

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, November 15, 2013

The Arkansas Legislative Council met at 9:00 a.m., Friday, November 15, 2013 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair John Charles Edwards called the meeting to order and recognized a quorum of members present.

Minutes of the Last Meeting

Co-Chair Edwards referred the members to the minutes of the last Legislative Council meeting on October 25, 2013 (Exhibit C) and asked if there was a motion to approve the minutes. **Representative Terry Rice moved the adoption of the minutes of the Legislative Council meeting on October 25, 2013. The motion was seconded and passed by voice vote.**

Co-Chair Edwards noted that many in the audience were here to hear the discussion of the settlement agreement in the desegregation case and that there are additional conversations taking place at this time. Co-Chair Edwards stated that he would deviate from the agenda when it was time for the committee to hear this discussion.

Presentation of Revenue Report

October 2013 Revenue Report

Co-Chair Edwards recognized Richard Wilson, Assistant Director for Research Services with the Bureau of Legislative Research, to present the October 2013 monthly revenue report (Exhibit D). Mr. Wilson reported that after four months of fiscal year 2014, gross collections were \$76.1 million dollars ahead of collections for the same period last year for a growth rate of four percent (4%). The net revenue available for October 2013 was \$70.5 million dollars ahead of the same period last year for a growth rate of four point three percent (4.3%). The graph shows that collections were about \$38 million dollars ahead of the official forecast. Mr. Wilson reported that the spreadsheet reflects that the gross receipts are growing five percent (5%) thus far this year and the weighted income tax rate is a little over three point six percent (3.6%). There were no questions regarding revenue report.

Senator Jane English moved the adoption of the October 2013 Revenue Report. The motion was seconded and passed by voice vote.

Report of the Executive Subcommittee

Co-Chair Edwards recognized Co-Chair Bill Sample to present the report of the Executive Subcommittee. Co-Chair Sample reported that the Executive Subcommittee met at 10:30 a.m. on November 14, 2013 and offered to answer questions concerning the report. There were no questions.

Co-Chair Bill Sample moved that the report of the Executive Subcommittee be adopted. The motion received a second from Representative Terry Rice and the motion was passed by voice vote.

Standing Subcommittees

Co-Chair Edwards referred members to the reports of the standing subcommittees and stated that reports from the subcommittees meeting during this month would be heard.

Administrative Rules and Regulations Subcommittee

Co-Chair Edwards recognized Senator Johnny Key to present the report of the Administrative Rules and Regulations Subcommittee (Exhibit F.1). Senator Key reported that the Administrative Rules and Regulations Subcommittee met on November 6, 2013 and reviewed the rules listed under section one. Senator Key reported that under section two, the subcommittee heard an update from the Arkansas State Highway Department on the rule titled "Restore Sign Visibility Policy", which was amended to reduce the fine for each offense from \$10,000.00 to \$500.00 in accordance with A.C.A. 25-15-217. This rule was reviewed by the subcommittee on September 11, 2013 with the exception of the \$10,000.00 fine. Senator Key reported that the subcommittee also referred the following rules interim committees with a request to report back to the subcommittee as follows: referred to the Interim Committees on Revenue and Taxation rules submitted by the Arkansas Development Finance Authority on the Tax Credit Program and the Qualified Allocation Plan; referred to the Interim Committees on Agriculture, Forestry and Economic Development a rule submitted by the Livestock and Poultry Commission on their laboratory-Regulatory Fee Schedule; and referred to the Senate and House Transportation Committees a rule submitted by the Arkansas State Police on Non-Commercial Driver's License Testing. This concluded Senator Key's report and he offered to answer questions. There were no questions.

Senator Johnny Key moved that the report of the Subcommittee on Administrative Rules and Regulations be adopted. The motion was seconded by Representative Edwards and passed by voice vote.

Claims Review Subcommittee

Co-Chair Edwards recognized Senator Robert Thompson to present the report of the Claims Review Subcommittee (Exhibit F.3). Senator Thompson reported that the Claims Review Subcommittee met on November 7, 2013 and reviewed the claims in the report and approved one claim and a number of unpaid warrants, and denied one claim. Senator Thompson reported that the subcommittee had difficulty agreeing on two claims which were held over to the next Claims Review Subcommittee because a quorum was not present at the meeting. Senator Thompson commented that the lack of a quorum has been a continued difficulty with the Claims Review Subcommittee and that it is important for subcommittee members to attend the meeting because action must be taken by the subcommittee. This concluded Senator Thompson's report and he offered to answer questions. There were no questions.

Senator Robert Thompson moved that the report of the Claims Review Subcommittee be adopted. The motion was seconded and was passed without objection.

Higher Education Subcommittee

Co-Chair Edwards recognized Senator Joyce Elliott to present an update (Exhibit F.5) on the status of interim study to review and evaluate all of the scholarship programs that were referred to the Higher Education Subcommittee (ISP 2013-172). Senator Elliott reported that the Subcommittee on Higher Education did not meet during the month of November, but wishes to report that the collection of data is ongoing and the subcommittee expects to meet between now and the next Legislative Council meeting.

