

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, September 16, 2011

The Arkansas Legislative Council met at 9:00 a.m., Friday, September 16, 2011 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Salmon called the meeting to order and dispensed with the calling of the roll. The members who attended are listed on the sign-in sheets.

Minutes of the Last Meeting

Co-Chair Salmon referred members to the minutes of the August 19, 2011 meeting of the Legislative Council and asked if there were any questions. There were no questions.

Senator Sue Madison moved that the minutes of the August 19, 2011 meeting of the Legislative Council be approved. The motion received a second and passed by voice vote.

Revenue Report

August 2011 Revenue Report

Co-Chair Salmon recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for August 2011. Mr. Wilson reported that the August 2011 revenue report reflects that after two months of this fiscal year, gross collections are \$ 5.2 million ahead of the same period last year for a growth rate of six tenths of one percent (0.6%). The adjusted net available for distribution is \$ 7.6 million ahead for a growth rate of one percent (1%). The graph page indicates that revenue collections are \$9.3 million below the official revenue forecast. On the first page of the spreadsheet is reflected a negative three percent (-3%) growth rate in gross receipts, which is the reason revenue is below the forecast. The income tax collections are performing as expected. At the conclusion of his report, Mr. Wilson offered to answer questions from the members.

Mr. Wilson provided the following information in response to questions:

- Information has been requested from the Department of Finance and Administration concerning the impact of the August 2011 sales tax holiday on tax collections.
- There are all kinds of things that affect the economy on a daily basis and currently the subscription economists are putting a probability of forty percent (40%) for a double-dip recession.

- The impact on the budget of the collection of income tax, manufacturing taxes, and other taxes is provided in the first pages of the report and there is approximately \$30 million in tax reductions from the last session.
- The budget was fully funded and after GIF and other requirements were funded, there would be approximately \$50 million that could be discussed in the upcoming session for funding other programs.

Report of the Executive Subcommittee

Co-Chair Salmon recognized Co-Chair Tommy Lee Baker to present the report of the Executive Subcommittee. Co-Chair Baker reported that the Executive Subcommittee met on September 15, 2011 and heard a report on the per diem rates authorized for members of the General Assembly. The Bureau of Legislative Research currently follows per diem rates as provided by the U.S. General Services Administration. The current per diem rate for Pulaski County is \$149.00 and will decrease to \$147.00 beginning October 1, 2011. The subcommittee passed a motion to accept the changes beginning October 1, 2011. It was also reported that direct deposit of mileage and per diem payments through the Bureau of Legislative Research will be an option available to members. There were no questions regarding the report.

Co-Chair Baker moved for the adoption of the report of the Executive Subcommittee. The motion received a second from Senator Bledsoe and was passed by voice vote.

Reports of Standing Subcommittees

Administrative Rules and Regulations Subcommittee

Co-Chair Salmon recognized Senator Percy Malone to present the report of the Administrative Rules and Regulations Subcommittee. Senator Malone reported that the report of the September 13, 2011 subcommittee meeting is in the members packets and he directed the attention of the members to the rule submitted by the Residential Building Contractors Committee (see page three of the report). Senator Malone stated there was confusion due to several rules being submitted in one package and the subcommittee deferred review of the rules until the next meeting to allow the rules to be submitted correctly. Senator Malone noted that among the rules deferred was a rule promulgated to comply with a law passed last session that requires any residential carpenter to be licensed for jobs amounting to more than \$2,000.00.

Senator Hendren moved that the report of the Administrative Rules and Regulations Subcommittee be adopted. The motion received a second and was passed by voice vote.

Higher Education Subcommittee

Co-Chair Salmon recognized Senator Sue Madison to present the report of the Higher Education Subcommittee. Senator Madison reported that the Higher Education Subcommittee met twice this week in lengthy meetings concerning the cost containment efforts of the institutions of higher education. The subcommittee learned there are a number of contracts that institutions have that

come with extra benefits. The subcommittee will continue the investigation of cost containment with additional meetings next month. There were no questions regarding the report.

Senator Madison moved the adoption of the Higher Education Subcommittee report. Representative Roebuck seconded the motion and the motion was passed by voice vote.

Policy-Making Subcommittee

Co-Chair Salmon recognized Representative Linck to present the report of the Policy-Making Subcommittee. Representative Linck reported that the Policy-Making Subcommittee met on September 8, 2011 to consider the renewal of the proposed Technical Services Contract between the Joint Interim Committee on Public Retirement and Social Security Programs and Osborn, Carreiro & Associates, Inc. The proposed contract had been approved by the Joint Interim Committee on Public Retirement and Social Security Programs and referred to this committee for consideration. Retirement Committee Analyst Estella Smith was present to answer questions and present information concerning the contract. The proposed contract provides actuarial services beginning September 1, 2011 through June 2013, in the amount of \$96,000. Senator Fletcher made a motion to approve the contract between the Joint Committee on Public Retirement and Social Security and Osborn, Carreiro & Associates, Inc. The motion was seconded and carried without objection.

