

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting March 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.

Vice Chairman Luneau 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 Jimmy Harris
Senator Beth Mizell
Representative Aimee A. Freeman
Representative Stephanie Hilferty
Representative Edmond Jordan
Representative Rodney Schamerhorn

Members Absent: Senator Louie Bernard
Senator Fred Mills

Approval of Minutes

(Video Archive Time 0:01:18)

Senator Mizell 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 0:01:30)

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

Representative Jordan offered the motion to approve the five entities on the Emergency Extensions –Greater than 90 Days list and with no objections, the motion was approved.

Representative Freeman offered the motion to approve the twenty-six entities on the Emergency Extensions – 90 Days or Less list and with no objections, the motion was approved.

Update on Fiscally Distressed Municipalities

(Video Archive Time 0:04:30)

Mr. Cryer directed the Council members to the updated list of 20 municipalities in their folders as well as posted on the LLA's website from January 2021. (<https://www.lla.la.gov/reports-data/fiscally-distressed-municipalities/index.shtml>)

Mr. Cryer noted these are based on pre-COVID financial reports so have not been able to see yet how the past year has impacted them. His staff has spoken with the mayors and heads of agencies, but due to the lag time in audits being received after fiscal year end. He explained the various factors and background that determine which municipalities are included on the list.

A **Disclaimer** is when the CPA performing the audit was not able to issue an opinion because the financial information provided by the municipality was incomplete and/or inaccurate (poor accounting records, fraud, etc.). There are two municipalities on the list due to a disclaimer. We ask the agency to do a corrective action plan and to have it monitored by another CPA firm so our office can receive real time updates on if they are fixing the issues. The list provided shows only municipalities, but there are other types of agencies that we are monitoring because of disclaimers and requiring corrective action plans and monthly updates from a CPA firm to be directly involved in their accounting work. We hope to see the agencies correct their problems before requiring fiscal administration.

A **Going Concern Emphasis** means that the CPA performing the audit or review expressed concern that the municipality may not continue to operate for more than a year out, based on factors disclosed by management (significant debt, loss of a major industrial taxpayer, etc.). There are five on the list currently for going concerns, either in the note disclosures or the audit opinions. These are ones that we work very closely with the auditors. In some occasions we have other officials come in such as their accountants serve as advisors to them. Some agencies have been on the list for multiple years and are holding stable and no further decline due to our intervention as well as the accountants and auditors helping them with financial issues.

Water Infrastructure is a big concern. It is when the municipality has significant problems with its water system, increasing the risk of a public health emergency and/or requiring expensive repair/replacement of equipment. The LLA is in a working group with the **Rural Water Infrastructure Committee** that the governor established two years ago. Every Friday there is a conference call with committee members and Louisiana Rural Water Association (LRWA), Louisiana Department of Health (LDH), Department of Environment Quality (DEQ) and U.S. Department of Agriculture (USDA) regarding the status of water systems around the state. The agencies on the list are of dire concern because if they have a major break in their water systems or other repair needs to be made, they have no money available to fix it. LDH has been working with the towns for about one and a half years and have changed the process on how they give grants to water systems. Instead of giving a \$10M grant a village of 100 people, where there is no economy of scale, instead they are trying to get the small systems to merge into the larger systems. This has been an ongoing issue. For example, the Town of Clinton's water system has been merged into the parish's water system. Some other small villages with major financial issues with their water systems are being patched into larger water systems. That ongoing process is not only being managed by LDH but also funding from the Office of Community Development (OCD) and USDA.

Mr. Cryer noted that there are three entities being monitored directly by the **Fiscal Review Committee** (FRC). These municipalities have major problems and been brought before the committee for corrective action. But because they have stabilized have not been brought under fiscal administration. LLA still monitors and receives monthly updates, except for one with a tax lien and receiving weekly updates on their situation.