Senator Joyce Elliott moved adoption of the report of the Higher Education Subcommittee. The motion was seconded and passed without objection.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Edwards recognized Senator Bruce Maloch to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee (Exhibit F.8). Senator Maloch reported that the PEER Subcommittee met on November 7, 2013 and the subcommittee approved two items; which were transfer requests from the Arkansas State Police. Senator Maloch directed the committee members' attention to Item C.3, a request from the Department of Community Correction for \$668,807 for the Beyond the Walls program (see page 2 of the report), and stated that when this was considered there were eleven (11) positions requested. Senator Maloch stated he was contacted that afternoon and informed that there was a mistake made and the department had intended to request thirteen (13) positions. This request was reviewed by the Personnel Subcommittee for thirteen (13) positions. Senator Maloch stated he would make two motions; one to adopt the report, and one that the Legislative Council review the establishment of the two additional positions.

Senator Bruce Maloch moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted.

Senator Bruce Maloch moved that the Legislative Council file as reviewed the request for two (2) additional positions for the Department of Community Correction.

Senator Maloch answered questions from the committee and then asked that Sheila Sharp be recognized to respond to questions concerning the Beyond the Walls program.

Co-Chair Edwards recognized Sheila Sharp, Director of the Department of Community Correction, who explained that Beyond the Walls program was a grant program that was started last fall and it is a re-entry program focusing on reentry efforts in Little Rock, Texarkana, and the West Memphis areas. Ms. Sharp stated the department is seeking regular salary positions for parole and probation officers and an assistant area supervisor, which will be for the initiation of a special response team to focus on absconders. Ms. Sharp stated that there is a significant number of absconders and these positions will also help with the department's shortage of supervision. Ms. Sharp explained that the program includes career planning and placement specialists as well as probation and parole officers who have been trained in working with offenders in the three areas mentioned to help them find jobs and to obtain other services and to closely track the offenders. Ms. Sharp stated that this is a demonstration program that ends in April. Representative Debra Hobbs asked how many parolees will be going through the program and Ms. Sharp stated she did not have that information and the caseloads vary, but they are taking a hard look at this right now. Ms. Sharp stated the department is hiring a Reentry Director who will be responsible for making sure that this program is successful. She also stated the

department had also just received another one-year planning grant that will coincide with ongoing Act 1190 reentry efforts currently underway. She stated that if the department is successful with this grant, then they may be eligible to receive up to \$1 million a year for the next three years. Ms. Sharp stated that she is attempting to move these positions back into miscellaneous federal grant positions so that the department can use the regular salary positions back to increase the supervision in the department.

Co-Chair Edwards recognized Representative Kim Hammer who referred to Item E.2 (see page 2) and asked what the need is for \$120,000.00 in overtime pay for the Department of Veterans Affairs. Senator Maloch responded that the request was to pay anticipated additional overtime expenditures at the Fayetteville Veterans Home which may be the result of some of the issues they are attempting to resolve and also due to turnover. Senator Maloch stated the Fayetteville Veterans Home had a \$40,000.00 appropriation for overtime expenditures and that was insufficient due to continued understaffing. The Veterans Home had seven (7) unfilled positions at the time the request was submitted; three (3) CNAs, three (3) LPNs, and one RN positions and the overtime expenditures was to keep the required staffing in place. Co-Chair Edwards asked if there were more questions about the report. There were no questions.

Co-Chair Edwards asked Senator Maloch to state his motions again. **Senator Bruce Maloch moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted. The motion was seconded and passed by voice vote.**

Senator Bruce Maloch moved that the Legislative Council approve the review of the establishment of two (2) additional positions requested by the Department of Community Correction under the request listed as item C.3 in the PEER Subcommittee report.

Co-Chair Edwards recognized Representative Debra Hobbs who asked for more information on the nine (9) positions requested by the DHS Division of Child Care and Early Childhood Education, listed as item C.4 on page two of the PEER Subcommittee Report. Senator Maloch responded that these positions were discussed during the subcommittee meeting and these positions were for oversight to ensure certain programs were administered as intended and that these programs provided meals for non-profit food service programs for children or adults participants in non-residential institutions. Senator Maloch stated the funding is not additional funds for the nutrition program, but is to provide oversight of the program.

Co-Chair Edwards called for a voice vote on the motion that the Legislative Council approve the review of the establishment of two (2) additional positions requested by the Department of Community Correction under the request listed as item C.3 in the PEER Subcommittee report. The motion was seconded and passed by voice vote.

Review Subcommittee

Co-Chair Edwards recognized Senator David Sanders to present the report of the Review Subcommittee. Senator Sanders reported that the Review Subcommittee met on November 13, 2013 reviewed methods of finance, discretionary grants and professional and consultant services contracts. Senator Sanders referred to item one listed on Attachment B (see page 3) and reported that the subcommittee held the contract between Correct Care Solutions and the Department of Community Services, which is for providing comprehensive medical and pharmaceutical services for the inmates. Senator Sanders stated he would make two motions. Co-Chair Edwards asked if there were any

questions about the report. There were no questions and Co-Chair Edwards asked Senator Sanders to make his first motion.

