



MINUTES

Executive Board

**Three hundred sixteenth Meeting
Monday
April 19, 2004**

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

Monday, April 19, 2004

The three hundred sixteenth meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Orville B. Smidt at 9:07 a.m. (CT), April 19, 2004, in LCR 1 of the State Capitol, Pierre, South Dakota.

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

Staff members present included James Fry, Director; and Teri Retrum, Senior 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

SENATOR DENNERT MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE MINUTES OF THE MARCH 15, 2004, MEETING AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Approval of Agenda

There being no objection, Chair Smidt declared the agenda approved as presented.

Director's Report and Correspondence

Legislative Research Council (LRC) Director James Fry presented the financial statement for the period ending 3/31/04 (**Document #1**). He stated that the budget was in good condition.

Mr. Fry informed the committee that, at the Board's request, the Legislature's membership in the Education Commission of the States has been resumed.

Mr. Fry briefly commented on the redistricting trial currently in progress in federal court. He said that the trial is being monitored by LRC staff **Ms. Jacquelyn Storm**, Principal Legislative Attorney, and **Ms. Annie Mehlhaff**, Principal Fiscal Analyst. He reported that the judge is hoping to reach a decision by the primary election.

Mr. Fry said that office space on the fourth floor of the Capitol will be available and that the Legislature has requested that space. He said that the Supreme Court is also looking for more space.

Senator Ed Olson asked whether a legislative case statement has been formalized to request the space to provide better public participation.

Mr. Fry responded that currently the request for more space has been conducted in verbal discussions only.

Chair Smidt said that he plans to discuss the situation with the Governor and intends to address the situation during the Executive Board's Space Planning Subcommittee.

Responding to **Representative Phyllis Heineman**, Mr. Fry said that the Bureau of Administration at the direction of the Governor is responsible for space allocation.

Letter to Governor Rounds from Chair Smidt encouraging the South Dakota Department of Education to become part of the first group of states in Phase II of the collaborative effort among the U.S. Department of Education, Standard & Poor's, the Broad Foundation, and Just for the Kids to provide web-based analysis of education statistics (**Document #2**).

2004 Survey of Legislators on LRC Services (**Document #3**). Mr. Fry said that the LRC staff appreciated the positive responses from the legislators and that staff will continue to provide services to the Legislature in the best manner possible. He said that any items that need attention are being addressed.

2004 Legislation: **Document #4** is a listing of successful bills from the 2004 Legislative Session that directly affect legislative appointments or the *Red Book*. Information regarding the Constitutional Revision Commission (HB 1153), the Criminal Code Revision Commission

(SB 1), and the State and Local Government Task Force (HB 1202) is included in Document #4.

Document #5 outlines charter estimates for transportation to Executive Board meetings.

Responding to questions, Mr. Fry said that he will find out from the State Board of Finance if discussion is underway to increase travel reimbursement due to the rising price of gasoline.

Mr. Fry stated that wireless service will be provided to lobbyists next session and that they are open to paying a charge for the services. He said that the Legislature can then begin to reduce the number of kiosks placed in the lobbies.

In response to a question posed by Senator **Royal “Mac” McCracken**, Mr. Fry said technological security for the Legislature is on the state’s firewall, which is state-of-the-art.

Discussion began on who attends various organizations’ meetings. Mr. Fry said that LRC needs to know when members are traveling so that they are authorized for reimbursement. **Senator Gil Koetzle** asked how alternates are treated in regard to meeting attendance. Chair Smidt said that usually the alternate attends a meeting if the primary appointee cannot attend. Senator Koetzle said that for planning purposes, an alternate would benefit by advance notice.

SENATOR GREENFIELD MOVED, SECONDED BY SENATOR DENNERT, THAT THE ATTENDEES OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC) MEETING TO BE HELD ON JULY 28 THROUGH AUGUST 1, 2004, BE REIMBURSED FOR TRAVEL AND PER DIEM EXPENSES AND REGISTRATION FEES. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Chair Smidt announced that the Executive Committee of the Executive Board will determine the number of attendees at the ALEC meeting.

At this time, Senator Olson expressed his opinion that a meeting should be held with legislators and interns to discuss how best the Legislature can utilize the skills of the interns to the maximum benefit to everyone. He commented that with the high quality of the interns hired, the process needs to evolve to incorporate that quality to its best use.

Report from the Personnel Subcommittee

Chair Smidt reported that a comparative analysis of the salaries of Mr. Fry and **Mr. Martin Guindon**, Auditor General, will be conducted. Included in the analysis will be salaries of their counterparts in other areas and states.

For informational purposes, Representative Matthew Michels distributed copies of a South Dakota Supreme Court decision regarding a case between an individual and the Department of Game, Fish and Parks (**Document #6**). Representative Michels commented that the

Legislature needs to maintain good oversight when it delegates rule-making authority to an agency.

