

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting Wednesday, July 20, 2022 Senate Committee Room E State Capitol Building

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

Chairman Luneau called the Legislative Audit Advisory Council (Council) meeting to order at 1:15 p.m. Ms. Tanya Phillips called the roll confirming that a quorum was present.

Members Present: Senator Jay Luneau, Chairman
Senator Louie Bernard
Senator Franklin Foil, Proxy for Senator Fred Mills
Representative Aimee Adatto Freeman
Representative Barbara Freiberg, Proxy for Representative Stephanie Hilferty
Representative Edmond Jordan

Members Absent: Senator Beth Mizell
Senator Jimmy Harris
Representative Barry Ivey, Vice Chairman
Representative Rodney Schamerhorn

Also Present: Michael J. “Mike” Waguespack, Louisiana Legislative Auditor (LLA)

Approval of Minutes

(Video Archive Time 01:42)

Senator Bernard offered a motion to approve the minutes of the March 9, 2022 meeting and, with no opposition, the motion was approved.

Extension Requests

(Video Archive Time 01:56)

Mr. Waguespack advised we are seeing less extension requests than we did in 2021 when the requests reached its peak. The Legislative Auditor’s office has been tough in approving these requests. Several agencies were denied extension requests for no better reason than they are not engaging timely with their CPA’s and management is not prioritizing following the Audit Law.

Senator Luneau applauded the Legislative Auditor’s office for that work. LAAC has been sensitive to those issues but there comes a time when agencies have to abide by the rules and get back to a normal practice.

Mr. Waguespack discussed an agency that was recently mentioned publicly because the agency had not filed an audit report in three years. The Legislative Auditor’s office advised the District Attorney’s office and the District Attorney filed a Bill of Information on the agency. Mr. Waguespack stated that all agencies should take this seriously.

Ms. Diane Allison, Director of Local Government Services, presented four extension lists (Attachment A):

- ✚ Emergency Extension Requests - Greater Than 90 Days (23 entities)
- ✚ Emergency Extension Requests - Less Than 90 Days (82 entities)
- ✚ Non-Emergency Extension Requests - Less Than 90 Days (74 entities)
- ✚ Non-Emergency Extension Requests - Greater Than 90 Days (16 entities)

Ms. Allison provided an overview of the 295 extension requests. In July 2021, the Legislative Auditor's office presented 567 extension requests so we are now 48% less requests than in 2021. The extension requests cover 267 agencies. We received 152 extension requests, or 51%, for declared emergencies. The three declared emergencies are Hurricanes Laura, Delta and Ida. We received 28 extension requests due to Hurricanes Laura and Delta and 102 extension requests due to Hurricane Ida. We also received 22 extension requests from agencies that opted to delay filing their audit report due to the delay in the federal government issuing audit guidance on some of the CARES Act programs, particularly Preferred Provider Funds. These guidelines outline how to audit federal programs. The federal government usually provides guidelines in the spring but they did not come out until December.

The Legislative Auditor's office received 143 extension requests, or 31%, for non-emergencies. The reason for non-emergency extension requests are primarily due to staffing issues. Our office has summarized it as staffing shortages, turnover in key personnel and lengthy illness of key personnel. This is happening throughout the country.

Ms. Allison began with the emergency extension requests less than 90 days which represented 82 agencies. All of the requests were for fiscal year end 2021. We received 57 extension requests due to Hurricane Ida and 22 extension requests due to Hurricanes Laura and Delta. We received five extension requests due to the delay in receiving the federal government CARES Act guidance. LLA recommended the committee approve. Senator Bernard moved to approve the extensions and, with no opposition, the motion was approved.

Ms. Allison presented emergency extension requests greater than 90 days which represented 23 agencies. Of the extension requests, 25 are due to Hurricane Ida, four are due to Hurricanes Laura and Delta, and four requests are due to the delay in receiving federal government CARES Act guidance. Ms. Allison noted that eight of these requests are for fiscal year end 2020 and 25 are for fiscal year end 2021. LLA recommended the committee approve. Senator Bernard moved to approve the extensions and, with no opposition, the motion was approved.

Ms. Allison then presented non-emergency extension requests less than 90 days which represented 74 agencies. She advised that 57 are due to staffing issues – staff shortages, turnover key personnel or lengthy illness from CPA firm, agency or both. All of the extension requests are for fiscal year end 2021.

Representative Freeman questioned the reason for an extension request being that the agency did not know they had a reporting requirement. Ms. Allison explained that it is usually the agency's first time reporting and they did not realize they had a reporting requirement. She went on to explain that non-profits that get any type of public funds have to report to our office. New nonprofits have to learn that. Somehow we

learn about the agency but if we don't notify them quick enough, or we don't learn from CPAs quick enough, it causes a delay in the agency filing a timely audit report.

