

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, August 19, 2011

The Arkansas Legislative Council met at 9:00 a.m., Friday, August 19, 2011 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Baker called the meeting to order and dispensed with the calling of the roll. The members who attended are listed on the sign-in sheets.

Minutes of the Last Meeting

Co-Chair Baker referred members to the minutes of the June 17, 2011 meeting of the Legislative Council and asked if there were any questions. There were no questions.

Senator Jimmy Jeffress moved that the minutes of the June 17, 2011 meeting of the Legislative Council be approved. The motion received a second from Representative Cowling and passed by voice vote.

Revenue Reports

June 2011 Revenue Report

Co-Chair Baker recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for June 2011. Mr. Wilson reported that the June 2011 revenue report reflects the numbers for the end of the fiscal year and after twelve (12) months, the gross collections grew at four point seven percent (4.7%) for the year, which was \$253.2 million greater than the same period last year. The adjusted net available for distribution is \$249.7 million ahead of the previous fiscal year for a growth rate of five point eight percent (5.8%).

The graph page indicates that revenue collections are \$94 million ahead of the official revenue forecast. The spreadsheet indicates that gross receipts grew at four point nine percent (4.9%). The gross receipts grew at eight percent (8%) the first half of the year, but that has slowed to five percent (5%) and is still slowing down due to consumers' lack of confidence. The weighted average of all the income taxes grew at four point four percent (4.4%) for the year and monthly withholding grew at five point seven percent (5.7%). Collection of cigarette and tobacco taxes are at a negative two percent (-2%), which was expected in the forecast. Collection of alcohol taxes are at five point eight percent (5.8%) due mostly to gains in permitting. Collections from horse racing and dog racing reflect negative growth, but this was overcome by growth in electronic games. Collections for natural gas severance taxes showed good growth last year with \$2.75 million into general revenue and also \$52 million went to the Highway Department. At the conclusion of his report, Mr. Wilson answered questions from the members of the Legislative Council.

Annual Revenue Report for Fiscal Year 2011

Co-Chair Baker recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the annual revenue report for fiscal year 2011. Mr. Wilson reported that the annual report reflects the collection and distribution of all general revenue for the year. On the first page is a comparison of the gross general revenue collections for the last ten (10) years and that also shows that three (3) of these years were negative amounts. Last year's collections were \$5.686 billion indicating an increase of four point sixty-six percent (4.66%), which is not much higher than the amount collected in fiscal year 2008. Fiscal year 2011 can be described as recovery in that \$68 million more was collected than in fiscal year 2008.

Also on the first page is a comparison of income tax collections with the general revenue portion of sales and use tax collections for the last thirty (30) years with a column reflecting the amount of collections for each penny of tax. In fiscal year 2011, approximately \$462 million in general revenue was collected for each penny of tax. The peak for gross receipts collections occurred in fiscal year 2007, which indicates that gross receipts collections have not yet recovered. The state has done fairly well with the collection of income tax. Sales tax collections are rebounding, but are still approximately three point eight percent (3.8%) less than the collections in fiscal year 2007.

On pages two through five is a list of the amounts collected for all general and special revenue with the total collections for both general and special revenues reflected at the bottom of page four. On page five is a list of deductions from general revenue collections with the total amounts of net available for distribution shown at the bottom. The net general revenue available for distribution is \$4.57 billion for general revenue and \$1.68 for special revenue.

On pages six through eight is a list of the distributions for the tax dollars with a total net general revenues of \$4.57 billion shown at the bottom of page eight along with a total of \$93.9 million shown in the General Revenue Allotment Reserve Fund. On pages nine through eleven is a comparison of distributions for the current year with the previous year with the growth rate for each line item indicated in the far right column. The bottom line reflects a growth rate of five point seventy-eight percent (5.78%), but that is actually three point six percent (3.6%) when the surplus is removed.

The last page of the report is a comparison of current fiscal year's distributions to last fiscal year's distributions to the Educational Excellence Trust Fund with the growth rate percentage shown in the far right column. This year it is negative five point forty-five percent (-5.45%). The Educational Excellence Trust Fund growth rate is based on the previous year's sales tax and that is why the growth rate is negative. At the conclusion of his report, Mr. Wilson answered questions from the members of the Legislative Council.

