

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

May 21, 2021

The Arkansas Legislative Council met at 9:00 a.m., Friday, November 20, 2020, in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Cecile Bledsoe called the meeting to order and recognized a quorum of members present. The members present are listed on the sign-in sheets.

Point of Personal Privilege

Co-Chair Bledsoe recognized Senator Joyce Elliott for a point of personal privilege. Senator Elliott presented a Senate Citation, acknowledging the retirement of Ms. Patricia (Pat) Nunn Brown, who served as the Director of the Arkansas Economic Development Commission (AEDC) - Division of Minority and Women-Owned Business, after 45 years of leadership and service to Arkansas state government.

Minutes of the Previous Meeting

Co-Chair Bledsoe referred the members to the minutes of the last Legislative Council meeting on October 16, 2020 (Exhibit C) and asked if there were any questions. There were no questions.

Co-Chair Bledsoe moved that the minutes of the October 16, 2020 meeting of the Legislative Council be adopted. The motion was seconded and passed by voice vote.

Revenue Report

Co-Chair Bledsoe recognized Mr. Kevin Anderson, Assistant Director, Fiscal Department, Bureau of Legislative Research to present the October 2020 Arkansas Revenue Report (Exhibit D). Mr. Anderson began by introducing Ms. Ellie Stinnett, Legislative Economist, Bureau of Legislative Research. Mr. Anderson then reported, to date, collections of net general revenues are \$242.6 million above last year. Gross receipts sales tax is up for the first four months of the fiscal year (FY20-21), in comparison to last fiscal year (FY19-20), by \$90.6 million. The biggest increase is in income taxes, with an increase of \$208 million this fiscal year in comparison to last fiscal year. Mr. Anderson further reported, the graph reflects the state is \$231.8 million above the projected forecast, with October having an increase of \$73.1 million above the forecast.

Co-Chair Bledsoe recognized Senator Kim Hammer for questions. Senator Hammer asked Mr. Anderson if he could provide him with direct information on the significant increases of the Arkansas Department of Transportation's *Electric/Hybrid Vehicle Registration Fee* and the *Driver Search Fees - Act 1067 of 1979*. Mr. Anderson responded he would provide that information.

With no other questions, this concluded the revenue report.

Reports of the Standing Subcommittees

Administrative Rules Subcommittee

Co-Chair Bledsoe recognized Senator Lance Eads to present the report of the Administrative Rules Subcommittee (Exhibit F.1). Senator Eads reported that the Administrative Rules Subcommittee met on November 16, 2020 and adopted rules of the Executive Subcommittee concerning its approval of emergency rules since its last meeting. The subcommittee reviewed and filed quarterly reports that were submitted by the Department of Correction and Arkansas Parole Board, in accordance with Act 1258 of 2015. At the agencies' request, two rules were pulled from consideration prior to the meeting. The request included the Department of Health rules for hospice and the Department of Human Services rules concerning minimal licensing standards for child welfare agencies. All other rules were reviewed and approved. The subcommittee also reviewed agency updates on delinquent rulemaking under Act 517 of 2019.

This concluded the report of the Administrative Rules Subcommittee, and there were no questions.

Senator Eads moved that the report of the Administrative Rules Subcommittee be adopted. The motion was seconded and passed by voice vote.

Review Subcommittee

Co-Chair Bledsoe recognized Senator Scott Flippo to present the report of the Review Subcommittee (Exhibit F.10). Senator Flippo reported that the Review Subcommittee met on November 16, 2020, and reviewed various methods of finance, alternative delivery construction projects, discretionary grants, and service contracts. One item was held (#2, *pg.10 of the report*), a contract for Arkansas Department of Environmental Quality (ADEQ) with University of Central Arkansas (UCA), for additional information. The agency decided to pull the contract from legislative review at that time.

This concluded the report of the Review Subcommittee, and there were no questions.

Senator Flippo moved that the report of the Review Subcommittee, without Item #2, be adopted. The motion was seconded and passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Bledsoe recognized Representative DeAnn Vaught to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee (Exhibit F.8). Representative Vaught reported that the Performance Evaluation and Expenditure Review (PEER) Subcommittee met on November 19, 2020. The subcommittee approved requests for various temporary appropriations, shared service appropriation transfers, rainy day fund transfers, restricted reserve fund transfers, and CARES Act appropriations. A request was made to pull the \$50 million transfer of CARES Act appropriation to DFA that would make a payment to the Unemployment Insurance (UI) Trust Fund (*Item B.2(c) of the report*). The subcommittee reviewed several other items and received monthly reports. Two requests (*MFG requests, Items D.9 and D.10 of the PEER report*) from the Department of Health to establish two positions were referred to the Arkansas Legislative Council without recommendation.