The Board recessed at 10:10 a.m. and reconvened at 10:40 a.m.

Discussion of Style and Form Vetoes

Mr. Fry said that in a review of the fifty states, six states have style and form or amendatory vetoes. He said that Montana provides for an amendatory veto, but the veto must be germane to the original issue. Illinois provides for an amendatory veto but for minor and grammatical changes only.

Representative Ron Williamson stated: "It is well past due to address this issue."

Representative Michels said that the Legislature determines whether a style and form veto is appropriate. The Legislature must decide whether a veto is technical or whether it changes the intent of a bill. Representative Michels said that in his opinion the question should be whether a two-thirds majority vote should be required to override a veto. He said that perhaps line item vetoes also should be included in the discussion.

Mr. Reuben Bezpaletz, Chief of Research Analysis and Legal Services, briefed the Board on style and form vetoes from a historical perspective. He said that a style and form veto is a quasi-legislative act.

Chair Smidt asked staff to provide leadership with a briefing paper on vetoes.

At the request of Representative Michels, Mr. Fry submitted materials concerning vetoes to be included in the original minutes file (**Document #7**).

REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE CHAIR OF THE EXECUTIVE BOARD VIA LETTER TO THE CHAIR OF THE CONSTITUTIONAL REVISION COMMISSION REQUEST THE COMMISSION TO DISCUSS THE SCOPE OF THE STYLE AND FORM VETO, AMENDATORY VETO, AND LINE ITEM VETO AUTHORITY AND TO INCLUDE RELEVANT COMMITTEE MINUTES AND LRC RESEARCH OF HOW OTHER STATES DEAL WITH VETOES. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Selection of 2004 Interim Study Topics

The document "2004 Interim Study Survey Materials" was distributed (**Document #8**).

Mr. John Cooper, Secretary, Department of Game, Fish and Parks, visited with the Board about the top ranked interim study topic—A study of issues related to the Department of Game, Fish and Parks of concern to landowners and sportsmen. He distributed copies of a listing of the members of the West River Issues Working Group (**Document #9**) and copies of an outline of issues to be addressed by the Work Group (**Document #10**).

Mr. Cooper said that the Work Group will hold its first meeting on May 5, 2004, in Rapid City. He said that the current intent is to conduct a meeting no less than once per month. The meetings will be held separate from the commission. There will be public participation, and a facilitator—Dynamic Solutions—from Wyoming that is experienced in these issues in other states has been hired. He said that the Game, Fish and Parks Commission has approved the Work Group and will pay for the travel and per diem for its members as well as for the facilitator.

At the request of Representative Michels, Mr. Cooper read the top ranked interim study topic—A study of issues related to the Department of Game, Fish and Parks of concern to landowners and sportsmen.

Representative Michels then asked Mr. Cooper whether this study topic paralleled the outline of the Work Group's study. Mr. Cooper responded affirmatively.

Representative Michels asked about the depredation issue. Mr. Cooper stated that hunting and access issues encompass depredation—they are parallel issues and cannot be separated.

Representative Michels requested that a final report from the Work Group be available to the Executive Board and to the Legislature.

Mr. Cooper said that the final report should be completed in December and will be provided to the Commission and to the Legislature.

Senator **H. Paul Dennert** said that there also are five to six issues that would be of concern to east river landowners and sportsmen.

Mr. Cooper agreed and stated that one of the objectives of the Work Group is to clear up some of the misinformation about funding sources and how the department conducts business.

Representative Williamson asked: "Do you think that having the participation of the Legislature makes it too political?"

Mr. Cooper responded that it maybe could give the appearance of politicization.

Senator Olson said that this topic is "far and away the number one topic" that legislators chose to be studied and that choice should warrant some legislative participation--perhaps, by adding four legislators to the Work Group.

Senator McCracken distributed copies of an article from the *Rapid City Journal* titled "Group to Handle GF&P Issues" (**Document #11**).

Public Testimony

Mr. Chris Hesla, South Dakota Wildlife Federation, said that two groups studying the same issues are not needed. Mr. Hesla stated: "Let the people involved work on it."

The committee recessed at 12:00 p.m. and reconvened at 1:20 p.m.

Public Testimony (Continued)

Mr. Rick Vallery, South Dakota Wheat, Incorporated, said that he believes that there should be no legislators on the Work Group. He stated that communication levels need to be defined and that legislative participation may curtail communication.

Mr. Vallery expressed support for the study ranked number seven—A study of easements on agricultural and other rural land, particularly easements for conservation and related purposes and their effects on property owners, easement holders, and the general community. He said that a definition of conservation easements concerning severance and dominance should be addressed. Mr. Vallery also stated that perpetual easements are wrong and that they should be for a term of years. He suggested that conservation easements be combined with the tax issue on property because conservation easements impact valuations.

