

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting March 21, 2013

A meeting of the Legislative Audit Advisory Council (Council) was held on Thursday, March 21, 2013, in House Committee Room 1 of the State Capitol.

CALL TO ORDER AND ROLL CALL

Representative Greene called the meeting to order at 2:45 p.m. A quorum was present with the following members in attendance:

Members Present

Representative Hunter V. Greene, Chairman
Representative Cameron Henry
Representative Girod Jackson III
Representative Clay Schexnayder
Representative Ledricka J. Thierry
Senator Edwin R. Murray, Vice Chairman
Senator Mike Walsworth

Members Absent

Senator Robert Adley
Senator Ben W. Nevers
Senator John R. Smith

APPROVAL OF MINUTES

Representative Greene made the motion to approve the minutes for the February 21, 2013, meeting and with no objections, the motion was approved.

EXTENSION REQUESTS

Ms. Joy Irwin, Director of Local Government Services for the Louisiana Legislative Auditor (LLA), presented two agencies that had 90 days or less non-emergency extension requests to allow them more time to submit their audits. Senator Murray moved to approve the non-emergency extension requests and with no objections, the motion was approved.

MEMORANDUM OF UNDERSTANDING WITH BP EXPLORATION & PRODUCTION, INC.

Representative Greene commented that the State of Louisiana (State) is in pending litigation with BP and the Attorney General's office is present, and asked all to be cognizant that any comments spoken could hamper those negotiations.

Mr. Trey Phillips, First Assistant Attorney General, told the Council that the State is in active litigation with British Petroleum (BP) in New Orleans Federal Court with Judge Barbier presiding. They are about half way through phase one of the trial, and phase two of the trial will probably start in September, and phase three the next year. Any comments about BP and the Memorandum of Understanding (MOU) will be watched by BP and can be used against the State. Mr. Phillips said that BP has been following the State's attorneys speaking at different events around the country, and urged caution in the discussion during the meeting.

Mr. Daryl Purpera, Legislative Auditor, said that the Council expressed concern about the transaction of the MOU in December 2010, so his office began reviewing it. He explained the LLA's informational report issued February 13, 2013, addresses the method of the transaction when \$78 million was given to the State. Eighteen million was given to the Department of Wildlife and Fisheries (LDWF) for seafood testing through the normal appropriation process, and then \$60 million was split equally between the Louisiana Wildlife & Fisheries Foundation (LWFF) and Community Foundation of Acadiana (CFA) - both nonprofits. The report addresses the issue of the \$60 million not being deposited into the Treasury and not appropriated in the legislative and budget process, so not accounted for in the financial statements of the state government.

The tourism program was administered by the Office of the Lieutenant Governor (OLG) for mitigation of the negative impact resulting from the oil spill and included \$30 million from BP. Those funds flowed directly from BP to the CFA; however, the MOU states that CFA has no responsibility or obligation to determine how or to whom funds shall be distributed, or whether or not the distribution directed by the OLG are consistent with the provisions of the MOU. The OLG agrees to defend,

indemnify and hold harmless and defend CFA's officers in performing its obligations of the OLG. Though the funds did not flow through the State, the State is maintaining considerable control over the distribution of funds and the State is taking the responsibility and liability, but CFA is taking none. In the agreements where CFA entered with third parties to conduct some operations, it states that CFA will serve as a third party fiscal agent for the State. Since this transaction was structured this way the money flows around the state, and not deposited in the Treasury and not appropriated, so not recorded in the State's financial statement. He suggested that it would have had more transparency and accountability had it gone through the State. He discussed the expenses as outlined in the documents provided, which showed CFA has been paid approximately \$66,000 to date.

Mr. Purpera pointed out the Attorney General's opinion included in the LLA report which opined that current law allows this method of funding. From his perspective to promote accountability and transparency in State government, all the same accomplishments could have been made by depositing it in the State Treasury. The LWFF received \$30 million and reviewed the expenses which included the properly handled \$2.1 million through a BA-7 (Exhibit E) in the Joint Legislative Committee on Budget. The balance as of 12/31/12, was about \$10 million. The portion of the MOU regarding LWFF states the same language regarding responsibility, but the program was directed and developed by Louisiana Seafood Promotion and Marketing Board (LSP&MB). The expenditures were reviewed by the LSP&MB and the LDWF. This legislature may want to take measures to not allow state agencies to structure transactions in this manner of going around the appropriation process.

