# LEGISLATIVE AUDITOR
# STATE OF LOUISIANA

## LEGISLATIVE FISCAL OFFICE
STATE OF LOUISIANA

ISSUED OCTOBER 21, 2004

**LEGISLATIVE AUDITOR**
**1600 NORTH THIRD STREET**
**POST OFFICE BOX 94397**
**BATON ROUGE, LOUISIANA 70804-9397**



Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

This document is produced by the Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Thirty copies of this public document were produced at an approximate cost of $92.10. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's Web site at www.lla.state.la.us. When contacting the office, you may refer to Agency ID No. 3446 or Report ID No. 05400480 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Wayne "Skip" Irwin, Director of Administration, at 225/339-3800.

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

STEVE J. THERIOT, CPA
LEGISLATIVE AUDITOR

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (225) 339-3800
FACSIMILE: (225) 339-3870

October 21, 2004

Honorable Donald E. Hines
Louisiana Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Honorable Joe R. Salter
Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Dear Senator Hines and Representative Salter:

In a letter dated August 20, 2004, you requested that I review the accusations made relative to financial impropriety by the legislative fiscal officer, Mr. John Rombach. The legislative fiscal officer is statutorily created by Louisiana Revised Statute (R.S.) 24:602 - 608, which provides, in part, the legislative fiscal officer shall be the chief executive officer of the Legislative Fiscal Office and the legislative fiscal officer shall be elected by the favorable vote of a majority of the elected members of both houses of the legislature. R.S. 24:608(C) provides that the books and records of the Legislative Fiscal Office (LFO) shall be subject to audit by the Legislative Auditor.

My review consisted of inquiries and the examination of selected financial records and other documentation as they pertain to the three issues in question: retroactive pay, car allowance, and per diem paid to Mr. Rombach and his staff. The following are the results of my review.

Retroactive Pay

Information provided indicates that Mr. Rombach received approval by the Joint Legislative Committee on the Budget (JLCB) for a pay increase on May 20, 2004, and thereafter Mr. Rombach directed his accountant to apply this increase in accordance with office practice. The office practice is to pay increases based on the anniversary date of the employee, which made Mr. Rombach's increase effective August 1, 2003. This generated a one-time payment to him of $12,270.77. I have summarized the facts of this transaction below. The question is one of intent and law. Therefore, I have included for you the applicable Louisiana statutes, opinions of the Louisiana Attorney General, and case law.

The salary[1] of the legislative fiscal officer is set by the JLCB. On September 29, 2000, the JLCB set Mr. Rombach's salary at $94,500. This salary was not adjusted until May 20, 2004, when the JLCB approved a pay increase for Mr. Rombach from $94,500 to $110,000 per year. Our review of the minutes and recording of this meeting confirmed that there was no discussion of the intended implementation date of this increase. Subsequent to the meeting, Mr. Rombach prepared and you received a memorandum

[1] R.S. 24:602 "Legislative fiscal officer; office created; compensation" provides in part the salary of the legislative fiscal officer shall be established by the Joint Legislative Committee on the Budget, by majority vote of each house as prescribed by the statute creating the Joint Legislative Committee on the Budget.

dated May 24, 2004, certifying the action of the JLCB (Attachment 1). This memorandum did not directly address the intended implementation of the salary increase only to state ". . . $110,000 per year in accordance with R.S. 24:602 and Legislative Fiscal Office policies and procedures."

The written policy of the LFO does not address implementation of pay increases. However, the practice of the LFO has been to grant pay increases to staff as of their anniversary date regardless of when the pay raise was approved. As an example, Mr. Rombach provided documentation that salary increases approved on March 15, 2002, were, at his direction, granted to the majority of his employees on a retroactive basis. Records examined for the 2003-2004 fiscal year show that employees generally received their pay increases retroactively.

On May 28, 2004, Mr. Rombach directed his accountant to apply this increase in accordance with office practice. The office practice is to pay increases based on the anniversary date of the employee, which made Mr. Rombach's increase effective August 1, 2003. The difference between his previous salary of $94,500 and his recently approved salary of $110,000 was paid back to his anniversary date of August 1, 2003. The check for the retroactive payment, covering 19 pay periods, was in the amount of $12,270.77.

The budget for the 2003-2004 fiscal year of the LFO was $1,818,095, of which $1,441,100 are salaries. The budgeted salary represented a 4% increase from 2002-2003 budget.

The determination that a retroactive pay raise is prohibited is based on the Louisiana Constitution Article VII, Section 14 which provides, in part, "Except otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private." In *McElveen vs Callahan* 309 So 2d 378, 381 (3rd cir. 1975), the court stated, "Payments to be legal must be in the form of salary increases for the future, not extra compensation for past services rendered." The Attorney General, for the last two decades or more, has consistently interpreted Article VII, Section 14 to prohibit a retroactive pay raise, concluding that a retroactive pay raise is a bonus or donation (A.G. Opinion #86-88). In addition, the Attorney General also concluded (A.G. Opinion #92-866) that salary increases which were approved, authorized, and budgeted prior to the beginning of the fiscal year can be distributed later during the year and not constitute a retroactive salary increase and/or bonus.

The LFO budget for the 2003-2004 fiscal year included a 4% salary increase for employees. There were no details separating the increase for Mr. Rombach or the LFO employees. Assuming it was the legislative intent to grant an increase, as evidenced by the budget, and if the Attorney General Opinion (A.G Opinion #92-866) were applied, Mr. Rombach may have been eligible for the 4% increase allowed the LFO employees. However, this would still leave the deficiency of the JLCB not approving his salary increase as required by R.S. 24:602. Under these assumptions, it appears that Mr. Rombach did not have authority to receive $12,270.77 but may have been able to pay himself a 4% increase or $2,992.50 covering 19 pay periods.

Mr. Rombach has stated that applying raises retroactively has been the practice of the LFO and is common practice in state government. Instead of using the term retroactive, he maintains other agencies call this practice "administrative adjustment." This term is not addressed in the Attorney General opinions.

