

MINUTES OF THE MEETING
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Friday, May 20, 2011

The Arkansas Legislative Council met at 9:00 a.m., Friday, May 20, 2011 in Committee Room A of the Big Mac Building, Little Rock, Arkansas. Co-Chair 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.

Selection of Seat Assignments

The first order of business was the selection of seat assignments for the members of the Legislative Council, which was done by seniority in each chamber. The seat assignments are listed in the seating chart (see Exhibit B).

Minutes of the Last Meeting

Co-Chair Baker referred members to the minutes of the December 17, 2010 meeting of the Legislative Council and asked if there were any questions. There were no questions.

Representative Stubblefield moved that the minutes of the December 17, 2010 meeting of the Legislative Council be approved. The motion received a second and passed by voice vote.

Revenue Report

Monthly Revenue Report

Co-Chair Baker recognized Richard Wilson, Assistant Director of the Bureau of Legislative Research, to present the monthly revenue report for April 2011. Mr. Wilson reported that the April 2011 revenue report reflects that after ten months of this fiscal year, the gross collections are \$193.1 million greater than the same period last year for a growth rate of four point three percent (4.3%). The adjusted net available for distribution is \$190.3 million dollars ahead for a growth rate of five point three percent (5.3%). The graph page indicates that revenue collections are \$10.34 million dollars ahead of the official revenue forecast after the revision on April 21, 2011. The graph page also reflects a significant change in the amount of refunds that were made. Mr. Wilson answered questions from the members.

Report of the Executive Subcommittee

Co-Chair Baker recognized Co-Chair Salmon to present the report of the Executive Subcommittee. Co-Chair Salmon reported that the Executive Subcommittee met on May 19, 2011 and reviewed proposed revisions to the Legislative Council Rules. The subcommittee passed a motion to recommend to the Legislative Council the adoption of the revised rules.

The subcommittee also discussed the use of legislative meeting space on the fifth floor of the Big Mac Building and asked that staff draft proposed room use policy for the Executive Subcommittee to review at the next meeting.

The Executive Subcommittee also heard a report from Marty Garrity, Assistant Director for Legal Services, regarding the legislation passed during the 2011 Regular Session dealing with task forces.

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

Co-Chair Baker recognized Jill Thayer, Legal Counsel to the Director, to explain the revisions to the Legislative Council Rules. Ms. Thayer referred members to the attachments to the Executive Subcommittee Report and explained these were a memo that summarized the changes and a mark-up version of the rules. Ms. Thayer explained that the Legislative Council Rules were revised as follows:

- (1) Rule 5.(a)(6) was revised to remove from the Policy-Making Subcommittee the duty of reviewing per diem and mileage payments to committee co-chairs who attend meetings of executive boards or commissions. This change was made because such payments had not been made in several years and because of the new IRS regulation does not permit reimbursement for these types of meetings because they do not qualify as a legislative committee meeting.
- (2) Rule 5.(g) was added to ensure that Legislative Council subcommittees do not schedule meetings at the same time as the Legislative Council meeting.
- (3) Rule 9.(c) was added and requires a second to all motions made in the Legislative Council meetings, which would also apply to Legislative Council subcommittee meetings. The reason for this change is because the Legislative Council Rules state the Legislative Council will follow the rules of the Senate and House of Representatives if there is not a specific rule. The House rules require a second, but the Senate rules do not require a second. This new rule adds a specific rule to clarify the issue.
- (4) The rules were updated to conform to two enactments of the 2011 Regular Session that the Speaker of the House or the President Pro Tempore must approve requests for travel authorization for members who attend national legislative conferences.

- (5) The rules were updated to add a specific time that the pre-session budget hearings would begin and to conform to the statute.

There were also editorial changes made to make the rules easier to read. These changes are shown in the markup version of the Legislative Council Rules. There were no questions concerning these revisions.

Representative Garry Smith moved that the Legislative Council Rules be adopted as revised. The motion received a second from Representative Cowling and the motion passed by voice vote.

