

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, January 20, 2012

The Arkansas Legislative Council met at 9:00 a.m., Friday, January 20, 2012 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair Mary Anne 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 Mary Anne Salmon referred members to the minutes of the December 16, 2011 meeting of the Legislative Council and asked if there were any questions. There were no questions.

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

December 2011 Revenue Report

Co-Chair Salmon recognized Richard Wilson, Assistant Director for Research Services with the Bureau of Legislative Research, to present the monthly revenue report for December 2011. Mr. Wilson reported that the December 2011 revenue report reflects that after six months of this fiscal year, gross collections are \$ 97.6 million ahead of the same period last year for a growth rate of three point seven percent (3.7%). The adjusted net available for distribution is \$ 77.2 million ahead of the same period last year for a growth rate of three point four percent (3.4%). The graph page indicates that revenue collections are approximately \$42.2 million above the official revenue forecast after six months. The spreadsheet reflects positive numbers in the growth of gross receipts with a four percent (4%) growth rate for December. The weighted average growth rate for income taxes is six point six percent (6.6%). The collections for severance of timber reflects a negative amount. There were no questions for Mr. Wilson.

Report of the Executive Subcommittee

Co-Chair Salmon recognized Co-Chair Tommy Lee Baker to present the report of the Executive Subcommittee of the Legislative Council. Co-Chair Baker reported that the Executive Subcommittee met on Thursday, January 19, 2012 and discussed the handling of information requests by legislators to other agencies during committee meetings.

The subcommittee also passed a motion to recommend to the Legislative Council that since the Legislative Council will not meet in February 2012 due to the convening of the 2012 Fiscal Session,

that the Legislative Council subcommittees are authorized to act on behalf of the Legislative Council prior to the Fiscal Session and that their actions are final, and the subcommittees will report their actions to the Legislative Council during its next meeting following adjournment of the Fiscal Session.

Co-Chair Baker moved that the report of the Executive Subcommittee be adopted. Co-Chair Salmon stated that passing the motion to adopt the report will also adopt the motion by Senator Luker at the Executive Subcommittee meeting that the Legislative Council will not meet during February 2012 and the actions of the subcommittees will be final and reported at the next Legislative Council meeting. There were no questions.

The motion to adopt the report of the Executive Subcommittee received a second and was passed by voice vote.

Reports of Standing Subcommittees

Administrative Rules and Regulations Subcommittee

Co-Chair Salmon 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 January 11, 2012 and reviewed and approved nine (9) rules from different departments and commissions and also referred several rules to the Senate and House Committees on Education for review. Representative Word informed members that the Administrative Rules and Regulations Subcommittee has scheduled a special meeting for January 27, 2012 at 10:00 a.m. in Room 171 of the State Capitol for consideration of education rules. There were no questions for Representative Word.

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

Claims Review Subcommittee

Co-Chair Salmon recognized Representative Randy Stewart to present the report of the Claims Review Subcommittee. Representative Stewart reported that the Claims Review Subcommittee met on January 9, 2012. The subcommittee reviewed one claim that had previously been denied and dismissed and was on appeal. The subcommittee remanded that claim back to the Claims Commission with several stipulations for further evidence and findings. The claim was by *Duit Construction vs. the Arkansas State Highway Department* that had been held over from the previous subcommittee meeting.

The subcommittee also took the following actions: affirmed one reissuance of a warrant; affirmed an award claim that had been appealed by the claimant; affirmed two negotiated settlement agreements, and affirmed three claims that had been denied and dismissed by the Claims Commission. There were no questions for Representative Stewart.

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

Game and Fish/State Police Subcommittee

Co-Chair Salmon recognized Representative Garry Smith to present the report of the Game and Fish/State Police Subcommittee. Representative Smith reported that the Game and Fish/State Police Subcommittee met on January 11, 2012 with officials from the Game and Fish Commission and the Arkansas State Police. The subcommittee heard a presentation on 2012 Turkey Season dates, including reasons why the dates had been changed, from Ricky Chastain, Deputy Director of the Game and Fish Commission. The subcommittee also discussed the health care cost for state employees as compared to the Arkansas State Police health insurance for uniformed employees. There were no questions for Representative Smith.

Representative Smith moved the adoption of the report of the Game and Fish/State Police Subcommittee. The motion received a second and was passed by voice vote.

