University of Arkansas at Little Rock Law Review

Volume 26 | Issue 2 Article 2

2004

84th General Assembly

Herschel W. Cleveland Speaker of the House

Herschel W. Cleveland, Speaker of the House

The 84th General Assembly convened at noon on January 13, 2003, and was met with as much anticipation as trepidation for several reasons. First, this was the first session with a fully term limited House and Senate. Second, five budget cuts during the biennium 2001-2003 carved $179 million from the budget. Third, the dark cloud of the *Lake View* school-funding case[1] casts its shadow.

Several people knowledgeable in state government had commented to me that they anticipated the 84th Legislature to be one of the hardest ever. Although I had just come off triple-bypass heart surgery, I accepted this as a challenge and was very glad that the session was not expected to be an average or normal one.

In November 2002, well after the general election, lawmakers learned of a proposed sales tax increase by the governor. Because neither the tax increase nor the need for additional revenue had been discussed prior to the election, the governor's budget stuck out like a sore thumb.

Governor Huckabee, in his opening address to the 84th General Assembly, revealed two additional proposals that had been hidden from the public during the campaign of 2002: a massive school consolidation program and a government reorganization plan.

Given the crisis atmosphere with the budget and the governor's plan to consolidate schools and reorganize state government, lawmakers were presented with an opportunity to accomplish many things under the radar screen of the governor's proposals.

This essay is an attempt to present many of the significant accomplishments and controversies of the House of Representatives during the 84th Regular Session and the First Extraordinary Session of the 84th General Assembly.

Some significant legislation was presented and enacted into law with hardly a peep from the press. Since then, I have been asked several times by members of the press how this issue or that issue got through without much attention. The answer is that the media had concentrated on the governor's proposals and had failed to appropriately recognize the magnitude of many House members' bills that were passed and enacted into law.

1. Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002).

UTILITY REGULATION

Several important pieces of legislation came out of the House Insurance and Commerce Committee. Among them were bills dealing with the Public Service Commission's ability to set rates,[2] electric utility deregulation,[3] and insurance for the working poor.[4]

The General Assembly designates to the Public Service Commission (PSC) the ability and authority to regulate the state's utilities. It is almost impossible to over-emphasize the importance and authority of the PSC and the effect its decisions have on the financial and economic well-being of Arkansas citizens.

One consumer-friendly act important to the people of Arkansas is Act 1317, which deals with utilities, their acquisitions and what they may pass on to consumers.[5] Normally, "Blue Sky" legislation allows a public utility to obtain a return on assets. However, Act 1317 excludes such "Blue Sky" returns in certain circumstances.[6] This means that a company that pays more than the asset value for assets will not be allowed to base their rates on more than the actual value of the assets.

This law should result in smaller rate increases for state utilities that are net acquirers of property. For example, CenturyTel acquired assets in the State of Arkansas at essentially the same time that CenturyTel acquired properties in Wisconsin. CenturyTel paid nearly $1,000 more per customer in Arkansas than was paid for assets in that other state. Provided that the assets were of substantially the same value, Act 1317 would prevent CenturyTel from utilizing the extra $1,000 paid per customer in Arkansas for the purpose of a utility rate increase.

The General Assembly this year also approved legislation to repeal a previous law aimed at deregulating the electric industry.[7] Deregulation was first approved in 1999,[8] but implementation was delayed to give the PSC enough time to make sure certain consumer protections were in place. As

---

2. Act of Apr. 14, 2003, No. 1317, 2003 Ark. Acts 1317 (codified at ARK. CODE ANN. § 23-4-111 (LEXIS Supp. 2003)).

3. Act of Feb. 21, 2003, No. 204, 2003 Ark. Acts 204 (codified at ARK. CODE ANN. § 4-9-109(a), -301, 23-2-304(a), -3-102 to -104, -201(a), -4-209, -18-101, -106, -107, -511, 519 (LEXIS Supp. 2003)) (repealing ARK. CODE ANN. §§ 4-9-102(a)(69)).

4. Act of Apr. 2, 203, No. 1044, 2003 Ark. Acts 1044 (codified at ARK. CODE ANN. §§ 23-79-1001 to -1005 (LEXIS Supp. 2003)).

5. 2003 Ark. Acts 1317.

6. *Id.*

7. 2003 Ark. Acts 204.

