

LEGISLATIVE AUDIT ADVISORY COUNCIL
Minutes of Meeting
April 3, 2018
House Committee Room 6
State Capitol Building

The items listed on the Agenda are incorporated and considered to be part of the minutes herein.

Vice Chairman Julie Stokes called the Legislative Audit Advisory Council (Council) meeting to order at 1:25 p.m. Ms. Liz Martin called the roll confirming quorum was present.

Members Present: Senator Mike Walsworth, Chairman
Representative Julie Stokes, Vice Chairman
Senator Wesley Bishop
Senator W. Jay Luneau
Senator Danny Martiny
Senator John Smith
Representative Jimmy Harris
Representative Marcus Hunter
Representative Blake Miguez
Representative Clay Schexnayder

Also Present: Thomas H. Cole, First Assistant Louisiana Legislative Auditor (LLA)

Approval of Minutes

Senator Bishop made a motion to approve the minutes for the December 14, 2017, meeting and with no objection, the motion was approved.

Extension Requests

Mr. Cole pointed out the four lists of extension requests in the members' folders.

Representative Katrina Jackson testified in support of the Ouachita Parish Charter School – Learning Solutions, Inc. – Vision Academy. The school had to hire a new auditor and submitted a request for more time to have the audit completed. Ms. LaToya Jackson, CEO and founder of Learning Solutions, Inc. echoed Ms. Jackson's comments that their current auditor needs additional time to complete the audit.

Mr. Bradley Cryer, Director of Local Government Audit Services, said that LLA is in support of the extension. Representative Jackson said that she spoke with Chairman Walsworth who was in approval of an extension to May 15, 2018. Senator Bishop moved to approve the extension for Vision Academy to May 15, 2018, and with no objection, the motion was approved.

Mr. Cryer explained that the entities on the Nonemergency Extension Requests Ninety Days or Less list had been approved by the Legislative Auditor but required the Council's affirmation of the approvals. The last Council meeting was December 14, 2017, so many extension requests had come in since the end of 2017 as well as for the fiscal year ending March 31, 2017. He provided further details on the 36 agencies and pointed out that the list was grouped by the reasons for extensions, such as OPEB/actuary issues, key staff turnover, software conversion problems, prior year CPA issues, etc. Some of the entities were also on

the Greater than 90 Days List because they were unable to submit their report within the 90 day extension already granted.

Representative Stokes asked about the entities that have not turned in their audits yet but are not on the Greater than 90 Days list. Mr. Cryer explained that some entities do not receive state funds directly, so there is no impact to them for not having an extension.

Representative Harris made the motion to approve the Nonemergency Extension Requests Ninety Days or Less, and with no objection, the motion was approved.

Mr. Cryer continued to the Nonemergency Extension Requests Greater than 90 Days list which contained six agencies, explaining their audit status and reasons for extensions. Representative Stokes asked to be updated on the Tensas Parish School Board which had not submitted their audit yet because they may be invited to a future meeting. Senator Martiny moved to accept these extension requests and with no objection the motion was approved.

Mr. Cryer summarized the three agencies' situations on the Emergency Extension Requests Ninety Days or Less list. Mr. Cryer explained that the Town of St. Joseph (Town) was also on the Emergency Extension Request Greater than 90 Days list. The Town is a success story because their finances are now in order after being under fiscal administration. The Town has clean water and is in the process of being returned to the mayor and city council's control. Senator Walsworth made a motion to approve the Emergency Extension lists and with no objection, the motion was approved.

Louisiana State Board of Medical Examiners

Ms. Jenifer Schaye, General Counsel for LLA, provided the timeline of the meetings and litigation with the Louisiana State Board of Medical Examiners (Board). First, the Board is part of the executive branch of government and under R.S. 24:513, the LLA does audit it. Ordinarily, outside CPAs perform a financial audit of the Board. However, LLA received certain information that indicated the necessity to look at the Board's regulatory practices and how the Board is doing in that regard. The LLA decided to also do a performance audit, which is also within the scope of R.S. 24:513. In early November 2017, the Board and the auditors were discussing the audit. At that point the Board president, executive director, and counsel met with Mr. Purpera, herself, and some auditors regarding what needed to be done to have unfettered access to the records for the performance audit. The Executive Director, Mr. Culatto, said that he would feel more comfortable to have a friendly declaratory judgment so that he would be ordered by the court to produce those records because he was concerned.

As this Council is aware, the LLA has had record production issues before with various boards and commissions, such as the Louisiana State Board of Dentistry and the Louisiana Board of Pharmacy. The auditor was not opposed to going to court. On November 20, 2017, the Board filed their petition and the hearing was on January 3, 2018, in the 19th Judicial District Court (JDC) in Baton Rouge because it involves a state board. Judge Caldwell decided that the auditor has unfettered access to the Board's records. Ms. Schaye assured the judge because of the sensitive nature of the records – although the LLA looks at many records that are sensitive in nature – and because of the Board's concern, only the auditors involved in the audit would have access to the workpapers which would be secured in the electronic vaults.

The judge ruled that pursuant to R.S. 24:513(i), the LLA would have access to those records and the judgment and reasons for judgment were declared. The Board at first stated that they would not appeal, but then decided to appeal the matter which is certainly their right to do. On February 26, 2018, the Board asked for a suspensive appeal which means that those records that the Board thought they have a right to limit the auditor on would be withheld but the LLA would still begin their process. LLA is actually in the process of the financial audit and has been reviewing the policies and procedures for the performance audit so they can proceed when the lawsuit is complete.

Ms. Schaye said she expects the return date to 19th JDC and oral arguments would be heard sometime in the summer. So the auditors are proceeding as far as possible in the audits at this time. She is limited in discussion because of the litigation nor could she discuss the audit workpapers, but she could discuss the audit law and how it all proceeded to this point.

Ms. Schaye said that the judge stated he would not rule on the federal records that the Board had. The LLA would not go to any attorney-client records except if they are declared by a court to be attorney-client for the evidentiary privilege which comes from the insurance case some years ago.

