LEGISLATIVE AUDIT COMMISSION

Review of
East St. Louis Financial Advisory Authority
Two Years Ended June 30, 2010

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REVIEW: 4358
EAST ST. LOUIS FINANCIAL ADVISORY AUTHORITY
TWO YEARS ENDED JUNE 30, 2010

FINDINGS/RECOMMENDATIONS - 12

IMPLEMENTED - 8
ACCEPTED - 2
PARTIALLY ACCEPTED - 1
UNDER STUDY - 1

REPEATED RECOMMENDATIONS - 5

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 7

This review summarizes the auditors' reports on the East St. Louis Financial Advisory Authority, for the two years ended June 30, 2010, filed with the Legislative Audit Commission February 24, 2011. The auditors performed a compliance examination and financial audit in accordance with *Government Auditing Standards* and State law, and stated that the financial statements of the Authority were fairly presented

The Authority was established on August 30, 1990, and its purpose is to provide a secure financial basis for and to furnish assistance to the City of East St. Louis. The Authority issued a loan of $3,795,000 to the City in FY91, allowing the City to provide basic municipal services and meet its obligations to creditors. In addition to provide for the Authority's organization and internal management, some of the Authority's other statutory powers include:

- Make rules and regulations governing the use of property and facilities,
- Approve all loans, grants, or other financial aid from any State agency to the City,
- Determine the terms and conditions of any loans made to the City.

The Authority has a governing board of five unpaid directors appointed by the Governor with the advice and consult of the Senate. The City is required to develop and adopt budgets and financial plans as directed by the Authority. The Authority has the power to approve or reject any budgets, financial plans or contracts that are inconsistent with the budget or financial plan of the City.

The Chairman of the East St. Louis Financial Advisory Authority is Mr. Marvin Lampkin. He has served in that capacity since August 5, 2010. The position of Authority chairperson had been vacant since January of 2005. The Authority's Executive Director during the audit period was Patrice Rencher. She was first employed by the Authority in April 2001 and served in several capacities, with a short break in employment in 2010. According to the audit report, the Authority had four employees in FY10; however according to the Minutes of an Emergency Meeting held on May 19, 2011, due to budget cuts and not desiring to borrow more money from locally held funds, the Authority's two employees, including Ms. Rencher, were laid off by vote of the Authority's Board. At July 1, 2011, the

Authority re-hired one person, the administrative assistant, Ms Jennifer Wilson. Its appropriation authority for FY12 is $116,400. In the updated response to Recommendation No. 2, Chairman Lampkin states that he expects an executive director to be named in October.

The Authority has been a central component in many positive developments for the City of East St. Louis, and has been the prime motivator in several of the City's accomplishments including:

- Implementing a $3,795,000 State loan to the City in 1991 and 1992 which was paid back in 2003, two years early.
- Restoring withheld IDOT Motor Fuel Tax payments in 1991 by entering into an agreement for the City to repay $42,885,142 in misused MFT funds. The monies were repaid in 2003, three years early.
- Establishing a riverboat casino in 1993 and expanding the casino and hotel through TIF revenue bonds in 1999.
- Restructuring the City's debt and liabilities in 1994 through the issuance of $21 million in Debt Restructuring Revenue Bonds and refunding the refundable portion in 2003.
- Designing a new financial management system in 1999 and hiring a contractor to manage and operate the system in 2000.
- Initiating a self-insurance program and establishing appropriate self-insurance cash reserves.
- Approval of the City of East St. Louis' 2010 Debt Restructuring Plan and identified solutions to address the City's dire financial problem and reduce the City's deficit.
- Approval of the City of East St. Louis Revenue Financing Bonds, Series 2010 to issue its revenue bonds to refund a portion of the outstanding Series 2003 Bonds and a portion of the outstanding Series 2005 Bonds.

Expenditures From Appropriations

GRF	FY10	FY09	FY08
Appropriation	$120,000	$240,000	$240,000
Expenditures	$119,935	$221,684	$216,358
Lapsed Balances	$65	$18,316	$23,642

The decrease in personal and contractual services from 2009 to 2010 was due to the Authority's appropriation being reduced by 50%. The Authority then used its locally held fund, the Corporate Savings Fund, to pay for $139,814 in expenditures incurred after the appropriation had been used fully.