General Financial Concerns is when municipalities exhibit signs of fiscal distress, as indicated by such factors as losses in utility operations, minimal/negative fund balances, cash flow problems, unpaid taxes, financial-related findings, etc. The LLA developed a model approximately six years ago based on bankruptcies around the country, including City of Detroit and Sun Valley, California, and also agencies brought under fiscal administration in Louisiana. Based on LLA's model it shows right now there are 97 agencies with general financial concerns including 20 municipalities, as well as sheriff's departments, school boards, assessors, etc. that are potentially distressed. Once those agencies are determined to be of concern, his staff investigates further and speaks with auditors, and heads of the agencies. The model is just an indicator and based on certain financial ratios such as sufficient fund balance to cover bills, revenue to expenditures ratio. But the model is not 100% accurate because often the information is often dated and may have justifications for lower balances or ratios.

The agencies on the fiscally distressed municipalities list now are those that are identified by the model and verified by CPAs, mayors, accountants, or auditors to have financial problems. In some cases, they have utility systems that are insufficiently subsidized through their rate structure, or may have no reserves left. One village on the list has consistently for three years had less than \$1,000 in the bank. All agencies are in a prime condition where any kind of emergency could put them in the position of unable to pay their bills or be able to bring their water system back online.

The last issue reviewed is *Delinquent Reports* which is when the municipality has not filed its financial report(s) by the statutory deadline, limiting our ability to assess the municipality's finances. There are six municipalities on the list that have outstanding audits for more than two years. We are unable to understand their situation without having current audits and financial information. The agency may not even be engaged with an auditor because the records are so bad. One entity has not submitted four years of audit reports and is eligible for fiscal administration but we are trying to get them caught up and working with the CPAs and the mayor. We have six or seven that are two years behind and others are further behind but hoping to assist them to get caught up and avoid fiscal administration.

Mr. Cryer has received updates from every municipality on the list in the previous two weeks and know they are fairly stable and his staff is making recommendations. If they do not follow recommendations and improve, those entities will be brought before the FRC.

Senator Luneau asked for a comparison of the list from the previous year. Mr. Cryer responded that the list has increased by five entities and suspects the numbers may increase due to COVID impact. The smaller municipalities seem to have a less impact than the larger cities with more restaurants, etc. that were closed.

LLA's performance report ([Impact of COVID-19 and Hurricane Laura on Local Government Finances](#)) issued a few months ago estimated the impact of lower sales taxes statewide from the COVID pandemic and Hurricane Laura. Since then we have had Hurricane Delta, Zeta and now the freeze a few weeks ago. The discussion with LRWA last week was regarding the ongoing problems with water systems since the freeze. It has been a challenge and expect to see more issues in the upcoming months.

Senator Luneau asked for the status of municipalities that could be removed and others added. Mr. Cryer answered that three entities are making progress after years of monitoring and should be taken off the list in the next few months. But he was unable to say how many may be added in the upcoming months.

Senator Mizell asked about the village in her district with a going concern. The previous mayor dealt with long term problem of not enough citizens to support the town and the water district was not receiving adequate revenues. She asked if he counsels on what exists or the possibilities such as shifting to parish oversight or how extensively do they provide direction to the town. Mr. Cryer said that he has spoken with the new mayor several times and in that case, they are looking at OCD grant funding and possibly another municipality running their utility system for collections. The grant would allow the town to install individual meters because currently there are multiple lines on one meter and unable to turn off water to the past due recipient. If they turn over the utility system to another municipality then the mayor would not have to turn off water to a neighbor. The village was in a steady decline because not collecting utility payments largely due to the water system in such bad shape. Mr. Cryer said a list of available grants was sent to the mayor along with OCD and LDH contact information, as well as recommended the village outsourcing the utility collections and maintenance or work with someone through a cooperative endeavor.

Senator Mizell asked how many towns are under fiscal administrator and if on the list. Mr. Cryer responded that the fiscally distressed municipalities list does not include the ones under fiscal administration. The Town of Sterlington is moving close to be released from fiscal administration. The City of Bogalusa has straightened out the issues with waste disposal as well as the pension system so moving toward closure. The fiscal administration for the City of Jeanerette has asked to be released and the court filings are being done now. The Village of Clarence is stable at this point because a local CPA in the Natchitoches area is handling the day to day operations.

