



One Hundred Thirty-sixth Meeting
2005 Interim
Monday, June 6, 2005

Legislative Conference Rooms 1 & 2
State Capitol Building
Pierre, South Dakota

The one hundred thirty-sixth meeting of the Special Committee on Appropriations was called to order by Representative J.E. "Jim" Putnam, Co-Chair, at 9:05 a.m., Monday, June 6, 2005, in Legislative Conference Rooms 1 and 2 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jerry Apa (Co-Chair), Julie Bartling, Brock Greenfield, Gary Hanson, William Napoli, and Orville Smidt; and Representatives H. Paul Dennert, Jeffrey Haverly, Ted Klaudt (Vice Chair), Deb Peters, J.E. "Jim" Putnam (Co-Chair), and Larry Tidemann. Senators William Earley (Vice Chair) Jason Gant, and Duane Sutton; and Representatives Mary Glenski, Jean Hunhoff, Val Rausch were excused.

Staff members present included Reed Holwegner, Chief Fiscal Analyst; Mark Zickrick, Principal Fiscal Analyst; Sue Cichos, Senior Fiscal Analyst; Aaron Olson, Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

A list of persons present during all or part of the meeting is on file with the master minutes.

(**NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

Expenditure Requests

The **Interim Report**, prepared by the Bureau of Finance and Management, is on file with the master minutes as **Document #1**.

Attorney General—\$100,000 from federal funds

Mr. Kevin Thom, Division of Criminal Investigation (DCI), informed the committee that the Office of the Attorney General is requesting 2.0 FTEs and \$100,000 from federal funds to use the Violence Against Women Grant funding that is received through the Department of Social Services for a Victim Witness Assistant Program. Mr. Thom said that the program will serve primarily rural areas where there is no Child Advocacy Center (CAC). He said that one FTE will work through St. Mary's Hospital in Pierre; the other will be placed in Minnehaha County to service the surrounding rural areas that are not serviced by the City of Sioux Falls' Child Advocacy Program.

Co-Chair Jerry Apa said that he is concerned about the continued growth of state government and asked for assurances that when the federal money is gone the program also will be gone so that it will not become a program that requires funding from the state.

Mr. Thom responded that at the time the federal funding ends, the department might make a request to the Special Committee on Appropriations to continue funding—at which time, the committee will make the decision whether to continue the program.

Co-Chair J.E. "Jim" Putnam asked what would happen to the federal money if it is not used. Mr. Thom said that the money would most likely revert to the federal government.

Representative Jeffrey Haverly posed a question about the objective of the CACs. Mr. Thom said that the purpose of the CACs is to provide humane treatment to those who are a victim of sexual assault. The concept is to conduct one examination and one interview of the victim so that the victim is not subjected to further trauma.

Representative Haverly expressed his opinion that the program would be worthwhile and asked if the money could be better spent by putting it into an existing program. Mr. Thom said that the program is intended to serve tribes in central South Dakota and nontribal people in rural areas.

Representative Ted Klaudt asked how the CACs are funded in Rapid City and Sioux Falls. Mr. Thom replied that he is not sure how the CACs are funded in those cities but believes that some of the funding for those CACs is self-sustaining. Representative Klaudt then asked whether a CAC serves the same function as CASA. Mr. Thom said that CASA deals mostly with the legal issues involved and does not conduct forensic interviews and medical exams.

Co-Chair Putnam said that he would like to see the program up and running but that he is not sure about the timeliness of the request. He asked what the time frame would be for implementation of the program. Mr. Thom said that the money is available and that the hiring process would not take long.

Representative Haverly asked to see information from any available model program regarding child advocacy centers.

Responding to **Senator Orville Smidt**, who asked about the 25 percent match, Mr. Thom said that the match can be either hard dollars or in-kind money.

Ms. Kay McLain, Office of the Attorney General, said that the office would have to come up with about \$20,000 in-kind match and then absorb the rest. She said that the office does not intend to ask for more at this time.

Co-Chair Apa said that he wants to see a coordinated effort between the DSS and the Attorney General's Office. Mr. Thom said that there is a state coordinated plan in place which would be incorporated within the proposed CAC.

Senator Bill Napoli asked whether the program is for victims of all crimes or just sex crimes. Mr. Thom said that the program is for victims of all types of crimes.

At the request of Co-Chair Putnam, **Mr. Jason Dilges**, Commissioner of the Bureau of Finance and Management (BFM), responded to committee questions. Mr. Dilges said that,

when preparing a recommended budget, BFM views the availability of the dollars to fund a program as an opportunity to maximize federal money to save state resources. He said that he shares the committee's concern about funding after the federal dollars go away; however, Mr. Dilges said that the committee or the Legislature would determine the outcome of the program when the federal money is gone. Mr. Dilges observed that a year will be lost if a determination cannot be made.