The Authority's locally held fund, a corporate savings fund from loan repayment funds received from the City, had a balance of more than $6.73 million at June 30, 2010, and about $6.67 million at June 30, 2009. The majority of fund assets is investments and may be pledged as security for any new debt incurred by the City.

Accountants' Findings and Recommendations

Condensed below are the 12 findings and recommendations included in the audit report. There are five repeated recommendations. The following recommendations are classified on the basis of updated information provided by Marvin Lampkin, Chairman of the Authority, via electronic mail received September 27, 2011.

Under Study

2. Seek reimbursement from the Executive Director for improper payments. Additionally, implement appropriate controls to ensure the Authority operates within its budget. Also, ensure affirmative votes of three Directors is obtained for adopting any rules, regulations, or any other business as outlined in the Illinois Municipal Code.

<u>Finding</u>: The Authority's Board of Directors inappropriately paid the Executive Director $55,976 for "breach" of employment contract.

During the audit period, the Executive Director entered into two employment agreements with the Authority:

Employment Agreement One stated: • The Director was to perform the functions and duties specified in the Illinois Financially Distressed Cities Statute and such other duties as assigned by the Board of Directors. • Employer agreed to pay the Director a salary of $73,100 per year. • Employer agreed to enroll the Director into the applicable state or local retirement system and to make all appropriate contributions on the employee's behalf, for both the employer and employee share required. • Term of the contract was for three years. The Agreement could automatically renew for 12 months unless either party notified each other. • "If either party breaches any term of this Agreement, the non-breaching party shall so notify the breaching party in writing, specifying the breach. If the breach is not cured within 30 days, the non-breaching party may terminate this Agreement by giving written notice to the breaching party." • "Severance shall be paid to the employee when employment is terminated (due to breach of contract by employer) …the employer shall provide a minimum severance payment equal to two months salary at the current rate of pay upon employee termination due to breach of contract by the employer."	The Agreement was effective June 1, 2009, but not signed until June 2, 2009.

Under Study – continued

Employment Agreement Two outlined the same terms as the June 1, 2009 terms, except for two provisions • The severance pay section was changed to provide minimum severance pay equal to six months at the current rate of pay upon employee termination due to breach of contract by the employer, and • The length of the contract was changed from three to four years.	Effective June 1, 2010, but not signed until June 9, 2010
The Executive Director requested payment from the Authority for vacation, retirement contributions, and six months of severance pay, totaling $55,976, based on the severance payment section of the June 1, 2010 Agreement. The request for severance was based on the Authority's inability to pay the retirement contributions due to insufficient appropriations.	Requested June 8, 2010

During the review, auditors noted:

- There was no documentation indicating the Executive Director afforded the Authority formal written notification of the breach and an opportunity to cure it as required by the contract.
- The Authority paid the Executive Director $6,050.24 for the missed retirement contributions. However, the contract did not provide for payment of missed retirement contributions to the employee upon termination due to the breach, rather the employee was to be paid six months salary as severance, along with "all accrued vacation time and all paid holidays."
- Furthermore, as a component of the severance payment, the Authority paid the Executive Director $12,523.19 for 356.38 hours of accrued and unused vacation time. However, the auditors calculated the correct amount as $12,207.99 for 347.41 hours of accrued and unused vacation time.
- For purposes of the State's payroll system, the Executive Director was terminated on March 15, 2010. As discussed above, she was paid a severance amount of six months salary, but was reinstated to the State's payroll system on July 1, 2010, at the start of the next fiscal year. As a result, the Executive Director essentially received double salary for six months.
- According to the Illinois Municipal Code, 65 ILCS 5/8-12-12(b), "a majority of the Directors holding office shall constitute a quorum for the conduct of business. The affirmative votes of at least three Directors shall be necessary for adopting any rule or regulation, and for any other action required by this Division to be taken by resolution, directive, or ordinance." However, at the June 9, 2010 special meeting of the Board of Directors, the required three affirmative votes were not received.

