



MINUTES

EXECUTIVE BOARD

Three hundred twelfth Meeting
Monday
June 9, 2003

LCR 1
State Capitol Building
Pierre, South Dakota

Monday June 9, 2003

The three hundred twelfth meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Orville B. Smidt at 9:45 a.m. (CT), June 9, 2003, in LCR 1 of the State Capitol, Pierre, South Dakota.

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

Staff members present included James Fry, Director, and Yolonda J. Soyer, Administrative Assistant.

(**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.)

(**NOTE:** The Budget Subcommittee met at 7:15 a.m. on June 9; the Personnel Subcommittee met at 8:00 a.m. on June 9. The Space Planning Subcommittee met following the full Board's adjournment.)

Approval of Minutes

REPRESENTATIVE HEINEMAN MOVED, SECONDED BY SENATOR DENNERT, THAT THE MINUTES OF THE MAY 12, 2003, MEETING BE APPROVED AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Approval of Agenda

Mr. Fry explained that Representative Hal Wick, Chair of the Interim Committee on Property Tax Exemptions, requested to meet with the Executive Board relative to the committee's proposed study and meetings.

REPRESENTATIVE KONOLD MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE AGENDA BE AMENDED TO INCLUDE A PRESENTATION BY REPRESENTATIVE WICK RELATIVE TO INTERIM COMMITTEE BUSINESS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

SENATOR GREENFIELD MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE AGENDA AS AMENDED BE APPROVED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Director's Report and Correspondence

Legislative Research Council (LRC) Director James Fry presented the financial statement for the period ending 5/31/2003 (**Document #1**). He commented that the budget is in excellent shape. There has been overspending in the Contract Research portion of the budget, and he explained that he would further explain this expenditure during the discussion of the redistricting lawsuit. The Director stated that he anticipates a reversion of approximately \$300,000 (5-7%). He also noted: "We're where we should be" and explained that the contingency fund probably would not be touched. The current budget could sustain the costs of a special session. Mr. Fry stated that the first day of a special session costs approximately \$31,000.

A listing of telephone numbers for the reorganized departments of state government was provided in **Document #2**. Mr. Fry reported that Senator McCracken had suggested that department and division head names be included on the listing. This information will be provided when this information is finalized.

REDISTRICTING LAWSUIT: Mr. Fry presented an update on the lawsuit's status. Depositions have been taken by the State; the American Civil Liberties Union (ACLU) has deposed individuals on the Pine Ridge and Rosebud Reservations. Also, Mr. Reed Holwegner, LRC, has been deposed, and Mr. Reuben Bezpaletz, LRC, will also be deposed. A trial date has not been set.

Discussion ensued. Senator Dempster asked when the lawsuit might be resolved, and Mr. Fry responded that any resolution would take quite a while. He further stated: "I would expect the losing party to appeal." He also speculated that the lawsuit might go to trial this fall. Representative Michels interjected that the constitutional amendment which would have clarified the responsibility of the Legislature to provide for its own apportionment did not prevail.

Subcommittee Reports

BUDGET SUBCOMMITTEE: **Representative Cradduck**, Budget Subcommittee Chair, reported that the subcommittee met for the first time. The subcommittee is responsible for the Legislature's budget; the group also received an overview of the appropriations process. Staff has been requested to provide a flow chart of how money moves through the system. There has been an ongoing discussion of LRC staff having access to the same budget information that is available to the Governor's budget staff. Representative Cradduck also stated that this same discussion will be held this fall with the chairs of the House and Senate Appropriations Committees.

INVESTMENT COUNCIL SUBCOMMITTEE: **Representative Michels**, Subcommittee Chair, stated that he and Representatives Cradduck and Smidt met in Sioux Falls at the Investment Council office on May 27. He stressed that the technology used by the office is phenomenal. The group met with State Investment Officer Stephen Myers and his staff. Representative Michels commented that the meeting was extremely enlightening.

Discussion of Legislator Travel

MIDWESTERN LEGISLATIVE CONFERENCE (MLC): A roster of those legislators wanting to attend the Midwestern Legislative Conference (MLC) Annual Meeting in Milwaukee, Wisconsin, in August was

included in **Document #3**, along with a report showing those legislators who have been appointed to the various committees of the Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), and the MLC. The Board also received a copy of its policy on appointments to the various committees of NCSL and CSG (**Document #4**). Mr. Fry explained that the topic of legislator travel is on the agenda at the request of Senator McCracken. He further explained that the legislators who are appointed to the various committees of these groups are authorized and expected to attend the committee meetings. If there are budget restrictions, meeting attendance could be curtailed.

