



# MINUTES

## Executive Board

**Three Hundred Thirteenth Meeting**  
**Monday**  
**August 4, 2003**

**LCR 1 & 2**  
**State Capitol Building**  
**Pierre, South Dakota**

The three hundred thirteenth meeting of the Legislative Research Council Executive Board was called to order by Representative Orville B. Smidt, Chair, at 9:25 a.m. (CT), August 4, 2003, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Arnold M. Brown, H. Paul Dennert, Brock L. Greenfield, Gil Koetzle, and Royal "Mac" McCracken; and Representatives Julie Bartling, Phyllis Heineman, Claire Konold, Gerald Lange, Matthew Michels, Orville Smidt, and Ron Williamson. Senators Tom Dempster and Ed Olson and Representative Rebekah Craddock were excused.

Staff members present included James Fry, Director; and Kris Schneider, Legislative Secretary.

**(NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

**(Clarification:** Voice votes that prevail with all members present voting "aye" will carry the disposition language "prevailed unanimously." Voice votes that prevail with a majority of all members present voting "aye" will carry the disposition language "prevailed." Voice votes that prevail without all members present voting "aye" will list those members casting "nay" votes if so requested by the dissenting voter.)

### **Approval of Minutes**

**A MOTION WAS MADE BY SENATOR KOETZLE, SECONDED BY REPRESENTATIVE KONOLD, THAT THE MINUTES OF THE JUNE 9, 2003, MEETING BE APPROVED AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

### **Approval of Agenda**

Representative Heineman requested permission to present a technology report to the Board following the Legislative Audit budget request.

**A MOTION WAS MADE BY REPRESENTATIVE LANGE, SECONDED BY REPRESENTATIVE BARTLING, THAT THE TECHNOLOGY REPORT BE ADDED TO THE AGENDA FOLLOWING THE LEGISLATIVE AUDIT BUDGET REQUEST. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Representative Konold requested permission to present a report on the DCI expansion project to the Board following the technology report.

**A MOTION WAS MADE BY REPRESENTATIVE HEINEMAN, SECONDED BY SENATOR DENNERT, THAT THE DCI EXPANSION PROJECT REPORT BE ADDED TO THE AGENDA FOLLOWING THE TECHNOLOGY REPORT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Representative Lange requested permission to speak regarding the biotechnology workshop August 7-8, 2003. Chair Smidt placed it on the agenda following the Investment Council's Report.

The amended agenda was accepted as presented.

### **Investment Council Report and Budget Request**

**Mr. Dave Anderson**, Lemmon, Chair of the South Dakota Investment Council, and **Mr. Steve Myers**, State Investment Officer, distributed supporting documents for the council's presentation (**Document #1**) and the Training Guide Intern Program 2003 (**Document #2**). Mr. Anderson reviewed the Investment Council's organizational chart. He reported that the South Dakota Retirement System's total returns for FY 2003 was 4.95%, which was 1.9% higher than the index, which resulted in \$88 million in extra earnings because of the outperformance. Mr. Myers stated that the goals going forward must be more modest because of greater market efficiencies, general lower overall expectations from the capital markets, and intensive competition from all peer groups. He explained that superior returns of 0.5% would make a difference of \$3.2 billion in additional earnings, a 1% outperformance would produce an extra \$6.8 billion, whereas a 1% underperformance would cost the retirement system \$5.6 billion. Mr. Anderson reported that \$6.317 billion was being managed by the Investment Council. Over the past ten years, the retirement system fund has underperformed the benchmark for only two years. Mr. Myers reported that in regard to the Trust Fund Value and Asset Allocation, the total rate of return was 8.12% for the Health Care Trust, 6.65% for the Education Enhancement Trust, and 7.22% for the Dakota Cement Trust. Mr. Myers explained that the timing of the investment and the asset allocation makes the difference between the rate of returns between the funds. In response to Representative Smidt's question why School and Public Lands was changing, Mr. Myers replied the key difference is that they keep their portfolio whole; whatever inflation is, they hold back that number in income instead of paying it out. Representative Lange questioned whether the Dakota Cement Trust should have a law that keeps it whole similar to School and Public Lands. In response to Senator Koetzle's question as to the 4% of fair value to be paid out, is that 4% of the original principal or 4% of the accumulated principal, Mr. Myers stated he would get the answer to that. Mr. Anderson reviewed the management fees and the FY2005 budget request. He stated that the proposed budget is 4.44% higher than FY2004, of which 3.5% is for Personal Services. The proposed budget also includes an additional \$100,000 for Other Investment Services. Mr. Anderson explained that the council felt it was necessary to have this line item in case something new comes along, although Mr. Myers did not feel it was necessary. Without this additional line item, the proposed budget increase would be 2.59%. Mr. Myers reported that \$752,434 was reverted to the General Fund at the end of FY2003.