Senator David Sanders moved that the report of the Review Subcommittee be adopted as it stands with the exception of the contract between the Department of Community Correction and Correct Care Solutions that was held by the subcommittee. The motion was seconded and passed by voice vote.

Co-Chair Edwards asked Senator Sanders to state his second motion. **Senator David Sanders moved that the Review Subcommittee be allowed to meet and review the contract between the Department of Community Correction and Correct Care Solutions and, if the Review Subcommittee favorably reviews the contract, that the subcommittee action would be final upon approval of the Legislative Council co-chairs. The motion was seconded by Senator Johnny Key.**

Co-Chair Edwards recognized Senator Key who asked what happens to the contract if the subcommittee does not reach agreement on the contract. Senator Sanders responded that he has communicated with the members of the Review Subcommittee and he feels that it is possible for the subcommittee to reach a conclusion. Senator Key asked if the subcommittee did not reach an agreement on the contract, would it come before the Legislative Council. Senator Sanders responded that if there was a stalemate, then an emergency meeting of the Legislative Council could be called to review the contract.

Co-Chair Edwards recognized Senator Missy Irvin who commented that because the contract was for \$92 million she would not be comfortable with the subcommittee's action being final and the contract not being brought back to the Legislative Council. Co-Chair Edwards recognized Senator Linda Chesterfield who asked if the Legislative Council had ever approved a contract of this magnitude to another entity. Senator Sanders responded that a medical services contract is in place, but this contract is special because it includes its own enabling legislation that gives the Department of Correction the opportunity to contract for a period of up to nine and a half (9.5) years. Senator Sanders stated this contract is the largest contract in state government history and with the longest term and for those reasons he was not comfortable with the contract being filed as reviewed while there were still questions from the members to be answered. Senator Sanders stated in response to another question that the department had conducted an extensive RFP process and had assessed the department's ability to perform the services themselves.

Senator Chesterfield asked if the Bureau could provide her with the following information: (1) what entity or entities were providing medical, dental, and pharmaceutical services for inmates prior to this contract; (2) who had the contracts for these services; and (3) what was the amount of money expended. Senator Sanders responded that the information could be provided and that the medical services and pharmaceutical services were split by two contracts and it was a rather large contract price, but the former providers did not win the bid for the current contract.

Co-Chair Edwards recognized Representative Fredrick Love who asked to direct a question to Ms. Jane Benton. Co-Chair Edwards asked Ms. Benton to come forward to be recognized and asked that she introduce herself. Ms. Jane Benton introduced herself as the director of State Procurement. Representative Love asked Ms. Benton if contracts could only be for a maximum term of seven (7) years. Ms. Benton stated this is correct, but that there is a special law that allows the Department of Correction to contract to this maximum amount for medical services.

Co-Chair Edwards recognized Representative Kim Hammer who asked was it considered during the research for this contract whether a local hospital could provide these medical services in order to keep the services close to the facility. Senator Sanders responded that is a consideration and because there is not a prison hospital, that inmates go to local area hospitals for certain services. He stated that contract is managed by the entity with the contract. Representative Hammer also asked what amount would the state save by doing business this way versus what was done historically. Senator Sanders responded stating one of the justifications for the contract was that cost of these services being provided by state employees was not cost effective. In response to another question, Senator Sanders stated that the Medicaid Program would cover the cost of medical services to inmates who are admitted to the hospital for longer than twenty-four hours if the inmate was eligible for Medicaid.

Co-Chair Edwards recognized Representative Terry Rice who asked for the clarification of whether a confirmed meeting date for the review of the contract has been set if the Legislative Council does not review the contract today. Senator Sanders responded that a meeting date needs to be set and that any member of the Legislative Council is welcome to attend. Senator Sanders stated that if the motion is passed the meeting date would be set and published. Representative Rice stated that he wished to make clear that the contract under discussion is in the amount of \$92 million with a projected \$647 million total that is 100 percent state funds, and the motion is that this contract will be discussed at a Review Subcommittee meeting to make a final determination and then it will go to the Legislative Council co-chairs.

Co-Chair Edwards recognized Senator Irvin who asked if officials from the Department of Correction or the Board of Correction could be asked to respond to questions about the RFP process and how much money would be saved by the state.

Co-Chair Edwards asked the officials to come forward and to identify themselves. Co-Chair Edwards stated that after this line of questions is completed, the Legislative Council would break from this discussion and go to the discussion of litigation settlement and then the a vote on the motion would be taken.

The following officials came forward and identified themselves as: Wendy Kelley, Deputy Director for Health and Correctional Programs for the Arkansas Department of Corrections; Dr. Mary Parker, Vice Chair of the Board of Correction; Rory Griffin, Administrator for Medical and Dental Services for the Arkansas Department of Corrections. The following information was provided in answer to questions.