Senator McCracken noted that some legislators ask LRC to make their travel arrangements; other legislators make their own travel arrangements. There is no way for the LRC to know which legislators are scheduled to attend a particular meeting. He felt that there should be a mechanism in place so that the LRC can determine which legislators are scheduled to attend these meetings. He noted that the LRC coordinates travel plans for legislators attending the NCSL Annual Meeting, however.

Senator Koetzle observed that sometimes alternate appointees do not receive ample notification that the delegate cannot attend a meeting. Chair Smidt requested that staff review procedures to determine if there is a way to timely inform legislators who are alternate appointees to committees that the delegate cannot attend a committee meeting. Mr. Fry stated that legislators usually inform him if they are not able to attend a meeting; he contacts the first alternate (if the timeframe permits) to determine if the first alternate is able to attend the meeting.

Senator Dennert noted that many of the legislators who want to attend the MLC are committee appointees. Chair Smidt referred members to the most recent issue of the *Update*, which contained several reports from legislators who had attended national meetings.

Representative Heineman asked if LRC must pay experts from NCSL and CSG who are asked to share their expertise with legislative committees. Mr. Fry explained that these groups will provide this expertise at no cost; this service is included in the membership dues paid to these organizations. He further explained, however, that if the LRC requested a special study, e.g., a review of employee compensation, it would be assessed a fee for that particular project.

The Executive Board recessed at 10:15 a.m. and reconvened at 10:25 a.m.

South Dakota Investment Council Report

Mr. Richard Kahler, Chair of the South Dakota Investment Council, addressed the issue of expectations and expected returns (**Document #5**). He referred Board members to the various asset classes and expected annual returns. He noted that the anticipated rates of return vary from a low of 3% (cash) to a high of 11.5% (real estate). The overall expected return (2004 asset allocation) is 7.74%. Mr. Kahler next explained the expected equity returns. He stated: "Our expected equity return is 8.0%."

Mr. Stephen Myers, State Investment Officer, stressed that it is necessary for everybody to have low expectations. There are a multitude of reasons for these low expectations. There is a high degree of volatility. "It is a tough issue; have low expectations. . . . It is the best way to go." **Document #6** is a fact sheet on the Education Enhancement Trust Fund (tobacco fund). As of May 31, 2003, the total trust principal was \$325,432,521.91; the fair value as of that same date was \$351,895,671.09. The estimated rate of return for the period 7/1/02 to 5/31/03 is 6.2%. Mr. Myers stressed that these are

just estimates. He explained that this fund has improved from six months ago. He addressed the complexities relative to the tobacco fund. He noted that Article XII, § 6 of the South Dakota Constitution and SDCL 4-5-29.2 govern the entire Education Enhancement Trust Fund. He went on to explain the two different bond issues—issued taxable (6.72% due 6/1/25) and tax-exempt (6.5% due 6/1/32). There is an estimated 4% disbursement of \$14,075,827. Mr. Myers explained the guidelines which govern the spending of the taxable and tax-exempt funds.

Document #6 also contains information on the assets of the South Dakota Investment Council. He noted that as of 5/31/03, the South Dakota Retirement System had a 3.3% return. Mr. Myers stressed again, however, the volatility of the market. He explained that the earnings on the Dakota Cement Trust will go down with time.

Mr. Kahler provided an update on the South Dakota Scholarship (529 Plan) (**Document #7**). He praised the State Investment Officer and his staff for the fees they negotiated for this program. **Mr. Thomas Everist**, a member of the South Dakota Investment Council, explained that Document #7 provides information on scholarship winners by town, top majors, college distribution, and the top 70 breakpoint. The information also includes a summary of shareholder accounts and a summary of awarded scholarships. Mr. Everist read excerpts from some of the letters received from scholarship recipients. He explained that South Dakota's franchise was sold to PIMCO. He commented: "We get these products at cost."

