



MINUTES

Executive Board

**Fifth Meeting
2011 Interim
June 27, 2011**

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

The fifth 2011 interim meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Charles M. Turbiville at 10:20 a.m. (CT), June 27, 2011, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Hundstad, Ryan Maher, Tom R. Nelson, Larry Tidemann, and Craig Tieszen; and Representatives Gene Abdallah, Kristin A. Conzet, Marc Feinstein, Larry Lucas (Ranking Minority Member), Val Rausch, Charles M. Turbiville (Chair), and Mark E. Venner. Senator Joni Cutler (Vice Chair) and Senator Bob Gray were excused.

Staff members present included Jim Fry, LRC Director; Lou Adamson, Legislative Information System Coordinator; 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, June 27, 2011, the Investment Council Subcommittee met at 9:00 a.m., and the Computer Technology Subcommittee met at 9:30 a.m.

Approval of Minutes

REPRESENTATIVE LUCAS MOVED, SECONDED BY SENATOR MAHER, THAT THE MINUTES OF THE MAY 9, 2011, MEETING BE APPROVED. The motion prevailed on a voice vote.

Approval of Agenda

REPRESENTATIVE TIDEMANN MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT DISCUSSION ON THE DISPOSITION OF THE PAYMENT OF DUES TO THE MIDWEST HIGHER EDUCATION COMPACT BE ADDED TO THE AGENDA. The motion prevailed on a voice vote.

Report of Investment Council Subcommittee

As Chair of the Investment Council Subcommittee, **Senator Larry Tidemann** reported that the subcommittee met with **Mr. Haven Stuck**, Chair of the South Dakota Investment Council, concerning the SDIC report (Document #1).

In addition, **SENATOR TIDEMANN MOVED, SECONDED BY REPRESENTATIVE LUCAS, THAT THE EXECUTIVE BOARD COMMEND MR. STUCK ON HIS SUCCESSFUL CHAIRMANSHIP OF THE SDIC AND THANK HIM FOR HIS SERVICE ON THE COUNCIL. The motion prevailed on a voice vote.**

Addressing the report, Mr. Stuck noted the following:

- Assets managed;
- The role of the SDIC;
- Council member selection—Need members that believe in a long-term approach and have the discipline to persevere during tough times and to have patience. The reason the Council came out above expectations is due to the patience of the SDIC, the Governor, and the Legislature and thanked them for their support of the Council's long-term investment approach; and
- The 529 Scholarship Program update—transfers to Dakota Corps Scholarship Program.

Mr. Matt Clark, SDIC Investment Officer, reviewed the summary of the following trust fund fair value and asset allocation—estimate adjusted for June and July distributions:

- Health Care Trust
- Education Enhancement Trust
- Dakota Cement Trust
- School and Public Lands

Responding to **Representative Marc Feinstein**, Mr. Clark said that much of the funding for the education trust fund came from tobacco money.

Representative Lance Carson asked about the South Dakota Cash Flow. Mr. Clark stated that the South Dakota Cash Flow has grown 11.1 percent. He said that the cash flow acts almost like a trust fund. Mr. Clark said that the Bureau of Finance and Management can provide the breakdown of the South Dakota Cash Flow.

Compensation for the State Investment Officer

Mr. Stuck addressed the FY 2012 compensation for the State Investment Officer. He explained that the primary goal of the compensation plan is to motivate superior investment performance and retain value added investment staff for the long term. Mr. Stuck said that the SDIC target is 70 percent of benchmark to balance desire to get quality results at a low cost, with the risk of losing the good deal if the Council cannot keep its people. The SDIC target is less than one-third the top quartile pay level.

SENATOR TIDEMANN MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF SETTING THE COMPENSATION FOR THE STATE INVESTMENT OFFICER. The motion prevailed on a voice vote.

The Executive Board went into executive session at 10:55 a.m. and came out of executive session at 11:25 a.m.

SENATOR TIDEMANN MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE EXECUTIVE BOARD CONCUR WITH THE RECOMMENDATION OF THE INVESTMENT COUNCIL TO REDUCE BY FIVE PERCENT THE FY 2012 BASE SALARY FOR THE STATE INVESTMENT OFFICER AND CONTINUE THE INVESTMENT PERFORMANCE INCENTIVE PLAN WITH ANY EARNED INCENTIVES FOR FY 2012 INVESTMENT PERFORMANCE TO BE PAID EARLY IN FY 2013 FOLLOWING COMPLETION OF THE AUDIT, SUBJECT TO FY 2013 BUDGET AUTHORITY. The motion prevailed on a roll call vote with 13 voting AYE and 2 EXCUSED. Those voting AYE: Hundstad, Maher, Nelson, Tidemann, Tieszen, Abdallah, Carson, Conzet, Feinstein, Lucas, Rausch, Venner, Turbiville. Those EXCUSED: Gray, Cutler.