Representative Greene asked if the Legislative Auditor was involved in the creation and implementation of the MOU with BP. Mr. Purpera replied that only when an amendment was added giving him audit authority was he aware of the MOU. Representative Greene asked if any concern of misspending or misconduct. Mr. Purpera said he was not saying that any money was misspent, but believes it could have had more accountability and transparency. As per the Council's request at the last meeting, he reviewed Mississippi, Alabama and Florida's MOUs, and the money either went through their state's accounting systems and budgeted or appropriated, or the money was given directly to nonprofits and not controlled by the state. He noted that there was no mention of indemnifying and holding harmless language regarding third parties.

Mr. Purpera said he was not saying that anyone was intentionally trying to conceal anything, but if the money would have been deposited into the Treasury, there would have more accounting controls, as well as included in the State's CAFR, and processed through BA-7's for budgeting.

Senator Murray asked if BP selected the nonprofits in our State at the direction of our government, and if the other states directed BP on whom to give the money to and exercised the control over the funds through nonprofits. Mr. Purpera said when reviewing the other state's MOUs, and the funds went to a nonprofit he did not see the language where the expenditures was controlled by state officials, but more of a delegation to an outsider. He did not know how the nonprofits were chosen by any of the states or by BP.

Senator Murray asked if the \$2.6 million remaining with LWFF would be returned to the state if not spent in a limited time. Ms. Beth Davis, Assistant Director of Financial Audit Services, said there was no specific timeframe in the MOU for spending all the money, but has to spend in accordance with the terms of the MOU and with Louisiana Department of Culture, Recreation and Tourism (CRT) approval for any disbursements.

Senator Murray asked if the LLA has audited CFA and LWFF. Mr. Purpera said that both entities had clean audits performed by local auditors, and his office is looking over cancelled checks and other documents but not audited them fully. If the money would have gone through the Treasury and then given to the nonprofits, they would have then been quasi-public entities so the LLA would have authority to audit them both.

Senator Murray pointed out the numerous and varied expenses for advertising and promotion and asked to be provided the detailed listing of which companies were paid for those functions. Mr. Purpera said that would be sent to him. No one was present from LWFF to answer questions.

Representative Henry asked if BP received a tax credit for the \$60 million given to 501c3 nonprofits. Mr. Purpera answered that he had not seen their tax returns, but as per federal law they were eligible to receive tax credits for donations. Representative Henry wanted to know if the \$78 million already provided to the State would be subtracted from any future lawsuit settlements. Mr. Phillips urged them to not further discuss settlements or the lawsuit. Representative Greene suggested that Representative Henry focus on the provision in paragraph 7 of page 11 of the MOU.

Lieutenant Governor Dardenne said he watched the video of the previous LAAC meeting and heard the self-appointed attorney general had concluded that this transaction was illegal and reminded him of Nicaragua. He took great exception to that and believed that to be the most irresponsible

comments by a public official. He came to provide answers to any questions they have and believes the program to be the most transparent and accountable ever devised for the expenditure of this money.

Lt. Governor Dardenne stated the MOU which was signed three days before he took office. He said that Mr. Scott Angelle was involved extensively and they spoke during negotiations of the MOU. They wanted to not only ensure transparency but also to get the job done. From the end of 2010 and beginning in 2011 the problems with the perception that Louisiana seafood after the oil spill was unsafe had financially threatened the seafood industry. They took seriously to use the funds to supplement the funds available in the budget to advertise and market Louisiana and ensure the people across the world know that the seafood was safe. He tried to secure the right to spend money from the budget to supplement the efforts through a BA-7, but was turned down so went through the MOU.

Shortly after his swearing in, Lt. Governor Dardenne made a conscious decision to amend the MOU to include audit authority to the LLA. He asked if he could change the MOU and the answer was no negotiating and it was a done deal, but only tweaks could be made. He emailed early in 2011 to the Legislative Auditor asking if they had the proper language to satisfy him, and received advice on wording in the amendment. He never heard any word of a problem with the MOU from the LLA until now being told that the LLA's counsel's opinion is that the MOU was amiss in how done. He had seven boxes that anyone could see showing every transaction. He provided the balance of the event fund to be \$2.6 million and about \$1 million in the promotional fund. When negotiating with CFA on their fees, he saw that they wanted too much and would only approve a lower fee so they would not make an extreme profit. When he saw that the funds were being spent too quickly, he slowed it down, thus unintentionally allowing more interest to accrue for CFA.