Car Allowance

Information provided indicates that Mr. Rombach, in addition to his salary, received a car allowance during fiscal years 2002, 2003, and 2004. As stated previously, the salary of the legislative fiscal officer was established by the JLCB on September 29, 2000, at $94,500 and increased to $110,000 on May 20, 2004. The minutes of the JLCB make no mention of a car allowance.

- On June 26, 2002, Mr. Rombach directed his accountant to begin paying him a $7,200 per year car allowance in lieu of mileage reimbursement. The amount of the car allowance to Mr. Rombach in 2002 was $6,916.31. This was $283.69 less than the $7,200 to account for mileage payments reimbursed to Mr. Rombach earlier in the 2001-2002 fiscal year.

- Mr. Rombach received $7,200 car allowance for the 2002-2003 fiscal year on June 13, 2003, and for the 2003-2004 fiscal year he was paid $7,200 on June 30, 2004.

- Mr. Rombach's mileage expense reimbursement for the preceding years was considerably less; fiscal year 1999-2000 was $707 and fiscal year 2000-2001 was $421.

Louisiana law also provides that certain disbursements of the LFO must be specifically approved by the chairman of the JLCB. R.S. 24:605 provides, in part, that whenever any warrant, voucher, or check is in excess of $1,000, it shall be signed by the legislative fiscal officer or his principal assistant <u>and</u> the chairman of the JLCB. The check/vouchers directing these car allowance payments were not signed by the chairman of JLCB.

Mr. Rombach informed us that this car allowance was not approved by the JLCB. In addition, the amount for the car allowance was not specifically included in the LFO budget. Rather, according to Mr. Rombach, he waits until the end of the fiscal year, and if funds are available, he orders the payment to be made. Mr. Rombach repeatedly stated that it is customary for agency heads to have car allowances and/or use of state vehicles--he just looked at what others were doing.

Again, this issue is a question of law. By law, Mr. Rombach's salary is established by the JLCB. The JLCB set Mr. Rombach's salary and made no mention of a car allowance or any other compensation. According to state law[2] for the Louisiana State Employees Retirement System (LASERS), earned compensation includes amounts paid for car allowance. Furthermore, Mr. Rombach did not obtain the specific approval of the chairman of JLCB by obtaining his signature on the check or voucher ordering the automatic deposit.

---

[2] R.S. 11:403 provides, in part, that "Earned Compensation" means the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes and includes the full amount earned by an employee, overtime, and per diem earned by an employee of the House of Representatives, the Senate, or an agency of the legislature, and expense allowances and per diem paid to members of the legislature, the clerk, or sergeant at arms of the House of Representatives and president and secretary or sergeant at arms of the Senate.

Per Diem

The information provided indicated that Mr. Rombach paid himself per diem in addition to his salary and he received this per diem prior to and during the legislative sessions.

The practice of the LFO has been to pay the legislative fiscal officer and staff per diem or overtime during the period preceding a legislative session and while the legislature is in session. According to Mr. Rombach, the per diem/overtime is paid because of the extraordinary hours and circumstances under which he and his staff work. While he receives per diem at the same rate as legislators, he allows his staff to choose to receive per diem at a reduced rate or overtime pay. The LFO policy and procedures manual provides for per diem/overtime to all professional staff during the legislative session.

- Mr. Rombach stated neither his nor his employees' receipt of per diem has been approved by the JLCB. The receipt of per diem has been a policy and a practice of the LFO prior to Mr. Rombach becoming the legislative fiscal officer.

- Mr. Rombach stated in 2001 he began paying his employees per diem/overtime when the Senate began paying their employees overtime, but for the last few years he declared the start of per diem/overtime payment based on the workload of the LFO. According to Mr. Rombach, during these years, the work load of his office rose significantly during the early part of January, thereby warranting the additional per diem/overtime.

- From declaration to the end of the legislative session, Mr. Rombach receives per diem at the same rate as legislators, which is currently $121 per day seven days a week.

| Fiscal Year | LFO Per Diem Began | Actual Session Began (including extraordinary sessions) | Session End | Total Days Per Diem Received | Per Diem Received by Mr. Rombach |
|---|---|---|---|---|---|
| 2001 | February 28 | March 11 | June 18 | 111 | $11,433 |
| 2002 | March 5 | March 25 | June 12 | 100 | $11,600 |
| 2003 | January 6 | March 31 | June 23 | 169 | $20,280 |
| 2004 | January 5 | March 7 | June 21 | 169 | $20,449 |

- LFO employees can choose to receive either per diem or overtime depending on which one works best for the employee.

  - The staff per diem rate is based on income with a maximum rate of $44 per day. Employees are expected to work one additional hour per day when receiving per diem.

  - Overtime is paid based on two additional hours per day. Employees are paid 54 hours per week.

- Employees are paid the per diem/overtime regardless of whether they actually work the extra hours. For example, an employee who chooses overtime is expected to work 54 hours per week; 40 regular hours plus two additional hours seven days per week (40 + 14 = 54). Should the employee work only eight hours per day, at the end of the week the employee is recorded as owing 14 hours. The employee is then allowed to make up these 14 hours during a later period.

- Records indicate that the employees of the LFO were not working extraordinary hours when Mr. Rombach declared payment for per diem/overtime during 2003 and 2004.

  - For the fiscal year 2002-2003, Mr. Rombach and his employees began receiving per diem on January 6, 2003. However, at the end of January, only two employees had worked a total of 11 hours in addition to their normal work hours. By the end of the legislative session, the staff had worked the extra hours for which they were previously paid.

  - For the fiscal year ending 2003-2004, Mr. Rombach and his employees began receiving per diem or overtime on January 5, 2004. However, at the end of January, though the staff had been paid for 162 hours of overtime, they had worked only 79 hours in addition to their normal work hours. By the end of February, the staff had been paid for 336 overtime hours though they had worked only 178 hours.[3] By the end of the legislative session, the staff had worked the overtime hours for which they were previously paid.