- The department negotiated this contract with the expectation of a \$29 million savings for the State of Arkansas.
- This is a very specialized type of care and there are about seven or eight national companies that specialize in correctional medical health care and the department believes this is a terrific company.
- The department was extremely careful in drafting the RFP and very careful within the bid process and in the negotiations with this company.

Discussion of Settlement Agreement

At this point, Co-Chair Edwards commented that the Legislative Council would now undertake the discussion of the settlement agreement listed as item B on the Supplemental Agenda and would come back to the discussion of the contract and the motion afterward.

Co-Chair Edwards recognized Attorney General Dustin McDaniel who stated that about a month ago he reported to the Joint Committees on Education that the Office of the Attorney General was preparing for trial on December 9, 2013 on their motion to immediately discontinue funding the settlement of 1989 with the three school districts in Pulaski County. General McDaniel stated his education goals when he took office were to get out of Lakeview, to stay out of Lakeview, and to bring about a tangible end to the Pulaski County Desegregation litigation. He stated they want a date certain when the financial obligation will end, a dollar amount certain before the financial obligation would end, and some accountability. General McDaniel stated that it is important to acknowledge the great work of the counsel for the school districts, the counsel for the Joshua Intervenors, and Senior Assistant Attorney General Scott Richardson. General McDaniel stated that yesterday he presented a settlement agreement to the Desegregation Litigation Oversight Committee, which is now before the Legislative Council (Exhibit B on the Supplemental Agenda), which was presented for the purpose of meeting the statutory requirements and for the opportunity to provide advance knowledge for the members of the Legislative Council. General McDaniel commented that this is an historic milestone for the three school districts in Pulaski County and the State of Arkansas to be at a point of agreement on how to terminate this funding, how to terminate the litigation, how to terminate the ongoing hostilities.

General McDaniel provided the following information regarding specific details of the settlement agreement:

- The payments being distributed this year will continue unchanged. Under this agreement, after this year the State would make desegregation payments for three additional years to the school districts.
- The payments would be made without any annual inflationary increase, which means the school districts would receive the same amount for the next three years that they are receiving this year.
- The amounts of desegregation payments to the school districts are as follows: the Little Rock School District receives \$37.3 million per year; the North Little Rock School District receives \$7.6 million per year; and the Pulaski County Special School District receives \$20.8 million per year. These desegregation payments would end in school year 2016-2017.
- Beginning in school year 2017-2018, the State would make payments for a fourth year in amounts equal to the same amount that each of the school districts is currently receiving, but the payment would be dedicated exclusively for construction of educational facilities.
- The educational facilities would be “bricks and mortar” facilities as defined in another area of the law and would exclude football stadiums or administration buildings.
- The settlement agreement provides that current magnet school and M-to-M students may continue at their respective schools. The school districts have agreed that future

students may attend school in another district under the existing School Choice law with some numerical caps.

- The settlement agreement authorizes the State to establish a stand-alone Jacksonville School District. The Office of Attorney General is prepared to amend the settlement agreement to state that Jacksonville is prepared to establish its own school district, but that the State would oppose the creation of any other districts within the Pulaski County Special School District until the Pulaski County School District establishes full unitary status and is released from the jurisdiction of the federal court.
- The settlement agreement authorizes the State to pay attorneys' fees as authorized in Act 395 of 2007 as follows: (1) Payment to the counsel for each school district in the amount of \$250,000.00; and (2) Payment to the class action counsel for the Knight Intervenors and the Joshua Intervenors in an amount as set by the court.
- The Office of Attorney General offered a payment for attorneys' fees to the Knight Intervenors in the amount of \$75,000.00 and a payment for attorneys' fees to the Joshua Intervenors in the amount of \$500,000.00; however, the counsel for the Joshua Intervenors indicated that amount was not acceptable. This offer was removed from the settlement agreement because the amount of attorneys' fees would be set by the court and the State cannot control the amount.
- The settlement agreement represents a return to a state and local relationship between three of the State's largest school district and the State and this is critical for moving forward for all concerned.
- The settlement agreement provides the State a predictable and definitive end to the desegregation payments and some transition.

General McDaniel stated he believes that if the State prevails in court that it is almost certain that the payments will continue for a short time and that his office would ask the court to discontinue the payments immediately. General McDaniel stated that the 8th Circuit Court ruling said that the federal court had the authority to discontinue the payments immediately, but there must first be a hearing. General McDaniel stated that this hearing is scheduled for December 9th, and if there is no settlement agreement his office will seek to have the desegregation payments ended immediately.

General McDaniel stated he is asking the Legislative Council to authorize him to present the settlement agreement to the United States District Court. General McDaniel stated that yesterday he believed the Joshua Intervenors had agreed to sign the settlement agreement, but prior to yesterday's committee meeting he learned that this was not the case. General McDaniel stated that he had agreed this morning to two additional requests from the Joshua Intervenors, but that as of this moment, the Joshua Intervenors have refused to sign the settlement agreement.

