

# EXHIBIT C

## APPROVED NOVEMBER 12, 2019

**DRAFT MINUTES  
JOINT PERFORMANCE REVIEW COMMITTEE  
MAC, Room A  
Little Rock, Arkansas  
Wednesday, September 11, 2019**

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The Joint Performance Review Committee met on Wednesday, September 11, 2019, at 9:00 a.m., Multi-Agency Complex (MAC), Room A, Little Rock, Arkansas.

**Committee members present:** Senators Jimmy Hickey, Jr., Chairman; Terry Rice, Vice Chairman; Missy Irvin, Jonathan Dismang, Bill Sample, Ronald Caldwell, and Jane English. Representatives Jimmy Gazaway, Chairman; Chris Richey, Vice-Chairman; Reginald Murdock, Mark Lowery, Josh Miller, Joe Jett, David Hillman, Jana Della Rosa, Marcus E. Richmond, Brandt Smith, LeAnne Burch, Sonia Eubanks Barker, Johnny Rye, and Brian S. Evans.

**Also attending:** Senators Bob Ballinger, Linda Chesterfield, Lance Eads, Mark Johnson, Larry Teague and Representatives Fred Allen, Sarah Capp, Frances Cavanaugh, Andy Davis, Marsh Davis, Jim Dotson, Dan Douglas, Les Eaves, Kenneth B. Ferguson, Charlene Fite, Justin Gonzales, Grant Hodges, Monte Hodges, DeAnn Vaught, Jeff Wardlaw, Danny Watson.

Representative Gazaway called the meeting to order. A moment of silence was taken to remember the tragedy that occurred on September 11, 2001.

### **CONSIDERATION OF A MOTION TO AUTHORIZE CHAIRMEN TO APPROVE SPECIAL EXPENSES INCURRED BY THE SENATE AND HOUSE JOINT PERFORMANCE REVIEW COMMITTEES. [EXHIBIT C]**

**Representative Richmond made a motion to authorize chairmen to approve special expenses incurred by the Senate and House Joint Performance Review Committees. Senator Hickey seconded the motion, and without objection the motion carried.**

### **DISCUSSION OF RECENT PROPERTY ASSESSMENT VALUATION CHANGES RELATING TO POULTRY HOUSES AND MOTOR VEHICLES.**

**Mr. Glen “Bear” Chaney, Executive Director, Arkansas Assessment Coordination Division (AACD), Department of Finance and Administration (DF&A)** was recognized. He stated Assessment Coordination Division was asked by two legislators to look at the inequity of poultry house values throughout Arkansas. AACD’s research included sales of chicken houses by county, appraisers of chicken houses, values used by two different bank lenders, and Marshall & Swift Valuation Service. Research revealed values between \$2.06 per square foot (sq. ft.) and \$10.13 sq. ft. Mr. Chaney noted AACD works to make assessment equitable across the state by providing a base valuation to be used by the assessor for assessing property across all 75 counties and to provide a starting point for reappraisal. Examples of changed values:

- Real Estate: updated every five years or when the county reappraises.
- Broiler Houses 1995: \$4.50 sq. ft does not include equipment or land.
- New Broiler Houses 2019: \$9.00 sq. ft. includes equipment and depreciation of 5% per year, does not include land.
- Older chicken houses can only go up 10% according to Amendment 79, does not include land.

Each assessor has discretion to determine good values for property in their county. Most assessors use the values AACD provides because the counties do not have resources for research. Contracts are between the county and the provider AACD does not sign the contract.

**Mr. John Nichols, Staff Attorney, AACD**, noted the assessors are not mandated, or required to use values issued by AACD. The values are recommendations by AACD based on its best market value research. There is no enforcement authority to make assessors follow AACD recommendations.

Mr. Nichols clarified that the contract/reappraisal plan is not drafted by AACD nor is AACD a party to them, but does review them. These are separate professional service agreements between a contracted appraiser and a county. He stated if counties do not comply with its reappraisal/statistical analysis, AACD is an enforcement authority in the area of ratio studies. Upon completion of reappraisal, AACD administers reimbursement from the state to the county for its reappraisal expense of \$7.00 per parcel.

Representative Gazaway confirmed with AACD third party vendors are responsible for administering assessment procedures, and contracts involving the third party vendors, counties and AACD. He noted he has reviewed several contracts and AACD is mentioned in those contracts as an enforcement authority if the contracts are not followed. He understands the contract language from paragraph 24 of section "Compliance with AACD Rules" to mean the provisions in the contracts bind and render an assessor unable to assess as he would like and is AACD's way of controlling the assessors. Mr. Nichols respectfully disagreed.