Some of the conditions noted above, which led to the declaration of the breach and the resulting severance payment, were within the Executive Director's area of responsibility. For instance, the Executive Director is responsible for budgeting appropriated funds to cover all the full year's expenses and/or following necessary steps to obtain supplemental appropriations. Additionally, the Authority did not provide adequate documentation to demonstrate its attempts to make the missed retirement contributions directly to the State's Employee Retirement System or to otherwise avoid the circumstances which led to the Executive Director's termination, severance payment, and subsequent reinstatement.

Response: Not Accepted. The City of East St. Louis Financial Advisory Authority did not inappropriately pay the Executive Director $55,976 for "breach" of employment contract.

The Authority concurs with your finding that the East St. Louis Financial Advisory Authority entered into an Employment Agreement with the Executive Director effective June 1, 2009. We also concur that a new employment agreement was entered into by the Board of Directors and the Executive Director effective June 1, 2010 and that the terms and conditions of the agreement were the same with the exception of the initial term of the contract and the severance provision.

The Authority's opinion differs from that of the auditor, in that, the finding states that the request for severance was based on the Authority's inability to pay the retirement contributions due to insufficient appropriations.

The Executive Director presented the Board of Directors with a proposal on how to cure the breach of contract on June 8, 2010, which was approved on June 9, 2010.

Section 4.5 of the employment agreement between the East St. Louis Financial Advisory Authority and the Executive Director states that "the Employer is to enroll the Executive Director into the applicable state or local retirement system and to make all the appropriate contributions on the Employer's behalf, for both the Employer and Employee share required." The Executive Director was no longer considered a State employee as of March 15, 2010, when the agency's State appropriation was exhausted; therefore, contributions could not be made to the State retirement system.

The Authority accepts that there was a calculation error of 8.97 hours; and concurs with the auditor's calculations for accrued and unused vacation time at 347.41 hours totaling $12,207.99 as a formula error was identified on the Authority's spreadsheet. The Authority will recoup time from the Executive Director for the 8.97 hours resulting in overpayment.

Upon discussion with the Board of Directors, the legal counsel drafted the resolution approving the payout to the Executive Director. The resolution approved by the Board of Directors states that the East St. Louis Financial Advisory Authority Board has agreed to make the Executive Director whole by continued payment of vacation time, retirement and severance while ensuring continuity of the agency. The Board also factored into the settlement the costs and savings of avoiding litigation. The Executive Director was paid out of the employment agreement and currently serves without a contract. There were no double payments made to the Executive Director.

Under Study – concluded

We agree that a majority of the Directors holding office shall constitute a quorum for the conduct of business. The Board of Directors at the special meeting on June 9, 2010 had a quorum. There were three Board members in attendance and two out of the three Directors voted in favor of the payout. The legal counsel was present during the meeting of June 9, 2010. The Authority's legal counsel verbally acknowledged that the resolution passed. The resolution approved June 9, 2010 also has signatures from all three Directors seated on the Board at June 9, 2010. Furthermore, the action taken by the Directors on June 9, 2010 to approve the payout to the Executive Director was ratified by the approval of the minutes on June 25, 2010.

The Executive Director diligently acted to obtain supplemental appropriation from the State of Illinois. The Executive Director consistently informed local State of Illinois Representatives, State Senators, the Governor's Office, the Budget Office, the House of Representatives, Senate and House Majority Leaders, and the Speaker of the House of inadequate State funding as documented in letters sent throughout the 2010 fiscal year. The Executive Director and the Vice-Chair of the Board made several trips to Springfield to meet with State officials to seek additional funding. The Executive Director aggressively sought supplemental funding, but to no avail. The audit firm is in receipt of six letters sent to State officials requesting assistance with the agency's budget. However, the Executive Director was instructed by the Vice-Chair to continue to operate with all three (3) employees while seeking budget relief.

Chairman Lampkin's Response
I was not a part of the Board when this decision was made. However, it is my opinion that the previous Board should assume full responsibility for the decision to pay Ms. Rencher the severance payment. This resolution was initiated and voted on by the Board.

Auditor's Comment: As stated in the finding, the Executive Director was terminated from the State's payroll on March 15, 2010. At that time the Executive Director was under an employment agreement dated June 1, 2009, not the June 1, 2010 employment agreement.

