

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, September 17, 2010

The Arkansas Legislative Council met at 9:00 a.m., Friday, September 17, 2010 in Room 171 of the State Capitol, Little Rock, Arkansas. Vice Chair Steve Faris chaired the meeting in the absence of Co-Chair Wilkins and Representative Gregg Reep served as co-chair for this meeting in the absence of Co-Chair Maxwell. Vice Chair Faris 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

Vice Chair Faris referred members to the minutes of the August 20, 2010 meeting of the Legislative Council and the minutes were approved without objection.

Introduction of Senator-Elect Mike Fletcher

Vice Chair Faris introduced Senator-Elect Mike Fletcher, from District 27. Mr. Fletcher is currently Captain Fletcher of the State Police and is the longest serving state police officer in the history of Arkansas. Vice Chair Faris welcomed Senator-Elect Fletcher to the General Assembly and thanked him for his work with the State Police.

Revenue Reports

August 2010 Revenue Report

Vice Chair Faris recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for August 2010. Mr. Wilson reported that the August 2010 revenue report reflects gross collections were \$ 48.1 million greater than same period last year for a growth rate of five point nine percent (5.9%). The adjusted net available for distribution is \$10.2 million less than the previous year because there was \$61 million transfer in the first month of the previous year. The net available grew at seven point four percent (7.4%), but the adjusted amount is negative one point three percent (-1.3%).

Mr. Wilson reported the graph page indicates that revenue was \$32.7 million ahead of the official forecast. The spreadsheet indicates the gross receipts grew at nine point one percent (9.1%) and income tax collections grew at six point four percent (6.4%). There were no questions concerning the August 2010 revenue report.

Annual Revenue Report for Fiscal Year 2009-2010

Vice Chair Faris recognized Mr. Wilson to present the annual revenue report for fiscal year 2009-2010. Mr. Wilson reported that the first page of the annual revenue report reflects gross revenues for the last ten years and shows that year 2010 was a negative \$161 million, which is the first time there were two back-to-back years of negative growth. Also on the first page is a comparison of the percentages of gross income tax collections compared to the percentages of gross general revenue sales and use tax collections. The comparison shows that gross income tax collections have been negative for two years and the gross sales and use tax collections have been negative for the last three years. Pages 2 through 5 reflect gross collections of all general and special revenue with total gross revenues shown at the bottom of page 4 and the adjusted net available for distribution shown on page 5. Adjusted net general revenues were \$4.3 billion, adjusted net special revenues were \$1.6 billion for a total adjusted revenue of \$5.9 billion.

The distribution of all general and special revenue to the state agencies is shown on pages six through eight of the report. The total shown on page 8 should be the same total as shown on page 5; however, there is a forty-one cent difference. The staff has contacted the State Treasurer's Office and the State Treasurer's Office confirmed that both numbers are correct and that forty-one cents (\$0.41) has been lost. Pages nine through eleven reflect the current general revenue distribution compared with the previous year. The far right column reflects the gains and losses over the past year. On page 12, the current year distribution to the Educational Excellence Trust Fund is compared with the previous year's distribution, which reflects a one point forty-five percent (1.45%) decrease across the board. Mr. Wilson answered questions regarding this report.

Reports of Standing Subcommittees**Administrative Rules and Regulations Subcommittee**

Vice Chair Faris recognized Representative Mike Burris to present the report of the Administrative Rules and Regulations Subcommittee. Representative Burris reported that the subcommittee met on September 15, 2010 and referred members to the report in their packets for details. There were no questions regarding the report.

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

Charitable, Penal & Correctional Institutions Subcommittee

Vice Chair Faris recognized Senator Glover who reported that the Charitable, Penal and Correctional Institutions Subcommittee met on September 15, 2010 at the Aaron Hawkins correctional facility in Wrightsville for continued discussion with correction officials of Interim Study Proposal 2009-197 regarding stabilization of the increasing inmate population and efforts to curb growth. The subcommittee also heard a presentation from Wendy Kelley, Deputy Director of Health and Correctional Programs, on the treatment services for substance abuse and sex offenders. Dr. Charles Allen, the CAO of the Corrections School System, reported on education programs available to inmates. The subcommittee also heard a presentation from Mike Richards, with

InnerChange Freedom Initiative regarding the training programs offered by the program and heard video and personal testimony from an inmate. The meeting concluded with a tour of the boot camp and the women's facility. There were no questions regarding this report.

Senator Glover moved the adoption of the report of the Charitable, Penal and Correctional Institutions Subcommittee and the motion passed without objection.

Litigation Reports Oversight Subcommittee

Vice Chair Faris recognized Representative Rice to present the report of the Litigation Reports Oversight Subcommittee. Representative Rice reported that the subcommittee met on September 15, 2010 and referred members to the report in their packets and noted that the subcommittee had reviewed and approved the settlement agreement in Tyson Foods, Inc. v. Weiss. There were no questions regarding this report.