The Executive Board recessed at 11:30 a.m. and reconvened at 11:35 a.m.

**Report from Secretary Denny Kaemingk,
Department of Corrections**

Chair Turbiville announced that, because of the upcoming trial, the Executive Board will not discuss the situation at the State Penitentiary in which a prison guard was killed in an escape attempt but only will discuss corrective action taken and whether legislative resources are needed.

Mr. Denny Kaemingk, Secretary, Department of Corrections, and **Mr. Doug Weber**, Warden, South Dakota State Penitentiary, reviewed corrective action taken. Mr. Weber said that the department was able to purchase additional metal detectors with money in this year's budget.

Representative Val Rausch asked about the overall mental condition of the prison employees.

Mr. Weber responded that he is absolutely impressed with the morale of the employees and how they rallied around each other and the inmates. One person resigned and gave as a reason that she did not feel safe.

Mr. Kaemingk said that he talked to Mr. Weber and expressed concern about guards writing up inmates at an increased rate. Mr. Kaemingk said that did not happen and that speaks well of the personnel.

Representative Rausch said that he is grateful that the employees are working toward healing with such good assistance from Secretary Kaemingk and Warden Weber.

Representative Lance Carson asked what the turnover rate is and how that rate compares nationally.

Mr. Weber said that there is approximately a 20 percent turnover rate, which is about in the bottom third of the country. Part of the reason is due to the stresses of the occupation itself.

Senator Larry Tidemann spoke of his visit to the prison and the unsolicited comments made by the prisoners and the concern and care expressed by those prisoners for the affected families.

Mr. Weber said that at least 99 percent of the prisoners have been so caring and offering condolences to the families.

Chair Turbiville asked if there is anything the Executive Board can do legislatively for the prison.

Mr. Kaemingk said that the security issues have been taken care of at the end of this budget year. He assured Board members that the penitentiary and the warden and his employees continue to review security measures. Mr. Kaemingk again commended the employees.

Chair Turbiville thanked the gentlemen for their comments and expressed appreciation for their efforts.

Ms. Laurie Feiler, Department of Corrections, informed the Board about the short-term technical assistance which will be provided by the National Institute of Corrections. The Department is expecting a review possibly by the end of the summer. The process is ongoing regarding the DOC's response to the tragedy.

Public Testimony

Mrs. Johnson said that assurances need to be made that the guards are safe. She said that the prison continues to run short on guards. Mrs. Johnson said that the guards need raises. She questioned whether the guards are really safer.

Chair Turbiville said that the Legislature is sorry for the family's loss. He agrees with Mrs. Johnson that assurances must be made that the guards are safe. He said that salaries will be taken up in the budgetary process.

A gentleman whose son, Matt, was the other officer attacked during the escape attempt, said that adequate pay to the prison staff is important. They get \$12 per hour—national average is about \$18 per hour.

Mrs. Johnson expressed concern about the current classification of inmates. She said that the classification system needs to be addressed.

Matt's father said that inspections need to be reviewed. There never should be just one officer with a prisoner like that.

Chair Turbiville said that policies are being improved in the hopes that this situation never happens again.

Representative Gene Abdallah said that he does not necessarily agree that all of those improvements needed to be made because of this incident. He said that he has received some suggestions, such as better pay, retention matters, unions for the officers, etc. Representative Abdallah said that he is not anti union; however, a bad situation can be created when public safety and unions are mixed. He expressed support for higher compensation for correctional officers; however, Representative Abdallah said that only so much can be done with the available money.

Mrs. Johnson said that more staff would help the situation.

Representative Abdallah said that throwing money at the problem is not always the solution.

Matt's father said that the prisoners have too much freedom.

Representative Abdallah said that federal case law states that a prisoner can be kept in a cell for only so long a period of time.

Chair Turbiville thanked the families for their comments and said that their testimony was appreciated.

The Executive Board recessed at 12:00 noon and reconvened at 1:20 p.m.