Mr. Myers briefly reviewed the intern program they have developed. He was pleased to report that they had offered full-time positions to two of the seven interns. In response to Senator McCracken's request for a listing of who the interns are and where they are from, Mr. Myers responded that he will provide that information to the Board.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR BROWN, THAT THE EXECUTIVE BOARD APPROVE THE FISCAL YEAR 2005 BUDGET REQUEST OF THE SOUTH DAKOTA INVESTMENT COUNCIL AS PRESENTED. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 VOTING AYE, 0 VOTING NAY, AND 3 EXCUSED.** Those voting **AYE**: Brown,

Dennert, Greenfield, Koetzle, McCracken, Bartling, Heineman, Konold, Lange, Michels, Williamson and Smidt. Those **EXCUSED**: Dempster, Olson (Ed), and Craddock.

Chair Smidt recessed the committee at 10:25 a.m. and reconvened the committee at 10:47 a.m.

#### **Director's Report and Correspondence**

Mr. Fry presented the final financial statement for fiscal year 2003 as of June 30, 2003 (**Document #3**). Overall the budget was in excellent shape. He noted that the contract research program was over budget due to the redistricting lawsuit. As to the litigation, Mr. Fry stated that the state's attorneys filed a Motion for Summary Judgment in July; there are a few more depositions that need to be taken; and that a trial date may be set soon. Included in the packet was a letter to Mr. Richard Kahler thanking him for his service as a member of the Investment Council (**Document #4**) and a list of the current members of the Uniform Laws Commission (**Document #5**). Also included was a roster of those legislators approved to attend the Midwestern Legislative Conference (MLC) Annual Meeting in Milwaukee, Wisconsin, in August (**Document #6**). Mr. Fry noted that approximately forty legislators will probably attend. Senator Brown commented that because of the location of the meeting and because agenda items pertain to South Dakota's geographical area, he would encourage legislators to attend this meeting. Correspondence that was sent to the two interim committee chairs of the agency reviews was included in the correspondence packet (**Document # 7-**).

Mr. Fry stated that an application for use of the legislative chambers had been received from the School Administrators of South Dakota (**Document #8**). The application is a request to use the House Chamber on November 5, 2003, for a Model Legislature.

**SENATOR BROWN MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD APPROVE THE USE OF THE HOUSE CHAMBER ON NOVEMBER 5, 2003, BY THE SCHOOL ADMINISTRATORS OF SOUTH DAKOTA FOR A MODEL LEGISLATURE; AND THAT APPROVAL INCLUDES USE OF THE SOUND SYSTEM AT THE FRONT OF THE CHAMBER ONLY AND PROHIBITS USE OF THE HOUSE VOTING MACHINE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Uniform Laws Commission (ULC)**

Mr. Fry reported that Mr. Michael DeMersseman had been reappointed to the Uniform Laws Commission at the June 2003 meeting and that Ms. Barbara Everist did not wish to be reappointed as she felt it would be beneficial to have another current member of the Legislature, preferably an attorney, serving on the ULC.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT SENATOR DAVE KNUDSON BE APPOINTED TO A THREE-YEAR TERM ON THE UNIFORM LAW COMMISSION, SAID TERM TO COMMENCE IMMEDIATELY AND EXPIRE ON JULY 31, 2006. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 VOTING AYE, 0 VOTING NAY, AND 3 EXCUSED.** Those voting **AYE**: Brown, Dennert, Greenfield, Koetzle, McCracken, Bartling, Heineman, Konold, Lange, Michels, Williamson and Smidt. Those **EXCUSED**: Dempster, Olson (Ed), and Craddock.

