**MINUTES OF THE MEETING**

**OF THE**

**ARKANSAS LEGISLATIVE COUNCIL**

**Friday, December 21, 2018**

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The Arkansas Legislative Council met at 9:00 a.m., Friday, December 21, 2018, 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 16, 2018 (Exhibit C) and asked if there were any questions. There were no questions.

**Co-Chair Bill Sample moved that the minutes of the November 16, 2018 meeting of the Legislative Council be adopted. The motion was seconded and passed by voice vote.**

## Presentation of the November 2018 Revenue Report

Mr. Wilson reported that the November 2018 monthly revenue report reflects that after five (5) months of Fiscal Year 2019, gross general revenue collections are currently $ 121 million above collections during the same period last year for a growth rate of four point eight percent (4.8%).

Mr. Wilson reported that net general revenues are $ 142.7 million ahead of collections during the same period last year for a growth rate of six point six percent (6.6%). Mr. Wilson reported that the graph shows that after the November 14, 2018 revision, the state is currently $ 11.5 million ahead of the official forecast.

Mr. Wilson reported that the spreadsheet shows that gross receipts are growing over five percent (5%), and the weighted income tax collections are five percent (5%). This concluded the November 2018 monthly revenue report, and Mr. Wilson offered to answer questions.

Co-Chair Dotson recognized Senator Bart Hester who asked Mr. Wilson to explain what happened when collections were zeroed out on November 14, 2018. Mr. Wilson responded that when the Chief Fiscal Officer (CFO) delivered a new official revenue forecast on November 14, 2018, which is a statutory requirement, they chose to redo some of the collection numbers in the forecast. Mr. Wilson stated that there was no change in the net revenue, so the forecast is still the same and it matches the budget plus the surplus. Mr. Wilson explained that when the revision took place, the first four (4) months of the fiscal year become actual statistics, and the graph starts over at zero. Mr. Wilson explained that this money will show up again between November and June, and the growth line will be a bit steeper. There were no other questions.

## Report of the Executive Subcommittee

Pursuant to the action of the Legislative Council on September 21, 2018, the Executive Subcommittee did not meet in December 2018.

## Reports of the Standing Subcommittees

Administrative Rules and Regulations Subcommittee

December 18, 2018 Meeting
Co-Chair Dotson recognized Representative Kim Hammer to present the report of the Administrative Rules and Regulations Subcommittee meeting on December 18, 2018 (Exhibit F.1a).

Representative Hammer reported that the Administrative Rules and Regulations Subcommittee met on Tuesday, December 18, 2018, and adopted the Report of the Executive Subcommittee concerning emergency rules. Representative Hammer reported that the subcommittee also reviewed and filed the quarterly reports submitted by the Parole Board and Arkansas Correction Department in accordance with Act 1258 of 2015.

Representative Hammer reported that the subcommittee deferred action on the Department of Human Services (DHS) rule on ARChoices and Homecare Home and Community-Based Services Waiver until the December 20, 2018 meeting of the subcommittee.

Representative Hammer reported that the subcommittee passed a motion to authorize the Bureau of Legislative Research to begin the process of obtaining a contract with The Stephen Group for the purpose of reviewing the new Milliman report, and making recommendations to the General Assembly or Legislative Council regarding this rule. Any such contract will be reviewed by the Executive Subcommittee of the Legislative Council during the 2019 Regular Session. Representative Hammer reported that all rules were reviewed and approved.

**Representative Kim Hammer moved that the report of the Administrative Rules and Regulations Subcommittee meeting on December 18, 2018 be adopted. The motion was seconded by Senator Bart Hester, and passed by voice vote.**

December 20, 2018 Meeting

Co-Chair Dotson recognized Representative Kim Hammer to present the report of the Administrative Rules and Regulations Subcommittee meeting on December 20, 2018 (Exhibit F.1b).

Representative Hammer reported that the Administrative Rules and Regulations Subcommittee met on Thursday, December 20, 2018, and considered the Department of Human Services (DHS) rule on ARChoices and Homecare Home and Community-Based Services Waiver that was deferred by the subcommittee on December 18, 2018. Representative Hammer reported that the subcommittee heard a presentation from the Department of Human Services, and heard the announcement that the agency had reached an agreement with the Arkansas Residential Assisted Living Association and Assisted Living Council of Arkansas.

Representative Hammer reported that the agreement includes the following:

- The Department of Human Services agreed to revise and redo the Milliman Actuary Study with a completion date of March 1, 2019, and the study will facilitate meaningful consultation between the agency and providers. The Arkansas Residential Assisted Living Association and Assisted Living Council of Arkansas agreed to report data to actuaries by January 15, 2019, which will include data from at least twenty-five (25) assisted-living facilities

- Any decrease in rate will be phased-in over two (2) years: twenty-five percent (25%) on July 1, 2019; fifty percent (50%) on January 2020; seventy-five percent (75%) on July 1, 2020; and one hundred percent (100%) on January 1, 2021.

- The Department of Human Services will ensure the unduplicated cap set at 1725 on January 1, 2019 and admissions will be immediate.

- The goal set by the Department of Human Services for completion of assessments is thirty (30) days from the application date.

Representative Hammer reported that the subcommittee reviewed and approved the following rules: ARChoices and Homecare Home and Community-Based Services Waiver, Independent Choices 1-18, Personal Care 1-18, Living Choices Assisted Living 1-18 and Living Choices Assisted Living Home and Community-Based Services Waiver, Program for All-Inclusive Care for the Elderly (PACE) 1-18 and State Plan Amendment #2018-014.

