

HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS

**Wednesday, April 18, 2012
9:30 a.m.
Room 544 Legislative Office Building**

MINUTES

The House Select Committee on Public-Private Partnerships met on Wednesday, April 18, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representatives Moffitt, Brawley, Carney, McGee, R. Moore, and Owens were in attendance.

Representative Brawley presided. He welcomed the Committee members and introduced the Sergeant at Arms and staff members.

PRESENTATIONS

Proposed Public Private Partnership for Zoo Expansion and Governance

Dr. David Jones, Director of the North Carolina Zoo, was introduced to give his presentation titled "Proposed Public Private Partnership for Zoo Expansion and Governance", which is attached (see Attachment 1).

After the conclusion of Dr. Jones' presentation, Representative R. Moore asked how the employees that are presently employed by the State will be infused if a public private partnership with the zoo is carried through. Dr. Jones stated that both Federal and State case law will require that they will be riffed, then reemployed by the Zoo Society the following day. Whatever the effective day may be is the day that those employees would be taken on. Representative R. Moore asked how the employees' benefits prior to being riffed would be affected after they are integrated into the new system, and if their benefits would be carried over. Dr. Jones responded that the employees would retain their pension and what they've attained already, in terms of pension. There are about twenty employees that are approaching twenty years of employment, who might be slightly disadvantaged as far as pension rights but not significantly. The business plans allows for about 33% of all staff costs to be put into a benefit plan and although the buying power of 300 people isn't the same as 300,000 people, so the overall benefit package might not be quite as good as the State's but it will be more than comparable with the private sector.

Mr. Stanly Moore, from the Fiscal Research Division at the North Carolina General Assembly, commented that the current zoo employees would be riffed as of December 31st, 2012. There was a discontinued service retirement and severance wages law put into law in the late 70's or early 80's when McCain Hospital was closed down into Sand Hills. It declared that in accordance to how long a person has worked and their age, they can receive severance wages. Some of the employees that lost their jobs on June 30, 2011, received those benefits. Additionally, there is discontinued service retirement for folks that are fifty or more or have twenty years of service in lieu of severance wages. It buys down the reduction that they would

normally take. There is another provision in the law that allows furloughed employees to continue receiving health benefits for one year, until they are eligible for other health insurance.

Representative Owens stated that the zoo is a great asset for the State of North Carolina, but that he has concerns about the ten million dollar a year statutory requirement, and that it would diminish each year because of the wrong people in leadership. He stated that he also has concerns about the five million dollar a year allocation for renovations and repairs, because there is a very limited amount of funds for renovations and repairs and the funds that exist are going towards state buildings and universities. The ten million dollar statutory requirement would require 10% of the State portion of those funds; additionally, there is a lot of equipment and vehicles that need replacements and he is unsure that there are enough funds to do so. He stated that there are two-thirds bonds, a better affordability, and the monies available to us; then asked that it be considered to appropriate the thirty million dollars out of a capital fund to do what needs to be done rather than take the money from renovations and repair funds.

Dr. Jones responded that the zoo receives about a million dollars a year, therefore, thirty million dollars that they hope to receive minus the additional funding that they receive, isn't as large a sum as one might think. However, that would be temporary; once that's done, the Zoo Society, the new governing mechanism, would then be raising the rest of the money on top of that. He also stated that the Society expects to be able to raise private money for much of that cost. If a solution isn't reached for how to deal with the lack of funds, then in the next five years, the zoo will decline and that will have a rollercoaster affect in the sense that it will lose visitation and income. It pays in the end to try to reinvest in the zoo.

Mr. Gerry Cohen, the director of the Bill Drafting Division at the North Carolina General Assembly, stated that the fiscal year of 2012-2013 appropriations in this bill will be dealt with and taken into consideration by the Appropriations Committee, however, beyond that fiscal year, everything in it is subject to future budget writers. If the Legislature chose to give a higher or lower amount, that would prevail over what is in the bill for future biennium; as far as capital, the Legislature can choose an alternative way of dealing with the back log. If there are two-thirds bonds available, then that could be done. In 1972, the original zoo construction was funded by a state wide general obligation bond referendum that passed; so there is some experience with general obligation bonds being used at the zoo.

