

**MINUTES OF THE MEETING**  
**OF THE**  
**ARKANSAS LEGISLATIVE COUNCIL**

**Wednesday, May 18, 2016**

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The Arkansas Legislative Council met at 1:00 p.m., Wednesday, May 18, 2016, in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Bill Sample called the meeting to order and recognized a quorum of members present. The members present are listed on the sign-in sheets.

**Moment of Silence**

Co-Chair Bill Sample asked members to observe a moment of silence in remembrance of Representative Laurie Rushing's daughter who passed away yesterday.

**Minutes of the Last Meeting**

Co-Chair Sample referred the members to the minutes of the March 18, 2016 meeting (Exhibit C) of the Legislative Council and asked if there was a motion to approve the minutes.

**Representative Greg Leding moved that the minutes of the March 18, 2016 Legislative Council meeting be adopted. The motion was seconded and passed by voice vote.**

**Presentation of Revenue Reports**

Co-Chair Sample recognized Richard Wilson, Assistant Director for Research Services with the Bureau of Legislative Research, to present the revenue reports prepared by the Bureau of Legislative Research.

Mr. Wilson stated that since the Legislative Council did not meet last month, he will present both a revenue report for March 2016 (Exhibit D.1) and April 2016 (Exhibit D.2). Mr. Wilson reported that the March 2016 revenue report reflects that after nine (9) months of this fiscal year, gross revenue collections are slightly negative while the net general revenues available for distribution is \$123 million dollars over the same period last year. Mr. Wilson explained that the difference is the individual income tax refunds are \$120 million less than the same nine-month period last year, which is a growth rate of negative thirty-two percent (-32%). Mr. Wilson referred to the March 2016 graph and reported that in the two (2) months since the official forecast revision on February 1, 2016, net general revenues available for distribution are \$73 million ahead of the revised forecast.

Mr. Wilson referred members to the April 2016 monthly revenue report and stated that the trend continues with the gross revenue collections at a negative \$13 million, while the net general revenues available for distribution is \$160 million over the same ten-month period last year. Mr. Wilson reported that the individual income tax refunds are \$155 million less than the previous year. Mr. Wilson reported that the April 2016 graph reflects that three (3) months after the

official forecast was revised on February 1, 2016, net general revenues available for distribution are \$110 million ahead of the revised forecast. Mr. Wilson reported that in calendar year 2015, the employers were using out-dated or incorrect withholding tables and employers did not withhold quite enough tax on their employees, and as a result, tax refunds for tax year 2015 are not flowing back to the taxpayers as expected in the forecast. Mr. Wilson stated that is a one-time fix and one-time money assuming those tax tables are correct for tax year 2016. Mr. Wilson reported that of the \$110 million dollars reflected on the graph, approximately \$80 million is due to the tax refund situation. Mr. Wilson stated the surplus at the end of this fiscal year should be quite a bit larger than previously expected due to conservative budgeting and forecasting, and in part, to the tax refund situation that provides some one-time money moving forward. This concluded the presentation of the March 2016 and April 2016 revenue reports and Mr. Wilson responded to questions.

At the request of a member, Co-Chair Sample recognized Tim Leathers, Deputy Director of the Department of Finance and Administration, to respond to questions. Mr. Leathers explained that the net liability is the same whether a taxpayer has less withheld from his or her check and receives money earlier or whether a taxpayer receives money later in a refund. Mr. Leathers stated that in this instance, taxpayers received money earlier in their paychecks when the withholding was adjusted. Mr. Leathers stated the goal has always been to not take more money from taxpayers than what is due and to try to set the withholding tables to match the tax law so that taxpayers get their money earlier.