**Representative Kim Hammer moved that the report of the Administrative Rules and Regulations Subcommittee meeting on December 20, 2018 be adopted.**

Co-Chair Dotson recognized Senator Joyce Elliott, who asked if Representative Hammer would give a summary of the rule and an explanation of what the changes mean. Representative Hammer responded that there has been a long debate in the subcommittee this week regarding the homecare-based, the nursing homes, and the assisted living rules, and that not everyone is happy with them. Representative Hammer responded that he would interpret that the choices for the committee are to either go through this process and have a mild ripple, or if the rule is not reviewed, then effective January 1, 2019 the Department of Human Services will not have an assessment tool and would not be able to continue or begin assessments going forward. Representative Hammer stated that a law was passed in 2002 and that resulted in these unintended consequences as far as it affects one portion of those populations. Representative Hammer responded to another question that the two-year phase-in was a compromise on the part of the agency, and that he feels that legislators will continue to hear from constituents as the effects are felt.

Co-Chair Dotson recognized Senator Missy Irvin who stated that the rule is a little different from what was reviewed in the Public Health Committee, and her questions could be addressed to the agency. Co-Chair Dotson recognized the following officials with the Department of Human Services, and asked that they come forward to respond to questions: Kelley J. Linck, Chief of Governmental and Legislative Affairs; Craig Cloud, Director of the Division of Provider Services and Quality Assurance; and Mark White, Division of Aging, Adult, and Behavioral Health Services. Mr. Linck, Mr. Cloud, and Mr. White provided the following information in response to questions:

- The Department of Human Services will still have an average rate of $8.33 as of January 1, and as of July 1, the rate will not go down as far as was planned with the one-year phase-in.

- The third provision of the agreement provides that the Department of Human Services will redo the rates and give providers another opportunity to submit their cost surveys, which will be reviewed by the Department of Human Services. Based on the review of the cost surveys, DHS will implement either a higher or lower rate as necessary. The intent is to redo the survey with additional data from the providers, and then determine a final rate based on the results of the survey.

- The savings from the one-year phase-in of assisted living rates is anticipated to be $4.6 million in Fiscal Year 2020. The savings from the two-year phase-in of assisted living rates is anticipated to be $2.8 million.

- The timeline for implementation of the rule is as follows: an overview of proposed changes was provided to providers in May and June 2018; the proposed rule changes were released in October 2018; and at the end of the public comment period, a number of changes were made to the rule.

- Revisions to the rule include the following: a one-year phase-in of rates for assisted living; the removal of a restriction on family members working as homecare givers for individuals; and the language was clarified concerning the standards used to determine hours for in-home service and the flexibility that is allowed there; and the one-year phase in for assisted living rates was extended to a two-year phase-in and an agreement was reached for a new study.

- The assisted living rate would be $8.33 per day as of January 1, 2019 if the rule is approved, which is a posit average that means the agency would be spending roughly the same amount statewide.

- As of January 1, 2019, the agency will begin using a new assessment tool for in-home care, with the same eligibility requirements and the same underlying criteria.

- If the rule is not approved, the agency will not have an assessment tool to assess people for eligibility for the program or a tool to re-assess people currently in the program on a yearly basis as required by law.

- Earlier in the year, the agency was in the position of not being able to conduct reassessments due to a court order, and CMS gave the agency some leeway. The federal matching funds could be at risk if the agency is again unable to conduct re-assessments.

- By March 1, 2019, a new rate will be established for assisted living that is based on the best data available. For in-home care, the agency is moving to a system that is person centered and focuses on the specific needs of each individual to develop a service plan. Also, assessments will be done by a healthcare professional and not by an algorithm.

- The CMS is beginning to look at states' funding and is "clawing back" some of the money paid under the Medicaid Program to assisted living facilities with regard to the question of whether facility cost have been included.

- The Department of Human Services is doing quality assurance to make sure the assessment of an individual matches the individual's needs, and if a person appeals the agency's determination, they are appealing on criteria that is set out in the rule. There will also be opportunities for individuals to request exceptions to a determination on hours, which will reviewed by a panel of three (3) nurses who will make a decision within ten (10) business days.

- The individuals receiving services fall into two groups: the younger persons with disabilities whose needs remain pretty static; and the older persons who are usually on a waiver for less time and who will need more services as time goes on.

- The individual services budget is the amount of money provided to recipients who can then decide how to allocate that amount to obtain the services they need. There is a transitional allowance given to high-needs beneficiaries who have a plan of more than $30,000.00 and who will receive an ISB amount that is lower the next year. The transitional allowance provides that those individuals retain the same amount of services the next year and then a reduction of five percent (5%) the next year.

- There has been some confusion regarding how language in the rule is applied to persons who require a skilled level of care and who are not eligible for the waiver. Skilled level of care means that a person needs one (1) of eleven (11) specialized types of medical treatment and also needs access to that medical treatment on a twenty-four/seven (24/7) basis. Out of the more than 12,000 assessments done last year, there were twenty-five (25) people who met the criteria for skilled-level of care. The skilled level of care provision is not a change in benefits, and no one will be shuffled in to the tier 3 just because they need a lot of services.