This concluded the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee, and there were no questions.

Representative Vaught moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted, with the exception of Item B.2(c). The motion was seconded and passed by voice vote.

Co-Chair Bledsoe recognized Ms. Jo Thompson, Chief Financial Officer, Department of Health, Mr. Don Adams, Deputy Director, Department of Health, and Dr. Mike Cema, Associate Director for Science, Department of Health, to come forward to respond to questions. Mr. Adams stated that the Department of Health is making a request for a total of 29 positions on the supplemental grant, the Epidemiology and Laboratory Capacity grant, which is an amendment to a MFG request to add these positions. The positions are needed to assist in the process of allowing other federally funded staff to go back to their primary functions in which they are funded for. Permission has been granted from the federal government to reallocate many positions and redirect efforts to COVID-19 response.

Co-Chair Bledsoe recognized Representative Jim Dotson and Senator Kim Hammer for questions.

Co-Chair Bledsoe made a motion to file Item B.2(c) - Department of Health as reviewed. The motion was seconded and passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Bledsoe recognized Mr. Tony Robinson, Administrator, Bureau of Legislative Research, to present a request through the Uniform Personnel Classification and Compensation Plan Subcommittee (Exhibit F.11). Mr. Robinson stated that the two grants from the PEER Subcommittee that were just presented and voted on by members of ALC, are the two grants that he will speak of. Mr. Robinson explained that the Uniform Personnel Classification and Compensation Plan Subcommittee usually review the classifications that are associated with the grants, and PEER reviews the appropriations and positions itself. With the explanation already heard from the Department of Health, the positions are epidemiologists, business administration, and IT classifications.

This concluded the request of the Uniform Personnel Classification and Compensation Plan Subcommittee.

Co-Chair Bledsoe made a motion to file the classifications of the Uniform Personnel Classification and Compensation Plan Subcommittee as reviewed. The motion was seconded and passed by voice vote.

Lottery Oversight Subcommittee

Co-Chair Bledsoe recognized Senator Joyce Elliott to present the report of the Lottery Oversight Subcommittee (Exhibit F.12). Senator Elliott began by introducing the new director for the Arkansas Lottery Commission, Mr. J. Eric Hagler, Director. Senator Elliott reported that the Lottery Oversight Subcommittee met on November 19, 2020, and heard testimony on the following item:

1. Update on the Arkansas Academic Challenge and Workforce Challenge Scholarship Programs, with testimony from Mr. Nicolas Fuller, Deputy Director, Arkansas Division of Higher Education.

The Subcommittee reviewed the following reports:

1. Department of Finance and Administration Office of the Arkansas Lottery Activities, Monthly Disclosure Reports and Term Contracts;
2. Arkansas Division of Higher Education's Invoice to Department of Finance and Administration Office of the Arkansas Lottery, for reimbursable administrative expenditures; and
3. Arkansas Division of Higher Education Report.

This concluded the report of the Lottery Oversight Subcommittee, and there were no questions.

Senator Elliott made a motion that the report of the Lottery Oversight Subcommittee be adopted. The motion was seconded and passed by voice vote.

Highway Commission Review and Advisory Subcommittee

Co-Chair Bledsoe recognized Representative Ron McNair to present the report of the Highway Commission Review and Advisory Subcommittee (Exhibit F.13). Representative McNair reported that Act 298, passed during the 2019 Regular Session, required ALC to conduct a study of "the processes and functions of the Arkansas Department of Transportation (ArDOT)" and required ALC to hire a consultant to assist with the study. The ALC rules, adopted in May of 2019, assigned the study to the Highway Commission Review and Advisory Subcommittee. In August of 2019, *Guidehouse, LLP* was hired to provide consultant services to the subcommittee. *Guidehouse, LLP* performed a review of the various functions of ArDOT and reported on its findings to the subcommittee. In June 2020, *Guidehouse, LLP* presented the subcommittee with 13 recommendations for improvements and efficiencies of ArDOT. Between June 2020 and October 2020, the subcommittee met 6 times to discuss the recommendations and hear ArDOT responses to the recommendations. The subcommittee worked with ArDOT and *Guidehouse, LLP* to revise some of the recommendations. The report reflects a final recommendation adopted by the subcommittee at the October 13, 2020 meeting, including two draft bills. In addition to the recommendations provided by *Guidehouse, LLP*, the subcommittee also voted to recommend continued oversight of the Arkansas Department of Transportation as it works to implement the recommendations of the subcommittee. This oversight is accomplished by providing additional authority to the subcommittee as set forth in a proposed amendment to ALC Rules.

