



MINUTES

Executive Board

**Fourth Meeting
2009 Interim
August 17, 2009**

**Room 413
State Capitol
Pierre, South Dakota**

The fourth 2009 interim meeting of the Legislative Research Council Executive Board was called to order by Chair Senator Jean Hunhoff at 10:00 a.m. (CT), August 17, 2009, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene G. Abdallah, Dan P. Ahlers, Bob Gray, Jean M. Hunhoff (Chair), Ryan Maher, Kathy Miles, and Craig Tieszen; and Representatives Quinten L. Burg (Ranking Minority Member), Dustin Cronin, Shantel Krebs (Vice Chair), Larry Lucas, J.E. "Jim" Putnam, Larry Tidemann, and Charles M. Turbiville. Representative Tim Rave was excused.

Staff members present included James Fry, LRC Director; and Teri Retrum, Administrative Assistant.

(Note): For the purpose of continuity, these minutes are not necessarily in chronological order. Also, all material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

(Note): On Monday, August 17, 2009, the Investment Council Subcommittee met at 8:00 a.m.; the Budget Subcommittee met at 8:45 a.m.; the Legislative Interns Subcommittee met at 8:45 a.m., and the Computer Technology Subcommittee and Personnel Subcommittee met at 9:15 a.m.

Approval of Minutes

REPRESENTATIVE TURBIVILLE MOVED, SECONDED BY SENATOR MILES, THAT THE MINUTES OF THE JUNE 8, 2009, MEETING BE APPROVED. The motion prevailed unanimously on a voice vote.

Approval of Agenda

There being no changes to the agenda, **Chair Jean Hunhoff** declared the agenda approved.

Chair Hunhoff welcomed members of the Legislative Committee of the South Dakota Association of Telephone Co-ops. Chair Hunhoff said that the Co-ops serve the vast majority of South Dakota's land mass and more than 70 percent of the state's geography.

At the request of Chair Hunhoff, the members of the Legislative Committee of the Co-ops introduced themselves prior to their meeting in the Capitol.

Mr. Greg Dean, South Dakota Association of Telephone Co-ops spoke briefly regarding some of the services provided by the co-ops. Mr. Dean said that some of the offerings include internet, video, cable, voice mail, and some cell phone services.

Report of the Investment Council Subcommittee

Representative Larry Tidemann, Chair of the Investment Council Subcommittee, introduced **Mr. Paul Livermore**, Chair of the South Dakota Investment Council (SDIC), and **Mr. Matt Clark**, SDIC Investment Officer, and asked them to present their report.

Mr. Livermore introduced the following Council members who were present at the meeting: Mr. Joseph A. Anglin, Spearfish; Mr. Hugh M. Bartels, Watertown; Mr. Haven Stuck, Rapid City (Vice Chair); Mr. Wesley G. Tschetter, Brookings; and Mr. Rob Wiley, Executive Director/Administrator for the South Dakota Retirement System (SDRS), Pierre.

Mr. Livermore and Mr. Clark reviewed the Investment Council's report to the Executive Board (**Document #1**). The report begins with the organizational chart of the Council and includes the following graphs and charts:

- Assets Managed for Fiscal Years 1973 to 2009;
- Dollar and Percentage Impact of Investment Performance—Total SDRS dollars earned in Fiscal Year 2009 were \$-1.478 billion; total dollars earned in the last five years were \$860 million; total dollars earned in the last ten years were \$1.928 billion. The South Dakota Retirement System's beginning FY 2009 assets were \$7.301 billion, and the SDRS ending June 30, 2009, assets were \$5.640 billion;
- Comparison graph showing performance of SDRS against private funds—SDRS outperformed nearly 60 percent of private pension funds;
- South Dakota Retirement System Total Fund Return Comparison—back to achievement levels;
- Potential Excess Earnings Historic Versus Average Returns—need patience to allow the Council to continue with the long-term investment strategy;
- Chart showing realistic expectations for the future;
- Graph depicting management fees per \$1,000 for assets managed—one of the reasons for the successes of the Investment Council is due to keeping expenses low;
- Cost Effectiveness Ranking;
- Wealth Accumulation;
- Investment Council Long-Term Plan (Executive Summary);
- Fiscal Year 2011 Budget Request—8.92 percent total salary budget for incentives—total operating expenses grew modestly—no provisions for senior personnel salary increases, including the Investment Officer.

