

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting February 8, 2021 House Committee Room 5 State Capitol Building

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

Representative Barry Ivey called the Legislative Audit Advisory Council (Council) meeting to order at 10:10 a.m. Ms. Tanya Phillips called the roll confirming quorum was present.

Members Present: Representative Barry Ivey Chairman
Senator Jay Luneau, Vice Chairman
Senator Louie Bernard
Senator Rick Ward, proxy for Senator Fred Mills
Senator Beth Mizell
Representative Aimee A. Freeman
Representative Barbara Freiberg, proxy for Representative Stephanie Hilferty
Representative Edmond Jordan
Representative Rodney Schamerhorn

Members Absent: Senator Jimmy Harris
Senator Fred Mills
Representative Stephanie Hilferty

Also Present: Daryl G. Purpera, CPA, CFE, Louisiana Legislative Auditor (LLA)

Approval of Minutes

(Video Archive Time 1:04)

Vice Chairman Luneau offered the motion to approve the minutes of the December 17, 2020 meeting and with no opposition, the motion was approved.

Extension Requests

(Video Archive Time 1:20)

Mr. Bradley Cryer, Director of Local Government Services, presented two extension lists and briefly detailed the various reasons for the agencies' emergency extension requests.

Senator Luneau made the motion to approve the one page list of Emergency Extensions –Greater than 90 Days and with no objections, the motion was approved.

Mr. Cryer responded to Senator Mizell's question about the impact of COVID, delayed guidance and hurricanes that resulted in the very long list of entities requesting 90 Days of Less Extensions.

Senator Luneau made the motion to confirm the nine page list of Emergency Extensions – 90 Days or Less and with no objections, the motion was approved.

Mr. Cryer noted that an updated list of Fiscally Distressed Municipalities is available on LLA's website.

Department of Environmental Quality – Monitoring and Enforcement of Air Quality – Performance Audit Issued January 20, 2021 *(Video Archive Time 7:18)*

Ms. Gina Brown, LLA Performance Audit Manager, explained the reasons for this audit and used a powerpoint presentation to provide an overview of the report and findings. Louisiana has a high concentration of industrial facilities requiring air permits. Between fiscal years 2008 and 2018, Louisiana's DEQ ranked 4th among states in staffing cuts and 3rd in budget cuts. She gave statistics on permits, air quality and emissions.

Ms. Kristen Jacobs, Senior Performance Auditor, responded to Senator Mizell's question explaining how air quality is graded by the six criteria set by the Environmental Protection Agency (EPA) outlined in Appendix C. DEQ and EPA determine where the air quality monitors are placed around the state.

Ms. Brown referred to the next slide with the Louisiana air quality overview stating that since 2008 parts of Louisiana have high potential cancer risks and/or a high respiratory hazard index. Louisiana has the highest toxic air releases per square mile than any other state. It remains important for DEQ to effectively monitoring air quality in Louisiana.

Ms. Jacobs presented the regulation findings and recommendations based on DEQ's inspections. While DEQ conducted the required number of inspections during fiscal years 2015-2019, it could make inspections less predictable and require photographs or other evidence that inspections actually occurred. DEQ does not identify whether a company fails to submit required self-monitoring reports or if a facility self-reported violations until its routine inspection or file review, which could take years. DEQ took 102.1% more time to issue enforcement actions so the average increased from 289 days to 585 days. Ms. Jacobs explained their further review of DEQ's addressing of violations and enforcement, and noted that DEQ was working on improving their manual processes and creating additional reports to make staff more efficient.

Ms. Jacobs testified that while DEQ knows how much in settlements it has assessed and collected, DEQ does not effectively track the penalties it has assessed and whether facilities have paid the assessed amounts. In addition, DEQ gives facilities the option to submit an initial settlement offer after issuing a notice of potential penalty. LLA recommended that DEQ generate additional reports that would track data more effectively and for DEQ to offer a settlement amount to the facilities rather than allow them to submit what they wanted to offer.

Despite Louisiana's large number of Title V facilities, DEQ's positions dedicated to air regulation decreased 14.6% which presents a challenge for staff in performing their responsibilities. DEQ management should improve its use of data to better monitor air quality in Louisiana. LLA made 11 recommendations and DEQ management agreed with 10 and disagreed with one.

