

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, December 15, 2017

The Arkansas Legislative Council met at 9:00 a.m., Friday, December 15, 2017 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Jim Dotson called the meeting to order and recognized a quorum of members present. The members present are listed on the sign-in sheets.

Minutes of the Previous Meeting

Co-Chair Dotson referred the members to the minutes of the last Legislative Council meeting on November 17, 2017 (Exhibit C) and asked if there was a motion to approve the minutes.

Vice Co-Chair Terry Rice moved that the minutes of the November 17, 2017 meeting of the Legislative Council be adopted. The motion was seconded and passed by voice vote.

Presentation of the Revenue Report

November 2017 Monthly Revenue Report

Co-Chair Dotson recognized Richard Wilson, Assistant Director for the Research Services Division of the Bureau of Legislative Research, to present the November 2017 Monthly Revenue Report (Exhibit D) prepared by the Bureau of Legislative Research.

Mr. Wilson reported that the November 2017 Monthly Revenue Report reflects that after five (5) months of fiscal year 2018, gross general revenue collections are \$39 million ahead of the same period last year for a growth rate of one point six percent (1.6%). Mr. Wilson reported that the net general revenue available for distribution is \$21 million ahead of the same period last year for a growth rate of one percent (1%). Mr. Wilson reported that the graph reflects revenue is about \$27 million behind the official forecast by the Department of Finance and Administration. Mr. Wilson reported that the spreadsheet reflects gross receipts are growing at almost one percent (1%) and the overall income tax collections are at two point three percent (2.3%). This concluded the November 2017 monthly revenue report and Mr. Wilson offered to respond to questions.

Co-Chair Dotson informed the members that the response from the Department of Finance and Administration to questions from Legislative Council members during the November 17, 2017 meeting, is available to them in their email and that printed copies were also available upon request (Exhibit D Handout).

Co-Chair Dotson recognized Senator Bryan King, who asked if officials from the Department of Finance and Administration would come forward to respond to questions. Co-Chair Dotson recognized the following officials, who came forward and responded to 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.

Co-Chair Dotson recognized Senator King who referred to a report about a \$3 million dollar project for which the Department of Correction is seeking financing, and asked why funding was not available in the department's budget. Mr. Baird responded that he would defer to the agency on the specifics on that project, and then stated that between FY 2015 and FY 2018 significant amounts of new general revenue has been allocated to the Department of Correction. Mr. Baird stated he thought the amount allocated was between \$12 million and \$15 million of additional general revenue in FY 2016, and that around \$10 million was allocated in FY 2018 to replace the one-time funds. Senator King asked about communication between the Department of Finance and Administration and the Department of Correction, and Mr. Baird stated these agencies were communicating and were in the process of preparing budgets for the upcoming 2018 Fiscal Session and the 2019 Regular Session.

The Department of Finance and Administration officials also responded to questions regarding the tools available to the department for limiting spending, the budget process, the budget allocations, the impact of the rise in interest rates on state revenues, the impact of seasonal shopping trends on revenues, and whether there were any changes being considered in the method for projecting budgets.

Report of the Executive Subcommittee

Co-Chair Dotson 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

Co-Chair Dotson recognized Representative Kim Hammer to present the report of the Administrative Rules and Regulations Subcommittee (Exhibit F.1). Representative Hammer reported that the Administrative Rules and Regulations Subcommittee met on December 12, 2017, and adopted the report of the Public Health Committees concerning the Board of Pharmacy Rule 7, which is currently held at the request of the agency and pending the completion of the study by the Health Services Subcommittee.

Representative Hammer reported that the subcommittee reviewed and filed the quarterly report submitted by the Department of Correction and the Parole Board in accordance with Act 1258 of 2015. Representative Hammer reported that the Alcoholic Beverage Control Board had requested that the proposed rule entitled Section 1.34, continuation of permit conditioned upon operation of originally proposed business, be withdrawn from consideration.

Representative Hammer reported that the rule proposed by Arkansas State Plant Board on the use and application of Dicamba was deferred for final consideration with a recommendation that the Board reconsider its current rule and revise the rule using: (1) science-based evidence;

(2) creating a dividing line for north and south zones; and (3) the ambient temperature and humidity applicable to temperature inversion during night-time hours.