Appointment to the State Investment Council

Chair Turbiville explained that subcommittees interviewed several candidates and recommended that four candidates appear before the full Executive Board for further interview.

Representative Kristin Conzet informed the Board that the first interviewee is a relative. Representative Conzet said that she asked the Chair and other members of the Board if she should recuse herself from the interviews. She said that the members did not foresee a problem with her presence during the interviews or the selection process and was told that recusal was unnecessary.

In the following order, the Board interviewed:

Mr. Bryce Healy;
Mr. Jim Means (via telephone);
Mr. Dan Rasby; and
Mr. Eric Lee.

SENATOR TIDEMANN MOVED, SECONDED BY REPRESENTATIVE VENNER, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF APPOINTING A MEMBER OF THE SOUTH DAKOTA INVESTMENT COUNCIL. The motion prevailed on a voice vote.

The Executive Board went into executive session at 2:00 p.m. and came out of executive session at 2:35 p.m.

REPRESENTATIVE LUCAS MOVED, SECONDED BY SENATOR TIDEMANN, THAT THE EXECUTIVE BOARD APPOINT JIM MEANS TO THE SOUTH DAKOTA INVESTMENT COUNCIL. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting NAY, and 2 EXCUSED. Those voting AYE: Hundstad, Nelson, Tidemann, Tieszen, Abdallah, Carson, Conzet, Feinstein, Lucas, Rausch, Turbiville. Those voting NAY: Maher, Venner. Those EXCUSED: Gray, Cutler.

Representative Lucas and **Senator Craig Tieszen** commented that they liked the interview process this year and expressed that it resulted in a smoother operation of selecting a member to the SDIC. Both gentlemen encouraged the candidates not selected at today's meeting to reapply for next year's opening, if they are interested.

The Executive Board recessed at 2:40 p.m. and reconvened at 2:50 p.m.

LRC Director's Report

Mr. Jim Fry, LRC Director, said that LRC will revert about \$200,000 to the general fund. Mr. Fry said that significant savings were experienced in interim committee expenses and computers. He said that the Executive Board has been a good steward of the budgeted monies.

Mr. Fry provided an out-of-state travel report and said that very little money was spent on such travel this fiscal year.

Representative Rausch noted that one more legislator has been appointed as vice chair to a national committee. For clarification, he asked if the policy of the Board still is to allow travel for a chair or vice chair of a national committee.

Chair Turbiville responded affirmatively.

Representative Rausch reported on the International Legislators Forum held in Brookings, South Dakota, this year. He said the focus of the Forum was wind energy. Representative Rausch said that the Forum was successful and interesting. He reported that the attendees were very pleased with the subject matter discussed. Representative Rausch said that he was proud of South Dakota's hosting of the Forum and received good comments from the attendees. He said that sponsorships funded the meetings and that reimbursement probably will be needed for five legislators.

Chair Turbiville said that a couple of Board members have requested reimbursement of mileage for travel to conduct interviews of Investment Council candidates.

REPRESENTATIVE RAUSCH MOVED, SECONDED BY SENATOR HUNDSTAD, THAT MILEAGE BE PAID TO EXECUTIVE BOARD MEMBERS WHO TRAVELED TO INTERVIEW INVESTMENT COUNCIL CANDIDATES. The motion prevailed on a voice vote.

Mr. Fry asked for direction from the Board on whether it still wants to authorize expenses/per diem for members of the Health Care Working Group. He commented that LRC has paid for such meetings held in FY 2011. The Governor's Office is paying for meals, mileage, and lodging. Mr. Fry asked if the Board wants to leave payment status quo.

Representative Lucas said that those legislators should be paid per diem for their time attending meetings.

Representative Abdallah asked why a salary has to be paid if the Governor's Office pays for other expenses.

Mr. Fry responded that, historically, the Legislature has paid the standard expenses for its own interim committees. During the interim, the per diem is paid as salary.

Senator Tieszen concurred with Representative Lucas. He said that it is hard enough to recruit people to run for the Legislature so legislators should get paid for their time to attend meetings. Senator Tieszen said that if people are asked to do the work, they should not be put in a position of not being able to attend because they cannot pay the cost on their own.

REPRESENTATIVE RAUSCH MOVED, SECONDED BY SENATOR TIESZEN, THAT LEGISLATORS WILL BE AWARDED SALARY PAY AND NORMAL TRAVEL EXPENSES, IF NOT PAID BY THE HOSTING COMMITTEE.

