

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting December 15, 2011

A meeting of the Legislative Audit Advisory Council (LAAC) was held on Thursday, December 15, 2011, in Senate Committee Room A-B of the State Capitol.

CALL TO ORDER AND ROLL CALL

Senator Murray called the meeting to order at 1:48 p.m. A quorum was present with the following members in attendance:

Members Present

Senator Edwin Murray, Chairman
Senator Ben Nevers
Senator Karen Carter Peterson
Senator John Smith
Representative Noble Ellington, Vice Chairman
Representative Cameron Henry
Representative Anthony Ligi

Members Absent

Senator Willie Mount
Representative Charles Kleckley
Representative Ledricka Thierry

TOWN OF JONESBORO UPDATE

Mr. Daryl G. Purpera, Legislative Auditor, provided an update on the status of the Town of Jonesboro (Jonesboro) being placed on the noncompliance list requiring that no state funds be given to Jonesboro. In an effort to help Jonesboro's recovery, his office and Mayor Leslie Thompson and LAAC agreed to contract with a CPA to serve as the Chief Financial Officer (CFO) of the town for a period time. That time has ended and the person serving as the CFO has had many accomplishments. The audit for fiscal year ending 6/30/11 is due on 12/31/11, and the Mayor has just contracted with a CPA to do the audit so it will not be completed on time. Mr. Purpera said because of concerns about the audit, he asked the Mayor to extend the contract with the CFO to help him through this audit period.

Ms. Joy Irwin, Director of Local Government Services, stated that the Town of Jonesboro has been monitored since receiving their 2008 report. The last three audit reports had disclaimers of opinions issued by the auditor, which means that the auditor cannot render an opinion on the financial statements for the reasons provided. Ms. Irwin said the two separate auditors for those three years provided the reason for their inability to render an opinion was because the accounting records were not kept in a manner in which the auditor can opine on the financial statements. Ms. Irwin said the contract monitored by the Legislative Auditor included 24 items that the CFO was responsible for, in addition to the ultimate responsibility of the Town. The relationship has gone well, and the CFO has been able to convert the computer system and for the first time in three years, Jonesboro has been able to prepare financial statements for presentation to the Council to manage the affairs of the Town. There are several items outstanding, which is the reason for the extension of the contract with the CFO through March 2012. The concerns include payroll tax payments to the IRS and they are attempting to get current, and also other payroll items that they are working on completing. Jonesboro hired an approved CPA who will begin at the first of 2012 on their audit; therefore, their report will be late.

Senator Murray asked if Jonesboro was on the extension list. Mr. Purpera said he has the authority to grant the first 90 days extension, and feels comfortable granting that extension with the Mayor's agreement to continue the contract with the CFO.

Representative Ligi inquired about the accounting bills owed by the Town. Ms. Irwin stated that her staff does not get involved in the decision making process of which bills have to be paid, because the Mayor and the Council still have the authority to run the town. Ms. Irwin explained that Mr. Kenneth Folden, auditor of Jonesboro's 2008 audit, provided a bill to the Mayor for a background meeting he had with the staff of the Legislative Auditor's office, and the Mayor chose not to pay the bill.

Senator Murray asked if the contract extension was approved by all parties involved to ensure that the progress continues in Jonesboro. Mayor Leslie Thompson said he is in agreement with the extension of the contract, and believes that approximately 97% of the goals had been achieved, but wants to get the remainder finished. Senator Murray asked if the Town Council approved the expenditure for the CFO to continue working. Mayor Thompson said as per the Lawrason Act, he cannot enter the contract

without the council's approval, but they are in agreement with the contract with one modification. Senator Murray told Mayor Thompson he hopes to not see him in this capacity again, but if the extension ends, they may need the Mayor back to be sure the audit is completed.

APPROVAL OF MINUTES

Senator Nevers moved to approve the minutes for the November 17, 2011, meeting and with no objections the motion was approved.

EXTENSION REQUESTS

Ms. Joy Irwin, Director for Advisory Services, with the Louisiana Legislative Auditor (LLA), stated the need for council approval of extension requests for less than 90 days which included the City of Franklin, East Carroll Parish Hospital Service District, Marksville Chamber of Commerce, Philadelphia Center, Regina Coeli Child Development, Terrebonne Council on Aging, Inc., and Washington Parish Sheriff. Senator Nevers moved to grant the less than 90 day extension requests and with no objections to the motion passed.

Ms. Irwin presented the list of nonemergency extension requests greater than 90 days.

N'R Peace

Ms. Irwin provided an update on the progress on N'R Peace from the last meeting. She informed the council that the CPA that performed the 2009 audit has still not been paid for her work, and is therefore reluctant to start on the 2010 audit.

Ms. Dimitre Blutcher, Executive Director for N'R Peace (Natural Resources for Preparing, Educating and Changing Environments, Inc.) provided documentation to the LAAC members showing justification for their delay in providing an audit. Ms. Blutcher had pointed out some errors in the agency procedures and how contracts were written, which caused the reimbursements received by N'R Peace to be substantially lower. She said no other community based organizations received such penalty. Ms. Blutcher stated that each contract allowed a certain amount for the audit, but it was not sufficient to pay for the audit. For 2009, they received state funding totaling \$779,175, of which less than \$3,000 was paid toward the audit. In 2010, they received \$471,725, of which less than \$2,000 toward the audit.

Senator Murray pointed out that for year ending December 31, 2009, N'R Peace received \$779,175, and asked how much the audit cost. Ms. Blutcher said it was \$13,000 for Silva and \$5,000 for their in-house that charges extra to conduct the audit. She said in the contract line items they did not cover for the audit. Senator Murray asked what she means by line items. Ms. Blutcher said the budget line items for individual contracts have approval for audits ranging from \$800 - \$1,000, which did not cover for the full audit. She said the contracts are sent to each state agency, and is limited on how much can be spent on audits by the state agencies.