Representative Rice moved the adoption of the report of the Litigation Reports Oversight Subcommittee and the motion passed without objection.

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Vice Chair Faris recognized Senator Bryles to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Senator Bryles reported that the PEER Subcommittee met September 2, 2010 and approved all items on the agenda with the exception of a request from the Board of Nursing for a legal support specialist position that was held for more information. There were no questions concerning this report.

Senator Bryles moved the adoption of the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee and the motion passed without objection.

Review Subcommittee

Vice Chair Faris recognized Senator Horn to present the Review Subcommittee report. Senator Horn reported that the Review Subcommittee met September 1, 2010 and reviewed all items on the agenda and no items were held. There were no questions regarding this report.

Senator Horn moved the adoption of the report of the Review Subcommittee and the motion passed without objection.

Senator Horn moved that the rules be suspended for the purpose of considering a professional services contract for an expert witness submitted by the Department of Finance and Administration and the motion passed by voice vote.

Vice Chair Faris recognized Richard Weiss, Director of the Department of Finance and Administration. Mr. Weiss informed the members that an issue came up after the subcommittee met when the Department was notified on August 1 that the opposing side would bring an expert witness for a case due for trial on October 19, 2010. Mr. Weiss explained that this necessitated the

hiring of an expert witness, David N. Kobernuss, for the Department of Finance and Administration in the case of Nucor v. Weiss. Mr. Weiss answered questions from the members. Martha Hunt, Chief Counsel for the Revenue Division was recognized and explained the issue in the lawsuit and answered questions. In response to a question, Ms. Hunt noted that there is an error in the rule summary attached to the report and that the word “chemicals” should be replaced with “machinery and equipment”.

Senator Horn moved that the contract to hire David N. Kobernuss as an expert witness for the Department of Finance and Administration stand reviewed and the motion passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Vice Chair Faris presented the Uniform Personnel Classification and Compensation Plan Subcommittee report for the September 16, 2010 meeting. Vice Chair Faris reported that the subcommittee heard three routine reports, one from the Department of Education, one from two institutions of higher education on provisional positions; one a quarterly report from the University of Arkansas on clinical expansions; reviewed requests for OPM pool positions from the Department of Human Services; reviewed three requests for new classified titles from the Arkansas Disability Determination for Social Security Administration; two requests for labor market classifications for a medical consultant and a medical specialist; miscellaneous grant program approval; a request for supplemental personal services position; and a new salary grid for new court reporters and trial court administrative assistants. There were no questions regarding this report.

Vice Chair Faris moved the adoption of the Uniform Personnel Classification and Compensation Plan Subcommittee report and the motion passed without objection.

New Business

Vice Chair Faris stated that an item under new business would be considered out of sequence. He noted that there were a lot questions from members regarding Act 1242 of 2009, which brought the State Police Retirement System under the umbrella of the Arkansas Public Employees Retirement System.

Senator Faris recognized Gail Stone, Executive Director of the Arkansas Public Employees Retirement System to present a performance report. Ms. Stone presented an oral report and a PowerPoint presentation (see Exhibit J) and provided the following information:

- Act 1242 of 2009 had the effect of putting the assets of the Arkansas State Police alongside the assets of the Arkansas Public Employees Retirement System to co-invest.
- In 1991, legislation was passed to provide automatic survivor’s benefits to retired state troopers, which was actuarially very expensive and it cost the retirement system approximately \$1 million a year. This legislation along with the automatic

three percent COLA that was passed the same year definitely put the retirement system in harm's way.

- In 1997, the General Assembly created a Tier II for state troopers. The construction of that benefit program was designed to conform to the twenty-two percent (22%) statutory employer contribution rate and the program has been successful in this goal to this date. The program's normal cost ranges between 21.98 and 22.09 percent and remains a very expensive proposition.
- When Tier II was enacted, a funding mechanism was put in place to restore Tier I to fiscal health. The actuaries' recommendation was to put an additional \$733,000 in the fund to make it fiscally sound, but the formula that was codified in law did not permit that. The retirement system should have collected \$6.6 million in insurance premium tax, but actually collected \$1.9 million. If the retirement system had received the anticipated \$6.6 million to grow at a rate of 7.75 percent investment rate, the amount would have grown to approximately \$9 million.
- The General Assembly provided the retirement system with \$9 million in the last biennium, which is what saved the retirement system.
- The actuary recommends an investment return of approximately 7.75 percent to fund the benefit program. The actual investment suffered a serious dip in 2001-02 and again in 2008-09, which has seriously harmed the system. The system is currently funded at sixty-two percent (62%).
- In 2009, the actuary recommended the following actions to restore the system to fiscal soundness: eliminate the investment volatility; reduce the investment expense, correct the stagnant active membership caused by retirees outnumbering active members; and address the variance of state contributions.
- Statistics show that the retirement system received insufficient amounts of revenue in 2003 through 2005 and again in 2007-08, but the \$9 million in one-time funding received in 2009 helped the system to catch up.
- Statistics also reflect that more benefits are being paid than contributions being received, which puts the burden on the investment program.
- Co-investing the assets of the Arkansas State Police alongside the assets of the Arkansas Public Employees Retirement System has reduced investment expense dramatically and also reduced investment volatility. The system expects to save an average of approximately \$25 million dollars over thirty years.
- The State Police Retirement System has enjoyed a better than 12 percent return; with 11.9 percent from co-investment with the Arkansas Public Employees System and an additional percentage from liquidating assets at an optimal time right after July 1, 2009.

