had said he would approve and the total of \$5.6 million is delay damages. Delay damages are really more than an engineering issue, but also an actuarial issue. Delay damages require an expert analysis to determine if they are related to the project or not. Those approved by Mr. Youssef with respect to change order #5 had to do with the approval of the actual hard cost. At this time the Parish is retaining an expert in delay damages to review delay damage difference between the \$2.85 and the \$5.6 million. She said they believe the comments by the Legislative Auditor are valid and the recommendations are very good and will follow up on those to ensure they have an expert tell them whether they paid too much in delay damages.

Mr. Foshee said an inquiry has been made about the current pending change order #8 which includes a substantial amount of delay damages, so the same expert that is evaluate change order #5 based on the recommendation of the LLA, will also review #8. She said they will not go forward spending one more penny of state or parish dollars until sure those particular funds are legitimate and justified. They understand it is a very serious situation and take their obligations with respect to this very seriously. She said going forward this is not the last time Jefferson Parish will come to the state to ask for money to build something beautiful for the Parish. In connection with their overall review of their processes and the recommendations made by the LLA, they have made a comprehensive revision of their procurement practices. They are working with the Bureau of Governmental Research to develop model procurement practices, not just with respect to the selection of experts, and selection of design professionals, but also in their public bid process. They are also improving their construction management processes, and do not need to have originals in nine locations – a lot of area for improvement and something the council and Parish President are both committed to. Ms. Foushee continued that they have financial controls, but must enforce them. It does very little good to have model financial controls if you also have the ability to go around them. So in addition to reviewing their financial controls, they are also enforcing their financial controls to create a culture where you are encouraged and rewarded for following the existing financial controls. She said they are creating a culture in which a project like this can go forward and where problems can be brought to light, where people are not afraid to bring an issue to you that needs to be resolved.

Senator Murray asked when the building can be finished. Ms. Foshee said we are told either the spring or summer 2012, but now again the building can be finished but we will have to pay to finish it, and we are not committed to paying any money on change order #8 until we have a complete and comprehensive review.

Senator Murray asked if the agreement between the Parish and the contract did not allow access to records to be audited. He said he hopes they will include in their process to give LLA access to those records, and whatever litigation and their settlement. Ms. Foshee said she is careful to answer what she can, but in respect to an audit clause, every contract that comes out of Jefferson Parish from this point forward will include an audit clause. It does not make any sense why the contract for JPAC did not have it. She said they do not need an audit clause necessarily to recover this information because they have a right to request back up information because these are public funds being spent, and public records being submitted for payment, so it is her position that they have the absolute right to receive them. We have requested the documents just as the LLA, and have also been told no. Going forward in their litigation and evaluation, they will obtain all the documents they can and share it with the Legislative Auditor.

Senator Murray said since JCC has told the Parish and LLA that they will not give records, he will put JPAC on the next meeting's agenda and invite the contractor to the meeting tell the council why, and if they will not, the council will issue a subpoena to get their assistance.

Representative Henry asked if JCC is still currently allowed to bid for other projects in Jefferson Parish. Ms. Foshee said they are not currently prohibited from bidding on other contracts. Representative Henry asked if they are considering when someone has committed such significant

issues on one contract to allow them to continue to bid on other work in Jefferson Parish while they have outstanding lawsuits. Ms. Foshee said they are reviewing the proposal for package bills for Jefferson Parish for this upcoming session, and one issue being discussed is what steps can be taken in this situation. She said they would have to complete the litigation for there to be a finding of any sort of actions upon which they could take a restrictive measure like prohibiting someone from bidding. That does not mean the Legislature cannot do so, so we will investigate that.

Representative Henry said JPAC is in his district, and when more money is requested, he will ask who is doing the work and if currently being sued – because legitimate questions that should be asked to get background on the contractor.