Mr. Leathers stated that a tax cut of about \$50 million was passed in the last regular session and a determination was made before the 2015 tax year began to adjust the tax tables so that taxpayers would have money earlier rather than later. Mr. Leathers stated that when the session began, part of the tax cut was delayed and then there were more tax cuts. Mr. Leathers stated there was no change made for the interim time to adjust withholding that created a situation where, following the tables that were enacted pursuant to the law and the withholding instructions that were pursuant to the law, taxpayers received more money earlier in the year, which caused their tax refund to be less although the net liability for the year was the same. Mr. Leathers stated that taxpayers can adjust their withholding if they want a larger refund. Mr. Leathers stated they just try to hit what the law is and make their forecast on that basis, but there was no erroneous table under the law and there was no error in the instructions that went out. Mr. Leathers concluded his remarks by stating that taxpayers received money earlier and paid no more net tax and then he responded to questions from the committee members.

### **Report of the Executive Subcommittee**

Co-Chair Sample informed members there is a report from the Executive Subcommittee meeting on March 31, 2016 in the meeting packets, but no action is required by the Legislative Council.

### **Report of the Standing Subcommittees**

#### **Administrative Rules and Regulations Subcommittee**

Co-Chair Sample recognized Representative Andy Davis to present the report of the Administrative Rules and Regulations Subcommittee (Exhibit F.1). Representative Davis reported that the Administrative Rules and Regulations Subcommittee met on May 17, 2016, and adopted the reports of the Executive Subcommittee concerning its approval of emergency rules

during the March meeting. Representative Davis reported that the Administrative Rules and Regulations Subcommittee also reviewed the quarterly reports submitted by the Department of Correction in accordance with Act 1258 of 2015. The subcommittee also deferred three (3) rules to the next subcommittee meeting: one from the Natural Resources Commission; one from the State Board of Examiners in Counseling; and one from the Commission for Arkansas Public School Academic Facilities and Transportation. Representative Davis concluded his report by reporting all other rules were reviewed and approved.

**Representative Andy Davis moved that the report of the Subcommittee on Administrative Rules and Regulations be adopted. The motion was seconded and passed by voice vote.**

#### Game and Fish/State Police Subcommittee

Co-Chair Sample recognized Senator Bobby J. Pierce to present the report of the Game and Fish/State Police Subcommittee (Exhibit F.4). Senator Pierce reported that the Game and Fish/State Police Subcommittee met on May 16, 2016 with representatives of the Game and Fish Commission at the Museum of Natural Resources in Smackover, Arkansas, where the subcommittee heard a presentation on Chronic Wasting Disease (CWD) and Arkansas' surveillance of infected animals. Senator Pierce reported that the Game and Fish Commission will hold a meeting tomorrow (May 19, 2016) on proposed rules on Chronic Wasting Disease. Senator Pierce reported that the Arkansas Educational Television Network (AETN) will present a program on Chronic Wasting Disease on Monday, May 23, 2016 at 8:00 p.m. on "Arkansas Asks". This concluded the report and there were no questions.

**Senator Bobby J. Pierce moved that the report of the Game and Fish/State Police Subcommittee be adopted. The motion was seconded and passed by voice vote.**

#### Higher Education Subcommittee

Co-Chair Sample recognized Senator Jason Rapert to present the report of the Higher Education Subcommittee (Exhibit F.5). Senator Rapert reported that the Higher Education Subcommittee met on March 31, 2016, and heard testimony from Allen Weatherly, Executive Director of the Arkansas Educational Television Network (AETN), on the services provided by AETN to Arkansas and Arkansas schools, which was discussed by the subcommittee. This concluded the report and there were no questions.

**Senator Jason Rapert moved that the report of the Higher Education Subcommittee be adopted. The motion was seconded and passed by voice vote.**

#### Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Sample 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 May 17, 2016, and reviewed several items, including cash fund appropriation increase requests; an appropriation transfer for the Secretary of the State; a miscellaneous federal grant request; two overtime appropriation requests; and several pay plan appropriation requests that are listed in the attachment to the report. This concluded the report and there were no questions.