Senator Luneau asked if LLA audits individual facilities' self-monitoring reports. Ms. Brown explained that DEQ performs the audits of facilities' reporting. He asked if staffing cuts contributed to DEQ's backlog and delays. Ms. Jacobs agreed that staffing is a factor but further explained that the majority of the reports are on paper and it is a highly technical and complex process. Senator Luneau asked if some of the reports could be done electronically and if that would be an expensive endeavor. Ms. Jacobs replied that she believes DEQ is looking into electronic reporting but the other issue is that they do not have current staff that can create these reports in enforcement.

Council members asked further questions and discussion continued regarding the extensive regulations, monitoring, reporting, enforcement and comparisons to other states.

Dr. Chuck Carr Brown, Secretary for the Department of Environmental Quality (DEQ), thanked LLA for performing the audit and spending time at his agency. He stated that Louisianans breathe the safest air since the industrial revolution based on six criteria by the EPA and only 15 other states can claim to meet that.

He explained DEQ is self-funded: 85% through the regulated industries & 15% from the EPA. Other states' counterparts receive some general funds from their states. The audit took a snapshot of 262 cases out of 965 cases. Fiscal year 2020 was not part of the report, but DEQ reduced the time by 38% in 2020.

All DEQ's enforcement actions are formal and field inspection forms are completed and signed by the company being inspected. He briefly explained the levels of the enforcement. They are looking into automating the Title V deviation reports because those are very time intensive and complex. He is in the process of speaking with a vendor but do not have more details to share yet. Ms. Lourdes Iturralde, Assistant Secretary in Office of Environmental Compliance, introduced herself to the Council.

Chairman Ivey asked about the locations of monitoring stations. Dr. Brown explained they have a monitoring network of 43 stations across the state, located based on meteorologist conditions, and other criteria. DEQ's website shows real time air quality data. He detailed criteria for particulate matter, which can be hazardous or nonhazardous and by law is required to investigate any complaints about air quality. His agency's purpose is to protect human life. Chairman Ivey encouraged DEQ to pursue the efficiency of automation wherever possible because of the volume of paperwork they process, and offered his assistance however possible.

Dr. Carr responded to Senator Luneau's question about ozone levels and EPA's requirements to meet adequate air quality. He said there are some pockets of areas of elevated risks but have made those industries reduce their toxic emissions. Senator Luneau asked if DEQ is required to verify if industries' self-monitoring is accurate. Dr. Carr said DEQ is required to physically inspect all the records and equipment for every major facility every other year. His office can always find out if any facility is not accurately reporting.

Senator Luneau asked about DEQ's staffing problems. Dr. Carr detailed DEQ's budget and staffing situation and the need for additional funding.

Senator Bernard questioned Clean Harbor's situation regarding contained burning compared to open burns. Dr. Carr said Clean Harbor submitted a modified permit request to include a clean burn unit. He has spoken with the governor and visited the sight and believes with the next permit that 90% of their processing will be in a contained burn unit. DEQ is reviewing the process and expects it to be complete by mid-summer 2022.

Dr. Carr shared that the enforcement writers must have extensive technical training and quite often industries lure away his employees, so DEQ has to start over the training process again. Chairman Ivey commended LLA for providing reports that show deficiencies and areas for improvement.

Representative Freeman asked for a better understanding of DEQ's structure for funding from industry. Dr. Carr explained funding from industries and his plan to incrementally increase the rate per ton which will still be far below the max allowed by the EPA. Representative Freeman expressed the concerns from her constituents about health concerns in "cancer alley". Dr. Carr said there is a lot of research and data for the industrial corridor between Baton Rouge and New Orleans that does not support that name. Further discussion continued regarding the differences in EPA funding ranging from 7-20% in other states.

Louisiana Department of Health – Behavioral Health Provider – Destined For a Change, Inc. – Investigative Audit Issued January 20, 2021 *(Video Archive Time 1:06:50)*

Mr. Roger Harris, LLA Director of Investigative Audit Services, gave background and overview information about behavioral health services and concerns.

Mr. Greg Clapinski, Investigative Audit Manager, presented a summary of the report and audit findings. Destined for a Change, Inc. (DFAC) billed the Louisiana Medicaid Program (Medicaid) and was paid \$71,112 for services that DFAC does not appear to have provided, in whole or in part, from January 2016 through August 2019. By billing Medicaid for services that were not provided, DFAC may have violated federal and state law, and its provider agreements with the Louisiana Department of Health (LDH), as well as the Managed Care Organizations (MCO) that operate the Medicaid program on LDH's behalf. Based on our review of DFAC records and client interviews, DFAC appears to have improperly billed Medicaid for \$26,163 in services from January 2016 through August 2019. According to the clients we spoke with, DFAC provided services to all children in the household at the same time. However, Medicaid records show that DFAC billed for each child separately, which costs five times more than group services. As such, it appears that DFAC either improperly billed group services as individual services, or billed for multiple individual services at the same time. By improperly billing Medicaid, DFAC may have violated federal and state law, and its provider agreements with LDH and the MCOs that operate the Medicaid program on behalf of LDH.