- The LFO practice of allowing employees to be paid in advance is prohibited by the Louisiana Constitution Article VII, Section 14. This type of advance payment has been determined by the Attorney General to be a loan and/or compensation for services not yet rendered. Hours worked by employees are cumulative through the end of the legislative session. Since employees are not consistently working the extra time during the early part of the session, employees are being paid for hours not worked. Employees are allowed to work these previously paid hours at a later date with the expectation that the time is made up by the end of the legislative session. Paying employees in advance is prohibited by the Louisiana constitution.[4]

- Mr. Rombach informed the leadership of JLCB that he and members of his staff receive per diem on days other than session days. In a memorandum dated November 27, 2001, addressed to Senators Hainkel and Dardenne and Representatives DeWitt and LeBlanc, Mr. Rombach answered certain inquiries made of him (Attachment 2). In items numbered 4 and 5, Mr. Rombach stated that he and his employees receive per diem beginning when the Senate begins paying its employees overtime. Mr. Rombach further explained that for the 2001 Regular Session he received per diem for 111 days at $103 per day totaling $11,433 representing February 28 through June 18.

---

[3] This does not include those employees who received per diem.
[4] Article VII, Section 14 of the Louisiana Constitution provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Although the leadership and chairman of JLCB received the aforementioned memorandum, the basic question is one of whether the legislative fiscal officer can grant himself additional compensation beyond that approved by the JLCB. State law provides the salary of the legislative fiscal officer shall be established by the JLCB (R.S. 24:602) and the legislative fiscal officer shall appoint and remove all professional, research, technical, clerical, and other necessary employees and shall fix all salaries upon the recommendation of the JLCB [R.S. 24:605(A)]. As stated previously, the salary of the legislative fiscal officer was established by the JLCB on September 29, 2000, at $94,500 and increased to $110,000 on May 20, 2004. The minutes of the JLCB make no mention of additional per diem payments associated with the legislative session. In addition, earned compensation per LASERS[2] includes per diem. Therefore, absent approval by the JLCB, Mr. Rombach's additional salary, in the form of per diem, may be in violation of Louisiana Constitution Article VII, Section 14.

Another question is may the legislative fiscal officer grant additional compensation to his staff in the form of per diem. R.S. 24:605[5] provides that the legislative fiscal officer shall fix the salaries of all employees upon the recommendation of the JLCB. The Attorney General opined, in an opinion directed to Mr. Rombach (A.G. Opinion #94-485), the legislative fiscal officer has the authority to appoint and remove employees <u>if</u> he secures a recommendation from the JLCB. In his opinion, the Attorney General stated:

> In our opinion, the phrase ". . . shall fix all salaries upon the recommendation of the Joint Legislative Committee on the Budget . . ." requires the Legislative Fiscal Officer to adhere to the "recommendation" of the Committee."

We are not aware of an approval by the JLCB providing for additional compensation in the form of per diem to LFO staff and therefore, this practice may be in violation of Louisiana Constitution Article VII, Section 14.

In summary, relative to each area we addressed:

<u>Retroactive Pay</u>

> The application of pay increases on a retroactive basis is prohibited by the Louisiana Constitution Article VII, Section 14. Assuming it was the legislative intent during the budget process to grant an increase, Mr. Rombach may have been eligible for the 4% increase or $2,992.50 covering 19 pay periods.

<u>Car Allowance</u>

> Mr. Rombach's car allowance has no basis in law as his salary is set by the JLCB and the JLCB made no mention of a car allowance when setting his salary.

---

[5] R.S. 24:605 provides, in part, the legislative fiscal officer shall appoint and remove all professional, research technical, clerical, and other necessary employees and shall fix all salaries upon the recommendation of the Joint Legislative Committee on the Budget

Per Diem

Per diem payments, while a standing practice of the LFO, were also not approved by the JLCB. However, we must acknowledge that Mr. Rombach informed the leadership of the JCLB of his per diem practices and no action was taken by those informed. Car allowances and per diem payments per LASERS are components of earned compensation.

Recommendations:

1. The LFO should adopt written policies and procedures providing for all salary increases to be effective for pay periods subsequent to any performance appraisals and required authorizations have been completed. As a regular practice, supervisors should be informed in advance of the need for performance appraisals and specific deadlines set ensuring that administrative matters are completed prior to an employee's anniversary date. The legislative fiscal officer should develop a salary schedule for LFO employees and seek the approval of the JLCB prior to its implementation. The legislative fiscal officer should obtain the approval of the JLCB prior to his anniversary date and before any change is made to his salary.

2. The LFO should cease paying the legislative fiscal officer a car allowance pending approval by the JLCB. Should the JLCB desire to provide a car allowance to the legislative fiscal officer, such should be approved as part of his salary and in accordance with R.S. 24:602. Should the JLCB authorize a car allowance, the LFO should adopt a written policy detailing how and when the payment shall be made.

3. The LFO should cease paying the legislative fiscal officer and LFO employees per diem pending approval by the JLCB. Should the JLCB desire to provide per diem to the legislative fiscal officer and/or LFO employees, such should be approved as part of salary and in accordance with R.S. 24:602. This approval should be specific as to the rate, period and circumstances under which it is to be earned. The LFO should update its written policies regarding per diem to accurately reflect that which is authorized by the JLCB.

4. The LFO should cease its practice of paying employees for overtime not yet worked. Employees working approved overtime should be paid for only those hours actually worked in excess of their normal work hours. The LFO should revise its written policies regarding overtime as appropriate to include provisions providing that overtime must be adequately documented and actually incurred prior to payment.

5. The LFO, with the concurrence of the JLCB, should adopt written policies and procedures to ensure that all disbursements in excess of $1,000 are approved by the chairman of the JLCB in accordance with R.S. 24:605.

For your review, I have enclosed Mr. Rombach's response as Attachment 3.

I trust that this information answers your request. If you need further information, contact me at (225) 339-3839.