The June 1, 2009 employment agreement stated the "breach of contract declared by either party with a 30 day cure period of either Employee or Employer. Written notice of a breach of contract shall be provided." The Executive Director did not provide the Authority's Board written notification in order to cure the breach. The Executive Director stated on June 8, 2010 she presented to the Board of Directors a proposal on how to cure the breach of contract. However, the proposal was actually the severance calculation determined by the Executive Director. The proposal did not outline the breach or provide the Board the opportunity to cure the breach.

The June 1, 2009 employment agreement stated the Executive Director was only entitled to two months severance pay and all vacation and holiday pay in the event of termination due to breach of contract. However, the Executive Director received six months severance pay, and vacation and holiday pay per the retroactive June 9, 2010 agreement. In addition, she also received the missed retirement payments, which were not provided as a component of severance pay in either contract.

Further, the Authority stated “there were no double payments made to the Executive Director.” However, the Executive Director continued to receive her monthly salary from March 15, 2010 to June 30, 2010, in addition to the six month severance payment. The monthly salary payments were part of the $139,814 spent from the Authority’s locally-held funds (See Finding 10-1).

Finally, the Law provides that the “affirmative votes of at least 3 Directors shall be necessary for adopting any rule or regulation, and for any other action required by this Division to be taken by resolution, directive or ordinance.” In fact, as the Authority states in its response, only 2 Directors voted for the payout at the June 9, 2010, special meeting.

Updated Response: Under Study by the Attorney General’s Office. On March 18, 2011, the Authority submitted a formal request for a written opinion from the Attorney General’s Office regarding this issue. To date, we have not received a response. The Executive Director has been removed from the position. We are currently in the process of hiring for this position and hope to have it filled by the end of October.

Additionally, the Authority has limited its expenditures to the amounts appropriated by the General Assembly. The agency was appropriated $116,400 for this year and has implemented a budget to ensure it operates within its appropriated amount.

Partially Accepted

5. **Segregate the duties of receipts and disbursements to enhance internal controls over the processes. In addition, as a compensating control, involve the Board of Directors in reviewing transactions and monthly financial reports, including expenditure reports.**

   Direct a member of the Board of Directors to approve all employment based transactions that are incurred by the Executive Director. Payroll should be reviewed immediately following any payroll change and regularly reviewed thereafter. (Repeated-2006)

Finding: The Authority lacks a segregation of duties in its accounting and financial procedures.

The Authority currently has three employees. Because of the limited number of personnel, the Authority’s cash and investment receipts and disbursement procedures often require that one individual be responsible for duties that should be performed by at least two people. In several instances the payments, reimbursements, vacation requests, and payroll made to the Executive Director were not approved or reviewed by a supervisor and the Executive

Partially Accepted – concluded

Director. In other instances, the Executive Director's reimbursements, vacation requests and payroll were not approved by anyone other than the Executive Director.

Additionally, the Executive Director signed as approver on various reports for the Vice Chair of the Board.

Response: Accepted. It is difficult to segregate duties with only three employees. However, the Board of Directors reviews, accepts and approves all transactions of the Authority by resolution on a monthly basis with the exception of the agency's payroll and vacation requests. The City of East St. Louis Financial Advisory Authority Personnel Policies and Procedures designates the Executive Director to sign payroll vouchers for the agency.

The Chair authorized the Executive Director to sign commercial (travel/non-travel), payroll/contractual payroll/retirement and C-02 vouchers as provided for by signature authorization cards (Form SCO-095).

Updated Response: Partially Accepted. It is difficult to segregate duties with only one employee at this time. However, the Board of Directors reviews, accepts and approves all transactions of the Authority by resolution on a monthly basis. Additionally, we have implemented a policy that the Board Chairman will approve all employment-based transactions that are incurred by the Financial Manager (formerly the Executive Director Position).

Please note that the Board Chairman has been serving as the Interim Executive Director until a replacement is found. He has not been paid for any of his services.

Accepted or Implemented

1. Work with the General Assembly to obtain sufficient appropriations. Additionally, implement appropriate controls to ensure the Authority operates within its appropriated budget.

Finding: The East St. Louis Financial Advisory Authority inappropriately expended funds from locally held funds for the expenses of its daily operations.

