

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, October 21, 2011

The Arkansas Legislative Council met at 9:00 a.m., Friday, October 21, 2011 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Tommy Lee Baker 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 Baker referred members to the minutes of the September 16, 2011 meeting of the Legislative Council and asked if there were any questions. There were no questions.

Representative Rice moved that the minutes of the September 16, 2011 meeting of the Legislative Council be approved. The motion received a second and passed by voice vote.

Report of the Executive Subcommittee

Co-Chair Baker recognized Senator Robert Thompson to present the report of the Executive Subcommittee. Senator Thompson reported that the Executive Subcommittee met on October 20, 2011 and addressed two items. David Ferguson, Director of the Bureau of Legislative Research, presented a report and a series of bids for the rehabilitation project in Room 315. The subcommittee discussed the issues related to the project including asbestos abatement, noncompliance with the Americans with Disabilities Act, and the electrical systems. The subcommittee accepted a low bid and the Executive Subcommittee passed a motion to approve the rehabilitation project. The Executive Subcommittee also discussed the volumes of information requests from legislators to institutions of higher education and asked staff to research how requests are handled in other states. There were no questions regarding the report.

Representative Terry Rice moved for the adoption of the report of the Executive Subcommittee. The motion received a second from Senator Robert Thompson and was passed by voice vote.

September 2011 Revenue Report

Co-Chair Baker recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for September 2011. Mr. Wilson reported that the September 2011 revenue report reflects that after three months of this fiscal year, gross collections are \$ 34.5 million ahead of the same period last year for a growth rate of two point six percent (2.6%). The adjusted net available for distribution is \$ 31.9 million ahead of the same period last year for a growth rate of two point seven percent (2.7%). The graph page indicates that

revenue collections are approximately \$16 million ahead of the official revenue forecast. On the first page of the spreadsheet is reflected a negative zero point four percent (-0.4%) growth rate in gross receipts, which is an increase since last month. The weighted average of income tax is growing at five percent (5%). At the conclusion of his report, Mr. Wilson offered to answer questions from the members.

Co-Chair Baker recognized Representative Andrea Lea who asked if the back-to-school sales tax holiday was reflected in the report. Mr. Wilson stated that was included in the sales tax collections for the month of September. Mr. Wilson stated that after questioning the Revenue Division of the Department of Finance and Administration, it is his understanding that exemptions are not reported and therefore there is no way to track or pinpoint the number. Also, the Revenue Division saw no reason to question the \$2.1 million revenue impact that was provided during the session. Co-Chair Baker recognized Senator Hendren who asked what the impact would be on the State of Arkansas if the law was enforced concerning all the taxable sales across state borders. He asked how that would affect the State of Arkansas' income. Mr. Wilson responded that there had been discussion of this since 2003 and the most recent impact statement he had reviewed indicated there would be approximately \$100 million in additional income if all those sales were taxed. There were no further questions.

Recognition of LeRoy Dangeau

At this point, Co-Chair Baker asked the Legislative Council members to take a moment to recognize former Representative LeRoy Dangeau, who was in attendance. The members recognized Mr. Dangeau who is a former member of the House of Representatives and a former chairman of the Legislative Council.

Reports of Standing Subcommittees

Administrative Rules and Regulations Subcommittee

Co-Chair Baker recognized Representative James Word to present the report of the Administrative Rules and Regulations Subcommittee. Representative Word reported that the Administrative Rules and Regulations Subcommittee met on October 4, 2011 and the subcommittee discussed fifteen proposed rules from boards and commissions and all were reviewed with the exception of one proposed rule that was tabled at the request of Representative Eddie Cheatham. The rule that was submitted by the Alcoholic Beverage Control Board was held to give the subcommittee more time to review the changes. The subcommittee also reviewed three rules from the Department of Education that were repealed. At the conclusion of his report, Representative Word offered to answer questions. There were no questions.