Co-Chair Apa said that DSS has 249.3 FTEs working in Child Protection Services and questioned why these employees could not be utilized in the CAC Program. Mr. Dilges said that the individuals required to provide services in the CAC Program need to be a little more specialized.

Representative Deb Peters asked the following questions:

- What is the demand for these types of services?
- How many children will not receive treatment in the time frame needed, if the committee delays action on this request?

Mr. Thom replied that he does not know the answer to those questions.

Representative Peters said that she would like to have those figures.

Mr. Thom said that victims of all crimes in South Dakota would be possible candidates for these services.

Representative Haverly asked whether the federal money could be funneled through a private foundation to provide services. Mr. Dilges said that that possibility could be researched. Representative Haverly commented that growth of government would be kept down, if services could be provided through a private foundation.

Representative Klaudt asked what qualifications would be required of the individuals hired to fill the positions. Mr. Thom said that the individuals hired probably would need to be familiar with the family court process and have a background in court services and social services.

The committee delayed further consideration of this request until the Department of Social Services had answered questions about the availability of funding.

Distribution of Investment Earnings to Funds

Mr. Dilges briefly discussed the recommendations for the designation of companies as either "participating" or "nonparticipating" in the proration of investment income earned in FY 2005. (This information is included in Document #1.) A total of \$21 million would be distributed.

Representative Klaudt requested figures showing average daily cash balances.

Responding to Representative Klaudt's request, on behalf of Mr. Dilges, **Ms. Sue Cichos** distributed **Document #2** showing the average daily cash balances for several funds. Mr. Dilges cautioned that the figures are for a snapshot in time and change very quickly. Co-Chair Putnam requested that, in the future, Commissioner Dilges provide the committee with an estimate of investment earnings that are to be credited to each company or cash center.

After brief committee discussion, **REPRESENTATIVE DENNERT MOVED, SECONDED BY REPRESENTATIVE KLAUDT, TO APPROVE THE PRORATION OF INVESTMENT INCOME FOR FY 2005. The motion prevailed unanimously on a voice vote.**

The committee recessed at 10:30 a.m. and reconvened at 10:45 p.m.

Department of Social Services

Ms. Deb Bowman, Secretary, Department of Social Services (DSS), introduced DSS staff and asked **Ms. Susan Sheppick**, DSS, to discuss the grant money that is received through the department from the Violence Against Women. Regarding some of the limitations of the grant, Ms. Sheppick explained that the grant money has to go to a state agency, and the grant money has to be expended by March 31, 2006.

Responding to Representative Peters, Ms. Sheppick said that the grant money is not restricted just to children; it is also for women. She said that six counties provide full-time victim's assistance. Ms. Sheppick said that part of the grant requirement is that there is no duplication of services and that the program must serve an underserved area.

Responding to Co-Chair Apa, Ms. Sheppick said that the grant money cannot be given to private providers.

Ms. Sheppick responded affirmatively to Co-Chair Putnam who asked whether the grant money was gender-based. The money is to be spent for the benefit of women and children.

Medicare Part D, Possible Federal Funding Cuts to Medicaid

Department of Social Services staff distributed copies of its presentation on Medicare Part D (**Document #3**).

Ms. Bowman discussed Medicare basics. She said that Medicare is for people 65 years of age and older, people of any age who have end stage renal disease, people of any age with Lou Gehrig's Disease, or people who are disabled and entitled to Social Security or Railroad Retirement benefits. Ms. Bowman said that the new program is Medicare, Part D, and is strictly a prescription drug program. The program becomes effective January 1, 2006; however, voluntary enrollment begins November 15, 2005, and ends May 15, 2006. There will be a \$37 monthly premium. Late enrollment will result in a cumulative monthly penalty of one percent—for example: if enrollment is delayed by six months, the premium will be \$39.22 (\$37.00 + \$2.22), so Ms. Bowman said that she would encourage interested people to enroll during the voluntary enrollment period. She explained the drug plan coverage cost share for

2006. Ms. Bowman said that DSS has estimated that 84,000 people in South Dakota will be in this particular program.

Ms. Bowman addressed the eligibility requirements for low-income subsidy. She said that approximately 40,400 people in South Dakota with Medicare will be eligible for low-income subsidy. This group is not automatically enrolled.