Representative Freeman also questioned why the reason for another agency's extension request is because they did not receive requested information from the City of New Orleans. Ms. Allison explained that the particular agency needs tax information, the City of New Orleans is the tax collector which is probably a major revenue source or major receivable for the agency. The City of New Orleans is not providing the information timely to the agency.

Mr. Waguespack added that he has received several complaints that agencies and CPA's are requesting information from the City of New Orleans and they either do not get the information or it takes a while to receive the information. This is affecting numerous agencies.

Representative Jordan asked Ms. Allison what the significance is for a timely engagement. Mr. Waguespack explained that agencies are required to engage a CPA within 60 days of their fiscal year end. Part of LLA's criteria on the acceptance or denial side of an extension request is whether or not an agency is a habitual offender of engaging a CPA timely.

Senator Foil asked about the threshold an agency has to meet for reporting requirements, especially non-profits who receive one-time funding. Ms. Allison stated that an agency is required to report to LLA after receipt of the first dollar of public funds. If an agency receives \$75,000 or less, they are required to file a Sworn Financial Statement. If they receive between \$75,000 and \$200,000 they file a compilation which requires a CPA. An agency that receives between \$200,000 and \$500,000 is required to file a Review/Attestation which means a CPA expresses an opinion of the financials. If an agency receives \$500,000 and above an audit is required. She went on to advise that the LLA does notify a new agency if we know about them but there is no way for us to know what the non-profits are doing. The agency's CPA will often contact our office because they are aware of the reporting requirements. These requirements also apply to capital outlay dollars if they are funded with public funds.

LLA recommended the committee approve. Representative Freiburg moved to approve and, with no opposition, the motion was approved.

Ms. Allison presented the non-emergency extensions greater than 90 days. This represents 16 agencies. She stated that 50% are due to staffing issues, five are due to a CPA that lost his license and those agencies having to engage another CPA, and five are for various reason. LLA recommended the committee approve. Senator Foil moved to approve the extensions and, with no opposition, the motion was approved.

Ms. Allison then presented members with a chart of 79 emergency and non-emergency extension requests from 72 agencies which were approved during LAAC's March 2022 meeting. Ms. Allison stated that this list represented audit reports that had been received since the March 2022 meeting. LLA recommended the committee approve. Representative Jordan moved to approve and, with no opposition, the motion was approved.

Performance Audit Report – Status Update: Regulation and Valuation of Surface Water (Issued July 6, 2022) *(Video Archive Time 25:05)*

Performance Audit Manager, Gina Brown and Senior Auditor Kristen Jacobs presented their report, released July 6, 2022, on the Regulation and Valuation of Surface Water.

Representatives from the Department of Natural Resources were in attendance. Over the past six years LLA has issued 11 audits related to water regulations and issues in Louisiana and are about to issue a 12th report on the Louisiana Watershed Initiative.

LLA provided a handout that lists all of the audits we performed in the last six years ranging from Capital Area Groundwater Commission, water rates and evaluation of Louisiana's management of water resources which looked at the regulation of ground and surface water. That report was issued in February 2020 right before everything shut down so our office was happy to do this follow-up on some aspects of that report. The common theme among the audits is not about who and who cannot use Louisiana's water resources but the need to regulate this resource for future generations and to ensure that it is sustainable for future generations.

This report is a follow-up on the July 2020 regulation of surface water report from July 2020. For a brief overview, in that report, we found that Louisiana is perceived as a water rich state but it faces declining water levels, salt water intrusion and other states attempting to use our water. Surface water is defined and lakes and rivers. We found that Louisiana does not have a statewide water management plan which would help better manage our surface water. Other states have water management plans. Louisiana has an abundance of water so it will become necessary to better manage it.

When we looked into the water management plan, we still face the same barriers we did in 2020 of not being able to produce a water management plan and lack of water code in Louisiana. The Louisiana State Law Institute is working on this code and we will need more water data to help with the creation of this plan. We do have water related data but the way it is collected is fragmented so it is difficult to determine whether Louisiana has enough data to produce this water management plan. A comprehensive water management plan is important because other states want to purchase our water and other states have water management plans. In order to protect our resources, we need to know how to manage it.