July 2011 Revenue Report

Co-Chair Baker recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for July 2011. Mr. Wilson reported that July 2011 is the first month of this fiscal year and after one month, gross collections are \$8.8 million ahead of the one-month period for the last fiscal year for a growth rate of two point one percent (2.1%). The net available for distribution is \$6.4 million ahead of the same month for the last fiscal year for a

growth rate of one point seven percent (1.7%). The graph page indicates that revenue collections are \$2.4 million dollars less than the official forecast, which is due to a negative three point five percent (-3.5%) growth rate in gross receipts. There were no questions regarding this report.

Report of the Executive Subcommittee

Co-Chair Baker recognized Co-Chair Mary Anne Salmon to present the report of the Executive Subcommittee. Co-Chair Salmon reported that the Executive Subcommittee met on July 21, 2011 and discussed the mileage reimbursement issue concerning the differing figures provided by the IRA and the GSA. The subcommittee passed a motion to recommend to the Legislative Council that the mileage reimbursement rate remain at the current rate of fifty-one cents (\$0.51) per mile. There were no questions regarding the report.

Co-Chair Salmon moved for the adoption of the report of the Executive Subcommittee. The motion received a second from Senator Whitaker and was passed by voice vote.

Reports of Standing Subcommittees

Administrative Rules and Regulations Subcommittee

Co-Chair Baker recognized Senator Percy Malone to present the report of the Administrative Rules and Regulations Subcommittee. Senator Malone commented that the subcommittee continues to see state agencies submitting rules for review when no public hearings had been held on the proposed rules as well as rules that were implemented before the subcommittee had an opportunity to review them. Senator Malone mentioned an instance when the Arkansas Development Finance Authority (ADFA) submitted a rule for review that had all ready been implemented and explained that this was done with the advice of the agency's attorneys. In response, the subcommittee instructed staff to send a letter to the ADFA board asking what role the legislature played in the promulgation of rules and whether legislative review was relevant to the process. Senator Malone referred members to the Administrative Rules and Regulations Subcommittee report and offered to answer questions.

Senator Malone commented that state agencies are required to publish notice of proposed rules in newspapers with a statewide circulation, but he feels it is now time to determine how much is expended by the State of Arkansas on this requirement in order to determine if this is the best way to notify the public of proposed rules and regulations. Senator Malone asked the Legislative Council co-chairs to explore with the Bureau staff the suggestion that a web page be developed where all state agencies, boards, and commissions would post their proposed rules as a way of providing public notice. Senator Malone asked that the proposed web page have a feature that would allow an interested party to provide their email address for the purpose of being notified when the proposed rule is being considered. Senator Malone offered to answer questions.

Co-Chair Baker recognized Senator Hendren who asked about the new procedure for reviewing rules that requires rules to be reviewed by the Administrative Rules and Regulations Subcommittee after the rules are reviewed by other committees. Senator Malone responded that the Legislative Council adopted the procedure at the last meeting.

Senator Malone moved that the report of the Administrative Rules and Regulations Subcommittee be adopted. Representative Overbey seconded the motion and the motion passed by voice vote.

Charitable, Penal & Correctional Institutions Subcommittee

Co-Chair Baker recognized Representative Butch Wilkins to present the report of the Charitable, Penal & Correctional Institutions Subcommittee. Representative Wilkins reported that the subcommittee met on July 14, 2011 in a joint meeting with the House and Senate Interim Committees on Judiciary and heard updates on the implementation of Act 570 of 2011 from representatives of the Parole Board, the Department of Community Correction, the Department of Correction, the Arkansas Sentencing Commission, and the Administrative Office of the Courts. There were no questions.

Representative Wilkins moved that the report of the Charitable, Penal & Correctional Institutions Subcommittee be adopted. Representative Overbey seconded the motion and the motion passed by voice vote.

Claims Review Subcommittee

Co-Chair Baker recognized Representative Randy Stewart to present the report of the Claims Review Subcommittee. Representative Stewart reported that the Claims Review Subcommittee met July 28, 2011 and affirmed the re-issuance of warrants for eight claims, affirmed the denial of twelve claims, affirmed the award of one claim, and remanded one claim back to the Claims Commission. The Subcommittee also requested additional information concerning the re-issuance of warrants for the next subcommittee meeting. There were no questions.

Representative Stewart moved that the report of the Claims Review Subcommittee be adopted. Senator Salmon seconded the motion and the motion passed by voice vote.