Representative Word 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 Baker recognized Representative Johnnie Roebuck to present the report of the Higher Education Subcommittee. Representative Roebuck reported that the Higher Education Subcommittee met on October 4 and October 19 with all of the colleges and universities to discuss ways to contain cost and these were very productive meetings. The subcommittee also met on October 20 and heard a report by the Bureau of Legislative Research on "Worth of a Degree" and also heard a presentation from Shane Broadway, Interim Director of the Department of Higher Education, on "The Worth of Degree Programs Across the State". Also at this meeting, the subcommittee heard a report on teacher shortages in Arkansas from Dr. Karen Cushman, Assistant Commissioner with the Division of Human Resources of the Department of Education. Representative Roebuck informed members that the Georgetown report update on the economic worth of a degree is available to members on the Bureau's higher education web site. Also at this meeting, members viewed a short video on the worth of a degree that is also available to members and she thanked Channel 4. There were no questions.

Representative Roebuck moved the adoption of the Higher Education Subcommittee reports for the meetings on October 4, 2011, October 19, 2011 and October 20, 2011. Senator Madison seconded the motion and the motion was passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Baker recognized Representative James McLean to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee.

Representative McLean moved that the transfer of \$ 2 million from the Educational Facilities Partnership Fund that was discussed at the September Legislative Council meeting be reviewed. The motion received a second and was passed by voice vote.

Representative McLean reported that the Performance Evaluation and Expenditure Review (PEER) Subcommittee met on October 6, 2011 and reviewed the transfer request by the Arkansas State Police of \$1.5 million for land acquisition for Troop L in Springdale. Representative McLean reported that all other items on the agenda were reviewed and no items were held.

Representative McLean moved that the Performance Evaluation and Expenditure Review (PEER) Subcommittee report be adopted. The motion was seconded by Representative Rice.

Co-Chair Baker recognized Representative Post who expressed concern with voting to review the transfer of \$1.5 million for land acquisition for Troop L when Madison County officials were unaware of the plans for relocation of the headquarters. Representative Post asked that the Legislative Council not approve the transfer. Co-Chair Baker stated that he could not accept a motion from Representative Post as the member is in attendance for whom she is an alternate, but that the committee will take note of her concerns. There followed discussion and additional comments regarding the transfer request by the Arkansas State Police.

Co-Chair Baker recognized Representative Hobbs for a question regarding item D.4 on the PEER Subcommittee report (see page 2 of Exhibit F.8). Representative Hobbs asked for more information regarding the Retail Tobacco Inspection Program. Representative McLean responded that this is an

amendment in the amount of \$475,000.00 to defend legal claims by the participating manufacturers to the master settlement agreement that the state failed to meet its obligation funded from interest income from the Arkansas Tobacco Settlement Account.

Co-Chair Baker called for the vote on the motion by Representative McLean that the Performance Evaluation and Expenditure Review (PEER) Subcommittee report be adopted that was seconded by Representative Rice. The motion passed by voice vote.

Review Subcommittee

Co-Chair Baker recognized Representative Larry Cowling to present the report of the Review Subcommittee. Representative Cowling reported that the Review Subcommittee met on October 5, 2011 and received a report of a contract that was reviewed under emergency procedures prior to the meeting. The subcommittee also reviewed methods of finance, a general contractors construction project, discretionary grants, and professional-consultant services contracts. All other items on the report were reviewed. There were no questions.

Representative Cowling moved that the report of the Review Subcommittee be adopted. The motion received a second and was passed by voice vote.

Report of Interim or Special Committees

Arkansas Lottery Commission Legislative Oversight Committee

Co-Chair Baker recognized Senator Johnny Key to present the report of the Arkansas Lottery Commission Legislative Oversight Committee. Senator Key referred members to the Arkansas Lottery Commission Legislative Oversight Committee report (Exhibit G.1) and reported the committee met on September 29, 2011. Senator Key reported that the subcommittee heard a report from Ernie Passailaigue, the last director of the Arkansas Lottery Commission, a report from Michael Hyde, the Internal Auditor for the Arkansas Lottery Commission, and an update from Julie Baldridge, interim director of the Arkansas Lottery Commission, regarding the operations of the Lottery Commission and the transition period. The subcommittee also heard an update from David Barden regarding the new games coming online and also heard an update from Dianne Lamberth, Chair of the Arkansas Lottery Commission, on the search for a new director for the Arkansas Lottery. There were no questions regarding the report.

