

# MINUTES

## Executive Board



Senator Gary Cammack, Chair  
Representative Dean Wink, Vice Chair  
Representative Spencer Hawley, Ranking Minority Member

**Seventh Meeting, 2016 Interim  
Friday, November 18, 2016**

**Room 413 – State Capitol  
Pierre, SD**

The seventh meeting of the Executive Board for the 2016 Interim was called to order by **Senator Gary Cammack** at 9:45 a.m. in room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Gary Cammack, Chair; Representative Dean Wink, Vice Chair (via phone); Representative Spencer Hawley, Ranking Minority Member; Senators Corey Brown (via phone), Phyllis Heineman (via phone), David Omdahl, Billie Sutton (via phone), and Jim White; Representatives Jim Bolin, Brian Gosch, Don Hagggar, Roger Hunt, Tim Johns, and Fred Romkema (via phone). Excused: Senator Scott Parsley.

Staff members present included Jason Hancock, Director; Sue Cichos, Deputy Director; Doug Decker, Code Counsel; Annie Mehlhaff, Chief Analyst for Fiscal Research and Budget Analysis; David Ortbahn, Chief Analyst for Research and Legal Services; Scott Darnall, Information Technology Manager; Fred Baatz, Principal Research Analyst; Clare Charlson, Principal Research Analyst; Amanda Jacobs, Research Analyst; Jessica LaMie, Research Analyst; Jeff Mehlhaff, Fiscal Analyst; and Cindy Tryon, Senior Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://www.sdlegislature.gov/>.*

### **Approval of the Agenda**

**A MOTION WAS MADE BY REPRESENTATIVE HUNT, SECONDED BY REPRESENTATIVE HAGGAR, TO APPROVE THE AGENDA. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, White, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Parsley.**

### **Approval of the Minutes**

**A MOTION WAS MADE BY REPRESENTATIVE HUNT, SECONDED BY SENATOR WHITE, TO APPROVE THE MINUTES OF THE AUGUST 29, 2016, EXECUTIVE BOARD MEETING. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, White, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Parsley.**

### **LRC Management Reports**

**Ms. Sue Cichos, Deputy Director**, said packets were sent to all legislators requesting information be sent back to the LRC office. The packet also included a *Welcome to the Legislature* booklet that is a handy resource for all legislators. Sundby Photography, Rapid City, will again provide the official legislative photography this next term.

Ms. Cichos also reported that Ms. Phyllis Perkovich will be returning as the Legislative Page Advisor and that no additional page recruiting is needed at this time.

**Mr. David Ortbahn, Chief Analyst for Research and Legal Services**, said the research staff has been busy finalizing the 2016 interim committees. The LRC office has reviewed two initiated measure proposals and is in the process of reviewing a third. The staff has proposed changes to the prison impact costs statement process for the Executive Board's consideration. Mr. Ortbahn and his staff held bill drafting training for the state agencies and bill drafting is well underway.

Mr. Ortbahn reported the two staff vacancies, made available with Ms. Amanda Reiss' and Ms. Roxanne Hammond's resignations, have been filled. Mr. Wenzel Cummings, Legislative Attorney, and Ms. Emily Kerr, Legislative Attorney, were introduced to the Board.

**Ms. Annie Mehlhaff, Chief Analyst for Fiscal Research and Budget Analysis**, reported LRC has received the agency requests of \$1.65 billion, and that amount will be reduced as revenues are not meeting the estimates, which will be addressed in the Governor's Budget Address on December 6.

Ms. Mehlhaff said the new budget data program is progressing and will be ready for session.

**Mr. Doug Decker, Code Counsel**, said the codification of legislation passed last session is underway. The Code Commission makes the decisions as to where the new laws are codified in statute. Those decisions will be made public on December 1 and subscribers to the code will receive a pamphlet with those updates.

Mr. Decker showed examples of the documents that have been rebound and said more documents will be sent to the bindery over the next few years. Mr. Decker also answered questions from the committee regarding Initiated Measure 22.

**Mr. Scott Darnall, Information Technology Manager**, said the IT Division is reviewing the IT infrastructure to ensure it is in working order when session starts. Mr. Darnall said the computer buyback program is under way and legislators have been contacted regarding their ability to purchase LRC computers. The Technology Subcommittee is working on a protocol regarding private business emails coming through state devices.

**Mr. Jason Hancock, Director**, reported the office remodel is near completion. The main purpose of the remodel was to update the HVAC system and the LRC offices were among the last in the State Capitol to receive a general remodel since the 1970's and 1980's. Mr. Hancock said some of the committee rooms have also been remodeled, including LCR 1 and 2, 464, and 423. There will be a few less seats for the audience in room 464 and options for addressing that issue are being considered.

### **Investment Council and Retirement System Updates**

**Mr. Matt Clark, State Investment Officer**, said the markets are currently above the Investment Council's measure of fair value but another downturn is expected and the Investment Council is prepared for that.