Representative Capps noted in the discussion that took place July 30, 2019, with Mr. Chaney and a group of legislators regarding this same issue, it was said if assessors do not follow policy recommendation and follow this new value, they could be called out of compliance by AACD. She asked Mr. Chaney for a letter of clarification on AACD recommendations at that meeting but has not received it to date.

She stated under Amendment 92, the General Assembly has authority to approve or disapprove AACD rules. There was a valuation increase with correspondence to county assessors, indicating rates and procedures would be effective immediately. For clarity:

- this issue was never vetted
- there was never any type of working group to include the General Assembly and
- nothing was brought in front of the General Assembly regarding the increase

Mr. Chaney said that was true, and stated AACD ensures counties assess according to market value and if a county fails its ratio study it could be called out of compliance. Ratio studies do not include chicken houses.

Senator Rice requested AACD issue a letter stating who has what authority, because assessors believe they are under AACD authority to comply with its issued valuation rate.

Mr. Nichols noted revaluation occurs at three year or five year intervals, reappraisal results may or may not impact that. Assessors may use something different to value poultry houses or convenience stores, AACD does not mandate that. Mandated values for real property are on agriculture such as crop land, pasture and timber land set by statutory formula reviewed annually by the legislature.

**Ms. Angela Hill, Deputy Director, AACD**, provided that AACD gives information as guidelines to assessors to help them accomplish their responsibility of achieving market value on properties. Assessors have the ability to make adjustment where necessary for their county.

Representative Gazaway understood the debate to center around what AACD refers to as guidelines, but assessors believe is mandated. Whether in the form of a contract, or where assessment is different from

AACD guidelines, the contract would be terminated as a way and means of making assessors comply with AACD “guidelines”. This fact takes it out of the classification of guidelines and makes it a mandate.

Mr. Nichols noted there are two things that AACD mandates or has enforcement authority on. 1) A statistical analysis/ratio study done when reappraisal is completed in each county. The analysis/study compares levels of market value versus assessed value, which must be within certain statistical boundaries. If value is not within a certain statistical boundary, correction has to be done. 2) Reappraisal plan allows the contractor and assessor to identify progress made through a county’s three or five year cycle. This ensures a county earns its reimbursement funds by doing the work. The contract language “complying with AACD rules” refers to the reappraisal, progress plan, and final results of the ratio studies.

If a county falls behind on its plan of progress, AACD can call them out of compliance and withhold reimbursement for reappraisal expenses, but before cutting off its funding:

- If there is an issue at completion of a reappraisal cycle such as failed ratio study; AACD will get an explanation.
- If a county falls behind on its progress plan, it can request an extension of time and AACD will work with the county.

Representative Vaught asked Mr. Chaney if he followed the law in the guidelines when it comes to increasing taxes. He said he believed he did it correctly.

She disagreed with him and stated that by deliberately calling valuation increase a policy guideline the legislative review was skirted and kept from knowing about the tax increase. This should have been brought before the legislature for review, but AACD did not do this, therefore constituents taxes increased with no representation and that is not the law.

Senator Dismang asked why some assessors understood and some did not understand about following the guideline or having latitude to make decision about setting valuation. He noted there is a lot of confusion about what assessors have to follow or not follow about valuations that has been presented.

**Larry Walther, Director, Department of Finance and Administration**, confirmed that a letter will be developed to provide to assessors addressing the law. He understands that AACD provides recommendations but DFA needs to make sure all assessors know what can be done. The letter will be brought for legislative review as quickly as possible.

Senator Irvin noted by putting AACD under DFA, clarity to the state law should come about. She stated AACD exists for the purpose of recommendations and uniformity and requested AACD director to bring to the legislature, recommendations for how to fix the agency’s problems.

She noted the Task Force on Tax Reform requested the Gas and Oil Study on how to deal with tax assessments for the oil and gas industry, there has been no follow-up from AACD to the legislature. Also, there was a task force formed in 2003 by Act 1714, to improve efficiency and performance of AACD. She requested a copy of that report be sent this committee so it could check AACD’s implemented recommendations of that task force. Mr. Nichols said he would get that report to the committee.

She stated there is much confusion over AACD recommendations and the legal predicament of assessors, that if a law suit incurs, the counties have no resources to help themselves. She stated it was Mr. Chaney’s job as agency director to come to the legislature with recommendations.

