

# JOINT PERFORMANCE REVIEW COMMITTEE

OCTOBER 20, 2014

## MINUTES

The Joint Performance Review Committee met Monday, October 20, 2014 at 1:00 p.m. in Room 171 of the State Capitol, Little Rock, Arkansas.

Committee members present were Senators Jane English, Senate Co-Chair and Jon Woods, and Representatives Randy Alexander, Jody Dickinson, Jon Eubanks, Douglas House, and Mark Lowery.

Other members present were Representatives Denny Altes, David Branscum, John Burris, Ann Clemmer, Andy Davis, Jeremy Gillam, John Hutchison, Kelley Linck, Frederick Love, Stephanie Malone, Stephen Meeks, Micah Neal, Betty Overbey, Butch Wilkins, Marshall Wright, and Senators Jonathan Dismang, Jeremy Hutchinson and Michael Lamoureux.

### Call to Order

Senator English called the meeting to order.

### Approval of Minutes – August 27-28, 2014, September 16 and September 23, and October 13, 2014 [EXHIBIT B, B-1, B-2, B-3, B-4]

A motion to approve the minutes was made by Representative House and seconded by Representative Eubanks. The minutes were adopted unanimously.

### Opening Comments – Senator English

Senator English thanked legislators for their attendance.

### Discussion of Interim Study Proposal 2013-200 by Senator English “REQUESTING THAT THE JOINT PERFORMANCE REVIEW COMMITTEE STUDY PROCEDURES, PRACTICES, AND TRANSPARENCY REGARDING PRIVATE ATTORNEY CONTRACTING WITH RESPECT TO CONSTITUTIONAL OFFICERS, STATE AGENCIES, AND POLITICAL SUBDIVISION” [Exhibit D]

Senator English recognized Bill McCullum, former Attorney General, State of Florida. Mr. McCullum gave an overview of a model act known as the “Transparency in Private Attorney Contracting (TIPAC)” Act. He said that during his tenure as Attorney General, a version of the TIPAC Act was passed by the Florida General Assembly. Upon leaving the office of Attorney General and returning to private practice, he was contacted by the Institute for Legal Reform. The Institute asked him to promote the model Act throughout the U.S. He detailed components of the Act. He said the first requirement is a written determination by a state’s Attorney General stating that using a private law firm is necessary. The TIPAC Act lists the criteria for publishing a Request for Proposal (RFP). Mr. McCullum gave three facets of the TIPAC Act as:

- Transparency - every contract a state agency enters into when hiring outside legal counsel, and setting the counsel’s contingency fees, is to be posted on a website.
- Accountability – contracts should save taxpayers as much money as possible

- Fee tiers – fee tiers do not include basic costs

Fee tiers of a settlement in a contingency fee contract are:

- a 25% fee for the first ten million dollars
- a 15% fee for the next five million dollars
- a 10% fee for the next five million
- a 5% fee for remaining amounts, not to exceed a total of \$50 million in fees

Other components of the Act include:

- a provision for a state's Attorney General to maintain control of the contract process
- posting the contract on a website within five days of a contingency fee contract being enacted
- the contract is to remain posted on a website throughout the duration of a lawsuit
- payments to the private law firm must be posted on a website within fifteen days of a settlement or the end of litigation, and must remain posted for a full year

Mr. McCullum said the final aspect of the Act concerns the requirement that a private law firm retains documents, records of hourly rates. Plus, filing a report to the legislature, on an annual basis, regarding any litigation engaged in by the law firm on behalf of the state.

Randy Zook, President/CEO, Arkansas State Chamber of Commerce, was recognized. Mr. Zook discussed the use of no-bid contingency fee contracts by state agencies seeking legal damages against corporations and businesses operating inside and outside the state. He said that frequently the lawsuits are filed by trial attorneys who have contractual relationship with a state agency. Mr. Zook thinks there are some instances when it is appropriate for a lawsuit. However, there are claims that lack definable injury, which extorts corporations to settle on terms that benefit the agency and the contracted legal counsel. He said the contract shouldn't prevent or restrict the state or its agencies from punishing wrong-doers who cause harm to the state's residents. But, he believes there is a lack of standards associated with the current contingency fee contracting process. This incentivizes trial attorneys and state agencies to use the process more liberally than it should. Allowing private trial attorneys to file lawsuits on behalf of the state, without setting reasonable standards, sends the wrong message to businesses interested in locating in the state. He told legislators he believes that Arkansas should adopt the TIPAC Act, establish standards, and provide transparency and accountability.

Legislators spent the rest of the meeting discussing the model Act and its effects.

There being no further business, the meeting adjourned at 2:00 p.m.