Representative Brawley stated that his understanding of Mr. Cohen's comments were that if the zoo remains a part of the State, money may not be appropriated and the zoo will run out. If the zoo has a new governance structure and the legislature failed to appropriate funds to it, the zoo will still have the option of attempting to raise replacement funds from the private sector, which cannot be done presently.

Mr. Cohen stated that Representative Brawley is correct. The zoo is just as subject to budget cuts as is any other state agency. If the zoo is made private then it will have a lot more flexibility, because they will be able to control their own receipts rather than the receipts being moved to other places in the State budget or filling other holes, as Dr. Jones indicated has happened in the past.

Representative Owens asked if the two-thirds bonds capability goes away if it is not used this year. Mark Bondo, from the Fiscal Research Department at the North Carolina General Assembly, stated that it does go away. Two-thirds bonds are built off the repayment of general obligation debts.

Representative McGee asked if the 110,000 students that were admitted free were included in the 741,000 annual visitors, indicating that there were 630,000 paying customers. Dr. Jones responded that there are about 450,000 paying due to additional Society members that pay into the zoo, but the students admitted free are included into that overall number.

Representative McGee asked what percentage of the zoo's payroll would go towards employee benefits. Dr. Jones stated that 33% of the payroll would go towards employee benefits. Representative McGee stated that the thirty million dollars, if allocated to the zoo, would be at risk because the current legislature doesn't have control over what the future bodies would do to the money that is being anticipated by the zoo. He also stated that the bill states the zoo will receive thirty million from the State. It needs to be considered whether or not this legislative body should fund the necessary repairs, and not put the burden on a future elected representative body.

Representative Carney asked to be reminded if there are any North Carolina schools that receive free admission to the zoo. Dr. Jones responded that all the schools are admitted free. Representative Carney asked if that will continue with the new agreement. Dr. Jones stated that they have allowed for it to continue in their business plan. Representative Carney stated that ten million dollars is a lot of money and wonders what the State is going to realize from this ten million dollar investment. Representative Carney also inquired about the relationship with the Vet School. Dr. Jones stated that it was very strong. Representative Carney asked if that relationship would continue without fees from the Vet School in the future. Dr. Jones stated that it is a mutual agreement; the zoo provides their Senior Vets as part of the School's staff and the zoo takes a lot of the Students for training, so it is a mutually symbiotic relationship.

Review of Bill Draft

Mr. Gerry Cohen, Director of the Bill Drafting Division at the North Carolina General Assembly, was introduced to give his presentation to go through the drafted bill section by section, titled "Review of Bill Draft: An Act to Create a Public-Private Partnership for the North Carolina Zoological Park". During his presentation there were three (3) documents provided: a summary of the Bill Draft (Attachment #2), the Bill Draft (Attachment #3), and "DENR Recommended Changes to Zoo Legislation" (Attachment #4).

In regards to the changes in Section 2, line 14-15, Mr. Cohen requested that the Chairs allowed Mary Penny Thompson, the General Counsel from the Department of Environment and Natural Resources, to clarify those changes. Ms. Thompson stated that DENR wanted to add a sentence to give the overall purpose of the zoo, describing the functions that make the zoo separate from any other kind of non-profit park (see Attachment #4).

Representative Brawley asked Dr. Jones if he was familiar with the document and its suggestions provided by DENR. Dr. Jones stated that he is and that he did have input on it. Representative Brawley pronounced that the recommendations provided by DENR have the zoo's agreement.

Representative Brawley, referring to #12, "maintain AZA credit accreditation", asked that the acronym be written out as opposed to abbreviated. Mr. Cohen said that he can make that change if the Association will send him the full name. Mr. Cohen continued to review the bill draft (Attachment #3, subsection b).