Senator Key moved that the Legislative Council accept the report and the motion was seconded by Senator Salmon. The motion passed by voice vote.

Community Services Oversight and Planning Council

Co-Chair Baker recognized Representative Word to present the report of the Community Services Oversight and Planning Council (Exhibit G.2). Representative Word reported that the Community Services Oversight and Planning Council met on October 12, 2011 and discussed the status report on intermediate care facilities for individuals with developmental disabilities and a report that those facilities ended the fiscal year on September 30, 2011 with \$6.47 million. There was discussion of how these facilities maintain a waiting list because of the trend of moving more people to this type of facility. The Council also reviewed the Department of Human Services appropriation act for

fiscal year 2012 and heard a report from John Selig, Director of the Department of Human Services, regarding expenditures for the upcoming fiscal year. The Council also discussed the proposed time frame for the Arkansas Health System Reform and Medicaid Transformation, the integrated health care homes, the potential cuts to the Older American's Act and the Arkansas Senior Citizen programs and the impact on these programs of actions at the federal government level, and the Arkansas Youth Service Providers' current contract, outcome measures, and future funding for the program. There were no questions regarding the report.

Representative Word moved that the Legislative Council adopt the report of the Community Services Oversight and Planning Council. The motion was seconded and passed by voice vote.

Review of Communications

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

Quarterly Report from the Office of the Attorney General

Co-Chair Baker recognized Representative Andrea Lea who asked that the Oil and Gas Commission email her the quarterly report on activities in the Fayetteville Shale (Exhibit H.3). Mr. Bengal agreed to do so.

Representative Lea also asked if someone from the Office of the Attorney General would come forward to answer questions regarding the quarterly report of cash funds received from court orders or settlement agreements (Exhibit H.5).

Co-Chair Baker recognized Blake Rutherford, Chief of Staff for the Office of Attorney General. Representative Lea commented that the report was not as detailed as she would have liked and then asked for more information regarding the cash fund account. Mr. Rutherford provided the following information:

- The Attorney General implemented, on October 11, 2011, a new policy for the funds that are derived from settlement agreements when a state agency is represented by the Office of Attorney General.
- The new policy sets forth criteria for distribution of the funds by the following methods: (1) restitution to Arkansas consumers; (2) designation of cash funds to a state agency having a nexus to the underlying litigation; (3) payment of attorneys fees to the State Treasury; and (4) payment into the Consumer Education and Enforcement Account.
- From time to time, money cannot be returned directly to consumers because the consumers cannot be identified or there is no mechanism to return the money. In these instances, the money would be distributed to a state agency with an underlying nexus to the litigation, which would allow for oversight at several levels including the General Assembly and the Department of Finance and

Administration.

- The Office of Attorney General wants to reserve \$1 million for the Consumer Education and Enforcement fund account for the purpose of paying fees for expert witnesses and to continue consumer protection efforts on behalf of the state pursuant to Arkansas Code 4-88-105.
- The Consumer Education and Enforcement Fund account is capped and the Office of Attorney General will make a distribution within 120 days of receipt of any settlement funds.
- Reports will continue to be filed with the General Assembly and additional detail can be provided to ensure that the reporting requirements are met.
- The GlaxoSmithKline settlement award was \$707,358.00 and currently the Office of Attorney General is investigating the alternatives for disbursement of this award that would be consistent with the settlement agreement and the policy.
- A substantial amount of the monies retained in the fund would be spent on litigation costs and expenses and this may include the services of a consultant, but the consultant fees would not be for the majority of the monies in the fund account.
- The consultant services include identifying the key messages for consumer education, the development of messaging tactics to inform consumers of the services offered by the Office of Attorney General, and the execution of the consumer education campaigns.
- The current balance in the Consumer Education and Enforcement fund account is a little over \$8 million.