Reports of Standing Subcommittees

Performance Evaluation and Expenditure Review (PEER) Subcommittee

Co-Chair Baker recognized Representative Rice to present the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. Representative Rice reported that the PEER Subcommittee met on May 17, 2011 and reviewed all items on the agenda. The PEER Subcommittee approved a request from the Governor for FY2011 set aside GIF funds from the Eighty-Seventh General Assembly projects account for the Department of Correction in the amount of \$5.8 million dollars. All other items were reviewed and none were held. There were no questions concerning the report.

Representative Tyler moved the adoption of the report of the Performance Evaluation and Expenditure Review (PEER) Subcommittee. The motion received a second by Representative Dale and the motion passed by voice vote.

Review Subcommittee

Co-Chair Baker recognized Representative Cowling to present the Review Subcommittee report. Representative Cowling reported that the Review Subcommittee met on May 18, 2011 and reviewed all items on the agenda including methods of finance, alternative delivery, construction contracts, discretionary grants, professional and consultant service contracts. The subcommittee did not review two contracts because one was held for additional information from the agency and the other contract was pulled from the agenda prior to the meeting by the agency. There were no questions regarding this report.

Representative Cowling moved the adoption of the report of the Review Subcommittee. The motion received a second from Representative Word and the motion passed by voice vote.

Uniform Personnel Classification and Compensation Plan Subcommittee

Co-Chair Baker recognized Senator Lamoureux to present the Uniform Personnel Classification and Compensation Plan Subcommittee report. Senator Lamoureux reported that the subcommittee met on May 16, 2011 and makes the following recommendations: review of the monthly reports from the Department of Education and the Department of Higher Education for provisional positions along with the quarterly employment report; requests for special entry rates for exceptionally well-qualified applicants; four requests for growth pool positions; one position request for the OPM swap pool; and one position request from the transitional pool. The subcommittee recommended the continuation of eight pool positions that were created previously, but that did not make it into the budget recommendations for FY 2012. The subcommittee recommended approval of the hiring of an attorney ad litem for the Administrative Office of the Courts pursuant to the special language in the appropriation act. The subcommittee approved the title for an AOC senior staff attorney that was a request also heard by the PEER Subcommittee. Senator Lamoureux offered to answer questions. Representative Lea was recognized and asked if it was common to have so many personnel changes so soon after a legislative session. Senator Lamoureux stated this was discussed at the subcommittee meeting and the explanation given was that at some point during preparations for the legislative session additional requests were cut off and also there was one meeting for regular business and many requests were deferred until the adjournment of the session because of the volume of work. There were no further questions.

Senator Lamoureux moved the adoption of the report of the Uniform Personnel Classification and Compensation Plan Subcommittee. The motion received a second from Representative Garry Smith and the motion passed by voice vote.

Reports of Interim and Special Committees**Joint Committee on Advanced Communications and Information Technology**

Co-Chair Baker recognized Representative Patterson to present the report of the Joint Committee on Advanced Communications and Information Technology. Representative Patterson reported that the committee met on May 19, 2011 and heard a report from the Department of Information Services that prices would go down \$6,900,000.00 in the year 2011 and that rates would go down \$2,200,000.00 in the year 2012. The committee passed a motion to recommend the report to the Legislative Council.

Representative Patterson moved that the report of the Joint Committee on Advanced Communications and Information Technology be adopted. The motion received a second from Representative Cowling and the motion 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 listed under H.1 through H.2.

Co-Chair Baker referred members to the Program Fact Sheets listed under Exhibit H.5a and stated this is a request for the Legislative Council's review. Co-Chair Baker recognized Charles

Lynch, with the Economic Development Section of the Arkansas Development Finance Authority and asked that he explain this request.

Mr. Lynch stated the first Program Fact Sheet is for the refinancing of the Episcopal Collegiate School Project, which was refinanced for the purpose of lowering the rate and extending the maturity of the bonds. The second Program Fact Sheet is the financing for the Academics Plus Charter School, which is one of the first charter schools in the state that has expanded greatly over the years. This bond issue would finance a new school to replace portable buildings and better accommodate the students. The agency is the guarantor for part of the financing and the original lender is providing financing on a non-guaranteed basis. The charter school enrollment is 600 students and the debt service and reports are in good standing. There were no questions regarding the program fact sheets.