In March 2010, the Authority exhausted the $120,000 appropriated to them from the General Assembly. From March until June 30, 2010, the Authority expended $139,814 from locally held funds for the payment of payroll, legal, and general operating costs.

In February 2010, House Bill 6299 was introduced to amend the State Finance Act to allow a special trust fund to be established in order for the Authority to continue to expend money for the day to day operations. However, the Bill did not pass; therefore, the Authority was not authorized to expend funds outside of the funds appropriated to them.
The Executive Director stated she had researched this issue and cited the Illinois Municipal Code, Financially Distressed City Law (65 ILCS 5/8-12-6(d)) "From any funds

appropriated to the authority for the purpose of making a loan to a distressed city, the Authority may expend not more than $250,000 for the expenses of its operations in the fiscal year in which the appropriation was made" as a basis for the decision.

Response: Not Accepted. The Authority disagrees that they inappropriately expended funds, from locally held funds, for the expenses of their daily operations.

The audit firm only referenced one provision within the Financially Distressed City Law as an authorized use of locally held funds. The Board of Directors requested that its legal counsel research the Financially Distressed City Law. The Executive Director did not research the law as stated by the audit firm. All legal interpretation came under the advisement and research of legal counsel. The Authority's legal counsel cited several provisions contained in the Illinois Municipal Code that permits the use of locally held funds and presented them to the Board of Directors. Those provision are: (1) Section 5/8-12-6(b)(6), as the law provides for the Authority to have the power necessary to meet its responsibility to carry out its powers and purposes, including paying the expenses of its operations.

Subsection (b) of Section 5/8-12-6 is an allowable condition for the use of the locally held funds, as well as, Subsection (c) of Section 5/8-12-6, which provides for the use to support the activities leading to the restructuring of the distressed City's debt.

The Financially Distressed City Law states that the Authority is not abolished until 30 days after the City's Debt Restructuring Bonds are paid off as referenced in Subsection (c) of Section 5/8-12-22 in the Financially Distressed City Law. According to the City's Debt Restructuring Schedule the final bond payment is not scheduled until November 2014.

Upon verbal and written recommendation of the legal counsel, the Board of Directors on February 26, 2010, unanimously approved, by resolution, the transfer of $250,000 to pay for the personnel and operating expenses of the agency as applicable within the provisions outlined in the Financially Distressed City Law.

The audit firm did not provide an explanation as to why their interpretation of the law was accurate and the interpretation presented by the Authority's legal counsel was inaccurate.

Chairman Lampkin's Response
I was not a part of the board when this decision was made. However, I am in agreement with the Board's decision based on my discussions with the agency's legal counsel.

Auditor's Comment: Section 8-12-5 of the Financially Distressed City Law designates the Authority as "an agency of State government." [65 ILCS 5/8-12-5] As a State agency, the Authority is a creature of statute and its powers emanate from those expressly granted to it by statute. In this case, the Law provides that the Authority may use "amounts appropriated by the General Assembly" to carry out its statutory responsibilities. [65 ILCS 5/8-12-5] Further, the Illinois Constitution of 1970 sets forth the

Accepted or Implemented – continued

general principle that "[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State."

The General Assembly appropriated a sum total of $120,000 for the Authority's FY10 operations. In February, 2010, the Authority's Board authorized the transfer of $250,000 from an investment account to a locally-held bank account for the purpose of paying "personnel and operating expenses." Also in February 2010, HB 6299 was introduced. On April 30, 2010, HB6299 was defeated in the Senate. At its May, 2010 Board meeting, members discussed the failure of HB6299. According to minutes of that meeting, one director inquired whether "the State could come back and say that this is an area where funds should not have been utilized."

In fact, the Authority expended $139,814 from the locally-held fund in FY10 for agency operations. $55,976 of that amount was used for a "severance" payment to the Executive Director, as outlined in Finding 10-2. These expenditures were in addition to the $120,000 amount appropriated to the Authority by the General Assembly. In total, the Authority spent $259,749 for its FY10 operations.

At its May 21, 2010 Board meeting, the Executive Director discussed plans to expend further amounts from the locally-held bank account for its FY11 operations. At June 30, 2010, the Authority's investment account balance totaled $6.4 million. If the Authority continues to believe its expenditures are not limited to amounts appropriated by the General Assembly, we further recommend it obtain a formal written opinion from the Attorney General's Office regarding its authority to expend amounts from its investment account or other locally-held monies for operational and personnel expenses.

