

MINUTES

Executive Board



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

**Third Meeting, 2018 Interim
Monday, May 21, 2018**

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

The third meeting of the Executive Board for the 2018 Interim was called to order by Senator Brock L. Greenfield at 10:45 a.m. in the SD Investment Council conference room, Sioux Falls, South Dakota. A quorum was determined with the following members answering the roll call: Senators Jim Bolin, Kris Langer, Jeffrey Partridge (via phone), Jim Stalzer, and Billie H. Sutton (via phone); Representatives Hugh Bartels, Spencer Gosch, Steven Haugaard, Tim Reed, and Mike Stevens; Representative G. Mark Mickelson, Vice Chair; and Senator Brock L. Greenfield, Chair. Excused: Senator R. Blake Curd, Representatives Spencer Hawley and Lee Qualm.

Staff members present include Jason Hancock, Director; Sue Cichos, Deputy Director; Doug Decker, Code Counsel; David Ortbahn, Chief Analyst for Research; Scott Darnall, Information Technology Manager; 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 webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

Director Hancock said that on page two, third paragraph, of the April 23, 2018, prepared minutes, the words "Secretary of State's" should be inserted in front of the word "website." The fiscal notes for proposed ballot initiatives can be found on the Secretary of State's website.

A motion was made by Representative Mickelson, seconded by Senator Stalzer, to approve the minutes of the April 23, 2018, Executive Board meeting as revised. Motion prevailed on a voice vote.

Commission on Uniform Legislation Appointments

Senator Kris Langer, Chair, Commission on Uniform Legislation Ad Hoc Subcommittee, said terms for two members of the Commission are expiring on July 31 and those vacancies need to be filled ([Document #1](#)). Senator Langer said both members would like to be reappointed to the Commission, and that two additional applications have been received. The subcommittee recommends reappointing Senator Arthur Rusch and former-Representative Marc Feinstein to the Commission on Uniform Legislation.

Senator Bolin asked how long both members have served on the Commission. Mr. Marc Feinstein responded that he is just starting his seventh year on the Commission. Representative Stevens said Senator Rusch has served one year on the Commission.

A motion was made by Senator Langer, seconded by Representative Haugaard, that Arthur Rusch and Marc Feinstein be reappointed to the Commission on Uniform Legislation. Motion prevailed on a roll call vote with 10 voting AYE, 2 voting NAY, 3 EXCUSED. Voting AYE: Langer, Stalzer, Sutton, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. Voting NAY: Bolin and Partridge. EXCUSED: Curd, Qualm, and Hawley.

Investment Council Appointment

Representative Mark Mickelson, Chair, Investment Council Subcommittee, said Mr. Steve Kirby's appointment to the Investment Council is expiring on June 30 ([Document #2](#)). The subcommittee received one application for the vacancy and has met with the applicant, Mr. Greg Kulesa. Representative Mickelson introduced Mr. Kulesa, Watertown, to the Board. Mr. Kulesa said he appreciates being considered and is passionate about the work conducted by the Investment Council. Representative Bartels spoke in support of Mr. Kulesa.

A motion was made by Representative Mickelson, seconded by Senator Langer, to appoint Mr. Greg Kulesa to the SD Investment Council. Motion prevailed on a roll call vote with 12 voting AYE, 3 EXCUSED. Voting AYE: Bolin, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Qualm, and Hawley.

Senator Greenfield thanked Mr. Kirby for his years of service on the Investment Council. Mr. Kirby said he enjoyed his time on the Council and will miss being a part of it. Mr. Kirby also commented that the great partnership with the Executive Board plays a key role in the success of the Investment Council.

Investment Council Update

Mr. Matt Clark, State Investment Officer, and Mr. Steve Kirby, Chair, SD Investment Council, presented the Investment Council Update ([Document #3](#)). Mr. Clark reported on the assets managed stating that the SD Retirement System investments are up about 6.5% and the trust funds are managed at 90% of the risk of SDRS and those investments are up about 5.7%. The 529 Scholarship funds transfer is down about \$500,000 from the 2017 transfer, as Allianz discontinued its contract with Michigan, which had resulted in a \$0.5 million profit for the fund. The 2018 transfer will be about \$1.2 million.

Mr. Kirby explained the role of the Investment Council and reported that the SD Investment Council ranked number one in North America this past year. Mr. Kirby presented the Investment Council's recommendation for the FY2019 Investment Officer compensation for consideration by the Executive Board.