Representative Ligi asked if any request given to the contractor to get a credit for that period when the builders risk insurance was not in effect. Ms. Foshee said she is not aware of any effort to regain a credit, but could investigate that. The contractor did work for a period without builders risk insurance, and stated he did so based upon an agreement with the parish attorney's office, but Ms. Foshee said they were unaware of any such agreement, nor were they able to find any documentation of such an agreement. She said the extent that a credit is owed will be looked into. Senator Murray said this will be put on the agenda for our next meeting and would invite the contractor.

EXTENSION REQUESTS

Ms. Joy Irwin, Director for Advisory Services, with the Louisiana Legislative Auditor (LLA), stated the need for council approval of extension requests for less than 90 days which included D'Arbonne Woods Charter School, Housing Authority of Ferriday, Lafayette Neighborhoods' Economic Development Corporation Inc., and Lafayette Public Trust Financing Authority.

Ms. Irwin referred to the greater than 90 day list of entities who were invited to explain the reason for their extension request. She explained that four of those entities will be represented by Mr. Mike Elliott, CPA, auditor: Beauregard Parish Library, Cameron Parish Waterworks District #2, Matthew 25:40, Vernon Parish Assessor.

Senator Murray explained that the council would like some detail about the cause for the delay in the audit, and how it will be remedied and when it can be expected. He said that Senator John Smith had called him to let him know that Mr. Elliott is a good CPA and doing the best that he can to get the audits done in the circumstances.

Mr. Elliott from Leesville explained that he had open heart surgery about ten weeks ago and out of work for approximately six weeks ago and expects no problem to have all audits complete by December 31, 2011. Representative Ligi moved to approve the extension request for the four entities audited by Mr. Elliott, and with no objections the motion was approved.

Senator Broome moved to approve the four entities on the less than 90 days extension request list and with no objections, the motion was approved.

Reverend Patricia Watson, Executive Director for the Family Center of Hope, said they are requesting an extension for the audit until December 15, 2011. She explained that they had delay in receiving their general ledgers and accounting records from their local accounting agency. They also were recipient of the federal flow through funds of \$2.2 million provided to the City of New Orleans and the State of Louisiana requiring a A-133 Single Audit, which entailed additional procedures to be performed. Also they had a major delay with the audit firm of Jonald J. Walker & Company, because the person performing the audit left the firm which caused approximately a 60 day delay. During the course of the audit, there were instances of noncompliance with grant terms and other documentation that were noted and required additional requests. There were unclear invoices from subcontractors, and unsigned contract agreements which were necessary for the accounting firm to review. Finally, based on the procedures performed to date, the firm has requested the additional time to complete the audit by December 15. Senator Broome moved to approve the extension request for the Family Center of Hope, and the motion was approved.

Ms. Irwin stated that the audits were submitted by the Greenpath International, Inc. and the Housing Authority of Leesville arrived late the previous day, so do not need to take up those requests.

Ms. Maria Auzenne, Special Counsel for the New Orleans Regional Business Park, stated she was an employee for them, but the board asked her to come provide information for their extension request. She said the auditor Ms. Brendel Deemer has not submitted the report is because she is waiting to receive minutes from 2011. The board is meeting the next day and the approval of the minutes is on the agenda, and expecting that approval then Ms. Deemer can complete and submit the audit. Ms. Auzenne said she will provide the draft of the audit report to Ms. Irwin. Senator Broome moved to grant the extension request to November 30, and the motion was approved.

Ms. Dimitre Blutchter, Executive Director for N'R Peace, Inc., said that they requested an extension due to the loss of a bookkeeper and funding, and currently in the process of raising funds to