**Mr. Rob Wylie, Executive Director, South Dakota Retirement System**, distributed the executive summary of the most recent SDRS Board meeting ([Document 1](#)). Mr. Wylie explained the changes the SDRS Board is planning to make to the system in 2017. The actuarial assumptions are reviewed every five to seven years, and the most recent review indicates the need to make adjustments to the system. Mr. Clark commented that with these changes, the SDRS will be a fully realistic plan.

## Issue Memos

Mr. Hancock said the Research Staff prepared several Issue Memos at the request of the Executive Board. The staff member responsible presented each of the four memos.

### *Legislative Compensation*

**Ms. Clare Charlson, Principal Research Analyst**, prepared and presented the Legislative Compensation Issue Memo ([Document 2A](#)). Ms. Charlson said legislator compensation varies widely among the fifty states. Attempting to make salary comparisons between the different states' Legislatures is difficult because of the vast differences in the structure of each Legislature.

Ms. Charlson said the South Dakota constitution allows the Legislature to change legislator salaries with a 2/3 majority vote. The last time the South Dakota legislator salary was changed was in 1998 when it was increased from \$4,000 to \$6,000. Ms. Charlson concluded that low pay may limit who can afford to serve in the Legislature and who will run for office.

### *Property Taxation*

**Mr. Fred Baatz, Principal Research Analyst**, prepared and presented the Property Taxation Issue Memo ([Document 2B](#)). Mr. Baatz said this issue memo is a summary of the 30 – 40 year history of property taxes in South Dakota, as well as explaining property taxes as they are implemented today. SDCL Chapter 10-6 contains provisions that provide the operational structure for assessing real property and those provisions have been amended 27 out of the last 30 years.

Currently the amount of property taxes collected in South Dakota is approximately \$1.25 billion. These taxes are a reliable source of revenue for local governments, funding schools, law enforcement, courts, roads, other infrastructure, and basic services provided by local government.

### *Partition Fencing*

**Ms. Amanda Jacobs, Research Analyst**, prepared and presented the Partition Fencing Issue Memo ([Document 2C](#)). Ms. Jacobs said the laws governing partition fences can be found in SDCL 43-23, and these laws are intended to establish parameters and resolve disputes between adjoining landowners who are unable to reach an agreement. This issue memo provides the history of those laws.

Ms. Jacobs said the fencing laws allow great discretion when neighbors agree on the fencing and is very specific when there is a dispute. These laws do not apply to fences found inside municipalities but are intended for rural areas to benefit both livestock and non-livestock landowners. Specifications for a legal fence have not been changed since 1973.

### *Asset Forfeiture*

**Ms. Jessica LaMie, Research Analyst**, prepared and presented the Asset Forfeiture Issue Memo ([Document 2D](#)). Ms. LaMie said statutory procedure for civil and criminal forfeiture is combined into chapter 23A-49. Forfeiture consists of the seizure and subsequent use or sale of assets utilized or acquired during a crime. This issue memo covers the history of forfeiture, the current procedures, and how forfeiture is handled federally and in other states.

Ms. LaMie said South Dakota has been criticized for its civil forfeiture laws as there is a very low bar of proof required for law enforcement to seize property and the owner must prove their innocence to have their property returned whether or not charges are filed.

**A MOTION WAS MADE BY REPRESENTATIVE JOHNS, SECONDED BY REPRESENTATIVE HUNT, TO ACCEPT THE ISSUE MEMOS AS PRESENTED. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, White, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Parsley.**

### **Supreme Court Opinions Report**

Ms. Jessica LaMie, Research Analyst, prepared and presented the Supreme Court Opinions Report ([Document 3](#)). Ms. LaMie said the Legislative Research Council is required to prepare an annual report of SD Supreme Court opinions in cases that interpret state statute and the intent of the Legislature. The following cases are included in the written report: In Re: Petition for Declaratory Ruling Re: SDCL 62-1-1(6); Matter of Adoption of A.A.B & B.A.B; Pitt-Hart v. Sanford USD Medical Center; State v. Smith and State v. Johnson; State v. Lerma; State v. Horned Eagle.

Ms. LaMie said it is the opinion of the Legislative Research Council that there is enough attention from various interested parties to propose legislation on their own that no further action is needed from the Executive Board.

### **Interim Committee Final Reports**

**Mr. Tim Flannery, State Government Audit Manager, Legislative Audit**, gave the Government Operations and Audit Interim Committee Report ([Document 4A](#)).

The following Interim Committee reports were given and each of the written final reports can be found on the LRC website ([Document 4B](#)).

- **Senator Mike Vehle** gave the Legislative Planning Committee final report.
- Senator Mike Vehle gave the Special Task Force (University Centers) final report.
- **Representative Wayne Steinhauer** gave the Regulation of Nursing and Assisted Living Beds Study final report.
- Ms. Annie Mehlhaff gave the Joint Committee on Appropriations final report.
- Mr. Doug Decker gave the Code Commission final report.
- Mr. Fred Baatz gave the Ag Land Assessment Task Force final report.
- Ms. Jessica LaMie gave the State-Tribal Relations final report.
- Mr. David Ortbahn gave the River Basin Task Force final report.
- Mr. Doug Decker gave the Rules Review Committee final report.
- Ms. Jessica LaMie gave the Substance Abuse Prevention Study final report.
- **Mr. Jason Simmons, Senior Fiscal Analyst**, gave the Payment Methodologies for Medicaid Providers Study final report.