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 reported that the Performance Evaluation and Expenditure Review (PEER) Subcommittee met on January 11, 2012 and reviewed and approved the 2013-2015 Biennial State Agency Budget Forms that will be used for the fall 2012 budgets hearings. Senator Key stated these forms are attached to the report. All other items were reviewed and none were held. There were no questions for Senator Key.

Senator Key moved that the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee be adopted. The motion received a second from Representative Rice and was passed by voice vote.

Policy-Making Subcommittee

Co-Chair Salmon recognized Senator Jimmy Jeffress to present the report of the Policy-Making Subcommittee. Senator Jeffress reported that the subcommittee met on January 9, 2012 and discussed a request from the Senate Interim Committee on Public Health, Welfare and Labor for an additional allocation of funds in the amount of \$14,000.00 for in-state per diem, mileage, and expenses. The Policy-Making Subcommittee approved the request and there was no further business for the subcommittee. There were no questions for Senator Jeffress.

Senator Jimmy Jeffress moved that the report of the Policy-Making Subcommittee be adopted. The motion received a second from Representative Smith and was passed by voice vote.

Review Subcommittee

Co-Chair Salmon recognized Representative Larry Cowling to present the report of the Review Subcommittee. Representative Cowling reported that the Review Subcommittee met on January 10, 2012 and reviewed various methods of finance including a sidewalk project at the Southern Arkansas University and requests from the University of Arkansas at Little Rock, and the University of Arkansas. The subcommittee reviewed two discretionary grants from the Department of

Human Services and also discussed six discretionary grants from the Arkansas Department of Health and chose to hold one grant for review at the next subcommittee meeting. The grant held over to the next meeting was the Health Department discretionary grant for "The Living & Affected Corporation". The subcommittee reviewed three professional/consultant services contracts, which are attached to the report on pages two through nine. The subcommittee also reviewed one special procurement from the Arkansas Department of Correction on the Agriculture Farm Fertilizer Report.

Representative Cowling moved that the report of the Review Subcommittee be adopted.

Co-Chair Salmon recognized Representative David Meeks who asked for an explanation of the contract in the amount of the \$463,600.00 between the Arkansas Insurance Department and First Data Government Solutions LP (listed as item 6 under out-of-state contracts on pages 4 and 5 of the subcommittee report).

Co-Chair Salmon recognized Kathy Schmidt, subcommittee staff person, who explained that this item was an amendment to an existing contract between the Arkansas Insurance Department and First Data Government Solutions LP, which added \$463,600.00 to the existing contract. Ms. Schmidt stated that representatives of First Data attended the subcommittee meeting and testified that they would not move forward unless the money was made available to them. Ms. Schmidt stated the amendment is one hundred percent federally funded. In responding to additional questions, Ms. Schmidt stated this contract was for the Arkansas portion to link with the federal exchange.

Representative Meeks asked if this contract could be pulled out and Co-Chair Salmon asked if he would like to hear from representatives of the Insurance Department on this matter. Representative Cowling commented that this contract was thoroughly discussed during the Review Subcommittee. Representative Meeks responded that he understood that, but that he was unaware the contract would be discussed and he feels it is important to have the information publicized. Co-Chair Salmon stated that Representative Meeks could make a substitute motion.

Representative Meeks moved that the contract in the amount of the \$463,600.00 between the Arkansas Insurance Department and First Data Government Solutions LP (listed as item 6 under out-of-state contracts on pages 4 and 5 of the subcommittee report) be pulled out of the Review Subcommittee Report. The motion received a second from Representative Garry Smith.

A point of order was raised regarding whether Representative Meeks was a member of the Legislative Council and he responded that he was a member as he is the alternate for Representative Ann Clemmer who is not in attendance today.

Co-Chair Salmon called for the vote on the motion to remove the contract from the Review Subcommittee report . A question was raised of whether the motion was debatable and Co-Chair Salmon responded that it was.

Co-Chair Salmon recognized Senator Chesterfield who asked for an explanation of the reason for pulling the contract from review, how long the contract had been in place, and is it a new contract. Co-Chair Salmon recognized Jay Bradford, the Arkansas Insurance Commissioner, to respond to the members' questions regarding the contract. Commissioner Bradford introduced Cindy Crone, the

Planning Director for the Arkansas Health Benefits Exchange Division. Mr. Bradford and Ms. Crone responded to several questions from the members.