pay for the audit. She said they are a small non-profit and do not have the funds to pay for the audit. Senator Murray asked about the funds they receive. Ms. Blutchter said the \$1,652,581 was the funds received in 2008-2009, and in 2009-2010 they lost close to \$500,000 in funding. Senator Murray asked how they do not have any funds to pay for the audit. Ms. Blutchter said \$6,000 would pay for the audit for the 2009 and with budget cuts only had \$4,000 allowed in the budget to pay for the audit. She said their CPA at the close of the 2009 audit suggested that they acquire a CPA to do their bookkeeping rather than have a bookkeeper and an outside CPA. They followed her recommendations and hired a new CPA as of September 2011 and she is in the process of reviewing the books and sent an email stating that the books are in order and was awaiting additional information from the previous CPA to close out the books. Senator Murray stated that N'R Peace had been late in four of the past five years submitting audits. Ms. Blutchter said they had crossing funding years which left them awaiting reimbursements for previous expenses and put the agency at a deficit. The new CPA hired to review the books will get the books to their auditor by December 31, and will need an additional two months to complete the audit. Ms. Irwin said the fee for the 2009 audit had not been paid, and the auditor will have an issue completing the audit for the current year.

Senator Murray said they would not approve this extension request, but take it up the following month to see what progress had been done. He asked the LLA to assist the agency to get the work done by the auditor. Senator Murray said that N'R Peace will continue to receive funding because they are working with the LLA. Ms. Blutchter said they are expecting reimbursement from the Louisiana Public Assistance and FEMA for invoices submitted to them, and expecting that soon to pay their auditor. Ms. Irwin confirmed with Senator Murray that they are conditionally approved based on N'R Peace appearing at the next meeting.

Mr. Ernest Legier, Executive Director for the Orleans Parish Hospital Service District A, requested an extension until December 15, 2011. He explained that the District put out an RFP to employ a firm to do the work and received no responses on two occasions which created a delay. He said they have now engaged the services of Bruno & Tervalon, who has substantially completed the task and will have it completed by December 15. Senator Broome moved to grant their extension, and the motion was approved.

Ms. Irwin mentioned that the 2009 audit for the Northeast Delta Resource Conservation and Development Area, Inc. (NDRC&DA) was received late because of the issues of misappropriation of funds, and some records were taken by law enforcement agencies. Due to the results of that investigation, the auditor had to disclaim and was unable to render an opinion on the financial statements. Ms. Irwin said her staff has been working with this agency to get to a posture whereby the auditor can opine on the financial statements for next year, and the agency submitted a plan of action. Ms. Becky Keahey, Executive Director for NDRC&DA, stated that the 2010 audit is expected to be completed by December 31, 2011. She said their auditor, Doyle Hassell, expects to complete the audit but will have a disclaimer because the former project coordinator was still employed during that time. Mr. Mike Adcock with NDR&DA said that the reason for the delays in that the ex-director who is under federal investigation was not providing the information that the auditors needed. Mr. Adcock said the auditors were uncomfortable completing the audit until the investigation was completed. The board has since appointed Ms. Keahey as the new Executive Director. Senator Broome moved to grant the extension for NDRC&DA until December 31, 2011.

APPROVAL OF MINUTES

Representative Ligi moved to approve the minutes for the September 20, 2011, meeting and with no objections the motion was approved.

DEPARTMENT OF HEALTH & HOSPITALS

- PROCESSES TO PREVENT, DETECT, AND RECOVER IMPROPER MEDICAID PAYMENTS

Mr. Purpera said that DHH is responsible for overseeing program integrity activities to prevent, detect and recover improper Medicaid payments. Based on previous audit findings from his office and also based upon the request of the DHH, his staff performed this audit. Many suggestions were made for how to improve this program, and received a lot of cooperation from the department.

Ms. Karen LeBlanc, Performance Audit Manager, reviewed highlights from the audit issued on September 14, 2011. They primarily focused on Medicaid home and community based services for the elderly and those with disabilities because those programs have seen a rise in improper payments over the last five years. Also the population served by these providers are particularly vulnerable to abuse and fraud. The other reason for this review is because Louisiana ranked fairly low when it comes to the identification of improper payments. She said that DHH agreed with all recommendations made in the audit.