8. *See* Act of Apr. 15, 1999, No. 1556, 1999 Ark. Acts 1556 (codified at ARK. CODE ANN. §§ 4-9-103 to -105, -403, 23-3-201, -18-306, -307, -318, -330, -331, -18-511, -519(b), -19-101 to -616 (LEXIS Supp. 2001)) (repealing ARK. CODE ANN. §§ 23-18-103, -104, -302(8)).

the months progressed, however, we witnessed the problems of electric deregulation in California and other states, as well as the collapse of Enron Corp. After much study and with the support and recommendation of the PSC, lawmakers repealed electric deregulation for Arkansas.[9]

HEALTH INSURANCE

We approved legislation to help more Arkansans receive health insurance.[10]

About 400,000 Arkansans are uninsured, and the program, according to supporters, will help the poorest of those, along with their spouses in some cases. The new law establishes the Arkansas Safety-Net Benefit Program.[11] It allows employers to pay the state's portion for Medicaid directly for the employees who are not already covered by Medicaid.[12]

In addition, the General Assembly approved the implementation of a program to help the working poor receive medical coverage.[13] The Act provided an innovative framework for community-based health care access programs. The health access program was piloted in Logan, Franklin and Scott counties and is now fully operational.

While we are on the subject of health, I should point out that legislation by the 84th General Assembly puts Arkansas on the forefront of our nation's battle against obesity among our young people. The new legislation requires schools to determine the body mass index (BMI) of students and inform parents of those BMI rates.[14] Certainly, we do not mean to embarrass students or to "pry," but it is imperative that we educate the public, in any way possible, about the tremendous financial and physical costs of obesity and about how our children can lead healthier lifestyles.

AGRICULTURE AND ECONOMIC DEVELOPMENT

While the House Agriculture, Forestry and Economic Development Committee emphasized economic development issues during the 2003 session, the committee and the General Assembly did approve a package of three bills dealing with chicken litter and water quality, especially in

---

9. 2003 Ark. Acts 204.

10. Act of Apr. 2, 203, No. 1044, 2003 Ark. Acts 1044 (codified at ARK. CODE ANN. §§ 23-79-1001 to -1005 (LEXIS Supp. 2003)).

11. *Id.*

12. *Id.*

13. Act of Mar. 26, 2003, No. 660, 2003 Ark. Acts 660.

14. Act of Apr. 10, 2003, No. 1220, 2003 Ark. Acts 1220 (codified at ARK. CODE ANN. §§ 6-7-117 to -119 (LEXIS Supp. 2003)).

Northwest Arkansas with its Illinois River and other tributaries.[15] Water quality is a huge issue involving the quality of life in Northwest Arkansas and affecting our ability to attract or keep jobs in that area. This issue also affects our neighbors in Oklahoma who get their drinking water from the Illinois River.

The agriculture committee also spent much time debating the need for Arkansas to form a Department of Agriculture. Several bills reached the floor of the House, but none of the bills passed both the House and the Senate. This remains a controversial issue that, in all probability, will be debated in a future session.

House Joint Resolution 1028 proposes a constitutional amendment authorizing the state, subject to voters' approval, to issue general obligation bonds as part of an incentive package to lure "super projects" to Arkansas.[16] "Super projects" are defined as economic development projects that invest at least $500 million in their Arkansas operations and hire at least 500 full-time workers.[17] Such companies or manufacturers could use the state issued incentives only for infrastructure needs such as land acquisition, site preparation, road and highway improvements, rail construction or sewer and water services.[18]

In addition, the Legislature passed Act 860, which provided an incentive for venture capitalists to invest in economic development projects in the state.[19]

TRANSPORTATION

The House Transportation Committee also sent to the House significant legislation in an effort to bring truckers back to Arkansas for the purpose of the registration of their vehicles.[20] Act 551 reduces the sales tax on the big rigs, including the trailers, to bring truckers and their registrations back to the state and to help retain state general revenues.[21] In addition, leg-

15. Act of Apr. 3, 2003, No. 1059, 2003 Ark. Acts 1059 (codified at ARK. CODE ANN. §§ 15-20-1001 to -1008 (LEXIS Supp. 2003)), Act of Apr. 3, 2003, No. 1060, 2003 Ark. Acts 1060 (codified at ARK. CODE ANN. §§ 15-20-901 to -906 (LEXIS Supp. 2003)), Act of Apr. 3, 2003, No. 1061, 2003 Ark. Acts 1061 (codified at ARK. CODE ANN. §§ 15-20-1101 to -1114 (LEXIS Supp. 2003)).

