

MINUTES

Executive Board



Representative G. Mark Mickelson, Chair
Senator Brock L. Greenfield, Vice Chair
Representative Spencer Hawley, Ranking Minority Member

**Fourth Meeting, 2017 Interim
Tuesday, June 06, 2017**

**SD Investment Council Office
Sioux Falls, South Dakota**

The fourth meeting of the Executive Board for the 2017 Interim was called to order by Representative G. Mark Mickelson at 10:30 a.m. in the Investment Council conference room, Sioux Falls, South Dakota. A quorum was determined with the following members answering roll call: Representatives Spencer Gosch, Steven Haugaard, Lee Qualm, Tim Reed, and Mike Stevens; Senators Jim Bolin, R. Blake Curd, Kris Langer, Jim Stalzer, and Billie H. Sutton; Representative Spencer Hawley, Ranking Minority Member; Senator Brock L. Greenfield, Vice Chair; and Representative G. Mark Mickelson, Chair. Excused: Representative Craig Tieszen and Senator Jeff Partridge.

Staff members present include Jason Hancock, Director; Sue Cichos, Deputy Director; Doug Decker, Code Counsel; Annie Mehlhaff, Chief Analyst for Fiscal; David Ortbahn, Chief Analyst for Research; Scott Darnall, Information Technology Manager; 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://sdlegislature.gov>.

Approval of Minutes

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY REPRESENTATIVE REED, TO APPROVE THE MINUTES OF THE MAY 15, 2017, EXECUTIVE BOARD MEETING. Motion prevailed on a voice vote.

Approval of Agenda

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY SENATOR CURD, TO APPROVE THE AGENDA. Motion prevailed on a voice vote.

Investment Council Report

Mr. David Hillard, Chair, and Mr. Matt Clark, State Investment Officer, South Dakota Investment Council, presented the Investment Council Update ([Document #1](#)). Mr. Hillard gave a brief review of the assets managed by the Investment Council, and why those investments continue to grow even during this challenging time in the market. Mr. Clark explained the Investment Council's philosophy regarding investing.

Mr. Hillard said one of the strengths of South Dakota's Investment Council is the ability to remain non-political. The Council's most important responsibility is to establish the investment policy, and they do so under Mr. Clark's guidance.

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY SENATOR LANGER, TO ADOPT THE RECOMMENDATION OF THE INVESTMENT COUNCIL FOR THE INVESTMENT OFFICER'S FY2018 COMPENSATION: THAT TOTAL COMPENSATION FOR THE STATE INVESTMENT OFFICER PAYABLE IN FY2018 BE COMPRISED OF THE CURRENT FY2017 BASE SALARY AND CONTINUATION OF THE INVESTMENT PERFORMANCE INCENTIVE PLAN, WITH ANY EARNED INCENTIVES TO BE PAID FOLLOWING COMPLETION OF THE AUDIT. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Bolin, Curd, Langer, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. Those EXCUSED: Tieszen and Partridge.

Representative G. Mark Mickelson, Chair, Investment Council Subcommittee, said there were several highly qualified applicants for the open seat on the Investment Council. The Investment Council Subcommittee recommends appointing Mr. Paul Bisson, Sturgis, to the South Dakota Investment Council. Representative Mickelson said he encourages the remaining applicants to reapply next year.

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY REPRESENTATIVE HAWLEY, TO ACCEPT THE RECOMMENDATION OF THE INVESTMENT COUNCIL SUBCOMMITTEE AND APPOINT MR. PAUL BISSON TO THE SOUTH DAKOTA INVESTMENT COUNCIL. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Bolin, Curd, Langer, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. Those EXCUSED: Tieszen and Partridge.

Mr. Matt Clark gave an update on the 529 Scholarships that are distributed through the Dakota Corps Scholarship Program. Mr. Clark reported that the Allianz contract that created a \$400,000 contribution into the 529 Scholarship has been discontinued, creating a \$400,000 decline in the scholarship funding.

Senator Jim Bolin serves on the Dakota Corps Scholarship committee and explained that the 529 scholarships focus on in-state students who are studying for jobs that need to be filled in South Dakota. The Executive Board appoints members to the Dakota Corps Scholarship committee.

Mr. Rob Wylie, Executive Director, South Dakota Retirement System (SDRS), distributed a document, *SDRS Projected Funded Status as of June 30, 2017* ([Document #2](#)).

Mr. Wylie said the SDRS pays out almost a half a billion dollars in benefits every year, and currently has \$11.5 billion in assets. The base COLA is at 2.25% and will be adjusted to 1.8% – 1.95% next year. Representative Mickelson pointed out that by reducing the base COLA, SDRS becomes fully funded. Mr. Wylie said that thanks to the Legislature the system is now allowed to automatically adjust without going back to the legislature, assuring the system remains fully funded.

