

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting February 21, 2013

A meeting of the Legislative Audit Advisory Council (Council) was held on Thursday, February 21, 2013, in House Committee Room 3 of the State Capitol.

CALL TO ORDER AND ROLL CALL

Representative Greene called the meeting to order at 2:10 p.m. A quorum was present with the following members in attendance:

Members Present

Representative Hunter V. Greene, Chairman
Representative Cameron Henry
Representative Clay Schexnayder
Senator Robert Adley
Senator Edwin R. Murray, Vice Chairman
Senator Ben W. Nevers
Senator John R. Smith
Senator Mike Walsworth

Members Absent

Representative Girod Jackson III
Representative Ledricka J. Thierry

APPROVAL OF MINUTES

Senator Murray moved to approve the minutes for the September 26, 2012, meeting and with no objections, the motion was approved.

EXTENSION REQUESTS

Ms. Joy Irwin, Director of Local Government Services for the Louisiana Legislative Auditor (LLA), presented the emergency extension requests that were recommended for approval. Representative Greene moved to approve the extension requests from nine entities, and with no objections, the motion was approved.

Ms. Irwin presented a list of agencies that had 90 days or less non-emergency extension requests to allow them more time to submit their audits. She said the auditors performing government audits have been notified that the Legislative Auditor is not readily granting extensions past 90 days. Mr. Purpera explained the law added in 2008 that if an entity is not in compliance with the audit law, it will not receive further funding from the state. He reviewed the extension policy approved by the Council, and explained the necessity for audits to be submitted timely for decision makers to have the information. Representative Greene moved to approve the non-emergency extension requests and with no objections, the motion was approved.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS - CORRECTIONS SERVICES: DIVISION OF ADULT PROBATION AND PAROLE: OFFENDER SUPERVISION

Ms. Nicole Edmonson, Director of Performance Audit Services, presented the main points and findings from the performance audit issued on December 5, 2012: Department of Public Safety and Corrections (DPS&C)-Corrections Services (CS): Division of Adult Probation and Parole (P&P): Offender Supervision. The Council discussed the workload and requirements for visitations as per the P&P's policy. Ms. Edmonson stated the need for better detailed reporting by P&P officers, having a system for better recording keeping, and the need for increased accountability at all levels within the Division.

Senator Murray asked how P&P's caseload compared to the national averages. Ms. Edmonson explained that Louisiana has mostly felonies compared to other states and the caseload is higher than the national average. Senator Adley questioned if it is humanly possible to do all that the parole officers are being asked to do with their limited number of officers and if there is any way to know which offenders are not being visited. Ms. Edmonson pointed out Exhibit #4 (Average Officer Caseload by Number of Required Visits) in the report and the issue of other tasks taking up the officers' time to keep them from what needs to be done.

Senator Nevers asked if P&P's budget had been compared to the same offices in other states. Ms. Edmonson answered that was not in the scope of the audit, but as per the P&P's audit response they have seen an increase in offenders and a decrease in officers. The P&P office has been working since 2011 to have a new computer system that would provide more information for the officers, but that fully resolving

the issues identified during the audit would also require management to increase accountability at all levels within the Division.

Ms. Eugenie Powers, Deputy Secretary for the Department of Corrections, said based on the LLA audits Secretary James LeBlanc recognized the need to integrate the DPS&C-CS and P&P data systems and started the process in 2011. They hope to test the system later this summer and also be able to share with other partners including the sheriff's department so all can be more efficient.

Mr. Gerald Starks, Director of P&P, pointed out their favorable benchmarks of recidivism of 13.7% over a three year period. He said their risk assessment policy is to allow officers 90 days to complete the risk assessment from the time the offenders are available for supervision. They do not track all the reasons why the offender may not be available such as the offenders are still in jail, or moved out of state in a transfer, and some people did not come in after they are sentenced. He does not agree with the LLA's methodology that showed a highly inflated number because it excluded the exceptions.

Representative Henry asked if tracking the offenders would take care of the problems. Mr. Starks said it is a lot of paperwork and sacrificing effectiveness of the officers having to write down everything. Representative Greene commented that the goal is to supervise offenders and since P&P agents do not always supervise the same offenders, the lack of sufficient documentation is one of the key problems.

Mr. Starks disagreed with the methodology, stating that the offender's record is cumulative and therefore officers do not need to write everything down every time there is a visit. Ms. Powers said the report did not capture all of the exceptions but helped them to look at their processes to see if they could be quicker and better. Senator Adley asked if it is a policy decision or required by law for the 90 day assessment. Mr. Starks replied that it is not the law, but their policy and starts when the offender is available.

Ms. Phyllis Sheridan, Deputy Director of P&P, explained that they cannot do a risk assessment if the offender is not on the street for at least 60 days. Ms. Edmonson said the report was based on using the Division of Probation & Parole's own criteria to measure their performance which showed that staff at all levels within the Division are not conducting their supervision activities as required by policy.