Dr. Vincent Culotta, Executive Director, and Dr. Christy Valentine, Board President, introduced themselves. Dr. Culotta said they are pleased with comments made by Ms. Schaye and hoping to gain some insight and not have to go further. In accordance to the timeline, the Board's concern is federally privileged documents that they hold custody of but do not have the privilege to release. We have offered after the judge's decision where he said that the FBI criminal background checks were federally privileged and could not necessarily give the documents but only the results. We went on to proceed with the audit, and notified our federal partners particularly the Drug Enforcement Administration (DEA), Veterans Administration, and some of the federally protected drug treatment plans that include our patients that complain, and our physicians who are in treatment. It was the opinion that those were not protected. We informed our partners of the judgement, and the DEA strongly objected and the six files which they sent us have particularly damaging confidential information about informants, undercover agents. We could certainly let the auditors look at an in-camera review in our office and document what we put in our investigative files that we extracted from those files but not copy and remove from the office.

Dr. Culotta said the Veterans Administration is likewise concerned particularly because of peer review and we have a complaint against a physician. From the Veterans Administration we can get those peer review documents but cannot let them out of our possession. Again, we offered that the auditors can look at the documents to note what the Board has done but cannot allow the auditors to copy or remove them. These federally protected documents put us in a bind. Dr. Culotta offered to give the Council a copy of the letter from the DEA and other agencies' information that tell us we should not release these or be copied or removed from our office. That is what we are here to resolve today and hope the Council can help us resolve the issues.

Senator Luneau asked if the documents that the Board is protecting from the auditor are all federal documents. Dr. Culotta responded that the Board wants to provide an access to see and review the documents, but we just do not want to let them be copied and removed from our office. Senator Luneau asked about the DEA's standing. Dr. Culotta responded that he could give him a copy or read the DEA's

letter into the record. The DEA will allow the documents to be seen by the auditors, but not to be copied or removed from the Board's possession. Senator Luneau asked if Judge Caldwell would not rule on federal documents whether there was a privilege or not. Dr. Culotta said that was what the judge said in his decision.

Mr. Don McKinney with Adams & Reese Attorneys at Law explained that he has handled this matter at the 19th JDC as the Board's outside counsel. There were two buckets presented to Judge Caldwell for consideration. One bucket was the doctor-patient privilege that attaches to medical records which is similar and in fact derived from the same Louisiana Code of Evidence as the attorney-client privilege that the court in the Theriot case had recognized. That was one bucket that the Board was concerned about and asked Judge Caldwell to rule upon. The second bucket is federally protected things, which include substance abuse treatment records in facilities that are regulated and governed by federal law. There are specific laws that protect records generated by those facilities that the Board gets from the facilities when they are investigating physicians who have substance abuse issues. Another bucket within the federally protected stuff is FBI background checks and such that the Board gets when they are evaluating licensees. What Judge Caldwell held was that the attorney-client privilege materials, if they are withheld, a privilege log would be generated with those and the auditor could decide whether or not to challenge that privilege. He assumed they would go to court if there was a challenge on that. The court did not, however, recognize the doctor-patient privilege which derives in our view from the same code of evidence that the attorney-client privilege attaches to.

Senator Luneau asked if the appeal was based on those records or on the federal records as well. Mr. McKinney said the appeal was to ask the First Circuit Court (FCC) to really address all of the arguments that we made to the district court in which we believe the district court's opinion was inconsistent with regard to the federally protected materials. The district court recognized, and as Ms. Schaye said, refused to order the Board to produce the FBI background check information. However, the court did not recognize the federal protection of the substance abuse records, which we believe is inconsistent. If there is a federal protection then it applies to everything. The materials that Dr. Culotta has referred to from the DEA are materials that the Board has in its possession derived from federal sources over which there is a federal protection. We do not believe the Board has the authority to share outside of the limited scope that the DEA understood it to be sharing materials with.

Senator Luneau said he would share what he knows about state courts and federal courts interacting on federal laws. The rule was handed down to an old friend of his, Richard E. Lee, that was a district judge in the 9th JDC that decided he would rule contrary to a federal court order in a desegregation case. He used to say that he learned a lesson that ants don't play where elephants dance. He asked if the federal records are in question. Mr. McKinney answered affirmatively.

Senator Luneau said he did not get that from what Ms. Schaye said. Representative Stokes said she is curious if LLA can see these documents or is it just a copy and remove problem.

Ms. Schaye referred to the judgement in which the judge ruled that because of R.S. 24:513(i) the auditor stands in the place of the Board, and LLA can look at all records and access means to make part of the workpapers if they have to but never take the original records. But what the judge would not rule on, as

Mr. McKinney just testified, was on the national FBI criminal history records. The judge said that all other records have to do with the regulatory authority of this Board. This Board has those records so they can determine whether the licensee is able to practice medicine in Louisiana. We understand that if we receive those records we are held to the same level of confidentiality as they are. The records are not subject to public review and only subject to a subpoena from the United States or a subpoena from the district court.

Senator Luneau asked if LLA is standing in the shoes of the Board as the holder of the privilege or is someone else the holder of the privilege. Because if you are not holder of the privilege, then you do not get to decide who looks at them or gets them.

Ms. Schaye responded that she does not believe there is an evidentiary privilege. What the law says is that they have a statutory privilege for these records, and not the same as the attorney-client or even the doctor-patient. So it's different. We had to challenge the doctor-patient privilege because members of the Board are not sitting there as doctors of these patients. The law says that if it is addressed that there is something wrong with this licensee or a challenge to this licensee's ability to practice in Louisiana that all of those records shall come to the Board, but they do not sit there as the doctor of that patient.

Senator Luneau said he thought he understood Ms. Schaye to say that she is not seeking the federal documents. Ms. Schaye explained that she meant what the judge ruled on which is the FBI criminal history. Senator Luneau said his problem is if the DEA sends the Board a letter saying that they better not let anyone take these records then what should the Board do.