We reviewed DFAC client files for 13 clients from January 2016 to August 2019, and found that there was no documentation to support a majority (52%) of the services billed to the Medicaid program. To be eligible for reimbursement for behavioral health services, Medicaid requires providers to complete service/progress notes documenting the services performed. By billing Medicaid for services that were not documented, DFAC may have been paid for ineligible services and may have violated its Medicaid provider agreements. Six recommendations were given to LDH in the report. LDH agreed with the recommendations and had already implemented most of the changes prior to this report being issued.

Chairman Ivey thanked LLA for the in depth report to show money being wasted on fraud that could be used to help constituents. He asked if the behavioral health workers were aware of the fraud. Mr. Harris said the counselor may have filled out the progress reports correctly but the workers doing the billing have a tendency to inflate or modify the billing. In this case there has already been one arrest by the Attorney General's Medicaid Fraud Control Unit (MFCU) and that is working its way through the court process. Mr. Clapinski added that it was the owner that was arrested. In these small behavioral health providers, we often find that access to the billing system is usually very lax where workers often have access to other worker's accounts.

Chairman Ivey asked for the incentive for an employee to inflate billing unless being instructed to by an owner. Mr. Harris suggested that an employee may modify their progress report to meet required performance metrics. Further discussion continued about the process and approvals and access issues with these providers. Chairman Ivey asked if it is a crime to manipulate the patient's records and progress notes. Mr. Harris responded affirmatively.

Senator Luneau commented that manipulating patients' records would be state and federal crimes. He said these issues have been worked on through legislation in the past few years and asked if these problems have been addressed by LDH. Mr. Clapinski responded that since 2019 the law requires that whoever provides the service has to document the provider number so that helps to match up to progress notes. But prior to 2019, the billing data only showed the agency and not the individual provider number.

Mr. Harris commented that LDH has been very receptive to audits and working to implement recommendations, but there are always people that find a way to lie, cheat and steal. Senator Luneau agreed and said unfortunate have to rely on a lot of self-reporting.

Representative Jordan asked if LLA has audited to determine which smaller providers have internal auditors to help stop the fraud internally based on the amount of money involved. Mr. Harris responded that falls outside of LLA's work because trying to investigate whether money has been stolen. He referred to LLA's performance audit group which is tasked with making sure that state agencies are being economic and efficient, but that might be something to look forward to in the future. Representative Jordan commented he is not sure if LDH could require all providers to have internal auditors to deter illicit behavior on the front end and ensuring compliance before LLA has to get involved. Mr. Harris noted that LDH could respond further on whether that could be required but based on the need for behavioral health and the many varied providers, some may have the sophistication and staff to provide internal audit functions but others may not have the expertise or funding to do so.

Representative Schamerhorn asked if this is a snapshot of the four years, or was it an in depth dive. Mr. Clapinski explained how they determine when needed to look further based on people's responses that they did not receive services which were noted in progress reports.

Representative Schamerhorn asked if DFAC was still in business, and if any way to flag the owner guilty of crimes from creating a new company. He has seen manufacturing industries that open and receive federal grants and are waived from paying taxes and such, but when those incentives end, the company closes and reopens under a new name. He would be interested in finding a way to prevent those guilty of crime to not open a new business.

Senator Luneau shared that legislation was passed in the previous years to tighten up licensing and requirements for people who open these types of businesses and the fruits of those changes will be seen in the future. He asked if MCOs audit the providers and if they caught any of this fraud. Mr. Harris said he knows the MCOs have special investigation units but deferred to LDH for confirmation.

Senator Mizell asked what prompted LLA to perform this audit. Mr. Harris responded that many allegations come through the [Fraud Hotline](#) that often have insider information that prompts further investigation. However, this agency was flagged as high risk by a risk matrix that LLA's performance audit group ran using data analytics. Senator Mizell asked how many providers fall into the risk matrix. Mr. Harris explained that due to limited manpower, they had to choose to investigate the providers showing the highest risk which led to DFAC.

Mr. Stephen Russo, LDH Executive Counsel, and Mr. Jarrod Coniglio, Medicaid Program Integrity Section Chief-Interim Compliance Director responded to the audit and answered Council members' questions.

