



MINUTES

Executive Board

Three hundred nineteenth Meeting
Monday
August 2, 2004

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

Monday, August 2, 2004

The three hundred nineteenth meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Orville B. Smidt at 9:30 a.m. (CT), August 2, 2004, in LCR 1 of the State Capitol, Pierre, South Dakota.

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

Staff members present included James Fry, Director, and Reta Rodman, Legislative Secretary.

A list of guests present during all or part of the meeting is on file with the master minutes.

(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 following subcommittees met in conjunction with the Executive Board meeting: Investment Council, Computer Technology, Budget, Space Planning, and Legislative Interns.)

Approval of Minutes

REPRESENTATIVE LANGE MOVED, SECONDED BY SENATOR OLSON, THAT THE MINUTES OF THE JUNE 2, 2004, MEETING BE APPROVED AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Approval of Agenda

THE AGENDA WAS APPROVED WITH THE FOLLOWING CHANGES: REPRESENTATIVE WILLIAMSON MOVED, SECONDED BY REPRESENTATIVE LANG, THAT THE AGENDA BE AMENDED TO INCLUDE A DISCUSSION OF THE IMPACT MOBILE (RV'ER) VOTERS WOULD HAVE ON THE NOVEMBER ELECTION. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

SENATOR DENNERT MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE AGENDA BE AMENDED TO PROVIDE FOR AN UPDATE ON THE WEST RIVER WORKING GROUP. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

SENATOR OLSON MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE AGENDA BE AMENDED TO ALLOW FOR TIME TO TAKE A LOOK AT THE POSSIBILITY OF LEGISLATORS USING ON-LINE TICKETING FOR TRAVEL. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Representative Smidt congratulated Senator McCracken on his election to the NCSL executive committee. Senator McCracken spoke briefly.

Director James Fry updated the Executive Board on Senator Koetzle's health condition following his heart surgery. He is reported to be doing very well.

Investment Council Report and Budget Request

State Investment Officer Steve Myers distributed exhibits (**Document #1**) that supported the investment council's presentation to the Executive Board.

Mr. Tom Everist, vice chair, introduced the following individuals: Rob Wylie, Larry Ness, Bryce Healy, Curt Johnson, Angeline Lavin, Matt Clark and Burt Larson. Mr. Everist informed the Executive Board that for the last 31 years South Dakota has been at the top of the chart for investment returns. He also gave a detailed presentation on the role that the Executive Board plays with regard to the investment council. He indicated that the Board appoints members to the council along with setting the salary of the state investment officer and evaluating the performance of the fund.

Several years ago the Executive Board put into place a succession plan for the replacement of the state investment officer. When it became apparent that Mr. Myers was going to retire in January an outside search firm was contacted. From this search three candidates from outside South Dakota and one investment staff member were interviewed for this position. Mr. Everist explained that this process was lengthy with time spent on the phone before the actual interviews and the two-hour interview itself. The council wanted to measure Matt Clark, a current investment council staff member who was applying for the position, against the outside world. When the hiring process was completed, Matt Clark was "head and shoulders" above the other candidates.

Representative Smidt, on behalf of the Executive Board, welcomed Matt Clark as the newly appointed State Investment Officer. Mr. Clark expressed his excitement at the opportunity to

serve as the State Investment Officer and stated that he looks forward to working with the Board and other committees.

Mr. Everist pointed out that the total South Dakota Retirement System dollars earned for the fiscal year 2004 was \$719 million. This figure is an estimate since the final audit has not been completed.

Mr. Clark emphasized that the state's outperformance for the last 31 years has been a 1.4 percent compounded annualized return. The goals going forward should be more modest because of the greater market efficiencies and intensive competition from all peer groups.

Steve Myers advised that the focus on the years ahead has to do with the earnings for the retirement system. Expectations were higher back in 1982 with the lowest valuation levels since the depression. He indicated that the fixed income return then were between 12 and 13 percent. Mr. Myers expressed that today's view of potential earning assets is no longer as good as it was in 1993, 1994 and 1995. He shared his idea that fixed income is "what you see is what you get." He stressed that long term, there is a 50/50 chance that one will earn about a 7.2 percent or 7.3 percent return. However, it would be pushing it at 7.5 percent. Mr. Myers also indicated that while a 10 percent return is possible, the chances of accomplishing that level of return are low. If one would budget conservatively at an expected return of 6 percent, there is a 70 percent chance of accomplishing that goal. Representative Heineman posed the question why we now have these low expectations compared to the 1980s. Mr. Myers replied that price-earnings ratios are much higher now than then and book values are not as favorable as they were in the 80s. **Mr. Rob Wylie**, Administrator of the South Dakota Retirement System (SDRS), stated that the actuarial review is now being completed.

Mr. Tom Everist informed the board that the Pimco scholarship program funds 70 scholarships of \$2,000, each renewable for four years. In addition 200 students receive a one-time \$1,5000 scholarship. The Executive Board was presented with a plaque showing the students who have received these scholarships. Mr. Everist feels this program could go longer than the planned four-year term. Representative Heineman questioned if a map was available showing where the students that received the scholarships lived. The committee was informed that they would be provided with such a map.

Mr. Clark shared with the Board the fair value of the Health Care Trust as of 6-30-04 to be \$88,857,734.77. The law allows up to 4 percent of fair value to be paid out as long as the principal is not violated. The fair value of the Education Enhancement Trust fair value is \$361,758,229.28. Mr. Clark informed the Executive Board that the Dakota Cement Trust principal as of 6-30-04 was \$238 million. The Board was apprised of the fact that once the audit is completed \$12,633,125, which is 5 percent of \$252,662,504, can be paid out. Concern was raised by Representative Smidt that are we setting ourselves up for a possibility that this fund could decrease and it would be more difficult to reach the \$12 million. Mr. Clark responded to this statement by saying they feel we can earn at least 5 percent; however, they expect the figure to be 6 percent.