A motion was made Representative Mickelson, seconded by Representative Bartels, that the total compensation for the State Investment Officer payable in FY2019 be comprised of the FY2018 base salary adjusted for state salary policy and continuation of the investment performance incentive plan, with any earned incentive to be paid following completion of the audit. Motion prevailed on a roll call vote with 12 voting AYE, 3 EXCUSED. Voting AYE: Bolin, Langer, Partridge, Stalzer, Sutton, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Qualm, and Hawley.

South Dakota Retirement System

Mr. Rob Wylie, Executive Director, SD Retirement System (SDRS), gave an update on the SDRS ([Document #4](#)). There are only two state retirement plans in the nation that are 100% funded, one is Wisconsin and the other is South Dakota. SDRS will again be 100% funded and the COLA will be about 2%.

In response to a question from Senator Bolin, Mr. Wylie said there should never again be a circumstance where no COLA is paid, there should always be at least the 0.5% minimum.

The SDRS will be receiving an award from the National Society of Actuaries for plan design.

Program Evaluation Training

Mr. Max Arinder, Executive Director (retired), Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, talked to the Board about the training he conducted with the LRC Fiscal Staff regarding program evaluations. The staff was immersed in the topic for three days. Time was spent looking at theory and the practice of the program evaluation oversight and policy making. The training then turned from theoretical to practical. The third day focused on the two programs the Executive Board selected to be evaluated.

Mr. Arinder said that while the Fiscal Staff are talented and capable of accomplishing the task before them, the Legislature must remain resolute in their support for the process and the staff. One challenge lies in the fact that most Executive Branch agencies are not accustomed to this level of oversight and are not comfortable answering the involved questions. Each evaluation effort is unique; this is not cookie cutter research. Stay the course and success can be achieved.

Initiated Measures and Constitutional Hearings Discussion

Mr. Steve Willard, SD Broadcasters Association, met with the Executive Board at the April meeting and was invited back to further discuss the SD Broadcasters proposal to work with the Executive Board in presenting town hall forums regarding the ballot initiatives ([Document #5](#)). Senator Greenfield said there is some concern regarding the legislature legally taking part in initiated measure hearings because of [SDCL 12-27-20](#). Mr. Willard said they are asking the legislators to help in the presentation of information, not take a stance for or against the measure. Representative Hugaard said his biggest concern is the expenditure of state funds if the Legislature is leading the forums. Representative Stevens said he does not see that this statute applies, as the meetings would merely be a way to get the information out to the public, not to influence the election.

Senator Bolin said the question is if the legislature wants to formally endorse these town hall meetings and involve ourselves in the process, or should the broadcasters take charge and invite legislators to attend. Senator Bolin said he prefers to not involve the legislature directly.

Senator Greenfield asked Mr. Willard if the Executive Board does not act on this request, will the Broadcasters Association pursue other options. Mr. Willard said their intention is to shine light on these issues and they will continue regardless of the Executive Board's decision.

Representative Mickelson said that individually the Executive Board members are willing to cooperate but are not comfortable taking a formal role in commandeering the process.

Senator Stalzer suggested Senator Greenfield work with Director Hancock in writing a message to all legislators informing them about the statute. Senator Greenfield said the members can be surveyed to see who is willing to take part in the town hall meetings.

No action was taken on the SD Broadcasters Association's 2018 Ballot Issue proposal.

Management Reports

Ms. Sue Cichos, Deputy Director, reported that employee performance evaluations have been completed for the Operations Division. The 2018 Legislative Index is done, as are the 2018 Session Laws. Both documents are available on the LRC website. Page applications for the 2019 session will be available online by the end of the month. An early deadline for the page program application is being considered. Legislators not returning for the 2019 session can still sponsor pages. A new sponsor will be assigned if that applicant is selected.

Mr. Doug Decker, Code Counsel, said the 2018 Session Laws are available online and can be found in the "Laws" section of the LRC website. Mr. Decker is working with the publisher in reviewing the pocket parts and proofing pages. It is in the pocket parts to the Code where the blending of several amendments to one code section are found.

Mr. David Ortbahn, Chief Analyst for Research, said the employee performance evaluations have also been completed for the Research Staff. The Research Staff has been preparing for the interim study committee meetings that start in June. Ms. Clare Charlson will be lead staff for the Extraordinary Cost Fund for Special Education study committee and Ms. Emily Kerr will be lead staff for the Access to Mental Health Services study committee. The Issue Memos requested by the Executive Board have been assigned to staff and several of those will be presented at the August Executive Board meeting. Mr. Fred Baatz is officially retired; thirty-two applications have been submitted for his position and the vacant attorney position.