Senator Tidemann asked if this would include International Legislator Forum appointees. He questioned how many accepted an appointment knowing that they would not receive salary.

Representative Rausch said that he is not interested in going back to ask for salary for that Forum because the sponsors received the money for what they asked. He said that the motion is intended to deal with situations going forward for FY 2012.

Senator Tidemann said that he cannot support the motion because he knows that most of the people accepted the appointment knowing that they would not receive that payment.

The motion prevailed on a roll call vote with 10 voting AYE, 3 voting NAY, and 2 EXCUSED. Those voting AYE: Hundstad, Maher, Nelson, Tieszen, Abdallah, Conzet, Feinstein, Lucas, Rausch, Venner. Those voting NAY: Tidemann, Carson, Turbiville. Those EXCUSED: Gray, Cutler.

In his report, Mr. Fry said that for informational purposes, he included a copy of the U.S. Supreme Court—Certiorari to the Supreme Court of Nevada regarding legislative voting, conflict of interest.

Appointment of Uniform Laws Commissioner (two)

Chair Turbiville stated that seven have applied for appointment to the Uniform Laws Commission. The Chair said that to be selected, two people have to receive the majority votes of the members present. The selection will be made by secret ballot.

Chair Turbiville appointed **Senator Tom Nelson** to assist Director Fry counting ballots.

The ballots were distributed and collected.

Senator Nelson and Director Fry counted the ballots

Chair Turbiville announced that Representative Brian Gosch and Representative Marc Feinstein were elected to be appointed as members of the ULC.

Consideration of East-River Ag Committee Tour

The House and Senate Standing Agriculture and Natural Resources Committees have asked to participate in a tour during the 2011 interim. Mr. Fry said that LRC has been asked to stand for at least one night's lodging and perhaps one meal—last year, it cost about \$9,000.

Senator Ryan Maher said that he thought the tour was all covered last year.

Mr. Fry said that it would depend on how much outside sponsorship was received.

Responding to Chair Turbiville, Representative Rausch said that meals, lodging, and mileage will be included but not salary.

Representative Abdallah asked where the line will be drawn regarding expenses.

Representative Rausch said that Government Operations and Audit, Appropriations, and Ag Committees have had tours in the past. He said that whether they are necessary is another issue. Representative Rausch said that he is not opposed to such tours.

Senator Tidemann said that the Appropriations Committee is a constitutional committee while others are statutory committees. He noted that the Appropriations Committee decided not to tour this interim due to budgetary concerns.

Senator Tidemann said that he understands the sponsorship would cover lodging, meals, and mileage. He asked if other legislators could attend certain parts of the tours on their own.

Chair Turbiville responded affirmatively.

REPRESENTATIVE RAUSCH MOVED, SECONDED BY SENATOR TIDEMANN, THAT MEMBERS OF THE SENATE AND HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEES BE REIMBURSED FOR EXPENSES NOT PAID FOR THE EAST RIVER TOUR.

SENATOR ABDALLAH MADE A SUBSTITUTE MOTION THAT THIS TOUR BE APPROVED ONLY IF PAID BY OTHER SOURCES.

The substitute motion failed due to lack of a second.

The original motion prevailed on a roll call vote with 9 voting AYE, 4 voting NAY, and 2 EXCUSED. Those voting AYE: Maher, Nelson, Tidemann, Tieszen, Conzet, Feinstein, Lucas, Rausch, Venner. Those voting NAY: Hundstad, Abdallah, Carson, Turbiville. Those EXCUSED: Gray, Cutler.

Report of Computer Technology Subcommittee

Representative Larry Lucas, Chair of the Computer Technology Subcommittee, reported that **Ms. Lou Adamson**, Legislative Information System Coordinator, demonstrated the

Autobound redistricting software. He encouraged legislators who want to draw maps based on census data to call LRC to make an appointment.

Payment of Dues to the Midwest Higher Education Compact (MHEC)

Senator Tidemann said that he has been designated by the Appropriations Committee to bring the issue of the disposition of the payment of dues to MHEC. He said that the \$95,000 dues were cut from the Legislature's budget. Since it states in the bill that the state has to give MHEC two year's notice in order to get out of paying dues to the organization, Senator Tidemann said that the two options are:

1. Use a portion of the \$200,000 reverted money to pay for the dues—have received approval from BFM for this option;
2. Introduce a bill to deal with the issue.

Senator Tidemann said that the Legislature's responsibility is to pay its bills.