Mr. Larry Iverson, DSS, discussed the Part D formulary for prescription drugs. Mr. Iverson said that formularies must be developed by pharmaceutical and therapeutic committees. They must include at least two drugs in each therapeutic category. Mr. Iverson outlined examples of noncovered drugs, which includes benzodiazepines (anti-anxiety drugs).

Ms. Kristin Townsend, DSS, reviewed the Medicare Part D Low Income Subsidy. She said that to be eligible for the subsidy, income and resource requirements must be met. Those requirements are an income less than 150% of the Federal Poverty Level and resources that do not exceed \$10,000 for an individual or \$20,000 for a couple.

Ms. Bowman said that the department has an outreach and education program in place. She said that the department is ready for its obligations. Ms. Bowman said that DSS is absorbing any costs associated with the implementation of Medicare Part D and will not be asking the Special Committee on Appropriations for funding.

Ms. Townsend said that the department has been training field officers and is committed to helping people with the new program.

Ms. Gail Ferris, DSS, discussed state and local education and outreach. She said that the Center for Medicare and Medicaid Services provides funding to states for Senior Health Insurance Programs (SHIP) to educate and assist Medicare beneficiaries. South Dakota's SHIP program is SHINE (Senior Health Information and Insurance Education).

Mr. Iverson briefly discussed the Phase-Down State Contribution (Clawback). He said that the Clawback was established from 2003 data.

Tobacco Master Settlement Update

Mr. Larry Long, Attorney General, briefed the committee on the tobacco master settlement via teleconference. The following documents were distributed on the behalf of the Attorney General and **Mr. Gary Viken**, Secretary of the Department of Revenue:

- Copies of an article from the May 23, 2005, issue of *Business Week Magazine* titled "Lawsuits—The High Cost of Nicotine Withdrawal—Cigarette Makers Want Settlement Rebates from States" (**Document #4**); and
- Copies of a letter from **Mr. Alexander Shakness**, Counsel for Philip Morris USA Inc. and, for this purpose only, on behalf of R.J. Reynolds Tobacco Company and Lorillard Tobacco Company, requesting photocopies of all public records regarding information concerning amounts budgeted and spent and measures taken or considered by the

State of South Dakota or any of its divisions to identify nonparticipating tobacco product manufacturers and to monitor and enforce their compliance with SDCL 10-50B-1 through SDCL 10-50B-8 (**Document #5**).

Mr. Long said that the master settlement is from a 1998 agreement between 46 states and major cigarette makers whereby a participating cigarette manufacturer would pay \$206 billion to participating states over a twenty-five year period. Since South Dakota is a participating state, Mr. Long said that the state's obligation is to enforce the master settlement agreement, and the tobacco companies look for ways not to comply. The large tobacco companies contend that they are losing market share to other cigarette makers, which they say adds 42.5 cents to each pack of cigarettes they sell.

Mr. Long said that the process is becoming more time-consuming for the Attorney General's Office and the Department of Revenue. The Attorney General said that his office received its request for two new FTEs to devote effort and time to tobacco master settlement enforcement, but the Department of Revenue did not receive its request for two new FTEs to perform those added responsibilities.

Mr. Long stated that the State of South Dakota has to be able to prove that it is complying with due diligence in its enforcement of the settlement so that when the state goes to court it can prove that it has done everything that it has been asked to do. He said that no one is exactly sure what is meant by the term, due diligence.

Co-Chair Putnam asked what part of the state's revenue stream comes into jeopardy if the state is found to be culpable. Mr. Long replied that if the tobacco companies successfully establish that they have lost six percent of the market share due to a state's negligence in its enforcement of the settlement, the tobacco companies may win their request for settlement rebates. Mr. Long said that it probably would be a year or two before a determination is made on whether South Dakota diligently enforced the settlement agreement.

Mr. Gary Viken, Secretary, Department of Revenue, said that he wants two FTEs to work full time on settlement matters so that South Dakota can prove that it is working with due diligence regarding the settlement. He said that the tobacco companies have very good lawyers and are just looking for a "crack" in the states' required due diligence.

Co-Chair Apa said that it is a serious matter to protect the revenue stream. He said that perhaps the committee should give the Department of Revenue the authority to hire two new FTEs, and the department can report to the committee on its efforts during the 2006 Legislative Session.

Responding to Co-Chair Apa, Mr. Dilges said that the Department of Revenue takes the position that if two additional FTEs are not given to the Department of Revenue, the tobacco companies possibly could use that as evidence that the state is not giving due diligence. Mr. Dilges stated that the state needs to be able to prove that it is doing due diligence and therefore takes department officials' word for the necessity.