Representative Henry asked Ms. Blutcher how she could not have enough based on knowing the costs from previous years. Ms. Blutcher said they covered almost all except for about \$7,000, between fund raisers and moneys from the contracts. Ms. Blutcher said that most of the money went to salaries, contracts to pay employees, and they sent in a budget request for more money for accounting and auditing, but were only given a limit of \$1,000, and for some contract only \$800. She said it was for five or six separate contracts at the time. Senator Murray asked if the state agencies were limiting them to only spending \$800 - \$1,000 for auditing expenses for each contract. Ms. Blutcher agreed that is what they have been limited to. Senator Murray asked if she had told the Legislative Auditor about this issue.

Representative Henry said that limited amount does not seem to be enough based on the contract amounts, and considering Ms. Blutcher's comment that the majority of the money went to salaries, it results in her unable to pay for an audit and now be before the council. Representative Henry asked her to explain how she came up with \$1,000 for an audit. Ms. Blutcher brought some of her contracts to show what was in operating expenses and what was required to pay employees. Senator Murray said the issue is not so much your budget with employees, but her comments that the state agencies are only allowing her between \$800 - \$1,000 to pay for an audit of a contract that is over \$100,000.

Ms. Irwin said it is the first time she has ever heard of this issue, and was not personally aware of state agencies disbursing the money limiting the amount of the auditor's contracts specifically. Ms. Irwin said she understands the contracts are where the agency prepares the budget and then submits that budget to the state agency for disbursement. Ms. Irwin said if Ms. Blutcher put in a specific amount for the audit, it would have been approved, and not sure how the message would have come from that state agency that she was limited on the audit costs.

Senator Murray said the state agencies should know how much it will cost, and asked if Ms. Blutcher had a letter from the agencies. Ms. Blutcher said during her tenure at N'R Peace, each time she submitted a contract she asked for an audit increase to pay for accounting procedures, she was given a limited amount. Senator Murray said that audit and accounting procedures are separate. Ms. Blutcher

said for audit expenses she was only approved \$800 - \$1,000 from the departments within the Department of Health and Hospitals (DHH). Senator Murray said he has been on the council for a long time, and had never before heard of a state agency limiting how much could be spent on an audit.

Mr. Purpera said it is the nonprofit's responsibility to set their budget for the year to determine that they have sufficient funds to operate, and if they take money from the government then they must have enough for an audit. He said this organization did not set enough aside for the audit. Senator Murray instructed Mr. Purpera to find out if DHH is actually limiting the amount that nonprofits can spend on an audit, and report back to the council.

Senator Nevers pointed out the letter provided by Ms. Blutcher from Ms. Irwin to the Mayor of New Orleans of the significant findings and that they should take it into consideration before future funding. Ms. Irwin said when an audit has significant issues, those audits are referred to the funding agencies in writing so that they can make the decision if the agency should continue to receive funds. Ms. Irwin said there were significant findings in the N'R Peace report that needed to be brought to the attention of the funding agency. Senator Nevers asked if the Mayor considered this. Ms. Blutcher responded that the Mayor's office did stop funding N'R Peace. As shown on the documents provided, because of Ms. Irwin's letter each entity that received the letter chose to not fund her agency and they went from a budget of about \$1.2 million down to less than \$100,000.

Senator Murray pointed out a contract budget revision form between N'R Peace and DHH for the STD HIV program, asking Ms. Blutcher how she interpreted that she could not spend money on an audit based on the budget shown. Ms. Blutcher said when a budget is submitted she goes into budget negotiations, but it is never in the contract. Senator Murray asked if she has a document where the state shows in writing that she can only spend \$800 - \$1,000 for an audit. Ms. Blutcher said they will not put it in writing, but during budget negotiations, they will tell you what you can and cannot put in your budget. There is not a line item exactly for auditing or accounting, but it was included in the operating services, and then there is a separate amount that spells out what those operating services are. Senator Murray decided they could not get to the bottom of this today because the documents provided to the council do not reflect what Ms. Blutcher told them. Ms. Blutcher said the reason she included the documents was for verification that N'R Peace was waiting for funding. She just received in November a budget revision that was made to her budget for the programs. It was after Thanksgiving which means that the agency has not received any funding from the State of Louisiana between August and now. She was able to submit invoices for only one account on Monday, and they have not been paid in five months.

Senator Murray asked Ms. Blutcher to give the auditors' office the name of the person that she dealt with who told her that limit on audit expenses, so it could be verified. Senator Murray said until N'R Peace could provide a completed audit for this time period, it will be on the noncompliance list which means that she would not be able to receive any money from the state. Senator Murray said the audit should have been paid by the moneys she received during those contract years. Ms. Blutcher said she used the money that was allotted in those years, but could not raise the \$7,000 balance. Ms. Blutcher said if they cannot be reimbursed some of those funds then they cannot operate any longer. Senator Murray asked if the state sends her the reimbursement for the receipts she sent in on Monday- but according to what she said earlier she cannot use that money for an audit. Ms. Blutcher said \$3,000 of that money goes toward the audit. Senator Murray asked if that was an audit for a different year. Ms. Irwin said if those were 2010 expenditures, she assumed that would go toward the 2010 audit, but the 2009 audit has not been paid. Ms. Blutcher said she can use those funds because that is not the state funds, but money paid before getting reimbursed.

Senator Murray asked if the CPA would do any more work since not paid yet for 2009's audit. Ms. Irwin explained that auditing standards state that the auditor can start work on 2010, but our office does not normally direct the auditors to do audits unless there is a reasonable assurance that the auditors will be paid, and since the auditors have not been paid for the 2009 audit it is doubtful that the 2010 fees would be paid. Ms. Blutcher said she speaks with Ms. Becky almost weekly and also share with her what is being done to raise money. Senator Murray asked if she was willing to do the audit. Ms. Blutcher said she submitted general ledgers to Ms. Becky, at her request.