The Village of Clayton does not have a fiscal administrator yet, but the new mayor has been chipping away at their long-term debt because they had borrowed \$250,000 three years ago and used part of it for operations. They are paying back about \$5,000 a month but cannot yet cover their owe operating costs for the water system so the governor has issued an executive order for emergency declaration in Clayton to continue paying for their water system until they get back completely solvent. Three years ago, Clayton had a deficient each month with no extra funds coming in. Now they are receiving an extra \$3,000-\$4,000 a month so making some progress.

Senator Mizell asked if the fiscally distressed municipalities that are unable to find the remedies within themselves will end up under fiscal administration. Mr. Cryer responded that is always a possibility. He explained that his staff tries to lay out a menu of options, such as the mayor can either raise the rates or cut expenses, as well as apply for grant funding, or get a loan. Some towns do a combination of remedies to get stable. OCD and USDA want to see a promise to cover that water system long term rather than spend a million on a system and it get run into the ground. The Rural Water Infrastructure Committee looks to be sure that there is a funding mechanism in place and the rate structure is sufficient, and if the town is able to administer the systems with certified water operations or certified sewer handlers. All these things need to be in place before the funding goes through. Many times we will have the mayor on the call with oversight agencies as well to make sure all parties understand where they are and what is happening. We also get notified by the State Bond Commission regarding financing requests. Often times we have conference calls or Zoom calls with all parties involved to make sure that the entity can afford to pay for the new debt if unable to pay for existing expenses. Some entities were not approved because they did not have the structure in place. Senator Mizell commented on her fear that towns go into debt to remedy a problem and cause a whole new set of problems. She thanked Mr. Cryer for all that he and his staff does.

Representative Hilferty asked how large is the water infrastructure problem across the state. Mr. Cryer responded that it is a multibillion-dollar problem. At the LAAC meeting in November 2020, Senator Mills brought up a report that showed it to be a \$4.5 billion shortfall across the state. LDH is addressing that like the LLA, basically doing triage with the problems that come up. The systems that are failing today, we try to find a long time fix through OCD-CDGB or USDA funds. In the long term as LDH is trying to merge smaller systems into larger systems for economy of scale, we will see some improvements but it will be a very long process for the entire state to have dependable water systems that can withstand freezes and the regular maintenance that has not been kept up.

Representative Hilferty asked if this problem will only get worse and the state is just trying to keep up with the worst systems on the brink of collapse or already collapsed. Mr. Cryer agreed in part, explaining that the new approach by LDH where they are not funding or recommending funding for the very small systems solely but trying to get them merged into the larger systems. There are approximately 800 stand alone water systems across the state and as the smaller ones are merged into larger ones, the economy of scale will work but takes time to happen. Representative Hilferty asked if the state needs to place a greater priority on and assist LDH to speed up the process. Mr. Cryer answered that he does not believe anyone could quantify right now but they are working triage dealing with failing systems that have LDH administrative orders because of poor water quality or DEQ because of sewerage discharge and require immediate attention. Senator Luneau commented that he hopes some action happens in Washington, D.C. that will help these upgrades happen and get these entities off the list.

Regulation of the Massage Therapy Profession – Louisiana Board of Massage Therapy – Issued March 3, 2021

(Video Archive Time 0:24:40)

Ms. Emily Dixon, Performance Audit Manager, explained that this audit was the latest in a series of performance audits on health care regulatory boards in the state. LLA realized in 2016 that there was not an oversight entity looking at the licensing, monitoring and enforcement activities of our state health care regulatory boards so we endeavored to start on those with the Dental Board, Pharmacy Board, Medical Examiners' Board, Physical Therapy Board and now the Board of Massage Therapy (Board). A performance audit was issued last year in regard to the state's challenges and gaps related to human trafficking which brought to our attention the prevalence of illicit massage therapy establishments in the state and there is a high chance for human trafficking victims in those. In the United States right now there are an estimated 9,000 illicit massage therapy establishments so it is important for every state to get control over this to protect the public.