Sincerely,

Steve J. Theriot, CPA
Legislative Auditor

SJT:DGP:ss

Attachments

[LFO]

# Attachment 1

Attachment 1

**STATE OF LOUISIANA**
LEGISLATIVE FISCAL OFFICE
**BATON ROUGE**

JOHN R. ROMBACH
Legislative Fiscal Officer

P.O. Box 44097
Capitol Station
Baton Rouge, Louisiana 70804
Phone: (504) 342-7233
Fax: (504) 342-7243

To: The Honorable Donald E. Hines, President of the Senate
The Honorable Joe R. Salter, Speaker of the House

From: John R. Rombach. Legislative Fiscal Officer

Date: 5/24/04

Subject: Certification of Salary

This memo is to certify for audit purposes the action of the Joint Legislative Committee on the Budget in regards to the salary of the Legislative Fiscal Officer. Upon recommendation of the President of the Senate and the Speaker of the House, the Joint Legislative Committee on the Budget has officially established this salary has at $110,000 per year in accordance with R.S. 24:602 and Legislative Fiscal Office policies and procedures.

Received by:

Donald E Hines

The Honorable Donald E. Hines, President of the Senate

Joe R. Salter

The Honorable Joe R. Salter, Speaker of the House

# Attachment 2

Attachment 2

# STATE OF LOUISIANA
LEGISLATIVE FISCAL OFFICE
BATON ROUGE

JOHN R. ROMBACH
Legislative Fiscal Officer

P.O. Box 44097
Capitol Station
Baton Rouge, Louisiana 70804
Phone: (504) 342-7233
Fax: (504) 342-7243

To: The Honorable Senator John J. Hainkel, Jr. Senate President
The Honorable Rep. Charles W. DeWitt, Jr. Speaker of the House
The Honorable Senator Jay Dardenne, Chairman
Senate Finance Committee
The Honorable Rep. Jerry LeBlanc, Chairman
House Committee on Appropriations

From: John R. Rombach
Legislative Fiscal Officer

Date: November 27, 2001

Subject: Legislative Fiscal Office Issues

Before addressing your questions, please review this brief discussion of the unique circumstances and problems confronting the LFO in order to help you understand our difficult situation.

1) The LFO is a joint staff, responding to the needs of all members in both chambers, regardless of the administration. This responsibility has insured throughout our history that, if we do our job properly, the LFO and especially the Fiscal Officer will continuously be in trouble with the administration currently in power.

2) The LFO is present when either or both chambers are in session:

   when the House is in and the Senate adjourns, the House and LFO staffs are working;

   when the Senate is in and the House adjourns, the Senate and LFO staffs are working;

   We are the only staff "blessed" with this particular "privilege" - which is especially wonderful on weekends. This greatly increases our overtime/per diem expenses.

3) The LFO has a large responsibility in regards to HB1 when it is on the House side (along with the House Fiscal Staff) and when it is on the Senate side (along with the Senate Fiscal Staff). The only other staff with this particular dual function is the DOA. This also increases our overtime/per diem expenses.

4) The LFO workload from fiscal notes has increased by a factor of between 5x to 7x (from the 400 to 500 range in 1990 to the 2,000 to 3,000 range by 2000) - but we have absorded this increase without increasing the size staff. This too increases overtime/per diem costs.

5) The turnaround time for fiscal notes has been dramatically reduced, resulting in legislative sessions that are extremely strenuous and difficult.

6) The LFO received a very substantial increase in workload due to performance budget reports (a helpful exercise for our staff). We originally received 3 new positions for a total employment of 24, but we are now down to 20 employees. Over the years we have also received the tasks of reviewing Impact Statements, IEB analysis, and PST meetings (executive branch procurement support team). Despite these workload increases, today the LFO actually is smaller than it was in the 1980's.

7) The LFO has existed since 1988 without the benefit of a computer staff and with very little outside technical support; and yet the LFO has implemented a sophisticated computer system including fiscal note tracking - resulting in total savings in the range of $1.5 to $2 million to the state (please note that our networking with the House/Senate network system is now funded by the Budgetary Control Council and hence, we are receiving adequate system maintenance from PSA).

8) The Fiscal Officer is the only employee that comes before the JLCB for his annual step increase (or any salary increase). This is difficult for both the Fiscal Officer and the committee members. This fact and the propensity of the Fiscal Officer to stay in trouble results in the salary of the Fiscal Officer falling far off the pace of the others, many of whom have demonstrated a true lack of courage and yet receive large raises.

9) The LFO budget is approximately 95% salaries and related benefits. We have little flexibility except to reduce employment when faced with any significant expenditure need (such as paying our employees a competitive compensation).

10) The LFO salary schedule (attachment 1) was implemented in the early 1990's and was modeled closely after the Senate salary schedule that was in effect at that time. It has been adjusted (slightly) once since then in a failed attempt to keep pace with the increases in beginning salaries of the DOA, the leg. auditor's office, the House Fiscal Division, etc.

11) The LFO faced constant raids on our new, lower level employees by other state agencies after we have invested two to three years training these employees.

12) We have coped with the above problem by:

a) reducing the number of LFO employees (24 down to 20) and focusing on hiring mid salary level analysts who are hard hitting, experienced, and proven employees. We have successfully recruited three of the best mid level fiscal analysts available (from the BESE board, the DOA, and the Dept. of Education). These employees transferred laterally, without an increase in salary, because they (correctly) perceive the LFO to be the U.S. Marines of fiscal/budget offices and **desire** to serve here.

b) last year the DOA attempted to raid the LFO by offering three of our best employees an extra $10,000+. This year they offered another employee a $15,000 salary increase. I am proud to say that all four gave the DOA a resounding "NO". None of these employees have come to me for a raise based upon these offers. But why should our best employees suffer lower pay than their peers in civil service and lower pay than they could earn elsewhere? This situation must be remedied quickly.

c) the LFO no longer relies on new employees from our state universities due to a rapid, disturbing, and steady decline in the quality of new graduates from our universities that are interested in working (diligently) in state government.