Representative Owens asked if the Secretary is able to appoint a designee to attend the Board meetings. Mr. Cohen said that it does not say his or her designee, but that the committee can change the bill to allow the management agreement to allow the Secretaries to do so; currently it requires that the Secretaries themselves be the members, meaning if they want to vote they have to attend the meeting in person. In order to be able to vote they would need to personally participate under the current proposed agreement. Representative Owens stated that if the Board met on the same day as the Governor's cabinet meeting every week, one of the Secretaries would be unable able to go, and that this should be a concern. Mary Penny Thompson stated that the agencies, the Department of Administration and DENR, both have a high level of involvement. She stated that she understands his issue and the non-profit corporation's bylaws may allow for a designee or a substitute and that may be a better place to handle it than in the legislation, but they can do that. She understands there is a concern, because if it gets too low in the staffer level of an agency that it's not worthwhile input and the nonprofit doesn't get the buy-in it needs to keep the zoo up to par.

Representative Brawley asked Representative Owens if he would feel better about it if the legislation said the secretary of Department of Environment and Natural Resources, or his designate, and the same language for the Department of Administration, and put that in the hands of the secretary. Representative Owens stated that it what he would prefer, because he knows so many of the secretaries are too busy to do it, but if the agency doesn't want it then they probably need to talk to their boss. Representative Brawley asked Representative McGee if he had a preference on this. Representative McGee stated that he did not have a preference, but did have a question. Representative McGee asked Mr. Cohen if it is automatically assumed that members will be voting members if the bill doesn't state if they are voting or not voting or if it doesn't state one way or the other. Mr. Cohen stated that they would be voting by virtue of their office, but they have the same benefits and responsibilities as any other board member, both voting, fiduciary duty, among other things; they would be voting members.

Representative Brawley asked Representative Carney if she had a preference regarding the secretaries or their designee. Representative Carney stated that she does not have a preference if the department is okay without it being included, but that she does agree with Representative Owens that there could be a conflict down the road. Representative Brawley stated that his sense is that the consensus would be that the bill should include "the secretaries or their designee", and requested that staff put that into the bill. He also stated that the other issue can be addressed by the Governor.

Mr. Cohen continued to review the bill, restarting at subsection c (Attachment #3).

Representative Brawley stated that there was a request by the Department to defer that date until

June 30, 2013, and asked Ms. Thompson to address the reasons for that. Ms. Thompson stated that the Department has spoken with several of their partners, and the zoo was included in those discussions, along with the Society and some of their sister agencies, but they still need to reach out to the Department of Administration. One of the things that they have looked at in the structure is if they had an extended date it would allow them to move things over to the Society earlier, whereas in reverse, if there was an earlier date action will be forced and the Society may not be ready. Pushing the date back to a later date, would give the Department a little bit of leeway to make sure that they have everything in place, but in the instance that they are not ready, it will give them a couple months.

Representative Moffitt stated that there was a broad discussion about the effective date at the last meeting and that Marshall Barnes had some concerns about extending that past December 31st, 2012. Mr. Marshall Barnes, from the Fiscal Research Division at the North Carolina General Assembly, was recognized to comment. Mr. Barnes stated that the issue with extending the date was related to the calculations of severance wage cost and discontinued service retirement cost. He said they completed some preliminary calculations and estimated the cost of severance wages to be at about 2.9 million, and if the additional 21 people that would appear to be eligible for discontinued service retirement allowances as of December 31st were included, that would bring the cost to approximately 3.2 million dollars for the cost of both. Those are costs are based on the December 31st reduction enforce date, if that date was changed it would change those calculations.

Representative Brawley asked if there was a preference among the committee regarding the date and there were not any members that spoke up against keeping the December 31st reduction date. Mr. Cohen continued to review the bill draft.

Referring to subsection e (Attachment #3), Representative Owens asked if the Society could sell the assets off if the zoo were to shut down, and where would the proceeds go. Mr. Cohen referred to lines 10 through 13 that say "the management agreement must provide for the reversion of such personal property to the State, or redirection by the State, if the society ceases to exist, enters bankruptcy, terminates the agreement, or any other way is incapable of maintaining the zoo." Mr. Cohen stated that the bill protects the State's interest. Mr. Cohen continued to review the bill where it stated "all real property shall remain entitled to the State".