Management Reports

Ms. Sue Cichos, Deputy Director, said Ms. Carol Huber, LRC Business Manager is retiring on June 8 and Ms. Kris Schneider will be the new LRC Business Manager. Ms. Huber worked for LRC for forty years. In response to an earlier question, Ms. Cichos stated that the appointments to the Dakota Corps Scholarship Board are Representative Wismer and Senator Solano effective July 1, 2017.

Ms. Annie Mehlhaff, Chief Fiscal Analyst, said the Joint Committee on Appropriations' East River Tours begin tomorrow at noon in Yankton and the committee will be visiting several agencies located throughout southeast South Dakota.

Ms. Mehlhaff said there have been ten applications submitted thus far for Stephanie Gruba's Fiscal Analyst position. Ms. Gruba will be leaving LRC to attend law school this fall.

Mr. David Ortbahn, Chief Research Analyst, said the research staff has been busy preparing for and working with the interim committees. The Non-Meandered Waters Interim Committee has held four meetings already this interim and has been preparing legislation for a Special Session. State-Tribal Relations committee held their first meeting last week and Staff is preparing for the other interim study committees to begin.

Mr. Ortbahn reported on initiated measure proposals. LRC has received 15 proposed measures already this year for review. In response to a question, Mr. Ortbahn explained that after LRC reviews the proposed measures, copies of the responses are sent to the Secretary of State and the Attorney General. The Secretary of State's Office then places the measure on its website and at that time the proposal is available to the public for review.

Mr. Ortbahn said Mr. Fred Baatz, Principal Research Analyst, received an award from the County Officials for all the work he has done regarding county issues and updating laws that have been in effect for decades.

Mr. Doug Decker, Code Counsel, said the Code Counsel will meet the first day of the State Bar Convention to review the contract with West Publishing. There will most likely be an addendum to the West Publishing contract to remove the requirement that West provide a CD-ROM as an option for which people can subscribe.

Mr. Jason Hancock, Director, said the legislators are being surveyed to determine the best date to hold a Special Session to address the non-meandered waters legislation. Mr. Hancock met with the Secretary of State's Office and the Attorney General's Office to determine when the fiscal note requirements established in SB77 are to begin and it was determined that the requirements will apply to any initiated measures that have not been reviewed by the LRC as of July 1.

Streamlined Sales Tax Update

Representative Tim Reed serves on the Streamlined Sales Tax Governing Board which is the national organization working to find a way for states to collect sales tax on online sales. Representative Reed introduced Mr. Craig Johnson who joined the meeting via telephone.

Mr. Craig Johnson, Executive Director, Streamlined Sales Tax Governing Board, Lacrosse, Wisconsin, said the organization was formed in 2000 with the goal of finding a solution to the complexities in the states' sales tax systems which prevent the collection of sales tax on online sales. There are 23 states that belong to the organization, which has a four-part focus: creating a simpler tax system; making processes uniform if they cannot be made simple; balancing state and local sovereignty; and addressing collection burdens.

Since 2005, streamlined sales tax has collected and remitted over \$2.8 billion from over 3500 volunteer sellers for the 23 member states. South Dakota's share of those collections is about \$60 million, last year alone was about \$4.4 million. These volunteer businesses register through the streamlined sales tax organization.

The U.S. Senate and the U.S. House each have legislation under consideration. The Senate reintroduced the Marketplace Fairness Act, which is not as detailed as the house bill. Senator Rounds is a cosponsor on the bill, but Senator Thune has not signed on to the bill. The Senate is waiting for the House to act.

The House legislation, the Remote Transactions Parity Act, was introduced by South Dakota's own Congresswoman Kristi Noem and Congressman Steve Womack, Arkansas, and has 18 bi-partisan cosponsors. There are 53 new members in the House of Representatives and the focus now is on educating those new members regarding the streamlined sales tax issue. The biggest challenge with the House legislation is that it is not supported by the Chair of the House Judiciary Committee, and the bill will first be heard in that committee. Mr. Johnson encouraged the Board members to stay in contact with the South Dakota Congressional delegation to keep apprised as to the progression of these pieces of legislation.

Representative Mickelson asked about the pending remote sales tax litigation. Mr. Johnson said the case will be heard in the State Supreme Court and if the state wins, the businesses will most likely appeal to the US Supreme Court. More information on that litigation can be found on the Department of Revenue's [website](#).

Representative Mickelson thanked Mr. Johnson for his work and for taking the time to update the Executive Board on this issue.