Ms. Schaye explained that when the auditors had that issue previously, she would have a conversation with that federal agency. She had not seen the letter yet but was mentioned to her. The LLA had that issue with housing records in the past and once she explained that the documents are only used for the purpose of audit, and that person's name will never appear in any public report, but the LLA is only checking the regulatory practices of the agency, then the agency did not have any problems whatsoever.

Senator Luneau asked if she knew about the DEA letter before today. Ms. Schaye said that she heard about it but did not see it. Senator Luneau asked if she asked for it and Ms. Schaye responded that she did not because they already had an order from the court that gave all of these records and the DEA letter came up in February when the Board was talking about the appeal. So that may have been a mistake on her part, but since Mr. McKinney and the Board represented that they wanted to appeal the entire matter to the FCC, she believed it would all be resolved in the FCC.

Senator Luneau said he did not believe it possible for the FCC nor the district court to be able to resolve the issues that the DEA has based on federal law. He would personally not share data unless a federal judge ordered it. He understood the LLA's side and needing these records, and wants the LLA to have those records. Maybe it was not sufficient for the auditors to only review the records, but he believed just looking at the documents would allow the auditors to determine if any problem needs to be addressed and determine if necessary to proceed to the federal courts. He considers both the LLA and the Board to be part of the State of Louisiana. Ms. Schaye commented that they are both regulators. Senator Luneau said he would not like to see one agency get in trouble because another agency is pushing them to do something the federal government is saying they should not do.

Ms. Schaye gladly offered to speak with the DEA about it. She was put off by the fact that the case was on appeal. The Board offered to allow our auditors to only view records in their office but not make any copies and not include in our audit workpapers. That is a substantial limitation on the scope of the audit if we cannot make copies and going on memory and also cannot substantiate what is right in the report.

Senator Luneau offered that he is not an auditor, but his wife is, and believes that after reviewing the records if no problems are found then it stops there. However, if the auditors find problems and need those records then proceed through the proper channels to get those records to avoid jeopardizing the entity that you are auditing by violating federal laws and regulations.

Ms. Schaye said we do argue in our reply brief in this case when they initially brought up something about substance abuse and the federal statute that there is an exemption on those review for the auditor. But then the Board said respectfully they are not part of that statute. The Board said LLA could not look at it because part of that statute, but then on the other hand we are not part of it – there was a confusion and the judge took that under advisement and said that the auditor has access to all of the records. The LLA has access to all the substance abuse records at LDH, DCFS, and anything in the state in regard to HIV or substance abuse or any types of those issues. But we are extremely limited by R.S. 24:513(i), which says it is still confidential in our hands. That is the argument that we have explained to federal authorities.

Senator Luneau shared about a germane issue because of passed legislation dealing with the opioid epidemic where we are sharing information with the federal government and we need to know what is going on. We do not need to jeopardize the agencies that are working with the state because of audit procedures. He restated that he is not an auditor, but believes the auditors should go review the records and if no problem, then it ends there and cannot understand why that was not done.

Ms. Schaye explained it would be alright if the auditors could make copies and include as part of their workpapers. Senator Luneau asked why they have to copy the records and instead just look at all the records and if they do not have a finding then everything is okay. Ms. Schaye explained that auditors look at hundreds and thousands of records and have to put into electronic databases and do an analysis, and cannot do that by looking at just one piece of paper and then another.

Senator Luneau asked what analysis is done with the electronic databases. Ms. Schaye responded that the auditors do very sophisticated analysis and questioning and very sophisticated tools so they can cross check who is doing what and in what manner things have been done. Senator Luneau suggested that the LLA take this issue to the federal court and get a declaratory judgement from a federal judge saying what records you are entitled to so to not jeopardize these people by giving you records that they should not have given you.

Senator Bishop asked to confirm that Ms. Schaye had never asked for the DEA letter from the Board but heard about it. Ms. Schaye answered yes. Senator Bishop asked if Dr. Culotta had the letter. Dr. Culotta said yes. Senator Bishop said for the sake of this conversation the letter speaks to exactly what they are saying, so what would be the next step.

Ms. Schaye respectfully asked his indulgence to do this, for her to call the DEA and let them know that LLA is involved in this audit and see if she could explain to the DEA that LLA has the same degree of

access that the Board has to those records. So whatever we need from those records will be in our workpapers and would allow the auditors to review the regulatory practices of the Board. Ms. Schaye expressed her confidence to work it through with the DEA because there is an audit exception in the federal law for audits, so we can audit any PII information or HIPPA information.

Senator Bishop said there are two scenarios. The first one is that you make that phone call and work that entire piece out and they somehow agree with you, so your whole appearance before this body is moot. But let's assume that they don't agree with you, so tomorrow we are in the exact same situation right now. The LLA believes it should have access to the Board's records but the Board does not want you to get those records because bound by federal law so where do you go from there. Ms. Schaye responded that Senator Luneau may be correct and the LLA will be in the same spot because the FCC will say they cannot rule on it. However, she fully expected the Board to bring up the entire matter to the FCC when they returned on April 13 for oral argument.

Representative Stokes asked if the auditors could complete the audit with the access to just see the records. Ms. Schaye explained that the auditors cannot complete the audit because unable to do a full analysis and considers it to be a scope limitation if unable to include copies in their workpapers. Representative Stokes asked if the auditors could proceed with the audit to the point where you can without the court, which is to the evidence of seeing and documenting that the forms are on file and prepare a list of the forms you need to get once the judge makes the decision.

Ms. Schaye said that the auditors are proceeding as far as they can go, and have not stopped. The financial audit is continuing and moving forward. We have been given their policies, procedures, and everything we can continue with. We hoped to do the audit in a more expedited fashion. Representative Stokes suggested they visually see the available documents and note that it was done and then also have a list of documents that upon the decision of the judge to obtain to do further analysis.

Senator Martiny said he has dealt with federal agencies who have taken the same position but in most cases they have a situation saying that it's not an absolute ban on releasing but upon good cause shown or something like that. Rather than dealing with the FCC, why not just seek declaratory relief in the federal court. Ms. Schaye responded that she could do that but did not think we needed any kind of relief because the law was clear with R.S.24:513(i) that we could get the records. But the Board said they would seek declaratory judgment and never thought there would be an issue until they came in November, and they said once we get an order from a judge that the auditors can see it then we are good. Ms. Schaye said she understands people change their mind and the Board decided to appeal.