Mr. Russo provided an overview of LDH's response to fraud, waste and abuse. As of January 1st, LDH's secretary has combined under one reporting structure the Bureau of Legal Services, Internal Audit, Program Integrity and Health Standards, and all now report to Mr. Russo. LDH's Program Integrity is looking to get predictive modeling software tools that will help them develop a risk matrix such as what the LLA has and will allow running data mining. They hope to have that in by the end of this fiscal year, and start utilizing those tools in the next fiscal year.

LDH does have strong relationships with the MCOs, MFCU, and work very well with LLA, and appreciate all the work LLA does because LDH can get better and will never stop trying to get better. He detailed the meetings and reports from MCOs, providing data for behavioral health referrals to the MFCU as well as their own investigations. Mr. Russo said during the meetings they ensure to not duplicate investigations and get a broader scope of provider reviews.

Chairman Ivey shared his conversation with LDH Secretary Phillips and applauded her efforts to mitigate fraud and plans to invest in technologies to identify potential fraud and red flags.

Representative Schamerhorn's constituent complained of a \$2,715 billing to State Farm Group Medical for a COVID test. Mr. Russo said if it is a medically necessary test due to symptoms that it should be covered and not be charged to the patient. Mr. Trey Williams, LDH Director of Governmental Relations, explained that the State of Louisiana provides free COVID testing if citizens go to locations where free testing is offered by the state. However, if a patient goes to their own provider, they would be charged whatever their provider usually charges for testing. Representative Schamerhorn thanked Mr. Williams for his informative weekly calls to legislators. He asked if the state is getting reimbursed by the CARES Act rather than using state funds and Mr. Williams confirmed that is correct.

Senator Mizell asked about the electronic visit verification process and Mr. Russo responded that they are researching it and has the technology but does require funding.

Chairman Ivey stressed the service to the patients is first priority and is personally interested in anything that can be done to invest in technology infrastructure to find efficiencies. Chairman Ivey asked who is on the hook financially for the fraudulent payments if unable to be collected from the provider. Mr. Russo explained that the Attorney General tries to get some restitution from the provider but after the long court processes any uncollected would be covered by the taxpayers for the state portion. The Center for Medicaid and Medicare (CMS) allows reclamation of the federal share if LDH has established that they have done certain mechanisms to recover the funds.

Mr. Coniglio explained how the funds are returned based on who finds the fraud and does impact the per-member-per-month (PMPM) calculations. Chairman Ivey said he would appreciate a workflow diagram sent to the Council since it is surely a complicated process for retribution and reclamation of fraudulent payments as well as a glossary of the acronyms.

Trends in Staffing, Annual Rates of Pay, and Personnel Expenditures in Executive Branch Agencies – Performance Audit Issued January 13, 2021 *(Video Archive Time 1:56:45)*

Ms. Krista Baker-Hernandez, Performance Audit Manager, and Jodie Debetaz, Performance Senior Auditor II, utilized a powerpoint presentation to show a summary of the report and recommendations.

Ms. Baker-Hernandez explained the purpose of the report was to provide information to the legislature on the size of state government and update information from the 2013 performance audit report. She detailed the scope of the audit which covered fiscal years 2013-2020 and noted the trends found in the data for the various executive branch agencies. She noted the overall finding was that the number of state employees decreased but annual rates of pay and other expenditures increased since 2013. Voluntary resignations and retirements accounted for the majority of the decrease in employees.

Ms. Baker-Hernandez said the annual rates of pay increase was primarily due to the implementation of compensation redesign plan in fiscal year 2017, which was approved by State Civil Service Commission and the governor. The plan's goals included realigning pay with the market and it allowed market salary adjustments for eligible classified employees. The median rates of pay increased for executive branch employees with the greatest increase between fiscal years 2018 and 2019 when it increased by 4.8%.

The report also reviewed overtime which increased from \$69.8 million in fiscal year 2013 to \$111.2 million in fiscal year 2020, which agencies attributed to emergency response operations and maintenance of staffing requirements. Retirement and other benefit expenditures for employees in executive state agencies increased by \$249.8 million from fiscal year 2013 to 2020. The average monthly benefit for retirees increased by \$319. Expenditures for professional services increased 38.8%. She gave examples of why professional services expenditures consistently increased due to the Office of Technology Services' (OTS) technology projects for state agencies.