Senator Whitaker moved that the Legislative Council file as reviewed the Program Fact Sheets presented as Program Fact Sheet FY 2010-005 [Exhibit H.5a(1)], Program Fact Sheet FY 2011-001 [Exhibit H.5a(2)], and Program Fact Sheet FY 2011-002 [Exhibit H.5a(3)]. The motion received a second and the motion passed by voice vote.

Co-Chair Baker recognized Senator Malone for a question concerning the report of the Advanced Communications and Information Technology Committee. Senator Malone stated that the Department of Information Systems has a rate structure and operates as a cost-recovery system and it seems that they were over charging. Senator Malone asked if someone would explain the reason that the Department of Information Systems seems to overcharge their customers and then decreases rates at the end the end of the year to reimburse their customers, which this year is a \$6.9 million net decrease for DIS customers.

Co-Chair Baker recognized Jeff Dean, with the Department of Information Systems (DIS), to respond to the question. Mr. Dean provided the following information in response to the question:

- Usage continues to grow and the demand for technology continues to grow.
- DIS spends approximately \$74 million for the year and the decrease is approximately ten percent of that amount.
- DIS has cut rates for the last several years.
- There are costs common to all components and as usage goes up, the cost per unit of a service goes down.
- DIS is audited on an annual basis by an external firm;.
- For this fiscal year, DIS was trending above break-even and DIS is not allowed to retain any money other than some working capital that is allowed by OMB-87 federal regulations.
- DIS is giving the state agencies a credit on their account and this is not something that they have to expend, use or lose, in this fiscal year so the money flows back to the agencies.

Senator Malone asked if DIS does not refund money at the end of the year if more is collected than the services cost. Mr. Dean responded that there are two approved methods pursuant to OMB-87 regulations; one is to give refunds and one is through a rate-cutting process. The method preferred by DIS while working with the Department of Finance and Administration and

the federal Department of Cost Allocation, is the rate-cutting method because if rates are not cut every so often, the amount would continue to grow every year. The credit is the method for giving back money that DIS is not allowed to retain. Mr. Dean explained further that the rate reductions are retroactive to January 2011 and are in effect a rebate, but since DIS is only allowed to use one method a year, the rate reduction appears as an over payment or credit on the state agency account. Senator Malone asked if the money that was over charged was retained by DIS and whether the agencies would be able to use the credit in this fiscal year.

Co-Chair Baker recognized Nancy Turner with the Department of Information Systems, to respond to this question. Ms. Turner stated that each agency will have credit on their account and the agencies will be able to use it against each month's bill.

Co-Chair Baker recognized Senator Hendren. Senator Hendren referred to the reports in the members' packets and asked if the Bureau staff could be asked to review the reports and point out the reports that may need attention. He also asked that the members be provided with more information regarding who the lessors are for the leases listed in the Arkansas Building Authority's monthly report. Senator Hendren referred to the DIS rate cuts and commented that this appeared to be sorry budgeting. He asked if that was correct.

Co-Chair Baker recognized Representative Patterson, Co-Chair of the Joint Committee on Advanced Communications and Information Technology, to respond to Senator Hendren's question. Representative Patterson stated that DIS has not over budgeted and that the rate reductions are due to the decrease in the cost of providing technological services over the last two years. He responded to further questions from Senator Hendren by commenting that the budget for DIS was not cut in the recent legislative session because the costs to be incurred in the coming years are not predictable.

Co-Chair Baker recognized David Ferguson, Director of the Bureau of Legislative Research, to respond to Senator Hendren. Mr. Ferguson stated that all of the exhibits before the Legislative Council have been reviewed by Jill Thayer, Legal Counsel to the Director, and that she is available to provide supplementary information concerning the reports. Mr. Ferguson stated the reports are reviewed primarily to determine whether they comply with the reporting requirements, but are not reviewed in such detail as to determine who the lessors are on the state agency leases. Mr. Ferguson also commented that the Legislative Council may possibly want to refer some of the reports to Legislative Council subcommittees.

Co-Chair Baker recognized Senator Luker who asked if someone from the Department of Finance and Administration could explain the budget process for the budget of DIS and asked if DIS was not like a cash-fund agency for which the General Assembly makes an appropriation. Senator Luker asked where the money goes when the DIS customers make payments to DIS.