Representative Linck moved that the Policy-Making Subcommittee report be adopted. The motion received a second and was passed by voice vote.

Review Subcommittee

Co-Chair Salmon recognized Senator Randy Lavery to present the Review Subcommittee report. Senator Lavery reported that the Review Subcommittee met on September 7, 2011 and reviewed methods of finance, discretionary grants, and professional-consultant services contracts. One contract was withdrawn by the agency prior to the subcommittee meeting and all other items on the report were reviewed. There were no questions.

Senator Lavery moved the adoption of the report of the Review Subcommittee. The motion received a second and was passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Salmon recognized Senator Mike Fletcher to present the Uniform Personnel Classification and Compensation Plan Subcommittee report. Senator Fletcher reported that the subcommittee met on September 13, 2011 and reviewed the following: the monthly and quarterly reports from the Department of Education for employees hired using the approved salary grid and positions created using approved special language; the monthly reports on special entry and grid movements for the Public Service Commission, the Department of Correction, and the Department of Finance and Administration; provisional position reports for two and four-year institutions showing the new or vacant positions that are paid with other moneys such as donations, grants or other anticipated funds and which will not exist after the funds run out; and special entry and labor market reports from the Chief Fiscal Officer.

The subcommittee also heard and recommends approval of two requests for OPM swap pool positions for the Department of Community Correction and the Northwest Technical Institute. The subcommittee also heard a request from the University of Arkansas for on-call duty pay that was held for further review at the next subcommittee meeting. The subcommittee also held for further review at the next subcommittee meeting a list of requested salary increases from circuit court judges for court reporters and case coordinators. The salary increases were not approved and all the salaries were held at the current rates. There were no questions.

Senator Fletcher moved the adoption of the report of the Uniform Personnel Classification and Compensation Plan Subcommittee. The motion was seconded and passed by voice vote.

Moment of Silence

At this point, Co-Chair Salmon asked that the Legislative Council observe a moment of silence in memory of the late Maria Luisa M. Haley, Executive Director of the Arkansas Economic Development Commission.

Review of Communications

Co-Chair Salmon referred members to the communications in their packets and asked if there were any questions concerning the communications.

Request from the Department of Rural Services

Co-Chair Salmon recognized Butch Calhoun, Director of the Department of Rural Services, to explain the request. Mr. Calhoun explained that this is a request (see Exhibit H.12) for the Legislative Council's approval of funding for rural community grants that are awarded three times a year, as well as funding for county fair building grant programs that are awarded once a year. The department received about \$291,000 in requests and was able to fund about \$165,000 in the community grants. The department received \$28,000 in requests and was able to fund \$16,000 in county fair building grants. There were no were no questions regarding this request.

Senator Bledsoe moved that the Legislative Council approve the funding for rural community grants, rural fire protection grants, and county fair building grant programs that were submitted by the Department of Rural Services pursuant to Section 12 of Act 641 of 2011. The motion received a second and was passed by voice vote.

Summary of Approved Travel Recommendations

Co-Chair Salmon recognized Representative Andrea Lea for a question about the Report to the Legislative Council of Approved Travel Recommendations (Exhibit H.6). Representative Lea asked what the policy is on approval of travel that has already taken place. Co-Chair Salmon recognized David Ferguson, Director of the Bureau of Legislative Research, who explained that this is not a request for the Legislative Council's approval, but is a report presented for review only. He explained further that a couple of years ago, the Legislative Council had asked for a report any time a committee chair authorized travel to conferences other than the big four conferences: SLC/CSG, NCSL, ALEC, and the Energy Council. Mr. Ferguson also responded that these expenditures are approved by a committee chair, then approved by either the President Pro Tempore of the Senate or

the Speaker of the House, and then paid from committee travel funds that are contained within the Bureau budget.

Report of the Department of Community Correction

Co-Chair Salmon recognized Representative Tim Summers for a question regarding the monthly report on the Community Correction Centers' population totals and Parole and Probation Services' caseload information as of September 6, 2011 (Exhibit H.8). Co-Chair Salmon asked if anyone from the Department of Community Correction was present to respond to questions. As there was no one present to represent the department, the report was held over to the next meeting when someone could be present to answer questions.

Arkansas Economic Development Commission Reports

Co-Chair Salmon recognized Representative Mark Biviano for a question concerning the reports from the Arkansas Economic Development Commission (Exhibit H.3a and Exhibit H.3b). Representative Biviano asked if the jobs referred to in the report are actual jobs created or are they proposed jobs and whether there is any data on the actual jobs that were created.

