

85<sup>th</sup> Legislative Session – 2010

Committee: Joint Appropriations

Tuesday, February 09, 2010

P - Present  
E - Excused  
A - Absent

Roll Call

- P Ahlers
- P Burg
- E Bartling
- E Dennert
- P Hundstad
- P Wismer
- P Novstrup (Al)
- P Brown
- P Carson
- E Deadrick
- P Peters
- P Wink
- P Haverly
- P Putnam
- P Hunhoff (Jean), Chair
- P Tidemann, Vice-Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Jean Hunhoff.

**Department of Military and Veterans' Affairs**

Major General Steven Doohen, Adjutant General appeared before the Committee to present the FY11 proposed budget. Also in attendance were Steve Harding, Gerald Ball, Kit Cline, Larry Wilcox, and Bill Regynski. Document No. 1 was distributed.

The Governor recommends a total appropriation of \$47,724,439 and 196.1 FTEs. This dollar amount consists of \$6,270,811 from the general fund, \$37,260,722 in federal funds, and \$4,192,906 in other funds. This budget is a decrease from FY10 in general funds of \$43,692

(0.7%), an increase in federal funds of \$16,453,115 (79.1%) and a decrease in other funds of \$552,024 (11.6%).

The **Department's mission statement** is:

- To support national objectives by providing highly trained units capable of mobilizing for active federal service in time of war or national emergencies;
- To provide units organized, manned, trained, and equipped to assist civil authorities in the protection of life and property;
- To aid and assist veterans and their dependents in securing local, state, and federal entitlements/services for which they are eligible; and
- To provide a comfortable independent living environment, along with adequate medical support, for eligible veterans and their spouses, widows, or widowers.

### **Major Expansions and Reductions**

#### **Army Guard**

- A decrease in general fund expenditure authority of \$20,139 and in federal fund expenditure authority of \$114,123 for the cost of electricity and natural gas for the National Guard facilities statewide. This decrease is per the energy cap, which is an energy management and tacking program.
- A decrease in federal fund expenditure authority of \$439,905 for capital outlay. This is due to the American Recovery and Reinvestment Act monies not being received in FY11; therefore, federal expenditure authority is being decreased.
- An increase in federal fund expenditure authority of \$17,000,000 for design and construction costs for military building projects. During FY11 military construction projects that will be in progress are the Joint Force Headquarters Readiness Center, and Barracks/Classroom Building.

#### **Air Guard**

- A decrease in general fund expenditure authority of \$6,600 and in federal fund expenditure authority of \$19,800 for the utilities budget regarding facility operations and maintenance. This is a result of increased costs in water of \$7,146, electricity of \$70,572, and a decrease in the cost of natural gas by \$104,118.

#### **Veterans' Benefits and Services**

- An increase in general fund expenditure authority of \$2,000 for contractual services for new hire county and tribal veterans' service officer training.

#### **State Veterans' Home**

- A decrease in general fund expenditure authority of \$45,845 and in other fund expenditure authority of \$318,769 for support services. This is based on a combination of changes including: A \$173,934 decrease in electricity and heating fuels; a \$250,000 decrease for capital outlay, which is unused authority due to the depletion of cash levels; and an increase of \$59,320 for the food service contract.

- A decrease in other fund expenditure authority of \$250,000 for facility maintenance and repair.

Secretary Doohen provided the Committee with an overview of the department.

The National Guard 50% Tuition Reduction Program is administered by the Office of the Adjutant General and is key to National Guard recruiting efforts. Senator Hunhoff asked how many guardsmen participate in the program. Secretary Doohen will provide that information but added that approximately 30-40% of the soldiers and airmen are students.

Army National Guard is community based with 32 armories in 28 communities. These facilities provide a \$223.4 million economic impact on South Dakota. Senator Hunhoff asked for information on armory rental fees. Lt. Colonel Kline said the department uses two rental rates for armories. Other state or governmental agencies pay a minimum fee, based on operating costs; for-profit organizations pay a slightly higher rate. Rates are adjusted every 2-3 years based on the local economy. Colonel Kline said the projected increased revenue is based on increased rates. Senator Hunhoff asked what percentage of operating costs is paid by other governmental agencies for rent. Colonel Kline will provide this information, however it is minimal.

Secretary Doohen told the Committee the 196<sup>th</sup> Maneuver Enhancement Brigade from Sioux Falls would be deploying to Afghanistan in May. In addition Secretary Doohen said the 196<sup>th</sup> Regional Training Institute in Ft. Meade not only trains soldiers from South Dakota but soldiers from across the nation. The unit is nationally known and respected for what they do.

