

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, October 16, 2009

The Arkansas Legislative Council met at 9:00 a.m., Friday, October 16, 2009 in Room 171 of the State Capitol, Little Rock, Arkansas. Co-Chair Wilkins called the meeting to order and dispensed with the calling of the roll. The members who attended are listed on the sign-in sheets.

Adoption of Minutes of the Last Meeting

Representative Cook made a motion to approve the minutes of the September 18, 2009 Legislative Council meeting. The motion received a second and the motion passed without objection.

Monthly Revenue Report

September 2009 Revenue Report

Co-Chair Wilkins recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for September 2009. Mr. Wilson reported that for the first three months of fiscal year 2010, gross collections were \$109 million less than the previous year for a growth rate of negative seven point nine percent (-7.9 %). The adjusted net available for distribution is \$39.7 million dollars less than previous year, for a negative growth rate of three point three percent (-3.3%), even after the transfer of \$61 million from allotment reserve. The graph reflects that net general revenues are \$89 million below the official forecast.

The first page of the spreadsheet lists the major components of gross receipts and reflects that gross receipts are at negative eleven percent (-11%). The weighted average for income tax collections is negative eight point three percent (-8.3%) and after two months that number was negative zero point three (-0.3), which indicates that income tax collections were greatly reduced in the month of September. The figures for corporate and individual income tax are easy to explain, but the negative nine point one percent (-9.1%) in withholding for the month of September is statistically an outlier, which means it is difficult to imagine the figure being that low for that month.

Mr. Wilson responded to many questions from Legislative Council members. Mr. Richard Weiss, Director of the Department of Finance and Administration, was asked to come to the podium and he also responded to questions from Legislative Council members. The information provided in response to questions concerned possible cuts in the state budget, the process under

the revenue stabilization law, the impact on the state budget of federal stimulus money (The American Recovery and Reinvestment Act of 2009), the impact on the state budget of the taxation of lottery winnings, and explanations of data contained in the revenue report.

Co-Chair Wilkins recognized Senator Terry Smith who suggested that a special meeting be scheduled for the purpose of providing an in-depth study of the revenue report and how the budget process works for any member of the General Assembly with an interest in this information. Co-Chair Wilkins responded that a meeting on this subject would be appropriate and that the chair would entertain a motion to that point in a later meeting.

Reports of Standing Committees

Administrative Rules and Regulations Subcommittee

Co-Chair Wilkins recognized Senator Malone to present the report of the Administrative Rules and Regulations Subcommittee. Senator Malone reported that the subcommittee met on October 14, 2009 and the subcommittee asked the staff to draft a letter to the state agencies requesting rules be submitted to the Administrative Rules and Regulations Subcommittee prior to being implemented.

Senator Malone asked members of the General Assembly to be aware of this situation and suggested that perhaps a study of the process for reviewing rules and regulations should be conducted sometime in the next several months to determine the role of the General Assembly in the process and to make sure the legislature has some input before a rule is put in place.

Co-Chair Wilkins recognized Representative Mike Burris who commented that he is the co-chair of the Administrative Rules and Regulations Subcommittee and that he feels the subcommittee is the last opportunity for the public to have comment on rules. Representative Burris asked that serious consideration be given to the role of the General Assembly as representatives of the people in this process.

Co-Chair Wilkins recognized Representative Reep who commented that the same situation is occurring in other subcommittees and that agencies have requested expedited approval of contracts citing the need to avoid a violation of federal law. Representative Reep commented that timing is becoming an issue and he feels this should be reviewed as well.

Co-Chair Wilkins recognized Senator Jimmy Jeffress who commented that this issue is appearing in other subcommittees and noted that agencies have brought contracts before the Review Subcommittee citing that the contract must be reviewed now because next month is too late. He feels that something should be done to improve the process.

Co-Chair Wilkins commented that many members know that sometimes it really is a matter of poor planning that becomes an emergency for a subcommittee and that the issues need to be worked out.

Senator Malone moved the adoption of the report of the Administrative Rules and Regulations Subcommittee and the motion passed by voice vote.