Senator Murray said the audit will obviously not happen by December 31, and ask if the members would approve the extension for a month knowing that audit will not be finished by then, but at least give a chance to find out from the CPA what she thinks about it and if she will do the work. Based on Ms. Blutcher's assurance that if she gets the reimbursement, she will use that money to pay the auditor, maybe that will do it. He told Ms. Blutcher he hopes that if she is given an extension until January 31, she will be able to get this audit done, but if the auditor's office is not assured that you are complying and working with the auditor, then you will go on the noncompliant list and not receive any state money. Ms. Blutcher said she understands and has been working with every department that owes her agency funds.

Representative Ellington moved to grant N'R Peace an extension until January 31, 2012, and with no objections, the motion passed. Senator Murray told Ms. Blutcher that he hopes she will come back with better news and find those things from the department that says she can only spend limited dollars, and also asked the auditor to find out about that as well. Ms. Blutcher said she would get with other

agencies that have gone through this. Senator Murray said no, he does not want her to talk to other agencies, just to handle her agency.

Senator Nevers asked if a public agency can enter into a contract with an auditor when they know that they do not have the money to pay them, if that is standard business procedure. Senator Murray said it is a non-profit agency, not a public one, and receives other money as well. Ms. Irwin said under the audit law it is a quasi-public agency. Ms. Blutcher said they entered the agreement with Ms. Becky's understanding and acknowledgment that the agency is awaiting over \$400,000 of reimbursements. Senator Nevers said without the state reimbursement, she cannot pay an auditor. Ms. Blutcher told the committee that she had provided a plan to Ms. Becky on how they would raise money.

Operation Reach

Ms. Irwin said there is an external investigation of Operation Reach which has caused some difficulty for their auditor Sean Bruno to get records.

Dr. Kyshun Webster, CEO and Founder of Operation Reach, said it is headquartered in New Orleans and expanded across the region with offices in Atlanta, Georgia and Birmingham, Alabama. He said they help with recovery of youth programs and services post-Katrina. He said the funding came from various states and the federal government, and due to cut backs of about \$1.4 million in funding had to lay off staff in both offices in Atlanta and Birmingham. His office was down to two and a half full time people, not including the employees of the child care center which is self-sustaining. The shortage of staff and flux has put additional strain on his organization to complete the audit as they had to ship documents from the closed offices and currently have approximately \$27,000 on hold for reimbursements for much needed operations in Louisiana.

Dr. Webster said they had a letter of engagement with Mr. Bruno but was notified by the Office of the Inspector General with the National Corporation for Community Service that they had come up for a random audit. With limited staff and resources after federal budget cuts, it has been difficult trying to get all the documents for both audits. Senator Murray asked if he believed he can get the documents to Mr. Bruno to complete the audit. Dr. Webster said the money due for reimbursement would give the needed capital to pay Mr. Bruno to begin the process.

Senator Peterson moved to grant an extension until February 15, 2012, and with no objections, the motion was approved. Dr. Webster asked if that means they come off the noncompliance list and can be reimbursed. Senator Murray said he has until February 15, and if the audit is not received, the agency will go back on the noncompliant list.

Resource Foundation

Mr. Howard Tulle with Provost, Salter Harper & Alford, CPA firm, explained the purpose of The Resource Foundation, Inc. (the Foundation) is to help low income individuals get into affordable housing. He said in 2009 the Foundation entered a cooperative agreement with the Louisiana Recovery Authority and received a donation of approximately 40 homes built with federal dollars as a result of Hurricane Gustav. The Foundation received 20 homes in 2009 and another 20 in 2010, and except for those donations they would not have been subject to Government Auditing Standards (Standards) at all. When they found out that they must follow the Standards their CPA local firm contacted his office in mid-2010 to perform the single audit. Mr. Tulle said his office engaged with the Foundation to do the 2009 audit and just turned it into the Legislative Auditor the week before. He said the 2010 audit is being done but still requires additional documentation from the client. In 2011 the Foundation only received \$250,000 in grant money, so will not be subject to any audit standards for this year. He anticipates the 2010 audit to be completed and submitted by the end of March.

Representative Ellington moved to grant the extension to The Resource Foundation until March 31, 2012, and with no objections the motion was granted.

Senator Murray asked Ms. Irwin to find out if DHH is really telling people who they contract with that they can only spend \$800-\$1,000 for an audit.

JEFFERSON PARISH PERFORMING ARTS CENTER (JPAC)

As per Senator Murray, the Council discussed at the last meeting that the contractor would not provide backup information for the change orders, and the council volunteered to help make sure that the records would be received, and that is the main reason for discussing this today.

Allen Brown, Assistant Legislative Auditor for Local Audit Services, provided background information on the expenses, and highlights on the issues. The construction cost for JPAC went from \$25 million to over \$44 million. At the printing of the audit, the state had participated in paying about \$19 million, and their commitment is around \$30 million. Mr. Brown summarized the main points of the audit.

Mr. John Young, Jefferson Parish President, and Debra Foshee, Jefferson Parish Attorney, and Chris Tanksley, outside counsel hired by Jefferson Parish (Parish), testified. Mr. Young said when the Temporary Parish President Steve Theriot was in office, the parish council passed a resolution requesting an audit of the Jefferson Parish Performing Arts Center. The audit recommended that Jefferson Parish require the contractor to submit actual labor rates and supporting documentation as a result of change orders.

Ms. Foshee said they are trying to comply with the Legislative Auditor's request to get the labor rates from the contractor and evaluate their payments with respect to change orders, and determine if they did overpay. Senator Murray said he understood that they did receive some materials but not the labor rates. Ms. Foshee said they have only requested the labor rates as per the Legislative Auditor's report. She said another issue is change order #8 with over 50 items that all are being reviewed, and they need additional information on that.

