

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, November 17, 2017

The Arkansas Legislative Council met at 9:00 a.m., Friday, November 17, 2017 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Vice Co-Chair Terry Rice called the meeting to order and recognized a quorum of members present. The members present are listed on the sign-in sheets.

Vice Co-Chair Rice spoke of the passing of Senator Greg Standridge and asked that the Legislative Council stand and observe a moment of silence for Senator Standridge and his family.

Minutes of the Previous Meetings

Vice Co-Chair Rice referred the members to the minutes of the last Legislative Council meeting on October 20, 2017 (Exhibit C) and asked if there was a motion to approve the minutes.

Vice Co-Chair Jim Dotson moved that the minutes of the October 20, 2017 meeting of the Legislative Council be adopted. The motion was seconded and passed by voice vote.

Presentation by Aubrey Reed, Miss Arkansas' Outstanding Teen

Vice Co-Chair Rice welcomed and recognized Miss Aubrey Reed, who is the Miss Arkansas' Outstanding Teen, to speak to the Legislative Council. Miss Reed spoke of her experience with bullying, which led her to advocate for others who are bullied. Miss Reed noted that law provides that students are entitled to a school environment that is reasonably free from harassment and intimidation either personally or by electronic means. Miss Reed stated she is aware of anti-bullying legislation, but she wishes to encourage the expansion of the current legislation to encompass specific anti-bullying needs of each and every school. Miss Reed presented her proposal that a panel or board be created that would create and distribute bullying prevention and intervention programs dealing with specific issues in schools requesting guidance. Miss Reed stated that she hoped that her youth empowerment program known as "STAR" could be the foundation for the board. Miss Reed thanked the committee for the opportunity to speak.

At the conclusion of her presentation, the Legislative Council members applauded and Vice Co-Chair Rice thanked Miss Reed for her comments.

Presentation of the Revenue Report

Vice Co-Chair Rice recognized Estella Smith, Administrator of Committee Services, Research Services Division of the Bureau of Legislative Research, to present the October 2017 Monthly Revenue Report (Exhibit E) prepared by the Bureau of Legislative Research.

October 2017 Monthly Revenue Report

Ms. Smith reported that the October 2017 Monthly Revenue Report (Exhibit E) reflects that the first four (4) months of fiscal year 2018 compared to the same period last year. Ms. Smith reported that gross general revenue collections of \$2.1 billion increased over the same period last year by \$29.5 million for a one point four percent (1.4%) increase. Ms. Smith reported that the net general revenue available for distribution of \$1.8 billion increased by \$22.5 million over the same period last year for an increase of one point three percent (1.3%). Ms. Smith reported that the graph on page 2 of the report reflects a decrease of \$36.2 million, which is below the official forecast by the Department of Finance and Administration. Ms. Smith reported that the spreadsheet on page 3 of the report reflects the same dollar amounts as are shown on page 1 and compares the \$2.1 billion for the four-month period of fiscal 2017-2018 with \$2.1 billion for the first four (4) months fiscal year 2016-2017. This concluded the October 2017 monthly revenue report and Ms. Smith offered to respond to questions.

Vice Co-Chair Rice recognized Senator Bryan King, who asked if officials from the Department of Finance and Administration would come forward to respond to questions. Vice Co-Chair Rice recognized the following officials, who came forward and responded to several questions from the committee: Larry Walther, Director, Department of Finance and Administration; Duncan Baird, Administrator of the Office of Budget; and John Shelnett, with the Economic Analysis and Tax Research section within the Director's Office.

The Department of Finance and Administration officials responded to several questions regarding budget projections and how the projections are calculated, the amount of sales tax collected on Internet sales and groceries, and the reasons for the amount of revenue surplus seen over the years. Joel DiPippa, Senior Counsel for the Department of Finance and Administration, was also recognized and answered questions regarding the reasons that the sales tax collected on Internet sales is not broken out by the taxpayer. Paul Gehring, Assistant Revenue Commissioner, was also recognized and answered questions regarding whether the Department of Finance and Administration has the authority, and whether the department does audit records of out-of-state entities who are required to remit sales tax from Internet sales.