Co-Chair Putnam commented that he is in favor of the Department of Revenue doing whatever is necessary to get through January 2006 and then coming back to the Legislature with a budget request.

Co-Chair Apa said that perhaps it would be prudent and reasonable to go on record that the committee supports the Department of Revenue's desire to hire two FTEs now and then also address the matter during session.

Co-Chair Putnam stated that he wanted to follow the right process and that he did not think the committee was required to go on the record today to make a statement regarding the tobacco settlement issue.

Mr. Dilges said that he understood Co-Chair Putnam's position but stated that this matter will come before the Legislature again because the state continues to believe that it is an important issue.

South Dakota Opportunity Scholarship Update

Dr. Tad Parry, Executive Director, South Dakota Board of Regents, updated the committee on the South Dakota Opportunity Scholarship Program. He said that 832 students from the 2004 graduating classes in South Dakota received one of the scholarships; 775 continue to be enrolled. In addition to those 775, 11 new students have declared eligibility. For the 2004 spring semester, 786 students were eligible—41 below the projection.

Representative Haverly asked for a written summary on the statistics concerning the South Dakota Opportunity Scholarship.

Representative Larry Tidemann asked when the Board of Regents would know the final numbers for 2005. Dr. Perry replied that by midsummer they should have a pretty good idea of the numbers.

Co-Chair Putnam stated that the committee will keep reports from the Board of Regents on the scholarship program as agenda items for future committee meetings.

The committee recessed at 12:40 p.m. and reconvened at 1:48 p.m.

Sale of State Railroad Property

For informational purposes, **Mr. Aaron Olson** distributed copies of a memo regarding Railroad Funds (**Document #6**).

Ms. Judy Payne, Secretary, Department of Transportation (DOT), and **Mr. Todd Yeaton**, South Dakota Railroad Board, discussed the sale of state railroad property. Ms. Payne said that settlement for the sale of state railroad property is still in limbo. She said that the railroads are working on an important agreement with Burlington Northern Railroad, and until an agreement is reached, the department does not want to do or say anything that might

jeopardize the railroads' proceedings with Burlington Northern. If an agreement is reached, Ms. Payne said that the money will go into the Railroad Trust Fund.

Mr. Yeaton echoed Ms. Payne's comments. He said that from his perspective, he is looking at wonderful opportunities in agribusiness if an agreement can be reached.

Responding to Representative Klautt, Ms. Payne said that she would provide the committee with figures showing how much the state has invested for railroad improvements.

FY 2006 Letters of Intent

Representative Klautt distributed the following amendments to the FY 2006 Letters of Intent:

Amendment #1

The following text to be included in the letter of intent addressed to the Department of Corrections:

The Legislature appropriated \$238,500 from the State General Fund into a contingency fund. The Special Committee will release this money for expenditure when the secretary of Corrections has provided the committee with information showing that the state has received payment for the sale of land purchased pursuant to chapter 59 of the 2004 Session Laws. The procedure for releasing money within a contingency fund, as provided by chapter 4-8A, is as follows:

- 1) All requests by state departments and institutions for moneys from any general contingency funds appropriated by the general appropriation act or any special act shall be submitted in writing to the Governor, the Bureau of Finance and Management, and the chairman or chairmen of the special committee, setting forth clearly the proposed usage and necessity for such funds.
- 2) If the Governor deems any such request to be in the public interest and of sufficient necessity, he shall submit a recommendation to the special committee, for its consideration and disposition.
- 3) Whenever it shall be deemed necessary for the special committee to consider, pass upon and release general contingency funds for emergency purposes or as supplements to the budgets for the ordinary expenses of state departments and institutions, the Governor shall give due and reasonable notice to the members of the special committee.
- 4) No action shall be taken on release of moneys from any general contingency funds except by majority vote of the entire membership. The special committee by majority vote of the entire membership may reduce or increase the dollar amount recommended by the Governor.

REPRESENTATIVE KLAUDT MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE COMMITTEE APPROVE AMENDMENT #1. The motion prevailed unanimously on a roll call vote with 12 voting AYE, 0 voting NAY, and 6 EXCUSED. Those voting AYE: Dennert, Bartling, Gary Hanson, Greenfield, Haverly, Napoli, Peters, Smidt, Tidemann, Klaudt, Apa, and Putnam. Those EXCUSED: Glenski, Hunhoff, Gant, Rausch, Duane Sutton, and Earley.