General McDaniel stated that there is an 8th Circuit Court case that gives an indication of how the State may proceed without the Joshua Intervenors' agreement to the settlement, which is that the three school districts join with the State to present the settlement agreement to the federal court to demonstrate that this is a good deal.

General McDaniel stated that if not all of the three school districts join in the settlement agreement with the State, then they will have to go to trial on December 9th and that his office is fully prepared to go to trial if necessary. General McDaniel stated that the State is not controlling the Pulaski County Special School District and that the Commissioner of Education who is acting as the school board for this district has refused to review the settlement agreement and that the district superintendent and the

district's lawyers agreed to not allow him to see it. General McDaniel stated that the Pulaski County School District and the North Little Rock School District agreed to proceed with the settlement agreement with or without the participation of the Joshua Intervenors. He reported that the Little Rock School Board voted unanimously to approve the settlement agreement, but would not vote on the motion to proceed with the settlement agreement with or without the participation of the Joshua Intervenors. General McDaniel stated this resulted in the Joshua Intervenors making additional demands this morning of the Little Rock School District and resulted in the Joshua Intervenors not participating in the settlement agreement.

General McDaniel stated that in light of this situation, he is asking the Legislative Council to give the Little Rock School District one last chance to join with the State in the settlement agreement and to proceed with or without the participation of the Joshua Intervenors by giving him authorization through the end of the day Tuesday to proceed with presenting the settlement agreement to the court. He stated that if the Little Rock School District does not join with the State by that time, then he asks that the Legislative Council withdraw the authorization to proceed with the settlement agreement. This concluded General McDaniel's presentation and he offered to answer any questions.

The following information was provided by General McDaniel and Mr. Richardson in answer to questions.

- The 1989 settlement agreement in this case did not have a specific end date articulated in the agreement. The 1989 settlement agreement did not set out a specific amount for the desegregation payments that the three school districts were to receive and the payments were supposed to be substantially less.
- There was a lawsuit brought against these three school districts in 1982 for intentional segregation and his office has admitted that the allegations were true and the state deserves to pay remediation.
- When the legislature approved this settlement agreement in 1989, they thought it would be relatively brief and no more than \$100 million. There has now been paid more than \$ 1 billion and ongoing for twenty-four (24) years.
- His position is that now that the Little Rock School District and the North Little Rock School District have been declared unitary, these districts should not receive any more money.
- The Pulaski County Special School District is poised to be declared unitary, with nine (9) subcategories remaining to be addressed and there is a plan in place to accomplish this goal.
- The school districts continue to receive money because the Eighth Circuit Court has ruled that the payments would continue.
- The court hearing on ending the desegregation payments is set for December 9, 2013 and the Office of Attorney General is prepared to go forth with it.
- This is a "take it or leave it" settlement agreement because the other parties would not agree if more conditions were added to the settlement agreement.
- The Arkansas Department of Education has staff that have been fully involved with the compliance and performance of the 1989 settlement agree. The monitors are appointed by the court.
- The Knight Intervenors are small parties in this litigation and they have indicated they will sign the settlement agreement.

- The Joshua Intervenors are a sizable player in this matter. The Joshua Intervenors continue to make demands of the Little Rock School District which the Office of the Attorney General believes is a side matter and does not impact this agreement.
- The two demands from the Joshua Intervenors that were made today are: (1) written acknowledgement that nothing in this agreement interferes with the Joshua Intervenors ability to engage in a side commitment with the Little Rock School District so long as it does not in any way impact anything else in this agreement; and (2) written acknowledgement of the creation of a Jacksonville School District does not acknowledge in any way the appropriateness of the creation of any other school districts with the Pulaski County Special School District's territory.
- It is the belief of all parties that the creation of a stand-alone Jacksonville School District will benefit the Pulaski County Special School District and Jacksonville. Jacksonville has been working for years to lay the groundwork and infrastructure to take over the facilities and to incorporate the 4,000 students there. Jacksonville will be required to comply with all state law for the creation of a school district.
- The money from the settlement agreement to the Jacksonville school district would come as a condition. There can be no contract now concerning what the Jacksonville School District must do as a district because the Jacksonville School District does not exist at this time.
- When and if the Jacksonville School District is created, that district must abide by all of the terms in the settlement agreement that apply. If any portion of the desegregation money paid over the next three years to the Pulaski County School District was to be given to the Jacksonville School District would have to be a deal worked out between the Pulaski County Special School District and the Jacksonville School District at that time.
- The settlement agreement currently includes language that states the State of Arkansas opposes the creation of any other school districts.
- The settlement agreement does provide a date certain for ending the litigation to the extent that certainty is possible (see item D.2 of page 4 of the agreement). The districts are not precluded to bringing a new lawsuit.
- The court can be asked to establish the amount of attorney fees if the parties cannot agree on an amount.
- In the last nine years, the State has paid \$603 million as calculated by General McDaniel.
- In General McDaniel's opinion, a lot of good has come from the money expended to date, but that there could have been greater accountability and the money could have been spent more efficiently. In General McDaniel's opinion, the State of Arkansas has met its legal obligations and a point has been reached when it is time for the litigation to end. It is in the interest of everyone to end the litigation in an orderly fashion that avoids a punitive and abrupt hit to the districts.
- All parties recognize that there is a substantial possibility that the district court would terminate funding immediately or with a very short wind-down period. There is also a substantial possibility that the Eighth Circuit Court would deny a stay of the district court's order while the Eighth Circuit is reviewing the district court's order and General McDaniel believes the Eighth Circuit Court would uphold the district court's order.
- The Joshua Intervenors asked the Attorney General for a scholarship program and a specialized set of programs that would be ongoing in a trust fund capacity to serve the