Lt. Governor Dardenne said the Attorney General properly opined that the money from BP was a grant or donation and within the law to give this way. There was a huge level of public dialog and personally gave presentations before many legislative committees. The parishes had to submit for promotional dollars and with his approval, he allowed CFA to disburse funds. The LSP&MB received \$30 million and worked to be sure no duplication of services between them.

Representative Greene asked if the nonprofits are only disbursers of the funds and have no control, then could it have been handled through the Lieutenant Governor's office. Lt. Governor Dardenne answered that it was structured as a donation with the intent to be handled in that method. Representative Greene pointed out that other states either handled it through their state or by a third party on behalf of the state, but our MOU was a hybrid of the two methods.

Senator Murray said that many colleagues had issue with the MOU, but understood that Mr. Dardenne tried to do a BA-7 and Joint Budget did not allow it. He asked if any other money comes to the state would his office do most of the work again and let CFA write the checks. Lt. Governor Dardenne said the Restore Act would be state dollars, and he had applied for funds but only received \$500,000. He must follow the MOU as it was agreed upon.

Senator Murray asked how or why BP chose CFA. Lt. Governor Dardenne said that Mr. Angelle would have to explain, but of the first \$15 million from BP, \$5 million was given to New Orleans. There was concern that the legislature would direct money to other purposes. The remaining balance held by CFA includes some committed funds not spent yet, but not to supplant CRT's ongoing needs. If they had not received the one time money from BP, the Bicentennial celebration would have not happened.

Senator Murray commented that the state diverts money all the time, but could the \$3 million for advertising be used by CRT to help with any shortfalls. Lt. Governor Dardenne said that his office directs the spending and CFA only writes the checks, and is using the money to supplement the goals of his office. The advertising agency chosen by his office after an extensive RFP process and interviewing several firms was Trumpet Agency in New Orleans. Trumpet Agency handles all the state's advertising and purchases. The event fund is for events that will promote and bring visitors to the state.

Representative Henry questioned Commissioner Angelle if the reason for the MOU was to prevent the administration from sweeping funds by keeping the money out of the state's hands and going through a 501c3, but still allow the Lieutenant Governor to have control. Mr. Phillips said the Attorney General asks that they move on to another question and not discuss the intent and purpose of the MOU. Negotiations go to interpreting the MOU and could be harmful to the state's case. Representative Henry expressed hope that they would eventually get an answer.

Representative Greene noted there is a difference of opinion between the counsel for LLA and the Attorney General's opinion. He thanked everyone for attending, but their discussion is limited because of the lawsuit. He appreciated Lt. Governor Dardenne painting a picture of the state's dire situation after the oil spill and his efforts to protect the state. When audits occur, the auditors look back and see how things were done and may have recommendations on improvements.

Senator Murray asked if other nonprofits were considered and how these were selected. Mr. Angelle replied that he could not speak to the money given to LSP&MB and LWFF. The moratorium funds were for parishes affected by the moratorium. When he requested CFA's voluntary assistance with Palmetto Park, and checked their audits with LLA, he was impressed by CFA. Also in 2005, Superintendent Picard received funds that CFA was the keeper of the funds and proved they were qualified for that task. Senator Murray asked again if any other nonprofits were considered. Mr. Angelle said that BP approved CFA, and it was a natural fit for LWFF, but not sure who else was considered.

Louisiana Department of Wildlife and Fisheries (LDWF) Secretary and Internal Auditor Robert Barham stated that he considers LLA to be important to ensure the money has been handled wisely. He worked with Lt. Gov. Dardenne and Mr. Angelle to track every dime spent. Louisiana's seafood industry is the number two producer in the nation and their share of the market collapsed after the oil spill. The state must guarantee that the seafood is safe and knows it will be a long road ahead. Millions of dollars were spent to ensure the viability of the seafood market. Secretary Barham said that LWFF existed over 20 years but could not speculate as to why BP chose LWFF but he did not direct the money through them. He said that LSP&MB has done an outstanding job. Mr. Barham stated that he spoke with the General Counsel for BP and knows that they listen to every word spoken regarding them.