Representative Hammer reported that the Arkansas State Police proposed rule on licenses for the concealed carry of handguns 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, including the request that the Legislative Council consider the Arkansas State Police proposed rules on licenses for the concealed carry of handguns that would be voted on separately. The motion was seconded by Representative Jeremy Gillam.

Co-Chair Dotson clarified that this vote is on the motion and is not for adoption of the rules on concealed carry licenses, which would be the next discussion. Co-Chair Dotson stated in response to a question, that this vote was on the report as presented, and that a discussion of the rules on the concealed carry of handguns would follow next.

Co-Chair Dotson called for a voice vote on the motion by Representative Kim Hammer to adopt the report of the Administrative Rules and Regulations Subcommittee, including a discussion of and a separate vote on the Arkansas State Police proposed rule on licenses for the concealed carry of handguns. The motion was seconded and passed by voice vote.

Co-Chair Dotson opened the meeting to the discussion of the Arkansas State Police proposed rules on licenses for the concealed carry of handguns, and recognized Vice Co-Chair Terry Rice for a statement. Vice Co-Chair Rice stated he made the motion in the subcommittee meeting to hold this discussion until today, and stated he has concerns on the Second Amendment and the legislative process. Vice Co-Chair Rice stated that the State Police have done their due diligence and followed procedure for the promulgating of rules and that the rule is now in the hands of the committee. Vice Co-Chair Rice stated that the discussion in the subcommittee meeting was in regard to concerns from instructors who will be required to teach the enhanced carry course and who may prefer to quit offering services. Vice Co-Chair Rice stated that if the rule is adopted today, the clock will begin on the six-month period for instructors to qualify to teach the enhanced-carry courses, and there is no guarantee that this can be done in this time period. Vice Co-Chair Rice stated there has been discussion of whether changes in this provision of state law would be an item for a special session. Vice Co-Chair Rice stated that if this rule is not adopted today, that the rule would not be effective until the legislature changes the law to allow instructors the option of whether or not to teach the enhanced carry course.

Co-Chair Dotson recognized Colonel Bill Bryant, Director, and Mary Clair McLaurin, Staff Attorney, with the Arkansas State Police, who came forward and responded to questions from the committee members. They answered questions concerning where handguns must be stored, the purpose of the proposed rules, the difference between the concealed carry license and the enhanced concealed carry license, the concerns of instructors who would be required to teach the enhanced concealed carry course, and the concerns of the NRA as expressed in the letter to the Arkansas State Police. In response to a question, Director Marty Garrity was recognized and explained that if the Legislative Council does not approve the proposed rule, then the Arkansas State Police are prohibited from filing the rule with the Secretary of State's Office for the

purpose of making the rule effective and enabling the enforcement of the rule. Director Garrity explained that under the Arkansas Constitution, the Legislative Council has approval authority over rules. In response to another question of whether the Legislative Council must act within the time frame provided in Act 562 of 2017, Director Garrity explained that would be a determination by the courts in the event a lawsuit is filed against the legislative body. In response to another question, Director Garrity stated that the Bureau has not contacted the Office of the Attorney General for an opinion of the meaning of promulgate.

After the discussion among the committee members, and upon seeing no further questions, Co-Chair Dotson stated that without objection the proposed rule is reviewed and approved. There were objections from some of the committee members.

Co-Chair Dotson recognized Senator Joyce Elliott who moved to overrule the chair that the rule is reviewed and approved. Co-Chair Dotson asked Director Garrity to explain what is a proper objection to the approval of the rule. Director Garrity explained that the Legislative Council Rules require that a motion to not approve a rule must state the grounds for not approving the rule, and that there are two reasons that a rule may not be approved, which are (1) the rule is inconsistent with state or federal law, or (2) the rule is inconsistent with legislative intent.

Co-Chair Dotson asked Senator Elliott to re-state her objection and to state the grounds on which the rule is inconsistent with legislative intent. **Senator Joyce Elliott moved to overrule the chair on the grounds that the rule is inconsistent with the legislative intent due to the requirement that instructors are required to teach enhanced concealed carry courses and due to the rule providing that guns may be kept in dormitories.**

Co-Chair Dotson stated that was a proper motion and asked Director Garrity to explain the process for the vote on the motion. Director Garrity explained that two votes would be required. One vote on whether grounds exist for a vote to not approve the rule, which requires affirmative votes from a majority of members present to pass. If the first motion passes, then a second vote would be taken on whether to not approve the rule based on the stated grounds, which also requires affirmative votes from a majority of members present to pass.