Thank you for your patience. I hope that the above assists in your understanding of our unique situation and the exemplary work that we have done over the past decade - without asking you to bloat our staff or budget - it is a shame that other state agencies can't seem to do the same and save Louisiana billions of dollars. Now I will answer your questions as succinctly as possible.

1) **Are the salary ranges proposed by classification to address comparative salaries with other offices?**

Yes, to the extent possible given our limited budget.

Classification comparisons are very difficult due to extreme differences in the salary schedules of each office and each classification. For instance, the LFO salary schedule for each classification is thousands of dollars behind the schedule of the legislative auditor's office (LAO) or the DOA. Furthermore, the experience of the LFO employees in each classification frequently differs greatly when compared to an employee in a similar classification for the DOA. Information on an employees experience is also hard to get and to verify. Hence, in the comparative salary list that I previously provided to you, I have attempted to address this problem by providing common classifications by reducing the categories to four categories: upper, senior, mid and lower levels (categories). I do not have the classifications for the auditor's offfice and little experience data is available for anyone (I suggest that we all adopt a uniform pay scale).

2) **What basis is being used for proposed individual increases---years experience, performance; other factors?**

Primarily performance and to a lesser degree experience and workload. Another major factor is the inequity when compared to peer staff salaries.

3) **Is less experienced staff being paid at a level beneath our beginning salary levels?**

Yes, much less. The following chart demonstrates the severe salary inequity that exists between the DOA and the LFO.

**A DOA beginning analyst with a master's salary path is as follows:**
**(Source: DOA Budget Office)**

| | Time | % Increase | Salary |
|---|---|---|---|
| Management Intern | day 1 | ---- | **$31,620** |
| Budget Anaylst 1 | day 1 after 1 year | 14.5% | $36,046 |
| Budget Anaylst 1 | day 1 after year 2 | 4.0% | $37,489 |
| Budget Anaylst 2 (Prom.) | day1 after year 3 | 14.5% | $42,925 |
| Budget Anaylst 2 | day1 after year 4 | 4.0% | $44,642 |
| Budget Anaylst 3 (Prom.) | day1 after year 5 | 14.5% | **$51,115** |

**LFO salary path with master's degree**

| | | | |
|---|---|---|---|
| LFO Analyst 1 | day 1 | ---- | **$26,700** |
| LFO Analyst 1 | day 1 after 6 mths | 4.0% | $27,768 |
| LFO Analyst 1 | day 1 after 1.5 years | 4.0% | $28,879 |
| LFO Analyst 1 | day1 after 2.5 years | 4.0% | $30,034 |
| LFO Analyst 2 (Prom.) | 3 to 4 years | 12.0% | $33,638 |
| LFO Analyst 2 | 4 to 5 years | 4.0% | **$34,984** |

DOA employee can expect 2 promotions in a five year period; LFO only 1.

DOA employee with 1 year experience makes $1,062 more than a LFO employee with 5 years experience

DOA starting salary in excess of LFO is: $31,620 - $26, 700 = **$4,920**

DOA % Salary increase after 5 years **61.7%**
LFO % Salary increase after 5 years **31.0%**

DOA avg. annual salary increase **12%**
LFO avg. annual salary increase **6%**

DOA total earnings after 5th year $243,837
LFO total earnings after 5th year <u>$182,003</u>
DOA > LFO **$61,834** more in 5 years

avg 5 year, DOA > LFO $12,367 per year, each year

As mentioned above, the LFO staff has stayed loyal to us, but this is clearly unjust and must be remedied.

4 & 5) **As the Fiscal Officer, do you receive a per diem for any day other than a session day? If so, please describe. Also, how much per diem have you received in the last twelve months? Are any other LFO employees paid a per diem? If so, to whom and how much?**

Yes, I receive per diem as does the majority of the staff. The LFO allows its employees to choose between the old House per diem schedule or a reduced Senate overtime schedule.

In regards to legislative sessions, the Fiscal Officer, those LFO employees choosing per diem, and those LFO employees choosing overtime all begin receiving per diem/overtime when the Senate begins paying their employees overtime. Payment stops when the session ends. Last year the Senate began paying overtime on February 28th which lasted through the end of session on June 18th. The only other per diem received by the Fiscal Officer or LFO staff is for over night travel, which is a very, very small amount.

In the last 12 months, the Legislative Fiscal Officer has been paid the following per diem:

Spring Session Period:
111 days @ $103 per day = $11,433 (Feb. 28th through June 18th)

Travel:
3 days @ $103 per day = $309 (Three days overnight in 12 months)

Fall Special Session:
8 days @ $0 per day = $0 (Did not request per diem)

**LFO Per Diem Schedule**

| Salary Range From | Salary Range To | Daily Per Diem Rate |
|---|---|---|
| $0 | $20,999 | $24 |
| $21,000 | $26,999 | $30 |
| $27,000 | $32,999 | $36 |
| $33,000 | $38,999 | $42 |
| $39,000 | maximum | $44 |

A handful of other LFO employees received a very small amount of per diem for over night travel last year.

LFO overtime policy:

In lieu of per diem, employees may choose to be paid a maximum of 2 hours times the number of session days. Hence, last year an employee could potentially earn up to a maximum of 222 hours (111 days times 2) times the employees average hourly salary. Any additional hours work are tallied as (unpaid) K-time.