Secretary Doohen explained the differences in Title 10 and Title 32. Title 10 is active duty, not for training, under the control of the President. Title 32 is active duty status, for mission or training, but under the control of the Governor. Bill Regynski said when soldiers are on State Active Duty during emergency and disaster response situation, expenses are paid from the Disaster Emergency Fund. If the disaster qualifies for federal reimbursement, FEMA reimburses the fund. Representative Tidemann asked how expenses are covered for soldiers that go out-of-state to help with disasters. Mr. Regynski said other states generally pay from their disaster fund. At times the guard is able to help small communities or townships as part of a National Guard weekend. Secretary Doohen will provide additional information on how the federal funds are handled for reimbursements.

Deployments in 2009 included the 1<sup>st</sup> Battalion, 147<sup>th</sup> Field Artillery to Kuwait. These 350 South Dakota soldiers will return in March 2010. In addition, the 211<sup>th</sup> Engineer Company from Madison and DeSmet was deployed to Afghanistan and will return in the fall of 2010. The mission of these 20 soldiers is extremely important and dangerous.

Upcoming deployments include the 196<sup>th</sup> MEB unit to Afghanistan in May and the 641<sup>st</sup> Aviation Regiment deploying to Iraq in the summer of 2010.

Secretary Doohen told the Committee that for just over \$2 million in general funds, the states gets an economic impact of close to \$1 billion from the National Guard.

Current South Dakota armories on the Future Years Defense Program (FYDP) include two in Rapid City and one in Watertown. The Joint Force Headquarters in Rapid City is a replacement building at a cost of \$29 million. Building 802 in Rapid City is a new structure at a cost of \$14,500,000, and the armory in Watertown is a replacement at a cost of \$26,100,000. These facilities are constructed with federal funds except for state participation in Watertown.

Senator Hundstad asked about the possibility of repairs at the Redfield armory. Colonel Kline said the building is jointly owned by the school and city so the responsibility for maintenance lies with those agencies.

Representative Burg asked about the \$134,000 decrease in utility costs. Adjutant Doohen said it is merely a projection of costs.

Representative Putnam asked for information on the guard's energy cap. Colonel Kline said there are energy management programs in place on both the federal and state sides. It is their goal to see a 1/3 energy savings over a 10 year period. Colonel Kline will provide the Committee with a copy of the directive. Senator Hundstad asked for information on an energy audit conducted with ARRA funds. Colonel Kline said the audit results are used to determine future energy saving projects.

Secretary Doohen told the Committee the active duty Air Force is in the process of transferring newer block F16s to Sioux Falls. Future challenges facing the Air Guard include ensuring the South Dakota Air National Guard always has a relevant flying mission, the projected life expectancy of F-16's and construction of a new maintenance complex as well as continued overseas deployments and recruiting and retention.

Deployments in 2009 for the Air Guard included approximately 283 airmen and civil engineers from the 114<sup>th</sup> Squadron to Iraq.

Personnel Strength in the Air National Guard in Sioux Falls includes 1,092 airmen, 316 federal employees and 41 state employees.

Deputy Secretary Steve Harding presented information on Veterans' Affairs and the Veterans Home in Hot Springs. Mr. Harding said the Veterans Division helped procure over \$90,316,000 in federal VA entitlements to SD veterans and their dependents in 2009. In addition, the division paid 7,389 South Dakota Veterans Bonus Claims totaling \$3,181,120. Current South Dakota Veterans population totals 73,500. A total of 7,400 have been added since the beginning of the War on Terror

Mr. Harding told the Committee approximately 62% of the operating costs are received from VA per diem, resident maintenance fees and miscellaneous revenues. The home has a capacity for 152 residents (100 domiciliary beds and 52 nursing care beds). The average daily census as of December 31, 2009 was 132 (97 Veteran's and 35 non-veterans).

In response to Senator Hunhoff's question, Mr. Harding said the increase in the food services budget was a result of a additional residents and a 15% increase in the new contract.

Senator Hunhoff asked for information on discharges from the VA home. Larry Wilcox told the Committee some discharges are for disciplinary issues, others are residents that are rehabilitated and able to live on their own. The Veterans Home is currently in the process of being certified for Medicaid; approximately 12-14 residents are currently eligible. In response to Committee questions, Mr. Wilcox said the Veterans Home will incur costs as a result of its efforts to be Medicaid certified.