Representative Ellington said he understood that they do not have to respond to the labor rates on a bid project, and asked why the labor rates are necessary. Mr. Jerry Jones, Assistant Commissioner of Administration, replied that on a bid project it does not matter what the labor rates are on the base contract because it is a low bid, but on change orders we do care about the labor rates being charged by the contractor. The labor rate is evaluated on every change order, and that is what the auditor is requesting for every change order to be sure it is reasonable.

Representative Ellington asked if the Parish is required to do that. Mr. Jones said as part of the review of the change orders, the Parish should ask for that information from a contractor to properly evaluate the change order before approving it. Representative Ellington asked if they can ask for labor rates after it was approved and paid. Senator Murray clarified that Mr. Jones' office was not running this project and not their contract. Mr. Jones said this is a capital outlay project and his office determines which change orders they can participate in subject to the appropriation of the legislature. Mr. Jones said if his office recommends state participation in that change order, it would be brought before the Joint Legislative Committee on the Budget (JLCB) to approve it. Mr. Jones pointed out there were many change orders that the Parish approved that the State is not participating in.

Mr. Brown said the change orders are based on an estimate, so they may use the RS Means rates. The contract reads for change orders "wages paid for labor including supervision determined by actual rates, or if not available...", and they know the number of hours and the rate actually paid since the work was already done. Representative Henry asked Mr. Jones if the Parish should have requested the labor rates for the change orders before approved, and if either the information was not available or not sure of the amount. Mr. Jones said for a state job he requests the labor rates to determine if within reason and if too high for the scope of work, and his office negotiates the change order with the contractor and that is the importance of getting the information up front. Representative Henry asked if they are requesting the information for just one change order or all of them. Mr. Brown said for all of the orders.

Senator Nevers asked if everything approved by the parish is the responsibility of the parish to pay. Mr. Jones said yes. Senator Nevers asked for the procedure for state funds. Mr. Jones said if it is over \$50,000, it must be approved by JLCB. Mr. Brown said the state participated in specific charges orders, and they would review the entire thing and determine what part they should participate in. Senator Nevers asked if the contractors did any work before receiving a written communication that it was approved. Mr. Jones said technically no, but because they are on a time limit, they may start without approval.

Senator Nevers asked what "time and material basis" meant. Mr. Jones said the contractor must keep up with all costs and time with that change order and submit it to justify the cost. Mr. Jones said the state does not ever participate in errors and omissions on projects because we do not hire the architect or the contractor, but it becomes the responsibility of the entity that hired the architect.

Senator Nevers asked if the contracts are reviewed by Office of Facility Planning and Control (OFPC) before approval of capital outlay expenditures. Mr. Jones said the project was bid by the Parish and because it was an approved capital outlay project they were allowed to proceed with the contract. But some of the actions of the Parish were against our suggestions like firing the designer right before they entered in the construction contract. The architect was the interpreter of the documents, which they lost and the project was left for interpretation by the contractor and the new architect hired on the project. Mr. Jones said his office repeatedly warned the Parish to not fire the architect, and has to protect the state's interest by not participating at 100% because not allowed to. Mr. Jones said the Parish did not use the state's contract, and local governments do not have to use it, but his office just must ensure that the state dollars are going to what appropriated for.

Senator Nevers asked about the RS Means and if way out of line, does that bring under scrutiny the work that was performed if cost more than nationally. Mr. Jones said RS Means is the average cost regionally for doing detailed work, and if any costs are more than the RS Means it raises a red flag, and we ask the contractor why. He said change orders are essentially a negotiation, and often contractors will throw everything into a change order, and our responsibility is to question and negotiate it. By the time we get to JLCB, we have already gone through an exhaustive process of scrutinizing costs, and have all the

justification for the change orders. Senator Nevers asked from OFPC's standpoint, what can be done to resolve this. Senator Murray said OFPC is not involved even though it went through Capital Outlay. Mr. Jones said he hopes the legislators would never try to put local projects under the responsibility of OFPC.

Senator Murray said the audit states that the Parish should request the labor rates to justify the work orders, so we must hear from the contractor. Representative Ellington asked if the change orders should be approved by Mr. Jones. Mr. Jones said the Parish approves the change orders and sends them to the state requesting approval for funding of the change orders, but we only participate to a certain level.

Senator Murray said Capital Outlay approved a set amount to start this project, and some people came to the Legislature requesting additional money, and probably based on the local delegation's request, the Legislature approved the additional money. Mr. Jones said more was added by the Legislature, but we cannot participate in all of the change orders because of errors and omissions due to design errors. That means the Parish is responsible for a large part of this project because they approved the change orders. Our job is to project the state's interest and be sure the disbursement of payments is used in accordance with the appropriation, but the legislature can change that.

Mr. Joe Caldarera, President and CEO of J. Caldarera & Co., said they have been in business for 37 years and obviously this is not their first project. He prepared a power point presentation that would address many of the issues. He provided some personal background including that he also works as a consultant in the construction industry for large surety companies, and teaches public bid law. Mr. Caldarera reviewed types of change orders and his supporting documentation through the power point. He said the elements for JPAC was estimated in advance with information at the time using standardized manuals, and standardized rates. He said according to the Louisiana Public Bid Law at R.S. 38:2212A, the change order was negotiated to the best interest of the taxpayer, and also states that rates are used in accordance with the Associated Equipment Dealers handbook, which is a published and standardized manual.

Mr. Caldarera said whether or not the actual labor rates must be furnished depends on which mechanism in the contract you direct the contractor to proceed with the work. If you direct the contractor to proceed with the work under a mutually agreed upon changed order, then the means book is fair gain to establish pricing. He said they used the means rate for a primary and basic reason because the contract says that the contractor is in control of his means, methods and procedures. So to not get into a debate about what we pay our workers because we pay a variation of wages depending on their experience, we use the standardized rates which require performance based on production.