African-American students in the Pulaski County Special School District beyond when unitary status is achieved.

- The Pulaski County Special School District indicated to the Attorney General that there is an agreement in principle and will agree that the Pulaski County Special School District is unitary and will assist in pulling the school districts into a global settlement and the Joshua Intervenors need approximately \$50 million to go to a trust fund to administer college preparedness classes for African-American students who score less than 22 on the ACT and a scholarship program to give \$4,000.00 scholarships to students with 16 and 17 ACT scores.
- The Office of Attorney General researched how the requested programs could be made to work if it was authorized. The Office of Attorney General proposed instead that the Pulaski County Special School District would meet its financial obligations, meet its construction obligation, and meet its unitary status obligations and also divert approximately half of the next years payments to the Joshua Intervenors. The University of Arkansas at Little Rock has agreed to receive this money and to focus on college preparedness.
- The Attorney General agreed this morning to add to the agreement language that would allow the Little Rock School District and the Joshua Intervenors to negotiate the proposal to build a West Little Rock middle school.
- The General Assembly voted during the last session for a reduction in the grocery tax in the amount equivalent to the \$67 million when it becomes available and the money would become available at the end of the fourth year as specified in this settlement agreement.
- There would be a financial impact on the State if certain M-to-M students, who are not currently counted on ADM at the school districts, are immediately put in the pot as ADM students at the end of the settlement agreement period.
- The grocery tax reduction was contemplated when the settlement agreement was drafted and this is a fiscally-responsible settlement for the State.
- The Attorney General would not attempt to preclude any district from forming another district as they are permitted to do under state law, but while the State is under federal court jurisdiction these potential sub-districts are not on equal footing.
- The Attorney General was recently contacted about the possibility of creating a school district in Sherwood and if the process to establish a new district was begun now it would be a few years even without the federal court involvement.
- The Office of the Attorney General would oppose a new school district for Sherwood because it would be in violation of the 1989 settlement agreement which would still be in effect until the end of litigation.
- The establishment of the school district in Sherwood would require compliance with all state law and must be approved by the federal court.
- The Office of Attorney General believes it would be contrary to the settlement agreement and the pursuit of unitary status for the Pulaski County Special School District for any other districts to be created until the Pulaski County Special School District is declared unitary.
- As long as the federal court jurisdiction is in place, school choice will be governed by the federal court rather than by the School Choice statute. The settlement agreement would affect school choice during the period of the settlement agreement. The School Choice statute would govern school choice after that period.

- The intent of the provision in the settlement agreement concerning school choice is that the Little Rock and North Little Rock school districts could follow the School Choice Act as it is written and no longer claim the exemption, but the districts could choose to claim the exemption.
- The provision was also intended to provide some stability in student enrollment in the Pulaski County Special School District in order to have some predictability in the revenue stream to this district.
- It may be correct that, if the districts choose to abide by all of the terms of the School Choice Act, they may also be subject to the expiration date specified in the act, which is July 1, 2015.
- By the calculations of the Office of Attorney General, if the Little Rock School District was not required to pay attorney fees, the district may save approximately \$130,000.00 a year or approximately \$3.5 million over the years.
- By the calculations of the Office of Attorney General, if the North Little Rock School District was not required to pay attorney fees, the district may save approximately \$175,000.00 a year or approximately \$4 million total.
- By the calculations of the Office of Attorney General, the Joshua Intervenors legal counsel has been paid approximately \$5.3 over the years.
- A settlement in this lawsuit brings to the districts predictability, funding for much needed programs, and minimizes the risk of the district being declared fiscally distressed, and would avoid a contentious court hearing on December 9th and the appeal process.
- The vote by the Little Rock School Board authorized their legal counsel to go forward with the settlement agreement if all parties were in the agreement, but the board did not vote on a second motion to authorize their legal counsel to go forward with or without the agreement of the Joshua Intervenors.
- The Attorney General is asking for a deadline of Tuesday to allow the Little Rock School Board to vote to authorize their legal counsel to proceed with or without the Joshua Intervenors which would allow the Office of Attorney General to proceed with presenting the settlement agreement to the court with all three school districts in the agreement.

General McDaniel asked for a five-minute break and Co-Chair Edwards recessed the meeting at 11:40 a.m. and asked that everyone return at 11:45 a.m. to continue this discussion.