The Board regulates both massage therapists and the establishment owners. The Board overall needs to do a better job of regulating the practice to make sure that therapists and establishments are in compliance with the Massage Therapy Practice Act. The Board also needs to do a better job of identifying unlicensed and illicit establishments that threaten the integrity of the profession, because the Practice Act prohibits establishments from operating as sexually-oriented businesses. In addition, we found that changes in the Act could help the board better meet its mission of protecting the public.

Ms. Dixon continued presenting summaries of the findings in the report. She noted that the report has 11 recommendations to the Board, of which they agreed with four and disagreed with seven of the recommendations. We also suggested two matters for legislative consideration that could help the Board be more of an effective regulatory agency. The first was to change the law and require the Board to conduct background checks itself on all massage therapists and establishment owners, and the other was including a member of the massage therapy industry on the advisory committee for the Louisiana Human Trafficking Prevention Commission.

Ms. Rhonda McMamus, Board Executive Director, provided an overview of the seven member Board and has been a member of the board for ten years. She said they have been on a clean up for quite some time and only have three staff members including herself. Ms. Sallye Raymond, Board Chair, was also in attendance.

Mr. John C. Miller, Special Counsel with Butler Snow LLP for the Board, addressed the findings and explained why they did not agree with the finding regarding background checks. He responded to questions from Council members regarding the legal authority of the Board to require background checks and discipline massage therapists or establishes. Mr. Miller stated that the Board cannot file a criminal complaint against a therapist, but the complainant or victim has to report it to the authorities. Ms. McMamus responded to questions regarding the fees and fines. Further discussion continued regarding compliance inspections and responding to allegations of illegal behavior at establishments and the processes for reporting to law enforcement, as well as expanded training for their inspectors regarding human trafficking.

Discussion of Pending Litigation:

(Video Archive Time 1:32:50)

- a) *Daryl G. Purpera, In His Official Capacity as Louisiana Legislative Auditor and As Chairman of The Task Force on Coordination of Medicaid Fraud Detection and Prevention Initiatives vs Kimberly Lewis Robinson, In Her Official Capacity as Secretary, Louisiana Department of Revenue, No. 2020-CA-0815; and*
- b) *Louisiana Board of Ethics vs Daryl G. Purpera, In His Official Capacity as Legislative Auditor for the Louisiana Legislative Auditor's Office, No. 2020-CA-0801*

Chairman Ivey offered the motion to go into Executive Session and there was no opposition.

(Video Archive Time 1:36:05)

Chairman Ivey stated that the issues have already been publicly discussed and available to the public, so the Council exited Executive Session. He said there had been no discussion of the agenda items during the time the Council was in Executive Session so the public did not miss anything.

Ms. Jenifer Schaye, General Counsel for the Legislative Auditor, explained the reason for these two items which have been on the public purview for a while to be included on the agenda is the important nature of these two cases for the Council and for legislators. Both of these issues arose out of the auditor wishing to access records. We try to bring issues to the Council regarding entities that are audited by the Legislative Auditor which includes virtually every public entity in the state or every quasi-public entity that receives public funds.

Ms. Schaye commented that LLA's mission with the Council is transparency and accountability and access to records and source documents is extraordinarily important to auditors. Ultimately the auditor must base his opinion on those source documents and not what has been filtered. She referred to documentation in the members' folders and detailed the history and status of the two litigation cases.

Other Business

No other business was discussed.

Adjournment

(Video Archive Time 2:25:00)

Senator Luneau offered the motion to adjourn and with no objection, the meeting adjourned at 12:35 p.m.

Minutes Approved by the Legislative Audit Advisory Council at the July 12, 2021 Meeting.

The video recording of this meeting is available in [House Broadcast Archives](#):

https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/mar/0308_21_LegisAudit