Claims Review Subcommittee

Co-Chair Wilkins recognized Representative Flowers to present the report of the Claims Review Subcommittee. Representative Flowers reported that the Claims Review Subcommittee met on October 12, 2009 and referred members to the report for details of the subcommittee actions. Representative Flowers answered questions from the members.

Co-Chair Wilkins recognized Senator Pritchard who informed the members that the claim for Bradley Clevenger, a fireman, that the subcommittee referred back to the Claims Commission will be heard again by the Claims Commission on November 13, 2009 and the results of the hearing will be reported at the next subcommittee meeting.

Representative Flowers moved the adoption of the report of the Claims Review Subcommittee and the motion passed by voice vote.

Game and Fish/State Police Subcommittee

Co-Chair Wilkins recognized Representative Davenport to present the report of the Game and Fish/State Police Subcommittee. Representative Davenport reported that the Game and Fish/State Police Subcommittee met on September 18, 2009 and met with the Game and Fish Commission and Congressman Mike Ross at the Rick Evans Grandview Prairie Conservation Education Center in Columbus, Arkansas. The subcommittee heard a presentation on the implementation of the Telecheck System, which replaces past game check methods for deer and turkey harvests. The Game and Fish Commission will be the first state conservation agency in the nation to release a free iPhone application that allows users to check and search hunting and fishing information. There were no questions regarding this report.

Representative Davenport moved the adoption of the report of the Game and Fish/State Police Subcommittee and the motion passed by voice vote.

Higher Education Subcommittee

Co-Chair Wilkins recognized Representative Roebuck to present the report of the Higher Education Subcommittee. Representative Roebuck reported that the subcommittee held a special meeting on October 2, 2009 and held the subcommittee's regular meeting on October 15, 2009. The subcommittee met on October 2 at the Arkansas Association of Public Universities Conference and answered questions from the members of the association. The subcommittee met on October 15, 2009 and heard a report from Dr. Jim Purcell, Director of the Department of Higher Education, on the five issues listed in the subcommittee's report.

Co-Chair Wilkins recognized Representative Flowers who asked if the Higher Education Subcommittee had looked at whether an act passed in the 2007 legislative session that required the compilation of a list showing scholarships available to high school seniors and the financial resources available for higher education and vocational training had been implemented. Representative Roebuck responded that the subcommittee will take this under consideration and will also make sure this is included in the annual report required from the Department of Higher Education and will provide Representative Flowers with the information.

Co-Chair Wilkins suggested that Representative Flowers contact the Department of Higher Education to resolve the issue and, if the Department's response is not adequate, to bring that to the attention of the chairmen of the Legislative Council.

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

Litigation Reports Oversight Subcommittee

Co-Chair Wilkins recognized Senator Luker to present the report of the Litigation Reports Oversight Subcommittee. Senator Luker reported that the subcommittee met on October 13, 2009 and reviewed thirty-three (33) closed cases and reviewed forty-six (46) new cases of which six (6) cases were selected for monitoring. The subcommittee also reviewed ten (10) cases of litigation involving the Department of Finance and Administration.

Senator Luker noted that the subcommittee reviewed and recommends approval of two settlement agreements that will require action by the Legislative Council. Senator Luker provided a summary of each case. The first settlement agreement is in the case of Lewis v. Norris, involving allegations of inadequate supervision of an inmate who hung himself while being transferred from the Department of Community Correction to the Arkansas Department of Correction's Diagnostic Unit for evaluation. The Department of Correction's view is that a settlement agreement in the amount of \$200,000 is in the best interests of the department and the state.

The second settlement agreement is in the case of Powell v. North Arkansas College, involving a wrongful termination lawsuit that went to trial and resulted in a verdict against the college in the amount of \$195,000. The issue of front pay, attorneys' fees, and all other claims would be resolved with the settlement agreement in the amount of \$275,000.

Senator Luker answered questions from the Legislative Council members.

Senator Luker moved that the report of the Litigation Reports Oversight Subcommittee be adopted and the motion passed by voice vote.

Senator Luker moved that the settlement agreement in Lewis v. Norris be approved and the motion passed by voice vote.