**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.**

#### Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Sample recognized Senator Uvalde Lindsey to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit F.11). Senator Lindsey reported that the Uniform Personnel Classification and Compensation Plan Subcommittee met on May 18, 2016, and reviewed the following reports and requests: quarterly employment reports for state agencies and institutions of higher education; special entry rates for exceptionally well-qualified candidates approved by the Department of Finance and Administration (DFA); provisional positions reports from the two- and four-year institutions of higher education; and a request for five (5) MFG positions at the Developmental Disabilities Council. Senator Lindsey reported that the subcommittee also approved the following requests: growth pool positions for Northwest Technical Institute, the Department of Agriculture, and the University of Arkansas Community College at Morrilton; a special entry rate for an education program manager at Northwest Technical Institute; continuation of a previous salary for an employee of the Department of Correction; and a request from the Department of Workforce Services for a second-language differential as part of their duties. This concluded the report, and there were no questions.

**Senator Uvalde Lindsey moved that the report of the Uniform Personnel Classification and Compensation Plan Subcommittee be adopted. The motion was seconded and passed by voice vote.**

#### Review Subcommittee

Co-Chair Sample recognized Representative Jeff Wardlaw to present the report of the Review Subcommittee (Exhibit F.10). Representative Wardlaw reported that the Review Subcommittee met on May 17, 2016, and reviewed all contracts and all items on the agenda. This concluded the report and there were no questions.

**Representative Wardlaw moved that the report of the Review Subcommittee be adopted. The motion was seconded and passed by voice vote.**

#### **Review of Communications**

Co-Chair Sample referred members to the communications listed as Exhibit H.1 through Exhibit H.17 on the agenda and noted that the only items requiring action by the Legislative Council were: a request, submitted pursuant to A.C.A. § 19-11-1303, from Arkansas Teacher Retirement System for the Legislative Council's retrospective review of the imminent need partial equity ownership investment in Thoma Bravo XII, L.P. (Exhibit H.5a); a request, submitted pursuant to A.C.A. § 19-11-1302, from Arkansas Teacher Retirement System for the Legislative Council's review of the partial equity ownership investments (Exhibit H.5b); and a request, submitted pursuant to A.C.A. § 25-4-119(b)(3)(B), from the Department of Information Systems for the Legislative Council's review of the Proposed Rate Adjustments for Fiscal Year 2016 (Exhibit H.12).

Co-Chair Sample asked if there were any questions regarding the other communications and there were none.

### Arkansas Teacher Retirement System

Co-Chair Sample recognized George Hopkins, Executive Director of Arkansas Teacher Retirement System (ATRS), to explain the requests. Mr. Hopkins identified himself and stated the first investment listed on the agenda is with Thoma Bravo XII, L.P. fund 12 (Exhibit H.5a), which was entered into in late April and submitted retrospectively pursuant to A.C.A § 19-11-1303 as an imminent-need investment. Mr. Hopkins stated that the imminent need for the investment was because of the timing of the meeting of the Legislative Council and because of when the funds were closing for the last time. Mr. Hopkins reported that this is a \$30 million investment in a private equity firm with a stellar record of about a forty-three percent (43%) annual return in fund nine; forty-five percent (45%) in fund ten; and fund eleven is too new to know the return. There were no questions.

**Co-Chair David L. Branscum moved that the Legislative Council file the partial equity ownership investment with Thoma Bravo XII, L.P. as reviewed. The motion was seconded and passed by voice vote.**

Mr. Hopkins continued with an explanation of the second request for review of four (4) investments submitted pursuant to A.C.A § 19-11-1302 (Exhibit H.5b). Mr. Hopkins explained that the ATRS has purchased the revenue stream from the Big River Steel Recycling Tax Credits and in the last session a law was passed where the General Assembly will, every year, buy \$20 million dollars worth of tax credits for \$16 million. Mr. Hopkins stated that the ATRS bought the income stream from Big River Steel, which will provide about a five point three percent (5.3%) return on just the cash on cash, while at the same time, Big River Steel will give back \$16 million when the initial purchase is made and that over two (2) years the ATRS will get back another \$15 million. Mr. Hopkins explained that this means that, if the recycling tax credits are exactly \$280,000, the ATRS will pay \$151 million dollars for \$224 million that will be generated over fourteen (14) years and at the same time, Big River Steel will pay back \$31 million to the ATRS in the first two (2) years of operation of which \$16,000 would be received immediately. Mr. Hopkins stated that when the investment is looked at in total, it should return between five percent (5%) and nine percent (9%) per year.