Dr. Culotta said they proceeded on with the audit as well as notified their federal partners about what would happen and then received responses from the DEA and several other federal partners. The Board was persuaded to continue with the appeal. Furthermore, we have offered to meet with the legislative auditor and present the case where we would give them copies of our investigative files where the data from these federally protected files would be extracted, which they could have copies of and take. It would be that they could verify the data in the federal files by reviewing them so they could take our investigative files and copy them. The meeting was dismissed by Ms. Schaye because she felt it was not appropriate to have the meeting, so we did not have the meeting. And we proceeded with the appeal based on the advice

of the governor and on the advice of the leadership of the House and Senate Health and Welfare Committees we are here today to ask for your help.

Senator Martiny shared his dealings about federal agencies that they always give you the absolute answer that you cannot have this. He represents police departments and will gladly send federal agencies all our records but when we ask for theirs, they say no way. So I would suggest to you, that if all else fails, you really need to go to federal court to seek declaratory records. Ms. Schaye responded that the LLA might have to do that.

Representative Stokes concluded that the auditors are waiting for the court to decide and will have to do whatever procedures are allowed based on the decision that has been rendered so far, and suggested keeping a list of the additional documents needed.

Ms. Schaye said she would get the letter today and call the DEA this afternoon to work out their concerns as Senator Luneau and Senator Martiny recommended. Dr. Culotta said he would give the investigative files with the information for them to verify it immediately. Representative Stokes asked to be kept posted on the issue.

Louisiana Cancer Research Center (LCRC)

Representative Stokes said the next item for discussion is the LLA's performance audit regarding LCRC's progress toward obtaining National Cancer Institute Designation (NCID).

Ms. Krista Baker-Hernandez, Performance Audit Manager, presented a brief overview of the performance audit issued on December 13, 2017. The objective of the audit was to evaluate LCRC's progress toward achieving NCID, which the National Cancer Institute (NCI) awards to U.S. institutions based on scientific merit. LCRC is a nonprofit organization created in 2002 by an act of the legislature with a primary function of obtaining NCID. LCRC has four consortium partners: Louisiana State University Health Sciences Center (LSUHSC) in New Orleans, Tulane University Health Sciences Center, Xavier University of Louisiana, and Oschner Health System. A key requirement for achieving NCID is hiring a center director. LCRC's board of directors has not hired a center director, who must be highly qualified in the sciences with the experience and expertise to establish a vision for LCRC. The center director would have to be granted authority over all funding, scientific priorities, and allocation of space in LCRC's facility.

The next finding is the LCRC's board has not developed a plan that identifies how LCRC will achieve initial and consortium NCID. NCI requires that a stand-alone cancer center initially attain NCID, and that cancer center can then apply as a consortium during designation renewal which occurs every five years. The stand-alone cancer center must perform research and not merely transfer funds to other partners who perform the research. While LCRC receives tobacco tax dedications and distributes those funds to the consortium partners, it does not conduct research itself. Therefore, one of the consortium partners and not LCRC will have to apply for initial NCID.

Another finding is that LCRC has not held meetings with its external scientific advisory board since 2009. External scientific advisory boards consist of scientific leaders from NCI-designated cancer centers nationwide who provide objective evaluation and advice. One of the requirements for NCID is for a cancer

center to have a formal standing advisory board that meets at least once yearly. However, LCRC has not met with its advisory board since 2009 because it has not implemented many of the advisory board's previous recommendations.

The next two findings relate to LCRC's funding. First, LCRC has relied on declining and unreliable state funding and not actively pursued other resources such as fundraising. LCRC has been funded primarily by statutorily-dedicated tobacco tax proceeds which have declined by 27% since fiscal year 2005. According to the director of the Office of Cancer Centers (OCC) within NCI, major sources of funding for NCI-designated cancer centers are philanthropy and institutional commitment. However, LCRC has generated less than 1% of its total revenues from fundraising, and its consortium partners have not developed a written agreement outlining how each institution will contribute to achieving NCID. Such an agreement should describe ongoing tangible institutional commitments such as direct financial support of cancer research, hiring researchers, providing equipment, etc. In addition, LCRC has had to reallocate funds from its cancer research program to help cover the expenses of operating its newly-built facility. When LCRC's board of directors authorized the construction of the facility, it underestimated the future cost associated with operating the facility.

The last finding is that many of LCRC's consortium partners exceed the minimum funding base requirement in order to compete with other cancer centers seeking NCID. The funding base refers to cancer-related research grants. While LCRC has increased its combined funding base to \$17.9M, only one consortium partner can apply for initial designation and must meet the minimum requirement of \$10M in funding base. However, just meeting the minimum requirement is not enough to receive designation because of the intense competition of federal funding from other cancer centers. While LCRC needs to continue increasing its combined funding base, the board of directors needs to also insure that at least one other partner's funding base exceeds the minimum requirement to compete with other cancer centers seeking designation.

Representative Stokes said one thing she hears is that there is not enough funding to get the center director with declining state funding and reallocating funds to the newly-built facility. She asked if the new facility was the board's idea or through capital outlay. She asked if it is possible to have the consortium under LCRC apply for the initial designation. Ms. Baker-Hernandez said that the director of the OCC explained that they never give a consortium an initial designation. LCRC could try working with NCI to receive the initial designation for a consortium, but it has never been done.

Representative Stokes said that other states have NCID for a consortium. Ms. Baker-Hernandez explained that other states do have consortiums with NCID but they had to start with a stand-alone cancer center with the initial NCID and then later on brought other entities in and created a consortium. Representative Stokes asked if LCRC put the cart before the horse. Ms. Baker-Hernandez suggested theoretically LCRC could work together with the consortium and decide which entity would be best able to receive initial designation by meeting all the requirements such as the funding base.