Mr. Morris Jenkins and Mr. Kurt Naumann, with the Arkansas Economic Development Commission, were recognized to respond. Mr. Jenkins stated the report reflects proposed jobs and that the actual data follows later. The Department of Finance and Administration audits each of these proposals to see what they qualify for and each proposal has twenty-four (24) months to create the jobs. Mr. Jenkins also stated the only data available at this point is for the year 2008.

Representative Biviano suggested that future reports include information on previous years' incentive programs and the actual jobs that were created and not just proposed jobs. Mr. Jenkins responded that we would be glad to do that.

There were no questions regarding the remaining communications and they were filed without objection.

Business Carried Over from Previous Council Meeting

Oil and Gas Commission Report (Exhibit I.2):

Co-Chair Salmon referred members to the quarterly report from the Arkansas Oil and Gas Commission concerning Fayetteville Shale activities (Exhibit I.2) and recognized Lawrence Bengal. Mr. Bengal introduced himself as Lawrence Bengal, Director of the Arkansas Oil and Gas Commission, and explained that there is a provision in the commission's appropriation bill that requires a quarterly report of the commission's activities in the Fayetteville Shale. The report before the members today is the first quarterly report for the time period of April 1 through June 30, 2011. Mr. Bengal stated the report was initially submitted in August and has been amended to include the additional information requested by the Legislative Council staff. Mr. Bengal provided the following information in response to questions from the members:

- The two cessation orders (listed as 4.C on page 1 of the summary) were issued to Poseidon Energy; one order was to an injection well operating in White County with a fine associated with that particular operation; and one was a temporary cessation order for the two injection wells in regard to the earthquake moratorium that was implemented earlier this year.
- There are actually twenty-four (24) notices of violations (listed as 4.A–D on page 1 of the summary) that were broken down into two broad categories: (1) operational violations that have an environmental impact, some type of discharge or some type of potential harm; and (2) administrative violations that are reporting violations that may not have an environmental impact. Of those twenty-four (24) notices, two (2) were operations-related violations that were issued to Poseidon Energy for their operations; and one for exceeding injection pressure and the other for not having the proper equipment on their disposal well to accurately measure the injection pressure and rate.
- The Oil and Gas Commission generally checks the injection wells or disposal wells once a week. After a violation and the issuance of an order or fine, there are weekly follow-up inspections and in some cases bi-weekly follow up inspections in compliance with the order.
- From the time reports were input to the data base in 2006 through June of this year, there have been over 25,000 inspection reports conducted throughout the State of Arkansas. There were 910 inspections within the Fayetteville Shale in one quarter. There were 3,500 inspections in the Fayetteville Shale during calendar year 2010. The Oil and Gas Commission has added inspectors and increased the number of inspections.
- The increase in the number of inspections could be due be in part to an increase in the number of wells. The number of wells has increased from zero wells in 2004 to almost over 3,500 wells currently. Also, with the drilling of wells on multiple-well pads, it is easier to inspect four, five, or six wells at once because they are all, essentially, right next to each other. Each of those is counted as a well if they are on the same site.

Arkansas State Parks Division (Exhibit I.1)

Co-Chair Salmon referred members to the additional information from the Arkansas State Parks Division (Exhibit I.1) and asked if someone was in attendance to present this information. Richard Davies, Executive Director of the Department of Parks and Tourism, was recognized and provided the following information in response to questions from the members:

- Back in 1996 when the plan for the conservation amendment was developed, land acquisition was just five percent (5%). Now the State Parks Division will acquire land to try to fill-in holdings if the master plan shows that the acquisition of an area is appropriate. The land has to be adjacent to the park; otherwise it wouldn't be a part of the park. A good example is when the West family farm indicated a desire to sell property that was identified as a crucial piece of property to acquire for the Prairie Grove State Park. That is the sort of thing that happens.
- The commission has the power for condemnation, but it is rarely used.

- There is a process where the Division of State Parks can sell land through an auction with the assistance of the Arkansas Building Authority or the State Purchasing Office if the commission declares land surplus to the needs of the state park. One reason for selling land is that in the early days of state parks, the Land Commissioner deeded to the State Parks Division tax-forfeited property in lots that were not adjacent to a park and not necessary to the state park plan. Mount Nebo is a great example of this.
- The estimated total property tax on state parks property is about \$3,300.00 a year. Any money generated from the lease of pasture on state park land goes into the state park cash fund, which is then appropriated by the General Assembly to the State Parks Division.
- The State Parks Division takes bids when state park property is leased. The property can be leased through a process involving bids submitted to the Arkansas Building Authority or by a process that involves a permit for hay removal where a person pays to mow and keep the hay.