PER DIEM paid last spring session period

| | TOTAL | Daily Amt. (2 hrs/per day x hourly wage) | Method |
|---|---|---|---|
| ROMBACH | $11,433 | $103 * | Per Diem |
| MONK | $9,158 | $82 | Overtime |
| ALBRECHT | $8,041 | $75 | Overtime |
| HOSSE | $7,839 | $71 | Overtime |
| KEATON | $6,819 | $61 | Overtime |
| BRASSEAUX | $6,398 | $58 | Overtime |
| CARROLL | $4,884 | $44 | Per Diem |
| HOTSTREAM | $4,884 | $44 | Per Diem |
| JONES | $4,884 | $44 | Per Diem |
| NICKLAS | $4,884 | $44 | Per Diem |
| ROME | $4,884 | $44 | Per Diem |
| SEWELL | $4,884 | $44 | Per Diem |
| CROW | $4,796 | $44 | Per Diem |
| DOUGLAS | $4,796 | $44 | Per Diem |
| SCOTT | $4,796 | $44 | Per Diem |
| BLANCHARD | $4,662 | $42 | Per Diem |
| SAMSON | $4,662 | $42 | Per Diem |
| BISHOP | $4,578 | $42 | Per Diem |
| FREEMAN | $3,996 | $36 | Per Diem |
| PEDERSEN | $1,417 | $18 | Overtime |
| WARREN | $1,011 | $20 | Overtime |

* legislative rate

6) **Upon what basis have you determined the proposed merit increase for the Fiscal Officer?**

There ia nothing magical about the $103,709 proposed figure. It is simply 2% less than the current salary of the DOA Budget Director, so I guess that implies that I'm not very ambitious.

For many, many years the salaries of the Fiscal Officer and the leg. auditor were the same and moved together. This policy ended during the last Edward's administration when I steadfastly disputed the governor's claims that his $500 million tax package was essential or else Armageddon would ensue. As a result, the Fiscal Officer's salary began to fall behind the auditor's salary (and everyone else's). During the Foster administration, the Fiscal Officer did not request a step increase during the difficult budget year created by front-loading of debt defeaseance which resulted in a massive budget problem (despite my persistent warnings and urgings - which got me in trouble, as usual). However, the auditor and virtually everyone else continued to receive raises.

Furthermore, over the past 10 years, almost everyone (except poor old Bob Keaton, our national award winning analyst) has received <u>at least one</u> major salary adjustment in addition to their step increases (some have received more than one). I have never received such an adjustment and, as noted, have not even consistently received step increases.

**Peer Comparisons - Leg. Auditor and DOA Budget Director versus Fiscal Officer**

**Leg. Auditor** -Dan Kyle - Approx. $115,000, has a car (or allowance of either $3,500 or $5,000) and a $1,000 per month travel expense account (and a very, very, easy job). Leg. auditor now makes approx. $24,000 more in salary than the Fiscal Officer plus his many benefits.

**DOA Budget Director** - (formerly Steve Winham, now Ray Stockstill) $105,783 plus overtime. My salary was once over $10,000 greater than this position but is now about $10,000 less. I had substantially more experience at this level of government than Steve or Ray. Ray has been DOA Budget Director for only two years. This position is protected by civil service.

Dozens of other examples are available upon request, but they all show that, relative to their peers, the Fiscal Officer is seriously underpaid.

Your kind consideration of this request is both urgent and greatly appreciated.

# Legislative Fiscal Office
## FY 04/05 Budget Request

| | Budgeted 2003-04 | Requested 2004-05 | Percent Change |
|---|---|---|---|
| PERSONAL SERVICES | | | |
| Salaries | $1,441,100 | $1,556,388 | 8.0% |
| Overtime | $4,316 | $4,661 | 8.0% |
| Students | $8,320 | $8,986 | 8.0% |
| SUBTOTAL | $1,453,736 | $1,570,034 | 8.0% |
| FICA | $520 | $541 | 4.0% |
| Medicare | $11,688 | $12,155 | 4.0% |
| Insurance | $48,077 | $55,288 | 15.0% |
| Retirement | $228,376 | $298,160 | 30.6% |
| SUBTOTAL | $288,660 | $366,144 | 26.8% |
| TOTAL PERSONAL SERVICES | $1,742,395 | $1,936,179 | 11.1% |
| OPERATING EXPENSES | | | |
| Travel | $14,700 | $14,700 | 0.0% |
| Dues/Subscriptions | $16,000 | $16,000 | 0.0% |
| Postage | $2,000 | $2,000 | 0.0% |
| Printing | $10,000 | $10,000 | 0.0% |
| Other Insurance | $8,000 | $8,000 | 0.0% |
| Telephone | $10,000 | $10,000 | 0.0% |
| Supplies | $5,000 | $5,000 | 0.0% |
| Acquisitions | $10,000 | $10,000 | 0.0% |
| TOTAL OPERATING SERVICES | $75,700 | $75,700 | 0.0% |
| TOTAL | $1,818,095 | $2,011,879 | 10.7% |
| Positions | 19 | 19 | 0.0% |

Attachment 3

Legislative Fiscal Office response:

The Legislative Fiscal Office is audited annually. The auditor is picked by the legislature and approved by the legislative auditor. The legislative auditor reviews the audit and approves it. Since our creation in 1974, thirty years ago, there have never been any negative findings or even a mention in regards to these issues - in fact, the legislative auditor performed the LFO audits themselves from 1974 through 1983 but did not find any problems. We had every reason to believe that we were in full compliance with all laws.

Retroactive pay

1) The LFO is mandated by law to follow the policies of the legislature. R.S. 24:602 states, "The legislative fiscal officer ...shall have general administrative control over the operations and functions of the office subject to the policies and directives of the legislature and of the Joint Legislative Committee on the Budget....".
   This law is the guiding rule used by the LFO in formulating our policies and practices. **The House and Senate pay raise policies are retroactive. By law the LFO practices must track the House and Senate policies and thus are retroactive.**
2) The current fiscal officer did not implement the retroactive pay raise practice. This practice was in place when he took office in August of 1988.
3) The former fiscal officer, Mr. Mark Drennen, also received retroactive pay raises. The House staff, the Senate staff, and hundreds (perhaps thousands) of state employees currently receive retroactive pay and have for many decades.
4) The single exception to the practice of retroactive pay raises for the fiscal officer occurred in 1996 when, following a committee action granting the current fiscal officer a raise, a J.L.C.B. committee member made a motion that this raise was not to be retroactive. The motion passed and the raise was not retroactive.
5) The apparent prohibition on retroactive pay originates from the A.G.'s opinion that the constitution bans bonuses. As with retroactive pay, the granting of bonuses is pervasive throughout state government. The legislature has had retroactive pay raise policies or practices for many decades while agencies routinely grant bonuses and provide retroactive raises.
6) For decades, the auditors have reviewed the LFO retroactive raises each year without any comment. The legislative auditor reviewed and approved of these audits.