Following the recess, Co-Chair Edwards recognized Attorney General Dustin McDaniel who informed the members that the request from the Joshua Intervenors to establish a scholarship program through the University of Arkansas at Little Rock is not included in this settlement agreement. The money that would have been diverted to the university would be an agreement between the Pulaski County Special School District and the Joshua Intervenors for satisfying the needs of the Joshua Intervenors as a class.

Co-Chair Edwards recognized Senator Jane English. **Senator Jane English moved that the Legislative Council review and approve the Settlement Agreement before the Legislative Council today and that we authorize the Attorney General to present a settlement consistent with what we have seen and discussed today to the U. S. District Court for approval. Senator English further moved that both Chairs of the Legislative Council be added as signatories to the settlement in order to approve the final document to be submitted to the Court. The North Little Rock School District and the Pulaski County Special School District have granted authority to**

their counsel to settle with us, with or without the participation of the Joshua Intervenors. The Little Rock School District has approved the settlement; however, it has not yet authorized its counsel to proceed even without Joshua. Therefore, Senator English further moved that our grant of authority to the Attorney General expire at midnight Tuesday, November 19, 2013, if the state is not joined by that time by the Little Rock School District, or Joshua, or both. The motion was seconded and passed by voice vote.

Co-Chair Edwards recognized Senator Jane English. **Senator Jane English moved that the Legislative Council review and approve the reimbursement agreement for attorney's fees to the three school districts as presented to us today, as provided under Arkansas Code section 6-20-416. The motion was seconded and passed by voice vote.**

General McDaniel thanked the committee and stated that he would be in close contact.

Report of the Review Subcommittee (Continued)

Co-Chair Edwards stated the committee would now continue with the discussion of the report from the Review Subcommittee and he recognized Senator David Sanders. Senator Sanders stated that his motion to review the contract in the subcommittee was an effort to expedite the process.

Co-Chair Edwards recognized Representative Terry Rice who stated he wished to make a substitute motion. Co-Chair Edwards recognized Representative Rice for a motion.

Representative Rice stated that he feels the December 20th meeting of the Legislative Council is sufficient time for the start-up date and that is important that this major a contract should come back to the full Legislative Council after questions are answered in the Review Subcommittee meeting.

Representative Terry Rice moved that the review of the contract between the Department of Community Correction and Correct Care Solutions be brought before the full Legislative Council after the Review Subcommittee has met to address questions regarding the contract.

Co-Chair Edwards recognized Senator Sanders who stated this was fine and that he would withdraw his motion to allow the action of the Review Subcommittee to be the final action on the contract and he would second the motion by Representative Rice.

Co-Chair Edwards stated that Senator Sanders has withdrawn his motion and the motion by Representative Rice that the review of the contract between the Department of Community Correction and Correct Care Solutions be brought before the full Legislative Council after the Review Subcommittee has met to address questions regarding the contract is the main motion. Senator Sanders seconded the motion and the motion was passed by voice vote.

Personnel Subcommittee

Co-Chair Edwards recognized Representative Andrea Lea to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit F.11). Representative Lea reported that the Personnel Subcommittee met on November 13, 2013 and reviewed the following: reports of grid movements and usage by multiple agencies for October 2013; provisional position reports from two and four-year institutions showing new provisional positions for fiscal year 2013; report from the Department of Finance and Administration detailing the approval of special entry rates

for exceptionally well-qualified candidates by the Chief Fiscal Officer; request by the Arkansas State Police and Arkansas Public Retirement System for swap pool positions; and a request from the Department of Community Correction for one position from the DFA growth pool; a request to establish two new positions from the Department of Higher Education's central pool for ASU Mountain Home; and request from the Department of Community Correction and the Department of Human Services for titles and grades associated with positions established through miscellaneous federal grants; and a request from the Department of Labor for a second-language increase up to forty percent (40%) for an employee who serves as a Spanish interpreter for the entire agency.

Representative Lea reported the Personnel Subcommittee also met on November 14, 2013 to discuss Interim Study Proposal 2013-162, which examines the employment and funding structure of court reporters and trial court administrative assistants. Representative Lea reported the subcommittee took no action at this meeting and will meet on this topic again in December 2013 when a date is finalized. Representative Lea offered to answer questions. There were no questions.

Representative Andrea Lea moved that the report of the Uniform Personnel Classification and Compensation Plan Subcommittee be adopted. The motion was seconded and was passed by voice vote.

Old Business Carried Over

Co-Chair Edwards stated the committee would now go past the communications on the agenda and consider the methods of finance removed from the Review Subcommittee Report and held by the Legislative Council on October 25, 2013 (Exhibit I.1) and asked if there were questions.

Senator Bill Sample moved that the following methods of finance held by the Legislative Council on October 25, 2013 be filed as reviewed: University of Arkansas – Fayetteville–Phi Mu Sorority House for \$10,678,525.20; University of Arkansas – Fayetteville–Art & Design District for \$4,133,754.00; University of Arkansas – Fayetteville–Alpha Chi Sorority House for \$11,478,495.20; and University of Arkansas – Fayetteville–AFLS Academic Renovation for \$2,602,326.00. The motion was seconded and passed by voice vote.

