ARKANSAS AMERICAN RESCUE PLAN STEERING COMMITTEE MEETING MINUTES

Zoom Meeting

Thursday, August 18, 2022 – 10:00-11:00 AM

**IN ATTENDANCE**

**STEERING COMMITTEE MEMBERS**

Larry Walther, Secretary, Department of Finance & Administration

Johnny Key, Secretary, Department of Education

Cindy Gillespie, Secretary, Department of Human Services

Mike Preston, Secretary, Department of Commerce

Wes Ward, Secretary, Department of Agriculture

A.J. Gary, Secretary, Department of Public Safety

Stacy Hurst, Secretary, Department of Parks, Heritage & Tourism

Daryl Bassett, Secretary, Department of Labor & Licensing

Renee Mallory, Secretary, Department of Health

Senator Bill Sample

Senator Keith Ingram

Senator Ronald Caldwell

Representative Kenneth Ferguson Representative Jeff Wardlaw

Representative Frances Cavenaugh

**ADDITIONAL ATTENDEES**

Alan McVey, Chief of Staff, Department of Finance and Administration

Senator Kim Hammer

Paul Louthian, Deputy Director, Department of Finance and Administration

Bob McMahan, Prosecutor Coordinator, Office of Prosecutor Coordinator

Gregg Parrish, Executive Director, Arkansas Public Defender Commission

Paul Gehring, Assistant Commissioner, Department of Finance and Administration

**AGENDA**

1. Welcome and Opening Remarks – Secretary Larry Walther
2. Approval of Minutes – Secretary Larry Walther
3. Requests
   * Senator Hammer – Program Expenses for Employee Vaccination Testing Reimbursements – $25,000
   * Office of the Prosecutor Coordinator – $4.5 million
   * AR Public Defender Commission – $4.5 million
   * Department of Agriculture – Secretary Wes Ward – Water/Wastewater – $300 million
   * Arkansas Game and Fish – Director Austin Booth
   * Rural Hospital/Healthcare Needs – Preview – Secretary Cindy Gillespie
4. Adjournment

**WELCOME AND OPENING REMARKS**

Secretary Walther welcomed the Committee and called the meeting to order.

**APPROVAL OF MINUTES**

Secretary Walther presented the minutes from the last meeting held on June 13, 2022.

*Secretary Walther entertained a motion to approve; Secretary Bassett provided a motion to approve; Secretary Preston* *provided a second; Secretary Walther called for a vote; the minutes were approved.*

**SENATOR HAMMER** – **PROGRAM EXPENSES FOR EMPLOYEE VACCINATION TESTING REIMBURSEMENTS REQUEST FOR $25,000**

Secretary Walther introduced Senator Hammer to the Committee. Senator Hammer started by presenting his request for $25,000 to cover program expenses for employee vaccination testing reimbursements. This program was established by Act 1115 of 2021, which authorized the COVID-19 testing reimbursement for employees who choose to be tested in lieu of receiving the COVID-19 vaccination.

*Secretary Walther entertained a motion to approve; Secretary Gillespie* *provided a motion to approve; Representative Ferguson provided a second; Secretary Walther called for a vote; the motion passed.*

**OFFICE OF THE PROSECUTOR COORDINATOR REQUEST FOR $4.5 MILLION ALONG WITH THE ARKANSAS PUBLIC DEFENDER COMMISSION REQUEST FOR $4.5 MILLION**

Mr. Paul Louthian presented the request from the Office of the Prosecutor Coordinator and the Arkansas Public Defender Commission for $4.5 million. The funding would be used to reduce the COVID backlog in the criminal justice system by hiring additional attorneys and qualified staff.

Representative Cavenaugh asked if the $4.5 million requested would be enough to last through 2023, and if the plan would eliminate the backlog of cases that have occurred due to COVID. Bob McMahan, Prosecutor Coordinator with the Office of Prosecutor Coordinator, stated that the additional funding would significantly help to fill more positions. He stated out of 40 positions, only 23 are filled, and of those, 21 are clearly making a difference with regards to the COVID backlog of cases for both the prosecution and public defender’s offices. He explained both departments have identified a time frame, and, while they are making significant progress, he cannot guarantee all COVID backlogs would be handled by the end of next year.

Mr. Gregg Parrish, Executive Director, Arkansas Public Defender Commission, added that the public defender’s office can only see so many cases per day, and the extra positions would greatly help to address the backlog of cases. Mr. Parrish stated that Mr. McMahan and he have had the same problem with not being able to hire people in certain locations because there is no one available to hire. He stated the backlog being caught up by this time next year depended upon the ability of judges to have trials, to get these people in front of a jury, and make something happen in that case while still handling their current caseloads.

Secretary Walther explained that the funding being referred to was for fiscal year 2023, and the departments would need to decide on how much funding will be required as they develop a budget for the 2024 – 2025 fiscal year. Secretary Walther stated that both departments would need to provide estimates of what their requirements would be in the 2024 – 2025 year so that could be added to the budget and hear it in January.