Co-Chair Baker recognized Mike Stormes, Administrator of the DFA Office of Budget, who stated the DIS budget is prepared like any other budget. In the budget process, the numbers are prepared for what they think they will need for the next biennium and those are presented to the Legislative Council and that results in appropriation levels that are contemplated to be needed for the next fiscal years. The funding of the DIS budget comes from payments from other state agencies to DIS and then, at the appropriate times, DIS reconciles the costs with the funding and

then issues the credits or rebates. The appropriations to DIS are based on anticipated needs for operation over the fiscal years.

Senator Luker asked Mr. Stormes to comment on whether DIS has retained a large sum of money in a bank account. Mr. Stormes responded that DIS has the money, but that over time the funds adjust to the extent that new rates are established so that the next year DIS does not collect as much money as the previous year and results in a leveling of operations from year to year. Mr. Stormes further explained that the funding received by DIS from other agencies is in the DIS account in the State Treasury and through time the rates are adjusted and less money will be deposited in the future into the account because the state agencies will be paying less. Senator Luker asked if the Office of Budget has an issue with this process. Mr. Stormes responded that the process seems to be working well.

Senator Luker asked if the difficulties with the feds concerning the DIS billing practices had been resolved. Mr. Dean responded that one result of that settlement is the agreement to an external audit by Crowe-Chizek, which is one of the contracts on the list, to extend the contract for the final year. The fourth year's audit has just been completed and they deemed the rate-cutting process as appropriate and improving continuously every the year. The audit found that DIS was in compliance with one exception concerning accounting procedures required by the federal Department of Cost Allocation.

Co-Chair Baker recognized Representative Tyler who asked if it was correct that the rate reduction reflects a per unit reduction to those who are using it, but does not reflect an increase in users or usage and therefore your overall budget has not decreased. Mr. Dean responded that was correct.

Co-Chair Baker recognized Senator Malone who asked why the refund of money method was not used instead of the rate-cutting process. Ms. Turner responded that DIS had done that in the past, but one of the recommendations from the federal government was to start changing the rates to match the actual cost for recovering expenditures for service and only one adjustment per year is allowed.

Senator Malone asked that this discussion be kept for consideration in the fiscal year session to allow input from the legislature on this matter.

Co-Chair Baker recognized Representative Hobbs who referred to the Arkansas Building Authority's report and the rental fees in excess of \$100,000.00 a year and asked if it would be a cost-saving measure to purchase the property instead of paying this much in rent. Representative Hobbs stated she noted eight instances where rent was in excess of \$100,000.00 a year and specifically noted the rental in Mississippi County on page 13 of the report.

There was no one present to answer the question and Representative Hobbs asked if this information, as well as, the identity of the principals could be provided to the members for the next meeting. Co-Chair Baker asked the staff to request this information.

Co-Chair Baker referred members to Exhibit H.5b and stated a motion is necessary on this item. Co-Chair Baker recognized Shane Broadway, Interim Director of the Arkansas Department of Higher Education, to explain this request for the Legislative Council's advice. Mr. Broadway

explained that this was a transfer from federal mineral lease proceeds that come to the state to the Arkansas Research and Educational Optical Network (ARE-ON) Project in the amount of \$1 million. This is an ongoing project over several years that will tie-in the institutions of higher education into the national research network. The transfer has been approved by the Arkansas Higher Education Coordinating Board. There were no questions regarding this request.

Representative Garry Smith moved that the Legislative Council give favorable advice to the approval of the grants as presented. Representative Clemmer seconded the motion and the motion passed by voice vote.

Co-Chair Baker recognized Representative Benedict who referred to Exhibit H.1g, the monthly report from the Department of Human Services on psychiatric placements. Representative Benedict asked if anyone could give her an average and a high-end expenditure and an explanation of the treatments involved. Co-Chair Baker recognized John Selig, Director of the Department of Human Services, who responded that these programs are for kids with psychiatric disturbances who are in in-patient facilities for treatment. There are a number of providers around the state such as Mill Creek, Rivendale, and Youth Home, Centers for Youth and Families, and the different facilities charge different amounts. He further explained the high end would be around \$500.00 a day, but most are not that high and this would be for psychiatric services from psychiatrists and psychologists, and group therapies of different types. Some of the programs specialize in certain types of kids and some may be in programs for sex offenders. All of the treatments have been prescribed.