Senator Rice asked that the AACD letter include:

- Clarify misconception of AACD's authority to enforce its recommendations.
- Describe what assessors may do to be equitable with their values and explain how.
- Address allowable cost variance in poultry houses.
- Describe punitive action.
- AACD cannot bring punitive actions.

Mr. Walther noted there will be an Arkansas County Assessor's Association meeting in October that would be an appropriate place for AACD to make a presentation before the assessors and talk about these issues and answer questions from assessors throughout the state. He said a serious issue such as litigation needs to be addressed collaboratively and DFA would like to work with this body in order to address issues and foresee potential issues and through AACD continue to work with the assessors, and DFA will commit to do that.

Representative Capps noted because previous requests for a letter of clarification from AACD had not been received, the new request for a letter be sent within ten days. Mr. Chaney said he would work with DFA to get the letter out.

Senator Ballinger pointed out page 27 of the contract section "Compliance with AACD Rules", says the assessor is in violation of the contract if they do not follow proper procedures. He noted constituents are bound by signed contract with their vendor providers to follow guidance from AACD. Mr. Nichols agreed that provision does not apply to today's discussion due to a change made in June 2018, and agreed to include that fact in the letter to assessors. He said AACD would look at all contracts and go through whatever process the committee wants.

Representative Gonzales noted regarding AACD enforcement authority and the exchange between Representative Capp and Mr. Chaney earlier in today's meeting where Mr. Chaney could not recall what he had said in the July meeting about turn back money, comments from that July 30, 2019 meeting are recorded in the committee's handout. Representative Gonzales asked Mr. Chaney to address that. Mr. Chaney stated if he said that, then he was mistaken and had misspoken.

Representative Gonzales requested clarification in the letter to be issued, to include the fact that turn back money cannot be affected by AACD. Mr. Chaney agreed.

Senator Irving asked where AACD statutory authority is. Mr. Nichols stated the process has been in place a long time, it is statute § 26-25-103 to 107, also in statute § 26-26-1904. There is no clear statutory mandate that says this is AACD's process. However AACD has guidelines for recommended values for equity and consistency across the state. He agreed the unclear statutory authority is problematic and needs to be changed because it is vague.

Representative Gazaway noted the need for clear procedure in the law for how AACD operates. He asked for clarification of the existing statutory authority which allows for AACD authority to set values and recommendations also specific statute, constitutional or otherwise authority that provides for procedure AACD follows to obtain values for its recommendations. Mr. Chaney said AACD will provide that to the committee.

Mr. Nichols noted when an assessment is made, by statute the property owner has the right to an informal appeal to the Assessor's Office. If there is still a disagreement on value, the property owner has a right to appeal to the County Equalization Board. The loser there has the right to go to County Court then to Circuit Court and then to the Court of Appeals or the Arkansas Supreme Court depending on jurisdiction. He understands the correction notice of the valuation of motor vehicles tells citizens they have the right to appeal to the County Board of Equalization.

Senator Dismang asked the assessors' for their take away of AACD's testimony that it is a guidance, not a mandate issued to assessors who have latitude within their individual counties to set valuations by following the law of fair market value.

**Ms. Sandra Collier, Assessor, Columbia County and Assessors' Association Board Member**, explained assessor responsibility.

- Make sure values are correct, it is an assessor's duty.
- Comply with Arkansas laws.
- Value all real and personal property that is subject to taxation at market value as mandated by the constitution.
- Utilize different ways to get the market value of different property.
- Assessors in small rural areas do not have resources to hire outside people.
- Use and apply information given by AACD correctly.

She noted Act 153 of 1955 addresses AACD is to prepare guidance manuals for valuation. Statute 26-26-304 addresses ratio studies and allows that an assessor may use a true market value if different from AACD. This is important for the county and its citizens. She stated she has the right to use any value she finds to be the true market value.

The valuation for chicken houses in her county used prior to the recommended change was \$4.50 sq. ft. She believes the definition of starting point to mean,

- basic cost at dollars per sq. ft.,
- location factor,
- what the market is bearing in a particular county, which determines sales

**Mr. John Hutchison, Assessor, Poinsett County**, asked if a grain bin cost the same in other counties as it does in his county. He noted values of vehicle have not been done in Poinsett County because changing at eight and a half months into a twelve month cycle is a problem. It is his opinion to leave the values of vehicles alone in his county, since it is not mandated. He said it was explained to him the way valuation comes about is for example, we are in 2019 and tax is payable in 2020; to get the January 1, 2019, valuation the last quarter (October, November, and December, 2018) was used.