Mr. Caldarera pointed out the boxes present containing the 493 revised sketches, drawings, and directives that have changed the work on the project. Most of the emphasis was on the previous administration and counsel that selected the architect in the first place. The problems with this project have to do with design, and Caldarera and Co. are not responsible for the high cost, but have actually cured many of the problems. He said that initially he was told in a very early meeting that it was important for any errors or omissions in the project be noted for consideration of paying. The fact that the initial architect was not still there was not a choice of the current administration, but if the architect had been still there it would probably have been more contentious. As you can see from the magnitude of changes that had to be made, there was a question if the building could have been built as designed. He said they asked at the pre-bid conference over 95 questions, including if they really wanted only one exit door. They developed 110 questions overall, but the architect said due to the magnitude of the questions, an addendum was issued and the project had been extended. The Parish official told the architect that he could not extend the deadline, and the architect then said he would answer no more questions, but would answer in the formal RFI process. Mr. Caldarera explained the differences between various accounts and why it is difficult to know the exact rates because unsure which employee will be used and not sure if subcontracting part of the work.

Representative Henry asked why he could not provide the actual rates for work already paid and finished. Mr. Caldarera said these changes orders were estimated well in advance of completion of the work. When they gave us approval for that price, he agreed on pricing with subcontractors, and lump sum items, and broken down pricing for that work. Mr. Caldarera said he is being asked for the actual cost of the work after completed and having earlier agreed on the price to do it. He provided examples of quoting for a change order, and if agreed to the pricing then the customer has no right to change it. He said the prices were commitments made to his company based on negotiations with the contractually required designated representatives including an engineer and an architect. He said they met for months on the estimated pricing, agreed on the price, completed the work and submitted the invoices, and now have subs waiting to be paid.

Mr. Caldarera said his presentation would show two different breakdowns that developed costs and was provided to the parish before they paid it. He said 90% of change order #8 has been done, with a recommendation by the design professional that was supposed to review the work. He followed the rules given to him. Senator Murray said before the change orders were given to the Parish, it was given to Perrin & Carter Architects who approved to pay it.

Mr. Caldarera said one of the issues is that there is one set of front end documents that come from three different sources including DOTD, Jefferson Parish, and the 8201 General Conditions adopted by reference. He met on sight with Jose Gonzales who was a former public works director about putting a particular subcontractor on force account because of concern about their prices being too high, but Mr. Gonzales said no because they want to know the price in advance. Mr. Caldarera said the reason for a change order is a guaranteed price to the contractor that he may rely upon to extend those prices to his subcontractors.

Senator Murray asked Mr. Caldarera to make a copy of his presentation available to the Council and to the Legislative Auditor. Mr. Caldarera agreed to do so. Mr. Caldarera explained the truth about the change order #5 which was incorrectly stated in articles. Mr. Caldarera said within the eight change orders there are 115 change order proposals, and showed one of the recap sheets. The back up to that change order is about 8 inches thick, and gave some further examples. Senator Murray said they did not require all the details, but the issue is that the Legislative Auditor has suggested that the Parish go back and do an audit using the actual labor rates, and Mr. Jones agreed that it is appropriate when change orders. Senator Murray asked Mr. Caldarera if he believed that he has already provided the rates and that the Parish approved it, so he should not have to recreate anything.

Mr. Caldarera requested that they look at what he has submitted for change order #8 and do a rifle shot and if there is anything submitted that does not meet their standard or have an issue with or he cannot provide further explanation to clear it up, let's deal with those items. But certainly the entirety of change order #8 cannot be in question, and for change orders #1-7 which are already approved, the Parish's own documents say that when approved, and the payment made, it does not make sense to go back. Mr. Caldarera said he heard about some future legislation that an agency or the state can go back into a completed change order and review and ask for money back, but you will have very few contractors that are going to want to bid under public bid law.

Mr. Purpera said one of his responsibilities is to ensure that the Parish has done its job, so when performing an audit, we look to see if the Parish vet out these change orders. As per the contract, there is supposed to be an itemized list of material costs and labor costs for all subcontract work. The contract states that wages paid for labor include supervision determined by actual rates or if not available, by prevailing wages. Mr. Purpera said they are asking the Parish for the actual rates to compare to see if it was properly vetted. Senator Murray asked if all construction contracts should have been verified for the actual labor rates. Mr. Purpera said they should have done so originally.

Representative Henry said there is a huge gap between the information provided and requested, and the goal is to find out where the information lapse is, because more money will be needed to finish the job, and will probably have to come from other important uses such as drainage. He asked if they could come back before the council to stay on the forefront of this.

Mr. Caldarera said he does not believe any mistakes were made on the way they submitted their pricing, or the way it was reviewed. He believed that he salvaged this project and it easily doubled in size because as a contractor he must put up a performance bond on 100% of the value of the project. When architects bid projects, they are required to put \$500,000 or \$1 million worth of coverage, but they really should be required to put some percentage of the project so they can be accountable. In the paper a councilman said that they need to put up a mechanism to check change orders, but that is what Perrin & Carter was supposed to do, and they did that. But there are 493 changes. He heard that the previous Parish administration paid for a constructability review at about \$400,000 or \$600,000, to catch the problems and mistakes, and approved the plans. Mr. Caldarera said there were two elevators in the plans that did not go all the way to the top, and from day one there has been issue after issue on this project.

Senator Nevers asked what provisions are in the contract for the means for determining and approving the change orders. Mr. Caldarera said according to Article 7.1 of the 8201 General Conditions a change order can be mutually agreed upon ahead of time, and outlines what can be done if we do not mutually agree, and how to handle a dispute by being put on force account. Senator Nevers said there are other avenues to approve a change order other than just the time and material and labor rate outlined in the contract, and we do not know how the Parish approved change orders.