Sales Tax Update

Mr. Jeff Mehlhaff, Fiscal Analyst, gave an update on the State General Fund Receipts through May of 2017 ([Document #3](#)). Mr. Mehlhaff said the general fund receipts for May were up almost 1% over May of 2016, adjusted for the sales tax rate increase. June receipts would have to see a 14.2% growth (1.7% when adjusted for

the sales tax rate increase) over 2016 to reach the revenue estimate for FY17. Mr. Mehlhaff said the sales tax receipts are down in several states, not just South Dakota.

Parcel Delivery Tax Research

Mr. Fred Baatz, Principal Research Analyst, via telephone, presented information on taxing parcel delivery into South Dakota ([Document #4](#)). Mr. Baatz said an estimated 11 million UPS deliveries are made into South Dakota annually and an estimated 1.9 million FedEx Air and 4.6 million FedEx Ground deliveries into South Dakota annually, totaling 17.6 million deliveries into South Dakota every year.

Representative Mickelson said placing a \$3 tax on each delivery would bring in \$51 million, which would help with the loss of sales tax revenues to online sales. Representative Mickelson said the state will either have to shrink government or find a solution to the online sales tax issue.

Uniform Laws Commission Subcommittee Report

Representative Mickelson asked what purpose the Uniform Laws Commission serves. Mr. Decker said the Uniform Laws Commission agrees on legislation at the National Conference, that legislation is then taken to the State Bar and the State Bar prepares the bill for consideration by the State Legislature.

Representative Mike Stevens explained that the National Conference of Commissioners on Uniform State Laws has an annual meeting that lasts about a week where the delegates decide what laws need to be reviewed. The Uniform Commercial Code is an example of a Uniform Laws Commission's success story.

Representative Mickelson asked that a letter be written to the Director of the South Dakota State Bar requesting the Bar's assistance in making this program more effective.

Senator Kris Langer said the Uniform Laws Commission Ad Hoc Subcommittee reviewed four applications for this one appointment and recommend Former-Representative Brian Gosch be reappointed to the Commission. The Executive Board will be making two appointments to this Commission next year and the other three applicants are encouraged to apply again.

A MOTION WAS MADE BY SENATOR BOLIN, SECONDED BY SENATOR STALZER, TO REAPPOINT BRIAN GOSCH TO THE UNIFORM LAWS COMMISSION. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting NAY, and 2 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Bolin, Curd, Langer, Stalzer, Sutton, Hawley, and Greenfield. Those voting NAY: Stevens and Mickelson. Those EXCUSED: Tieszen and Partridge.

Technology and Budget Subcommittees Report

Representative Hawley, Chair, Technology Subcommittee, said the Technology and Budget Subcommittees met jointly to discuss expenditures for upgrades to the legislative committee rooms. Representative Hawley explained the proposal that was reviewed by the joint subcommittees totaling \$324,651. The joint subcommittees recommend approving \$285,880 for the upgrades to the legislative committee rooms.

Mr. Scott Darnall, Information Technology Manager, explained the plans for the technology upgrades, and said setting a maximum amount may cause a problem if the total should be a little over that maximum amount. Representative Mickelson told Mr. Darnall to come back to the Executive Board if more money is needed.

Senator Langer said she has some concerns with the cost for adding the ability to allow testimony through Skype during committee meetings. Senator Langer said she prefers people testify in person rather than through technology when addressing committee meetings. Representative Mickelson said he agrees that having the testifier appear in person is preferred, but there are times when having Skype available would be useful.

Senator Blake Curd said he would prefer having someone testify via Skype rather than testifying by telephone, as being able to see the testifier can be beneficial when considering their testimony.

Senator Bolin said the subcommittee's recommendation includes the cost for adding the ability to use Skype in three of the legislative committee rooms.

A MOTION WAS MADE BY REPRESENTATIVE HAWLEY, SECONDED BY SENATOR BOLIN, TO AUTHORIZE UP TO \$285,000 FOR LEGISLATIVE COMMITTEE ROOM UPDATES AND TECHNOLOGY. The motion prevailed on a roll call vote with 10 voting AYE, 3 voting NAY, and 2 EXCUSED. Those voting AYE: Gosch, Haugaard, Reed, Stevens, Bolin, Curd, Stalzer, Sutton, Hawley, and Mickelson. Those voting NAY: Qualm, Langer, and Greenfield. Those EXCUSED: Tieszen and Partridge.

Mr. Darnall said the IT staff conducted a survey regarding the LRC website in preparation for the redesign of that website and have received helpful input from the respondents.

Issue Memo Topic Selection

Mr. Jeff Mehlhaff, Fiscal Analyst, presented a draft issue memorandum, "Regional Comparison of Post-Secondary Tuition and Fees" ([Document #5](#)). **Ms. Stephanie Gruba, Senior Fiscal Analyst**, joined the meeting via telephone to assist in answering questions.