Mr. Jerry Phillips, DHH Undersecretary, stated that the Secretary requested the performance auditors to come in yearly and review individual areas as needed. He said the auditors did a thorough and professional job of reviewing the personal care services. They have done three items to address the personal care services growth and better management over the years: better job of identifying

improper payments; identifying charges up front before payments are made; provide more efficient services. He reviewed some of the enhancements made in the program to provide better services, controls and lower expenses. Mr. Phillips explained the consolidation of all licensing began June 20, 2011.

Senator Murray asked if this will benefit the coordinated care network. Mr. Phillips said they expect the networks to do a better job than the state agencies have done to control the upfront expenditures.

LOUISIANA WORKFORCE COMMISSION – RELIABILITY AND RELEVANCE OF PERFORMANCE INDICATORS

Mr. Purpera said they look at the data for the Louisiana Workforce Commission (LWC) to determine if it is relevant and reliable. Ms. LeBlanc said this report is done periodically and required by law to review performance information that state agencies report in the Executive Budget, and our role is to help provide the law makers get relevant and accurate information that will enable the legislators to make good decisions.

Senator Murray asked if the LLA would be doing a performance audit on the Department of Education soon. He said the DOE could not explain where the numbers came from on their reports during last session.

Ms. LeBlanc reviewed highlights from the report issued on September 14, 2011, that addressed two programs within the Commission: Office of Workforce Development and Office of Unemployment Insurance Administration. The report provided detailed information on the control issues, reasons for unreliability, mistakes on the calculations, and lack of source documentation for reports. Mr. Purpera explained that for point in time information the data base is ever changing, and the agency needs to keep a proper record of that information for later review.

Mr. Curt Eysink, Executive Director for LWC, said the issue is that the data is captured at a point in time, and agrees with recommendation to keep the data on file as support for the reports. He appreciates the audit and very important that the data is accurate for comparing with other states and to ensure aiming at the right target.

Senator Murray asked about the unemployment compensation issues and the calls to his office are finally decreased. Mr. Eysink said his office's performance has improved greatly but must address the old mainframe system that must be replaced, and hope to move forward within the year on possible licensing proposals.

HAZARD MITIGATION GRANT PROGRAM

Mr. Purpera stated that he has staff at GOHSEP for two primary purposes: first to look at the assistance program; and secondly for the HMGP program. Mr. John Morehead, Director for Recovery Assistance, discussed the highlights of the GOHSEP Hazard Mitigation Programs report issued October 19, 2011. He said that the program established by GOHSEP is working and rectifying the issues and then making the payments.

Senator Murray asked what kinds of reasons for delays. Mr. Morehead said often it is lack of documentation in the file to support the cost, or costs that appear to not be reasonable. The ECG process has been perfected and should resolve a vast majority of the issues and their next report will address that.

Senator Murray asked if the documents are supposed to be in hand before the payment goes out. Mr. Morehead said these are the final payments, after the initial 80% was paid out. He said this is mostly regarding levee work and other areas of mitigation work than elevation. Mr. Morehead said the 40 payments made before the review was done totaling \$3.8 million, and of that \$3.1 million was questioned and the documentation must be gathered to mitigate for this money already paid out.

Senator Murray asked for this subgrantee, is it a homeowner or subcontractor, who received the dollars. Mr. Morehead replied this is all through OCD and to homeowners that received these dollars. Mr. Morehead pointed out on page 7 of the report, the individual homeowner files are the OCD files that GOHSEP asked his staff to review before a request for reimbursement is made. In this process they reviewed 1110 homeowner files totaling \$39 million, and noted about \$4.3 million of questioned costs. Those costs will be resolved, and this money is still in the bank and will be resolved before paid.

Mr. Morehead said the table showing the resolved question amounts by year, and notice that on calendar year in 2008 have been resolved. He said for calendar year 2010 in this six month period reported on \$2.3 million has been resolved, and for calendar year 2010 a little more than \$1.28 million has been resolved, so they are working through those issues.