Mr. Sven Davisson, LCRC's Chief Administrative Officer, said he appreciates the auditors' work and the time that they spent with LCRC, which was 16 months from beginning to end, and appreciates the Council taking time to listen. LCRC's response agreed with most of the auditor's points and may have agreed upon

approach. Some of the numbers do not accurately reflect the full picture of where they are really at. In most instances, the board is already identifying the areas and began steps to work on those areas including strategic goals. It is important to note the auditor's charge is really to look at the boards and commission. However, LCRC is not a traditional board or commission but a 501(c)(3) nonprofit established by the State of Louisiana (State) and has a unique public-private partnership between private universities and hospital systems and the State. As such, the report does not really look at scientific progress, which is what the cancer center was established to do, and does not capture the larger picture and put the work done in context.

Mr. Davisson said he spent 15 years in the cancer center in New England, so he has a slightly different perspective on the work and the story here. There is another story captured in the audit and it is truly a success story. Hurricane Katrina had a devastating impact on the work of LCRC. The trajectory from the inception of LCRC in 2002 until 2005, there was a steady increase in grants and faculty. In 2005, Katrina decimated all progress made. The cancer center lost 81 faculty members, which was about half of the faculty members in the cancer center today. LSUHSC was down to one oncologist. Almost half of Tulane's faculty members left. The lost faculty members took tens of millions of dollars in federal research funding and also took the investment that had been made in junior faculty, as well as the returns on the millions of dollars of state and institutional investment with them. In good times it is difficult to recruit quality faculty and can only imagine how difficult it was to recruit during the 10 years or so after the storm. Now LCRC is at a pivotal point in its history, because it has actually built back stronger than it was before the storm. As shown in LCRC's 2016 annual report, research funding has doubled and publications have doubled and increased faculty and billing capacities in areas they did not have before. The research building is critical infrastructure for attaining NCID and was in the plan prior to Katrina. Phase 2 of construction was just completed last year and room to recruit more faculty and explain other things. Dr. Ochoa's clinical trials team just moved into the building.

Mr. Davisson believes Louisiana should look at it as a real success story. He came because Louisiana is trying to do a unique thing with public-private-state partnership for NCID. It takes years of work with NCI staff and working out the details during the process. Coupled with this was the decrease in state tobacco tax collections. The universities have put in a commitment to support their own cancer centers in spite of their own budget cuts. Just in the recent years there has been a 28% decrease in tobacco tax collections. The two recent tobacco tax increases helped the general fund but did not increase the allocated amount to LCRC. The end effect of reducing smoking is the decrease in pack sales which reduces their revenue. In closing, the path to NCID is not checks and boxes, it takes a while, and, in many cases, it takes more than a decade for states that have set out to do this.

Representative Stokes commented that the high-caliber scientific building takes more funds to maintain, and taxes decrease as less people smoke. She asked how LCRC should choose between the members of the consortium to decide who should apply for NCID.

Mr. Davisson proposed several strategies including investing in research. As LCRC builds up the cancer centers and collaboration between the cancer centers, it will build up the research initiatives within LCRC and partner institutions. No matter what, even if just one institution becomes the named applicant, everyone else will be involved in that application. If we take a statewide approach, they will need all

partners of the consortium. LCRC, even if not the applicant organization, has built an infrastructure to foster that collaboration and prove that everyone is working together. That is critical after going through two rounds of applications such as this for NCID because they need to show that infrastructure.

Mr. Davisson shared how he has worked with NCI officials to craft new approaches and centers that did not exist before. Just because someone has not done it one way, does not mean that they cannot make the case for it. He believes there is a hunger on the federal level to put cancer centers in especially underserved states. There is no cancer center in this region and the closest ones are in Houston and Birmingham, so we are the best poised to get there because of state investment and the commitment of the institutions.

Senator Luneau said no one here has problems with the work you do and the research you have done and it is sorely needed in this state. However, the concern is the financial side of this organization. He was extremely pleased to hear that LCRC agreed with the auditors' findings and working to correct those and move in that direction because he wants to see LCRC be successful. Please explain which findings LCRC took issue with and did not agree with.

Mr. Davisson said they did not agree with the auditor's approach and recommendation to choose a single institution to invest and focus on. First they want to focus on a single director and need to continue working with their federal partners to determine the best approach because all have the same agenda to improve health care within this region. Committing to focus on one institution is premature. Senator Luneau said he hopes they are successful and reminded him that LCRC will live or die by those decisions, and appreciates them working to resolve the issues. Mr. Davisson added that LCRC is not cutting off any options.

Dr. Augusto Ochoa, LCRC Co-Director for Scientific Leadership and LSUHSC Director, has been in the position since Katrina. He also worked at NCI for 10 years and a member of multiple boards at the NCI, and more recently in the Cancer Moonshot Blue Ribbon Panel of Vice President Biden.

Dr. Ochoa thanked the auditors for the audit not because fun or comfortable but it puts them at their best game. As a member of multiple boards at NCI, he does essentially the same thing with their grantees but do not call them audits, and instead call them site visits. They look at the money and how getting to the goals that they set. The auditors did an outstanding job and pointed out the weaknesses which LCRC's board has taken seriously. But he also wanted to show what was not clear in the audit and that citizens of Louisiana should be proud of. Dr. Ochoa referred to the handout titled "Building an NCI Designated Cancer Center for Louisiana." Louisiana has the 4th highest incidence of cancer and the 5th highest mortality of cancer in the U.S. The gulf coast corridor has the highest mortality and is where the NCI wants to place a NCID center because it changes the game. The reality is that not only does Louisiana want to do it, but so does Mississippi and Arkansas and both have hired their own researchers to achieve designation. In Louisiana alone, there are more than 24,000 new cases of cancer each year, not counting the ones diagnosed the previous years. Deaths from cancer in Louisiana are around 9,000 per year. Cancer disproportionately affects minority and underserved citizens. The best investment is to prepare Louisiana's health system for appropriate screenings, early diagnosis, and have the best cutting edge treatment possible. For the financial component, the calculated value of a life lost to cancer is approximately \$150,000 and at 9,000 deaths that calculates to \$1.4B lost for the state per year.