Mr. Myers presented Mr. Fry with a composite of the 2003 "Investing in our Future" recipients. It was explained that any student who applied and who met the requirements received some type of scholarship. In 2003, 70 scholarships in the amount of \$2,000 for a total of \$140,000 (\$560,000 in commitments for four years) and 193 scholarships in the amount of \$1,500 (for a total of \$289,500) were awarded. Some students declined scholarships because they had plans to attend an out-of-state school.

Following committee discussion on the PIMCO contract and the effort to inform the public about the program, Mr. Kahler introduced the following individuals: Mr. David Anderson, member of the South Dakota Investment Council; Mr. Bryce Healy, Commissioner of School and Public Lands and a member of the South Dakota Investment Council; Mr. Wade Hubbard, Acting Administrator of the South Dakota Retirement System; Mr. Rob Wylie, staff member, South Dakota Retirement System; and Mr. Vernon Larson, State Treasurer and a member of the South Dakota Investment Council. In closing, Mr. Kahler thanked the Executive Board for the opportunity to serve on the council.

SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING THE PERSONNEL REPORTS OF THE STATE INVESTMENT OFFICER, THE DEPARTMENT OF LEGISLATIVE AUDIT, AND THE LEGISLATIVE RESEARCH COUNCIL; AND TO INTERVIEW APPLICANTS FOR APPOINTMENT TO THE SOUTH DAKOTA INVESTMENT COUNCIL. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The executive session commenced at 11:15 a.m. The Board recessed at 12:00 noon for lunch and a tour of the Department of Corrections. The executive session resumed at 1:30 p.m.

SENATOR MC CRACKEN MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE SESSION CONCLUDE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The executive session concluded at 3:40 p.m.

South Dakota Investment Council Appointment

SENATOR OLSON MOVED, SECONDED BY SENATOR MC CRACKEN, THAT DR. ANGELINE M. LAVIN, SIOUX FALLS, SOUTH DAKOTA, BE APPOINTED TO A FIVE-YEAR TERM ON THE SOUTH DAKOTA INVESTMENT COUNCIL, SAID TERM TO COMMENCE JULY 1, 2003, AND EXPIRE ON JUNE 30, 2008. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Cradduck, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

Chair Smidt congratulated Dr. Lavin on her appointment to the South Dakota Investment Council.

The Executive Board recessed at 3:45 p.m. and reconvened at 3:50 p.m.

Interim Committee on Property Tax Exemptions

Representative Hal Wick, interim committee chair, requested permission from the Board for the committee to expand its scope of study to include other entities in addition to counties. He distributed a document in support of his request (**Document #8**). He asked that townships and special districts be included in the study. He also asked for the Board's consideration to add cities and towns to the committee's study scope. Representative Wick further explained that he would like to divide the committee into three groups to conduct meetings in three areas of the state. One group would meet in Sioux Falls; one group would meet in Rapid City; and one group would meet in Aberdeen. The full interim committee would then meet in Pierre following these regional meetings. Upon a query from Senator Olson, Representative Wick responded that he was not requesting an extra meeting day for the interim committee. He further explained that his proposal would divide the committee into three separate groups for the regional meetings. The additional cost would be to have an LRC staff member present at each of the three regional meetings.

SENATOR DEMPSTER MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPROVE THE REQUEST OF THE INTERIM COMMITTEE ON PROPERTY TAX EXEMPTIONS TO EXPAND ITS STUDY SCOPE TO INCLUDE TOWNSHIPS, SPECIAL DISTRICTS, CITIES, AND TOWNS; AND THAT THE EXECUTIVE BOARD APPROVE THE INTERIM COMMITTEE'S REQUEST TO HOLD REGIONAL MEETINGS IN ABERDEEN, RAPID CITY, AND SIOUX FALLS. SUCH APPROVAL INCLUDES AUTHORIZATION FOR PAYMENT OF THE EXPENSES ATTENDANT TO THE REGIONAL MEETINGS.

Discussion ensued on the motion. Representative Wick clarified that his proposal would divide the full interim committee (nineteen members) into three groups for the purpose of the regional meetings, with one group meeting in each of the three cities. He further explained that the three groups would meet on the same day. The groups would then meet as one committee in Pierre following the regional meetings.