#### **Legislative Budget Request**

Mr. Fry discussed the Legislative Budget for FY2005 (**Document #9**). He stated that there was a slight increase over FY2004 because of the forty-day session. He noted that there may be a second

special session and that the cost of leasing laptops may change. Mr. Fry reported that \$357,000 of the FY2003 budgeted amount was reverted to the general fund.

In response to Senator Koetzle's questions, if the line item for interns includes the office secretaries and who determines their salary, Mr. Fry stated that the line item does not include the secretaries. The interns are paid \$100 per day for living expenses and are not treated as employees, whereas the office secretaries are treated as part-time salaried employees and the two presiding officers of the chambers determine the secretaries' salaries. Senator Koetzle stated that it had been brought to his attention that some of the office secretaries have supervisory positions and they feel that they should not be making less than the interns.

Representative Heineman made the suggestion that legislators share ideas on how to make the interns more effective. Senator Brown commented that possibly some changes could be made to the interview process to ensure that the best applicants are selected. He stated that there were several excellent interns this year; however, there is always room for improvement. Senator McCracken stated that the living expenses for interns was raised from \$80 to \$100 per day to attract more applicants; now that the number of applicants is up, there is a need to increase the recruitment process on the campuses by getting professors involved. Another idea was for the legislators to take the intern information that is on the Legislature's Web site to service clubs.

Representative Smidt noted that the Legislature is no longer paying the membership dues to the Education Commission of the States (ECS) and that it may be something that the Executive Board may want to reconsider. Representative Heineman stated that she and Representative Ed Olson had been invited to an ECS meeting by Dr. Tad Perry. She stated it was a very worthwhile meeting and that the ECS membership brings information at a lower cost and sometimes free. Representative Williamson commented that the Board should wait to see what the Department of Education decides to do.

**REPRESENTATIVE WILLIAMSON MOVED, SECONDED BY REPRESENTATIVE LANGE, THAT THE EXECUTIVE BOARD APPROVE THE FISCAL YEAR 2005 BUDGET REQUEST OF THE LEGISLATIVE RESEARCH COUNCIL AS PRESENTED. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 VOTING AYE, 0 VOTING NAY, AND 3 EXCUSED.** Those voting **AYE**: Brown, Dennert, Greenfield, Koetzle, McCracken, Bartling, Heineman, Konold, Lange, Michels, Williamson and Smidt. Those **EXCUSED**: Dempster, Olson (Ed), and Cradduck.

### **Legislative Audit Budget Request**

**Mr. Martin Guindon**, Auditor General, distributed copies of the FY2005 Budget Request Summary (**Document #10**) and the Budget Request Narrative (**Document #11**) for the Department of Legislative Audit. Mr. Guindon reported that the overall FY2005 budget shows a net increase of \$19,637, less than one percent. The proposed budget includes no changes in staffing levels or in the nature and scope of services provided by the department. He stated that at the time the budget was prepared he did not have the Bureau of Information and Telecommunications' rates yet, that he would try to absorb any increases and if unable to do so, he would be back. He reported that for FY2003, the department reverted \$108,128 to the General Fund, \$80,591 was Personal Services and \$27,537 was Operating Expenses.

Chair Smidt commented that a subcommittee should do a comparison study of the Auditor General's and the LRC Director's duties, responsibilities, and compensation.

**SENATOR DENNERT MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD APPROVE THE FISCAL YEAR 2005 BUDGET REQUEST OF THE DEPARTMENT OF**

**LEGISLATIVE AUDIT AS PRESENTED. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 VOTING AYE, 0 VOTING NAY, AND 3 EXCUSED.** Those voting **AYE**: Brown, Dennert, Greenfield, Koetzle, McCracken, Bartling, Heineman, Konold, Lange, Michels, Williamson and Smidt. Those **EXCUSED**: Dempster, Olson (Ed), and Craddock.