Higher Education Subcommittee

Co-Chair Baker recognized Representative Johnnie Roebuck to present the report of the Higher Education Subcommittee. Representative Roebuck reported that the Higher Education Subcommittee met on June 23, 2011, which was a special meeting to hear a presentation on House Concurrent Resolution 1024 of 2003 and House Resolution 1013 of 2003 that pertain to construction on the University of Arkansas campus. Representative Roebuck thanked Senator Sue Madison for her work and commented that, as result of Senator Madison's work, the state had saved a lot of money and adjustments had been made in the construction.

Representative Roebuck reported that the Higher Education Subcommittee also met on August 18, 2011 and heard a presentation from Dr. Dave Spence, President of the Southern Regional Education Board (SREB), summarizing the services provided by SREB. The subcommittee also heard a brief report from Mr. Shane Broadway, Interim Director of the Department of Higher Education. There were no questions.

Representative Roebuck moved the adoption of both reports of the Higher Education Subcommittee. Representative Overbey seconded the motion and the motion passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Baker recognized Representative James McLean to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Representative McLean reported that the PEER Subcommittee met on August 16, 2011 and approved three items: (1) the Arkansas State Police appropriation-fund transfer; (2) the GIF set-aside fund transfer of \$300,000 to the Department of Community Correction; and the GIF set-aside fund transfer of \$1.75 million to the Department of Human Services, Division of Youth Services. The subcommittee also held one item, which was a request from the Governor to transfer \$2 million from the Educational Facilities Partnership Fund to Eighty-Eighth session project account for Adtech. This item was referred to the House and Senate Interim Committees on Education for further review. All other items were reviewed. The report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee meeting on July 7, 2011 is attached and lists the items reviewed by the subcommittee under the authority granted by the Legislative Council. There were no questions.

Representative McLean moved the adoption of the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Senator Key seconded the motion and the motion passed by voice vote.

Review Subcommittee

Co-Chair Baker recognized Representative Larry Cowling to present the Review Subcommittee report. Representative Cowling reported that the Review Subcommittee met on July 6, 2011 and the report reflects the items reviewed and approved under the authority granted by the Legislative Council.

Representative Cowling reported that the Review Subcommittee also met on August 15, 2011 and reviewed reports of two emergency contracts from the Department of Human Services, and also reviewed methods of finance, alternative delivery construction contracts, discretionary grants, and professional-consultant services contracts. The report also reflects that two contracts were removed from consideration at this meeting. There were no questions.

Representative Cowling moved the adoption of the report of the Review Subcommittee. The motion received a second and was passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Baker recognized Senator Mike Fletcher to present the Uniform Personnel Classification and Compensation Plan Subcommittee report. Senator Fletcher reported that the subcommittee met on August 17, 2011 and reviewed the following: the monthly and quarterly reports from the Department of Education for employees hired using the approved salary grid and positions created using approved special language; the quarterly employment report for the fourth quarter of fiscal year 2011; the monthly reports on special entry and grade movements for the Public Service

Commission, Department of Correction, and the Department of Health; provisional position reports for two and four-year institutions showing the renewed or continued positions that are paid with other moneys such as donations, grants or other anticipated funds and which will not exist after the funds run out; and special entry and labor market reports from the chief fiscal officer.

The subcommittee also heard and recommends for approval the following: a request for four OPM swap pool positions for the Department of Health, the Department of Rehabilitation, and the Department of Human Services; a request for transitional pool positions for the Appraiser Licensing and Certification Board and for the Assessment Coordination Department that are used to train replacement employees for exiting employees and will only last up to 180 days; a request from the Department of Human Services for four OPM growth pool positions to be used at the State Hospital Forensic Unit; a request for seven positions from the central growth pool at the Department of Higher Education for Arkansas Tech University; a request for certification of on-call duty pay differential for the State Military Department and the Department of Human Services; and a request for revision of the established nursing grid for the Department of Health. The subcommittee also discussed the issue of a salary increase requested by circuit judges for trial court administrative assistants and court reporters. There were no questions.

Senator Fletcher moved the adoption of the report of the Uniform Personnel Classification and Compensation Plan Subcommittee. Senator Salmon seconded the motion and the motion passed by voice vote.