Senator Olson said that his intent is to facilitate conversation regarding the topics that the Wildlife Work Group will be discussing but that the Executive Board also has responsibility to the legislators who ranked this topic number one.

Mr. Vallery said that he understands why the topic was ranked number one because it was an issue that garnered a lot of attention during the 2004 Legislative Session.

Mr. Richard Howard, South Dakota Association of County Commissioners, said that HB 1202 involves many county issues, among them unfunded mandates. He objected to mandated services. Mr. Howard stated: "Don't mandate but guidance might be accepted."

Mr. Howard said that the Association appreciates the intent to involve county officials in the study of zoning issues related to agriculture.

Mr. Howard said that perhaps the study topic ranked number twenty—A study of the 911 system—could be addressed in an issue memorandum.

Mr. Howard said that the study topic ranked number two—A study concerning the impact of the limitation on sales used to value property and the potential impacts if changes are made to the factors used to limit sales to value property—should be studied as a fairness issue. He said that the study should proceed with the intent to improve the valuation and taxation of real property.

Senator Olson asked staff to provide a paper on the 911 system.

Executive Board Discussion and Action

Wildlife Work Group

Senator McCracken suggested that perhaps someone could be appointed to attend Wildlife Work Group meetings to act as a representative of the Legislature and to report back to the Legislature.

Representative Williamson asked how the group would be staffed.

Senator Olson said that the facilitator would staff the work group. He suggested that the Executive Board appoint two legislators to attend the Wildlife Work Group meetings and then survey the legislative body for its selection of an additional two representatives.

Senator Dennert suggested that an LRC staff person attend the May 5 meeting.

Senator Olson said that he was supportive of Senator Dennert's suggestion.

Senator McCracken also requested that representation from the Legislature be present.

REPRESENTATIVE WILLIAMSON MOVED, SECONDED BY SENATOR OLSON, THAT THE EXECUTIVE COMMITTEE OF THE EXECUTIVE BOARD SELECT FOUR INDIVIDUALS REPRESENTATIVE OF THE CAUCUSES TO THE WILDLIFE WORK GROUP. THE MOTION PREVAILED ON A VOICE VOTE. SENATOR GREENFIELD ASKED THAT HIS "NO" VOTE BE NOTED.

Impact of the Limitation on Sales Used to Value Property

Senator Dennert said that the study topic of conservation easements should be combined with the limitation on sales used to value property study topic.

Representative Claire Konold and Senator McCracken disagreed.

Stating that study topic number two concerning the impact of the limitation on sales used to value property and the potential impacts if changes are made to the factors used to limit sales to value property is an on-going educational process, **REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD SELECT STUDY TOPIC NUMBER TWO CONCERNING THE IMPACT OF THE**

LIMITATION ON SALES USED TO VALUE PROPERTY AND THE POTENTIAL IMPACTS IF CHANGES ARE MADE TO THE FACTORS USED TO LIMIT SALES TO VALUE PROPERTY AS A 2004 INTERIM STUDY COMMITTEE. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Motor Vehicle Task Force

REPRESENTATIVE CRADDUCK MOVED, SECONDED BY REPRESENTATIVE BARTLING, THAT THE EXECUTIVE COMMITTEE OF THE EXECUTIVE BOARD SELECT FOUR LEGISLATORS FOR THE MOTOR VEHICLE TASK FORCE. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The Board recessed at 2:50 p.m. and reconvened at 3:07 p.m.

Medicaid

Representative Rebekah Cradduck stated that the Health Committee is studying long-term care so she did not see the need for a study of Medicaid at this time.

Responding to Senator Olson, Representative Cradduck said that South Dakota has not been in the forefront of waivers and stays within the realm of allowed waivers. She said that the issue probably could be addressed by writing a letter of query to the Secretary of the Department of Health.

Representative Konold said that the Legislature has to start reviewing the Medicaid program sometime in order to get a handle on the rising cost.

Representative Williamson agreed and said that the Legislature needs to be educated on the health care issue—what other states are doing and alternatives, etc. He suggested that, at the minimum, staff provide an issue memorandum on the subject.

Representative Heineman said that the Department of Social Services also should be asked what it is doing to address the problem and what changes are being made or could be made to hold down costs while still providing needed services.

Chair Smidt said that he does not object to a limited interim study on this issue with a limited membership and a limited scope with maybe an allowance of two or three meeting dates.

REPRESENTATIVE KONOLD MOVED, SECONDED BY REPRESENTATIVE WILLIAMSON, THAT STAFF WRITE AN ISSUE MEMORANDUM TO ADDRESS MEDICAID FOCUSED ON DEMOGRAPHICS AND COST CONTAINMENT AND TO COMPARE

SOUTH DAKOTA'S SYSTEM WITH THE SYSTEMS IN OTHER STATES. THE MOTION PREVAILED ON A VOICE VOTE.