**Mr. Zach Johnson, Assessor Sebastian County**, noted Sebastian will use the cost approach so all poultry houses in his county will be charged at the same rate. The main goal is to be fair and equitable. He feels the Assessor Office has lost public trust.

**Ms. Jovan Thomas, Assessor, Polk County**, noted poultry houses in Polk County were affected by the valuation change. Before the change the sq. ft. was \$4.50, afterwards it increased to the recommended new rate of \$9.00 sq. ft. Had AACD not recommended an increase to \$9.00 sq. ft., the valuations would most likely have remained \$4.50. She agreed she would have felt pressure if she had decided to do something other than what AACD has recommended, because there would be consequences for not staying in compliance such as the county not receiving its reimbursement.

**Ms. Beckie Alden, Assessor, Pike County**, noted her reappraisal year is 2022 and she will wait to put them into the reappraisal but if a residential or commercial property fell out of the 18-22 percent range of a ratio study, the county could go into corrective action with AACD so the \$7.00 per parcel turn back would not be lost. The end goal of an assessor is market value.

**Mr. Cody Gallagher, Little River Valley, Independent Poultry Grower and Rancher**, noted he purchased his farm in 2014 and paid \$450 thousand which included the land, equipment, and buildings. That

amount is less than the tax valuation of \$9.00 sq. ft. and the rise of valuation makes it impossible for him to sell his farm property for the amount of the tax. The pressure from the added responsibility of the new valuation, is unrealistic and crippling for his farm.

**Mr. Nicholas Taylor, Farmer**, noted his budget is streamlined already with the average tax at \$4.50 sq. ft. which runs about \$1,000 per chicken house. Double taxes, even if it is increased slowly at 10% for ten years, it is still double the tax or \$2,000 per chicken house. Consider if one's residential taxes were going to double in the next ten years, that person would move. He predicted chicken houses will leave and go to states with less expensive taxes.

Representative Gazaway remarked he wanted to make it clear that this tax increase was not imposed by the legislature. This is the policy recommendation of AACD, it changed its policy. Many legislators are upset about it because it was not brought to the legislature for a vote. The purpose of this meeting is to bring accountability to AACD and its process because this has the potential to put people out of business and kill the poultry industry in Arkansas.

**Mr. David Harris, Yell County, Farmer, Breeder Houses**, noted the tax will hit breeder and pullet houses hardest. Required updates on houses should be taken into consideration as well as wear and replacement of equipment and buildings. He said he appreciates everyone fighting against the tax.

**Ms. Lesli Efird, Howard County, Independent Farmer, Pullet Houses**, noted in the past two years they have had to sell their home, 20 acres they previously ran cattle on, and another five acres her parents had given to her. Expenses such as propane to heat the pullet houses and insurance are big issues. As farmers we cannot continue to take the hits and bankruptcy means the bank lenders will not be able to give the farm away because it does not generate enough money to pay the taxes. She stated today AACD and the assessors sat before the committee and talked about how it was a nightmare for them; let them be farmers and try to pay these taxes.

**Ms. Jordan Icenhower, Sevier County, Lender and Farmer**, noted she was raised in the poultry industry, has an agriculture business degree and is an agriculture lender. Her father is a live production manager for Tyson so she has seen the industrial side of the poultry business and as a lender, specializes in poultry; 90% of her portfolio is in poultry. Currently, she and her husband are constructing six 43x500 foot broiler houses. She has seen all these scenarios and is able to bring hard numbers to the committee today. The numbers are supported by contracts from her area and she has confirmed permission to use the program's contract and also has a Tyson contract for the committee's review.

Ms. Icenhower presented the committee with a rough cash flow for a four-house farm. She noted in her area the average poultry farm is four 43x500 foot houses. There is a great misconception on what these growers gross versus net. This program's contract has been broken down to see what is actually being paid to the farmer; area growers are grossing \$235,918. Today it costs \$1,320,000 to construct a four house farm in her area. Approval to use these hard numbers came from a grower whose farm was financed in January and is being constructed. Financed on 5.95%, the annual payment to the lender on a common 15 year fixed amortization schedule will be \$135,911. Regarding operating expenses; every year she and her underwriter use poultry growers' schedule Fs from across Arkansas to find the operating expense ratio. To run their farms it will be 33% of gross \$235,918 which comes to \$78,640. This leaves the growers with only \$21,367 gross before property taxes or insurance on the farm.