Per-diem/overtime payments

1) The legislature has granted per-diem/overtime payments on legislative and non-legislative days for decades, as has the LFO (in accordance with R.S. 24:602).
2) The current fiscal officer did not implement this practice. This practice was in place when he took office in August of 1988.

3) The fiscal officer has always been responsible for determining when per-diem/overtime payments for the LFO were to begin.
4) The former fiscal officer, Mr. Mark Drennen, received per-diem payments.
5) The legislative leadership has been aware of this practice. A detailed letter was received by the leadership in November 2001, which addressed the fiscal difficulties being experienced by the LFO and the per diem/overtime/workload issue.
6) Each year, auditors review all compensation to LFO staff, including salaries and all other forms of compensation including per-diem/overtime payments. There have never been any findings or even mention of any type of violation or problem.

The legislative auditor's comments in regards to overtime work in January is based strictly on in-office recorded hours via the office time clock. In reality, the LFO employees worked many extra hours.

Examples of this workload increase are described below.

**Fiscal Notes:** Until the mid 1990's, the LFO generated approximately 400 to 500 fiscal notes per session. This workload had an astounding increase in the past four or five years and now numbers between 2,000 to 3,000+ notes per session. Concurrently, the staff declined from 24 to 19. That amounts to a current workload of between 133 to 200 fiscal notes per analyst per session. <u>The legislature, in its wisdom, has increased the volume of pre-filed bills, which allows the LFO to get a head start on preparing the notes. But if we don't make workload adjustments, we won't benefit from the pre-filing.</u>

**Fiscal Note Tracking System Software Development:** The legislature's main computer system(s) receives fiscal notes from the LFO via a software program written, maintained, and upgraded "in house" by the LFO staff. We also port this system to the Legislative Auditor's staff for their local government fiscal notes. This is a sophisticated and time-consuming function that saves the state a substantial amount of money, provides us a superior product that can be modified or "debugged" immediately, and it is the property of the state, not a private vendor. We are currently upgrading the system with interface testing planned for January. Last January, the program was in need of substantial debugging due to the many "on the fly" alterations that have been done during the legislative sessions.

**Performance indicators**: This recently added function entails a considerable amount of data analysis, tracking and written presentation.

**Impact statements**: These statements have become far more numerous than in previous years, and many of these are very complicated and lengthy.

**Research:** R.S. 24:603(1) requires the LFO to provide the legislature with a report on fiscal issues such as inefficient programs, etc. Historically, this has been in the form of a budget cut list. In recent years, legislators have expressed that they are not interested in the same old cut list of spending items that are politically impossible to cut. Thus, two years ago, we eliminated the cut list and switched to major research projects. Last year, we issued a major report entitled "Louisiana Retirement Systems Expenditure Analysis", which analyzed the incredible amount of waste in the state retirement systems. A substantial amount of legislation resulted from this report, although we have not yet begun to scratch the surface. The previous year, the report was on state spending comparisons entitled, "Louisiana in the Economic Vortex".

Analysis of this nature is very complex and time consuming. A very conservative estimate of the Fiscal Officer's uncompensated time on last year's project amounts to 330 hours generated between September through December 11, 2003 (the report release date) with an additional 88 hours in January for post report research for a total of 418 hours of research on the project from September 2003 to January 30, 2004. The Fiscal Officer's extra compensation during this period comes to **$3,146**. Thus, the hourly rate of compensation for this complex research and analysis was $7.52, which is slightly above the minimum wage. Similar results were generated in the previous year.

In order to continue to provide the legislature with the quality, quantity and timeliness of services demanded of the LFO, each individual staff member had to work a great deal of extra hours relative to prior years. The LFO workload was already which very difficult. Besides the tremendous workload, the LFO must serve both chambers – thus we are here working when either chamber is in session – which is especially difficult on weekends. There were really only two options for achieving the required workload.

An easy, but unfeasible, option would be to request additional funds in order to restore the 5 LFO staff positions. This option has three major drawbacks:

1) Prohibitive employee cost at a time when the state faced fiscal difficulty.
2) We would have to either, raid a fellow state agency for skilled employees, or spend a great deal of very scarce senior staff time training the new hires (and the results aren't present for the first year or two – provided that you hired a good trainee).
3) We would have excess staff resources in the interim months, as we have found that 19 LFO staffers are sufficient for the interim. Thus, the state would have 5 more employees than it needed for half of the year.

The second option was to add work effort to the current staff by offering additional per diem/overtime. This avoids the disadvantages of the first option and aids in keeping the current employees on board.*

* The LFO salaries have been far behind our peers, even when the additional overtime/per-diem is considered. The gracious actions of the

legislative leadership and the legislature this past session will move the staff into same range of earnings as our peers.

We believe that we made an extremely good business decision for the state.

Car allowance:

The new legislative auditor has argued that the Legislative Fiscal Officer's car allowance is classified as "salary" and thus must be authorized by the J.L.C.B. as part of the Fiscal officer's salary, citing that LASERS (La. State Employees Retirement System) considers it as taxable income.

1) The former auditor, in regards to his car allocation, treated this benefit as an "emolument", not salary. The fiscal officer's decision to implement a car allowance in 2001 was based on the practice of the former legislative auditor. The former auditor provided himself with an office "pool" car for his personal use throughout his 14+ year tenure as legislative auditor. Documents provided by the legislative auditor's office verify this fact. When the Audit Advisory Committee (the committee that sets his salary) increased the former auditor's salary to $114,500, no mention was made of a car allocation as part of his salary because it is not part of his salary. It as an emolument, not salary.