Co-Chair Edwards referred the members to the Report of the Emergency Review of the Method of Finance for the University of Arkansas at Fayetteville for the Purchase of Property located at 1554 W. MLK Blvd. for \$365,000.00, that was held by the Legislative Council on October 25, 2013 (Exhibit I.2) and recognized Co-Chair Sample to address this item. Senator Sample stated that Method of Finance by the University of Arkansas at Fayetteville for the Purchase of Property located at 1554 W. MLK Blvd. for \$365,000.00 was reviewed by the emergency procedures in the Legislative Council Rules. He stated that letter from the Department of Finance and Administration is included in Exhibit I.2. Co-Chair Edwards stated there was no further action required on this report.

New Proposals and Resolutions

Co-Chair Edwards recognized Senator Linda Chesterfield to present Interim Study Proposal 2013-176 (Exhibit K.1) in the meeting packets. Senator Chesterfield explained that one of her concerns in the review of the distribution of general improvement funds is that there is no certain time frame for people to apply for those grants and that the legislators are not informed of grant deadlines. Senator Chesterfield stated that each state entity have different procedures and she is asking for a study to

review the procedures and to discuss the feasibility of uniform procedures for grant applications and so that the deadlines would be known.

Senator Linda Chesterfield moved that Interim Study Proposal 2013-176 (Exhibit K.1) be referred to the Policy-Making Subcommittee of the Legislative Council. The motion was seconded and passed by voice vote.

Supplemental Agenda

Co-Chair Edwards referred members to the Supplemental Agenda and to the new interim resolutions in the meeting packets: Interim Resolution 2013-001 (Exhibit A.1); Interim Resolution 2013-002 (Exhibit A.2); and Interim Resolution 2013-003 (Exhibit A.3). Co-Chair Edwards recognized Senator Missy Irvin to explain the resolutions.

Senator Missy Irvin thanked the co-chair and stated with her were Mr. Jeff Sikes and Mr. Chad Wood who introduced themselves as Jeff Sikes with the Association of Arkansas Counties and Chad Wood an environmental attorney with the Gill Ragon Owen Law Firm in Little Rock. Senator Irvin stated that this past Tuesday the Senate and House Committees on City, County and Local Affairs met jointly with the Senate and House Committees on the Agriculture and Economic Development for the purpose of hearing testimony on the critical habitat designations of two endangered species known as the Rabbitsfoot mussel and the Neosho mucket.

Senator Irvin stated that the Association of Arkansas Counties has taken the point position for a coalition of organizations on this issue and she felt it was necessary to bring this before the committee for the purpose of understanding the facts of issue, to inform the legislators and citizens about what is currently taking place, and to discuss how the state legislature and the Arkansas Congressional Delegation can join the coalition in affecting the scope of the critical habitat designation. Senator Irvin noted that provided to the members in their packets are the informational materials on the critical habitat designation, which include statements from all six members of the Arkansas Congressional Delegation and a list of all of the organizations in the coalition that includes the Association of Arkansas Counties, the Arkansas State Chamber of Commerce, the Arkansas Environmental Federation, the Arkansas Forestry Association, the Arkansas Farm Bureau, the Arkansas Poultry Federation, the Arkansas Independent Producers and Royalty Owners, the Camp Ozark, Entergy and Environmental Alliance of Arkansas, Arkansas Cattlemen's Association, and the Arkansas Association of Conservation Districts. Senator Irvin stated they expected this list to grow and she asked that the resolutions be passed and add the voice of the Arkansas State Legislature to the voice of the Arkansas Congressional Delegation at the federal level.

Co-Chair Edwards recognized Senator Linda Chesterfield. **Senator Linda Chesterfield moved that Interim Resolution 2013-001 (Exhibit A.1) be adopted.**

Co-Chair Edwards stated that a motion was needed to suspend the rules to allow immediate consideration without the six days' prior notice.

Senator Linda Chesterfield moved to suspend the rules to allow immediate consideration of the interim resolutions without the six days' prior notice and that Interim Resolution 2013-001 (Exhibit A.1) be adopted.. The motion was seconded and passed by voice vote.

Senator Linda Chesterfield moved that Interim Resolution 2013-002 (Exhibit A.2) be adopted. The motion was seconded and passed by voice vote.

Senator Linda Chesterfield moved that Interim Resolution 2013-003 (Exhibit A.32) be adopted. The motion was seconded and passed by voice vote.

Senator Irvin thanked the committee and also the Attorney General and the Governor's Office for their support.

Adjournment

Co-Chair Edwards stated there is no further business before the Legislative Council and the meeting is adjourned at 12:00 noon.

Respectfully submitted,

ATTEST:

Representative John Charles Edwards
Co-Chair, House of Representatives

Marty Garrity
Executive Secretary