Representative Linck expressed his concerns as to how the difference between the amount of property tax that would have been paid on state park property and the amount school districts would have received through the school funding formula is accounted. Representative Linck also asked that any time that land is being acquired by any agency, that the estimated property tax should be reported to the Legislative Council.

UAMS College of Medicine (Exhibit I.3):

Co-Chair Salmon referred members to the information provided by the UAMS College of Medicine and recognized Dr. Debra Fiser. Dr. Fiser introduced herself as Dean of the College of Medicine and also introduced Mr. Tom South, the Assistant Dean for Admissions.

Co-Chair Salmon recognized Senator Jeffress who commented that he had asked for the additional information concerning admissions to the College of Medicine. He specifically asked that members receive the list divided by congressional district and an assessment of how admissions to the College of Medicine would be impacted by the formation of new congressional districts for next year. Dr. Fiser, Mr. South, Dr. Richard Wheeler, Executive Associate Dean for Academic Affairs, provided the following information in response to questions from the members:

- The list of admissions by congressional districts has been submitted to the Legislative Council and the last attachment shows there was a difference of just a few positions one way or the other in each district in the number of matriculants using the 2000 criteria versus the 2010 criteria. Admissions to this class were based on the current congressional districts. Seventy percent (70%) of the first 150 admissions must be equally divided from among the four congressional districts.
- The College of Medicine looks for applicants from Arkansas who are highly qualified, and then when there are no more really highly qualified students from Arkansas, the College of Medicine looks at the out-of-state applicants with particularly strong Arkansas ties. The criteria for admission of out-of-state students are extremely high to ensure that the applicants would be truly excellent and raise the level of the whole class.

- In the northwest campus, located in Fayetteville, the class consists of sixteen students who are doing extremely well. The curriculum there is slightly different and is presented in a slightly different way to be a little bit more directed toward primary care. The students' scores on the measures, such as the National Board of Medical Examiners subject examinations, indicate these students are actually doing a tiny bit better than the students in the same class in Little Rock. It is a little hard to compare because the numbers are so different.
- The UAMS College of Medicine has no data concerning how Arkansas ranks among other states in the length of time that it takes an out-of-state doctor to get their Arkansas license. The UAMS College of Medicine does recruit a number of out-of-state physicians and sometimes there is a lengthy delay in getting primary verifications from other places.

Senator Jeffress asked if any studies had been conducted or is there any data that shows the number Arkansas graduates or percentage of UAMS graduates that return to Arkansas after an internship out of state. Dr. Fiser responded that she would have to provide that information later as she did not have the statistics with her. She also commented that there is no real requirement for graduates to provide the information and that sometimes it is difficult to obtain the data.

Representative Pennartz asked for information regarding the mechanism used by the UAMS College Medicine to track graduates and also asked for the percentage of UAMS graduates who remain in Arkansas.

Department of Workforce Services (Exhibit I-4)

Co-Chair Salmon referred members to the information provided by the Department of Workforce Services and recognized Artee Williams, Director of the Department of Workforce Services to respond to questions. Mr. Williams introduced himself and Bruce Waller, the Division Chief for the Unemployment Insurance Program. The following information was provided by Mr. Williams and Mr. Waller in response to questions:

- The current fund balance is now \$330.8 million. A payment of \$29 million was made to the United States Treasury on Wednesday of this week (September 14, 2011), which reduced the amount owed by Arkansas to \$330.8 million. This saved the department and employers \$626,000.
- By September 26, 2011, the first interest payment of \$10.1 million dollars will be made from the advance interest fund, which is already established and has a sufficient balance for the payment. The balance in the advance interest trust fund is approximately \$117 million. The department does not anticipate needing another Title XII advance through the end of this calendar year.
- If legislation being considered in Washington to again extend benefits is passed by Congress and is signed by the President, those benefits would be paid for with federal funds and would not be paid with funds from the state unemployment insurance trust fund. The source

of funding for the unemployment insurance trust fund is the taxes paid by Arkansas employers.