Mr. Mark Riley, Chief of Staff for GOHSEP, said this process was put in place at the beginning of the recovery process because they wanted the LLA imbedded with them to provide a check and balance on what is done. The end result of all this which will take years is FEMA coming in and reviewing all of these funds and want to do it in such a way as they do not obligate any funds because all spent on eligible work. This applies for both primary programs that we run – the Public Assistance Program and the Hazard Mitigation Program. We use it as a tool to help identify the specific documents and help develop the process of what documents need to be looked at to demonstrate eligibility. It is kind of an audit perfection process to perfecting the individual files so that when FEMA comes in to look at it. We also use it as a training tool and management tool with the Disaster Recovery Specialist which is that individual in our agency that is the particular grants manager of a project to education them and be sure they have the right training and identify the things that are being done right and wrong, and helps us adjust our process. Mr. Riley said the Elevation Cost Guidance (ECG) was brought up by LLA pointing out the anomalies in that system to our attention, so we got RS Means who is the gold standard of cost estimation to come in and review the process and certify it. With that then the LLA can take their work to determine that costs are reasonable. A lot of the issues in this particular review were the cost reasonableness issues, and we are going to be able to resolve those issues for the application of the RS Mean standard.

Senator Murray asked about the discussion of the contractor using the RS Means numbers and there was some question of whether it was accurate.

Mr. Riley said what he understood was not that the RS Means was accurate, but that the application of the data was not accurate. RS Means is the standard that FEMA uses and is cost estimation. FEMA has validated the cost guidance, which resolves a lot of issues and the documentation requirements may not be so much anymore with the validation of this standard. It has improved the process and this is an ongoing, evolving thing. As LLA identifies issues, they raise a reasonable request for us to review the process of particular costs, that may be the management decides after looking at it may tell us it is OK. We have gotten away from looking at line item analysis of a particular house elevation project and gotten to the standard where we are looking at the total cost of the project, and within the guidance of RS Means, that is as far as we go and do not have to go into the line item review to determine they used gold door knobs, etc. If it is a reasonable cost and something we can sell FEMA on, we let it go at that point in time, so it will greatly reduce the timing for the reimbursement and resolve some of these back problems that you have heard about.

Senator Murray said the main issue that came up at the meeting last week, and thought we had gotten past this, but the homeowners have been told that they will receive X amount to elevate their home, and get 80% of it, but on the back end they are told this should not be included, so it means less money so the homeowner is left on the hook to pay the contractor more money out of pocket because that is what is in the contract. When are do we get past that, so that we say you are going to \$100,000, then you will really get that amount.

Mr. Riley said there will always be some of those issues, but the main point is that most of those issues – if a homeowner demonstrates that they must elevate the house, and meets all the standards of the elevation, and within the estimated cost guidance which is a calculation of square footage for the size of the house and height of elevation, then that will be the level of review that we will get to. But we will occasionally, especially if the cost exceeds the ECG, there will be a review and if there is a cost that is ineligible then it will not be approved.

Senator Murray said they learned at the meeting last week that the OCD side were having two separate contractor meetings, one for the largest 10-12 and another for everybody else, have you done that. Mr. Riley said his office does not meet with contractors.

Senator Murray asked Mr. Forbes if that practice had ended and if he received a letter from Senator Morrell asking if the bonding requirements could be suspended for 60 or 90 days, and asking if any action has been taken on that yet.

Mr. Pat Forbes, Executive Director for OCD-DRU, said they plan to suspend the bonding requirements and have developed a process to allow the smaller contractors to work in the program in the event that they cannot get bonding. Senator Murray said he was told that only one company, Orleans Shoring, could meet the bonding requirements in place.

Mr. Forbes said there is a total of six companies that provided bonds for a total of 75 projects. He said four companies have provided 75 bonding letters of intent: Orleans Shoring, Rubion, Fusion, and CXA Services. Senator Murray asked if there were 700 on the list that had applied to OCD to do work. Mr. Forbes said there are 900 that have ever registered, but the active list is closer to 350. Mr. Forbes said two other companies have submitted letters of intent from the bonding company but did not specify the homeowners so they are in the process of redoing those so we will have six then.