Co-Chair Baker recognized Representative Darrin Williams who stated he wants to commend the Office of Attorney General for the transparency regarding this fund. He commented that when he was the Chief Deputy Attorney General, there was a television program produced called "Too Good To Be True" where consumer lawyers from the Attorney General's Office discussed consumer education issues. He also commented that consultants are extremely expensive and that while it is important to have transparency it is also important that the Office of Attorney General has the necessary tools to protect the citizens.

Request from the Department of Health

Co-Chair Baker referred members to the request from the Arkansas Department of Health for the Legislative Council's review of the Arkansas Department of Health sub grant with Crittenden EMS LLC and asked if there was a motion to review the sub grant.

Senator Linda Chesterfield moved that the Arkansas Department of Health sub grant with Crittenden EMS LLC be filed as reviewed and the motion was passed by voice vote.

Oil and Gas Commission Quarterly Report of Fayetteville Shale Activities

Co-Chair Baker recognized Lawrence Bengal, Director of the Arkansas Oil and Gas Commission, to respond to questions regarding the Arkansas Oil and Gas Commission's quarterly report on activities in the Fayetteville Shale (Exhibit H. 3). Mr. Bengal provided the following information:

- The quarterly report before the committee today reflects the Arkansas Oil and Gas Commission's activities in the Fayetteville Shale from July 1 through September 30, 2011.
- During this quarter, an additional inspector was hired who works on pipeline inspections and who works to enforce the new noise rule that will be effective November 1, 2011.
- During this quarter, the number of inspections conducted throughout the Fayetteville Shale area increased by approximately nineteen percent (19%) and there was a slight reduction in the number violations issued.
- There is currently an open position for staff who review documentation for compliance, but there has been sufficient staff to properly review and process the paperwork without delays.

Report from the Department of Community Correction

Co-Chair Baker recognized David Eberhard, Director of the Department of Community Corrections, to respond to questions regarding the monthly population and caseload reports from the Department of Community Correction (Exhibit H.7). Co-Chair Baker recognized Representative Tim Summers who asked what the trend is in residential services provided by the department since the passage of Act 570 of 2011 and what impact has the passage of this act had on the population and parole statistics. Mr. Eberhard and Mr. Rick Hart, Deputy Director of the Residential Services Program, provided the following information in response to questions:

- It may be too early to assess the impact of Act 570, but since April 2011 there has been a significant decrease in the number of inmates who are held in county jails while space becomes available in the department. The number of those inmates has gone from 1,900 to less than 600.
- One of the reasons for this significant reduction may be due to the requirement in Act 570 that the Department of Community Correction implement an intermediate sanctions grid which has resulted in the department making more of an effort to resolve issues of non-compliance instead of revoking the parole.
- The population of parolees and probationers has continued to rise since January 2011 and the present population of a little over 56,000 is the highest that the

Department of Community Correction has ever seen.

- The population of residents in the centers has decreased possibly due to courts ordering probation instead of incarceration because of Act 570.
- The department is attempting to develop a viable alternative for drug court judges to send a person to one the centers for a short term of approximately 30 to 90 days instead of the usual 270 days.
- The centers are therapeutic communities where the residents hold each other accountable for their actions, which is very effective in changing behavior.
- The department has a complete program at the residential centers that includes a cognitive program to help determine why a person continues to get into trouble and also offers instruction for anger management, drugs 101, parenting, and college classes in coordination with Arkansas Baptist College.
- The latest recidivism studies show that the programs have been quite effective with an average recidivism rate for all the centers of approximately twenty-two percent (22%). The recidivism studies are conducted over a three-year time period.
- The average direct supervision caseload for parole officers is around 115 offenders per officer. The frequency of visits by parole officers is dependent on the level of supervision required to supervise an offender.
- Additional parole officers were authorized in the last legislative session and have been hired.
- The department does not have a formal relationship with the Department of Career Education statewide, but Judge Chad Mason in Fayetteville has established a "work court". Judge Mason has worked with the Department of Community Correction and the Department of Workforce Services to provide center residents with a "certificate of employability".
- The reason for the overall decrease in recidivism is the department's ability to meet the criminalgenic needs of each individual to allow them to make changes that would decrease the potential risk of re-offending.