Coordination and Review of Curriculums at the Public Colleges of Education

Representative Williamson suggested that this topic be included in the Appropriations Committee interim study. For instance, he said that the state appropriates approximately \$2.5 million to a reading program, and the Legislature should be able to determine whether it is being monitored for responsibility and effectiveness.

Representative Heineman said that might be something to consider because the Education Committee mostly deals with kindergarten through twelfth grade education.

Representative Williamson said that there are some education programs that the Legislature needs to get "its hands around to see if we are getting the best bang for the buck."

Representative Heineman said that the Legislature should be kept informed on what person or entity has the oversight for some of these programs.

Representative Craddock said that higher education is significant enough that perhaps it should be moved out of the Appropriations process and into one of the policy committees. She said that maybe there could be a study committee composed of a cross-section of Appropriations and Education Committee members.

Representative Konold said that perhaps the reading program should undergo a review by Legislative Audit.

REPRESENTATIVE CRADDUCK MOVED, SECONDED BY REPRESENTATIVE WILLIAMSON, THAT THE STUDY OF THE PURPOSES, COSTS, AND EFFECTIVENESS FOR ADDITIONAL CLASSES TO EDUCATE TEACHERS ABOUT LITERACY BE SELECTED AS AN INTERIM STUDY COMMITTEE. THE MOTION PREVAILED ON A VOICE VOTE. REPRESENTATIVE MICHELS CAST A NAY VOTE.

911 System

SENATOR MC CRACKEN MOVED, SECONDED BY SENATOR OLSON, THAT THE BOARD DIRECT STAFF TO WRITE AN ISSUE MEMORANDUM ON THE 911 SYSTEM, INCLUDING AN EXAMINATION OF THE SURCHARGE IN TERMS OF HOW IT IS SPENT AND WHETHER IT IS SUFFICIENT AND THE CONSEQUENCES OF INTERNET TELEPHONE SERVICE. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Conservation Easements

REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD DIRECT STAFF TO WRITE AN ISSUE MEMORANDUM ON

EASEMENTS ON AGRICULTURAL AND OTHER RURAL LAND, PARTICULARLY EASEMENTS FOR CONSERVATION AND RELATED PURPOSES AND THEIR EFFECTS ON PROPERTY OWNERS, EASEMENT HOLDERS, AND THE GENERAL COMMUNITY. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Federal Transportation Reauthorization Act

SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE BARTLING, THAT THE BOARD DIRECT LRC STAFF TO WRITE AN ISSUE MEMORANDUM ON THE FEDERAL MATRIX OF PUBLIC TRANSPORTATION FUNDING PROGRAMS. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Statutory Fees Collected

SENATOR DENNERT MOVED, SECONDED BY REPRESENTATIVE CRADDOCK, THAT THE BOARD DIRECT STAFF TO WRITE AN ISSUE MEMORANDUM ON THE STATUTORY FEES COLLECTED FOR LIQUIDATED COSTS OF THE JUDICIAL AND LAW ENFORCEMENT SYSTEMS, SUCH REVIEW TO INCLUDE THE HISTORIES OF HB 1053 AND HB 1103 FROM THE 2004 LEGISLATIVE SESSION—HOW THESE FUNDING SOURCES HAVE EVOLVED, FOR WHAT PURPOSES THEY ARE SPENT, AMOUNTS OF REVENUE GENERATED, AND SOME EXAMPLES OF THE FEES IN REGARD TO THEIR COMMON IMPLEMENTATIONS. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Small School Districts

Senator McCracken questioned whether the sparsity issue and how to fairly compensate those school districts that are “small by necessity” should be addressed in some manner.

Representative Heineman said that the Legislature does not need to study it this interim but that the topic should be addressed again next session.

Update—Publishing the New South Dakota Code

Mr. Doug Decker, Code Counsel, reported that the Code Commission selected West Publishing to publish the Code and showed the Board the new cover design chosen by the commission. He said that the new Code will be published the end of June 2004. Mr. Decker said that the new Code will cost \$364 and that there will be fewer sets distributed due to technological availability.

Other Business

Representative Heineman said that she was asked by another legislator about the possibility of receiving notice of rule promulgation when it would affect legislation sponsored by that legislator.

Senator McCracken said that all rules hearings are public and that advance notices of those hearings are published in newspapers throughout the state. Also, Senator McCracken said that Rules Review Committee agendas are posted on the internet.

Mr. Decker said that a Register is also published and mailed to legislators who request the document.

Responding to Senator Olson, Mr. Fry said that currently there is no prospect of individually purchasing the laptops.

Adjournment

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

The Executive Board adjourned at 4:10 p.m.



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