<u>Updated Response:</u> Implemented. The Authority has submitted a formal request for a written opinion from the Attorney General's Office regarding the Authority's ability to expend amounts from its investment account for operational and personnel expenses. We have also sought out guidance from the Governor's Office regarding this issue. To date, we have not gotten a response from the Attorney General's Office.

However, after much discussion and guidance from the Governor's Office on this issue, we have made the following decisions. The Authority has limited its expenditures to the amounts appropriated by the General Assembly. The agency was appropriated $116,400 for this year and has implemented a budget to ensure it operates within its appropriated amounts.

3. Review and reconcile the investment account to the general ledger monthly so that the ending balance of the investment statement agrees to the ending balance per the general ledger as well as income analysis reports given to the Board on a quarterly basis. Perform this procedure to obtain information and allow the Authority to make investment decisions and provide for the maximization of return on its investments. (Repeated-2004)

<u>Finding:</u> The Authority did not appropriately reconcile its investment statements to the general ledger.

The Authority prepares investment analyses on a quarterly basis for reporting purposes and enters the investment data into the general ledger. However, the Authority does not update its accounting records to reflect the monthly change in fair market value. The investment balances at June 30, 2009 and 2010 were $6,543,791 and $6,488,794, respectively.

The Executive Director stated reconciliations are being completed, albeit not on a timely basis. Investment statements, which include balances and reported income for the period, are presented to the Board for approval on a monthly basis. However, an analysis of income is not presented.

Updated Response: Accepted. The Authority is working to ensure that when the investment account is reviewed and reconciled monthly to the general ledger, the ending balance of the investment statement agrees to the ending balance per the general ledger, as well as, the income analysis reports are given to the Board on a quarterly basis.

4. Designate an individual with suitable skill, knowledge, or experience to ensure financial information is properly recorded and accounted for to permit the accurate preparation of financial information.

Finding: The Authority did not ensure financial records used to prepare the year-end financial statements and the Office of the Comptroller Generally Accepted Accounting Principles (GAAP) packages were accurate. The auditors noted:

- The Authority recorded all cash disbursements from its Locally Held Fund using the date the check was posted to the bank account. Upon review of Accounts Payable during financial audit procedures, $37,217 of the Accounts Payable recorded should be classified as Outstanding Checks. The effect was current assets and current liabilities were overstated by $37,217.

- The Authority provided a schedule of pay rates and hourly balances related to Compensated Absences to an external firm who prepares the annual submission on behalf of the Authority; however, the firm did not take into consideration the payout of 356.38 accrued and unused vacation hours to the Executive Director. The Executive Director did not review the report in appropriate detail to catch the error, thus Compensated Absences was overstated by $14,378 at June 30, 2010.

Authority personnel stated cash disbursements were not recorded properly due to clerical error. Authority management reviews numerous transactions and activities throughout the fiscal year and attributed the failure to identify this error to oversight.

Inadequate controls over maintaining accurate financial records prevents the Authority from preparing financial statements in accordance with GAAP and results in inaccurate and incomplete financial information. (Finding Code No. 10-4)

Updated Response: Implemented. The Authority has designated Crowe Horwath to ensure the financial information is properly recorded and accounted for to permit the accurate preparation of financial information. The agency's Fiscal Officer is also designated to accept the internal responsibilities for functions related to financial statements and the related notes for financial reporting to the State of Illinois. The Authority has put measures in place to ensure GAAP Package submissions are materially correct. The Authority uses the external CPA firm, Crowe Horwath, to compile its annual GAAP package and C-17 reports for submission to the Comptroller. Additionally, we will continue to look for ways to improve this process once a new Financial Manager (formerly the Executive Director position) is hired.

6. Reconcile the Register Reports to the Comptroller's Object Expense/Expenditures by Quarter Report (SA02) on a monthly basis by detail object code and correct any discrepancy found. (Repeated-2008)

Finding: The Authority does not reconcile its expenditures details to the Comptroller's records. During the review, auditors noted the Authority reconciled in total with the Comptroller's Monthly Appropriation Status Report (SB01) and the Object Expense/Expenditures by Quarter Report (SA02). The Authority did not reconcile each detailed object code to the Comptroller's reports.