State of Louisiana's Comprehensive Annual Financial Report For Fiscal Year Ended June 30, 2020

(Video Archive Time 2:11:00)

Mr. Brian Fleming, LLA Financial Audit Manager, explained that the Division of Administration (DOA) prepares the state's Comprehensive Annual Financial Report (CAFR) and must be completed annually by December 31st in accordance with state laws. This document provides an overview of the state's actual financial results for the fiscal year and is used by investors that have invested or that are considering to invest in the state's bonds. The CAFR is also useful for legislators in making decisions.

The task of preparing the CAFR begins with hundreds of state entities preparing and submitting their year-end financial results to DOA which is then consolidated into this one document. To support our opinions on the CAFR, we audit DOA's consolidation process and we audit the financial information that state agencies and universities provide to DOA. We also rely on audits by independent CPAs on certain state component units such as levee districts and pension plans.

He pointed out the Management's Discussion and Analysis (MD&A) begins on page 19 provides an overall analysis of the financial statements including summarized comparative statements along with narratives explaining key elements of the financial statements and changes from the prior year. He also provided detailed financial summaries and bond indebtedness from the CAFR and the reasons for increases and decreases.

Mr. Fleming stated that LLA's report on the 2020 CAFR was issued on December 31, 2020 and included an unmodified or clean opinion which means the basic financial statements and note disclosures are fairly presented and can be relied upon. Mr. Fleming explained that emphasis paragraphs were included related to pensions, and the unemployment trust fund. These two matters did not affect LLA's opinion, but are believed to be important matters that warrant the reader's attention.

Mr. Purpera explained that the standards by which the CAFR is prepared. He reiterated the concerns about the unpaid accrued liability and the retirement systems' assumed rate of return. The Louisiana Workforce Commission as well as other states have paid fraudulent unemployment payments and will take time before the full impact of the fraud schemes are determined.

Legislative Auditor's 2022 Budget

(Video Archive Time 2:26:40)

Chairman Ivey asked for the Council's legal responsibility in respect to the LLA's budget. Mr. Purpera explained that LLA's budget is part of the legislative appropriation act. This Council must approve LLA's budget before it goes before the Legislative Budgetary Control Council (LBCC). He stated that the budget request for fiscal year 2022 is very similar to the previous year with only a 0.7% increase. He explained the three sources of funding. The state general fund appropriation is used for investigative audits, local government services and a good portion of the performance audits performed, as well as general support office functions. Self-generated funds are payments for audits performed.

Mr. Purpera provided explanations for the office's expenses including actuarial notes, the reason for a fund balance and the forecasted shortfalls in 2023. He suggests that the office needs a revenue source every year to properly fund the office. Chairman Ivey said the LLA is one office that needs to be fully funded because the value far exceeds the cost for the services provided.

Senator Ward commended all the hard work done by the LLA. He asked if Mr. Purpera sees a path for the state to not have a fiscal cliff and not constantly face shortfalls. Mr. Purpera said it is a matter of what does the legislature wants and to properly fund it. His office is called many times by legislators, district attorneys, as well as receives many allegations that require investigation. Audits deter fraud and theft. However, when investigating an agency or municipality, they do not have the funds to pay for the investigation. The law requires LLA to conduct a performance audit of all major agencies every seven years, but legislators are accustomed to and often request many more performance audits which are paid for with general fund appropriations. Senator Ward said we just need to prioritize correctly and on the legislators to fund properly.

Senator Luneau made a motion to adopt the Legislative Auditor's 2022 budget and with no objections, the motion was approved.

Other Business

(Video Archive Time 2:41:00)

Mr. Purpera announced that after his 37 plus year career, he has decided it is time to move on to other challenges and other opportunities. He already spoke with Speaker Schexnayder and President Cortez as well as Chairman Ivey and Vice Chairman Luneau to set his retirement effective March 2, 2021. He said that the office is well positioned with a very professional staff. When he leaves, First Assistant Legislative Auditor Tom Cole steps in as acting legislative auditor. A temporary legislative auditor can also be appointed. A selection committee chooses a replacement legislative auditor which is then voted on by the full House and Senate. Mr. Purpera appreciated the past 11 years as legislative auditor and said he would miss it but felt a lot was accomplished and offered assistance during the time of transition. Chairman Ivey thanked Mr. Purpera for his years of service as well as his integrity and leadership. He expressed confidence in the LLA staff to continue their exemplary work.

Adjournment

Senator Luneau offered the motion to adjourn and with no objection, the meeting adjourned at 12:54 p.m.

Approved by LAAC on: March 8, 2021

The video recording of this meeting is available in [House Broadcast Archives:](https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/feb/0208_21_LEGISAUDIT)
https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/feb/0208_21_LEGISAUDIT