Senator Murray asked if Secretary Barham has a voice in how the remaining money in the fund is spent. Mr. Barham said in an administrative sense yes, and Ewell Smith, Executive Director of the LSP&MB, was present along with their consultant and they made sure to get the most bang for the buck. Mr. Barham said his department ensures that the money is properly accounted for and signs off on it.

Senator Murray commented that at every meeting of the oversight committee of the BP Oil Spill which he chairs, there are fishermen complaining about health and resource issues. He asked if Secretary Barham has any ability within his parameters to use some of the remaining funds to help the fishermen. He requested a report be provided to the Council a couple of times during the year to let them know how the money is spent because \$10.5 million is still a substantial amount. Secretary Barham said his department does not receive any general funds and has a vested interest in the fishermen because without their licenses and activities, LDWF receives no funds. He pledged to assist the fishermen for injuries and promote their industry.

Representative Greene expressed appreciation to all the attendees answering the best that they could under the circumstances.

RESULTS OF THE ALTERNATIVE HOUSING PILOT PROGRAM - KATRINA COTTAGES

Nicole Edmonson, Director of Performance Audit Services, presented a summary of the performance report issued on February 20, 2013. Louisiana received \$74,542,370 in grant funds to implement the Katrina Cottages program and built 461 cottages located at 12 sites in the Baton Rouge, Lake Charles, and New Orleans areas. The program experienced delays, construction deficiencies, and occupancy issues.

Senator Walsworth asked to whom the money goes when the cottages built with grant money are sold. Senior Performance Auditor Krista Baker-Hernandez answered that the funds for the sale of cottages went to the local community partners to reinvest for more affordable housing initiatives.

Pat Forbes, Executive Director for the Office of Community Development, explained the program's process of teaming with nonprofits to sell or rent the cottages. The nonprofits use the program income to maintain the facilities and to provide other affordable housing. Senator Walsworth asked if he had a breakdown of the number sold and rented, and the selling prices for all the cottages. Mr. Forbes said he would get that information for him and explained the process will continue for some time as they do rentals and lease to own programs. Senator Walsworth asked if OCD still has control over the money after the nonprofits take the homes. Mr. Forbes said OCD has Cooperative Endeavor Agreements (CEAs) with each nonprofit outlining what they are to do with the money they received, and expected to use it to continue the mission of the providing affordable housing. Senator Walsworth said he would like to get more information on these details.

Senator Murray commented that this program took a long time to start and the cost per unit is so high considering the homes are not large. Mr. Forbes explained that the high cost per square foot is driven by the fact that the homes are so small, and the federal construction regulations caused the cost to be greater. Many units had disabled access requirements, and the steel framing design in the original proposal sent to FEMA caused costs to be high. The pilot program cost of \$145,000 per unit is more than usual but not abnormally so. Senator Murray commented that prices were higher for materials after Katrina because of demand, but by the time this program started the material costs were lower, so would still like to know why costs so high for a 600 square foot (SF) property.

Mr. Forbes explained that the FEMA Office of Inspector General detailed the pilot oriented program, and administrative costs were not the reason for high costs for the homes, because 94% of the

funds spent were for the construction portion. Senator Murray commented that some contractors made a lot of money because there is no way it should cost \$145,000 to build a 600 SF property.

OTHER BUSINESS

Mr. Purpera reviewed documents that the Council requested in their previous meeting. The Department of Health and Hospitals had calculated the cost for their internal audit staff, and for hiring contractors, as well as the budgeted amount for hiring an Inspector General.

Mr. Purpera explained the calculations by his actuary of the financial effect and legacy cost for charity hospitals closing and employees that would no longer be in the state retirement systems. He provided a tentative schedule of when the LSU Health Care Services Division (HCSD) would enter into cooperative agreements with the various charity hospitals.

ADJOURNMENT

Senator Murray moved to adjourn, and with no objections, the meeting adjourned at 4:20 p.m.

APPROVED BY:


REPRESENTATIVE HUNTER GREENE
CHAIRMAN


DARYL G. PURPERA
SECRETARY


DATE