Representative Benedict asked if it would be possible to get more of a break down on this report in particular and go into a little more detail for the next meeting. Mr. Selig responded that this could be done or he could ask someone to contact her in the interim to discuss the report if that would be helpful. Representative Benedict agreed that would be helpful. Co-Chair Baker thanked Mr. Selig and then asked if there were any more questions concerning the communications listed under H.1 through H.2.

Co-Chair Baker recognized Senator Elliott, who referred to the State Procurement Semiannual Minority Report (Exhibit H.3b) and explained that there is a long-standing goal of ensuring fairness in the awarding of contracts from the state and this goal has not been met. The State Procurement Semiannual Minority Report is required by law and reflects the contracts that have been awarded in the last six months.

Senator Elliott asked if Ms. Jane Benton, Director of State Procurement, could be recognized for questions on this report. Co-Chair Baker recognized Ms. Benton. Senator Elliott asked if the amount of \$10,552,753.00 is the total of the contracts awarded and the amount awarded to minority contractors was \$29,000.00, which is a small percentage. Ms. Benton confirmed that is accurate for the contracts let during this six-month period. Senator Elliott also noted that the report includes statistics for female contractors and that this was a low percentage as well.

Senator Elliott commented that this process must be improved and this is something that we need to continue to monitor. Ms. Benton stated that after speaking with Patricia Brown with the Small and Minority Business Division, the next semi-annual report that is due following the end of this fiscal year should reflect an increase in the percentage of contracts let to minority contractors and that a lot of the minority contracts are below the \$25,000.00 threshold for reporting.

Senator Elliott also commented that the general managers should be required to report these statistics in order for the members to get the information needed. Ms. Benton stated that she believed that the agencies are attempting to compile these statistics and that in construction projects there are subcontractors who would qualify as minority businesses. There were no further questions regarding this report. Co-Chair Salmon assumed the chair and asked if there were any other questions regarding communications listed under H.3 or H.4. There were no questions. Co-Chair Salmon asked if there were any questions regarding Exhibit H.5c or Exhibit H.5f. There were no questions.

Co-Chair Salmon referred to Exhibit H.5d, the request from the Arkansas Teacher Retirement System (ATRS) for review of the partial equity ownership agreement submitted pursuant to A.C.A. 19-11-1302 and recognized George Hopkins to explain the request.

Mr. Hopkins, identified himself as the Executive Director of the Arkansas Teacher Retirement System (ATRS), and explained that this is a partial equity ownership investment that ATRS made with Altus Capital Partners II, L.P., that is a private equity firm that invests in quality, very small manufacturing companies that are not publicly traded. This is a \$20 million investment and it is designed for Altus to go through the mid west and east and find very specialized small manufacturing companies that have a very clear profitability and then purchase the companies and enhance their capital structure or management style and then sell the companies for a substantial profit. Altus has returned over twenty-five percent a year and is a strong company. The ATRS Board felt this was a very high quality investment and asks the Legislative Council to approve the investment. There were no questions regarding the request.

Senator Lavery moved that the Legislative Council file as reviewed the partial equity ownership investment that Arkansas Teacher Retirement System made with Altus Capital Partners II, L.P. (Exhibit H.5d). Representative Smith seconded the motion and the motion passed by voice vote.

Co-Chair Salmon recognized Mr. Hopkins to explain the next agenda item, Exhibit H.5e, the request from the Arkansas Teacher Retirement System (ATRS) for review of seven partial equity ownership agreements submitted pursuant to A.C.A. 19-11-1303. Mr. Hopkins explained that under this statute, the Arkansas Teacher Retirement System may move quickly when investment opportunities occur and must be acted on before the full procurement and review process can be completed. The ATRS made seven investments under this statute.