This concluded the report of the Highway Commission Review and Advisory Subcommittee, and there were no questions.

Representative McNair made a motion that the final report of the Highway Commission Review and Advisory Subcommittee be adopted. The motion was seconded and passed by voice vote.

Representative McNair made a motion to adopt the proposed amendment to ALC Rule 5.(a)(13).

Co-Chair Bledsoe recognized Senator Linda Chesterfield for questions on the motion.

Upon request of Senator Chesterfield, Ms. Jillian Thayer, Legal Counsel, Bureau of Legislative Research gave an overview of the amendment to ALC Rule 5.(a)(13).

Ms. Thayer stated the Highway Commission Review and Advisory Subcommittee approved sending legislative members a proposed amendment to ALC Rule 5.(a)(13), that provides authority to the Highway Commission Review and Advisory Subcommittee, adding language that, proposed rules of the Highway Commission related to implementation of any of the recommendations in the study would come before the Highway Subcommittee, not for approval, but for review, and proposed contracts of the Commission in the amount of \$50,000 or more that are entered into for the purpose of implementing any of the recommendations, would also come before the subcommittee. The Arkansas Department of Transportation (ArDOT) would also be required to provide monthly reports of status updates of those implementations to the subcommittee.

After explanation, the motion by Representative Ron McNair was seconded and passed by voice vote.

Occupational Licensing Review

Co-Chair Bledsoe recognized Senator Missy Irvin to present the report of the Occupational Licensing Review Subcommittee (Exhibit F.15). Senator Irvin reported that the Occupational Licensing Review Subcommittee met on November 16, 2020, and discussed the draft report. The subcommittee will finalize and submit the report and draft legislation package to Arkansas Legislative Council (ALC) in December 2020.

This concluded the report of the Occupational Licensing Review Subcommittee, and there were no questions.

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

Report of Interim or Special Committees

Special Subcommittee on Data-Sharing

Co-Chair Bledsoe recognized Senator Jane English to present the report of the Special Subcommittee on Data-Sharing (Exhibit G.01). Senator English reported that the Special Subcommittee on Data-Sharing met on December 14, 2020, at 12:30 p.m. via Zoom. The subcommittee approved the ALC Data-Sharing and Data-Driven Decision-Making final report and its recommendations as required by Arkansas Legislative Council Rule 5.(c).

This concluded the report of the Special Subcommittee on Data-Sharing, and there were no questions.

Senator English moved that the report of the Special Subcommittee on Data-Sharing be adopted. The motion was seconded and passed by voice vote.

House Interim Committee on City, County, and Local Affairs

Co-Chair Bledsoe recognized Representative Lanny Fite to present the report of the House Interim Committee on City, County, and Local Affairs (Exhibit G.02). Representative L. Fite reported, pursuant to Interim Study Proposal 2019-131, Section (a), “The House City, County and Local Affairs Committee shall meet to conduct a study of public notice and participation in the environmental permitting process.” He further reported that the House Interim Committee on City, County, and Local Affairs met on August 11, 2020 and September 22, 2020. Nine (9) agencies participated in the discussion and recommendation: the Division of Environmental Quality; the Department of Health; the Division of Labor; the Arkansas Natural Resources Commission; the Oil and Gas Commission; Arkansas Press Association; Arkansas Democrat Gazette; Information Network of Arkansas; and the Arkansas Department of Transformation and Shared Services.

The study of ISP 2019-131 produced several recommendations and concluded that there should be an independent study on how to effectively notify the public of public notices and the cost analysis comparison for running a state website versus utilizing a private petitioner. This concluded the report of the House Interim Committee on City, County, and Local Affairs, and there were no questions.

Representative L. Fite moved that the report of the House Interim Committee on City, County, and Local Affairs be adopted. The motion was seconded and passed by voice vote.

Review of Communications

Co-Chair Bledsoe referred members to the communication listed on the agenda as Item H.1 and noted that action by the Legislative Council is needed for that item.

- H.1) **Arkansas Economic Development Commission, Division of Rural Services:**
Request for Legislative Council review of Rural Community Grant, Rural Services Block and County Fair Grant allocations for Cycle I of Fiscal Year 2021, submitted pursuant to Section 49 of Act 180 of the 2020 fiscal Session.

There were no questions from members.

Co-Chair Bledsoe made a motion to file Item H.1 for the Arkansas Economic Development Commission, Division of Rural Services as approved. The motion was seconded and passed by voice vote.