Representative Ellington asked if a change order is like another contract negotiating between the owner and the contractor, and if it is a signed document of agreement. Mr. Caldarera said yes, it is. Representative Ellington said if the cost is actually less you make more, but if it costs more the contractor loses money, but since the Parish agreed to the costs you provided, that is all that is necessary. Mr. Caldarera said if the Parish does not agree and an agreement cannot be reached, then he must provide all the details of hours worked and labor per employees and exact cost of materials.

Senator Murray said he understood that Mr. Caldarera followed the contract on submission of change orders and did the work when approved, asking when the building will be finished. Senator Murray stated that Perrin & Carter will be invited to the next meeting because they were not able to attend this meeting.

Mr. Caldarera said the \$8 million change order being held up has caused some subcontractors to be reluctant to work. My employees are working every day and finishing the inside of the building, and are within 4-5 months away pending payment be received. The State Fire Marshall sent him a review letter with 10 different inspection reports, and the most recent one was on September 9, 2011, when the Fire Marshall found 10 more items that are wrong including stairs not wide enough, and not enough head room, not enough railings in the auditorium, etc. He said that most items are under appeal, but at least the railings cannot be appealed and must be done which will cost additional. Mr. Caldarera said there have been many mechanical changes, and the roof took 891 days under the previous administration to approve the change caused by new roofing codes that were required because of Katrina.

Mr. Caldarera explained that a schedule is provided monthly with a written clear narrative of what must be done, items in red are critical, and new issues are in blue, with footnotes to further explain elements of the work, and charts showing the reason for delays. Senator Murray said the council better understands the reason for the delays and increased costs, and will probably revisit this issue. He asked Mr. Caldarera to provide the council with a copy of his presentation.

Debra Foshee, Jefferson Parish Attorney, said they are responding to the audit report and have a list of things they have been asked to do. She said they have problems with all of the change orders, but there was a specific instruction from the Legislative Auditor to require the contractor to submit actual labor rates and go back and analyze them. Senator Murray said the Auditor pointed out that the contract requires that information and if that is boiler plate language in all Jefferson Parish contracts then you have a lot more to review. Ms. Foshee said she must find out if it is in the contract, because if that is the case, they do not have the same issue.

Parish President Young said even if Perrin & Carter recommends a change order, the council must approve it and right now they will want to see the labor rates for change order #8. He said there were also problems with previous change orders based on the audit. As it stands now, there is not even a concession stand in the Performing Arts Center, which will be necessary. He said until he gets the documentation that the Legislative Auditor asked them to get, he will not bring anything else to the council. To be a good steward of public funds, we need to make sure we get everything needed from the contractor so everyone can feel comfortable that all the money is being properly spent. The project needs to be finished and will likely need more state funds to complete it.

Senator Murray said this will be put back on the agenda for a status update, but until then could you please tell us what else needs to be done when you come back. Mr. Young said they would do their best, but this may not be the last change order because of the Fire Marshall findings.

Senator Karen Carter Peterson questioned the steps for approval of contracts and change orders. Mr. Young reviewed the history of the JPAC project and the responsible parties from the previous Parish administration. Mr. Young said we have an audit report and must comply with it, that is where we are and that is what is driving us at the Parish and Council level to do what the Legislative Auditor told us.

Representative Henry said that will also be driving when you come back to the State to cover costs, because he cannot imagine much state funding will flow toward that project. Senator Murray suggested that Jefferson Parish, the contractor and the Auditor's office talk and see what they come up with, and the council will try to put this back on the agenda at some point in the future to see where it stands.

HAZARD MITIGATION GRANT PROGRAM

Senator Murray said this is on the agenda to follow through the changes and get an objective view on where the program stands and where it is headed. Mr. Purpera provided an overview for the elevation construction that there are approximately 60,000 applications, and FEMA has approved a list of approximately 15,000, and the Office of Community Development (OCD) has determined they have the funding for 10,500 applications. Of those, 2,300 have been completed and progress being made on another 6,500, and leaves about 1,700 that have not received any funding or work. Mr. Purpera said the question is for those recipients of funds from the Road Home Program but unable to complete their elevation, how will OCD get those funds back.

Senator Peterson questioned the criteria used to compile the 15,000 applicants that were sent to FEMA. Mr. Patrick Forbes, Executive Director for Office of Community Development, said the criteria including people that received payments already, and people that were working with an Mitigation Analysts (MA) and had progressed that far through the process, and people who were repetitive loss or severe repetitive loss, and once those three primary criteria was met, the last section were filled with the rest of the prioritization was based on expressed interest date.

Senator Peterson questioned what drove the criteria for the 15,000, and asked what verification could be provided that the criteria provided was in fact used. Mr. Forbes gave further explanation of possible ineligibilities that may push them back. Senator Peterson asked how anyone not included in the 15,000 could appeal. Mr. Forbes said he was not aware of an appeals process. Senator Peterson asked if it was required by Federal law. Mr. Forbes responded that they do have steps to go through, and would

find their appeal process in writing for Senator Peterson. He said some people have appealed their eligibility. Senator Peterson said there are a lot of people that want to challenge some decisions, and asked how they would have notification of the steps to take, and if it is required to be offered since Federal funds are involved. Mr. Forbes said their MA would tell them the process, and reiterated he would provide the written process to her.

Mr. Mark Riley said this is not a Federal programmatic appeal, but an agency internal appeal. The type that would engage FEMA would be a project appeal, questioning if the project is eligible which it is, and the individual homeowners would not have an appeal right to the Federal government on this. Senator Peterson said no one has ever provided the specific criteria used to choose the 15,000. Mr. Forbes said it was provided at a Select Committee meeting on a slide and in your folders back in the spring. Senator Peterson said she has received inconsistent information, so if he could provide it again on the selection of the 15,000, because the FEMA Inspector General is being asked to look at it.