Senator Malone raised a point of order that the discussion was out of order as it did not relate to the motion before the committee. After brief discussion, Senator Malone was recognized and asked for the call of the question. **Co-Chair Salmon asked for a vote on the question and it was passed by voice vote.**

Co-Chair Salmon asked for a vote on the motion to remove the he contract in the amount of the \$463,600.00 between the Arkansas Insurance Department and First Data Government Solutions LP from the report of the Review Subcommittee. The motion failed by voice vote.

At this point, three members requested a roll call vote on the motion. Co-Chair Salmon stated that the motion would be put to a roll call vote and stated that alternate members may not vote if the member for whom they are an alternate is in attendance and that members needed to be in their seats.

Representative Cowling was recognized for a point of order and noted that Representative Clemmer is in attendance and asked if it would be Representative Clemmer or Representative Meeks, her alternate, who would vote on the roll call motion. Co-Chair Salmon stated that Representative Meeks is representing Representative Clemmer today and that therefore Representative Clemmer would not vote today. Co-Chair Salmon asked for the roll call vote to commence.

The motion to remove the contract in the amount of the \$463,600.00 between the Arkansas Insurance Department and First Data Government Solutions LP from the report of the Review Subcommittee failed to pass by roll call vote.

Co-Chair Salmon called for the vote on the motion to adopt the report of the Review Subcommittee and the motion passed by voice vote.

Senator Chesterfield was recognized for a point of inquiry and asked if the maker of the motion voted on the motion and asked how many abstentions were counted. Co-Chair Baker stated there were none.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Salmon recognized Senator Mike Fletcher to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee. Senator Fletcher reported that the Uniform Personnel Classification and Compensation Plan Subcommittee met on December 20, 2011 and also on January 18, 2012. Senator Fletcher reported that on December 20, 2011, the subcommittee met in a special meeting to further review and discuss the reduction in force at the Arkansas Forestry Commission, but took no action. Senator Fletcher reported that on January 18, 2012, the subcommittee reviewed the following personnel-related items and respectfully requests that they be filed with the Legislative Council: monthly and quarterly reports for approved special entry rates, grid movements, and positions created based by established special language for the Department of Education, the Public Service Commission, the Department of Finance and Administration, and the Department of Veterans Affairs; monthly reports for provisional positions of institutions of higher education; a report from the chief financial officer detailing the approved special entry rates and labor

market rates from the previous month; a request from the Public Service Commission to hire a pipeline safety specialist using the exceptionally-well qualified applicant special entry rate of \$55,000 based on the applicants qualifications for the position; and requests for two miscellaneous federal grant position titles for the Administrative Office of the Courts and the Arkansas Department of Health. There were no questions for Senator Fletcher.

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

Reports of Interim or Special Committees

Substance Abuse Prevention Task Force

Co-Chair Salmon referred members to the Annual Report of the Substance Abuse Prevention Task Force (Exhibit G.1) and recognized Senator Mike Fletcher to present the report. Senator Fletcher reported that the Substance Abuse Prevention Task Force wished to bring to the attention of the Legislative Council that Act 304 of 2011 (SB 345 of 2011) authorized the State Board of Health to establish the Prescription Drug Monitoring Program, to create a controlled substance database, and to create the Prescription Drug Monitoring Program Advisory Committee. The Arkansas Department of Health received a federal grant to develop the Prescription Drug Monitoring Program, which should be online by March 1, 2012. Senator Fletcher offered to answer questions.

Co-Chair Salmon recognized Senator Malone who asked if the program would be networked with other states. Senator Fletcher responded that he believed this was a goal, but he was unsure whether the program has that capability. There were no other questions.

Arkansas Lottery Commission Legislative Oversight Committee

Co-Chair Salmon recognized Senator Johnny Key to present the report of the Arkansas Lottery Commission Legislative Oversight Committee. Senator Key reported that the Arkansas Lottery Commission Legislative Oversight Committee met on December 6, 2011 and heard a preliminary report from Julie Baldrige, Interim Director, and a forecast of the net proceeds for fiscal year 2012 is approximately \$89 million dollars, which is about \$5 million below the previous years' net proceeds. Ms. Baldrige indicated the forecast could be revised upward if the Lottery Commission experiences an increase in the third quarter sales similar to what occurred in the third quarter of the previous fiscal year.