Mr. Wilcox told the Committee the Veterans Home had received a 65% VA grant (35% state matching funds) that was used to make safety improvements at the home. The \$2 million was used to put in a sprinkler system, install a guard system on campus, security cameras, a new nurse call system, fire doors on 3<sup>rd</sup> and 4<sup>th</sup> floors and replace major fire doors, and install a new control system for nurses for securing patients in SU unit.

Representative Wismer asked about the decrease in the Veteran's Home operating fund. Bill Regynski said funding authority was higher than necessary because a proposed project was dropped. Representative Peters asked for a copy of the agencies condition statement.

Representative Wismer spoke to veterans in her area who are unable to get nursing home care due to the facility not being VA certified. Mr. Wilcox said the VA has certain requirements and obviously these homes are those requirements. It is not a state issue.

### **Office of the Attorney General**

**Mr. Marty Jackley**, South Dakota Attorney General, introduced the staff members present at the meeting – **Ms. Kay McLain**, Business Manager; **Mr. Bryan Gortmaker**, Director of the Department of Criminal Investigations (DCI); **Mr. Charles McGuigan**, Chief Deputy Attorney General; **Mr. John Bierne**, Law Enforcement Training Facility Director; **Ms. Paige Wilbur**, Legislative Affairs; and **Mr. Craig Price**, Forensic Laboratory.

Attorney General Jackley listed the priorities of the agency. They include:

- Criminal law enforcement - state and federal criminal appeals and habeas representation, the state forensic lab, the internet crimes against children unit, the division of criminal investigation, sex offender registry, background checks, and law enforcement training;

- State representation - official and other opinions, legal advice and court room representation to all state officials and agencies, and act as an enforcement arm for state environmental protection;
- Consumer protection - regulation of deceptive trade practices, door to door sales, identify theft, charitable solicitations, buying clubs, and consumer education. The agency receives up to 20,000 phone calls from citizens annually; and
- Providing revenue to the state – bringing money back to the state through varying degrees of programs such as the 24/7 sobriety program, prescription drug monitoring program, and the state forensics laboratory.

For FY11, the Governor recommends a total appropriation of \$20,661,509 and 157.0 FTEs for the Office of the Attorney General. This recommendation consists of \$9,886,879 from the general fund, \$4,327,481 in federal sources, and \$6,447,149 in other funds. The Governor's recommendation is an overall increase of \$567,149 in funding over FY 2010, with the recommended appropriation from the general fund decreasing by \$158,833, federal funds increasing by \$30,025, and other funds increasing by \$695,957.

Attorney General Jackley explained that the other fund is comprised of consumer law enforcement training, record checks, attorney general opinions, and drug control fund.

Some of the budgetary changes for FY11 include;

- An increase of \$77,042 in general funds and \$17,469 in other fund expenditure authority for in-state travel costs;
- An increase of \$9,855 in general funds due to an increase in the bond payment as per the Debt Service Schedule. The FY 2011 bond payment is scheduled to be \$651,396 up from \$641,541 scheduled in FY 2010;
- An increase of \$350,000 in other fund expenditure authority for capital outlay to purchase prescription monitoring program software;
- An increase of \$31,544 in general funds, \$8,195 in federal fund expenditure authority, and \$14,553 in other fund expenditure authority for the employer paid portion of the state health insurance plan; and
- A funding swap to fund legal services consumer settlement personal services from the Consumer Settlement Fund consisting of a decrease of \$298,365 in general funds and an increase of \$298,365 in other fund expenditure authority for personal services. Attorney Jackley noted that the Consumer Settlement Fund can pay for salaries for the 6 FTEs for two years. Another funding source will need to be determined at that point.

Attorney Jackley stated that the agency has been appropriated 157 FTEs and is not requesting an increase for FY11. A vacancy rate of 4.6 exists primarily due to the intensive hiring process.

Senator Ahlers and Senator Haverly asked about the transfer of \$305,000 in FY09. Ms. McLain stated that the funds are related to a drug grant received by the Attorney General's office. The

federal authority in the personal services ran out. The agency was previously approved general funds to compensate for the shortage, but the funding was placed in operating expenses. The funds were transferred from operating to personal services to cover the difference.

Attorney General Jackley stated that the tight economy has resulted in more work for law enforcement. Last year was a five-year high for the number of cases with 875 cases, which included 10 murder cases. There has been a tripling of prescription drug cases. Child pornography cases have reached a five-year high. The forensic laboratory touched 6,764 pieces of evidence and completed examinations on 945 items.

Senator Hunhoff asked about compensation increases. Ms. McLain stated that the agency followed the rest of the Executive Branch with no compensation increases for FY11. One or two small adjustments may have been made.