The Department of Finance and Administration officials also agreed to provide the following information requested during the discussion:

- An explanation of the increase of 1053% from Fiscal Year 2016-2017 to Fiscal Year 2017-2018 shown under Claims and Taxes Erroneously Paid.
- What the department is doing to collect the amount shown for Uncollected Checks and EFT Reversals, and the amount that has actually been collected.
- An estimate of the impact, or whether there is no impact, on the corporate income tax returns and other areas that might be impacted by decisions and debate at the federal level in Washington, D.C. for consideration by the full Legislative Council at the December meeting.

Vice Co-Chair Rice asked that the requested information be provided to the Legislative Council staff.

Report of the Executive Subcommittee

Vice Co-Chair Rice informed the committee that the Executive Subcommittee has not met since the last meeting and there is no report in the packet this month.

Reports of the Standing Subcommittees

Administrative Rules and Regulations Subcommittee

Vice Co-Chair Rice recognized Representative Kim Hammer to present the report of the Administrative Rules and Regulations Subcommittee (Exhibit G.1). Representative Hammer reported that the Administrative Rules and Regulations Subcommittee met on November 14, 2017, and reviewed and filed the quarterly report submitted by the Department of Correction in accordance with Act 1258 of 2015. Representative Hammer reported that two (2) rules proposed by the Alcoholic Beverage Control Administration and one (1) rule proposed by the Arkansas Department of Labor Electrical Examiners Board were deferred to the December subcommittee meeting. Representative Hammer reported that another rule proposed by Arkansas State Plant Board was deferred until the December subcommittee meeting and pending review by the Agriculture, Forestry, and Economic Development Committees.

Representative Hammer reported that Regulation 7 proposed by the Arkansas State Board of Pharmacy was held for consideration by the full Legislative Council and that all other rules were reviewed and approved. This concluded the report.

Representative Kim Hammer moved that the report of the Administrative Rules and Regulations Subcommittee be adopted with the exception of Regulation 7 proposed by the Arkansas State Board of Pharmacy, which would be considered separately. The motion was seconded and passed by voice vote.

Vice Co-Chair Rice recognized Representative Hammer to explain Regulation 7 proposed by the Arkansas State Board of Pharmacy. Representative Hammer asked if Mr. Kirtley would be allowed to comment on Regulation 7. Vice Co-Chair Rice responded that this rule was moved to the end of the subcommittee agenda and it was not discussed or presented. Vice Co-Chair Rice stated that if comments were to be allowed from one side, then comments would also be allowed from both sides and he would let that be a decision for Representative Hammer.

Representative Hammer asked to be allowed to comment, and explained that Regulation 7 came before the subcommittee, and it was deferred with the understanding that issues would be worked out and resolved between the Board of Pharmacy and the other parties. Representative Hammer stated that in regard to the question of the authority of the Board of Pharmacy, it has been substantiated that the board is well within their range of scope to request the rule. Representative Hammer explained that, in a nut shell, the regulation deals with allowing a pharmacist to substitute a biologics-type drug in place of what was prescribed by the prescriber at a possibly lower cost. Representative Hammer stated that it is his understanding that Kirk Lane, the Arkansas Drug Director, and Governor Asa Hutchinson support this regulation.

Representative Kim Hammer moved that Regulation 7 by the Arkansas State Board of Pharmacy be passed.

Vice Co-Chair Rice recognized Senator Missy Irvin who made a substitute motion that Regulation 7 by the Arkansas State Board of Pharmacy be referred back to the Administrative Rules and Regulations Subcommittee for a full hearing of testimony and discussion. The motion was seconded.

Vice Co-Chair Rice recognized Senator Stephanie Flowers who asked why copies of Regulation 7 were not provided for the members of the Legislative Council and why was Regulation 7 not submitted to the Public Health, Welfare and Labor Committees for discussion. Vice Co-Chair Rice asked that staff make copies of Regulation 7 for the members, and asked that Director Marty Garrity address the reason the rule was not seen by the Public Health, Welfare and Labor Committees. Director Garrity stated that under the law, proposed rules must be reviewed by the Legislative Council Subcommittee on Administrative Rules and Regulations, and that Regulation 7 could be referred to the Public Health, Welfare and Labor Committees; however, it is her understanding that such a motion was not made during the subcommittee meeting. There followed further questions and discussion and Director Garrity explained that there are some rules that, under the law, are sent to the Public Health, Welfare and Labor Committees for a recommendation, but the Legislative Council Subcommittee on Administrative Rules and Regulations has the final authority to approve a rule for referral to the full Legislative Council.