The committee also heard a Preliminary Student Data report of the students receiving Academic Challenge scholarships from Shane Broadway, the Interim Director of the Arkansas Department of Higher Education. Mr. Broadway also presented the committee with minor revisions to the Academic Challenge Scholarship rules that established a priority for children of military personnel killed in action, which were promulgated in compliance with Act 825 of 2011. Senator Key also stated that he wished to bring to the attention of the membership information that is not included in the report, which is that no changes in the scholarship amounts for the next year have been recommended and no

legislation on lottery scholarships will be introduced in the 2012 fiscal session. The scholarship amounts will remain at \$4,500.00 and \$2,250.00.

Co-Chair Salmon recognized Representative Hobbs who asked how many scholarships had been awarded and how many applications for scholarships were received, but not awarded due to lack of funds. Senator Key asked that Shane Broadway, Interim Director of the Department of Higher Education be recognized to respond.

Co-Chair Salmon recognized Mr. Broadway and he responded that the only applications not funded for the current academic year were from non-traditional students and that 31,000 applications were funded that included all applications from traditional students and renewals. Mr. Broadway stated there is a cap of \$12 million in the legislation and there are 5,780 applications from non-traditional students that are on a waiting list. There were no other questions.

Annual Report of the Racial Profiling Task Force

Co-Chair Salmon recognized Jack Lassiter, Chair of the Arkansas Racial Profiling Task Force, to present the Annual Report of the Arkansas Racial Profiling Task Force. Mr. Lassiter reported the Arkansas Racial Profiling Task Force was charged with several matters, of which one was to ensure that law enforcement complied with earlier legislation to create policies and procedures to address racial profiling complaints, to make sure that all law enforcement officers received training, and to ensure that the Arkansas Law Enforcement Training Academy (ALET) was conducting appropriate training. All law enforcement agencies were directed to supply their policies and procedures to the Division of Legislative Audit and the task force received reports from the Division of Legislative Audit on the compliance by the various law enforcement agencies.

Mr. Lassiter reported that the Arkansas Racial Profiling Task Force was also directed to address the feasibility of creating a racial profiling database and he viewed this as the most difficult goal to accomplish. Mr. Lassiter reported that the Arkansas State Police is developing an e-citation system that will be very effective toward creating a database. The e-citation system would provide violator statistics and also the GPS coordinates of the location of the stops. Mr. Lassiter will be meeting today with representatives of the Alabama program on which the Arkansas program is modeled. Mr. Lassiter answered several questions from the members.

Community Services Oversight and Planning Council

Co-Chair Salmon recognized Representative James Word to present the report of the Community Services Oversight and Planning Council. Representative Word reported that the Community Services Oversight and Planning Council met on January 11, 2012 and reviewed some rules pertaining to the Medicaid Program.

The council also discussed the following other items presented to the council by John Selig, Director of the Department of Human Services: a status report on intermediate care facilities for individuals with developmental disabilities provider fee collections and expenditures, and the new program that will take effect in phases with the new Medicaid Oversight Committee to review programs that consider bundling as part of services. The new director of the DHS Office of Medical Services, Dr.

Andrew Allison, was in attendance at the meeting to respond to questions and Dr. Allison will provide additional information to the council at the next council meeting. There were no questions for Representative Word.

Review of Communications

Co-Chair Salmon referred members to the communications (Exhibits H.1 through H.17) in their packets and asked if any member had a question about any of the communications.

Arkansas Board of Parole Monthly Performance Report

Co-Chair Salmon recognized Senator Percy Malone for a question on the Arkansas Board of Parole Monthly Performance Report (Exhibit H.1). Senator Malone asked if he may direct a question to someone from Arkansas Board of Parole.

Co-Chair Salmon recognized John Felts, Chairman of the Arkansas Board of Parole, and Solomon Graves, the Administrative Services Manager for the Arkansas Board of Parole. Senator Malone explained he was contacted by a constituent who was one of the victims of a sex offender who was charged with fifty-four counts of sexual abuse and was sentenced to twenty years in prison with ten years suspended and who became eligible for parole within eighteen months. Senator Malone asked if his understanding was correct that, because this offender had met the requirements for parole, the Arkansas Board of Parole did not have authority to deny the offender parole, but could refer the offender for counseling or other treatment services.