**A MOTION WAS MADE BY REPRESENTATIVE HAGGAR, SECONDED BY REPRESENTATIVE JOHNS, THAT THE EXECUTIVE BOARD ACCEPT THE REPORTS OF THE THREE INTERIM STUDY COMMITTEES AS BEING WITHIN THE ASSIGNED SCOPE OF STUDY. The motion prevailed on a roll call vote with 12 voting AYE and 3 EXCUSED. Those voting AYE: Brown, Heineman, Sutton, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Omdahl, Parsley, White.**

### **New Legislator Orientation Update**

Mr. Hancock presented the agenda for the New Legislator Orientation that will be held on December 6-7 ([Document 5](#)). Some returning legislators will assist with the committee and floor portions of the training.

### **Legislative Bathrooms Update**

Mr. Hancock said there have been requests for a handicapped accessible men's restroom on the third floor of the Capitol. A handout showing the design of the current bathrooms located behind the House and Senate Chambers was distributed ([Document 6A](#)). A new design has been drafted and would include swapping the men's bathroom and the women's bathroom located behind the House and Senate ([Document 6B](#)).

The Executive Board approved by consensus Mr. Hancock continuing to work with the Bureau of Administration to find the best solution to providing a handicapped accessible bathroom on the third floor of the Capitol.

### **Legislative Name Badges Proposal**

Mr. Hancock distributed samples of name badges for the Board's consideration, explaining that changing the colors of the name badges could better identify Senators and Representatives ([Document 7](#)). The Board's consensus is that the House badges remain black with white lettering and the Senate badges change to white with black lettering. The spouse badges will change to a gray background with white lettering.

### **Prison and Jail Impact Statements Proposed Legislation**

Mr. Hancock presented draft legislation that will limit to felonies the prison and jail impact statements required for legislation that may create additional costs for prisons or jails ([Document 8A](#)).

**A MOTION WAS MADE BY REPRESENTATIVE HAWLEY, SECONDED BY REPRESENTATIVE JOHNS, TO APPROVE THE LEGISLATION "AN ACT TO REVISE CERTAIN PROVISIONS REGARDING PRISON OR JAIL POPULATION COST ESTIMATES" FOR INTRODUCTION, AND DIRECT LRC TO DRAFT AN AMENDMENT TO JOINT RULES FOR CONSIDERATION BY THE JOINT LEGISLATIVE PROCEDURES COMMITTEE, WHICH WOULD ALLOW PRISON AND JAIL IMPACT STATEMENTS TO BE REQUESTED FOR NEW CLASS 1 MISDEMEANORS, USING A PROCESS SIMILAR TO THE ONE USED FOR FISCAL NOTES. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Parsley, White.**

### **LRC Comp Time Policy**

Mr. Hancock explained the LRC staff receives compensatory time for the additional work hours required to provide the best possible service during session and when working with interim committees. Mr. Hancock proposed some minor changes to the compensatory time plan allowing staff to be able to carry forty hours of comp time over into the next session ([Document 8B](#)).

**A MOTION WAS MADE BY REPRESENTATIVE GOSCH, SECONDED BY REPRESENTATIVE HUNT, TO ADOPT THE PROPOSED CHANGE TO THE LRC PERSONNEL MANUAL REGARDING COMPENSATORY TIME. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, Cammack. EXCUSED: Parsley, White.**

### **LRC 1 & 2 Update**

Mr. Hancock said the Legislative conference rooms, LCR 1 & 2, located on third floor, have been remodeled and LRC would like to change the monikers for these rooms to better assist those using the rooms in locating them. The LRC staff was asked for their suggestions and Mr. Hancock distributed a list of the staff ideas ([Document 8C](#)).

The consensus of the Board members is to refer to LCR 1 as Appropriations #362 and LCR 1 as #363.

### **Joint Rule Budget Process Adjustments**

Mr. Hancock said that a few adjustments are needed for the budget process in order to make improvements. A rule will be proposed that allows the Joint Committee on Appropriations (JCA) to act as a limited standing committee. Another rule change will allow the G-Bill to be introduced on the last day of session. The third suggested rule change will affect the target date for the revenue estimate. The final suggested rule change will define *appropriation bill*.

The consensus of the Board is to submit all changes to the Joint Legislative Procedures Committee for consideration during the first week of the 2017 session, except the provision related to G-Bill introduction. These suggested rule changes will be considered by the Legislative Procedure committee during the first week of session.

### **Adjourn**

**A MOTION WAS MADE BY REPRESENTATIVE HUNT, SECONDED BY REPRESENTATIVE GOSCH, THAT THE EXECUTIVE BOARD BE ADJOURNED. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Brown, Heineman, Omdahl, Sutton, Bolin, Gosch, Hagggar, Hawley, Hunt, Johns, Romkema, Wink, and Cammack. Those EXCUSED: Parsley, White.**

The Executive Board adjourned at 3:45 p.m.