Report of the Arkansas Department of Environmental Quality

Co-Chair Baker recognized Karen Bassett, the Chief Deputy Director of the Arkansas Department of Environmental Quality, to present the Quarterly Report of Activities in the Fayetteville Shale (Exhibit H.9b). Ms. Bassett stated that the Department of Environmental Quality has submitted the second quarterly report of activities in the Fayetteville Shale as required by special language in the agency's appropriation bill. The report provides the following: the complaints received divided by county and by program; the total number of inspections divided by county and by program; the

number of inspections anticipated for the next quarter; the number of inspectors in all programs; and a summary of the violation types that were noted during the last quarter and the administrative actions taken, penalties collected, and judicial actions taken during this quarter.

Co-Chair Baker recognized Senator Key who referred to the department's quarterly activity report (Exhibit H.9a) and asked why some of the permits listed in the report have been pending for a long time, some as long as 498 days. Ms. Bassett responded that the reasons vary based on the quality of the application when it is submitted and delays may be due to the application being incomplete, the extensive length of the public comment period, and issues with the federal government agencies such as the Environmental Protection Agency, the Office of Surface Mining, the Fish and Game Commission, and the Department of Forestry. New projects cannot start construction until the final permit is issued, but if the permit is for a renewal, the project can operate under the existing permit until the renewal is issued. If a company has applied for a modification, whether the operator could continue to operate would depend on the type of modification requested.

Ms. Bassett responded in regard to item number 10 on page 32 of the report (Exhibit H.9a), that this is ADEQ Regulation 26, which is a package of three regulations that will implement the federal Greenhouse Gas Tailoring Rule. The department has received comments from multiple sources during the public comment period and the department is in the process of revising and finalizing the "response to comments document" for regulation 26 and anticipates initiating the rulemaking process on another regulation that will be necessary for final approval of regulation 26. The Environmental Protection Agency has issued a notice of deficiency for the Arkansas plan because currently it does not cover greenhouse gases, which means permits that need to regulate greenhouse gases must be issued by the federal government and not the State of Arkansas.

Co-Chair Baker recognized Co-Chair Salmon who asked for an assessment of the department's need for inspectors. Ms. Bassett stated the department receives federal grants for the hazardous waste program, the water program, the air program, and the coal mining program that are used to partially fund the programs and the department has always been able to meet their national commitments for inspections. The department has met or exceeded the standards set by the federal Environmental Protection Agency. Ms. Bassett stated that inspectors spend half of their time responding to and investigating complaints, which are the biggest amount of unscheduled work for inspectors. The Department of Emergency Management (ADEM) has staff in the Department of Environmental Quality's (ADEQ) headquarters with authority to dispatch an ADEQ inspector to the site of an environmental disaster and this can be a disruption to an inspector's work.

Co-Chair Salmon commented that the state provides funding for the activities in the Fayetteville Shale area and there is a growing demand in this area. Senator Salmon asked if the department had sufficient staff to meet this demand. Ms. Bassett responded that the department has a memorandum of agreement with the Arkansas Game and Fish Commission which funds the inspector positions in this program and discussion has begun on extending the memorandum of agreement. Ms. Bassett also informed the members that the Environmental Protection Agency has begun regulating natural gas drilling and fracking activities and other activities, which may result in more federal grant funding for certain activities of the Arkansas Department of Environmental Quality.

There were no questions regarding the remaining communications listed on the agenda and these were filed without objection.

Business Carried Over from Previous Council Meeting

Department of Workforce Services (Exhibit I-1)

Co-Chair Baker 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 Ron Calkins, the Division Director for the Unemployment Insurance Program.

Co-Chair Baker recognized Representative Benedict who asked for the reasoning behind the policy of continuing to pay benefits to a person when the person declines to return to work at the same job from which he left. Mr. Calkins responded that it is not the policy to continue to pay benefits in this instance and that this would be something that the department would want to investigate. Mr. Calkins stated that if a claimant rejects a job offer for suitable work and has no valid reason for not accepting the offer, then benefits should be terminated. Representative Benedict asked Mr. Calkins to give her a written copy of the policy and he responded that he would provide it to her. There were no further questions on this information.