Mr. Scott Darnall, Information Technology Manager, said the legislators' devices for the 2019 session have been ordered with 60 iPad Pro devices and 50 Windows 10 laptops. A work group has been formed to look at the drafting process and determine if changes should be made. Those changes will be ready for the 2020 legislative session.

Mr. Jason Hancock, Director, said the thirty-two applications for the two research positions is the highest amount of applications submitted. There were twenty-one applications for the two fiscal positions, those interviews have been conducted and references are being checked. Thirteen applications have been submitted for the open secretary position. Five applications have been submitted for the Chief Fiscal Analyst, of which two are internal applications.

Mr. Hancock said a conference call or Board meeting will be needed in late June to consider the bids for the two Lean contracts under consideration for FY19. There will be some bills coming in yet this year for the prior Lean contract and those will be paid from the LRC general fund rather than from the contingency fund.

Interim Travel Funds Allocation

Ms. Annie Mehlhaff, Chief Fiscal Analyst, joined the meeting by phone. Ms. Mehlhaff explained that one of the duties of the Executive Board is to allocate interim travel funds for the members of the House and Senate. The proposed budget along with the previous budget can be found on the Travel Budget Distribution Information document [\(Document #6\)](#).

A motion was made by Representative Mickelson, seconded by Representative Gosch, to allocate the FY19 non-session legislative travel budget distribution at 61.8% to the House of Representatives, 35.1% to the Senate, and 3.1% to non-legislative member travel. Motion prevailed on a roll call vote with 11 voting AYE, 4 EXCUSED. Voting AYE: Bolin, Langer, Partridge, Stalzer, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Qualm, Sutton, and Hawley.

Executive Session

A motion was made by Representative Gosch, seconded by Senator Bolin, that the Executive Board go into Executive Session to discuss items relating to personnel. Motion prevailed on a roll call vote with 11 voting AYE, 4 EXCUSED. Voting AYE: Bolin, Langer, Partridge, Stalzer, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Qualm, Sutton, and Hawley.

The Executive Board went into Executive Session at 1:50 p.m.

A motion was made by Representative Mickelson, seconded by Representative Bartels, that the Executive Board come out of Executive Session and that the record reflect that no action was taken. The motion prevailed on a voice vote.

The Executive Board came out of Executive Session at 3:20 p.m.

Legislative Executive Salaries and Salary Policies

A motion was made by Representative Mickelson, seconded by Senator Stalzer, to adjust the midpoint pay range for Legislative Branch attorneys to match the pay range for Executive Branch attorneys 1, 2, and 3. Motion prevailed on a roll call vote with 10 voting AYE, 5 EXCUSED. Voting AYE: Bolin, Partridge, Stalzer, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Langer, Qualm, Sutton, and Hawley.

A motion was made by Representative Mickelson, seconded by Representative Bartels, to move the base salary of Mr. Jason Hancock, Director of the LRC, and Mr. Marty Guindon, Auditor General, by an increase of 1.2% for FY2019. Motion prevailed on a roll call vote with 10 voting AYE, 5 EXCUSED. Voting AYE: Bolin, Partridge, Stalzer, Bartels, Gosch, Haugaard, Reed, Stevens, Mickelson, and Greenfield. EXCUSED: Curd, Langer, Qualm, Sutton, and Hawley.

Other Business

Senator Bolin would like the LRC research staff to examine the following questions: What power does the state auditor's office exercise over the legislature through its rule making process and its ability to deny payment to the legislature or a legislator through its current authority to deny or approve vouchers, etc. Should and does this portion of the executive branch have the power to potentially bind, restrict, or inhibit the power of the legislature through its current authority? How were the current powers of the state auditor's office acquired?

Senator Greenfield said the payroll system used to be handled by the State Auditor's office and is now handled by the Bureau of Finance and Management. Senator Greenfield requested someone research this process to determine if that procedure should be once again under the purview of the State Auditor's office.

Adjourn

A motion was made by Representative Stevens, seconded by Senator Stalzer, that the Executive Board be adjourned. The motion prevailed unanimously on a voice vote.

The Board adjourned at 3:30 p.m.