- With respect to the home-care services, an individual service budget (ISB) is an amount based on the cost to the state and federal government for someone who is a nursing home resident. The reason for an ISB is to ensure that the government is not spending more on homecare services than if the person was in a nursing home.

- Individual service budget (ISB) levels are set on the person's functional capacity, which is a determination of what kind of things a person can or cannot do. The highest ISB level is $30,000.00; the next level is $20,000.00; and then there is a $5,000.00 preventative level. The ISB amount applies only to specialized services received under the waiver, and does not apply to all the other services received through Medicaid. All Medicaid beneficiaries have access to up to sixty-four (64) hours per month of personal-care services.

- The discussion with providers was related to the ISB caps and the transitional allowance that is provided for high-needs beneficiaries. Discussion with the providers included expanding the transitional allowance or having a grandfathering provision, but an agreement was not reached.

- It is possible that a recipient could experience a reduction in services if the recipient has a lower ISB level and does not receive a transitional allowance. The recipient may apply for an exception if the recipient has a particular medical issue or needs a few more services than have been provided.

**Seeing no further questions, Co-Chair Dotson called for a vote on the motion by Representative Kim Hammer that the report of the Administrative Rules and Regulations Subcommittee meeting on December 20, 2018 be adopted. The motion was seconded by Senator Bart Hester, and passed by voice vote.**

<u>Higher Education Subcommittee</u>

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 on Tuesday, December 18, 2018 at the office of the Department of Higher Education in Little Rock, Arkansas. Senator Rapert reported that the subcommittee heard the following:

- A presentation on the "State of Higher Education in Arkansas", and a report on the Closing the Gap 2020: A Master Plan for Higher Education, that includes that Arkansas is leading the SREB region in graduation and retention rates at both two-year and four-year institutions, from Dr. Maria Markham, Director, Arkansas Department of Higher Education (ADHE).

- A report on the fulfillment of Act 911 of 2017 regarding the display of the National Motto of the United States, "In God We Trust", and a survey of the state's public colleges from Ms. Ann Clemmer, Senior Associate Director, Government Relations and Special Projects, Arkansas Department of Higher Education (ADHE). Ms. Clemmer reported that Black River Technical College had received a poster for display.

- An explanation by Ms. Melissa Rust, Vice President for University Relations, University of Arkansas System, of a recent event at the University of Arkansas Fort Smith (UAFS), where the university's logo appeared on an advertisement without the prior approval of a vice chancellor (as per UAFS policy). The logo was removed when the error was discovered.

This concluded the report, and there were no questions.

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

<u>Performance Evaluation and Expenditure Review (PEER) Subcommittee</u>

Co-Chair Dotson recognized Senator Bruce Maloch to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee (Exhibit F.8). Senator Maloch stated he has filed a recusal letter and he would not participate in discussion or votes because he serves on the Arkansas State Fair Board and the subcommittee report includes a Rainy-Day Fund release request from the Agriculture Department for the Arkansas State Fair. Senator Maloch stated that Representative David Meeks would present the report of the PEER Subcommittee.

Representative David Meeks was recognized and reported the Performance Evaluation and Expenditure Review (PEER) Subcommittee met on Wednesday, December 19, 2018, and approved the following four (4) items: a Rainy Day Fund release request from the Department of Higher Education to provide $150,000 for the "Strong Start To Finish Program"; a Rainy Day Fund release request from the Department of Agriculture to provide $911,050 to make a grant to the Arkansas State Fair; an appropriation transfer request in the amount of $15,000 for the Arkansas Minority Health Commission to purchase promotional items; and an appropriation transfer request in the amount of $12.7 million for the Arkansas Department of Transformation to match available federal aid.

Representative Meeks reported that the subcommittee also reviewed the following other items: cash fund appropriation increase requests; appropriation and fund transfers requests, budget classification transfer requests; miscellaneous federal grant appropriation requests; and pay plan holding account requests; and various reports assigned to the subcommittee. This concluded the report.

**Representative David Meeks moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted.**

Co-Chair Dotson recognized Representative Mary Bentley, who asked that she be allowed to direct questions to officials with the Arkansas State Fair. Co-Chair Dotson recognized Doug White, who introduced himself as the Interim General Manager of the Arkansas State Livestock Association and the State Fair Grounds. Mr. White provided the following information in response to questions:

- The overall revenues from the 2018 state fair as compared to the average of the previous three (3) years was about $750,000 lower. The concession revenue was down about thirty percent (30%), and the revenues from gate admissions was down about twenty percent (20%).

- The State Fair contracted with a new carnival group this year, and it was the first year with this group. The carnival group reported that the carnival income was also down.

- The lower revenues was due to the six (6) days of rain, with two (2) days of rain occurring on the weekends.

- The State Fair changed their arrangement with the Big House Diner. The State Fair had a contract arrangement that allowed an independent contractor to come in, and then revenues would be shared.

- This year, the State Fair General Manager recommended, and the State Fair Board approved having an in-house provider for concessions. The State Fair broke even on concessions, which were expected to be higher.

- The State Fair Board met yesterday (December 20, 2018), and approved a significantly-reduced operating budget for 2019, which includes returning to a contract agreement for concessions. This agreement will reduce liability and allow the State Fair to have profitability with other events beyond the state fair.

- That when operations began in 2018, State Fair employed eighteen (18) full-time employees, which has been reduced to ten (10) full-time employees.

- The operating budget for 2019 that the State Fair Board approved yesterday is fifty percent (50%) less for payroll expense, and there may be additional cuts.