The remainder of the report was a summary of trust fund value and asset allocation and a narrative outlining the Compensation/Incentive Study completed by Deloitte and presented to the Council in 2006.

Representative Charles Turbiville asked questions regarding the contract between the SDIC and Mr. Steve Myers, former Investment Officer.

Mr. Clark stated that Mr. Myers is paid a consulting fee of \$80,000; up to \$40,000 to cover out-of-pocket expenses; although, typically, that amount is about \$25,000; and \$30,000 to cover other items.

Mr. Livermore said that Mr. Myers' name does not appear on charts presented because he is not an employee but an outside consultant.

Representative Turbiville said that he believes that Mr. Clark is equally as qualified as Mr. Myers and asked if Mr. Myers had an outside consultant when he started his job.

Mr. Livermore replied that the Council did not have such an individual for Steve Myers because, from the inception of the Council, Mr. Myers was the first and only Investment Officer until Mr. Clark advanced to the position upon the retirement of Mr. Myers. Mr. Livermore said that the expertise and knowledge provided by Mr. Myers are worth the cost. Mr. Myers has a unique perspective having fostered relationships with outside equity managers.

Representative Turbiville asked how long the contract with Mr. Myers will continue.

Mr. Livermore responded that there is not a specific termination date; however, the contract is reviewed annually.

Mr. Clark said that the Investment Council has far more young people than he would like so he wants to groom them in the Council's investment policy developed so successfully by Mr. Myers. Mr. Clark said that Mr. Myers reports to him and other senior people in the Council. Mr. Myers typically attends the June meeting, where a lot of this type of discussion takes place. Mr. Clark also noted that the Executive Board was the catalyst to consider retaining Mr. Myers in some way to help the Council continue its successful investment strategy. Mr. Clark also wanted to be able to utilize Mr. Myer's in-house expertise and thought that it would be better to hire him as a consultant rather than as an employee so that he would be freer to make recommendations. Mr. Clark said that Mr. Myers helps him to do his job; he is someone other than Mr. Clark to help the younger managers. Mr. Clark said that he and Mr. Myers worked together in some areas for 20 years.

Senator Gene Abdallah said that no one is indispensable and stated his opinion that an outside consultant is not needed.

Responding to **Representative Shantel Krebs**, Mr. Clark said that Mr. Myers developed a succession plan that does include training. Also, Mr. Clark said that having Mr. Myers as a resource for the Council is very valuable.

Senator Ryan Maher asked Mr. Clark how long he has been employed by the SDIC. Mr. Clark replied that he has been employed full-time with the Council since 1984.

REPRESENTATIVE PUTNAM MOVED, SECONDED BY REPRESENTATIVE BURG, THAT THE EXECUTIVE BOARD APPROVE THE BUDGET, AS PRESENTED BY THE SOUTH DAKOTA INVESTMENT COUNCIL, TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2010 LEGISLATIVE SESSION.

Senator Dan Ahlers said that it is not uncommon for groups, organizations, businesses, etc., to hire outside consultants. Senator Ahlers said that he supports the motion.

Representative Tidemann said that the money used to pay Mr. Myer's consultant fee is not state money or general funds. He said that the Executive Board appoints the members of the Investment Council and needs to trust their judgment. Representative Tidemann expressed support for the motion.

Representative Quinten Burg agreed that the Council's judgment needs to be trusted. He said that he does not know why anyone would want to cut all ties with a person who has been so successful in managing the Investment Council. Representative Burg said that he opposes micromanaging the Council and said that he supports the motion.