Updated Response: Implemented. The Authority reconciles the Register Reports to the Comptroller's Object Expenses/Expenditure by Quarter Report (SA02) on a monthly basis by detail object code and corrects any discrepancies found.

7. Communicate with the City that the provisions mandated in the Illinois Municipal Code be written into all contracts entered into by the City and subject to approval by the Authority. Also, cease approving contracts that lack the mandatory provisions.

Finding: Contracts entered into by the City of East St. Louis and approved by the Authority do not include provisions as mandated by Illinois Municipal Code. The auditors noted the following:

- 10 out of 25 contracts tested (40%) did not include the required provision regarding the binding effect of the contract, and

- All 25 contracts tested (100%) did not include the provision regarding the reason a contract can be approved. In the Authority's resolutions approving the contracts, the

> Authority consistently approved the contract subject to a condition that the contractor acknowledge "that the obligations of the City to make payments under this contract are specifically conditioned and limited to funds established for the purpose in the budget, which has been duly adopted by the City Council and approved by the East St. Louis Financial Advisory Authority." There is no evidence that the contractors accepted the conditions of approval.

The Authority was not aware that attaching the resolutions to the contracts was not sufficient to satisfy this Section of the Illinois Municipal Code.

<u>Updated Response:</u> Implemented. On November 23, 2010, officials of the City of East St. Louis were given notices to incorporate provisions mandated in the Illinois Municipal Code to be written into all contracts entered into by the City of East St. Louis that are subject to approval by the Authority. City contracts requiring Authority approval are approved by resolution. All contracts are reviewed to ensure this provision is included prior to Board approval.

8. Be cognizant of investments and work with the Investment Advisor to place investments in appropriate types of mutual funds or other investments, as defined by the Illinois Public Funds Investment Act.

<u>Finding:</u> The Authority's investment account for its Locally Held Fund violates the Illinois Public Funds Investment Act. The Locally Held Funds within the Authority's investment portfolio include investments in mutual funds which were comprised of foreign debt securities and money market securities held in foreign banks. At June 30, 2010, these investments totaled $1,061,208.

The Executive Director and the Board of Directors were not aware that its portfolio holdings include investments that depart from the Illinois Public Funds Investment Act.

<u>Updated Response:</u> Implemented. The Authority has worked with its Investment Advisor (Wells Fargo) to place its investments in appropriate types of mutual funds as defined by Illinois Public Funds Investment Act.

9. Reduce risk by obtaining collateral for the amounts in excess of federal insurance or invest in government backed obligations, or limit the locally held fund to the FDIC insured amount. (Repeated-2008)

<u>Finding:</u> The Authority had a locally held fund that was in excess of the federally insured limit during the two years ended June 30, 2010.

Accepted or Implemented – continued

At June 30, 2010, the Authority held the following investments: Cash of $19,575, Bank Deposit Sweep of $32,336, US Treasury Notes of $3,355,334, and Mutual Funds of $3,081,549, of which $701,124 (11%) was uncollateralized.

The Executive Director stated she believed the funds to be fully collateralized as this was requested of the investment manager.

Updated Response: Implemented. All funds have been appropriately collateralized.

10. Ensure that staff receive training on the Open Meetings Act and begin audio/video recordings of all closed session meetings as well as provide a written record to be approved by the Board of Directors. Maintain these files according to the guidelines set forth in the Open Meetings Act.

Finding: The Authority did not maintain written minutes or audio/visual recordings of the closed meetings held during the audit period as required by the Open Meetings Act.

During the two years ended June 30, 2010, the Authority held eight closed session meetings and maintained audio documentation on one meeting. This documentation was solely the audio recording as no written closed session meeting minutes were maintained.

The Executive Director stated, based on legal advice, she believed there was no requirement to record and maintain all Executive Session meetings due to the confidential nature of discussions held during closed sessions.

Response: Accepted. The Authority did not have all seven (7) of its closed session meetings audio/video recorded. However, the Authority does have all written minutes of the closed sessions that were approved by the Board of Directors.