The Department of Natural Resources (DNR) surface water management program is voluntary. In fiscal year end 2020 and 2021, FYE 2020 and 2021 DNR had 87 active Cooperative Endeavor Agreements (CEA) for surface water withdrawals – this is pumping water out of a lake -- comprising 1.54 trillion gallons of surface water withdrawals. If the CEAs remain voluntary, DNR still needs a more robust surface water regulatory process. DNR has limited staff and funds to administer the program and does not monitor the requirements with all of the terms of CEAs. Two recommendations are for DNR to improve the process for approving the CEAs and adding in an additional layer of review and improve monitoring of compliance with the terms of the CEA. We also found that state law caps fair market value at \$.15 per 1,000 gallons which does not allow for increases based on inflation and market demands.

LLA stated there is not one centralized agency to oversee groundwater usage. Act 446 of 2001 legislative session required Water Resource Commission to issue recommendations. We recommend one agency who would be in charge of the coordinating efforts.

Senator Bernard asked if this would be a comprehensive plan to address all uses of water. The answer is yes. Other states are set up for comprehensive review of both surface water and ground water. The Capital Area Groundwater Commission exempts agriculture but the water code would cover both riparian and non-riparian.

If we have exemptions they would have to meet constitutional provisions and Ag is one of those that can be exempted. It depends on what water code would say.

Senator Luneau asked how states determine fair market value of water sold. In Louisiana we charge 15% per thousand gallons. Western states are more highly regulated because they have less water so Texas charges more on the Toledo Bend side than we do. Texas is \$1.80 per thousand gallons for fracking contracts. Mississippi, Arkansas and Missouri don't charge anything. It depends on how the state is set up.

Representative Jordan asked if the overall goal of creating this program is it to preserve the resource and monitor usage. In other states it's used to know historically how much you've needed and predict how much you'll need in the future so when other states want to buy water, we have the data and knowledge on how much we can sell and be able to sustain for Louisiana. We know we have water issues with salt water intrusion and declining water levels – it's not dire but we are looking at generations ahead.

Blake Canefield, Executive Counsel for DNR spoke on the two items up for recommendations – revising the process to add a layer of review and the other aspect of this is having availability of staff and funding to administer the voluntary program. DNR plans to try to request funding in the upcoming session. DNR does not get any funding for this and the work is currently done by two members of staff that have other responsibilities.

Senator Luneau asked if the legislature needs to put more things in place to mandate this. Mr. Canefield responded that he agrees with LLA regarding having a comprehensive plan moving forward. This could be a mandatory requirement or a regulatory process already in law that distinguishes between riparian and non-riparian use. The largest area of discussion for legislation is what to include and what to exclude because everyone will be able to make a good case as to why their particular use is important.

LLA presented a summary of six recommended matters for legislative consideration:

Matters for Legislative Consideration 1: The legislature may wish to consider designating a person or entity to develop a comprehensive water resource management plan that ensures water resources are protected, conserved, and replenished for the health, safety and welfare of the people, as stated in Louisiana's Constitution.

Matters for Legislative Consideration 2: The legislature may wish to consider adopting key pieces of the anticipated new water code or of the Regulated Riparian Model Water Code prior to the completion of the entire proposal for a new water code.

Matters for Legislative Consideration 3: The legislature may wish to consider either making surface water CEAs mandatory or another process, such as permitting, for entities wishing to use a certain amount of surface water.

Matters for Legislative Consideration 4: The legislature may wish to consider specifying a minimum amount of surface water withdrawals that are subject to a mandatory process, such as CEAs or permits.

Matters for Legislative Consideration 5: The legislature may wish to allocate funds for DNR to administer the Surface Water Management Program, which could include allowing DNR to retain a percentage of revenue it collects through the CEAs or placing all funds collected into the State General Fund and allocating funding through the appropriations process.

Matters for Legislative Consideration 6: The legislature may wish to consider directing a person or entity to develop a valuation model for determining the fair market value of Louisiana's water resources and reevaluations over time.

Public Comment

Chairman Luneau asked for public comments and none were offered.

Other Business

Chairman Luneau asked if there was other business that needed to be discussed. Mr. Waguespack reported that for the past six months, LLA has been working on rebranding our office and website. He showed the committee members the new LLA logo. He also pointed out that our Performance Audit division was presented the 2022 Notable Document award by the National Conference of State Legislators for the report they did on *The State of Louisiana's Role in Animal Welfare and Control Activities* and our Investigative Audit division received an Excellence in Accountability in Forensic Audit award from the National State Auditors Association for their report on the *Louisiana Office of the State Fire Marshal*.

Adjournment

(Video Archive Time 01:01:25)

Senator Bernard offered a motion to adjourn and, with no opposition, the meeting was adjourned at 2:15 p.m.

Minutes Approved: Minutes Approved at the Legislative Audit Advisory Council meeting on October 27, 2022.

The video recording of this meeting is available

https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2022/07/072022LAAC