SENATOR DEMPSTER'S MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

ACTION ON PERSONNEL REPORTS

Department of Legislative Audit Personnel Report

SENATOR DENNERT MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD ACCEPT THE FY 2004 SALARY RECOMMENDATIONS FOR THE DEPARTMENT OF LEGISLATIVE AUDIT. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Craddock, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

SENATOR DENNERT MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD APPROVE A 2% SALARY INCREASE FOR FY 2004 FOR THE AUDITOR GENERAL. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Craddock, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

State Investment Office Personnel Report

REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR OLSON, THAT THE FY 2004 BASE SALARY OF THE SOUTH DAKOTA INVESTMENT OFFICER BE SET AT \$309,160 (4.8% INCREASE). MOTION PREVAILED ON A ROLL CALL VOTE WITH 10 AYES, 2 NAYS, AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, McCracken, Olson (Ed), Craddock, Heineman, Konold, Michels, and Smidt. Voting **NAY**: Koetzle and Williamson. **EXCUSED**: Brown, Bartling, and Lange.

Legislative Research Council Personnel Report

SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE WILLIAMSON, THAT THE EXECUTIVE BOARD ACCEPT THE FY 2004 SALARY RECOMMENDATIONS FOR THE LEGISLATIVE RESEARCH COUNCIL. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Craddock, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

SENATOR OLSON MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD APPROVE A 2% SALARY INCREASE FOR FY 2004 FOR THE LRC DIRECTOR. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Craddock, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

Chair Smidt commented that the Executive Board intends to review the duties and responsibilities and compensation of the Auditor General and the LRC Director.

LEGISLATIVE APPOINTMENTS

South Dakota Code Commission

Mr. Fry explained that the Code Commission is in the process of selecting a publisher for the *South Dakota Codified Laws*. He reported that Mr. Michael DeMersseman wants to be reappointed to the commission.

SENATOR MC CRACKEN MOVED, SECONDED BY SENATOR GREENFIELD, THAT MR. MICHAEL DE MERSEMAN, RAPID CITY, SOUTH DAKOTA, BE REAPPOINTED TO A TWO-YEAR TERM ON THE SOUTH DAKOTA CODE COMMISSION, SAID TERM TO COMMENCE JULY 1, 2003, AND EXPIRE ON JUNE 30, 2005. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Cradduck, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

Uniform Laws Commission (ULC)

The Director reported that there are two terms which will expire July 31, 2003, the terms of Michael DeMersseman and Barbara Everist. Mr. DeMersseman has asked to be reappointed. Mr. Fry also noted that Gene Lebrun is a lifetime member of the commission. Also, Representative Sean O'Brien is a member of the commission. He further explained that Barbara Everist felt that it would be beneficial to have another current member of the Legislature serving on the ULC and requested that she not be reappointed. He further clarified that Mr. DeMersseman was the only individual to express an interest in being appointed to the ULC.

SENATOR MC CRACKEN MOVED, SECONDED BY SENATOR DEMPSTER, THAT MR. MICHAEL DE MERSEMAN, RAPID CITY, SOUTH DAKOTA, BE REAPPOINTED TO A THREE-YEAR TERM ON THE UNIFORM LAWS COMMISSION, SAID TERM TO COMMENCE AUGUST 1, 2003, AND EXPIRE ON JULY 31, 2006. MOTION PREVAILED ON A ROLL CALL VOTE WITH 12 AYES AND 3 EXCUSED. Voting **AYE**: Dempster, Dennert, Greenfield, Koetzle, McCracken, Olson (Ed), Cradduck, Heineman, Konold, Michels, Williamson, and Smidt. **EXCUSED**: Brown, Bartling, and Lange.

It was agreed that the Executive Board, at its August meeting, would make another appointment to the Uniform Laws Commission.

Senator Olson, Chair of the Subcommittee on Space Planning, announced that the group would meet following the full Board's adjournment.

He also reported that the Executive Board Retreat has been scheduled for October 3-4, 2003. Reed Holwegner, LRC, will contact a Kansas senator relative to making a presentation at the retreat.

Next Meeting Date

The Board is scheduled to meet on Monday, August 4.

SENATOR MC CRACKEN MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD ADJOURN. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The Executive Board adjourned at 4:25 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 **My LRC** (<http://legis.state.sd.us/mylrc/index.cfm>).