Senator Hunhoff asked about the \$11,000 increase for the laserfische software. Mr. Gortmaker said that the system will allow the office to become more paperless by storing files for the Attorney General's Office and the Department of Criminal Investigations.

In response to Senator Hunhoff's question about the increase of \$20,660, Ms. McLain stated that the increase is for out-of-state travel and training registration. The funding for this increase will be provided by the Internet Crimes Against Children (ICAC) federal stimulus funding. She informed the committee that the grant was decreased before, and this amount increases the authorization to utilize the full grant.

Ms. McLain said, in response to Senator Hunhoff's question, that the agency budgets 25% of the computer hardware to be replaced annually. However, the agency usually does not replace 25%.

Representative Putnam asked about the impact the new Unified Judicial System program will have to the Attorney General Office. Ms. McLain stated that the Attorney General Office will replace the computers and upgrade to Windows 7 within the current budget. However, the full cost has not been fully analyzed.

Senator Haverly asked about the 24/7 Sobriety program. Attorney General Jackley stated that the office has implemented some cost saving initiatives to get the program self sustaining. On a national level, the office is trying to address more highway issues because the 24/7 Sobriety program helps the public safety arena. The office may receive other outside benefits as a result.

Senator Haverly commented that general funds were used for the initial start-up cost of the program. Attorney General Jackley stated that the office is trying to create a funding system for the program that will prevent the office from requesting future general funds to help support.

Representative Tidemann requested the total number of scram bracelets the office owns and the life expectancy.

In response to Representative Putnam's questions pertaining to the new system implemented by the UJS and the LEOTF funds, Attorney General Jackley stated that the Attorney General's office has talked to the Chief Justice about the program and the \$50,000 for the computer service. The \$50,000 was not included in the proposed budget. At the end of FY10, the LEOTF fund has an estimated loss of \$130,414 and an ending cash balance of negative (\$77,742). The \$50,000 requested by the UJS was not included because that would leave the LEOTF fund with a further negative balance.

In response to Senator Haverly's question about promotions in the agency, Ms. McLain stated that the office will provide a list of the people that were promoted.

### **Department of Environment and Natural Resources**

Steve Pirner, Secretary of the Department of Environment and Natural Resources (DENR) met with the Committee to discuss the FY11 proposed budget. Document No. 2 was distributed.

Secretary Pirner provided the Committee an update on the FY09 budget. The department had utilized 94.4% of its total budget authority and no transfers were made between personnel services and operating expenses. In addition, the department had utilized 96.1% of its FTE allocation. In response to Senator Hunhoff's question, Secretary Pirner said a turnover rate of 5.3% was typical.

The FY09 end of year cash balance in the Regulated Substance Response Fund was \$2.78 million and the end of year balance in the Environmental Livestock Cleanup Fund was \$1.08 million.

For FY11, the Governor recommends an increase of \$24,498 in all funds and a decrease of 1.8 FTEs from FY10. The FY11 recommended budget consists of \$5,807,108 from general funds, \$48,671,279 in federal fund expenditure authority, and \$5,857,407 in other fund expenditure authority, for a total budget of \$60,335,794 and 174.7 FTEs.

#### **Major Expansions and Reductions**

##### Financial and Technical Assistance

- A decrease of \$9,365 from general funds, \$21,824 in federal fund expenditure authority and 1.5 FTEs due to unutilized seasonal FTE.

##### Environmental Services

- A decrease of \$4,230 from general funds, \$1,620 in federal fund expenditure authority, and 0.3 FTE due to unutilized seasonal FTE.

##### State Health Insurance Plan

- An increase of \$61,537 (\$25,342 in general funds, \$23,697 in federal funds, and \$12,498 in other funds) for state health insurance.

**Regulated Response Fund – Informational**

The total recommended budget for the Regulated Response Fund consists of \$1,750,000 in other fund expenditure authority and 0.0 FTE.

**Livestock Cleanup Fund – Informational**

The total recommended budget for the Livestock Cleanup Fund consists of \$765,000 in other fund expenditure authority and 0.0 FTEs.

**Updates on Major Projects:**

Hyperion Energy Center – Secretary Pirner said the department had held contested case hearings in May, June and July of 2009. In August of 2009 the hearings concluded and the Board unanimously approved the air quality permit for Hyperion. However in September of 2009 appeals to the permit were filed in circuit court. Oral arguments are scheduled for June 2010. No water permit has been issued and the air permit requires that they begin construction in 18 months or ask for an extension. Hyperion hopes to begin construction in 2011.