Ms. Icenhower stated most of us have heard teachers complain about their pay; the average Arkansas teacher salary is only \$32,800. Ratios based off of a consumer ratio, show teachers can afford \$700 a month in a house payment. Run a reverse amortization schedule and it shows they can afford a \$140 thousand home, in

town on a lot. Use their property taxes and give them the homestead credit (which everyone gets) it shows they are paying \$770 in property taxes and they are bringing home more than our farmers.

Currently, on average one chicken house costs \$310 thousand to build. Regarding poultry houses having been last valued in 1995, hard numbers from Ms. Icenhower's father when he was building houses in 1995, show he was building a 40x400 foot house and was costing \$90 thousand per house to build. The price has more than tripled since 1995.

In her area since 1995, growers have received approximately six raises, but with those raises they have had three updates that were required to receive the raises. Understand the houses are costing more to build, but with gross taxes the profit margins are being cut into greatly. A grower's disposable income is being eaten up by taxes, when compared to teachers who are grossly underpaid as well, their profit margin is not affected as severely by property taxes as farmers are.

Senator Hickey asked what is the capped rate used in the poultry industry regarding valuation; and would an industry cap rate value the poultry farms lower based off those numbers. Ms. Icenhower agreed but in her area there is no cap and as a lender she uses comparable sales.

He stated this was an excellent presentation and asked for copies to be presented to the committee members. She agreed to email her documents to the committee staff.

**Dan Wright, Scott County, Poultry Farmer and Arkansas Farm Bureau Board of Directors Member, and Scott County Equalization Board Member,** noted the property tax increase is just one more he has seen over the last couple of years. For example his farm paid \$60 thousand for a year of propane to heat his houses for four months; \$35 thousand for electricity; \$110 thousand for house payments; and \$12 thousand for insurance. He will gross about \$250 thousand on his four houses, but does extra work outside the farm. He does his own books annually and realizes he could have a job in town for more money than what he makes in poultry. He noted farmers do everything they can to make their farms work and it is not right for them to pay more than their share. It seems this committee has the farmer's back and he hopes it continues by prohibiting AACD from making it harder on Arkansas farmers.

**Bruce Jackson, Sevier County, Farmer of Contract Poultry and Cattle Producer, Arkansas Farm Bureau Federation Board Member,** noted he is still growing in broiler houses he built 20 years ago yet they are appraised at 50% of their life value. He believes the residual should be 20% at 20 years to help reduce the valuation tax. The appraiser determines the life value of a poultry house and that \$9.00 tax increase for an old house is huge. The sale value of an older farm drops when poultry companies begin releasing contracts in the area. Deals are made where \$50-100 thousand for a contract but cannot be sold unless they sell the farm with it. His farm appraises for a lot but he cannot sell the contract.

**Brent Massey, Randolph County, Breeder Farm,** noted he and his wife own a four-house breeder farm built three years ago. With taxes and millage increases, if they had it to do over, he does not know that they would do it. In 2018 a millage increase came in at 3.44, and a new millage is proposed for 2020 for an additional 5. He and his wife are for the education of children and infrastructure but there is a breaking point. He met with his county assessor and the state appraiser and was shown the letter from AACD regarding the \$9.00 sq. ft. Mr. Massey encouraged all poultry house owners to check their assessor on what is being taxed, question the increase. It helped his taxes by talking with both of them.

In his meeting with the assessor and appraiser a detailed breakdown of different poultry houses was discussed and Mr. Massey discovered his houses were registered incorrectly at the highest tax rate. He pointed this out but the assessor and appraiser seemed to not know the difference. Mr. Massey explained the

difference between breeder and laying operations and his farm was re-registered at a lower tax rate. Several other farms in the county had been taxed incorrectly for the previous five years and were issued refunds.

**David Rawls, Randolph County, Broiler Farm,** noted he and his wife have a six-house broiler farm built two years ago. He stated their income has decrease due to taxes doubling.

**Chris Fort, Randolph County, Broiler Farm,** noted he and his wife have a ten-house broiler farm and raise cattle, he also he works on the railroad and she is a nurse. He said they do what they can to make their farm work between the integrators, taxes and insurance increases but the pay stays the same. He stated it is time for Arkansas to invest in the farmers because they are dying breed. Most of the farmers here today are late 30s to 50s and only one is in his 20s. Young people are not willing to come into the business and learn farming. Farmers need help from legislators with the integrators and taxes. Invest in Arkansas farmers not with handouts but with fair compensation for farmer contributions.

Representative Gazaway noted the committee will re-visit this issue again when AACD provides the requested correspondence to the committee.

With no further business, the meeting was adjourned.