Senator Adley was concerned that the DPS&C could change its policies to make it anyway they wanted to and as such, their policies lose value. Mr. Starks said they have good policy but that it is impossible to keep up with all the data and they have stacks of paperwork to keep up with. The agents have to give up some level of documentation because they have 175 -200 cases per agent and need to be on the street visiting offenders. His agents make over 48,000 face-to-face contacts with offenders. If the offenders stay in the state within 90 days, then an assessment must be done.

Senator Nevers asked if P&P knows when offenders are transferred and if Mississippi sends a report on their assessment. Mr. Starks said it is a formal process to transfer cases to other states but does not control how other states do their assessments, but can control the outcome if the offender has to go before court or on parole. They have electronic case management but still a lot is done manually.

Senator Nevers asked where does P&P check the box if an offender is moved to Mississippi. Mr. Starks replied in their file at headquarters is where all updates are made and tracked. They have approximately 30,000 new cases yearly and over 100,000 assessments per year. Senator Nevers calculated with 71,000 offenders and 500 officers that they would have to see 3 offenders per week. Mr. Starks answered that 48,000 face-to-face contacts are made per month. He feels the report is too narrow in focus because many contacts are based on needs because of offender's substance abuse and addictions. Concern for public safety requires that some offenders are visited more often than others.

Senator Nevers said the audit reveals many things left undone and asked if Secretary LeBlanc had submitted budget requests to the legislators. Mr. Starks replied that he would have to ask the Secretary.

Senator Walsworth commended the P&P officers because he knows many are overworked and underpaid. He pointed out in the audit that P&P agreed with the auditors' findings but then was giving excuses today to the Council. He knows that P&P deals with the worst of the worst and knows who needs to be checked up on for the protection of the citizens. But in the 21st century, why not expedite their documentation by using phones and not manual reports. Mr. Starks agreed they need to do better at tracking information but most important to see the offenders. They expect the new offender system to be online in 2014.

Senator Walsworth noted that the Governor would like to see more nonviolent criminals released early, and if that happens what will P&P do in 2013. Mr. Starks said they are streamlining policies and having an expert come in to get quick response and help their agents. His division was audited in August and passed with a 99% approval rate by the American Correctional Association. He said all the issues in the report will be addressed with their new system. Currently each supervisor has seven to eight under them with about 14,000 reports to review. He feels they sufficiently provide narratives because their officers understand the narratives and comments provided. Ms. Edmonson said when her auditors rode with the P&P officers and only wrote "no problem to report" that it is not adequate details to show how the offenders are doing. Mr. Starks feels the responses are sufficient even if cryptic because there is no need for details.

Senator Murray asked how P&P compares to other states. Mr. Starks said other states close prisons and put their money into P&P to track the offenders.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Mr. Thomas Cole, Director of Financial Audit Services, presented the state's 2012 financial report (CAFR) which was audited by LLA and released by December 31, 2012. The Office of Statewide Reporting and Accounting Policy (OSRAP) compile and print the report. Mr. Cole pointed out the unfunded liabilities which is the deficit and growing larger since 2009. He explained the changes in reporting standards.

Mr. Cole commended OSRAP and the Director, Afranie Adomako, for being awarded a certificate for reports by the Government Financial Officers Association. The CAFR was given a clean opinion from the auditor, but there is a concern that the reported actuarial accrued liability for the Louisiana State Employee's Retirement System and the Teachers' Retirement System of Louisiana could be understated.

Senator Adley asked what is owed in the future for retirement benefits and what is made liable today because every debate is that the state owes it right now. Mr. Cole said that long term debt is contractual and that retirement could be considered contractual too. Mr. Daryl Purpera, Legislative Auditor, explained that the unfunded accrued liability (UAL) is not the same as a current liability. Actuaries take assumptions - what normal number of years for people to work, the leave system, etc. - and calculate what the liability today is to become. On June 30, 2012, the UAL for all four state systems were \$19.5 billion for all employees until death.

Mr. Cole said the concern is that post-employment benefits (OPEB) for insurance is over \$7 billion and the state is not funding the trust fund set up in 2008 to invest funds.

Senator Murray asked who picks up the legacy costs and retirement and insurance for the employees of the public hospitals that are being shut down and transferred to the private companies. He was told that the cost will not be transferred and was not part of the negotiations. He asked for Mr. Cole and Mr. Purpera to try to calculate the cost for the employees of the ten public hospitals being transferred to private hospitals.

Representative Henry asked about the loss of cash flow into the state's retirement systems when those employees are transferred to private employment. Mr. Cole said that would create under funding. Senator Adley asked if the portion of insurance premiums paid by state employees were calculated into the \$7 billion problem. Mr. Cole replied that the OPEB liability is not being funded at all and has no asset accumulation.