Senator Luker moved that the settlement agreement in Powell v. North Arkansas College be approved and the motion passed by voice vote.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Wilkins recognized Representative Dismang to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Representative Dismang reported that the PEER Subcommittee met on October 1, 2009 and reviewed and approved all items on the agenda. Representative Dismang reported that Item C-5, the Arkansas Economic Development Commission's appliance rebate program, was reviewed with the condition that regulations would be developed and submitted to the Legislative Council at this meeting.

Representative Dismang requested permission to hand out these documents to the Legislative Council members and members were provided additional information (see Exhibit F-12) concerning the Arkansas ENERGY STAR Appliance Rebate Plan, which provides rebates to residential customers for the replacement of older appliances (refrigerators, clothes washers, and hot water heaters) with more energy efficient models.

Representative Dismang commented that members should be aware that appropriations for the stimulus money are being approved before budgets are developed and this makes public the amount of appropriations for stimulus money projects, which has lead to reverse bidding. Representative Dismang does not believe that is a prudent way to use taxpayer dollars and this was addressed in the appliance rebate program. Representative Dismang reported that Arkansas Economic Development Commission listened to the subcommittee concerns and reduced the administrative budget in this project from \$500,000 to \$175,000, which resulted in approximately 2,100 additional rebates for the program. He commended the Arkansas Economic Development Commission and asked that members look at this issue in future appropriations for stimulus money.

Co-Chair Wilkins recognized Representative Rice who thanked Representative Dismang for his diligence and encouraged members to review the requests for appropriation of stimulus money to ensure the budgets are appropriate.

Representative Dismang moved the adoption of the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee and the motion passed by voice vote.

Co-Chair Wilkins recognized Senator Glover who asked that Legislative Council members be provided with a report regarding the stimulus money received by the State of Arkansas under the American Recovery and Reinvestment Act of 2009, which would specify how the money has been re-appropriated, the different projects receiving stimulus money, and whether or not the stimulus money has been designated for specific purposes. Co-Chair Wilkins responded that we will ask our staff to have the information for our next meeting.

Review Subcommittee

Co-Chair Wilkins recognized Representative Reep to present the Review Subcommittee report. Representative Reep reported that the Review Subcommittee met on October 7, 2009 and reviewed a number of contracts and projects, methods of finance, construction projects exceeding \$5 million, discretionary grants, one tower lease agreement, and several technical services contracts. Representative Reep noted that the subcommittee discussed extensively a number of contracts from the Department of Education for the scholastic audit program and chose to refer these contracts to the Education Committees for further review because of concerns regarding the contracts. There were no questions regarding this report.

Representative Reep moved the adoption of the report of the Review Subcommittee and the motion passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Wilkins recognized Representative Wells to present the report of the Uniform Personnel Classification and Compensation Plan Subcommittee. Representative Wells reported

that the subcommittee met on October 15, 2009 and reviewed and approved the following: a position request for institutions of higher education; three labor market special entry rates; two requests for OPM pool positions; one request for pay plan correction pool position; one growth pool position request; one request for a position from the Institution of Higher Learning Growth Pool; two salary administration grid requests; and two requests for miscellaneous federal grant programs. There were no questions concerning this report.

Representative Wells moved the adoption of the report of the Uniform Personnel Classification and Compensation Plan Subcommittee and the motion passed by voice vote.

Co-Chair Wilkins recognized Senator Glover who informed members that the Charitable, Penal, and Correctional Institutions Subcommittee cancelled a meeting this month because persons invited to address the subcommittee could not be present. He further commented that an interim study proposal was on the agenda for consideration by the Legislative Council that would assist the subcommittee in gathering information from other states.

Review of Communications

Co-Chair Wilkins referred members to the communications in their packets and informed them that consideration of the Annual Report Assessing the Educational Progress of Students in School Districts Administratively Consolidated (Exhibit H.7) would be postponed to the next meeting at the request of the Department of Education.

Department of Rural Services' Request

Co-Chair Wilkins referred members to the Department of Rural Services' request (Exhibit H-1) for the Legislative Council's approval of funding for Cycle I of fiscal year 2010 rural community grants, rural fire protection grants, and county fair building grant programs, submitted pursuant to Section 5 of Act 16 of 2009.