### Subcommittee Reports

Computer Technology Subcommittee: **Representative Heineman**, Computer Technology Chair, and **Ms. Lou Adamson**, Legislative Information System Coordinator, distributed copies of a draft survey to legislators on computer usage (**Document #12**). Ms. Adamson reviewed the draft survey stating that the purpose was to find ways that staff can assist legislators with technology, how legislators are currently using their lap tops, and if the legislators are ready to go paperless. Additional suggested questions for the survey by committee members were: (1) Do you use your lap top during session? (2) Do you use your lap top the balance of the year or at home? and (3) Do you have a printer and Internet connection at your home? Representative Williamson commented that legislators need to be sure the public is being served and that their expectations are met. Ms. Adamson stated that the number of paper copies requested by lobbyists has dropped substantially; during the last session the Legislature's Web site had over one million hits.

Ms. Adamson also distributed information regarding a tablet notebook that would allow a user to use either a pen or a keyboard (**Document #13**). Pennsylvania is currently using the tablet notebooks. Plans for a pilot program are under way; one tablet notebook will be distributed to each political party for use during the upcoming session.

Retreat Subcommittee: **Senator McCracken**, committee member, reported that he had obtained three bids from hotels in Rapid City for the Board retreat set for October 3-5 and he also had an alternative date of September 26-28, as some members will be unable to attend on the original date. Following Board discussion, it was the consensus of the Board to leave the date for the retreat as originally set, October 3-5. Senator McCracken reported that the retreat will be held at the Radisson Hotel in downtown Rapid City and that events will be planned for Friday and Saturday evenings. The focus of the retreat will be the legislative budget cycle, and in addition to the Executive Board members, will include the chairs of the Appropriations Committee and the majority and minority leaders of both houses.

The committee recessed at 12:05 p.m. and reconvened at 1:35 p.m.

### Risk Pool Update

**Ms. Sandra Zinter**, Commissioner of the Bureau of Personnel (BOP), presented an update on the risk pool legislation that had been passed during the special session. She stated that there had been no traps or surprises with the legislation. She reported that the seven-member governing board and the advisory panel had met jointly and that on July 28, 2003, the Web site [www.state.sd.us/bop/riskpool.htm](http://www.state.sd.us/bop/riskpool.htm) was up and running and includes all of the necessary forms, along with the Administrative Rules. As of today, August 4, BOP had received 200 applications. She reviewed the application process. The majority of the applications are being submitted through insurance agents; however, individuals may also apply directly through the Web site.

Senator Brown requested that all legislators receive an update on the risk pool, along with the how to's, possibly through the *Update*. Commissioner Zinter stated that BOP would be willing to work with LRC staff on putting this information together.

Representative Williamson asked: (1) who is administering the claims processing? and (2) will there be an opportunity for privatization? Commissioner Zinter stated that Dakotacare is doing the actual adjudication of the claims. She estimates in a year there will be enough data to put together a Request for Proposal.

In response to Representative Bartling's question as to how long the process takes, **Mr. Larry Kucker**, BOP, stated that fifty percent of the applications received have had complete information. He estimates it will take ten to eleven days to process the applications once all the necessary information is received because a panel of three agencies reviews each application.

Senator Koetzle asked: (1) are you providing training for agents? and (2) how do you plan on dealing with those who are not eligible? Commissioner Zinter explained that the insurance lobbying group sent an email to the insurance agents regarding the preliminary information on the Web site within the first week and that BOP has been responding to the one hundred fifty email questions they have received. On Monday, July 28, the agents had all of the pertinent information. As to those not eligible, they are being handled on an individual basis.

### **Interim Committee Reports**

Department of Corrections Agency Review: **Representative Lou Sebert**, Vice-Chair, and **Reuben Bezpaletz**, Chief Analyst for Research & Legal Services, distributed a Progress Report and Tentative Subcommittee Composition and Scope regarding the Department of Corrections Agency Review (**Documents #14 and #15**). They stated there is a lot of interest in this agency review; approximately two hundred people are on the interested parties list, and the committee had selected four topics for subcommittee discussion: (1) Aftercare and Program Evaluation, (2) Intercultural and Minority Concerns, (3) Juvenile Justice, and (4) Parole Issues. Their second meeting is set for August 13-14, with public testimony being taken on the second day. Representative Sebert stated that Senator Abdallah, chair of the subcommittee on Juvenile Justice, may request an additional meeting date to visit the Plankinton facility. Following Board discussion on whether visiting a vacant facility would be worthwhile and if the possibility exists that Plankinton would be reopened as a juvenile facility, Chair Smidt stated that he will visit with Senator Schoenbeck, Chair of the Department of Corrections Agency Review Committee, regarding the need for an additional meeting by this subcommittee.