Co-Chair Dotson asked if there was a second to Senator Elliott's motion and the motion was seconded by Representative Greg Leding.

Co-Chair Dotson opened the meeting to discussion of the motion and recognized Senator Gary Stubblefield. **Senator Gary Stubblefield stated he wished to make a substitute motion that the rule not be approved based on the grounds that it is not consistent with the United States Constitution and the Arkansas Constitution. Co-Chair Dotson stated that was a proper motion and asked if there was a second to the substitute motion. Representative Josh Miller seconded the substitute motion.**

Co-Chair Dotson opened the meeting to a discussion of the substitute motion. At the request of Senator Dismang for a clarification of the process for disapproving the rule and for clarification of the motions, Co-Chair Dotson stated that the substitute motion was to disapprove the rule because the rule violates the Constitution, and the original motion was to disapprove the rule because the rule is inconsistent with legislative intent. Senator Stubblefield asked if the two

motions could be combined, and Co-Chair Dotson stated that would be a proper motion. Co-Chair Dotson asked if Senator Stubblefield would withdraw his substitute motion if Senator Elliott would agree to combine the motions.

Senator Elliott stated she would withdraw her motion and combine the motions if further discussion would not be required on the new motion. Co-Chair Dotson responded that the motion would be discussed and asked if she wished to confer with Senator Stubblefield.

Senator Joyce Elliott moved that the rule not be approved based on the rule being inconsistent with legislative intent and with the Arkansas Constitution and the United States Constitution.

Co-Chair Dotson asked, since this action has not been done before, that Senator Elliott cite exactly what law or constitutional provision the rule violates. After brief discussion, Senator Elliott stated she wished to stand by her original motion. Co-Chair Dotson asked Senator Stubblefield to re-state his substitute motion and to state specifically the violation in the Constitution.

Senator Gary Stubblefield stated that his substitute motion is to not approve the rule because it violates the Second Amendment to the United States Constitution and the Second Amendment to the Arkansas Constitution.

Co-Chair Dotson opened the meeting to a discussion of the substitute motion. Representative Gillam was recognized and asked for clarification of the vote threshold for passing the motion. Director Garrity explained that for the passage of either the substitute motion to not approve the rule or the original motion to not approve the rule, the Legislative Council Rules require that a quorum be present and then a majority of affirmative votes of the members present. After further discussion, Representative Ballinger was recognized and asked that there be a division of the vote when the vote is taken on the substitute motion. Co-Chair Dotson stated that was a proper motion and asked to see three (3) hands. Upon seeing three (3) hands, Co-Chair Dotson asked Senator Stubblefield to re-state his substitute motion.

Senator Gary Stubblefield stated that his substitute motion is to not approve the rule because it is inconsistent with the Second Amendment to the United States Constitution and the Second Amendment to the Arkansas Constitution. Co-Chair Dotson called for a voice vote of the Senate members and ruled that the motion failed to pass.

Co-Chair Dotson asked that Senator Elliott re-state her original motion. **Senator Joyce Elliott stated that her motion is to not approve the rule based on the rule being inconsistent with Arkansas Code Annotated § 5-73-322(d), which concerns having guns in dormitory rooms. Co-Chair Dotson, seeing no further discussion, called for a voice vote on the motion. Co-Chair Dotson ruled that the motion failed by voice vote. Upon seeing three (3) hands for a roll call vote, Co-Chair Dotson asked the roll be called on the motion. Co-Chair Dotson stated that the motion failed to pass with eight (8) yes votes and twenty-four (24) no votes, and with the motion failing to pass, the rule is reviewed and approved.**

Higher Education Subcommittee

Co-Chair Dotson 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 December 14, 2017, and heard from Ann Clemmer, Senior Associate Director for Government Relations/Student Success with the Department of Higher Education, regarding how the proposed federal tax bill might affect higher education in Arkansas. 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.

Policy-Making Subcommittee

Co-Chair Dotson recognized Representative DeAnn Vaught to present the report of the Policy-Making Subcommittee (Exhibit F.9). Representative Vaught reported that the Policy-Making Subcommittee met December 14, 2017, and heard from Senator Jane English, Co-Chair of the Legislative Task Force on Workforce Education Excellence, regarding the request for an additional allocation of committee funds for the task force.