Mr. Hopkins explained that the investment with Nephila Rubik Holdings, LTD is a re-insurance fund in which the ATRS has invested \$50 million, which provides re-insurance to insurance companies for wind damage, earthquakes, and other areas as part of a fund. Mr. Hopkins explained this is a very conservative fund that returns about six percent (6%) per year. Mr. Hopkins explained that the investment with Aeolus Property Catastrophe Keystone PF, L.P. is another re-insurance fund in which the ATRS is investing up to \$37 million dollars, but it is intended to be a \$25 million annual fund investment after the fund returns some money. Mr. Hopkins explained that the investment with Harbert European Real Estate Fund IV, L.P. is a very high-quality European fund that is operated out of Alabama, which is a ten-year commitment by the ATRS. Mr. Hopkins explained the fund typically invests in very conservative projects like offices, industrial retail, residential properties in major European markets, which has had a good return over the years. There were no questions.

**Co-Chair David L. Branscum moved that the partial equity ownership investments with Big River Steel Recycling Tax Credits, Nephila Rubik Holdings, LTD, Aeolus Property Catastrophe Keystone PF, L.P., and Harbert European Real Estate Fund IV, L.P. be filed as reviewed by the Legislative Council. The motion was seconded and passed by voice vote.**

Mr. Hopkins explained that the investments listed in Exhibit H.5c were submitted for notice only. He stated that because these investments fell outside of any requirement for review, the ATRS intends to try to amend the law to ensure that everything is reviewed. Mr. Hopkins explained the ATRS has made two (2) loans; one is a \$50 million commitment on a line of credit to the Arkansas Institutional Fund, L.L.C., which is operated by the Arkansas Development Finance Authority; and the second is a revolving line of credit for the Arkansas Development Finance Authority for various industrial development purposes of up to \$20 million, if requested once the details of the collateral are worked out. This concluded the presentation and there were no questions.

#### Department of Information Systems

Co-Chair Sample recognized Mark Myers, Director of the Department of Information Systems, to explain the request for the Legislative Council's review of the Proposed Rate Adjustments for Fiscal Year 2016 (Exhibit H.12). Mr. Myers identified himself and explained that before the committee now are the revised rates for state government agencies for information technology services. Mr. Myers noted that the proposal includes a reduction of rates of over \$2 million to state agencies over the next year. Mr. Myers explained that there appears to be a \$5 million number, but that is really a credit to ADE. Mr. Myers stated that, overall, only the main frame line item has any impact on the increase. This concluded Mr. Myers explanation and he answered questions from the committee members.

**Co-Chair David L. Branscum moved that the Rate Adjustments for Fiscal Year 2016 proposed by the Department of Information Systems be filed as reviewed. The motion was seconded and passed by voice vote.**

#### **New Interim Study Proposals and Interim Resolutions**

Co-Chair Sample referred the members to Interim Resolution 2015-005 (Exhibit J.1) and recognized Senator Jim Hendren to present it. Senator Hendren explained that this month is National Cystic Fibrosis Month and that this resolution was brought to him by the national foundation. Senator Hendren explained that Interim Resolution 2015-005 would declare May 2016 as the Cystic Fibrosis Awareness in Arkansas Month. He noted that there are 30,000 children and adults in the United States that suffer from Cystic Fibrosis, of which 250 are in Arkansas, and the average life of expectancy of people with Cystic Fibrosis is 41 years. Senator Hendren stated that there are over 1,000 new diagnoses each year and Interim Resolution 2015-005 points out that Arkansas is fortunate to have two (2) world-class treatment centers at Arkansas Children's Hospital and the University of Arkansas for Medical Sciences (UAMS).