16. H.J. Res. 1028, 84th Gen. Assem. (Ark. 2003).

17. *Id.*

18. *Id.*

19. Act of Mar. 28, 2003, No. 860, 2003 Ark. Acts 860 (codified at ARK. CODE ANN. §§ 15-4-1001, -1002, -1004, -1005 to -1009, -1011 to -1019, -1022 to -1029 (LEXIS Supp. 2003)) (repealing ARK. CODE ANN. §§ 15-4-1010, -1020, -1021).

20. Act of Mar. 30, 2003, No. 551, 2003 Ark. Acts 551 (codified at ARK. CODE ANN. §§ 26-52-433, -54-433 (LEXIS Supp. 2003)).

21. *Id.*

islation was passed that would enable toll roads to be more easily financed within the state.[22]

ENERGY

In response to our dependence on foreign oil and the uncertainty surrounding oil supplies because of the war in Iraq and other problems in the Middle East, Arkansas has taken the first step in attempting to set up infrastructure and research to stimulate development of alternative fuels.[23] Agriculture is an important part of Arkansas's economy, and as such, agriculture is in a position to produce products that can be converted to soy diesel, gasohol and other alternative fuels. During this session, Arkansas passed an Alternative Fuels Commission bill along with a funding bill that will provide approximately $1.6 million for research and development grants and aid in the production of alternative fuels.[24] Also contained in the funding bill was a weatherization project that would provide additional money to insulate Arkansans' homes to reduce the consumption of energy.[25]

GOVERNMENT REORGANIZATION

The biggest thrust from the governor and his administration was Senate Bill 45, which called for the reorganization of state government.[26] With eleven Senate sponsors and forty-one House sponsors, the bill proposed a structure with ten secretaries to run the administrative agencies for the state.[27] Since there was no proposal or discussion of this issue prior to the election and there was no indication to the Legislature that this would be an issue prior to January 14, 2003, the enormity of overhauling state government became very contentious.

The last reorganization of state government occurred during the Bumpers administration in the early 1970s and had been studied for a couple of years prior to its passage. Many members of the House decided that this year's reorganization bill needed in-depth study as well.

22. Act of Mar. 4, 2003, No. 296, 2003 Ark. Acts 296 (codified at ARK. CODE ANN. §§ 27-65-115, 27-90-201 to -215 (LEXIS Supp. 2003)) (repealing ARK. CODE ANN. §§ 27-71-201 to -210, -301 to -308, -401 to -411).

23. Act of Feb. 17, 2003, No. 121, 2003 Ark. Acts 121, Act of Feb. 18, 2003, No. 174, 2003 Ark. Acts 174 (codified at ARK. CODE ANN. §§ 65-10-601 to -602 (LEXIS Supp. 2003)), Act of May 6, 2003, No. 1287, 2003 Ark. Acts 1287 (codified at ARK. CODE ANN. §§ 19-6-487, 20-36-101 to -105 (LEXIS Supp. 2003)).

24. 2003 Ark. Acts 174.

25. 2003 Ark. Acts 121.

26. S. 45, 84th Gen. Assem., Reg. Sess. (Ark. 2003).

27. *Id.*

EDUCATION

The House Education Committee, on which I served, did a tremendous amount of work during the regular session. In addition to its usual duties, the committee was saddled with the responsibility of responding to the *Lake View* decision, in which the Arkansas Supreme Court ruled that our school system was unconstitutional.[28] The court said funding for education was both inadequate and inequitable.[29] The court gave the General Assembly the mandate and responsibility for not only raising money, but also the responsibility for expending the money in an appropriate manner designed to benefit students.[30] The court also said that there are great disparities in teacher's salaries both within Arkansas and between Arkansas and other states.[31] The General Assembly was given until January 1, 2004, to implement a constitutional system of education in Arkansas.[32]

Although the court did mandate substantially equal curriculum, equipment, and facilities, the court ruling did not directly require consolidation. In his address to lawmakers on the session's opening day, however, the governor proposed the consolidation of all school districts with fewer than 1,500 students. This became an extraordinarily divisive issue between the administration and many members of the General Assembly. The governor found little support for his consolidation-by-numbers plan. Much of the attention of lawmakers during the 84th General Assembly was diverted from how to improve education to how to deal with consolidation.

The administration prepared a consolidation bill, SB 758, with just eighteen sponsors, of which only four were Democrats.[33] The bill received initial support from the Arkansas Education Association and the Arkansas State Chamber of Commerce but was quickly discounted by a majority of members of the House after an examination of its contents and consequences. Although the bill did eventually get the approval of the Senate Education Committee and the discussion went to the Senate floor, it never received the necessary votes to be sent to the House of Representatives.