Director Garrity explained further that some rules are referred to the Public Health, Welfare and Labor Committees by law, but a member of the Legislative Council Subcommittee on Administrative Rules and Regulations may also make a motion to refer a rule to the Public Health, Welfare and Labor Committees for a recommendation. In response for clarification on the review process, Director Garrity explained the determination of which committee will review a rule, is made based on whether the law provides an agency is to promulgate rules and then to refer the rule to a specific committee for a recommendation. If there is no such language in the law, the rule is considered by the Subcommittee on Administrative Rules and Regulations unless a subcommittee member makes a motion to refer the rule to another committee for a recommendation. Director Garrity stated that this policy was to avoid the staff making subjective decisions on which committee would review a rule.

Vice Co-Chair Rice recognized Representative Hammer who stated that Act 820 of 2017 specifically states the Board shall promulgate rules and that is the reason the rule was sent to the Administrative Rules and Regulations Subcommittee and not referred to the Public Health, Welfare and Labor Committees first. There followed questions and discussion of the motion.

Vice Co-Chair Rice called for a voice vote on the substitute motion by Senator Missy Irvin that Regulation 7 by the Arkansas State Board of Pharmacy be referred back to the Administrative Rules and Regulations Subcommittee for a full hearing of testimony and discussion. The motion was seconded and failed to pass by voice vote.

Vice Co-Chair Rice recognized Representative John Payton who asked that the full Legislative Council hear the testimony today on Regulation 7. Vice Co-Chair Rice recognized Senator Will Bond who asked if copies of Regulation 7 were available for the Legislative Council members. Vice Co-Chair Rice stated that copies are being made and will be distributed, but that Regulation 7 may also be viewed online by opening the attachment to the Administrative Rules and Regulations Subcommittee agenda. Vice Co-Chair Rice asked Representative Payton if he wished to make a motion regarding his suggestion.

Representative John Payton made a substitute motion that the Legislative Council proceed to hear testimony, including public comment, on Regulation 7 by the Arkansas State Board of Pharmacy. The motion was seconded.

Vice Co-Chair Rice opened the meeting to discussion of the substitute motion. In response to the question from Senator Hickey on limiting debate, Vice Co-Chair Rice asked Representative Payton if he wished to re-state his motion.

Representative John Payton made an amended substitute motion that the Legislative Council proceed to hear testimony limited to twenty (20) minutes per side, including public comment, on Regulation 7 by the Arkansas State Board of Pharmacy. Vice Co-Chair Rice called for a voice vote on the amended substitute motion and ruled that the motion passed. Upon seeing three (3) hands for a roll call vote, Vice Co-Chair Rice directed staff to call the roll. The substitute motion failed to pass with 17 yes votes and 19 no votes.

Vice Co-Chair Rice recognized Representative Kim Hammer who withdrew his first motion, and asked to make a substitute motion. Vice Co-Chair Rice recognized Representative Hammer for a substitute motion.

Representative Kim Hammer made a substitute motion that Regulation 7 by the Arkansas State Board of Pharmacy be referred back to the Administrative Rules and Regulations Subcommittee with recommendation being received from the Public Health, Welfare and Labor Committees. Senator Stephanie Flowers seconded the motion. The motion was passed by voice vote.

Review Subcommittee

Vice Co-Chair Rice recognized Senator Scott Flippo to present the report of the Review Subcommittee (Exhibit G.10). Senator Flippo reported that the Review Subcommittee met November 15, 2017, and reviewed methods of finance, grants, and contracts that were submitted for November. Senator Flippo reported that the subcommittee held for additional information, the three (3) contracts listed under item 4 on the first page of the report, but that the hold has been released on each of the three (3) contracts. This concluded the report.