2) For all state positions for which the legislature sets the salary (elected officials, department heads, etc.), there are no cases where the legislature includes car allowances as part of the salary. In all of these cases, car allocations/allowances are correctly considered "other emoluments", "other compensation", or some other synonym by state agencies – not salary. Thus it is the practice of the state to treat car allocations or allowances as emoluments, not salary.

3) With all due respect to the new auditor, LASERS classifies (as does the I.R.S.) car allowances as "other emoluments", not salary. <u>In fact, LASERS clearly distinguishes between "base salary" and, total "earned compensation" which includes emoluments</u>.

   R.S. 11:403(10), relative to LASERS, provides the following definition:

   > *"Earned compensation' means the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency <u>which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes</u> and includes the full amount earned by an employee, overtime, and per diem earned by an employee of the House of Representatives, the Senate, or an agency of the legislature… "*

This distinction is further evident from LASERS' monthly retirement reporting requirements outlined in R.S. 11:531 which reads, in part:

*"Each agency employing members of the system shall submit a certified monthly retirement report to the board of trustees containing the following information:*

*(a) The **earned compensation** of each employee who was paid during the period reported.*
*(b) The monthly **base pay [salary]** of the employee as of the date of the report.*
*(c) The individual employee contributions.... "*

4) Finally, state agency budget documents treat these allowances as "related benefits", not salary.

It is perfectly clear from the above that the auditor is completely wrong on this matter. We have verified this fact with numerous private and government C.P.A.'s.

The auditor also maintains that the car allowance should have been co-signed by the chairman of the J.L.C.B. citing R.S. 24:605.B. which states, ".... whenever any warrant, voucher, or check is in excess of one thousand dollars, it shall be signed by the legislative fiscal officer or his principal assistant and the chairman of the Joint Legislative Committee on the Budget. "

1) The LFO payroll was never intended to be co-signed. R.S. 24:605.B. was enacted in 1974; at that time no LFO payroll checks were even close $1,000. By the early 1980's, some salaries had reached the $1,000 mark.
2) The LFO has not had payroll checks co-signed since 1982 when the JLCB chairman authorized the "splitting" of checks in order to avoid I.R.S. penalties (the chairman wasn't in Baton Rouge every 15 days to sign checks). Eventually electronic transfers replaced checks and the need to "split" checks
3) If the auditor uses a "strict definition of the law" in interpreting R.S. 24:605.B, he can't find a violation because the LFO has not signed any checks over $1,000.
4) If the auditor uses an "intent of the law" approach for R.S. 24:605.B, he can't find a violation because the $1,000 cap was never meant to include payroll. Furthermore, substantial inflation since 1974 would place the revalued $1,000 at a substantially higher level.

How does the auditor construct the claim of a violation in reference to the car allowance?

The auditor must apply the following very questionable "logic":

1) Ignore the initial intent of the law where payroll was well below the $1,000 threshold.
2) Ignore the former chairman's 1982 written authorization that payroll need not be signed.
3) Ignore the 20+ year practice of not including payroll in co-signing.

4) When reading R.S.24:605.B (above) the auditor must apply an "intent of the law" approach to the word "check" (thus equating "check" with "electronic transfer") and then change his philosophy and apply a "strict definition of the law" (letter of the law) approach for the number "$1,000". In other words, the auditor mixes legal "logic" in mid sentence – applying an "intent of law" to the word "check" and a "strict definition of the law" to the number, "$1,000". Without this utterly confused approach to reading the law, he can't claim that a violation occurred.

In spite of the foregoing facts, the fiscal officer acknowledges that his actions were extremely disrespectful and that he should have notified the legislative leadership and sought their directive.

The legislative auditor's recommendations are sufficient for the immediate future but do not address the real problem, which is that the majority of the laws pertaining to the LFO are now thirty years old and are in need of a major overhaul. With this in mind, the LFO respectfully proposes the following broad recommendations that we believe will remove the sources of the problems that we are currently encountering, provide adequate safeguards against abuse without punitive and troublesome criteria (such as $1,000 check caps), and continue to insure the independence of the fiscal office.

Legislative Fiscal Office recommendations:

1) Update LFO statutory laws in regards to office policies and procedures:
   a) Provide a mechanism for a LFO staff salary schedule that is tied to House/Senate/LAO schedules,
   b) Provide for a mechanism that assures adequate funding and fairness between the staff salaries,
   c) Clarify and modernize payroll and procurement procedures by removing arbitrary limits (such as the $1,000 check cap) and treat the LFO in the same manner as sister agencies (such as the auditor's office or the law institute),
   d) Any major equipment purchase must have prior approval from the JLCB chairman. The definition of "major equipment" will be as defined by the DOA definitions for such in their budget requests,
   e) All professional service contracts must be approved by the JLCB chairman,
   f) Move the LFO accounting function back to Senate Accounting (where it was in 1974) or to House Accounting.

2) Clarify and revise the statues pertaining to LFO employment, raises, overtime, and emoluments:

a) Protect the independence of the fiscal office by clarifying that the fiscal officer hires, fires, and sets salaries and overtime of LFO staff.
b) Protect the independence of the fiscal officer by establishing an evaluation committee of JLCB members that annually evaluates the fiscal officer's performance and provides for an adjustment to the base salary within the range of 0 to 10%. Any figure outside of this range must be voted on by the entire committee. If no such evaluation occurs, an automatic 4% increase to the fiscal officer's base salary is established.
c) Establish that the fiscal officer implements overtime for staff and must submit this implementation plan with justification for overtime for the JLCB chairman's review.
d) Establish that the fiscal officer implements overtime him or her self but must submit this implementation plan with justification for overtime for approval by the JLCB chairman.
e) Any emoluments not specifically addressed above must be presented to the chairman of the JLCB for approval.

3) Address the retroactive pay issue. The current practices of the legislature are clearly superior business practices than are the practices currently utilized by the civil service agencies. Legislation removing the roadblock created by A.G.'s opinion on retroactive pay is needed.

Submitted by,

John R. Rombach,
Legislative Fiscal Officer