- Arkansas is obligated to repay the \$330.8 million to the federal government and the first installment has been paid. With the current tax structure, Arkansas will repay this amount in the year 2015 without raising taxes, unless another issue arises with the economy or if there are changes made at the federal level.
- The Department of Workforce Services is attempting to verify the statistics in the report released by the United States Department of Labor that indicated that Arkansas had erroneously paid an estimated total of \$136 million in benefit payments over the past three years from 2008 through 2010, and had erroneously paid \$50 million in benefit payments during the last year. The statistics in the US Department of Labor report are based on a statistical sample.
- The Department of Workforce Services will provide the committee with the actual dollar amount of overpayments actually booked for repayment over the same three-year time frame from 2008 through 2010.
- The Department of Workforce Services has a very aggressive collection process, including interception of income tax returns for those who file claims that were not valid.
- The Department of Workforce Services is audited by an independent auditor who reviews all of the department operations and the department is also audited by the US Labor Department on a frequent basis.
- Mr. Williams indicated he would not be opposed to the Division of Legislative Audit conducting an audit of the Unemployment Insurance Trust Fund to review the internal controls that are in place within the department to ensure that procedures are properly followed.
- The Department of Workforce Services has an automated system that reviews all claims and identifies claims that meet certain parameters that may indicate fraud. Those claims are pulled and reviewed by department staff. If a determination of fraud is made, the department will pursue the claim and prosecute cases if appropriate. The department is also able to intercept state income tax refunds and will soon be able to intercept federal income tax refunds also.
- The current balance of the advance interest fund is \$11.2 million. The \$29 million was paid from the trust fund and not paid from the advance interest fund.
- The Department of Workforce Services attempts to prevent the erroneous payment of benefit claims by: training employees quite well in the eligibility process; the recent implementation of an automated system for applying for unemployment benefits that helps check for eligibility; review of claims on the back end to ensure the claims are filed correctly; and with additional technical assistance from the US Department of Labor.

- The maximum number of weeks for receiving unemployment benefits in Arkansas is approximately 77 weeks. Arkansas has not yet reached the unemployment rate threshold that obligates 99 weeks of benefits allowed under federal law.
- The Department of Workforce Services is working to obtain trend data showing inappropriate or ineligible payments for the past three years. The two main issues that contribute to overpayments are the under reporting of wage information and the receipt of inappropriate or inaccurate information from employers that is discovered after payment of benefits. The US Labor Department standards allows the Department of Workforce Services only seven (7) days to process a claim and sometimes employers do not provide the needed information within that time frame.
- Restitution and prosecution are the penalties for a person who files an improper claim and this penalty is noted on the application form.
- The Department of Workforce Services receives reports of abuse from both citizens and employers and the department will follow up on the report and collect the overpayment.
- Misclassification of workers occurs when an employer classifies a worker as an independent contractor versus an employee, yet the independent contractor is controlled by the employer. The Department of Workforce Services worked with the advisory council to set in place a process to review claims that have the appearance of misclassification. Additional auditors were hired to review those claims and to work with employers around the state. The advisory council receives a quarterly report of the number of misclassified workers identified by the department.
- Money is also recouped from employers who misclassify workers and there is an appeals process for these decisions, but employers are not subject to prosecution at this time.
- If restitution for an erroneous benefit payment cannot be repaid by the claimant, the amount of the restitution comes from the trust fund to which employers contribute. If additional money is needed to fund the trust fund for any reason, the only avenue currently available is to ask for that money from employers through increased taxes.
- There are approximately 250 full-time employees stationed across the state who review claims as they are submitted and there is another 75 to 100 part-time employees who assist with that effort also. These employees have a set of standards that they use to verify the claim when it comes in. There is also a supervisor and an office manager who review the claims and a technical assistance unit in Little Rock, if expert advice is needed.
- Unemployment benefits are provided by two methods: one is by a debit card issued by US Bank and the other is direct deposit. These methods result in a cost savings to the department because there is no need to trace lost checks. No appreciable trend has been noted in the incidence of fraud or abuse since these payment methods were implemented.
- A person can continue to draw benefits when he was called back to work, but declines the job if the authorized dollar amount has not yet been paid. However, there is the refusal of

suitable work policy that would preclude that person from drawing benefits.

- Individuals must verify their job search activities in order to continue receiving unemployment benefits. Individuals are required to register on the department's information system and they are able to validate their job search activities online or in person. A lot of people come back into the office to validate their job search efforts and those individuals are referred to job openings.
- The department's information system lists available jobs as job orders from employers. The job order includes information such as job order number, the job title, a brief description of job duties, some special requirements, education, training, certification, and a wage or salary range. The department uses this information system to verify the person's job search activities.
- There are 40,000 plus Arkansans receiving unemployment benefits currently with about half receiving regular benefits paid from the state Unemployment Insurance Trust Fund and the other half are receiving extended benefits that are paid with federal funds.
- A person receiving regular benefits will exhaust after 26 weeks. A person receiving extended benefits would exhaust their benefits depending on which extension a person would qualify for as authorized by the federal government.
- Employers are encouraged to notify the department when a person refuses a reasonable job offer and the department receives reports frequently.
- The success of a Department of Workforce Services employee is measured, not simply by the number of claims reviewed, but by the quality of their work. An employee's quality of work is also measured against the U. S. Department of Labor standards that include processing a claim within seven days.
- There is a provision in the current state unemployment law that allows a part-time employee to file a claim for unemployment benefits in the amount that is the difference between full-time and part-time hours and be paid if they meet all the other requirements.
- The advisory committee, which is comprised of both labor and management, discontinued the requirement that a claimant must submit a statement from an employer to verify the claimant's job application because employers had indicated that it was an unnecessary burden for them especially if they didn't have a job opening.
- The Department of Workforce Services has a unit that investigates those claims that may be deliberately fraudulent and follows through with prosecutors to prosecute those claims. These activities are reported on a quarterly basis to the advisory council.
- Other than restitution, there is no additional penalty for filing a fraudulent claim, but repayment can also be with interest. If the prosecutor agrees that the fraud is at the necessary level, the person can be charged with a felony.