- The State Fair receives $880,000.00 from the State. At the request of Senator Elliott, the State Fair is working on an analysis of how other states' operate their fairs and what other states contribute to their state fairs.

- There are no state fairs the size of the Arkansas State Fair that would have the rainy-day reserves to withstand six days of rain. The conservative operating budget for 2019 includes a provision for rain.

- About seven-years ago, the City of Little Rock made a commitment to the State Fair to provide a part of the city's hospitality tax revenue to the State Fair to be used only for capital improvements on the State Fair Grounds. The total commitment was around $3 million dollars, or $300,000 a year.

- The State Fair has spent about $1.3 million of the amount committed by the city, and the city has reimbursed the State Fair for capital improvements that include purchasing abandoned houses in the foot-print perimeter of the State Fair Grounds to provide more parking. Another planned capital improvement is to install a fence around the entire property for security and beautification.

- The City of Little Rock stills owes $1.6 million to the State Fair for capital improvements. The State Fair did not ask the City of Little Rock for assistance such as has been requested from the State of Arkansas.

- The mission of the State Fair is to support the goals of the youth organizations participating in livestock shows, and other events throughout the year help to make the State Fair Grounds profitable.

- The State Fair Grounds have been profitable in past years, and one objective of the General Manager is to review all areas of cost reduction to provide a better cost-benefit analysis for the other events scheduled throughout the year, and to make the ten-day State Fair production as profitable as possible.

- If state funds are provided, the State Fair would rely on these funds for some of the costs associated with the 2018 State Fair, such as livestock premiums, advertising and media budgets, and to pay some of the vendors. The State Fair has about $120,000 funds in reserve currently.

- Some of the lawn care and maintenance was moved in-house as opposed to contracting those services, which proved to be a money loser. The objective is to use funds from the elimination of three (3) full-time positions for the purpose contracting for lawn care and maintenance of the ninety (90) acres on the State Fair Grounds.

- The State Fair Board decided to take a more active role in the day-to-day operations of the State Fair Grounds to ensure that operations are cost effective. Also, the payroll expense in the 2019 budget has been reduced by approximately one-half million. The Interim General Manager intends to review every single line-item in the budget along with the accountants and the staff of the Department of Finance and Administration.

**Seeing no further questions, Co-Chair Dotson called for a vote on the motion by Representative David Meeks that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted. The motion was seconded by Senator Joyce Elliott, and passed by voice vote.**

Review Subcommittee

Co-Chair Dotson recognized Senator Scott Flippo to present the report of the Review Subcommittee meeting on Wednesday, December 19, 2018 (Exhibit F.10a). Senator Flippo reported that the Review Subcommittee met on Wednesday, December 19, 2018, and two contracts were reviewed and recommended for OSP ratification. Senator Flippo reported that the subcommittee held two (2) contracts for DHS, which Senator Rice would like to discuss after adoption of the report. This concluded the report.

**Senator Scott Flippo moved that the Review Subcommittee report for the December 19, 2018 meeting be adopted as presented.**

Co-Chair Dotson recognized Senator Terry Rice, who asked that officials with the Department of Human Service come forward to answer questions. In response to a question, Senator Rice explained that he held only two (2) of four (4) contracts for the Department of Human Services. Co-Chair Dotson clarified that the motion was to adopt the report including the contracts listed on page 39 of the report as items 19 and 20, but excluding two contracts listed on page 40 of the report as items 22 and 23 that would be held and will be discussed separately by the Legislative Council.

**Co-Chair Dotson recognized Representative Fredrick Love, who made a substitute motion to adopt the Review Subcommittee Report of the December 19, 2018 meeting, and that all four contracts for the Department of Human Services, listed as items 19, ad 20 on page 39 and as items 22 and 23 on page 40 of the report, be excluded from the report and discussed separately. The motion was seconded and passed by voice vote.**

Co-Chair Dotson recognized Senator Terry Rice, who asked that officials with the Department of Human Services and a representative from Arkansas Foundation for Medical Care (AFMC) be recognized to respond to questions. Co-Chair Dotson recognized the following officials from the Department of Human Services: Kelley J. Linck, Chief of Governmental and Legislative Affairs; Tami Harlan, Director of the Division of Medical Services; and Sarah Collins Linam, Chief Procurement Officer, who provided the following information in response to questions.

- The Department of Human Services contracts directly with the transportation brokers, then the Department of Human Services contacts with the Arkansas Foundation for Medical Care (AFMC) to the manage the brokers.

- It is correct that the transportation agencies are required to certify the equipment used to provide the services through the Arkansas Foundation for Medical Care (AFMC). As of today, the current brokers are compliant with their certifications.

- The Arkansas Foundation for Medical Care (AFMC), monitors all of the brokers, takes complaints on the brokers' subcontractors, ensures that all background checks have been done on all the drivers, and that the vehicles are mechanically sound and have the required equipment. This is one way the Department of Human Services ensures compliance.

- During a meeting with the brokers a few days earlier, all of the brokers stated they had upgraded their equipment, and the brokers indicated they would be ready to go as of January 1, 2019. The Department of Human Services informed the brokers that if they were found to not be in compliance as of January 1, the brokers would experience corrective action plans to make sure that they are ready.

- In the contract, there is no prohibition against the use of personal vehicles; however, the use of taxi cabs, or companies such as Uber and Lyft is prohibited.