Business Carried Over

Department of Workforce Services

Co-Chair Bledsoe recognized Dr. Charisse Childers, Director, AEDC - Division of Workforce Services (DWS), and Mr. Jim Hudson, EVP - Operations & General Counsel, AEDC, to report on fraudulent unemployment claims.

Mr. Hudson gave an overview of the PowerPoint presentation (Handout 1) from DWS. He provided an update on the DWS hotline staffing, the holiday work schedule, and unused vacation. Mr. Hudson reported on Unemployment Insurance (UI) and Pandemic Unemployment Assistance (PUA). He stated that from March 2020 - November 2020 there have been 464,928 initial UI claims, and 251, 987 initial PUA claims. The total 2020 UI and PUA disbursements is \$2.8 billion. Mr. Hudson stated

that prior to 2019, unemployment fraud was not an issue for the department. As of 2020, the total of (*known*) fraud claims reported (both UI and PUA) is 32,189. Of that number, a total of 10,843 claims had benefits paid out. Mr. Hudson continued, stating on September 6, 2020, Arkansas received a Department of Labor grant totaling \$1.7 million to combat UI fraud. The DWS Internal Audit and Fraud Unit has increased from 9 members of staff on March 1st to 23 members of staff as of October 31st. There were 76,078 PUA claims initially flagged for fraud review; 17,155 of those have been released from fraud review. DWS is implementing an automated ID solution called Identity Proofing that hopefully will increase resolution of these claims.

Mr. Hudson further reported that claims "Pending in Adjudication" is when the claims have been submitted and validated to some extent that it is not a fraudulent claim. DWS then tries to determine if the claim warrants the payment of benefits. There are 26,187 claims pending in adjudication, with 7,294 pending appeals.

That concluded the report on fraudulent unemployment claims.

Co-Chair Bledsoe recognized members for questions, beginning with Senator Chesterfield and Senator Kim Hammer, who both asked questions of clarification; Dr. Childers responded. Senator Hammer requested to receive a timeframe for Pandemic Unemployment Assistance disbursement with the said amount of claims pending. Dr. Childers stated she would provide that.

Co-Chair Bledsoe recognized Co-Chair Wardlaw for comments. Co-Chair Bledsoe recognized Representative Vivian Flowers for questions. Representative Flowers asked, if claimants were proven to be legitimate and applied before December 31, 2020, will they still receive their payments. Dr. Childers responded, yes, both UI and PUA claimants will receive their payments, current payments and any back pay.

Co-Chair Bledsoe recognized Senator Will Bond for questions. Senator Bond asked if there was a goal set in order to clear the 58,000 PUA claims/appeals - do the department require more manpower or services in order to reach the goal. Dr. Childers responded it's almost impossible to determine, because as fast as the claims are cleared, several more are being received in its place. Co-Chair Bledsoe recognized Representative Denise Garner for questions. Representative Garner asked what a person should do if they are considered an out-of-state resident, but an in-state contractor - do they qualify for Arkansas benefits. Dr. Childers responded that with limited knowledge, she would get and provide information on that matter.

Department of Transformation and Shared Services

Co-Chair Bledsoe recognized Ms. Amy Fecher, Secretary, Department of Transformation and Shared Services, Ms. Ann Purvis, Chief of Staff, Department of Transformation and Shared Services, and Ms. Kay Barnhill, Director, Office of Personnel Management (OPM), Department of Transformation and Shared Services, to present their information.

Secretary Fecher began by stating the agency wanted to look (globally and locally) at the issue of employees whom were necessary to perform government functions during the pandemic and unable to utilize their leave hours. The issue mostly impacted the front line service employees, which are workforce services, correction, human services, and public safety. State law prohibits state employees from carrying over more than 240 hours of leave at the end of the calendar year. Working with the Governor, a *COVID Carry Forward* leave category was established for 2020 only. Anyone

who falls under the category and who has more than 240 hours of leave will be moved into the new category and will be able to use the leave in 2021. All senior executive positions have been excluded from the ability. Secretary Fecher stated, the leave issue impacts 5,291 employees (at this time).

That concluded the presentation.

Co-Chair Bledsoe recognized Co-Chair Wardlaw for questions. Co-Chair Wardlaw asked if employees who have accumulated many hours by working overtime, even on Saturdays, and have not been able to take off, would be covered under this category. Mr. Hudson responded, yes, that is the very purpose of this new category. Dr. Childers responded that the qualifying staff of DWS and any other agencies will be included. She stated DWS will continue to work with DTSS and OPM on the list to determine who is/is not covered. Mr. Hudson responded that he, too, will look at the list. Ms. Purvis stated that they compared what happened last calendar year to this calendar year. In the last calendar year there were 2,403 people that gave up their leave. This year there are 5,291 with a leave carry forward average of about 67 hours over the 240 hours.