Senator Murray asked for Mr. Forbes to send him that list. Mr. Forbes said he is not sure of how many have tried, but since the bonding requirement was instituted only those six have submitted

packages. Senator Murray asked if he had decided to not implement Senator Morrell's request, and for what and when their plan would be put in place to allow other contractors to do work.

Mr. Forbes said they have it pretty much fleshed out, but want to talk to smaller contractors to make sure that pitfalls are removed. He spoke with Mr. Schexnayder and his staff is reaching out to other small contractors. Senator Murray encouraged Mr. Forbes to speak with Mr. David DaJon who represents several groups of contractors. Mr. Forbes said he asked his staff to call Mr. DaJon, but not sure if they spoke with him yet, but intent to.

Senator Murray asked if they have also stopped cohosting seminars on behalf of private companies. Mr. Forbes said absolutely, and that happened in the summer. Senator Murray encouraged him to speak with Mr. DaJon about his plan, and would like to take a look at it as well. Mr. Forbes said he would be glad to discuss what they have so far, but do not want to roll it out half done and want to reduce risk for the program and homeowners that does not require a bond. He said the bonding requirement there to protect homeowners and vital, but discovered from smaller contractors that it was causing problem. He said they will have a modified advance payment option, because currently it provides 80% to the contractor and homeowner on a two party check. When the work is done they request the last 20%. They have had contractors that took the APO and skipped out, and some contractors have even gone to jail for that, so decided we had to step in.

Mr. Forbes said the new program for contractors who have six projects or fewer in operation at a time, and right now that would be about 2/3 of the contractors who have active contracts in place for a year. Those would get a 25% advance instead of 80% advance. As soon as we get all the same documentation required for the 80% APO, they will be able to start the work and we will have three different milestones following that point that are elevation, completion and then submittal of all the necessary paperwork. Mr. Forbes further detailed their process.

Senator Murray reiterated the importance of speaking with the contractors because he was not sure if 25% is sufficient for them to start the work, and order the materials and pay their workers, but he could not speak for the contractors. Mr. Forbes said they have done a lot of investigation into the successful local programs and mimic the aspects of those in terms of the percentages. He will discuss further with smaller contractors to be sure the program is workable, but in the end the priority is to protect homeowners, and will try to accommodate the small contractors too. Senator Murray said he appreciate them protecting the homeowners, but does not want to put people out of work that cannot do the jobs.

Mr. David DaJon, president of two local community organizations – Contractors Advocate and the Community of Black Contractors, and board member of the Greater New Orleans Coalition of Black Contractors. The director is Mr. Charles Riley and the president is Bill Richardson. He provided the history and purpose of the organizations because he saw so many companies from the north getting the contracts. He began teaching classes five years ago to meet the enormous need in the black community to learn and understand the process. He has helped 100's of black, white and Hispanic get their contractor's license and most still have difficulty getting work. Mr. DeJon said his slogan is "standing together for inclusion", because they must work together.

Mr. DaJon said the Road Home Program has had many difficulties and the homeowners have been discouraged and frustrated. The process has improved over time with many changes taking place. The contractors doing shoddy work have been brought to the Licensing Board, and they finally got rid of all unlicensed contractors doing the elevation work. As a result of the HMGP many have been able to strengthen their businesses and helped the community. The problem now is the bonding requirement and the warranty, which has taken out about 95% of the contractors who are in the home elevation business and is erasing all of the good previously done by the HMGP. These new requirements will cause the exclusion of nearly all local black home elevation contractors, and the potential to exclude all women contractors.

Senator Murray said his impression is that no bonding requirement would be on the small contractors. Mr. DaJon said the concern of the small contractors is that they are unable to meet the bonding requirements regardless, and believes it was not thought out clearly before implementation. He discussed some other approaches with insurance professionals to make it work for all contractors as a whole. He was concerned about previous discussions of the bonding requirement before this council.