- It is correct that all vehicle subcontractors are not volunteers if they receive any reimbursement or compensation.

Co-Chair Dotson asked Senator Rice if he had any other questions. **Senator Rice moved, because of the flawed process and timeline and because of Arkansas recipients missing critical care services, that the Department of Human Services extend for ninety (90) days the current net contracts and that the Department of Human Services verify or certify all requirements have been met by all four (4) providers before the new programs proceeds on January 1, 2019, and if verification and certification is not possible, then new bids be required immediately. The motion was seconded by Representative Fredrick Love.**

Co-Chair Dotson asked that the motion be held at this time to allow other members an opportunity to ask questions, and further discussion followed.

The following additional information was provided by the Department of Human Services officials in response to questions:

- The last net procurement that went out was a failed procurement, and as a result of that, the Department of Human Services had to seek special procurement authorization from the Office of State Procurement, which was granted on December 31, 2018. The Department of Human Services does not have authorization to extend the current contracts.

- The contract with the Arkansas Foundation for Medical Care (AFMC) is a separate contract for monitoring, which is not the contract before the committee for review. The Office of State Procurement would have to grant the Department of Human Services a supplement if the current contracts are extended.

- The new net procurement was conducted through the Department of Human Services, with monitoring by the Office of State Procurement. The Arkansas Foundation for Medical Care (AFMC) has an existing net monitoring contract in place, which will not be affected by the action of the committee; however, the entities monitored by the Arkansas Foundation for Medical Care (AFMC) will be affected by the action of the committee.

- The Arkansas Foundation for Medical Care (AFMC) is currently monitoring the current net brokers, and on January 1, 2019 the Arkansas Foundation for Medical Care (AFMC) will be monitoring the new net brokers.

- The new contracts were awarded through a competitive bid process, and three (3) of the brokers awarded new contracts are existing brokers and one (1) broker is new to the state.

- There was one protest filed with the Office of State Procurement, which was not sustained.

- The Department of Human Services went from twelve (12) regions to seven (7) regions, and so the bid was for different regions. All of the beneficiaries' files have been changed from twelve (12) regions to seven (7) regions, and it may not be possible to change back in the amount of time contemplated in the motion.

- The current net contracts do not have a vehicle camera requirement, but the new contracts will have the vehicle camera requirement. All communications with the incoming brokers have led DHS to believe that all vehicles will meet the terms and conditions of the new net contracts as of January 1, 2019.

- The Department of Human Services did not conduct the bid process with an anticipation of a cost savings. The difference between the old and new contracts is that the group providing services to developmentally-disabled clients was not included in the bid for the new contract.

- There are no new requirements under the new contracts, other than the requirement for cameras in all vehicles. If any of the vendors fail to perform any terms or conditions of the contract, there could be administrative remedies applied, such as a corrective action plan, imposition of damages depending on the contract violation, or the termination of the contract.

- The procurement was an Invitation for Bid, which was based solely on price and was a normal procurement process. The bids were due on October 4, 2018, the anticipation to award was on October 9, 2018, and the announcement was made of the award of contracts. When the protest was filed, the Department of Human Services ceased all activity until a determination was made by the Office of State Procurement.

- The contracts that are currently in force were done under a special procurement, and were not done by an Invitation for Bid (IFB) or a Request for Proposal (RFP). An IFB is generally more specific as to what is required by the agency and is used when the agency knows exactly what is needed and how it will be performed. The agency would use an RFP when the agency knows generally what is needed, but does not know all the specifics for reaching the goal. In this instance, the RFP did not seem to be appropriate.

**Co-Chair Dotson recognized Senator Rice who withdrew his motion, but admonished the Arkansas Foundation for Medical Care (AFMC) and the Department of Human Services to work together to make sure the contract standards are in place by January.**

**Senator Terry Rice moved that the Review Subcommittee be filed as reviewed and to release and include the four DHS transportation contracts, and in addition to require the Department of Human Services to submit to the Legislative Council Review Subcommittee or the Joint Budget Committee PEER-Review Subcommittee a monthly report for calendar year 2019 beginning January 1, 2019, on the oversight by the Arkansas Foundation for Medical Care (AFMC) on the non-emergency transportation net contracts that shall include if all contract requirements are being met and any deficiencies by the four (4) providers with net contracts. The motion was seconded and passed by a voice vote.**

Co-Chair Dotson asked the agency officials to explain the issue that was brought to the committee's attention today concerning the transportation issue with groups serving developmentally-disabled individuals. Mr. Linck offered the following information as an explanation of the issue.

- The developmentally-disabled centers are now called early-intervention day treatment (EIDT) for children, and adult day treatment for adults. In the past, if the facility did not have a van or a way providing transportation, the Department of Human Services provided transportation through the non-emergency transportation contacts.

- When the Department of Human Services changed over to EIDT, transportation services became the responsibility of each facility and that segment was removed from the bids for non-emergency contracts.

- The providers of services for developmentally-disabled individuals are having issues with contracting transportation services or obtaining their own van for transportation, and a lawsuit is currently in place against the Department of Human Services.

- The Department of Human Services is working with the incoming non-emergency providers, and as of late yesterday, an agreement was reached for a one-year emergency contract to provide transportation for children and adults with disabilities, if needed. This will give the facilities a year to make arrangements for providing transportation for their clients.

- The Department of Human Services will be bringing the emergency contract for review by the four (4) committee chairs.