Co-Chair Bledsoe recognized Senator Hammer for questions. Senator Hammer asked if state employees have been working overtime, are they getting overtime pay. Ms. Barnhill responded that non-exempt employees who have been working overtime have received compensation. Senator Hammer further asked, if employees already aren't able to take the leave they have and are only receiving more leave, how will they be able to benefit from that - will they be paid for the leave at the end of their career. Ms. Purvis responded that the issue will have to be revisited on an ongoing basis to adjust.

Co-Chair Bledsoe recognized Senator Elliott for questions. Senator Elliot asked if there was ever an option of monetary payment in lieu of the leave hours. Ms. Barnhill responded that the pay out for the estimated hours would have been quite sizable, at \$9 million. Ms. Purvis also added that a lot of the funds received may be federal funds and the federal funds may not be an allowable pay out of this type, so under the current regulation, it is not allowed.

After further discussion from Senator Elliott, Co-Chair Bledsoe recognized Senator Lance Eads for questions. Senator Eads asked what was the reasoning for excluding senior level executives from the overtime accruals. Secretary Fecher stated that there are senior executives that have worked overtime, however, at that level it is a commitment that is made to do the job regardless of the number of hours. Secretary Fecher stated she would provide a report for the number of senior executive positions that will have carry over hours for the year.

Co-Chair Bledsoe recognized Co-Chair Wardlaw for questions. Co-Chair Wardlaw expressed his concerns for allowing employees to be able to use the leave only in 2021, especially with the uncertainty of COVID-19. Secretary Fecher responded the time can be extended through a two year period. However, it was thought to allow a one year period to encourage employees to go ahead and take the leave. Co-Chair Wardlaw asked how will this be executed - through an emergency rule or special language for the upcoming session. Ms. Barnhill stated that it's being implemented through more of an administrative process, declaring the leave will just be carried forward and not amending the Leave Act. Anything further than that would require legislation.

That concluded the presentation for compensation options.

Co-Chair Bledsoe recognized Senator Hammer for questions. Senator Hammer requested to receive a list of agencies that are affected by the excess of leave hours. Secretary Fecher stated she will provide that. Senator Hammer asked if there is a reason why CARES Act funds cannot be used to buy out the leave. Secretary Fecher responded that CARES Act monies can only be expended through December 30, 2020, and they would have to wait until December 31, 2020 to know the exact amount that is left. Mr. Hudson responded that payments of salaries and benefits may not meet the requirements for use of CARES Act funds.

Co-Chair Bledsoe recognized Senator Elliott for questions, who also expressed her concerns for not including executive or senior level employees in the leave compensation. Co-Chair Bledsoe then recognized Senator Irvin for comments on the discussion. After discussion, Senator Irvin made a request to further discuss the proposition of a motion to include senior/executive level staff in the leave carry over. Secretary Fecher stated that the implementation of this leave carry forward has to be done in a timely manner, before December 2020, otherwise it may not happen by the first of the new year.

Senator Irvin made a motion to recommend the extension of the leave carry forward from one year to two years and to also include senior/executive level staff in the leave carry forward options. The motion was seconded and passed by voice vote.

Supplemental Agenda

Co-Chair Bledsoe made a motion to suspend the rules to take up the Supplemental Agenda. The motion was seconded and passed by voice vote.

Co-Chair Bledsoe recognized Dr. Joseph Sanford, Interim Director of the Institute for Digital Health & Innovation, UAMS, to present the request for approval of Broadband I.D. grant awards. After the presentation, Co-Chair Bledsoe recognized Senator Irvin for questions. Senator Irvin asked if there was anything further coming down the pipelines and if Dr. Sanford wanted to make any comments on the current projects.

Dr. Sanford responded there are three more applications that are close to submission to the legislative body. But there is a limit to the number of applications they can award, so it is encouraged to get the applications submitted because they are awarded on a first come, first serve basis. There are resource pages on the website (www.idhi@uams.edu) that applicants can use to find partners for their application.

Co-Chair Bledsoe made a motion without objection, to batch and approve the grants. With no objection, the motion was seconded and passed by voice vote.

Adjournment

At 10:50 a.m., the meeting was adjourned as there was no further business to come before the Legislative Council.

Respectfully submitted,

ATTEST:

Senator Cecile Bledsoe
Co-Chair, Senate

Marty Garrity
Executive Secretary