- The Department of Workforce Services does not currently have the authority to seek repayment by direct access of the claimant's checking account.

During the discussion, the Legislative Council members asked for answers to the following questions:

- 1) How many people are there in Arkansas who have exhausted their unemployment benefits and are still unemployed?
- 2) On average, how many claims does a Department of Workforce Services employee review per day?
- 3) How does the State of Arkansas compare with surrounding states and the nation on the number of claims that are denied due either to misconduct by the claimant or because the claimant quit?
- 4) Over the last five years, what is the number of claims that have been accepted and rejected and the number of appeals won or lost?
- 5) What is the department's policy regarding the handling of deliberately fraudulent claims?
- 6) What is the percentage of fraudulent claims in which a criminal penalty is assessed?
- 7) How much money has been recouped from restitution for fraudulent claims?

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Salmon recognized Senator Johnny Key to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Senator Key stated that the PEER Subcommittee met on September 1, 2011 and reviewed and approved two items; (1) the subcommittee approved \$95,000 in appropriation and fund transfer for roof repair at Troop H and Troop C; and (2) the subcommittee approved \$61,612.30 in appropriation and fund transfer for sales tax on vehicles. The subcommittee held \$1,595,000 transfer request for land acquisition for Troop L in Springdale. The subcommittee reviewed a transfer to the 88th Session Projects Account, executive division, from Educational Facilities Partnership Fund in the amount \$ 2 million for ADTEC upon the review of the House and Senate Education Committees. The subcommittee adopted a motion to request the governor seek alternative funding and that the Department of Finance and Administration report back to the PEER Subcommittee at the October meeting on the status of this item. The subcommittee also requests that the Council direct Bureau legal staff to provide an official document on the issue of how review and approval is defined and what power the Legislative Council subcommittees have. Senator Madison also requested that the legal staff provide a report on when state universities are required to bid contracts and if it is appropriate that those contracts come with offers of gifts. The requested research by the legal staff is attached to the PEER Subcommittee report as a memorandum addressed to Senator Madison from Marty Garrity, Assistant Director for Legal Services. All other items were reviewed.

Senator Key moved the adoption of the Performance Evaluation and Expenditure Review (PEER) Subcommittee report and the motion received a second.

Co-Chair Salmon recognized Senator Jimmy Jeffress who asked to make a substitute motion. **Senator Jeffress moved that Item G (concerning a transfer in the amount \$ 2 million to the 88th Session Projects Account, executive division, from Educational Facilities Partnership Fund for ADTEC) be removed from the report and that the Legislative Council vote on this item separately. The motion received a second.**

Co-Chair Salmon recognized Senator Jeffress to explain his motion. Senator Jeffress stated this item has been the subject of discussion among the legislative council subcommittees and education committees as there is concern about the transfer. He noted that a motion was made during the PEER Subcommittee meeting that asked the governor to seek alternative funding before this transfer was made.

Senator Jeffress asked if the funds had been transferred. Co-Chair Salmon recognized Richard Weiss, Director of the Department of Finance and Administration, who responded that the transfer has not yet been made.

Senator Jeffress stated that this fund was set up specifically to appropriate funds to resolve the issues in the Lakeview lawsuit and is part of the reason the court released the state from that lawsuit. Senator Jeffress stated that borrowing from this fund for other issues could result in insufficient funding for the issues for which the funds were appropriated.

Senator Jeffress stated that due to those concerns he is asking for a separate vote on Item G because, as chairman of the Senate Education Committee, he wants an opportunity to vote against the transfer because of the possibility that a lawsuit may be filed.

Co-Chair Salmon called for a vote on the motion by Senator Jeffress that Item G (concerning a transfer in the amount \$2 million to the 88th Session Projects Account, executive division, from Educational Facilities Partnership Fund for ADTEC) be removed from the report and that the Legislative Council vote on this item separately and the motion passed by voice vote.