The court in *Lake View* declared that the state should do an adequacy study.[34] The state Department of Education, under the leadership of the administration, had failed to conduct an adequacy study as required by Act

28. Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 42, 91 S.W.3d 472, 477 (2002).
29. *Id.* at 71, 91 S.W.3d at 500.
30. *Id.*, 91 S.W.3d at 500.
31. *Id.* at 61, 91 S.W.3d at 489.
32. *Id.* at 97, 91 S.W.3d at 511.
33. S. 758, 84th Gen. Assem., Reg. Sess. (Ark. 2003).
34. *Lake View*, 351 Ark. at 58, 91 S.W.3d at 487.

917 of 1995.[35] As a result of the court's direction, the General Assembly passed acts commissioning both adequacy study and a facilities study. Armed with these acts, the General Assembly is empowered to do what the court instructed them to do and what the Department of Education failed to do prior to the *Lake View* decision.

Several other bills had significant impact on the reformation of education, did pass the House, and were sent to the Senate. Among those bills was the Weaver/Miller Bill, which was a school reorganization bill based on a school's ability to meet standards and the ability to test appropriately under the state's criterion-referenced testing system.[36] Also passing the House was a bill reorganizing the State Board of Education and reconstituting the appointments,[37] as well as a bill that would separate the accountability section of the state Department of Education from the department as it currently exists.[38] Neither bill was passed in the Senate.

AASIS

A few years ago, the executive office requested and the General Assembly agreed that the state should have a new computer system to provide a statewide system of accounting. The state contracted with a software vendor, SAP, Inc. ("SAP"), to provide the state with a statewide accounting system for $30 million. Since that time, the Arkansas Administrative Statewide Information System (AASIS) has repeatedly failed the state yet it has consistently retained the governor's support.

One of the big selling points for the AASIS project was its ability to provide the state with performance-based budgeting. At this point there has been no performance-based module available, nor has there been a module that would effectively allow the state to prepare a budget. Although the chief executive officer of the state—the governor—has received an award for innovation from SAP, the entire system may be no more innovative in addressing sound accounting principles than sending a monkey into space. The system is still not meeting its intended purpose at this time. The system will need additional modules in order to function effectively.

A bill was filed during the session to require all agencies to compile information for the General Assembly pertaining to the cost of AASIS. This bill was fought hard by the governor's office and never got out of committee. However, the Legislative Council has requested this information, and

35. ARK. CODE ANN. §§ 6-20-301 to -320 (Michie Repl. 1995).

36. Act of Apr. 3, 2003, No. 1054, 2003 Ark. Acts 1054 (codified at ARK. CODE ANN. § 9-28-410(b) (LEXIS Supp. 2003)).

37. *Id.*

38. *Id.*

based on the best information available from the agencies, AASIS had $57 million in implementation costs and $3.8 million in operating costs through fiscal 2002–2003.[39] At the present time the agencies aren't really sure they can balance their books with the state auditor's office, nor is the Department of Finance and Administration sure that the system restricts agencies from writing checks in excess of their appropriation.

The state is making legal claims against SAP, and SAP is making legal claims against the state. Information on this issue is not readily available to the General Assembly or the public because public statements, according to the administration, might damage the state's case. The Division of Legislative Audit has found the following deficiencies with the AASIS system:

- Inadequate budget controls that would prevent an agency from overspending its budget;
- Procedures to determine all financial costs of AASIS aren't in place;
- Inadequate firewalls;
- Controls are inadequate to prevent or detect unauthorized modifications to the AASIS system;
- Security flaws could expose a user's password and other sensitive information; and
- A lack of automated system to identify an attack on the network.[40]

It appears that AASIS was a mistake and will continue to be very costly.

BUDGET

The budget is always an important issue for the General Assembly. The budget was especially treacherous for the 2003-2005 biennium. As budget hearings began in October 2002 and the agencies began presenting their budgets, several agencies had recommended expenditure increases that were already approved by the executive branch.

After the election and as lawmakers became more inquisitive as to how the state was to pay for the substantially higher budgets, the Department of Finance and Administration (DFA) disclosed a bombshell to the Joint Budget Committee. From the beginning, DFA had included a 5/8 of a cent sales tax increase and a $250 million budget increase beyond a projected growth of 3.4 percent.[41] The candidates for governor had not discussed the

39. DIVISION OF LEGISLATURE AUDIT, SUMMARY OF CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS REGARDING THE ARKANSAS ADMINISTRATIVE STATEWIDE INFORMATION SYSTEM (AASIS) (Mar. 21, 2003).