Senator Hammer asked if the backlog of cases have a direct correlation in relieving the backup of the county jails by getting these cases handled. Mr. Parrish answered yes; there are only so many people that can be seen in a day with the public defenders either in person or by virtual, and these extra positions have enabled these attorneys who concentrate on the COVID cases and specifically the serious cases where the people are remaining in jail. The sooner the public defender’s office gets someone to the inmates, the sooner we can get them in front of a judge and sent to the ADC if there is a conviction or get them released if not.

A question was then asked what the total number of backlog cases were that needed to be worked. Mr. McMahan answered they do not have a total number but explained they identified the backlog they are calling COVID related cases to be between March 1, 2020 through May 31, 2021. The backlog occurred because crimes were still being committed, cases were still being worked, and charges were still being filed in the time where in-person proceedings stopped because of the per curiam order.

Secretary Bassett stated it would be helpful for the Committee to quantify the volume of the backlog beginning with the date of the disposition. Mr. Parrish replied that they would have ADC run the numbers from the time the disposition occurred and that they would get those numbers to the Committee. Secretary Bassett stated his concern with holding up the Committee’s decision because of the backlog and the need to hire people to work.

Senator Ingram wanted to know if they had a breakout of the positions between judicial districts in which Mr. McMahan answered he did have a document with the breakdown of the districts but would provide that to Secretary Walther and the Committee. He went on to explain that the Office of the Prosecutor Coordinator has surveyed all elected prosecutors in all 28 Judicial Districts to identify the need for additional deputies due to increased case filings and the failure to dispose of cases through trial or plea negotiations.

*Secretary Walther entertained a motion to approve the Prosecutor Coordinator’s request; Secretary Hurst provided a motion to approve; Secretary Gillespie provided a second; Secretary Walther called for a vote; the motion passed.*

*Secretary Walther entertained a motion to approve the Public Defenders Commission’s request; Secretary Hurst provided a motion to approve; Representative Ferguson provided a second; Secretary Walther called for a vote; the motion passed.*

**DEPARTMENT OF AGRICULTURE – SECRETARY WES WARD – WATER/WASTEWATER ALONG WITH ARKANSAS GAME AND FISH REQUEST FOR $300 MILLION**

Secretary Ward started by sharing a bit of background and explained that last year when the Governor and the Department of Agriculture met, they created groups for three separate working groups, one was for water and other infrastructure projects. The Department of Agriculture worked together and created a presentation that everyone should have received. He continued that during that process, a needs assessment was put out throughout the State of Arkansas which resulted in over 1400 responses demonstrating over $5 billion worth of water and wastewater needs across the state. Due to impacts of COVID and the need to respond, we were not able to move forward with funding last year. He stated with this second request, he is hoping to use this request for funding from the American Rescue Plan to address these particular needs across the state. Secretary Ward stated that the proposal represents $135 million for water projects, $135 million for wastewater and stormwater projects, $5 million for the Rock River irrigation district and $5 million for the Bayou Meto irrigation district along with two separate projects for the Arkansas Game & Fish Commission; a fish hatchery and for the Bayou Meto wildlife management area. He stated the total requested amount comes to $300 million; $270 million for water and wastewater projects, $10 million for irrigation, and $20 million for the Arkansas Game and Fish Commission projects.

Secretary Walther inquired about the process that will be used to select the projects the funding would be used for. Secretary Ward answered that within the Department of Agriculture and our Natural Resources Division, they have existing programs for water and wastewater that provide financing and principal forgiveness and loans for those sorts of projects. He stated they have got dedicated staff and teams that work on this all the time, so our proposal is to use a very similar process. He continued stating the eligibility criteria under the American Rescue Plan is the same as what they are currently using for existing programs. Secretary Ward explained if funding is granted today it will then go to ALC next week, through PEER the following Tuesday, and to the ALC next Friday. He stated that following the legislature’s approval of the plan, the Department of Argriculture would open a 50-day application process that would allow everyone a fair chance at applying, and from there they would do a 21-day (about three-weeks) review of those applications. Secretary Ward said following that review, they will submit them to the Natural Resources Commission in conjunction with ADEQ and DHS to make a decision on which projects to fund.

Upon Natural Resources Commission’s approval, they anticipate getting started on these infastructures early November. Senator Sample asked if the Natural Resources Commission has the money to fund these projects rather than using ARP funding, in which, Secretary Ward answered there are other resources they use, for example, grants, principal forgiveness, and low-interest loans, but it’s just not enough to cover the $5 billion needed. Secretary Walther asked how additional funding from other sources complements ARP funding. Secretary Ward responded that the entire state has water and wastewater needs that represent over $5 billion dollars that they have identified, current existing programs that provide financing support, and hopefully a favorable approval of ARP funding that will also assist in helping to fund these projects. He stated at that time they will have funding through the Infrastructure Investment and Jobs Act (IIJA) that will provide additional funding over the next five years.