Representative Michelle Gray asked that the Department of Human Services conduct a rate study on the mileage reimbursement to make sure the rate is adequate to allow facilities to contract for transportation services. Mr. Linck stated that is a good part of the issue involved in lawsuit, which he cannot discuss.

Seeing no further questions or discussion, Co-Chair Dotson dismissed the Department of Human Services officials.

Review Subcommittee Procurement Study 2017-2018 Report

Co-Chair Dotson recognized Representative Jeff Wardlaw to present the Review Subcommittee Procurement Study 2017-2018 Final Report to the Legislative Council (Exhibit F.10b). Representative Wardlaw reported that the Review Subcommittee and the Joint Performance Review (JPR) Committee began meeting in 2017 to carry out the procurement study that was assigned to the subcommittee by the Legislative Council Rules. Representative Wardlaw reported that, after an RFP process, the subcommittee selected Ikaso Consulting, LLC to assist the subcommittee with the study of procurement laws and process in the state.

Representative Wardlaw reported that pursuant to Legislative Council Rule 5.8, included in the Procurement Study 2017-2018 Final Report are six (6) draft bills for the consideration of the committee.

**Representative Jeff Wardlaw moved that the Legislative Council adopt the Review Subcommittee Procurement Study 2017-2018 Final Report. The motion was seconded by Representative David Meeks, and passed by voice vote.**

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Dotson recognized Senator John Cooper to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit F.11). Senator Cooper reported that the Uniform Personnel Classification and Compensation Plan Subcommittee met on Tuesday, December 18, 2018, and reviewed the following reports and requests shown as items one through seven on the report: the quarterly employment report for the first quarter of fiscal year 2019; the report of special-entry rates and labor-market rates approved by the Department of Higher Education; the report detailing provisional positions for the institutions of higher education; the Director's Discretion and Salary Administration Grid using the report from the Office of Personnel Management (OPM); the report from the Department of Community Correction concerning the current parole and probation office caseloads; requests for swap-pool positions for the Department of Economic Development, the Department of Community Correction, the Department of Veterans' Affairs, and the Department of Career Education; and a request for classifications in the Miscellaneous Federal Grant Program from the Department of Community Correction for technology-assistance treatment facilities.

Senator Cooper reported that item 8 listed on page 2 of the report is a discussion by the subcommittee of the processes and policies relating to provisional positions and the use of provisional positions, but the subcommittee took no action on this item. This concluded the report, and Senator Cooper offered to answer questions.

**Senator Cooper moved that the report of the Uniform Personnel Classification and Compensation Plan Subcommittee be adopted.**

Co-Chair Dotson recognized Senator Joyce Elliott, who asked that officials with the Department of Veterans Affairs be recognized to come forward and answer questions. Co-Chair Dotson recognized Andrew Branch, Chief Financial Officer with the Department of Veterans Affairs.

Co-Chair Dotson recognized Senator Elliott who asked for clarification of the following:
(1) could a medical doctor be hired instead of a nurse practitioner with the cost savings from the surrendered full-time position; and (2) explain why a medical doctor could or could not have been hired.

Mr. Branch responded that the Department of Veterans Affairs contracts with a medical doctor for the Medical Director position at $3,500 a month, who visits the facility once a week and who sponsors a the nurse practitioner. Mr. Branch explained that this nurse practitioner will replace the contract nurse practitioner who is a subcontractor with the department's vendor.

Senator Elliott asked for an explanation of the nurse practitioner's job description, and why a nurse practitioner would be hired instead of another medical doctor. Mr. Branch stated his understanding is that a nurse practitioner is what is necessary for those tasks, and will be under the supervision of a medical doctor. Mr. Branch stated there is not a full-time medical doctor at this facility. Mr. Branch stated that the Chief Operating Officer, Chris Tafner, working with the staff at the state veterans' home and the medical director, determined that it was appropriate to hire a nurse practitioner.

Senator Elliott asked if Kay Barnhill could be recognized to respond to this question. Co-Chair Dotson recognized Kay Barnhill, who identified herself as the Administrator of the Office of Personnel Management in the Department of Finance and Administration. Ms. Barnhill stated that it is her understanding that the nurse practitioner would be under the supervision of the medical doctor, but could do the additional medical assessments that were needed on an as-needed basis. Ms. Barnhill stated that she understands the department's biggest problem is the on-call medical needs, and a nurse practitioner could meet those needs at a cheaper rate.

Senator Elliott stated her question is whether the veterans need another medical doctor instead of a nurse practitioner, and if that is the case, why is it appropriate to hire a nurse practitioner instead of a medical doctor, and what will the nurse practitioner be doing.

Mr. Branch responded that the Medical Director does not think that another doctor is needed, and that the Medical Director sends a nurse practitioner on an as-needed basis to respond to request, and if the request should require a medical doctor, then the Medical Director or a resident would respond. Mr. Branch stated that if the position is not approved by the committee, then the Department of Veterans Affairs would continue using the medical director who is contracted at the higher rate, and would continue to have contract nurse practitioners respond, which would be more costly and would negatively impact the department's cash flow.

Senator Elliott stated she is trying to ensure that people receive the services they are entitled to receive, and that seeing the nurse practitioner's job description would be of immense help to her. Senator Elliott asked Mr. Branch provide her with a copy of the job description for the nurse practitioner.