Senator Murray said that when Senator Quinn attended a previous meeting they did not discuss the bonding requirements, but the complaints by the contractors and homeowners that they were not receiving the final 20% of the contracted amount. Senator Murray explained the role of the LAAC is regarding audit purposes, and that they do not have the authority to make OCD change their plan. He suggested that Mr. Forbes and Mr. DaJon discuss this problem further. He apologized that the committee could not resolve the issue, but along with other legislators will do what they can to make the program better and to allow any qualified to participate in the program. He strongly advised OCD to speak with many contractors to be sure that the new plan will work for everyone

Mr. DaJon said in a few months many contractors will be out of business if OCD does not make changes to the plan, and explained why the discussed plan of providing only 25% of the total cost to start

the job is not sufficient. Senator Murray said he requested a copy of OCD's plan so that he can talk to some of his constituents who are in that business to get their opinion because he hoped that the plan will work for everyone involved.

AUDITORS ACCESS TO RECORDS

Mr. Purpera wanted to inform the council that on the September 30, 2011, State Supreme Court denied writs on the lawsuit between the Louisiana Department of Insurance and the Legislative Auditor. The audit law 24:513 states that the auditor should receive all records, tapes, books – regardless of the form of recording, whether confidential or otherwise. The way that the case leads us, according to the Court, "otherwise" does not include attorney client or deliberative process. The problem is that that auditor needs unfettered access to the records and there are several reasons. In a financial audit, with limited access to records could lead to a scope limitation, because the auditor cannot audit what he cannot see. The extreme version of that would be a qualification on the state's financial statements as a result of that on one of the entities financial statements.

Mr. Purpera said just as important is the need for unfettered access for performing a compliance or performance audit. He said currently no agency is refusing to give records under these provisions, but it could happen in the future.

Senator Murray suggested the auditor drafting a bill to file during the next session to try to correct that issue. He said the court made a big distinction of certain words in the statutes. Ms. Jenifer Schaye, General Counsel, stated that Mr. Speer and others in the staff of the House and Senate have been in communication with them to draft some legislation for consideration.

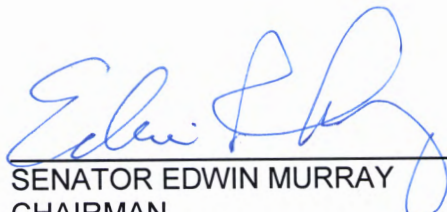
DISCUSSION OF LITIGATION

Mr. Purpera informed the council of a lawsuit against the Legislative Auditor's office, the former auditor, and himself personally. Ms. Schaye said the suit was also against the Legislative Audit Advisory Council by Mr. Rombach who was previously the Legislative Fiscal Officer. In 2004, the Legislature asked Mr. Theriot to do a forensic audit of some expenditures that Mr. Rombach's office had. The report was issued and then the Legislature convened a special committee to look at the audit report and commissioned certain members of the staff to determine if the report was accurate. Ms. Schaye explained that Mr. Rombach's suit states that the President of the Senate, and the Speaker of the House and members of the Legislative Audit Advisory Council and the Legislative Auditor were in a conspiracy and defamed him. She further stated that Mr. Rombach's lawsuit contends that the ethics board filing charges against him and not being heard until 2010 interrupted prescription. The Legislature has retained the firm of Usry and Weeks, and will file this week certain exceptions including most importantly on prescription. Ms. Schaye said basically it is a defamation and conspiracy lawsuit and the best defense is truth.

ADJOURNMENT

Senator Broome made the motion to adjourn, and with no objections, Senator Murray adjourned the meeting at 4:17 p.m.

APPROVED BY:



SENATOR EDWIN MURRAY
CHAIRMAN



DARYL G. PURPERA
SECRETARY

12/16/11

DATE