The Executive Director explained that under the advisement of legal counsel, closed session meetings are only to be released for the purpose of litigation due to their confidential nature. The Executive Director never stated that she believed that there was no requirement to record and maintain all Executive Session meetings due to the confidential nature of discussions held during closed meetings.

However, Authority staff will begin audio/video recordings of all closed session meetings as well as provide a written record to be approved by the Board of Directors.

Updated Response: Implemented. The Authority maintains audio recordings of all closed session meetings and a written record of all closed meetings is provided to and approved by the Board of Directors.

11. Implement a contract with existing legal counsel that includes all clauses and provisions as required by State statutes, and ensure payment is made in accordance with the terms of the contract.

Finding: The Authority legal contract did not contain the required provisions. The auditors noted the following:

The contract did not contain provisions as required by statute. Specifically, the contract did not contain the following provisions:

- Appropriation Contingency Clause,
- Drug free workplace certification, and
- State Board of Elections Certification.

In addition, the contract terms were January 1, 2009 through January 1, 2010; however, the legal counsel continued to provide services. The Authority paid $5,537 for services after January 1, 2010. This sum was paid from locally held funds as the Authority exhausted their appropriations in March 2010.

Authority personnel stated the continued use of legal services subsequent to January 2, 2010 without a contract was an oversight. Authority personnel stated they believed the clauses and provisions did not apply to this contract.

Updated Response: Implemented. The Authority has implemented a contract with its legal counsel that includes all clauses and provisions as required by the State Statue. The Authority is also ensuring payments to counsel are in accordance with the terms of the contract.

12. Continue to request Board appointments from the Office of the Governor for those terms that will expire on August 30, 2011 and for the one vacant Director position. (Repeated-2006)

Finding: The Authority's Board of Directors does not have the required number of members. During the period July 1, 2008 to May 31, 2010, the Board of Directors consisted of four members. On May 31, 2010, one Director was not replaced after he resigned. Therefore, from June 1, 2010 to June 30, 2010, the Board consisted of three members, all of whom are currently serving on expired terms. In addition, the Board chairperson resigned on January 27, 2005 and has not been replaced. As a result, the Board's Vice chairperson presides over meetings.

The Executive Director stated on August 5, 2010, the Governor appointed three new Directors to the Authority's Board of Directors and renewed the term of one member. Three of the four newly appointed directors have a term of one year, ending August 30, 2011. The Chairperson has a three-year term ending August 30, 2013.

Accepted or Implemented – concluded

Updated Response: Accepted. The Authority has discussed this issue with the Governor's offices. We were told that they are working towards filling terms that have expired and the vacant Director position. However, we have not been informed of any changes or provided a timeline on when this will occur.

Emergency Purchases

The Illinois Procurement Code (30 ILCS 500/) states, "It is declared to be the policy of the State that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts...." The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption when there exists a threat to public health or public safety, or when immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage to State Property, to prevent or minimize serious disruption in critical State services that affect health, safety, or collection of substantial State revenues, or to ensure the integrity of State records; provided, however that the term of the emergency purchase shall not exceed 90 days. A contract may be extended beyond 90 days if the chief procurement officer determines additional time is necessary and that the contract scope and duration are limited to the emergency. Prior to the execution of the extension, the chief procurement officer must hold a public hearing and provide written justification for all emergency contracts. Members of the public may present testimony.

Notice of all emergency procurement shall be provided to the Procurement Policy Board and published in the online electronic Bulletin no later than 3 business days after the contract is awarded. Notice of intent to extend an emergency contract shall be provided to the Procurement Policy Board and published in the online electronic Bulletin at least 14 days before the public hearing.

A chief procurement officer making such emergency purchases is required to file an affidavit with the Procurement Policy Board and the Auditor General. The affidavit is to set forth the circumstance requiring the emergency purchase. The Legislative Audit Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

The Authority filed no affidavits for emergency purchases in FY09 or FY10.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State agency is required to file reports of all of its officers and employees for whom official headquarters have been designated at any location other than that at which their official duties require them to spend the largest part of their working time.

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The East St. Louis Financial Advisory Authority's headquarters report filed on July 12, 2010 indicated that there were no employees assigned to locations other than official headquarters.