Reports of Interim or Special Committees

Special Oversight Subcommittee on Federal Stimulus Money

Co-Chair Baker recognized Representative Linda Tyler to present the report of the Special Oversight Subcommittee on Federal Stimulus Money. Representative Tyler reported that the Special Oversight Subcommittee on Federal Stimulus Money met on August 17, 2011 and heard the quarterly progress report for the quarter ending June 30, 2011 from the Arkansas Office of Recovery and Reinvestment. The report indicated that the State of Arkansas had received a cumulative amount of \$3.1 billion and has spent \$2.6 billion, which is over eighty-five percent (85%) of the total amount awarded. The expenditures for the quarter ending June 30, 2011 were over \$136 million.

Representative Tyler moved that the report of the Special Oversight Subcommittee on Federal Stimulus Money be adopted. Senator Salmon seconded the motion.

Co-Chair Baker recognized Representative Lea for a question. Representative Lea indicated her question concerned the Review Subcommittee Report that was adopted earlier and Co-Chair Baker stated that he would come back and recognize her later.

Co-Chair Baker recognized Senator Hendren who asked for an explanation of the \$3.1 billion received from the federal government given that the total budget for the year for the State of Arkansas is \$5.6 billion. Co-Chair Baker recognized Richard Weiss, Director of the Department of Finance and Administration, to respond. Mr. Weiss responded that the overall state budget is approximately \$23 billion and the state general revenue component of the budget is \$4.5 billion.

Mr. Weiss commented that a comparison of the general revenue component and the amount of federal funds received by the state is a faulty comparison. Mr. Weiss pointed out that a good part of the stimulus funds were the amount that was paid through ESD for unemployment compensation, which is not a part of the \$23 billion for the operation of the state.

Senator Hendren asked for information concerning the current status of the Arkansas Unemployment Insurance Trust Fund, including the forecast on the outstanding advances to the State of Arkansas from the federal trust fund and the outstanding interest owed by the State of Arkansas. Mr. Weiss responded that he did not have those figures. Senator Hendren asked if this information could be provided to the members at the next meeting.

Co-Chair Baker called for the vote on the motion to adopt the report of the Special Oversight Subcommittee on Federal Stimulus Money and the motion passed by voice vote.

Co-Chair Baker recognized Representative Lea for her question concerning the Review Subcommittee Report. Representative Lea asked for an explanation of why item number 20 was pulled from consideration by the subcommittee at the August Review Subcommittee meeting. Co-Chair Baker recognized Kathy Schmidt to respond. Ms. Schmidt identified herself as the staff person assigned to the subcommittee and stated the item pulled from consideration is on page 16 of the August report and is a contract with Northwest Arkansas Community College. She explained that the item was pulled when it was determined that this was an invalid contract because the college wanted to contract with a recent former employee of the college. Ms. Schmidt stated that there is a one-year waiting period before a former employee can contract with their former employer. The college requested that the contract be pulled from review and plans to rebid the contract properly and finalize a new contract.

Review of Communications

Co-Chair Baker referred members to the communications in their packets and asked if there were any questions concerning the communications.

Request from the Arkansas State Parks Division

Co-Chair Baker recognized Greg Butts, Director of the Arkansas State Parks Division, to explain the request. Mr. Butts explained that the Arkansas State Parks Division is requesting the Legislative Council's advice concerning priority land acquisitions identified for the following: Historic Washington State Park; Mississippi River State Park; Mount Nebo State Park; Pinnacle Mountain State Park; Powhatan Historic State Park; and Prairie Grove Battlefield State Park (see Exhibit H.7). Mr. Butts stated these priority acquisitions were identified for fiscal year 2012 and have been favorably reviewed by the Governor and the Chief Fiscal Officer of the State. Mr. Butts offered to answer questions. There were no questions.

Senator Salmon moved that the Legislative Council give favorable advice for the priority land acquisitions for fiscal year 2012 as presented in Exhibit H.7 for Washington State Park, Mississippi River State Park, Mount Nebo State Park, Pinnacle Mountain State Park, Powhatan Historic State Park, and Prairie Grove Battlefield State Park. Representative Rice seconded the motion and the motion passed by voice vote.

Report of ADEQ Activities Involving the Fayetteville Shale

Co-Chair Baker recognized Co-Chair Salmon who stated she had asked the Arkansas Department of Environmental Quality (ADEQ) to present a report concerning the agency's activities involving the Fayetteville Shale and asked if the report could be heard.