Senator Peterson asked how many people received \$30,000 for the purposes of elevation. Mr. Forbes said about 32,000. Senator Peterson said there are over 20,000 people who are not eligible to participate in the elevation program but they have received \$30,000 already, and cannot afford to elevate. She asked if the state will have to recoup the money. Mr. Forbes said he is working with HUD to bring them into compliance to ensure that they spent the \$30,000 to elevate their house, and also to find other unmet needs that the \$30,000 can be applied against, such as living expenses and rent while getting their house rebuilt and things that are not duplication of benefits for the original Road Home Grant.

Senator Peterson asked why people were given \$30,000 up front when they did not have enough to elevate their home. Mr. Forbes said because they expressed an interest in elevating, and most of the 32,000 expressed in the Road Home elevation program. He said that they are just reaching the end of the compliance period for the first grants provided in 2008. The vast majority of the elevation incentives were requested prior to the HMGP Elevation being instituted.

Senator Peterson asked what can they use the \$30,000 for, and why no one has checked on how that money was spent. Mr. Forbes said a letter is sent at 60 days before the end of the three year period asking for their compliance, and now they are sending out letters annually after the grant is issued. Senator Peterson asked if anyone has not been in compliance for using the funds for elevation, and do not have the \$30,000. Mr. Forbes said he is not sure if they received any responses that said that, but they took the money for the purpose of elevation, and no other programs were offered at the time to assist in elevation. Senator Peterson asked how the state can recoup the \$30,000 from the people that cannot afford to elevate. Mr. Forbes said OCD will continue to work with those people and with HUD to establish ways for them to be compliant. Senator Peterson asked if he meant changing the rules so that 1000's of people will not be indicted for federal fraud. Mr. Forbes said he does not believe anyone would be indicted, and not sure of the federal response to that. Senator Peterson asked what will happen if they are not in compliance under the rules of the existing program. Mr. Forbes replied his office will communicate with them about their responsibilities under the covenant and request an extension for 1-2 years to elevate.

Senator Peterson asked for the number of people not in compliance. Mr. Forbes said only those past the three years would be out of compliance, but that he is communicating with people within the three years. Senator Peterson asked if he knows how many people have less than \$30,000 and have not elevated, and have reached the three years and are not in compliance. Mr. Forbes said he does not know but would get that for her. He said they are primarily working on getting the money out.

Senator Peterson said many people are not able to manage \$30,000 in their accounts when there is a bad economy and other things happening, and unable to elevate anyway and the HMGP program is not able to help them. She said she suspects 1000's of people if checked today, do not have the money in their accounts and have not elevated.

Mr. Purpera referred to an audit released June 30, 2010, on OCD as part of the CAFR audit, in which they looked at the Road Home Program and if the covenants had been met because predicted this problem would arise. From a sample used where the three years had expired on individuals and there was \$2 million that would need to be recouped at that time, if other things could not be arrived at, such as HUD giving an extension or changing the program.

Senator Peterson asked if the homeowners were identified. Mr. Purpera said a sample of the original Road Home Program was used in the report, which provided details in the finding. He said from the beginning of the Road Home Program, the state was recommending to not operate as a grant program, but more of a construction loan program. But HUD said no- that it would be a grant program, and now we find ourselves three years later in this situation. If HUD does not change the program, the amount that would need to be recouped will be very high, and the possibility of recouping it will be very slim. Mr. Purpera said it was previously discussed about the potential astronomical legal cost, and if it would be fair to those who received those funds.

Senator Peterson asked the consequences for spending federal dollars not in compliance with a covenant. Mr. Purpera said he would have to find out for this particular program if there are criminal

penalties for the person who received the money to elevate their homes, and then used the funds to buy groceries, or some other use. Senator Peterson asked if this was noted in his previous audit. Mr. Purpera said the audit only reviewed a small sample, and the problem is much bigger back then. Mr. Forbes said in response to the audit, they have continued compliance monitoring by sending letters, making phone calls and driving out to inspect properties. Senator Peterson asked how they verify bank funds to ensure the \$30,000 is in their account. Mr. Forbes said he does not believe the covenant forces the grantee to show their bank records, and not sure if legal to do that.

Senator Peterson asked Mr. Purpera if HUD decides that 10,000 people are not in compliance, who would have to pay back HUD. Mr. Purpera said HUD would consider it questioned costs and would look to the state for the funds. Senator Peterson asked Mr. Riley if CDGB funds or from the general appropriation. Mr. Riley said if it similar to the FEMA Stafford Act program, it would be a debt of the state as the grantee, but not with FEMA money because not eligible for FEMA money until the project has been complete. He said the state would have go after the individuals, and the Stafford Act said either the parish government or other eligible applicant to recoup the funds, but it is the state's responsibility.

Senator Peterson pointed out that currently there are no checks and balances in the program to verify the \$30,000 has not been spent by the participants not in the 15,000 pool. Mr. Forbes said the verification is performance, and do not have to see their bank accounts to see if they have elevated, or whether they returned the \$30,000. Senator Peterson said the number of individuals in or out of compliance should be readily available because there must be a process of how the state can recoup the money, so that this program does not come to the Legislature for general appropriation dollars to send to the Federal government because unable to recoup from those not in compliance.

Mr. Forbes repeated again that their focus is not on recouping the funds, but working with HUD and the homeowners to get them in compliance, as well as get people back in their houses. Senator Peterson said the only reason to go to HUD is because you know there are 1,000's not in compliance and it worries you. Mr. Forbes said HUD approved this action plan in the first place and continues to approve his office's approach and work with them. Senator Peterson asked who decided to give homeowners \$30,000. Mr. Riley said the Louisiana Recovery Authority (LRA) approved these claims. Senator Peterson said she believed it came up while she was on the LRA, and the \$30,000 - even if we did it for CDGB because we thought it might be enough to help people do it, and they were limited in the covenant to use it only for elevation. Senator Peterson explained that there are only two inspectors in this program, but every meeting whether Audit Advisory with Senator Murray or her committee meeting, they continue to find flaws. She had asked for the program to be suspended because it is an inherently flawed program - it hurts homeowners, and hurts the state's image. People are jeopardized criminally and the fix is going on in quiet conversations with HUD because there are people who know, including Mr. Forbes, the risk and the potential, and do not communicate that openly with legislators unless questioned.