Ms. Stone answered questions from the members following her presentation. At the request of Senator Horn, the staff was asked to provide the PowerPoint presentation to all members of the Legislative Council.

Report of Interim or Special Committees

Arkansas Legislative Task Force on Sickle Cell Disease

Vice Chair Faris referred members to the reports in their packets for special committees. Vice Chair Faris recognized Representative Rainey to present the Report to the Arkansas General Assembly of the Arkansas Legislative Task Force on Sickle Cell Disease. Representative Rainey recognized the efforts of the task force membership. He explained that sickle cell disease is an inherited blood disorder that affects over 1,000 people in Arkansas of all races and the disease causes the red blood cells to stick together and block blood flow, which causes intense pain, anemia, and organ damage.

Representative Rainey noted that the recommendations of the Arkansas Legislative Task Force on Sickle Cell Disease are outlined on pages 11 and 12 and includes the creation of a Comprehensive Sickle Cell Registry Program and providing better care, better education, and better awareness of the needs of sickle cell patients. Representative Rainey commented that if members reviewed the needs, the resources currently dedicated to the disease, and the potential cost savings, then members would find that they could support implementation of the recommendations of the task force. There were no questions regarding this report.

Legislative Task Force on Autism

Vice Chair Faris recognized Senator Salmon to present the report of the Legislative Task Force on Autism. Senator Salmon stated that the Legislative Task Force on Autism is submitting this report as required by the statute and she noted that the task force will have legislation to propose to the General Assembly for the next legislative session. Senator Salmon asked members to review the report in their packets and she then offered to answer any questions now or at a later time. There were no questions regarding the report.

Review of Communications

Vice Chair Faris referred members to the communications in their packets and asked if there were any questions concerning the monthly communications under H.1 or the annual communications under H.2. Vice Chair Faris recognized Representative John Burris who asked if there was anyone in attendance who would answer a question regarding the annual report from the Arkansas Economic Development Commission (Exhibit H.2a).

Vice Chair Faris recognized Morris Jenkins and Kurt Naumann with the Arkansas Economic Development Commission to respond to questions. Representative Burris referred to Table 17 on page 29 and Table 18 on page 30 of the report and asked if the bulleted list above each table corresponds with the headings on the chart since the table headings were a solid black when copied. Mr. Naumann responded that the column headings do correspond with the bullet points above and

the last column is the overall ranking. There were no further questions regarding Exhibit H.2a or the other exhibits under monthly and annual communications.

Arkansas Department of Rural Development

Vice Chair Faris referred members to the request for the Legislative Council's approval of funding for rural community grants and funding for county fair building grants (Exhibit H.3a). There were no questions concerning this request.

Senator Horn moved that the Legislative Council approve the funding for the rural community grants and funding for county fair building grants and the motion passed by voice vote.

New Proposals and Resolutions

Vice Chair Faris referred members to Interim Study Proposal 2009-245 (Exhibit K.1), by Senator Madison, which concerns the sale of children's products containing Bisphenol-A or Phthalates in the State of Arkansas.

Vice Chair Faris recognized Senator Madison to explain Interim Study Proposal 2009-245. Senator Madison stated that Bisphenol-A is a synthetic estrogen that is added to a lot of plastic products and that it can cause developmental problems particularly in males. There were no questions regarding the study proposal.

Senator Madison moved that Interim Study Proposal 2009-245 be referred to the Senate Interim Committee on Public Health, Welfare, and Labor for study and the motion passed by voice vote.

Vice Chair Faris asked if there was any further business to come before the committee and recognized Senator Hendren. Senator Hendren noted that school board elections would be held next Tuesday for the Pulaski County Special School District and he asked that the district patrons be sure to vote in this election.

Adjournment

There being no further business to come before the committee the meeting was adjourned at 10:15 a.m.

Respectfully submitted,

ATTEST:

Senator Steve Faris
Vice Chair, Senate

David Ferguson
Executive Secretary