Dr. Ochoa pointed out the benefits of having an NCID center including federal research dollars, new jobs, increased additional dollars in revenue for health care, hospitality industry, etc. The expected return on investment in a Louisiana Cancer Center is \$8 dollars for each dollar spent. For examples of contributions to local economies, the University of Kansas Cancer Center estimated the increase to be \$1.6B/year, and the Moffitt Cancer Center estimates \$2B per year. The competition to achieve NCID in the gulf coast region comes from Mississippi and Arkansas. In spite of the effects of Hurricane Katrina, the consortium has all worked together. Dr. Ochoa shared examples of the LCRC Federal Funding Trend of Cancer-Related National Institutes of Health (NIH) Funding which grew from \$3.8M in 2001 to \$28.6M in 2017.

Dr. Ochoa said they need to bring the best and brightest researchers wherever they are in the state, and it is not one institution or the other, because not one predominate single institution can do this but all have to work together. He agrees they need to have this discussion with NCI. Through the NCI Community Oncology Program (NCORP) they have been able to establish a successful collaboration between many hospitals, and scored the highest at NCI. LSU is working with Ochsner to compete at the federal level for a major grant which would provide Louisiana with 36 different sites for advanced clinical trials for cancer patients. In summary, Katrina caused a big glitch, but there is no question of the LCRC leadership and the scientific leaders at LCRC are demonstrating their capacity to work together. The more joint programs they do, the more NCI will say that they can succeed as a consortium.

Dr. Lee Hamm, Chairman of the LCRC Board of Directors, said that he has been on the Board for 5-6 years and realizes that the findings in the audit may sound bad but their dedication is shown by the entire composition of the consortium board being present at the meeting. We are really proud of the tremendous amount of work being done. On average, about \$20M is spent on cancer research each year in Louisiana. It is in a setting where LCRC does not have clinical income, which is the single source of the greatest funding of most NCI centers. They do not have a single facility that is directly tied to LCRC. The consortium brings a lot of advantages to four relatively small institutions in terms of research, but what it doesn't have is a single hospital that pours its resources into that. So it's that lack of resources that I think we need. The building was more expensive than anyone planned on when it was envisioned. Certainly the current board did not plan on the building expenses, and now the research investment is about \$3M per year, so I think amazing things are being done.

Dr. Gene D'Amour, LCRC Board Member from Xavier University, commented on the extensive collaboration between the universities for three decades, which is why they have been able to raise the kind of research money they have. In terms of Xavier, because they belong to LCRC, they have brought in more than \$40M in additional NIH grant funding in the last 10 years. Xavier is number one in the country in terms of graduated African American MDs and undergraduate PhDs in the nation. They also have a center for health disparities, which is important to Xavier because they have the second highest proportion of African Americans of any state in the U.S. The highest incidence of cancer is in African Americans. Xavier would not have made a major contribution to the state without LSU, Tulane, Oschner, and LCRC.

Procedural Voting for Chairman

Chairman Walsworth said traditionally the Senate keeps the chair position for two years and then the House has the chair of the Council for two years, and the prior chairman becomes the vice chairman.

Senator Smith moved that Representative Stokes become the new chairman. Senator Walsworth complimented Representative Stokes' knowledge about finances and said that she will serve well as chairman of the Council. With quorum present and no objection, Representative Stokes was elected as chairman and Senator Walsworth became the vice chairman.

Chairman Stokes said that she did auditing in her CPA practice so it is near and dear to her heart. Senator Walsworth thanked the legislative auditor's staff for the past four years and expressed his respect and appreciation for all the hard work done by the legislative auditor's office.

Louisiana Cancer Research Center (LCRC) continued

Senator Walsworth asked why the average spending on cancer research has gone down tremendously since the new facility was built. Basically the cancer research expenditures have gone down almost 70%.

Mr. Davisson responded that the graph reflects the investment of the state tobacco tax and building the research programs when the building came online and it switched from a capital outlay construction costs and became a depreciable asset on the books of the LCRC. The general operation of the building took a chunk of that state tobacco tax to run the building, which came online in 2010-11. As the building is now getting older, it is taking incrementally more to maintain it.

Senator Walsworth asked why building is needed if it is going to take 70% of our assets to pay for the building. The research and work done by LCRC is important and the research is more important than the building, so tell me how we are going to get to where we need to be because this is unacceptable and surely not acceptable to LCRC. Research has gone from a high of \$8.7M and now down to under \$3M for research. He requested an answer for the reduction in research funding and Katrina is not the only reason. A decision was made to have a facility and to cut the spending on research, so where is LCRC headed?

Dr. Hamm responded that it is not the current board that decided to build the building. We might have a different answer in 10 years because the overall research base of the respective universities may grow to really need it more than we need it today. From Tulane's perspective, they pretty much need it and the building is humming. He encouraged the Council members to visit the facility because they will be amazed at what is going on in it. But the current research spending is not acceptable, so philanthropy may be part of the solution. All of the institutions are putting institutional funds into cancer research. It is estimated that both Tulane and LSU are spending an estimate of \$5-7M each on the cancer research independent of LCRC's spending. That funding comes from a whole variety of sources, so more is being invested in the cancer research than just the slightly less than \$3M from the state tobacco funds. Dr. Hamm agreed that it is still inadequate but philanthropy may be one source and LCRC has recently started a development process. They are exploring other possible options but those are too premature to discuss.

Senator Walsworth asked if the tobacco tax proceeds have gone from FY2006 of \$10M to now \$7.7M. Mr. Davisson responded that the average tax proceeds have been just shy of \$10,960,000. He added that the graph showing the allocation of tobacco tax for expenses and research does not take into account cost recovery such as rent or cost reimbursement for building space and other initiatives. Since starting at LCRC, he has been monetizing the building as much as possible. They now have a meeting room space for rent as well as use the parking garage for event parking since close enough to the Superdome and the

Smoothie King to sell out for Saints games and concerts. Anything they save or offset in the building expenses goes to cancer research.