Following discussion, the Policy-Making Subcommittee passed a motion to recommend the approval of an additional allocation of committee funds in the amount of \$15,000.00 for the Legislative Task Force on Workforce Education Excellence. This concluded the report and there were no questions.

Representative DeAnn Vaught moved that the report of the Policy-Making Subcommittee be adopted. The motion was seconded and passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Dotson recognized Representative Bob Ballinger to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee (Exhibit F.8). Representative Ballinger reported that the PEER Subcommittee met on December 13, 2017, and reviewed several items including requests for cash appropriations, appropriation transfers, miscellaneous federal grants appropriations, and pay plan appropriations. This concluded the report, and there were no questions.

Representative Bob Ballinger moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted. The motion was seconded and passed by voice vote.

Review Subcommittee

Co-Chair Dotson recognized Senator Scott Flippo to present the report of the Review Subcommittee (Exhibit F.10). Senator Flippo reported that the Review Subcommittee met December 13, 2017, and reviewed methods of finance, grants, and contracts that were submitted for December. Senator Flippo reported that the subcommittee ratified three (3) contracts listed

under item 3a on the first page of the report. Senator Flippo reported that no items were held and all other items were reviewed. This concluded the report and there were no questions.

Senator Scott Flippo moved that the report of the Review Subcommittee be adopted. The motion was seconded and passed by voice vote.

Uniform Personnel Classification and Compensation Plan

Co-Chair Dotson recognized Representative Les Eaves to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit F.11). Representative Eaves reported that the Uniform Personnel Classification and Compensation Plan Subcommittee met on December 12, 2017, and reviewed the following reports and requests: reports of special-entry rates and labor-market rates approved by the Department of Higher Education and the 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 provisional positions report from the Department of Higher Education detailing new provisional positions for institutions of higher education; a report from the Department of Community Correction on vacancies and caseloads for parole and probation officers; a request from the University of Arkansas for Medical Sciences (UAMS) for salary administration and certification differentials; a request from the Northwest Technical Institute for a geographical differential; requests from the Public Service Commission and the Department of Information Services for a swap-pool position; and a request from the Arkansas State Military Department for review of three (3) miscellaneous federal grant classifications. 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

Co-Chair Dotson recognized Representative Chris Richey to present the report of the Lottery Oversight Subcommittee meeting on December 14, 2017 (Exhibit F.12a) and the Annual Report to the Legislative Council (Exhibit F.12b). Representative Richey reported that the Lottery Oversight Subcommittee met on December 14, 2017, and heard testimony regarding the activities and operations of the Office of the Arkansas Lottery.

Representative Richey reported that the Subcommittee has reviewed and submits to the Arkansas Legislative Council the following recommendations from the Department of Higher Education, for the Arkansas Academic Challenge Scholarship Program:

Evaluation and analysis of the scholarship with the following principles in mind:

1. The scholarship program should be reviewed in conjunction with other state financial aid programs to ensure that college affordability combined with student performance is a priority; and
2. Consideration should be given to increasing the amount of expenditures allowed from \$12 million to \$15 million for the nontraditional student population.

Representative Richey reported that in keeping with its purpose, the subcommittee also determined that it should:

- Continue monitoring the business plan designed by Camelot Global;
- Continue to provide oversight to the Office of the Arkansas Lottery's implementation of the business plan by Camelot Global; and
- Continue to monitor the funds available to guarantee the Arkansas Academic Challenge Scholarship remains solvent within its parameters.

This concluded the report, and there were no questions.

Representative Chris Richey moved adoption of the Lottery Oversight Subcommittee's Annual Report to the Legislative Council, and adoption of the report of the December 14, 2017 meeting of the Lottery Oversight Subcommittee. The motion was seconded and passed by voice vote.

Arkansas Health Insurance Marketplace Oversight Subcommittee

Co-Chair Dotson recognized Senator Ronald Caldwell to present the report of the Arkansas Health Insurance Marketplace Oversight Subcommittee (Exhibit F.14). Senator Caldwell reported that the Arkansas Health Insurance Marketplace Oversight Subcommittee met on December 14, 2017, and heard testimony by the following:

1. Insurance Commissioner, Allen Kerr, discussed the premium increases approved for 2018 for each health insurance company. He noted that changes in rates were forced this year due to the ending of the Cost Sharing Reduction (CSR) payments to the insurance companies, as well as, the implementation of a new federal tax against health insurers.
2. Joe Thompson, MD, MPH, Director, Arkansas Center for Health Improvement (ACHI), discussed a handout which showed how Arkansas' uninsured rates have decreased, compared with other states around the country, and how our insurance rates have increased at a slower rate than other states.
3. Max Greenwood, Director, Government and Media Relations, Arkansas Blue Cross/Blue Shield; Michael Stock, President and CEO, QualChoice; and John Ryan, President and CEO, Arkansas Health & Wellness—Ambetter (Centene), discussed their companies' plans being offered on the 2018 Marketplace Exchanges and explained how the removal of the Cost Sharing Reduction (CSR) payments have impacted their rate requests for 2018.
4. Greg Hatcher, Chair; and Angela Lowther, Director, of the Arkansas Health Insurance Marketplace (AHIM) Board of Directors; discussed the progress of the 2018 open enrollment through week six of the open enrollment period, noting that the average monthly premiums for 2018 are \$115 more expensive than in 2017, however, the average Advanced Premium Tax Credit (APTC) is \$132 higher than in 2017.

This concluded the report, and there were no questions.

Senator Ronald Caldwell moved that the report of the Arkansas Health Insurance Marketplace Oversight Subcommittee be adopted. The motion was seconded and passed by voice vote.

Review of Communications

Co-Chair Dotson referred members to the communications listed as Exhibit H.1 through Exhibit H.11 on the agenda and asked if there were any questions regarding these communications and there were none.

Co-Chair Dotson noted that action by the Legislative Council was needed for the request from the Arkansas Teacher Retirement System (ATRS) listed as Exhibit H.4a and H.4b, and for the request from the Department of Parks and Tourism listed as Exhibit H.11.

Arkansas Teacher Retirement System

Co-Chair Dotson asked if there were any questions or discussion on the request from the Arkansas Teacher Retirement System (ATRS) for review of the investment listed as Exhibit H.4a, and seeing none, asked if there was a motion.

Senator Cecile Bledsoe moved that the investment by the Arkansas Teacher Retirement System with Aeolus Property Catastrophe Keystone PF, L.P., submitted pursuant to A.C.A § 19-11-1303, be filed as reviewed by the Legislative Council. The motion was seconded and passed by voice vote.

Co-Chair Dotson asked if there were any questions or discussion on the request from the Arkansas Teacher Retirement System (ATRS) for review of investments listed under Exhibit H.4b, and seeing none, asked if there was a motion.

Representative DeAnn Vaught moved that the following investments submitted by the Arkansas Teacher Retirement System pursuant to A.C.A § 19-11-1302, be filed as reviewed by the Legislative Council:

- 1) Franklin Park Venture Fund Series 2108, L.P.;**
- 2) Franklin Park International Fund 2018, L.P.;**
- 3) ATRS/FP Private Equity Fund, L.P.;**
- 4) Thoma Bravo Discover Fund II, L.P.;**
- 5) Sycamore Partners III, L.P.;**
- 6) Siris Partners IV, L.P.;**
- 7) Torchlight Debt Opportunity Fund VI, L.P.**

The motion was seconded and passed by voice vote.

Arkansas Department of Parks and Tourism

Co-Chair Dotson asked if there were any questions or discussion on the request from the Department of Parks and Tourism, Division of State Parks for approval of state park property acquisitions, submitted pursuant to A.C.A. § 22-4-106 (Exhibit H.11), and seeing none, asked if there was a motion.

Representative Greg Leding moved that the Legislative Council approve the state park property acquisitions, submitted pursuant to A.C.A. § 22-4-106, for the following parks: Petit Jean State Park; Woolly Hollow State Park; Pinnacle Mountain State Park; Jacksonport State Park; Mammoth Spring State Park; Prairie Grove Battlefield State Park; Jenkins Ferry State Park; and Delta Heritage Trail State Park. The motion was seconded and passed by voice vote.

New Business

Co-Chair Dotson referred the members to the Report of the Local Food, Farms, and Jobs Act, submitted pursuant to Act 617 of 2017, now codified at A.C.A. § 15-4-3805(b)(2), and noted that no action by the Legislative Council is required.

Adjournment

Co-Chair Dotson noted that the next meeting of the Legislative Council is January 19, 2018. At 11:05 a.m., the meeting of the Legislative Council was adjourned as there was no further business to come before the committee.

Respectfully submitted,

ATTEST:

Representative Jim Dotson
Co-Chair, House

Marty Garrity
Executive Secretary