In response to Chair Turbiville, Senator Tidemann said that the purpose of MHEC is more than just the regental system—also includes Native American colleges and tech schools. Some of the benefits are pooling purchases, such as insurance, computers, etc. Senator Tidemann said that one way the Compact can assist is with picking up hazardous waste from the schools. South Dakota State University has to pay about \$1 million to dispose of its hazardous waste. Senator Tidemann said that South Dakota was the last state to join the compact.

Responding to Representative Abdallah, Representative Rausch said that the Legislature would have to pass a bill stating that South Dakota will not participate in MHEC.

Representative Feinstein asked if there is a tuition break with reciprocity.

Senator Tidemann responded affirmatively.

Senator Maher asked why this subject is not part of the regents' budget.

Senator Tidemann said that the Board of Regents belongs to WICHE, which they joined before MHEC. MHEC is not run by higher education.

Representative Mark Venner said that he would like to see the budget for MHEC. Schools in South Dakota are eliminating services, such as extension services, and it throws up red flags.

Senator Tidemann explained that schools handle waste such as pesticide waste, and MHEC deals with hazardous waste disposal, such as that from chemical labs.

Representative Abdallah questioned why this is even being discussed. He said that this should come out of the Governor's budget.

Senator Tidemann said that it was cut out of the Governor's budget. He said that the Legislature is obligated to pay the bill.

Representative Abdallah said that the Attorney General should try to get the state out of the contract.

Representative Lucas said that perhaps it could be set up as user fees. The payment should be a legislative responsibility.

Representative Conzet said that she wants more information which would allow her to support the payment.

Responding to Representative Carson, Senator Tidemann said that the only way the Legislature can negate the contract is to pass a bill that states we no longer want to be a part of MHEC.

Representative Rausch said that it is something that is due and that the Legislature is obligated to pay. He said that he is not opposed to paying our share but that it should be revisited to decide its status.

Representative Conzet asked if this was included in the Legislature's budget.

Mr. Fry said that it was not included in the budget because it is an obligation of the Governor's Office, not LRC.

Senator Maher said that this matter should go back to the Governor's Office.

REPRESENTATIVE ABDALLAH MOVED, SECONDED BY REPRESENTATIVE LUCAS, THAT THE DUES TO MHEC NOT BE PAID BY THE LEGISLATURE.

SENATOR TIDEMANN MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE LEGISLATURE PAY THE DUES TO MHEC OUT OF THE MONEY REVERTED TO THE GENERAL FUND.

Senator Tieszen expressed support for the substitute motion and said that the bill should be paid.

Senator Jim Hundstad said that there is a procedure to change the law. Right now the bill has to be paid.

Representative Abdallah said that the Governor's Office is obligated to pay. He said that the Legislature should not pay. Representative Abdallah said that if MHEC sues for the dues, they will lose.

Senator Maher said payment needs to come out of the Governor's budget.

The substitute motion prevailed with 7 voting AYE, 6 voting NAY, and 2 EXCUSED. Those voting AYE: Hundstad, Nelson, Tidemann, Tieszen, Feinstein, Rausch,

Turbiville. Those voting NAY: Maher, Abdallah, Carson, Conzet, Lucas, Venner. Those EXCUSED: Gray, Cutler.

Chair Turbiville recommended that information be brought forth next session outlining benefits of membership to MHEC and ways to address it legislatively.

To address a concern regarding the Human Services Center, Senator Nelson said that the Center is no longer part of the Department of Human Services. He said that the Human Services Center is being reviewed by the behavior health portion with the Medicaid review task force.

Representative Lucas said that the Legislature has an obligation to include it in the Department of Human Services Review.

Representative Rausch agreed with Senator Nelson and said that the timing is very unfortunate so he believes it should be delayed to allow those involved to get organized for such a review.

SENATOR NELSON MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE HUMAN SERVICES CENTER BE REMOVED FROM THE DEPARTMENT OF HUMAN SERVICES AGENCY REVIEW. The motion prevailed on a voice vote.

Representative Lucas voiced a NAY vote.

Chair Turbiville commended LRC for reverting \$200,000.

Adjournment

REPRESENTATIVE RAUSCH MOVED, SECONDED BY REPRESENTATIVE CONZET, THAT THE EXECUTIVE BOARD BE ADJOURNED. The motion prevailed on a voice vote.

The Executive Board adjourned at 4:20 p.m.