Co-Chair Salmon asked Senator Hendren if he wished to speak in regard to Senator Key's motion to approve the report of the PEER Subcommittee. Senator Hendren commented that he had another item on which he wished to speak and Co-Chair Salmon stated the question before the committee now was the motion to approve the PEER report.

Co-Chair Salmon asked Representative Butch Wilkins if he wished to speak in regard to Senator Key's motion to approve the report of the PEER Subcommittee. Representative Wilkins indicated he had a question regarding the transfer in Item G that was separated from the report. Co-Chair Salmon stated that the question before the committee now was the motion to approve the PEER report.

Co-Chair Salmon stated that the question before the committee now was the motion by Senator Key to approve the PEER Subcommittee Report without Item G that was just separated from the report.

Senator Hendren asked to be recognized to speak before the vote is called on the motion and he was recognized by Co-Chair Salmon. Senator Hendren stated that Item B on page one of the PEER Subcommittee report concerns, in part, a request from the Arkansas State Police to transfer \$1.5 million for the purpose of acquiring land on which to construct a new headquarters for Troop L of the State Police. Senator Hendren informed members that consideration of this transfer request was held until the next PEER Subcommittee meeting upon the request of Senator Madison and Senator Pritchard. Senator Hendren stated that he had received a letter from the Washington County judge expressing the Washington County quorum court's opposition to the relocation of the Troop L

headquarters. Senator Hendren expressed his concern that the delay in reviewing the transfer request could cause problems with the acquisition of the land.

Co-Chair Salmon recognized Senator Key to respond. Senator Key explained that there was an effort to pass a motion to review the transfer request, but that failed to pass out of committee. Senator Key explained that Senator Madison and Senator Pritchard requested that the request be delayed to get additional information from the state police and from the community and the request was held for consideration at the next PEER Subcommittee meeting that is scheduled for October 6, 2011. Senator Key explained that the recommendation of the PEER Subcommittee would be reported to the Legislative Council at the October meeting, which would occur before the deadline for action on acquiring the land for the state police headquarters.

Co-Chair Salmon recognized Representative Rice who asked if the Legislative Council would meet before the deadline passes to acquire the property. Representative Rice asked that the committee hear from the state police on this question.

Co-Chair Salmon recognized Major Les Braunns, the Highway Patrol Commander for the Western Region of the Arkansas State Police. Major Braunns introduced himself and explained that the offer and acceptance agreement was signed on August 11th and the first sixty days' would expire October 10th, but there is a thirty-day extension in the agreement that would expire on November 9th. Major Braunns answered questions from the committee and heard from some members regarding their disappointment that area legislators were not notified of the plan to relocate the Troop L headquarters.

Co-Chair Salmon recognized Senator Fletcher who asked to make a motion on Item B in the PEER Subcommittee Report. Senator Fletcher asked that Item B be considered by the PEER Subcommittee at the next meeting on October 6th and commented that the State Police want to follow the review process and the construction of the new headquarters will bring all of the divisions of the state police under one roof which would be in the best interest of the people of northwest Arkansas and the state police.

Co-Chair Salmon stated that the motion to adopt the PEER Subcommittee Report would include that Item B be considered by the PEER Subcommittee at the next meeting. Co-Chair Salmon stated that everyone has had their say and it was time to vote.

Co-Chair Salmon called for the vote on Senator Key's motion to adopt the PEER Subcommittee report without Item G and the motion was passed by voice vote.

Co-Chair Salmon stated that a motion was needed in regard to the item that was separated from the PEER Subcommittee report, Item G, which is the transfer in the amount of \$ 2 million to the 88th Session Projects Account, executive division, from Educational Facilities Partnership Fund for ADTEC.

Co-Chair Salmon recognized Senator Jeffress who asked to make a substitute motion to the motion that was passed in the PEER Subcommittee meeting concerning item G (the motion is found under Item G on page 2 of the PEER Subcommittee report). Co-Chair Salmon recognized Senator Jeffress for his motion.

Senator Jeffress moved that the Legislative Council oppose the transfer of \$2 million dollars from the Educational Facilities Partnership Fund.

Co-Chair Salmon recognized Senator Lavery who asked to be reminded of the details of the transfer request. Co-Chair Salmon recognized Senator Key to respond. Senator Key explained the request is to transfer \$2 million from the Educational Facilities Partnership Fund, which is the fund that set aside approximately \$450 million for school facilities around the state as part of the effort to resolve the Lakeview lawsuit. Senator Key stated that the executive branch has requested that \$2 million be transferred to the ADTEC program that's based at Mid-South Community College and that also has programs in other two and four year institutions in the region of the delta. Senator Key explained that the PEER Subcommittee referred the request to the Education Committee and the Education Committee reviewed the request and referred it back to the PEER Subcommittee. Senator Key stated that during the last PEER Subcommittee meeting, a motion was made that Legislative Council ask the governor to seek alternative funding before that transfer was made and that is the motion noted in the PEER Subcommittee report that was presented today. Senator Key stated that the motion now before the Legislative Council is Senator Jeffress' alternative or substitute motion. There followed additional questions and comments from the members.