Senator Hunhoff asked about the funding listed in the Attorney General's Office budget from the Department of Environment and Natural Resources. Secretary Pirner said the department has 2 contracts with the Attorney General's Office. One contract for the regulatory side (all federal funding) and the other on the state revolving loan funds which is funded out of SRF fund (federal/other funds).

Representative Burg asked if the cost of the permit covers the litigation costs. Secretary Pirner said yes, in part. The department raised permit fees last year where they were justified.

**Expanded Monitoring for the Hyperion Project**

DENR has established 6 surface water sampling sites and 3 air monitoring stations. Senator Hundstad asked where the money comes from for this monitoring. Secretary Pirner said federal funds.

**Keystone Pipeline**

This \$302 million project is nearly complete and will soon be in operation.

**Keystone XL Pipeline**

Construction on this \$921 million project is set to begin in South Dakota during 2011 with an in-service target date of 2012.

**Otter Tail – Big Stone II**

The Board approved the air permit for this \$1.6 billion project in November of 2008; EPA made revisions in April 2009 and Otter Tail withdrew from the partnership in September of 2009.

Secretary Pirner said energy demands in South Dakota continue to grow. Power generation capacity from plants with air permits will grow to 1900 megawatts. In addition, production from ethanol plants with air quality permits continue to climb.

Feedlot permits have increased from last year, with a current total of 394.

### **Federal Stimulus Funding Update**

Secretary Pirner said all ARRA funds are obligated but not spent, and some reimbursements will not be made for 1 to 2 years.

The department met the necessary deadline to award projects for wastewater and storm water projects in the Clean Water Revolving Fund involving 27 projects at a cost of \$18.47 million; and drinking water projects in the Drinking Water Revolving Fund involved 42 projects at a cost of \$19.50 million.

The department announced funding awards to 37 school districts to purchase new school buses that have air emission controls and retrofit old school buses that have no air pollution controls at a total cost of \$1.7 million.

In May 2009 the department used the contractor selection process established by the 2009 Legislature to select 5 cleanup contractors for leaking underground storage tanks. In July of 2009 the department received \$1.2 million from the EPA for this work. To date 25 projects estimated to cost \$465,000 have been approved.

### **Department's Highest Priorities**

- Lack of Water
- Provide Water, Wastewater, and Solid Waste Facilities
- Timely Environmental Permitting
- Total Maximum Daily Loads
- Federal EPA Challenges/Projects.

Secretary Pirner told the Committee despite the economy, the department's workload continues with an increased number of air quality, surface water discharge, water rights, and hazardous waste generator permits.

Senator Novstrup asked for information on the TMDL. Secretary Pirner said the total maximum daily loads (TMDL) is a process under the federal clean water act. The department identifies water that does not consistently meet water quality standards. Once identified as impaired, the department works to bring the water back to standard. The department does an implementation

project and requires that there be a local project sponsor to work with DENR on the plan, to obtain the funding, and implement practices to improve the water quality.

In response to Senator Hundstad's question, Secretary Pirner said the department receives approximately \$3 million from EPA each year under 319 Nonpoint Source grants. Potential projects come to a Nonpoint Task Force. This task force reviews the projects and makes recommendations for funding; however, EPA makes the final selection. This is a yearly process. The 319 grants require 40% matching funds from the local entity. Senator Hundstad asked to see a list of projects.

Representative Wismer asked for information on the projects done with stimulus money. Secretary Pirner said the list of potential projects got longer because projects had to be on the state's water plan. A number of communities had delayed projects but came forward when the stimulus funding became available.

Senator Hunhoff asked if there were any Brownfield projects going on in South Dakota. Secretary Pirner said yes. Brownfield funding comes from EPA and in addition, there is Brownfield funding that goes directly from EPA to the project and not to the state.

Representative Wismer asked for an explanation on the reduction of FTE between 1994 and 1997. Secretary Pirner said that reduction occurred during Governor Janklow's second term and dealt with the Governor's pledge to reduce property tax by 30%. The department reorganized from 5 divisions to the current 2 divisions. Activities were streamlined or eliminated. Representative Wismer asked Secretary Pirner to provide information on the eliminated activities.

Following the Department of Environment and Natural Resources budget hearing, Representative Peters briefed the Committee on a recent meeting with UJS regarding their software request.

MOTION: ADJOURN

Moved by: Peters  
Second by: Haverly  
Action: Prevailed by voice vote.

Barb Bjorneberg and Lisa Shafer  
Committee Secretary

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Jean M. Hunhoff, Chair