Secretary Walther reiterated Secretary Ward’s proposal and then stated that ARPA requirements are designed for a lot of different things but specifically water and wastewater so that is why they put together a study group to look at the aspect of ARP funding. Secretary Ward’s program is designed to identify the projects on a comparative basis, but also leveraging money from other sources, including state money, that will allow the projects to be completed. There’s been some discussion within the legislature about waterways and concerns about getting these projects started because of the timing it takes to complete them. Representative Cavenaugh stated she was thinking they would probably ask for about $300 million to help with these grant projects, but there is $20 million of it going to the Game and Fish Commission, which is understandable. They need to give them the full $320 million for wastewater and drinking water projects and then an additional $20 million to the Game and Fish Commission instead of taking money away from the rural departments and the city department municipalities. Secretary Walther stated he did not think that it would be proper to change the proposal. Secretary Bassett said he agreed with Secretary Walther that they should submit an additional proposal for the other $20 million trying to take this $200 million working in conjunction with existing and additional funding to make it go as far as possible. Representative Cavenaugh questioned the amount being requested stated she thought all the $300 million should go to the water and wastewater projects and the Game and Fish should have a separate request for $20 million instead of the $20 million being taken out of the $300 million because of the need to have those projects completed. Secretary Walther stated he did not feel comfortable making a change in the requested amount at this time. Secretary Bassett also stated that it would not be proper to change the proposal after it has been presented to the Committee.

*Secretary Walther entertained a motion to approve; Secretary Hurst provided a motion to approve; A.J. Gary provided a second; Secretary Walther called for a vote; the motion passed.*

Senator Sample stated he was worried about the money spent in tax reduction and if the state would have the money to pay back in case we have to pay back the money. Secretary Walther introduced Paul Gehring, Assistant Commissioner of the Department of Finance and Administration to address the question. Mr. Gehring gave the Committee a short briefing into the litigation case that Arkansas along with other states have challenged the recoupment provisions of the American Rescue Plan and the Treasury guidance that was issued. The states were successful in the decision of the federal district court regarding having the Tax Mandate, which provides for the possible recoupment of ARPA funds, ruled unconstitutional. The Treasury has appealed the federal court’s decision to the U.S. Court of Appeals. Mr. Gehring said the DFA feels like the state’s argument that the Tax Mandate is unconstitutional is correct and that the ruling by the Alabama Federal District Court invalidating the Tax Mandate will likely be affirmed. Mr. Gehring continued by stating that the State of Arkansas is not using our funds either directly or indirectly to pay for tax cuts that the General Assembly enacted. He said the state is paying for those tax cuts out of surplus revenues where there is an overcollection of tax, and the state is not using our funds incorrectly under the Treasury guidance. He ended by stating if the Tax Mandate is ultimately upheld, the State of Arkansas is not in violation of the Tax Mandate. Senator Sample stated the state was worried about having to pay back millions a month ago, and now we are not going to have to pay back zero. Mr. Gehring responded by saying that DFA took a very close look at the Treasury guidance and looked at all litigation cases that were pending and talked to the state’s counsel, the Arkansas Attorney General’s Office and our sister states that are dealing with the same issue and focused on two issues. The analysis focused upon the question of if the Tax Mandate is upheld and whether the state is going to be subject to recoupment, or whether the Tax Mandate is to be completely reversed, both of which carries no risk of recoupment. He stated the conclusion was that the risk of recoupment was close to zero.

**RURAL HOSPITAL/ HEALTHCARE NEEDS – PREVIEW - SECRETARY CINDY GILLESPIE**

Secretary Walther introduced Secretary Gillespie to address rural hospital and health care needs. He stated we had a request from the hospital association as well as the rural hospital association having to do with ARPA funding that was still being evaluated, but he wanted to give the Committee a brief explanation of the future request that will be brought before them. Secretary Gillespie responded she is hoping to have the proposals ready the beginning of September regarding rural hospitals having a range of issues that have arose post COVID. She stated these issues involved not just a shortage of nurses but financial sustainability issues that hospitals are having that has caused them financial distress coming out of the public health emergency. She stated that of the many issues that are raised, the hospitals are trying to address through Medicaid, but some things Medicaid cannot pay for. Secretary Gillespie stated the proposals will be presented to the Committee giving them plenty time to review. Senator Sample asked why there was not a proposal request from the Pharmacy Association. Secretary Gillespie answered she had not seen any proposal come through, but she would reach out to the Pharmacy Association to inquire on any proposal they may have. Representative Cavenaugh raised the question of the amount of money being requested to help the rural hospitals and those hospitals in distress. Secretary Gillespie answered saying she did not want to give a firm number on the amount, but she assured that DHS were trying to keep the number as low as possible. Secretary Walther called for questions and none were raised.

**The meeting was adjourned.**