Mr. Purpera said the \$7 billion is the current value at future payouts based on assumptions by actuaries. But the state never puts assets into the account, and pays \$220 million toward benefits in a pay as you go fashion. Senator Adley asked if the state needs to collect over the cost to put into the account for future expenses. Mr. Purpera agreed more needs to be collected.

Mr. Cole explained in fiscal year 2014 the GASB standards that require certain liabilities currently only referenced in the notes to be reported in the CAFR. The unfunded liability would be \$28 billion when the standards change. Senator Adley asked what the state's credit would be when that happens. Mr. Cole said the GASB standard change effects all states and smart people will know that it will change liabilities.

Mr. Cole noted that the net state tax supported debts and Note 8.A. gives the state's compliance with debt limits. The State Bond Commission is watching closely the 6% limit as pushing closer to it. The State's divisions are looking at selling old account receivables before they become uncollectable.

DEPARTMENT OF HEALTH & HOSPITALS - BATON ROUGE MAIN OFFICE OPERATIONS

Wes Gooch, Financial Audit Manager, provided an overview of the DHH management letter issued January 16, 2013. Their procedures disclosed most of the DHH's problems regarded Medicaid payments. One Medicaid provider is currently being investigated further by the LLA. Mr. Gooch said the only finding not Medicaid related was the lack of internal audit functions at DHH. DHH agreed with the findings and responded in the audit.

Senator Walsworth asked for a scope of the errors and if it were a big problem. Mr. Gooch said there are 50 million claims per year, and 30,000 Medicaid providers with 1.3 million recipients, so there is no way to audit all the providers.

Mr. Jerry Phillips, DHH Undersecretary, said the Medicaid problem is small in relation to the total amount. He commented that Secretary Greenstein is pursuing how to develop program integrity to avoid the backend problems, and has already implemented several things to get problems under control. They have turned over to the Attorney General some cases because more than sloppy paperwork. He has been interviewing for an internal auditor to bring integrity to the providers.

Ms. Kathy Kliebert, DHH Deputy Secretary, said the auditors helped to focus on the problems and train providers on waivers. DHH has undergone more intense home service and selected monitors to have better focus on the high risk providers.

Senator Walsworth said the cuts given to DHH have been incredible the past three years and can understanding having the audit position unfilled. He appreciates what DHH does and how they help a lot of people and believe they will figure out how to get medical transportation off the list of problems.

Representative Greene noted the errors on 74 out of 75 claims show on page 4 of the report. Ms. Kliebert said that was for one recipient and their policy prohibits payments to a caregiver living in the same home. Their new billing system will kick out payments if the caregiver has the same address as the patient.

Representative Greene said these were only small samples looked at and fraud prevention is a big issue. He asked about the contracted internal auditor that exercised to not renew their contract. Mr. Phillips said they plan to hire an internal auditor which will be under the legal section, and will be under contract in place of a position. Representative Greene said he was not aware that they were contracting a firm for the internal auditing.

Mr. Phillips explained that the internal audit previously consisted of six people who did inspections, but now they want one person over the function. In 2009, they laid off five people and the sixth retired, so the positions are gone and not in their budget - all part of consolidations to save money. Now in their legal section they will have one person over the contract for internal auditing. Representative Greene asked Mr. Phillips to send all the Council members the cost for the six internal auditors they were previously employed. He asked when they would hire the new DHH Inspector General (IG). Mr. Phillips said the new IG will have to be hired first to have input on the contracts for internal auditors, and will be under DHH's legal counsel.

Senator Adley asked why DHH was unable to find the fraud when the auditor did. Ms. Kliebert said they do find cases of fraud by doing monitoring and spot checks and any issues found are turned over to program integrity to determine if fraud. Mr. Phillips said they find many cases of potential fraud and keep the Division of Administration law department very busy.

Senator Nevers questioned DHH's elimination of all internal auditors. Mr. Phillips said they had too many and will keep one internal auditor and contract out more auditors. He appreciated the legislative auditors and agree with their report. He believes for the amount of work done by the previous six employees they could use one. DHH did the same in engineering to save money and contracted out with the Fire Marshall. Senator Nevers asked if the LLA said it was good to get rid of their auditors and why LLA was not contacted to do some functions of the internal auditor when without one.

Mr. Phillips agreed with the auditors that they do need an internal audit function and the department totally believes that one person can overview the contract. Senator Nevers said it bothered him that there is no auditor in the largest department in the state. Mr. Phillips said they will hire an IG who will review all processes and have input on the contract who is hired. Senator Nevers asked if they had the costs for both ways to compare. Mr. Phillips said that audit findings are not usually reviewed by an internal auditor. Senator Nevers questioned how many cases have been sent to the Attorney General for fraud and wonders how much fraud is going on. He was thankful for the LLA bringing the issues to light and appreciate DHH trying to correct them.