Chair Hunhoff commented that the final approval of the Investment Council's budget will be made by the Appropriations Committee.

Representative Krebs recommended that the Investment Council develop a written plan to be in place to fill in those gaps in training in case of an emergency.

The motion that the Executive Board approve the budget, as presented by the South Dakota Investment Council, to go forth to the Appropriations Committee during the 2010 Legislative Session prevailed on a roll call vote with 8 voting AYE, 6 voting NAY, and 1 EXCUSED. Those voting AYE: Ahlers, Gray, Burg, Krebs, Lucas, Putnam, Tidemann, Hunhoff. Those voting NAY: Abdallah, Maher, Miles, Tieszen, Cronin, Turbiville. Those EXCUSED: Rave.

Copies of a document titled, "Benefits of Relationship with Steve Myers, Former Sate Investment Officer," were distributed (**Document #2**).

Report of the Budget Subcommittee

Representative J.E. "Jim" Putnam, Chair of the Budget Subcommittee, said that **Mr. Martin Guindon**, Auditor General, Department of Legislative Audit, presented an austere budget but does have some matters to address.

At the request of Representative Putnam, Mr. Guindon discussed the budget of the Department of Legislative Audit (**Document #3**).

Mr. Guindon said that the budget is conservative. He noted that the Executive Board approved scheduled salary advancement pay, certification incentive pay, and straight time compensation for hours worked in excess of the normal 2,080 hour work year.

At this time, Representative Krebs assumed the Chair.

Mr. Guindon said that he included a request for funds to replace laptop computers. He said that most of the audit staff uses laptop computers that will be four-years old. Obtaining parts to repair these computers is getting difficult, and they went off warranty coverage in June 2009.

REPRESENTATIVE PUTNAM MOVED, SECONDED BY REPRESENTATIVE BURG, THAT THE EXECUTIVE BOARD APPROVE THE BUDGET, AS PRESENTED BY THE DEPARTMENT OF LEGISLATIVE AUDIT, TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2010 LEGISLATIVE SESSION. The motion prevailed with 13 voting AYE and 2 EXCUSED. Those voting AYE: Abdallah, Ahlers, Gray, Maher, Miles, Tieszen, Burg, Cronin, Krebs, Lucas, Putnam, Tidemann, Turbiville. Those EXCUSED: Rave and Hunhoff.

Senator Hunhoff resumed the Chair.

The Executive Board recessed at 12:00 p.m. and reconvened at 1:10 p.m.

Report of the South Dakota Retirement System

Mr. Wylie distributed a copy of "South Dakota Retirement System Funded Status Overview" **(Document #4)**.

Mr. Wylie said that a large group of South Dakotans are members of SDRS. An amount of \$310 million will be paid out in retirement benefits this year. Mr. Wylie said that there is not a county in South Dakota that does not have some of its population receiving benefits from the retirement system.

Mr. Wylie explained that SDCL 3-12-122 contains specific conditions that demand immediate reporting to the Governor and the Retirement Laws Committee and recommended corrective action if they exist for three consecutive years. However, Mr. Wylie said that conditions may warrant action before triggers exist for three consecutive years. As of June 30, 2008, the System remains sound and reasonably well funded, and a conservative funding policy will provide some protection for the unfavorable system investment experience for fiscal year 2008. That experience will be worse for 2009. The 2009 liability experience will be available later this fall. Mr. Wylie said that the funded status for SDRS compares very favorably with similar systems.

Responding to Representative Larry Lucas, Mr. Wylie said that defined contribution plans are mostly exclusive in the private sector.

Representative Tidemann asked a question concerning the practice of retire-rehire. Mr. Wylie said that there are many reasons why that practice is beneficial, especially in the education realm in the small, rural school districts. Mr. Wylie said that the SDRS is working hard to develop a plan to deal with this issue to bring before the Legislature.