Mr. Hopkins reported that since July 1 until now the ATRS had increased in value by \$2 billion dollars despite the fact that ATRS had paid \$200 million from the trust fund to pay the difference between the benefits paid and the contributions received. A lot of the increase occurred in the equity part of the portfolio and in order to rebalance and not leave too much in equity should there be a down turn, ATRS reallocated funds in other investments that were more prudent based upon the economics. Mr. Hopkins provided the following information concerning these investments submitted pursuant to A.C.A. 19-11-1303:

- Prudential Real Estate Investors is a core real estate fund that only invests in first class properties that are ninety percent occupied and have a long history of quality returns. This investment also resulted in fee reductions.
- Tennenbaum Capital Partners does specialized loans with companies that can't get to the capital structure. Tennenbaum just invested with a publicly-traded company that needed air craft and is getting a twenty percent return on the loan over a several year period and will also get some equity options.
- Wicks is another private equity fund that does the same thing as the other private equity, but specializes in middle market or larger companies that specialize in media and information services or educational entities.
- The other four investments with Anchorage Capital , L.P., Capula Global Relative Value Master Fund, L.P., Graham Capitol Management Proprietary Matrix 10-V Portfolio, and York Credit Opportunities, L.P., are all global hedge funds that specialize in macro economics.

Mr. Hopkins answered several questions from the members concerning these investments as well as questions about the ATRS fund managers and consultants. During the discussion, the members asked that Mr. Hopkins provide additional information concerning: (1) the identity of the ATRS consultants and fund managers, including their names, racial and gender make-up of the company, whether any are an Arkansas company, and the value of the assets that they manage; (2) whether the ATRS has hired anyone under the emerging managers program; and (3) the process for seeking new fund managers to manage or invest funds for ATRS.

Representative Stewart moved that the Legislative Council file as reviewed the seven partial equity investments listed in Exhibit H.5e. Representative Stubblefield seconded the motion and the motion passed by voice vote.

New Business

Co-Chair Baker informed members that during the last year, the Legislative Council created the Special Oversight Subcommittee on Federal Stimulus Money for the purpose of advising the Legislative Council regarding the allocation and expenditure of federal stimulus funds by the State of Arkansas under the American Recovery and Reinvestment Act (ARRA). Co-Chair Baker asked members if they wished to reinstate this subcommittee for the next biennium.

Representative Roebuck moved that the Special Oversight Subcommittee on Federal Stimulus Funds be reinstated for the next biennium. Senator Rapert seconded the motion and the motion passed by voice vote.

New Proposals and Resolutions

Co-Chair Baker referred members to the three Interim Study Proposals in their packets and stated that motions were required to refer these to the appropriate committee for study. There were no questions regarding the interim study proposals.

Senator Bledsoe moved that Interim Study Proposal 2011-010 (Exhibit J.1) be referred to the House Interim Committee on Public Health, Welfare and Labor. Senator Hendren seconded the motion and the motion passed by voice vote.

Representative Powers moved that Interim Study Proposal 2011-170 (Exhibit J.2) be referred to the House Interim Committee on Aging, Children and Youth and Legislative Affairs. Representative Stewart seconded the motion and the motion passed by voice vote.

Senator Hendren moved that Interim Study Proposal 2011-171 (Exhibit J.3) be referred to the Senate Interim Committee on State Agencies and Governmental Affairs and the motion passed by voice vote.

Announcements

Co-Chair Baker announced that a meeting of the Senate Rules Committee is scheduled to meet upon adjournment of this meeting. Co-Chair Baker recognized Senator Luker who stated he did not see a quorum for the meeting. Senator Luker asked Senator Hendren if he agreed that the meeting should be deferred to a later date. Senator Hendren agreed that the meeting should be deferred and noted that the feasibility of live streaming Senate Committee meetings was to be a topic of discussion for the Senate Rules Committee.

Co-Chair Baker recognized Representative Roebuck who reminded the members that they had received an invitation to observe the Mission of Mercy, which is a free dental clinic, taking place at the State House Convention Center. Representative Roebuck stated this is something the members should see and invited them to come for a tour either today or tomorrow.

Adjournment

The meeting was adjourned at 11:28 a.m. as there was no further business to come before the committee.

Respectfully submitted,

ATTEST:

Representative Tommy Lee Baker
Co-Chair, House of Representatives

David Ferguson
Executive Secretary