Co-Chair Salmon commented that the Legislative Council cannot disapprove, but could express our disapproval. Co-Chair Salmon asked Senator Jeffress if he wanted to amend his motion to say that we are expressing our disapproval of the transfer.

Senator Jeffress stated would be fine and moved that the Legislative Council disapproves the transfer of money.

Co-Chair Salmon stated that she would allow a couple other comments or questions on this issue and then would ask the committee to vote. Co-Chair Salmon recognized Representative Stewart who commented that he also has concerns about this transfer and that he opposes it. He commented further that both the Governor's office and the Attorney General's Office had opposed legislation he sponsored during the last two sessions saying that the legislation would go against the intent of Lakeview.

Co-Chair Salmon recognized Representative Wilkins who asked whether the Governor had the right to authorize the transfer and if so, why is the committee continuing this discussion. Senator Jeffress responded that whether or not the committee passes the motion to express disapproval of the transfer, the Governor still has authority to authorize it.

Co-Chair Salmon recognized Co-Chair Baker for comments. Co-Chair Baker stated that he attended all of the meetings and he recalls that the Subcommittee had approved the transfer with the request that the Governor seek alternative funding. He noted that the legislation had been considered in special language and was approved by the House and the Senate and that it was time for the Legislative Council to review the transfer. Co-Chair Baker commented that there were colleges waiting for the transfer and that the Legislative Council could state an objection to the transfer, but it should not hold this any further because of the need for colleges. Co-Chair Baker commented that economic development in some parts of the state is dependent on whether there are educational facilities in the area.

Co-Chair Baker made a substitute motion that the Legislative Council adopts the motion as it is stated in the PEER Subcommittee Report, which would be to review the transfer and ask the Governor to seek alternative funding.

Co-Chair Salmon stated that the substitute motion is that the Legislative Council approves the transfer request in Item G that was separated from the PEER Subcommittee Report and which is the request to transfer \$2 million from the Educational Facilities Partnership Fund. The substitute motion received a second, but failed to pass by voice vote.

Co-Chair Salmon called for a voice vote on the main motion by Senator Jeffress that the Legislative Council expresses their disapproval of the request to transfer \$2 million from the Educational Facilities Partnership Fund and the motion passed by voice vote.

New Proposals and Resolutions

Co-Chair Salmon referred members to interim study proposals in their packets and asked that, without objection, these be referred to the appropriate interim committee.

Interim Study Proposal 2011-182

Interim Study Proposal 2011-182 (Exhibit K.1), by Representative Loy Mauch, which is an act to create the Arkansas Water Additive Accountability Act and to establish criteria for substances added to public drinking water for purposes unrelated to potability.

Interim Study Proposal 2011-182 (HB 1205) was referred to the House Committee on Public Health, Welfare and Labor without objection.

Interim Study Proposal 2011-183

Interim Study Proposal 2011-183 (Exhibit K.2), by Senator Hendren, that the Legislative Council of the Eighty-Eighth General Assembly refer to the appropriate Senate interim committee a study of the feasibility of excluding from the sales price on the purchase of a motor vehicle the amount of manufacturer's and dealer's rebate.

Interim Study Proposal 2011-183 was referred to the Senate Committee on Revenue and Taxation without objection.

Interim Study Proposal 2011-185

Interim Study Proposal 2011-185 (Exhibit A.1 on the Supplemental Agenda), by Representative David Sanders, that the Legislative Council direct the Joint Committee on Public Retirement and Social Security Programs to study the current status of retirement systems and benefits for judges.

Interim Study Proposal 2011-185 was referred to the Joint Committee on Public Retirement and Social Security Programs without objection.

Announcements

Co-Chair Salmon recognized Senator Stephanie Flowers who stated that she was going to jail for the benefit of the Muscular Dystrophy Association and asked that the Legislative Council members contribute toward her bail for this good cause.

Co-Chair Salmon announced that a health care meeting was scheduled to meet following adjournment of the Legislative Council meeting.

Adjournment

Co-Chair Salmon recognized Representative Stubblefield who moved that the meeting be adjourned. The motion received a second and was passed by voice vote and at 11:50 a.m. the meeting was adjourned.

Respectfully submitted,

ATTEST:

Senator Mary Anne Salmon
Co-Chair, Senate

David Ferguson
Executive Secretary