Representative Greene asked Mr. Phillips for the cost for the six auditors they previously had, and the cost of the one contracted in December because no one was in the position for 10 months. He wanted also the pay scale for the IG position and how much has been budgeted for contracting with the outside firm.

Senator Murray asked when to expect more information on the contracts with private hospitals. Mr. Phillips said the Memorandum of Understanding (MOU) would be signed soon, and then the Cooperative Endeavor Agreements (CEAs) would be next. He did not have a date yet, but expected in the next 30 days to have information for the public.

Senator Smith questioned what harm established the policy that family members living in the same home cannot be caregivers. Ms. Kliebert said the concern is that if the caregiver lived in the same home, they would focus on other tasks rather than taking care of the patient. Senator Smith said that family members would probably give better care.

MEMORANDUM OF UNDERSTANDING WITH BP EXPLORATION & PRODUCTION, INC.

Mr. Purpera provided the impetus for this report came when the Council expressed concern in 2010 about the structure of the transaction between the Lieutenant Governor's office and the Department of Wildlife and Fisheries (LDWF) with BP. BP gave \$18 million to LDWF for seafood testing which was deposited and appropriated. Then \$60 million was divided equally between the Community Foundation of Acadiana (CFA) and the Louisiana Wildlife and Fisheries Foundation (LWFF) for their distribution. The money was not put in the state's treasury and not appropriated by the legislature. This report is not questioning if the programs and nonprofits were bad, but how the MOU was handled and not appropriated

by the state even though it was given by BP to mitigate the loss to the state. CFA's role was to be the fiscal agent of the Lieutenant Governor. Senator Adley said this clearly circumvents the constitution because the state cannot expend funds without appropriations. He said he would like to know who is on the CFA board.

Beth Davis, Assistant Director of Financial Audit Services, said that CFA's agreement was to receive \$25,000 plus interest earned on the \$30 million as payment for their services for the Lieutenant Governor's office. Ms. Davis said of the \$4 million remaining it can be sent to the parishes or used for additional tourism expenses, but at the discretion of the Lieutenant Governor.

Mr. Purpera explained that this structured agreement with BP was given to mitigate the loss to the State of Louisiana because of the oil spill disaster. The Attorney General opined that on current law and based on the MOU the funds were private and given as donations. Representative Greene asked why were state agencies involved in that case. Mr. Purpera said that current law allows our state agencies to structure this type of transaction and questioned if they wanted to allow this again. Representative Greene asked if this was a settlement for a lawsuit against BP. Mr. Purpera replied that BP is allowed to "set off" the actual restoration accomplished.

Representative Henry asked if BP gave \$18 million directly to the state, then why couldn't they do it the same way for the other \$60 million. He also asked if the state can appropriate donations. Mr. Purpera replied that all \$78 million could have been put through the Treasury and appropriated by legislators. Representative Henry asked if the same process could be done for the money expected from the BP settlement, and how it would be classified. Ms. Schaye, General Counsel for the Legislative Auditor, replied that only the Attorney General can answer those questions.

Senator Murray asked that all parties be invited to the next meeting so they could have a full discussion, including BP to speak on their own behalf. He asked Mr. Purpera to find out if other states handled the funds in the same way and for more information about the Restore Act.

Representative Greene said that this item would be put on the agenda for the next meeting. Senator Nevers asked the auditor to find out if BP was given a tax break because the \$60 million was given to 501C3 nonprofits instead of the state.

OTHER BUSINESS

Mr. Purpera provided an update on the Town of Jonesboro's situation. The fiscal administrator appointed by the court had such difficulties with the Mayor and others while trying to do his duties that he stepped down. There is a hearing for contempt of court against the Mayor. Criminal charges were filed against the Mayor last week because of poor financial handling and other issues. Mr. Purpera's office has not received an audit for the past year and Jonesboro has not been held accountable for quite a while.

Mr. Purpera said he would meet soon with the Chair and Vice Chair to discuss the LLA budget.

Senator Walsworth commented that some schools believe that it would be proper to audit the Louisiana High School Athletic Association (LHSAA) in spite of the recent ruling. Mr. Purpera said his office was instructed by this Council to audit the LHSAA, but the Supreme Court ruled that he cannot audit the private entity. Ms. Schaye said that the Supreme Court voted six to one that the auditor has no authority to audit LHSAA and that homeschool children cannot play sports in Louisiana. The only remedy is legislative action.

ADJOURNMENT

Representative Greene made the motion to adjourn, and with no objections, the meeting adjourned at 5:05 p.m.

APPROVED BY:


REPRESENTATIVE HUNTER GREENE
CHAIRMAN


DARYL G. PURPERA
SECRETARY

3-27-13
DATE