Mr. Branch responded to questions from Representative Kim Hammer and Senator Eads. Senator Bob Johnson asked that the nurse practitioner job description be provided to all members of the Legislative Council. Co-Chair Dotson asked Mr. Branch to provide the job description to the committee.

**Seeing no further questions, Co-Chair Dotson stated that without objection the motion by Senator John Cooper to adopt the report of the Uniform Personnel Classification and Compensation Plan Subcommittee is passed.**

<u>Lottery Oversight Subcommittee</u>

Co-Chair Dotson recognized Representative Chris Richey to present the report of the Lottery Oversight Subcommittee (Exhibit F.12). Representative Richey reported that the Lottery Oversight Subcommittee met on Thursday, December 20, 2018, and that the subcommittee heard the following:

1) Testimony from Mr. Bishop Woosley, Director, Office of the Arkansas Lottery concerning the activities and operations of the Office of the Arkansas Lottery; and
2) An update on the Arkansas Academic Challenge Scholarship Program from Mr. Nick Fuller, Deputy Director, Arkansas Department of Higher Education.

Representative Richey reported that the subcommittee also reviewed and submits to the Legislative Council the following:

(1) A report from Mr. Bishop Woosley, Director, Office of the Arkansas Lottery, on Total FY18 Net Proceeds, Scholarship Shortfall Reserve Trust Fund Disbursements, and FY19 Net Proceeds Prediction; and
(2) An update on the Arkansas Academic Challenge Scholarship Program from Mr. Nick Fuller, Deputy Director, Arkansas Department of Higher Education.

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 without objection.**

Highway Commission Review and Advisory Subcommittee

Co-Chair Dotson recognized Senator Lance Eads to present the Highway Commission Review and Advisory Subcommittee report (Exhibit F.13). Senator Eads reported that the Highway Commission Review and Advisory Subcommittee met on Thursday, December 20, 2018, and heard the following reports from the Arkansas Department of Transportation: Public Road Construction Projects of $10 million or more; and the actions taken by the Arkansas State Highway Commission during their last three (3) meetings. This concluded the report and there were no questions.

**Senator Lance Eads moved that the report of the Lottery Oversight Subcommittee be adopted. The motion was seconded and passed without objection.**

Arkansas Health Insurance Marketplace Oversight Subcommittee

Co-Chair Dotson recognized Representative Deborah Ferguson to present the report of the Arkansas Health Insurance Marketplace Oversight Subcommittee (Exhibit F.14). Representative Ferguson reported that the Arkansas Health Insurance Marketplace Oversight Subcommittee met on Thursday, December 20, 2018, and heard testimony from the Arkansas Health Insurance Marketplace (AHIM) and the Arkansas Insurance Department (AID) regarding the subcommittee members' concern that no action had been taken in response to the subcommittee's recommendation that the user fee be lowered from one point twenty-five percent (1.25%) to one percent (1.0%).

Representative Ferguson reported that the subcommittee heard from Mark Meadors, Vice Chair, Arkansas Health Insurance Marketplace Board of Directors, and Angela Lowther, Director, Arkansas Health Insurance Marketplace, who reported that the nationwide enrollment numbers were down four point two percent (4.2%), but the enrollment in Arkansas was only down one point seventy-five percent (1.75%). They noted that Arkansas spent much less on navigators and advertising than other states.

Representative Ferguson reported that the subcommittee heard from Insurance Commissioner Allen Kerr, regarding the possible transfer of duties from AHIM, and his opinion that there was duplication between the duties of AHIM and the duties of AID. Commissioner Kerr stated that the Arkansas Insurance Department could perform all those functions of AHIM with only one (1) additional staff person.

Representative Ferguson reported that the subcommittee passed a motion by Senator Jason Rapert to recommend to the Legislative Council that the functions currently being performed by the Arkansas Health Insurance Marketplace, be transferred to the Arkansas Insurance Department and corresponding legislation be drafted to facilitate that transfer.

Representative Ferguson reported that one of the statutory obligations of the subcommittee was to submit an annual report of the subcommittee's duties to President Pro Tempore Jonathan Dismang and Speaker Matthew J. Shepherd, and the subcommittee's annual report has been submitted. This concluded the report and there were no questions.

**Representative Deborah Ferguson 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.9 on the agenda, and noted that action by the Legislative Council is needed for two requests from the Arkansas Teacher Retirement System; one request for the Legislative Council's retrospective review of the partial equity ownership investment with Franklin Park Venture Capital Access Fund, L.P. (Exhibit H.4a); and one request for Legislative Council's review of the partial equity ownership investments with Franklin Park International Fund 2019, L.P. (Exhibit H.4b1) and ATRS/FP Private Equity Fund, L.P. (formerly Franklin Park Co-Investment Fund, L.P.) (Exhibit H.4b2).

Co-Chair Dotson asked if there were any questions regarding the request for review of the Arkansas Teacher Retirement System partial equity ownership investment with Franklin Park Venture Capital Access Fund, L.P. (Exhibit H.4a). There were none.

**Senator Linda Chesterfield moved that the Arkansas Teacher Retirement System partial equity ownership investment with Franklin Park Venture Capital Access Fund, L.P. be filed as reviewed. The motion was seconded and passed by voice vote.**

Co-Chair Dotson asked if there were any questions regarding the request for review of the Arkansas Teacher Retirement System partial equity ownership investments with Franklin Park International Fund 2019, L.P. (Exhibit H.4b1) and ATRS/FP Private Equity Fund, L.P. (formerly Franklin Park Co-Investment Fund, L.P.) (Exhibit H.4b2). There were none.