Representative Mickelson pointed out that, according to this report, South Dakota has the third most expensive technical schools/public two-year schools when doing a national comparison of in-state tuition and fees.

The Board asked the fiscal analysts to research and report back as to why South Dakota public schools are so much more expensive.

Mr. Mehlhaff said the draft issue memorandum also does a comparison of four-year undergraduate schools based on tuition and fees. According to this report, South Dakota state universities have the second most expensive state schools in the region, in terms of in-state tuition and fees.

River Basin Natural Resource District Oversight Advisory Task Force

Representative Mickelson said the objective of this advisory task force is important but changes need to be made as to how to achieve that objective. The Executive Committee recommends to the Executive Board not to reappoint and that this task force be abandoned and a new framework be designed for addressing this issue.

Mr. David Ortbahn said the task force was established because the counties were no longer regulating drainage and the counties were told to leave these decisions to the landowners.

Mr. Jay Gilbertson, Manager, East Dakota Water Development District, Brookings, distributed a memo giving the history and action of the Oversight Advisory Task Force ([Document #6](#)). Mr. Gilbertson said he does support the action suggested by the Executive Committee to disband the task force.

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY REPRESENTATIVE HAWLEY, TO SUPPORT THE SPEAKER AND PRESIDENT PRO TEMPORE'S DECISION TO RESCIND THE APPOINTMENTS TO THE RIVER BASIN TASK FORCE AND ABANDON THIS FRAMEWORK. The motion prevailed on a roll call vote with 11 voting AYE, 1 voting NAY and 3 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Bolin, Langer, Stalzer, Hawley, Greenfield, and Mickelson. Voting NAY: Sutton. Those EXCUSED: Tieszen, Curd and Partridge.

Balanced Budget Amendment Planning Convention

A MOTION WAS MADE BY REPRESENTATIVE QUALM, SECONDED BY REPRESENTATIVE REED, TO APPOINT TWO DELEGATES TO THE BUDGET AMENDMENT PLANNING CONVENTION AND THESE DELEGATES WILL BE SENATOR STALZER AND REPRESENTATIVE STEVENS FOR A TERM TO LAST THROUGH JANUARY 2019. Representative Qualm withdrew his motion with approval from Representative Reed.

A MOTION WAS MADE BY SENATOR BOLIN, SECONDED BY SENATOR GREENFIELD, TO APPOINT SENATOR STALZER AND FORMER-REPRESENTATIVE HAL WICK TO SERVE AS DELEGATES TO THE BUDGET AMENDMENT PLANNING CONVENTION.

A SUBSTITUTE MOTION WAS MADE BY SENATOR LANGER, SECONDED BY REPRESENTATIVE GOSCH, TO APPOINT SENATOR STALZER, REPRESENTATIVE STEVENS, AND FORMER-REPRESENTATIVE HAL WICK AS DELEGATES TO THE BUDGET AMENDMENT PLANNING CONVENTION AND TO PAY ALL TRAVEL EXPENSES TO ATTEND THE PLANNING CONVENTION FOR A TERM TO LAST THROUGH JANUARY 2019. The motion prevailed on a roll call vote with 11 voting AYE and 4 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Bolin, Langer, Stalzer, Sutton, Greenfield, and Mickelson. Those EXCUSED: Tieszen, Curd, Partridge, and Hawley.

Non-Meandered Waters Interim Study Committee Update

Representative Lee Qualm is Chair of the Non-Meandered Waters Interim Study Committee and said the committee voted 13 aye and 2 nay on the bill that will now go before the full legislature during a Special Session. Senator Curd said June 12 seems to be the best date for the Special Session.

Senator Brock Greenfield was Vice Chair of the study committee and said this legislation gives access to the waters in question immediately and should save the summer for the affected businesses in those areas.

Executive Session

A MOTION WAS MADE BY SENATOR LANGER, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION TO DISCUSS ITEMS RELATING TO PERSONNEL. The motion prevailed on a voice vote.

The Executive Board went into Executive Session at 3:20 pm.

A MOTION WAS MADE BY SENATOR LANGER, SECONDED BY REPRESENTATIVE QUALM, THAT THE EXECUTIVE BOARD COME OUT OF EXECUTIVE SESSION. The motion prevailed on a voice vote.

The Executive Board came out of Executive Session at 3:40 pm. As part of the Director's annual evaluation, the Board discussed special session preparation and how leaders are elected. No action was taken.

Adjourn

A MOTION WAS MADE BY REPRESENTATIVE GOSCH, SECONDED BY SENATOR LANGER, THAT THE EXECUTIVE BOARD BE ADJOURNED. The motion prevailed on a voice vote.

The Board adjourned at 3:42 p.m.