Memorandum on Issue of Review and Approval (Exhibit I.2)

Co-Chair Baker referred the members to the memorandum (Exhibit I.2) from Matthew Miller, Administrator of the Administrative Rules Review Section, that provides the information requested during the last meeting regarding the issue of review and approval. Co-Chair Baker asked members if there any questions concerning this information.

Co-Chair Baker recognized Senator Key who asked if staff could be recognized to present the memorandum to the committee. Co-Chair Baker recognized Matthew Miller, Administrator of the Administrative Rules Review Section of the Bureau of Legislative Research, to present the information and answer questions. Mr. Miller commented that the memorandum in the members' packets (Exhibit I.2) presents an overview of *Chaffin v. Arkansas Game and Fish Commission*, 296 Ark. 431, 757 S.W.2d 950, which is the only real Arkansas Supreme Court precedent that looks at review as applied to the Legislative Council specifically. There are three main points in *Chaffin*. The first point in *Chaffin* is that when assessing constitutionality, the court looked more at effect than intent in that state agencies viewed passage of a motion for unfavorable advice as an order that prohibited the agency from proceeding. The second point in *Chaffin*, is that the court equated "paralyzing interference", such as actions that intended to inhibit or slow down review, with an outright order not to proceed. The third point in *Chaffin* is that the court recognizes there is a constitutional manner in which to conduct legislative review of agencies and the court did not repudiate the process. Following this explanation, Mr. Miller answered questions from the members.

New Proposals and Resolutions

Interim Resolution 2011-005

Co-Chair Salmon assumed the chairmanship for the consideration of Interim Resolution 2011-005, by Co-Chair Baker, which requests that the Arkansas Legislative Council contact the United States Postmaster General to respectfully request the presence of a representative of the United States

Postal Service to appear at a special meeting of the Legislative Council in order to meet with members of the Arkansas General Assembly to discuss the proposed closures of local post offices within the State of Arkansas and the potential impacts of those closures on communities in the State. Co-Chair Salmon asked if there was a motion to adopt.

Representative Terry Rice moved that Interim Resolution 2011-005 be adopted. The motion received a second and passed by voice vote.

Co-Chair Salmon recognized Representative Lea who asked why a special meeting of the Legislative Council is needed to meet with the U.S. Postal Service representative. Senator Salmon stated that the motion was worded this way in the event that the U.S. postal service representative was not able to attend a regularly scheduled meeting of the Legislative Council. Representative Lea asked for an estimate of what it would cost for a special meeting of the Legislative Council. Staff was asked to provide this to Representative Lea.

Co-Chair Baker recognized Representative Hobbs who asked how many post offices are being closed in Arkansas. Co-Chair Baker responded that was undetermined. Representative Hobbs requested more information, specifically, how many people are served by these post offices and how many are being closed. Co-Chair Baker stated the information would be provided as it is developed.

Co-Chair Baker recognized Senator Chesterfield who asked if the motion was passed to adopt the interim resolution. Senator Chesterfield raised a point of order that the time for discussion has passed because the motion to adopt Interim Resolution 2011-005 has already been passed.

Co-Chair Baker recognized Representative McLean who referred to the meeting of the State Agencies and Governmental Affairs Committee along with the ALC Higher Education Subcommittee in Fayetteville on Saturday, November 5, 2011 and asked if there was a Razorback game after this meeting and whether this practice had been discontinued. Co-Chair Baker asked that Representative McLean to pose his question to the chairmen of those two committees. Co-Chair Baker also commented that we will research this and get back with him.

Adjournment

Co-Chair Baker recognized Representative Rice who moved that the meeting be adjourned. The motion received a second and was passed by voice vote and at 10:50 a.m. the meeting was adjourned.

Respectfully submitted,

ATTEST:

Representative Tommy Lee Baker
Co-Chair, Senate

David Ferguson
Executive Secretary