State Investment Officer's Incentive

REPRESENTATIVE TURBIVILLE MOVED, SECONDED BY REPRESENTATIVE KREBS, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING AND SETTING THE STATE INVESTMENT OFFICER'S INCENTIVE FOR FY 2009. The motion prevailed on a voice vote.

The executive session commenced at 1:40 p.m.

REPRESENTATIVE TIDEMANN MOVED, SECONDED BY REPRESENTATIVE LUCAS, TO CONCLUDE THE EXECUTIVE SESSION. The motion prevailed on a voice vote.

The executive session concluded at 1:50 p.m.

REPRESENTATIVE TIDEMANN MOVED, SECONDED BY REPRESENTATIVE LUCAS, THAT THE STATE INVESTMENT OFFICER'S INCENTIVE BONUS BE SET AT \$44,762.52 FOR FY 2009. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting NAY, and 2 EXCUSED. Those voting AYE: Ahlers, Gray, Tieszen, Burg, Cronin, Krebs, Lucas, Putnam, Tidemann, Turbiville, Hunhoff. Those voting NAY: Maher, Miles. Those EXCUSED: Abdallah and Rave.

The Executive Board recessed at 1:55 p.m. for a Smartboard demonstration by Work Place Technologies, Inc.

The Executive Board reconvened at 2:30 p.m.

Report of the Budget Subcommittee (Continued)

Representative Putnam asked **Mr. Jim Fry**, Director of the Legislative Research Council (LRC) to present the budget for the Legislative Research Council.

Mr. Fry and **Ms. Carol Huber**, LRC Finance Officer, reviewed the budget for LRC (**Document #5**). Mr. Fry said that the LRC budget ended Fiscal Year 2009 in excellent shape and reverted \$126,138 to the state general fund. He said that the FY 2010 budget was reduced by \$156,000. For FY 2011, the budget needs to be supplemented to cover about \$3,300 in order to pay Social Security for legislators. Mr. Fry said that there is a considerable savings to pay for accidental death and dismemberment insurance for legislators in three-year increments but that FY 2011 is the year for the payment. He noted that there has not been a claim filed or paid against this insurance since it was provided. Mr. Fry said that an expanded per diem for interns and pages is included in the budget.

Mr. Fry said that the FY 2011 budget is \$4.85 million, which is less than the FY 2009 budget. He stated that this budget also will go through the appropriations process after approval by the Board.

REPRESENTATIVE TURBIVILLE MOVED, SECONDED BY SENATOR ABDALLAH, THAT THE EXECUTIVE BOARD APPROVE THE BUDGET, AS PRESENTED BY THE LEGISLATIVE RESEARCH COUNCIL, TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2010 LEGISLATIVE SESSION. The motion prevailed with 14

voting AYE and 1 EXCUSED. Those voting AYE: Abdallah, Ahlers, Gray, Maher, Miles, Tieszen, Burg, Cronin, Krebs, Lucas, Putnam, Tidemann, Turbiville, Hunhoff. Those EXCUSED: Rave.

Computer Technology Subcommittee

Representative Krebs, Chair of the Computer Technology Subcommittee, said that the following questions were raised regarding the Smartboard demonstration by Work Place Technologies, Inc.:

- For what purposes will it be used?
- How will it be used?
- Where will it be located?
- Is it worth the investment?

Chair Hunhoff said that it would be beneficial to the Appropriations Committee because paper would be reduced.

Representative Tidemann said that it would be valuable to staff because they will be able to continually track information and show it to the committee.

Representative Burg said that it would be helpful to have a Smartboard in both rooms but questioned whether it would be worth the money to have it in both places.

Senator Kathy Miles asked if the Smartboard was the only type of this technology that was considered.

Representative Krebs said that the interest was in the Smartboard because that was what the technology company that worked on fourth floor had available. She suggested that LRC personnel work with the Smartboard and report on its usefulness to the committees.

Ms. Lou Adamson, Legislative Information System Coordinator, reported that she spoke to other departments that have the Smartboard. Ms. Adamson said that she learned the technology is wonderful for classes but was told that if a committee does not use a white board now, it will not use the Smartboard. She informed the Board that the technology is available in the rooms now to provide the same information to a committee.