40. *Id.*

41. JOINT BUDGET COMMITTEE, 84TH GEN. ASSEM., GOVERNOR'S RECOMMENDATIONS, (Nov. 14, 2002) (presented by Department of Finance and Administration Director Richard Weiss).

issue of a tax increase, nor had the present governor disclosed that in order to meet his budget, a tax increase of more than $250 million would have to be enacted.

Lawmakers, immediately after learning of the proposed sales tax increase, directed that all agencies roll their requests back to the previous biennium numbers and each agency would have to come back before Joint Budget to justify any substantial increase in their budget over the previous biennium.

Knowing that additional revenue would have to be raised for public schools, lawmakers did their best to hold down increased spending. However, the Department of Correction, the Department of Community Correction, and the Medicaid program within the Department of Human Services made good cases for substantial increases. An economic impact study was commissioned by the House to determine what would be the consequences to the state if we did not fund the needed Medicaid increases. We determined that providing Medicaid with an additional $88 million would be best for the state. Therefore, the question became, "How do we get the money?"

As the budget process rolled slowly and methodically along, the tobacco tax was identified as a possible way to raise an additional $100 million. The governor's proposed 5/8 of a cent sales tax was rejected. As days went by and the session grew longer, a resolution to extend the session was introduced.[42] A rebellion to end the session was hatched mainly by Republicans with the approval of the executive office. The session adjourned sine die on April 16, 2003, without a budget and with many bills lacking only concurrence with Senate amendments to become law.

Shortly after adjournment on May 5, 2003, the governor called the General Assembly into special session. At that time, we had to reintroduce all budget bills that had not been passed in the regular session, along with a Revenue Stabilization Act[43] and a General Improvement Bill.[44]

The House quickly moved to present a hybrid tobacco tax and income tax surcharge, which very quickly passed the House with eighty votes, but it ran into problems with the Senate. The House version contained a sunset clause for the income tax surcharge, and the Senate didn't agree. The Senate passed an amendment and sent it back to the House. The amendment contained a trigger for sun setting the income tax surcharge. Although there was much disagreement, the House approved the Senate amendment and enacted the law resulting in approximately $100 million in new taxes.[45]

---

42. S. Con. Res. 34, 84th Gen. Assem., Reg. Sess. (Ark. 2003).

43. Act of May 13, 2003, No. 55, 2003 Ark. Acts, First Extraordinary Session 55 (codified at ARK. CODE ANN. §§ 19-5-205(e)(1)(B)(i), -303, -305(b), -306, -307, -311, -922, -926, -931, -1106(b) (LEXIS Supp. 2003)).

44. Act of May 9, 2003, No. 46, 2003 Ark. Acts, First Extraordinary Session 46.

45. Act of May 8, 2003, No. 38, 2003 Ark. Acts, First Extraordinary Session 38 (codi-

The other issue dealt with during the special session was the issue of General Improvement Funds. General Improvement Funds have in recent years been divided between the executive office and the legislative branch. The executive office can provide funding for special projects, and the legislature can provide funding for special projects important to members. In this particular session the governor had consistently complained that general improvement money should not go back to member's districts for the support of rural fire departments, non-profit corporations, municipal needs, and other local projects. The governor argued that the funds should be spent only on state projects.

This became a contentious issue. Although the legislative general improvement issue was not on the governor's call for the special session, the issue was considered germane because the governor placed the funding of some of his capital improvement projects on the call. So in the end, general improvement funds were distributed. The General Assembly funded such projects as a Veterans' Home in Northwest Arkansas; the Kuder Project at the Department of Higher Education, which is an interactive software program now helping thousands of young people match their talents and interests to vocations, college majors and other skills; and induced a movie, "Chrystal," to be filmed in Eureka Springs, instead of going to the State of Missouri.[46]

The 84th session was a terrifically successful session as we flew under the radar screen. Still facing us is a legislative response to the *Lake View* case.[47] I am encouraged that we will be successful then, as well.

---

fied at ARK. CODE ANN. §§ 26-51-207, 26-57-804, -805 (LEXIS Supp. 2003)).

46. 2003 Ark. Acts, First Extraordinary Session 46.

47. Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002).