Senator Walsworth pointed out that the board has not revisited their strategic plan that is now 10+ years old, and not exactly sure why. LCRC also has not met with the advisory board and still has not provided a good explanation of why research was cut by 75%. Funding to LCRC has been cut about 20%, but not 75% less funding, so cutting research by 75% is unacceptable.

Dr. D'Amour said first off, of course, the reason those cuts were made because we had to maintain the building. He explained that the financials only show the state tax dollars that are coming in for research. But they need to also look at the additional NIH dollars that are coming into the state because of what we have been doing in research. The NIH dollars are much higher than the losses caused by the LCRC building. Secondly, since the beginning of LCRC, they have actually raised \$2.6M in private fundraising which is not a lot. However, they are planning completely in the next two months on how they can increase that over time with additional private fundraising. Also, the universities have hired over 100 new faculty members that are paid for cancer-focused research since the beginning of LCRC.

Senator Walsworth said this report tells it all and we have to do better because this is not acceptable. Representative Stokes asked when the decision was made to build the building. Mr. Davisson answered that since LCRC began in 2002, they discussed the building and it did cost a lot of money.

Senator Walsworth asked how much the building cost to run. Mr. Davisson responded that it is just shy of \$4M per year for that type of building. His understanding is that is not an extreme amount of money for a scientific research building. Utility costs in that area are very high – just chilled water and steam from the district is one-half million dollars or more.

Senator Walsworth reiterated that it is unacceptable for LCRC to go from \$8.7M before the building to now only \$2.8M for research. Mr. Davisson said that is why they are looking at initiatives to cost recover the space in the building. He is in negotiations right now that will return \$2M to research by the end of this fiscal year.

Senator Walsworth said he understands that the four universities and Oschner, LSU, Tulane, Xavier are all doing their own thing together but this is strictly just LCRC. Our state begs for it and has the highest cancer rates. Since everyone agrees, he does not want to see a report next year showing this spending going up. Dr. Hamm said the report shows the state tobacco money minus the building costs. We cannot control the state tobacco taxes and we discourage smoking. Senator Walsworth pointed out that LCRC's spending on cancer research just has to go back up.

Mr. Davisson said what is within their control is cost recovery for the building because the biggest expense is operational costs and the graph in the report does not reflect the amount we bring in to offset the cost of the building. That is literally building costs as a portion of the tobacco tax and does not take into account other revenue streams we already have in place.

Dr. Ochoa said there are two issues here; one is what do we do with the money that we receive from the state and that is the \$8.7M - \$9M. Senator Walsworth said we want the tobacco taxes to go lower because

that means less tobacco is being purchased. Dr. Ochoa explained that 50-60% of it pays for the cost of that building. To offset that loss of revenues, the way we have done it, is to bring in that increase in grants that will support all our research. We have increased our research capabilities by bringing in federal dollars. What is decreasing there is how much money we can take from the state and invest into our research. We are using that money to invest and sustain the building that we can bring the researchers in to do their work. Our primary source of funds to support research is from federal dollars that we bring in and that is the line shown on his handout.

Senator Walsworth said he assumes that federal dollars cannot be used to pay for the building, so LCRC must use state dollars for the building. Dr. Ochoa said that is correct, but so here is where I think there are some opportunities that are important. As we develop these research capabilities, the greatest beneficiary of this whole thing will be the hospital systems that work throughout Louisiana. I think we need to partner with that and say because we are going to bring in all these advanced forms of treatment that are going to occur in your hospitals, we'd like to partner with you so you can help us sustain and support and develop this research enterprise. I think that is going to be a part of alternatively not having our own hospital. I think we need to sit down with the hospital partners and discuss how we partner to make this a success.

Chairman Stokes thanked Senator Walsworth for his leadership of this Council for the last four years. She explained that the chairmanship was supposed to switch over at the beginning of this term but there had been a lot of happenings in her life, one of which is highly relevant to what they have been discussing.

Chairman Stokes said she would like to look at a set of financials for LCRC to see all of those other funding sources that come in. She had visited the LCRC building last week in contemplation of this meeting and some legislation. She saw a beautiful building, no one would dispute that it is a very nice building. The decision was made 15-16 years ago to build this building which is a state of the art building. I saw it was occupied on every floor other than the one floor that was finished in December or October of this year. When I sat down at the table with people from LSU and Tulane and other board members, I saw very committed people to our state. Some of the decisions that we have made as a state have caused that \$10.4M of tobacco revenue to decrease to \$7.7M and then it looks like if we look at FY2012, which is where the graph is marked off, that we started to encounter \$6M or in the last year \$4-5M of expenses to operate the business. I assume that some of that is being offset by universities' funds coming into the LCRC. Her primary question is why LCRC has not met with the external scientific board since 2009.

Mr. Davisson said the question is what comes first, is the scientific director or external advisory board, and usually the new scientific director wants to appoint their own board using their own experts they want to rely on. So that has been a point of discussion since I started in the summer of 2015.

Chairman Stokes said that makes sense and goes with the next question is to get the science director and to be able to create a new board to address the concerns about inadequate research, or at least the perception of it, at this point, what do you need to bring the vision that we had for LCRC when it was created in 2002. She asked what is the primary thing that this entity needs in order to bring that vision into line with these findings, and what is missing.

Mr. Davisson said that primary issue is funding and what flows down from that. One of objectives is cost recovering the building, which what that graph does not show is the amount we receive in offset which we then turn into cancer research. Literally, it just takes state funding and the cost of the building against state funding and reflects the cut from \$10M to \$7.1M. What it does not show is the other revenue streams you are talking about which we are actively working this year to cost recover all space. The original plan for the building was not cost recover on day one. It is the plan I inherited but it has fluctuated but it was an incremental cost recovery that would step up as the institutions inhabited the building.

Dr. D'Amour added that to hire a scientific director who is capable of taking the LCRC to NCID, you don't get them by saying come and do this and we will pay your salary. They have to have sufficient funds so they can see they can invest those funds in a way that will allow us to achieve NCID. Unless those resources are there, we are not going to get a scientific director. We would have gotten a scientific director five years ago if the research were there, but if a candidate comes in and looks at the data you are seeing such as taxes going down and building costs are increasing over our research costs, you cannot hire a scientific director like this.