**Senator Linda Chesterfield moved that the Arkansas Teacher Retirement System partial equity ownership investment with Franklin Park International Fund 2019, L.P. and the Arkansas Teacher Retirement System partial equity ownership investment with ATRS/FP Private Equity Fund, L.P. (formerly Franklin Park Co-Investment Fund, L.P.) be filed as reviewed. The motion was seconded and passed by voice vote.**

There were no questions concerning the other communications listed on the agenda.

## Supplemental Agenda

Co-Chair Dotson referred members to the Supplemental Agenda, and asked if there was a motion to suspend the rules.

**Senator Terry Rice moved that the Legislative Council Rules be suspended to allow the Legislative Council to consider the items on the Supplemental Agenda. The motion was seconded and passed by voice vote.**

<u>Request by the Arkansas Teacher Retirement System</u>

Co-Chair Dotson recognized Representative Kim Hammer who asked that he be allowed to direct questions to the officials with the Arkansas Teacher Retirement System. Co-Chair Dotson recognized Clint Rhoden, Executive Director of the Arkansas Teacher Retirement System, and Rod Graves, Deputy Director of the Arkansas Teacher Retirement System, to respond to questions.

Co-Chair Dotson recognized Representative Hammer, who asked why the Arkansas Teacher Retirement System needed to request retrospective review of the partial equity ownership investments with Revenue Stream Generated by Big River Steel L.L.C. and Recycling Tax Credits (Exhibit A1.1); and Aeolus Property Catastrophe Keystone PF, L.P. (Exhibit A1.2) under the imminent-need statute. The following information was provided by Mr. Rhoden and Mr. Graves in response to questions:

- The Arkansas Teacher Retirement System Board met on Monday, December 17, 2018 in a called meeting. There was a need to call a board meeting due to timing issues regarding the Aeolus investment that needed to close this week, and the Big River Steel is a loan and potential purchase that is expected to close by the end of this year.
- The Big River Steel tax-credit purchase will not occur for approximately two (2) years, and the committee is asked to review what essentially a two-year loan is. The principal amount will convert into the tax purchase price in about two (2) years, and during the loan period, the interest rate is about seven point seventy-five percent (7.75%) and is income for the Arkansas Teacher Retirement System.
- Big River Steel came about through Act 1027 of 2014, which deals with credits associated with expansion of recycling plants, and this upcoming potential revenue stream purchase is contemplated to be $125 million in tax credits. Act 1047 of 2014 limits the amount of tax credits that a company can claim in any one year to $11 million, and also provides that the State of Arkansas will purchase those tax credits back at eighty percent (80%), which brings the $11 million dollar cap down further at $8.8 million a year.
- It is correct that the Arkansas Teacher Retirement System just increased the match rate to fifteen percent (15%) over the next four (years) with the rate increasing at a quarter percent per year until 2023.
- It is correct that another one percent (1%) is extracted from the employer school districts, which amounts to about a $40 million in increased income to the teacher retirement system.
- There have been offers to purchase Big River Steel that may have caused the time table on the expansion of Big River Steel to be moved up, which is the trigger for the tax credits to be issued.
- To the Arkansas Teacher Retirement System officials' knowledge, there have been no objection raised by the Department of Finance and Administration.

At the conclusion of the discussion, Co-Chair Dotson asked if there was a motion. **Co-Chair Sample moved that the Legislative Council file as reviewed the partial equity ownership investments Aeolus Property Catastrophe Keystone PF, L.P. and the Revenue Stream Generated by Big River Steel L.L.C. and Recycling Tax Credits. The motion was seconded and passed by voice vote.**

Request from the Arkansas Department of Environmental Quality (ADEQ)

Co-Chair Dotson referred the members to the request from the Arkansas Department of Environmental Quality (ADEQ) for review of the on-call professional consultant services contract with ENSAFE, Inc. (Contract # 4600043737) (Exhibit A.2).

Co-Chair Dotson recognized Kathy Schmidt, staff person for the Review Subcommittee of the Legislative Council, to explain the request. Ms. Schmidt explained that in the members' packets is a summary of the contract before the committee, and correspondence that includes a letter from the Arkansas Department of Environmental Quality stating the request for review of the contract by the Legislative Council today is due to the potential release into the environment of hazardous substances and timing of scheduled meetings.

Ms. Schmidt explained that contract with ENSAFE, Inc. is an on-call contract that was procured through the Arkansas Building Authority Division, and will be used for remedial action, corrective action, design, implementation, and oversight at potentially environmentally contaminated sites in Arkansas. Ms. Schmidt explained the length of the contract is six (6) months and in the amount of $1 million, with a possibility of another contract, if there is remediation work to be done. This concluded the explanation and there were no questions.

**Senator Linda Chesterfield moved that the Legislative Council file as reviewed the Arkansas Department of Environmental Quality (ADEQ) on-call professional consultant services contract with ENSAFE, Inc. (Contract # 4600043737). The motion was seconded and passed by voice vote.**

## Adjournment

At 11:25 a.m., the meeting was adjourned as there was no further business to come before the Legislative Council.

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| Respectfully submitted, | ATTEST: |
| ______________________ | ______________________ |
| Representative Jim Dotson | Marty Garrity |
| Co-Chair, House | Executive Secretary |