In light of the comments from Ms. Adamson, Representative Putnam suggested that the Board look into the resources that are available now in the rooms. He said that maybe the Smartboards from the Department of Labor or Department of Social Services could be shared.

Senator Ahlers said that that he would like to move in the direction of Smartboard technology. He also commented that the Legislature needs to expect more from the departments in meeting preparation.

Legislative Interns Subcommittee

Senator Bob Gray, Chair of the Legislative Interns Subcommittee, said that the subcommittee recommends that the Legislature continue with 22 interns—9 in the Senate; 13 in the House.

Legislative Travel

Chair Hunhoff asked Board members for input on legislative travel.

Senator Ahlers said that maybe the LRC can negotiate better prices regarding travel.

Mr. Fry said that the ability to work with airlines is difficult when there are so many points of departure concerning legislative travel. He said that room rates are negotiated with hotels by an organization holding a conference at that hotel.

Representative Krebs said that she has attended meetings telephonically when she is unable to travel to a meeting. She suggested that avenue for others who, for whatever reason, cannot attend a meeting in person at a certain time.

Chair Hunhoff asked the Board whether they are interested in requiring that a committee plan for a tour and that it be a budgeted item before permission is granted.

Representative Putnam expressed support for the idea.

With the consensus of Board members, Chair Hunhoff directed staff to include legislative travel as an agenda item for the next meeting. Also, Chair Hunhoff directed staff to research criteria for evaluating a standing committee's request to tour during the interim. She said that she approved the request from the Agriculture and Natural Resources Committee, in part, because it had obtained some private funding for the tour; however, Chair Hunhoff said that she prefers a policy, approved by the Board, for the Chair to follow when presented with these types of requests.

Updates on Interim Studies

Updates were given on the following interim studies:

Sex Offender Registry

Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services

Bureau of Personnel Agency Review

Terry Miller, Senior Fiscal Analyst

Medicaid Reimbursement Study

Sue Cichos, Senior Fiscal Analyst

State-Tribal Relations

Tom Magedanz, Principal Research Analyst

Alcohol Beverage Control and Licensing Laws
Jim Fry, LRC Director

Long-Term Highway Needs and Department of Transportation Agency Review
Dave Ortbahn, Principal Research Analyst

Report on Conference Room Usage

Mr. Fry reported that the legislative conference rooms on fourth floor have been in high demand this interim, and all have been pleased with the accommodations.

Request for Additional Meeting Times/Days

Stating that the Long-Term Highway Needs and Department of Transportation Agency Review Committee was a combination of two study topics, on behalf of the committee, **REPRESENTATIVE KREBS MOVED, SECONDED BY REPRESENTATIVE TURBIVILLE, THAT THE EXECUTIVE BOARD GRANT THE LONG-TERM HIGHWAY NEEDS AND DEPARTMENT OF TRANSPORTATION AGENCY REVIEW COMMITTEE ONE ADDITIONAL MEETING DAY. The motion prevailed on a voice vote.**

Legislative Code of Ethics

Representative Lucas said that he talked with Attorney General Larry Long about speaking to legislators regarding legislative ethics on the morning of the Governor's Budget Address. Attorney General Long agreed to talk to the legislators; however, he has since been appointed to a circuit judgeship. Therefore, Representative Lucas said that he has not pursued the issue further.

Responding to Chair Hunhoff, Representative Lucas said that he could continue the effort with the new Attorney General when that person is appointed.

Mr. Bezpaletz said that LRC staff also would be comfortable taking to the legislators regarding some aspects of ethics; however, a discussion of a financial conflict would be addressed best by the Attorney General.

Adjournment

REPRESENTATIVE TURBIVILLE MOVED, SECONDED BY SENATOR MILES, THAT THE EXECUTIVE BOARD ADJOURN. The motion prevailed on a voice vote.

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