Dr. Ochoa said there are initiatives in that direction. One of our hospital partners, the LCMC has hired a very high-powered consultant group who has worked with 14 different NCID cancer centers and helped them build that process. They are in the process of doing the analysis of what would be required to move in that direction. We are hoping that they will release that kind of information to us in the next few months which will allow us to have that internal discussion of what changes we need to make. These are examples of things that are ongoing right now that we will explore and decide when to meet with the external advisory board, and things of that sort.

Chairman Stokes said certain private foundations in the area are sending money to Mississippi or Texas to build up a center in those states. She asked what efforts are being done by LCRC for fundraising. Dr. D'Amour responded that \$2.6M has been raised in private fundraising since 2002. Tulane did bring in a consultant who ran a billion dollar campaign. The consultant was someone I had previously worked with. She laid out a very careful, thoughtful plan for how to focus and what areas to focus on to carry out fundraising. In addition to that we have been working on, and should be finished in 1½ - 2 months, an actual proposal. To be able to raise private funds you need to have a story showing what you are after, what the goal is, what it takes to achieve that goal, and what kinds of investments are needed to achieve that goal, and what will the funds achieve. We are putting that story together now. Unfortunately, the story is there but we have not put it together in a way that we can sell it to major donors, but once that is done we have the capability to do it.

Mr. Davisson said some of the initiatives that Dr. D'Amour was talking about were at the end of the audit, so it was not reflected in the audit report and their recommendations. Chairman Stokes said she heard that if you have the single scientific director and have the plan then you can go after more private foundation fundraising. So it all keeps coming back to the same issue – what does LCRC need to attract a director.

Dr. Hamm said basically more funding for the recruitment package because the cost for the scientific director will be part of the LCRC's overhead. Chairman Stokes said it will be more than the salary of that person but also the funding available to do research projects for that director to oversee and coordinate.

Mr. Davisson said in this situation it is even more critical on how that mix works. So the board has already agreed that all revenue and resources that the LCRC has be at the discretion of the director to use if not allocated. If it was a university recruiting, they would have a much wider expanse to create faculty positions and have say in different departments and budgets. So we are trying to sell a kind of unique thing here. It is not just more money, but the cut in tobacco tax that we suffered.

Dr. D'Amour said it is more money and wished they had brought the data. If you look at the amount of dollars that other states have invested in order to achieve NCID, it's much more than Louisiana has even thought about. We have done extremely well with the funds we have received and then when the funds go down like they have. We could have achieved and hired a director if we were made whole by the funds that had been coming to us and not having to be used for the building. I can tell you why the other states invest that much money and Dr. Ochoa has that data showing the return per dollar on economic development for NHI funding. Dr. Ochoa said it would be eight to one for us. Dr. D'Amour said he shared these numbers with the New Orleans Commission. If you start looking at what areas to raise funds and tax funds to pay for it in the state because it will be health care destination and bringing in research dollars. We are not going to bring in a lot of additional funding anymore, like we have done in the past for tourism and agriculture, it's not going to happen. But we have to advance in new technology areas. If you look across the country at cities and states where they are investing to create innovation centers and innovation districts, and they are killing it with the amount of money they are bringing in.

Chairman Stokes said her interest goes pretty deep because of being diagnosed with a very aggressive breast cancer last June and in a clinical trial right now. I very much appreciate and respect the work that you are doing and it would mean a lot to me personally and the many people that I talk to. The incidence of cancer in this state and mortality rate is very alarming, and your work is very important so I really want to figure out how we can work hand in hand together to bring fruition to getting the NCID and seeing the master plan come alive. Whatever we need to do for checks and balances with goals to make that happen.

Senator Walsworth said LCRC is supposed to present a strategic plan to the state by February 1 as per state law. When was the last one that was presented and do you have one to present this year, obviously you did not make February 1st this year. Mr. Davisson responded that every year since inception, LCRC has prepared on an annual basis goals and objectives. Those are submitted to the state and accepted by the state every year. Senator Walsworth asked if that is their strategic plan. Mr. Davisson explained that their goals and objectives are multiyear and cannot do this initiative thinking on an annual basis, so these are multiyear.

Senator Walsworth asked Mr. Davisson to send to the Council the last two reports of goals and objective that LCRC sent to the state. Mr. Davisson said just before he came on board, the LCRC bboard was actively engaged in a more formal strategic planning process. One of the first steps was recruiting me, and the second step is hire a scientific director and they are working on step two.

Senator Walsworth said the only thing we know in Baton Rouge is that the answer is money and the second question is what is the question, so always money and we are struggling with that but we have to work within the framework that we currently have. Our problem is not only are you asking for money but LSU and all the other universities and our public-private partnerships - each individually are asking for money.

Dr. D'Amour said that is obviously the biggest problem for our state right now is the lack of resources and how they have to be spread out. But if we have no money to invest in the future and our development of new businesses and technologies, then we will be in the same place 20 years from now. That is what really concerns me. Senator Walsworth said he understands that but some people will say \$30B budget in this state and should be able to do more than we are doing.

Chairman Stokes said she would like to see the strategic plans for the past two years for the goals and to help craft that plan, as well as a set of financials. If possible, please gather up a few other states for comparisons to see their benchmarks, what they are spending compared to how much our state is spending. I'm not sure if some of our people or some of your people might have that. We may review that and decide we want to talk again. I really appreciate your time and the important work that you do. Chairman Stokes said that her goal and the consensus of all of us would be to figure out a way to bring this to fruition and see better outcomes for our scientific research.

Discussion of Legislation Impacting Legislative Auditor

Not discussed.

Other Business

No other business was discussed.

Adjournment

Representative Miguez offered the motion to adjourn and with no objection, the meeting adjourned at 3:30 p.m.

Approved by LAAC on: August 30, 2018

The video recording of this meeting is available in House Broadcast Archives:
http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2018/apr/0403_18_LegAudit