Mr. Felts responded that it is correct. He stated that there are certain crimes that fall under the category of discretionary crimes where the Board of Parole has discretion by statute to deny parole, but that the particular sex offense in this case was not among discretionary crimes. Mr. Felts commented that the Board of Parole would work with the General Assembly in the next regular session to be given the authority to deny parole of any individual convicted of a targeted sex offense that requires the individual to register as a sex offender. Senator Malone stated he would like to help with the drafting of legislation that would remedy this situation.

Senator Salmon asked if the individual in question would be required to register as a sex offender and Mr. Felts responded that he is registered a level three sex offender. Co-Chair Salmon recognized Representative Hobbs who asked what is the success rate of the Reduction in Victim Sexualization Program (RSVP) or other programs that offer services to sex offenders. Mr. Felts responded that he was not a representative of RSVP, but the success rate is pretty good. Mr. Felts stated he would provide Representative Hobbs with the statistics on the success rate for the program.

Arkansas Development Finance Authority

Co-Chair Salmon referred the committee to Program Fact Sheets submitted by the Arkansas Development Finance Authority and stated these would require action by the Legislative Council. Co-Chair Salmon recognized Leigh Ann Biernat, the Vice President of Finance & Administration with the Arkansas Development Finance Authority, to explain the program fact sheets.

Ms. Biernat explained that the Arkansas Development Finance Authority(ADFA) is required to submit a program fact sheet to the Legislative Council whenever bonds are issued and there are two bond issues before the Legislative Council today. Program Fact Sheet 2012-001 [Exhibit H.3a(1)] is a \$57 million bond issue for revolving loan funds for Clean Water and Drinking Water Programs that are administered in conjunction with the Arkansas Natural Resources Commission. The all in, overall bond yield for this transaction was two point eight percent (2.8%). Program Fact Sheet 2012-002 [Exhibit H.3a(2)] is for the ADFA first-time home buyer program for single-family borrowers that provided \$40 million in funds for first-time loans. The overall bond yield for this transaction was two point eight six percent (2.86%). When all the yields for all the loans are blended together, \$15 million were provided in a three point two five percent (3.25%) mortgage rate. There were no questions for Ms. Biernat.

Representative Garry Smith moved that Program Fact Sheet 2012-001 and Program Fact Sheet 2012-002 be filed as reviewed. The motion received a second from Senator Burnet and passed by voice vote.

Department of Rural Services

Co-Chair Salmon recognized Butch Calhoun, Director of the Department of Rural Services, to present the Department of Rural Services' request for Legislative Council's approval of funding for rural community development grants and funding for rural community fire protection grant programs, submitted pursuant to Section 12 of Act 641 of 2011. Mr. Calhoun explained that three times a year, the Department of Rural Development submits for the approval of the Legislative Council grant disbursements for Rural Community Grant Program (RCGP). During this cycle, the department received grant requests totaling approximately \$228,000.00, and the department is requesting approval to fund grant requests totaling about \$175,000.00. The department will have one more grant cycle this fiscal year and the requests that did not receive funding in this cycle will have priority in the next cycle. There were no questions for Mr. Calhoun.

Representative Garry Smith moved that the Legislative Council approve the distribution of funding for rural community development grants and rural community fire protection grants as presented. The motion received a second and was passed by voice vote.

There were no questions regarding the other items listed under "H. Review of Communications" and these were filed without objection.

Business Carried Over From Previous Meetings

Response from the U.S. Postal Service

Co-Chair Salmon referred the committee members to the response from the U.S. Postal Services (Exhibit I.1) to questions raised by Legislative Council members during the December 16, 2011 Legislative Council meeting and asked if any member had additional questions.

New Business

Co-Chair Salmon asked if there was any new business to come before the Legislative Council and there was none.

Adjournment

At 10:30 a.m., the meeting was adjourned upon the passage of the motion to adjourn.

Respectfully submitted,

ATTEST:

Senator Mary Anne Salmon
Co-Chair, Senate

David Ferguson
Executive Secretary