Senator Scott Flippo moved that the report of the Review Subcommittee be adopted, including the three contracts that were previously held. The motion was seconded and passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Vice Co-Chair Rice recognized Senator Bruce Maloch to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee (Exhibit G.8), who reported that the PEER Subcommittee met on November 15, 2017. Senator Maloch reported that there were no approval items on the agenda, but the Subcommittee reviewed the following items: cash appropriations, appropriation transfers, federal grant appropriations, and over time. 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

Vice Co-Chair Rice recognized Representative Les Eaves to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit G.11). Representative Eaves reported that the Uniform Personnel Classification and Compensation Plan Subcommittee met on November 14, 2017, and reviewed the following reports and requests: quarterly employment reports for state agencies and institutions of higher education; special-entry rates and labor-market rates approved by the Department of Higher Education and the Department of Finance and Administration for institutions of higher education and state agencies; provisional position report from the Department of Higher Education detailing new provisional positions for institutions of higher education; a report from the Department of Finance and Administration Office of Personnel Management on the use of Director's discretion salary increases in state agencies; a report from the Department of Community Correction on vacancies and caseloads for parole and probation officers; a request from the University of Central Arkansas (UCA) to establish certification differentials for public safety officers; requests for swap-pool positions from Arkansas Educational Television Network (AETN), the School for the Deaf, the Military Department, the Northwest Technical Institute, the Arkansas State Police, and the Arkansas Disability Determination for Social Security Administration that also included a request for a labor-market rate above the mid-point of the grade for a DDSSA Medical Consultant; a request from the Department of Agriculture for a position from the OPM Growth Pool for the position of Agri Law Enforcement Chief; and a request from the Arkansas Insurance Department for a previously-approved classification of Accredited Financial Examiner. This concluded the report, and there were no questions.

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

Lottery Oversight Subcommittee

Vice Co-Chair Rice recognized Representative Chris Richey to present the report of the Lottery Oversight Subcommittee (Exhibit G.12). Representative Richey reported that the Lottery Oversight Subcommittee met on November 16, 2017, and reviewed an annual update on the Arkansas Lottery Activities and Operations for Fiscal Year 2017. Representative Richey reported that the subcommittee also heard testimony regarding the recent activities and operations of the Office of the Arkansas Lottery, and the October 2017 monthly disclosure report. This concluded the report, and there were no questions.

Representative Chris Richey moved that the report of the Lottery Oversight Subcommittee be adopted. The motion was seconded and passed by voice vote.

Arkansas Highway Review and Advisory Subcommittee

Vice Co-Chair Rice recognized Senator Lance Eads to present the report of the Arkansas Highway Review and Advisory Subcommittee (Exhibit G.13). Senator Eads reported that the Arkansas

Highway Review and Advisory Subcommittee met on November 16, 2017, and heard testimony from Mr. Scott Bennett, Director, Arkansas Department of Transportation, regarding:

- A report on Public Road Construction Projects of \$10 million or more as required by the Arkansas Highway Improvement Plan of 2016;
- A special report by Arkansas Legislative Auditing Committee on department funding; and
- Reviewed department rules on the criteria for distribution of funds and spending priority.

Senator Eads reported that the Subcommittee also heard a briefing on accessing meeting documents on the subcommittee webpage. This concluded the report and there were no questions.

Senator Lance Eads moved that the report of the Arkansas Highway Review and Advisory Subcommittee be adopted. The motion was seconded and passed by voice vote.

Review of Communications

Vice Co-Chair Rice referred members to the communications listed as Exhibit I.1 through Exhibit I.16 on the agenda and asked if there were any questions regarding these communications. There were no questions.

Arkansas Natural Resources Commission

Vice Co-Chair Rice noted that action by the Legislative Council was needed for the request from the Arkansas Natural Resources Commission for the Legislative Council's advice concerning the 2018-2019 Biennium Plan of Work for the Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program (Exhibit I.3), which was submitted pursuant to A.C.A. § 15-20-1303(c)(2)(B)(ii). Vice Co-Chair Rice asked if there were any questions or discussion on this item, and seeing none, asked if there was a motion.

Vice Co-Chair Jim Dotson moved that the Legislative Council give favorable advice for the 2018-2019 Biennium Plan of Work for the Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program. The motion was seconded and passed by voice vote.

Adjournment

Vice Co-Chair Rice noted that the next meeting of the Legislative Council is December 15, 2017. At 10:50 a.m., the meeting of the Legislative Council was adjourned as there was no further business to come before the committee.

Respectfully submitted,

ATTEST:

Senator Terry Rice
Vice Co-Chair, Senate

Marty Garrity
Executive Secretary