Amendment #2

The following text to be included in the letter of intent addressed to the State Auditor's Office:

The Legislature has appropriated a total of \$338,500 to contingency funds contained within the General Appropriations Act for FY 2006. The procedure by which that money may be released for expenditure is governed by chapter 4-8A which is summarized as follows:

- 1) All requests by state departments and institutions for moneys from any general contingency funds appropriated by the general appropriation act or any special act shall be submitted in writing to the Governor, the Bureau of Finance and Management, and the chairman or chairmen of the special committee, setting forth clearly the proposed usage and necessity for such funds.
- 2) If the Governor deems any such request to be in the public interest and of sufficient necessity, he shall submit a recommendation to the special committee, for its consideration and disposition.
- 3) Whenever it shall be deemed necessary for the special committee to consider, pass upon and release general contingency funds for emergency purposes or as supplements to the budgets for the ordinary expenses of state departments and institutions, the Governor shall give due and reasonable notice to the members of the special committee.
- 4) No action shall be taken on release of moneys from any general contingency funds except by majority vote of the entire membership. The special committee by majority vote of the entire membership may reduce or increase the dollar amount recommended by the Governor.

The State Auditor's Office should not approve payment from these funds until it has received information verifying that the above provisions have been complied with.

REPRESENTATIVE KLAUDT MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE COMMITTEE APPROVE AMENDMENT #2. The motion prevailed unanimously on a voice vote.

Amendment #3

The following text to be included in the letter of intent addressed to the Department of Education:

After the fifth bulleted item, add a sentence to read as follows:

It is the committee's intent that the department distribute the appropriation in 2005 Session Law Chapter 115 (HB 1082) to the technical institutes in a lump sum payment for each institute on a prorated basis using the FY 2004 funding formula percentages.

The committee agreed to include Amendment #3.

CO-CHAIR APA MOVED, SECONDED BY REPRESENTATIVE KLAUDT, THAT THE COMMITTEE APPROVE THE 2006 LETTERS OF INTENT AS AMENDED. The motion prevailed unanimously on a roll call vote with 12 voting AYE, 0 voting NAY, and 6 EXCUSED. Those voting AYE: Dennert, Bartling, Gary Hanson, Greenfield, Haverly, Napoli, Peters, Smidt, Tidemann, Klaudt, Apa, and Putnam. Those EXCUSED: Glenski, Hunhoff, Gant, Rausch, Duane Sutton, and Earley.

Co-Chair Apa directed staff to update the Special Committee's list of compliance for letters of intent and provide it to the members.

Committee Action on the Attorney General's Request

Co-Chair Apa suggested that the committee not take action on the Office of the Attorney General's request for 2.0 FTEs and \$100,000 from federal funds to use the Violence Against Women Grant funding that is received through the Department of Social Services for a Victim Witness Assistant Program. He stated that the committee has not seen the overall plan.

Co-Chair Putnam turned over the gavel to Co-Chair Apa.

CO-CHAIR PUTNAM MOVED, SECONDED BY SENATOR BARTLING, THAT THE COMMITTEE APPROVE THE OFFICE OF THE ATTORNEY GENERAL'S REQUEST FOR 2.0 FTES AND \$100,000 FROM FEDERAL FUNDS TO USE THE VIOLENCE AGAINST WOMEN GRANT FUNDING THAT IS RECEIVED THROUGH THE DEPARTMENT OF SOCIAL SERVICES FOR A VICTIM WITNESS ASSISTANT PROGRAM.

Senator Bill Napoli asked the committee to resist the motion. Senator Napoli expressed his opinion that the committee should wait to take action on this matter until the committee knows all the figures and details involved.

Representative Larry Tidemann expressed support for the Attorney General's request.

Representative Haverly said that he also supports the request and that when the grant money runs out, it will be up to the committee to decide what to do at that time. He said that he wants to err on the side of the "folks who need it most in the rural communities."

Responding to a question from Co-Chair Apa regarding what constitutes committee approval, Mr. Holwegner said that, as required by SDCL 4-8B-10, the money would be deemed appropriated if approved by a majority of the members-elect.

CO-CHAIR PUTNAM'S MOTION FAILED DUE TO LACK OF A MAJORITY OF THE MEMBERS-ELECT WITH 8 VOTING AYE, 4 VOTING NAY, AND 6 EXCUSED. Those voting AYE: Dennert, Bartling, Gary Hanson, Haverly, Peters, Smidt, Tidemann, and Putnam. Those voting NAY: Greenfield, Napoli, Klaudt, and Apa. Those EXCUSED: Glenski, Hunhoff, Gant, Rausch, Duane Sutton, and Earley.

Adjournment

SENATOR GREENFIELD MOVED, SECONDED BY SENATOR SMIDT, THAT THE COMMITTEE BE ADJOURNED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The committee adjourned at 2:20 p.m.



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