Co-Chair Baker recognized Teresa Marks, Director of the Arkansas Department of Environmental Quality (ADEQ), to present the report. Ms. Marks identified herself and offered to answer questions regarding the report identified as Exhibit H.14b. Ms. Marks stated that the ADEQ was able to fill some positions for investigatory inspectors in the Water Division by entering into an agreement with the Arkansas Game and Fish Commission and obtaining some money acquired by the Arkansas Game and Fish Commission through leasing arrangements for natural gas drilling. The new inspectors in those positions are limited to inspections involving natural gas drilling activities and this has been very helpful with being able to do random inspections.

In response to a question from Senator Salmon, Ms. Marks stated that she feels there are enough inspectors in the Water Division and has been pleased with the number of inspections they have been able to conduct, but she is concerned about air issues. Ms. Marks stated these are coming more to the forefront and that the federal Environmental Protection Agency (EPA) is looking at fugitive emissions in relation to natural gas drilling activities and the ADEQ has purchased some equipment for the purpose of conducting testing in the drilling areas. Ms. Marks commented that this issue is both pro industry as well as pro environment because determining whether natural gas is escaping would be beneficial to both. Ms. Marks stated that the ADEQ may need additional resources or manpower when it comes to air issues depending on whether or not the federal government decides to permit those activities. Ms. Marks stated the need for additional resources could be presented to the General Assembly at the next session.

Co-Chair Salmon asked staff if a report from the Oil and Gas Commission had been received and staff responded that no report had been received. Co-Chair Salmon asked the staff to contact the Oil and Gas Commission regarding the presentation of a report at the next meeting.

UAMS College of Medicine

Co-Chair Baker recognized Senator Jimmy Jeffress who asked if anyone from UAMS was available to answer a question concerning the report on admissions to the College of Medicine (Exhibit H.19). There were no representatives from the College of Medicine in attendance.

Senator Jeffress asked that the UAMS College of Medicine be contacted and asked to provide the following information for the Legislative Council at the next meeting: (1) A list of the admissions to the College of Medicine for academic year 2011-12 listed by congressional district; (2) the number of students who are from out-of-state; and (3) a discussion of the future impact on admissions to the College of Medicine as a result of formation of new congressional districts developed after the last federal census. Co-Chair Baker asked the staff to request the information.

Co-Chair Baker recognized Melissa Rust with the University of Arkansas System who offered to relay the request to the College of Medicine.

There were no questions or comments regarding the other communications listed on the agenda and these were filed without objection.

New Proposals and Resolutions

Co-Chair Baker referred members to interim study proposals in their packets and asked if there were questions. There were no questions.

Interim Study Proposal 2011-176

Interim Study Proposal 2011-176 (Exhibit J.1), by Representative Donna Hutchinson, requests that the Arkansas Legislative Council of the Eighty-Eighth Arkansas General Assembly refer to the House Committee on Public Health, Welfare, and Labor a study of the standards for suspending, revoking, and denying licenses to chiropractors.

Representative Hutchinson moved that the Legislative Council refer Interim Study Proposal 2011-176 to the House Committee on Public Health, Welfare and Labor. The motion received a second and was passed by voice vote.

Interim Study Proposal 2011-177

Interim Study Proposal 2011-177 (Exhibit J.2), by Representative David Meeks, requests the Arkansas Legislative Council of the Eighty-Eighth General Assembly to refer to the appropriate interim committee a study concerning the potential fiscal impact and loss of jobs to the State of Arkansas as the result of transferring the responsibility for the collection of sales and use taxes to out-of-state sellers that use an affiliated person or that use an Arkansas resident to refer potential purchasers to the out-of-state sellers.

Representative David Meeks moved that the Legislative Council refer Interim Study Proposal 2011-177 to the House Revenue and Taxation Committee. The motion received a second and was passed by voice vote.

Interim Study Proposal 2011-181

Interim Study Proposal 2011-181 (Exhibit J.3), by Representative Bryan King, is an act to require that a voter provide proof of identity when voting and to provide for the issuance of a voter identification card.

Representative Bryan King moved that the Legislative Council refer Interim Study Proposal 2011-181 to the House State Agencies and Governmental Affairs Committee. The motion received a second and was passed by voice vote.

Co-Chair Baker asked if there was any new business that members wished to bring to the attention of the Legislative Council. Co-Chair Baker recognized Senator Whitaker who asked if something could be done to make the communication system in this committee room easier for the members to use.

Adjournment

At 10:00 a.m., the meeting was adjourned upon the passage of the motion to adjourn.

Respectfully submitted,

ATTEST:

Senator Mary Anne Salmon
Co-Chair, Senate

David Ferguson
Executive Secretary