**Senator Jim Hendren moved that Interim Resolution 2015-005 be adopted and that the Legislative Council designate May 2016 as Cystic Fibrosis Awareness Month. The motion was seconded and passed by voice vote.**

### Supplemental Agenda

Co-Chair Sample referred the members to the Supplemental Agenda and stated that there are two items listed and each will require the passage of a motion to suspend the rules to allow the Legislative Council to consider them.

#### Arkansas State Parks Division Request

**Co-Chair David L. Branscum moved that the rules be suspended to consider the Arkansas State Parks Division's request for the Legislative Council's approval of fiscal year 2017 expenditures for the Special Maintenance Program. The motion was seconded and passed by voice vote.**

Co-Chair Sample recognized Grady Spann, Director of the Division of State Parks, and John Brown, Operations Manager for Arkansas State Parks, to explain the request. Mr. Brown explained that before Legislative Council today is a request for approval of fiscal year 2017 expenditures for the Special Maintenance Program (Exhibit A.1). Mr. Brown explained these projects range from the repair and upkeep of more than 1,147 buildings and structures, of which 180 are historical structures that are insured up to \$392 million, to the maintenance of state park trail systems. Mr. Brown stated one of the main components in the projects listed is safety for the guests and employees of the state parks, and the list also includes the cost of energy conservation materials for projects to reduce energy consumption by thirty percent (30%) by 2017 as required by law. Mr. Brown concluded his remarks by offering to answer questions concerning any of the 191 special maintenance projects for the State Parks System. He then responded to questions from the committee members, and in response to a request from Representative Nate Bell, offered to provide Representative Bell with the Arkansas Energy Office mandate concerning energy conservation by state agencies.

**Co-Chair David L. Branscum moved that the Legislative Council approve the Arkansas State Parks Division fiscal year 2017 expenditures for the Special Maintenance Program as submitted. The motion was seconded and passed by voice vote.**

#### Interim Resolution 2015-006

**Co-Chair David L. Branscum moved that the rules be suspended to consider the Interim Resolution 2015-006. The motion was seconded and passed by voice vote.**

Co-Chair Sample recognized Representative Stephen Meeks to explain Interim Resolution 2015-006 (Exhibit B.1). Representative Meeks stated that clear and specific powers of the federal government are enumerated in the United States Constitution and that the Tenth Amendment clarifies that anything not enumerated in the Constitution belongs to the purview of the states. Representative Meeks stated that the founding fathers purposely left education out of the powers given to the federal government, and ergo, that power remains with the states. Representative Meeks commented that the U. S. Department of Education overstepped its bounds when it issued policy guidance to the schools of Arkansas and the nation, and it is the responsibility of the Legislative Council and elected representatives of Arkansas and those to whom have been delegated the authority, to set education policy within Arkansas, including policy regarding trans-gender bathroom policy when and if it becomes an issue in Arkansas.

Representative Meeks stated that Interim Resolution 2015-006 does two things: first, the resolution agrees with the comments of Governor Asa Hutchinson and Arkansas Attorney General Leslie Rutledge in regard to the policy guidance issued by the federal government and directs schools and institutions of higher education to disregard the policy guidance; and secondly, the resolution supports the right of the State of North Carolina to develop its own laws and policies as deemed necessary by its lawmakers and calls upon the United States Department of Justice to withdraw its lawsuit against the State of North Carolina.

**Senator Gary Stubblefield moved that the Legislative Council adopt Interim Resolution 2015-006 and the motion was seconded.**

There was discussion on the motion by committee members. **Co-Chair Sample called for a voice vote on the motion to adopt Interim Resolution 2015-006 and the motion passed.**

### **Adjournment**

At 1:50 p.m., the meeting was adjourned as there was no further business to come before the Legislative Council.

Respectfully submitted,

ATTEST:

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Senator Bill Sample  
Co-Chair, Senate

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Marty Garrity  
Executive Secretary