Senator Peterson asked if someone can go online now and apply for this program now. Mr. Forbes said they would be late interest on the Hazard Mitigation Grant Program (HGMP), and he supposes they could still apply for the Road Home Elevation but not sure. Senator Murray said they could sign up for both, but it would be late interest for HMGP. Senator Peterson discussed the lack of value in allowing anyone to sign up for a program giving them false hope, when unable to fund anyone else. Mr. Forbes said there would be little to no value in signing up, and would find out for Senator Peterson the number of people who signed up in the last year.

Senator Peterson discussed the problem which has arisen repeatedly of contractors that have received the 80% advance payment as an option (APO) and have disappeared from the scene of the construction site. She asked how they could hold those contractors accountable and why there is no incentive for the contractors to complete the work. Mr. Forbes said this summer they started the threshold program where contractors have to bring their population to 50% complete and they were suspended from getting APO's until they did. The threshold program continues to this day, and the bonding requirements that we instituted are intended to protect homeowners from contractors that take the 80% APO and then walk away. Senator Peterson asked Mr. Forbes to provide to her the following day, just how much has been paid to Shaw in the past six weeks, and how much in administrative costs was OCD billing to this program in the past six weeks.

Senator Peterson questioned Mr. Forbes about Mr. Knight's work situation. Mr. Forbes said there was no indication that he was involved with anything and had him still working but not in the HMGP program. Senator Peterson asked why Mr. Kurg was on paid leave. Mr. Forbes said they had allegations against him, and have the proof now and he no longer works for the state. Senator Peterson asked if he was fired. Mr. Forbes said it was a personnel matter that he was not at liberty to go into. Senator Peterson asked if the FBI and the FEMA IG, and the State Police are the only ones she can get information from. Mr. Forbes said he is extremely restricted in what he can say. Senator Murray asked where Mr. Knight is working. Mr. Forbes said he works in administrative program for himself helping with reporting and budgeting in the CDGB programs.

Senator Murray asked Mr. Forbes to provide for him the number of people that received the \$30,000 because they were in Road Home at the time the HGMP program started, and to provide to him every six month interval showing the number of people who applied and how many are in the elevation

program. He said he did not understand why they would not have started with the pool of applicants that already received the \$30,000 to make them eligible to receive the additional elevation dollars.

Senator Murray said a nonprofit in his area, Beacon of Hope, found that about 25% of the homeowners that received Road Home grants had not touched their properties yet. Senator Murray suggested that nonprofits can assist with the compliance of the people that received money considering it is past the three year period for the Road Home Program. Senator Murray stated that a year ago Beacon of Hope had looked into people who received Road Home money and because OCD would not provide information to them, had to check permits at City Hall, and discovered 25% noncompliance. Mr. Forbes replied that his office has resources to help them get into compliance.

Senator Murray said at the previous meeting the council asked OCD to consider suspending the RFP process in light of the problems with the state's HGMP program or to split it into two separate contracts – one for just Road Home, and one for the Elevation program. Mr. Forbes said they did consider it and discussed it with the program managers and pushed the date back a week because of questions from potential proposer. He said they decided to not suspend it, but continue because it is the smart thing to do for the state. Mr. Forbes said we always maintain the option to removing scope items, and in this case we were very clear that we may remove a good number of scope items, particularly in HGMP. He explained this produces greater competition, and expect better pricing, and be able to review proposals from many companies that might give ideas on how to do this more efficiently – on how to blend some parts and not others. Senator Murray said it also discourages smaller companies from submitting proposals. Mr. Forbes said the minimum number of people to be hired even if Road Home would be around 130, and not the level of job from a small company.

Senator Peterson said this program is completely flawed and the state is on the line for millions. In the Review Estimating Committee, they saw the failure to recognize another \$1.98 million, and it will be discussed at Joint Budget further. She asked why continue doing something the same way that is not working. Mr. Forbes responded that they are outperforming the administrative cost milestones and are elevating homes, and expect to have all the funds obligated within about 4-5 months. Senator Peterson said if the funds are not properly obligated then the state is on the hook and jeopardizing the fiscal state. All the people who want transparency and accountability and fiscal responsibility, this HGMP program is inconsistent with that philosophy – this is a completely irresponsible way to oversee Federal dollars that are completely within the jurisdiction of the state. Senator Peterson stated on the record that she suggested stopping the program but no one is listening, and does not want to be part of the embarrassment.

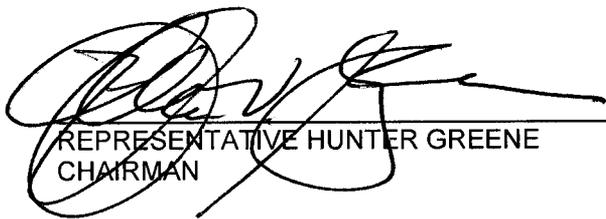
OTHER BUSINESS

Mr. Purpera stated that in 2010 this council asked his office to audit the Louisiana High School Athletic Association which had been issued. Since that time, LHSAA has filed a lawsuit against the Auditor of the state basically wanting to be declared a private entity and not a quasi-public entity. In the 19th Judicial District Court, the ruling was that the plaintiff's motion was denied for summary judgment and declared it to be a quasi-public body subject to the provisions of the audit law. At this time, no word on an appeal being filed.

ADJOURNMENT

Senator Peterson made the motion to adjourn, and with no objections, Senator Murray adjourned the meeting at 5:09 p.m.

APPROVED BY:



REPRESENTATIVE HUNTER GREENE
CHAIRMAN



DARYL G. PURPERA
SECRETARY

7-11-12

DATE