

**House Committee on Municipal, Parochial and Cultural Affairs
Subcommittee on Public Contracts**

Minutes of Meeting
2016-2017 Interim
October 20, 2016

I. CALL TO ORDER

Representative John A. Berthelot, chairman of the House Committee on Municipal, Parochial and Cultural Affairs Subcommittee on Public Contracts, called the meeting to order at 8:59 a.m. in Room 6, in the State Capitol in Baton Rouge, Louisiana. The secretary called the roll.

II. ROLL CALL

MEMBERS PRESENT:

Representative John A. Berthelot, chairman
Representative Robert E. Billiot
Representative Paula P. Davis
Representative Mike Huval, vice chairman
Representative Rick Edmonds
Representative Rodney Lyons
Representative Stephen E. Pugh
Representative Patricia Haynes Smith

MEMBERS ABSENT:

Representative Malinda B. White

STAFF MEMBERS PRESENT:

Tina Righteous, attorney
Valarie Banks, secretary
Cranay Murphy, attorney

ADDITIONAL ATTENDEES PRESENT:

None

III. DISCUSSION

To consider House Study Request No. 4 of the 2016 Regular Session relative to procedures that can be implemented in order to address the failure of local governmental subdivisions to make timely payments on public contracts

Representative Berthelot stated that the subcommittee had been formed as a result of Representative Talbot's study request, which was prompted by contractor concerns of late payments by the state and municipalities on public contracts.

Ken Naquin, Louisiana Association of General Contractors (LAGC), 666 North Street, Baton Rouge, LA, (225) 344-0432, explained several reasons for delayed payments, including errors made in invoicing, change orders, and payment approvals taking longer than the prescribed 45 days on most state and municipal contracts. He stated that only one person may approve payments from Community Development Block Grant funds, and when that person is away, no payments can be made. Mr. Naquin proposed the imposition of a payment penalty similar to that contractors are subject to when payments are delayed to subcontractors: one and one-half percent per a specified number of days late, up to a maximum of 15%.

Representative Huval noted that grant-funded projects generally take time for funds to be released from the federal government. He asked where the problem payments were occurring. Mr. Naquin listed Baton Rouge, Jefferson Parish, Orleans Parish, larger municipalities on the North Shore, and state contracts as having the highest percentage of late payments.

Representative Edmonds requested that the chairman obtain input on the issue of late payments to contractors from the division of administration, which administers the electronic database through which state payments are processed at Louisiana.gov, which Mr. Naquin called "LaGov".

Representative Smith expressed concern with implementing blanket financial penalties on municipalities that don't make timely contractor payments. She stated that such municipalities were most likely already cash poor and that penalties necessitating additional money could jeopardize employee jobs.

Representative Billiot asked if contractors should be more proactive in ascertaining whether there is sufficient funding before bidding on state and municipal jobs. Representative Billiot commented that parish and state revenues may drop because of severe flooding in 2016. Mr. Naquin said LAGC has met with parishes on multiple occasions to discuss the payments process, and the association meets with the city of New Orleans monthly specifically to discuss contractor payments.

Mr. Naquin said no other business entities take more than 120 days to pay their bills, yet state government and municipalities are allowed to delay payments with no apparent consequences.

Anthony Dieudonne, Dieudonne Properties, no address given, said \$220,000 is owed to his company by Orleans Parish, a debt that has existed since December 2015.

Representative Edmonds asked Mr. Dieudonne if his company had considered suing for the amount owed. Mr. Dieudonne stated that he preferred not to pursue lawsuits out of fear of being blacklisted. Mr. Dieudonne expressed confidence that the parish had money in its accounts to make payments since the contract had been bid based on the availability of Federal Emergency Management Agency (FEMA) funding.

Representative Billiot explained that FEMA funds are not disbursed in advance to municipalities and the state; instead, entities must send approved invoices to FEMA, which are reviewed and processed.

Karen White, Louisiana Municipal Association (LMA), 700 North 10th Street, Baton Rouge, LA 70802, (225) 344-5001, presented a handout to members, Exhibit A, entitled, "LMA Position Paper, HSR 4 of 2016", to be included in the committee records. Ms. White discussed how funds flow through municipalities from the federal government and from state and local taxes, and noted that bureaucracy and state and federal regulations slowed the flow. She said funds are withheld when there are disputes between the municipality and contractor. Ms. White stated that she would not be in favor of the imposition of penalties unless a municipality legally had been found at fault.

Representative Billiot stressed that change orders may be the biggest factor in delaying contractor payments and asked Ms. White to investigate that aspect.

Suchitra Satpathi, city of New Orleans, 1300 Perdido Street, New Orleans, LA 70128, (504) 688-4900, said the office of performance and accountability in the city of New Orleans tracks invoice time to payment data for contracts let by the city. She cited data from 2015 on 1,422 contracts closed by the city; of those, 109 were capital projects. Ms. Satpathi said the average capital project invoice in 2015 was paid within 36 days; the average payment time from the general fund in 2015 was 45 days. She said Louisiana law requires payment of public bid contracts within 45 days of receipt of a qualified invoice. Ms. Satpathi addressed the issue of the possibility of blacklisting contractors who pursued a lawsuit to recover unpaid invoices by testifying that by law, the lowest responsible bidder is let the contract even if that bidder had previously sued the city over payment disagreements.

Yolanda Y. Grinstead, deputy special counsel, New Orleans Sewerage and Water Board, 625 St. Joseph Street, New Orleans, LA, (504) 585-2154, echoed Ms. Satpathi's assertion that contractors who sue the board are not blacklisted. She stated that engineers employed by the board are required to review contractor invoices within two weeks, and contractors generally are paid within 30 days.

Representative Berthelot stated that a detailed email from the Police Jury Association of Louisiana had been submitted by President Roland Dartez, Exhibit B, which was submitted to members and would be included in the committee records.

Representative Berthelot offered a motion to request that the Louisiana Municipal Association and the Police Jury Association of Louisiana survey their members pertaining to the number and type of payments that are past due 90 days or more, and send information from the survey to subcommittee members before December 1, 2016. Without objection, the motion passed by a vote of 8 yeas and 0 nays. Representatives Berthelot, Billiot, Davis, Huval, Edmonds, Lyons, Pugh, and Smith voted yea.

Representative Berthelot offered a motion that a formal request from the subcommittee be made to LaGOV, the state's contract payment agency, for the agency's payments procedure documents. Without objection, the motion passed by a vote of 8 yeas and 0 nays. Representatives Berthelot, Billiot, Davis, Huval, Edmonds, Lyons, Pugh, and Smith voted yea.

IV. OTHER BUSINESS

There was no other business.

V. ANNOUNCEMENTS

There were no announcements.

VI. ADJOURNMENT

Representative Pugh offered a motion to adjourn. Without objection, the motion to adjourn passed by a vote of 8 yeas and 0 nays. Representatives Berthelot, Billiot, Davis, Huval, Edmonds, Lyons, Pugh, and Smith voted yea.

The meeting was adjourned at 10:28 a.m.

Respectfully submitted,

Chairman John A. Berthelot
House Committee on Municipal, Parochial and Cultural Affairs
Subcommittee on Public Contracts

Date adopted: May 24, 2017