Representative Owens asked if the State would inherit the debt if the zoo pledges the revenues to pay off a debt and then closed. Mr. Cohen stated that the zoo cannot pledge the appropriations; if they wanted to pledge their gate receipts and had a lender that would allow them to finance various things with gate receipts, then that would be between the zoo and the lender.

Representative Brawley stated to Representative Owens that this was discussed at length. There were two concerns: (1) that the zoo would try to capitalize future receipts from the State, however, he believes the language in the bill is structured in a way that this cannot be done; and (2) the concern of the pledging of state-owned assets, which cannot be done, there is no commitment on the part of the State to, in any way, guarantee or underwrite private debt by the zoo. Essentially, the zoo can pledge the things it owns, money they raise, and property they own,

but anything they get from the State or that the State has funded cannot be encumbered in any way and will remain the property of the people of North Carolina.

Mr. Cohen continued reviewing the bill, restarting at subsection g (Attachment #3). Mr. Cohen referred to the handout of suggested changes provided by DENR (Attachment #4) and requested that Ms. Thompson explain what exactly the changes are dealing with, as far as the role of the State in the construction process. Ms. Thompson stated that the language continues to evolve and they have not met with the Department of Administration's State Property Office, so this was some of their earlier drafts looking at some of their earlier concepts. The one that they would prefer to substitute is using a "tried and true" model, which is the University Construction Model, conforming the name of the Board of Governors to the "Society" and throughout that statute. Using that existing model for state construction and she understands that it works very well for the University System and the zoo is comfortable with having that process for projects that are two million dollars or less. Representative Brawley stated that this model would allow them the same model for operation but independence from the University system, and Ms. Thompson stated that this was correct.

Representative McGee said he would go back to lines 16-19 of section e, which says "if any fee or other payment is required to effectuate the transfer, the Society shall pay the fee or other payment or reimburse the DENR for any expenditure in relation to the transfer". He asked if any of the modifications in the bill provide some limit to any expenditure, or what does "any expenditure" mean. Ms. Thompson stated that what they were thinking of when they were referring to the fees was basically transferring vehicles; any vehicle registration fees, the cost of which would get allocated out to the recipient agency that would be able to get those vehicles. She didn't think that it was a limitation, but just a determination of who bears the cost.

Mr. Cohen stated that the Society is responsible for paying this out of their funds, therefore it would have to come out of the appropriation made during this year or private funds. Motor vehicle registration is the only fee that Mr. Cohen knows of as far as transferring personal property, but he doesn't think that they have any financing that way. The State is, in fact, protected from being on the hook.

Mr. Cohen continued reviewing the bill, restarting at subsection h (Attachment #3). Mr. Cohen referred to the handout of suggested changes provided by DENR (Attachment #4). Ms. Thompson stated that this was outgrowth of meeting with the State Budget Agency, one of their sister agencies, and there are two separate budgets. The State Budget Agency prefers to have two separate paragraphs. They understood the way it was written before, that it was just the intent and no binding effect for this year as it stood, but they added that clarification to make that directive this year.

Mr. Cohen continued referred to page 3 on the handout of suggested changes provided by DENR (Attachment #4). He stated that the three million dollars is related to one-time expenses, RIFs, and money for the vehicle transfers. Mr. Cohen then moved on to subsection j.

Representative Carney stated that she did not hear anywhere in the bill where there was going to be any reporting back in the beginning or ongoing during the public-private partnership to the

Legislature. Representative Brawley stated that that will be addressed in the management agreement between DENR and the Zoo. Representative Carney asked what the course for this bill was at this point. Representative Brawley responded that the bill will go back to staff to engross the changes to be made, after which, it will move forward to regular committee cycle during short session. Mr. Cohen said the bill will be eligible because it directly and primarily affects the budget, as well as the fact that it was recommended by a study.

Representative Brawley announced that the next meeting of the Public Private Partnerships Committee will take place on April 24, 2012 at 2:00 p.m. in Room 544 of the Legislative Office Building.

Representative Brawley adjourned the committee at 10:45 a.m.

Representative Tim Moffitt, Co-Chair

Melissa Carter, Committee Clerk