Co-Chair Wilkins recognized Butch Calhoun, Director of the Department of Rural Services, to explain the request. Mr. Calhoun explained that this is the Department of Rural Services request for approval of funding for grants. The Department of Rural Services was able to fund all of the county fair requests, all of the RCGP requests were funded except one, but that county had one request that was funded. There were no questions regarding this request.

Senator Steele moved that the Legislative Council approve the Department of Rural Services Cycle I of fiscal year 2010 funding for rural community grants, rural fire protection grants, and county fair building grant programs. The motion was seconded by Senator Glover and passed by a voice vote.

Arkansas Student Loan Authority's Request

Co-Chair Wilkins referred members to the Arkansas Student Loan Authority's request for the Legislative Council's advice concerning the 2009 Plan of Restructuring (Exhibit H-2), submitted pursuant to A.C.A. § 6-81-108. Co-Chair Wilkins recognized Tony Williams, Director of the Arkansas Student Loan Authority, and Jack Williams, the Bond Counsel for the Student Loan Authority with the Williams & Anderson PLC, to come forward to explain the request.

Mr. Tony Williams stated he was here with Mark Conine, the CFO of the Arkansas Student Loan Authority, and explained that they were before the Legislative Council to seek favorable advice concerning restructuring of the Authority's auction rate bonds. Mr. Williams explained that over the last twenty years auction rate bonds were used to fund loan programs, but the market had collapsed and is not expected to be resurrected. The bonds need to be restructured into a viable bond market and they are not asking to increase the debt. The current auction rate bonds would be moved into variable rate demand bonds and into a federal conduit created for situations like this where student loan organizations do not have liquidity for their bonds. The bonds will be triple-A rated bonds and the request has been reviewed and approved by the State Board of Finance. Mr. Tony Williams and Mr. Jack Williams responded to questions from the Legislative Council members.

Senator Glover moved that the Legislative Council has favorably reviewed the Arkansas Student Loan Authority's 2009 Plan of Restructuring and the motion was passed by a voice vote.

There were no questions regarding the remaining communications (Exhibits H.3 through H.13) and these communications were filed without objection.

New Proposals and Resolutions

Co-Chair Wilkins referred members to the interim study proposals in their packets and asked if there were questions. There were no questions regarding the interim study proposals.

Senator Glover moved that all the interim study proposals before the Legislative Council be referred to the appropriate interim committee and the motion passed by voice vote.

The Legislative Council referred the interim study proposals to the interim committee as indicated in the following list:

1. Interim Study Proposal 2009-189 by Senator Jimmy Jeffress and Senator Gilbert Baker, referred to the Senate Interim Committee on Judiciary and the House Interim Committee on Judiciary;
2. Interim Study Proposal 2009-190 by Representative Steve Cole, referred to the Administrative Rules and Regulations Subcommittee of the Legislative Council;
3. Interim Study Proposal 2009-192 by Representative Kerr, referred to the Joint Interim Committee on Public Retirement and Social Security Programs;
4. Interim Study Proposal 2009-193 by Representative Kerr, referred to the Joint Interim Committee on Public Retirement and Social Security Programs;
5. Interim Study Proposal 2009-194 by Representative Kerr, referred to the Joint Interim Committee on Public Retirement and Social Security Programs;
6. Interim Study Proposal 2009-195 by Representative Kerr, referred to the Joint Interim Committee on Public Retirement and Social Security Programs;

7. Interim Study Proposal 2009-196 by Representative Kerr, referred to the Joint Interim Committee on Public Retirement and Social Security Programs; and
8. Interim Study Proposal 2009-197 by Senator Glover, referred to Charitable, Penal, and Correctional Institutions Subcommittee of the Legislative Council.

Adjournment

There being no further business to come before the committee the meeting was adjourned at 11:40 a.m.

Respectfully submitted,

ATTEST:

Senator Henry "Hank" Wilkins, IV
Co-Chair, Senate

David Ferguson
Executive Secretary