Department of Social Services Agency Review: **Senator Brock Greenfield**, member of the committee, and **Jacquelyn Storm**, Principal Legislative Attorney, gave an update on the Department of Social Services Agency Review. Ms. Storm reported that since their first meeting, they have been reviewing Medicare, TANF, and S-chip as far as eligibility, the federal government requirements, and the optional coverages that South Dakota is currently providing. It was noted that of the \$590 million budget for the department, only \$176 million is from the General Fund. Compared to the Department of Corrections, this is whole different ballgame. Senator Koetzle and Senator Brown commented that part of the intent of the review process was whether or not South Dakota is really benefiting from the federal match money. They felt that the committee needs to be looking at this leverage. Representative Heineman suggested a comparison be done as to (1) what programs are optional, if so, are they necessary, and why and when did they begin and (2) what programs are mandatory and are they run in the most efficient way possible. The second meeting for this agency review is set for August 11.

Chair Smidt asked that each of the above interim committees give an update at the next Board meeting.

### **Legislators Back to School and Kids Voting South Dakota Programs**

**Ms. Clare Cholik**, Senior Research Analyst and Legislative Librarian, stated that the Legislators Back to School program will run from September 15-19, 2003. She asked that interested legislators contact her for the information available to them to take to schools. She reported that last year thirty South Dakota legislators spoke to approximately three thousand students.

**Ms. Patty Pearson**, Director of Kids Voting South Dakota, presented and distributed a Kids Voting lesson and a U.S. Constitution Test (**Documents #16 and #17**) to the Board that legislators may use in elementary, middle school, or high school classrooms during Legislators Back to School week. The presentation showed the importance of voting and being an informed voter.

### **Streamlined Sales Tax Initiative**

**Mr. Scott Peterson**, Department of Revenue and Regulation, distributed an update on the Streamlined Sales Tax (SST) Agreement (**Document #18**). He stated that as of today, seventeen states (Ohio, North Carolina, Indiana, Tennessee, Kentucky, Oklahoma, Iowa, Kansas, Arkansas, Utah, Nevada, West Virginia, Nebraska, South Dakota, North Dakota, Vermont, and Wyoming) have adopted legislation to bring them into compliance with the agreement and Michigan, Wisconsin, and New Jersey have or are in the process of drafting legislation. He stated that the next step will be a meeting on November 17 in Phoenix when the Implementing States meet to vote on whether the states are in compliance. The remaining issues to be settled in the agreement are the rates/jurisdiction data base, telecommunications definitions, uniform audits and procedures, and the taxability matrix guidelines. Mr. Peterson stated the issue of who has jurisdiction over disagreements, state or federal courts, has not yet been resolved.

Mr. Peterson also reported that 130 cities need to have their sales tax rate revenue neutral by January 1, 2004. He stated that the department is concerned because they have not heard from many of the cities and there is an October 1 deadline for the department to have the completed city ordinance. He reported that both the Municipal League and the department have sent letters. It was suggested by Senator Brown that a list be included in the next *Update* asking legislators if their city has complied.

### **Other Reports and Adjournment**

Representative Lange distributed information regarding a Legislator Biotechnology Workshop to be held August 7-8, 2003, at South Dakota State University in Brookings (**Document #19**). He reported that the international ethanol convention was recently held in Sioux Falls.

Representative Konold gave an update on the DCI expansion project. Mr. Kevin Thom had reported that RFP's had been sent out and that three firms are working with the State Engineer's office and hopefully a design will be selected by November 1. They are visiting labs in Kentucky, Nebraska, Idaho, and Minnesota for ideas. Representative Konold said he will present an update at the November meeting.

**IT WAS MOVED BY REPRESENTATIVE LANGE, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD ADJOURN. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Chair Smidt adjourned the Executive Board at 3:54 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.cfm>).