Mr. Everist discussed with the board the South Dakota Investment Council's FY 2006 budget request. The personal services category needs to be discussed before the final budget is approved. Mr. Clark responded to a question from Senator Olson that there would be no change in FTE's from 2005 to 2006. At the present time there are 26 full-time employees.

SENATOR BROWN MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING THE SALARY OF THE NEWLY APPOINTED STATE INVESTMENT OFFICER. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The executive session commenced at 11:15 a. m.

SENATOR DEMPSTER MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE SESSION CONCLUDE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The executive session concluded at 11:45 a.m.

REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR BROWN, THAT THE EXECUTIVE BOARD DEFER APPROVAL OF THE FISCAL YEAR 2006 BUDGET REQUEST OF THE SOUTH DAKOTA INVESTMENT COUNCIL AND FURTHER SALARY DISCUSSIONS UNTIL THE NOVEMBER MEETING. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

THIS ISSUE WAS REVISITED WITH THE FOLLOWING CHANGE OF MOTION. REPRESENTATIVE LANGE MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD APPROVE A PROVISIONAL 2006 BUDGET REQUEST OF THE SOUTH DAKOTA INVESTMENT COUNCIL ALLOWING SUBMISSION TO THE BUREAU OF FINANCE AND MANAGEMENT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Director's Report and Correspondence

Legislative Research Council (LRC) Director James Fry submitted the financial statement for LRC to the Board showing that two budget categories were overspent but overall the financial statement shows LRC to have finished the year in very good shape. He advised that there would be no report on the redistricting lawsuit as the judge is still reviewing the information presented to her.

Mr. Fry apprised the board of a request from the School Administrators of South Dakota to conduct a "Model Legislature" at the capitol on November 17, 2004,

SENATOR BROWN MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD APPROVE USAGE OF THE HOUSE CHAMBER BY THE SCHOOL ADMINISTRATORS OF SOUTH DAKOTA TO CONDUCT A MODEL LEGISLATURE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Director Fry also presented to the Board a request from the South Dakota Department of Agriculture for the use of the Senate Chambers for the 44th Annual State Finals Competition of the Resource Conservation Speech Contest. The date for this competition is April 2, 2005.

SENATOR BROWN MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD APPROVE USAGE OF THE SENATE CHAMBER FOR THE DEPARTMENT OF AGRICULTURE TO HOLD THE 44TH ANNUAL RESOURCE CONSERVATION SPEECH CONTEST ON APRIL 2, 2005. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

REPRESENTATIVE LANGE MOVED, SECONDED BY SENATOR OLSON, TO WAIVE THE \$500 DEPOSIT REQUIREMENT FOR THE DEPARTMENT OF AGRICULTURE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Legislative Budget Request

REPRESENTATIVE CRADDOCK MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPROVE THE FISCAL YEAR 2006 BUDGET REQUEST OF THE LEGISLATIVE RESEARCH COUNCIL AS PRESENTED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The Board recessed at 12:00 noon for lunch.

The Board reconvened at 1:00 p.m. and continued with the agenda.

Legislative Audit Budget Request

Mr. Martin Guindon, Auditor General, met with the Executive Board to present to them the FY2006 budget request from the Department of Legislative Audit. He informed the board that the budget request has increased \$66,293. In part this increase is due to an additional FTE along with the purchase of new computers to replace the outdated ones that they now have in their office. He further explained the need of the additional FTE. The annual audit is due March 31 and they have been unable to meet that deadline. When they are late submitting the information, approval must be obtained from the federal government. He explained that last year they had to submit a letter explaining why they were late but he is concerned if his office continues to miss the deadline there will be negative consequences. The additional FTE will help assure that deadlines will be met. He informed the Board that there are various other changes to the budget being submitted and those changes can be reviewed under the document being handed out entitled "State of South Dakota, Department of Legislative Audit" (**Document #2**).

Senator Olson posed the question to Mr. Guindon concerning how payment is handled when we go out of state to do a peer review audit. Mr. Guindon responded by saying that when a South Dakota auditor travels out of state that state pays his travel expense and South Dakota is responsible for his salary. He also advised that when South Dakota has an auditor come into the state we are responsible for his travel but not his salary.

SENATOR BROWN MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE FISCAL YEAR 2006 BUDGET REQUEST OF THE DEPARTMENT OF LEGISLATIVE AUDIT AS PRESENTED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Interim and Subcommittee Reports

Bureau of Information and Telecommunications (BIT) Agency Review Interim Committee: Mr. Aaron Olson, Fiscal Analyst for the Legislative Research Council, reported that Representative Putnam, Committee Chair, was unable to attend but he would enlighten the Board on the committee's actions to date. He reported that their first meeting occurred on June 15, 2004, in the capitol building. Ms. Julie Anderson, South Dakota Public Broadcasting (SDPB), Director, gave a brief review of broadcasting in South Dakota, explained the oversight of SDPB, and provided budget information within the division. Mr. Jerry Gooding, Data Center Director, explained to the interim committee how the Data Center manages and operates the state's production systems.

Commissioner Otto Doll, Bureau of Information and Telecommunications, concluded the presentation to the interim committee with a discussion about the evolution of BIT, the history of BIT's budget, state and federal statutes required by the central service agency and the decision-making process.

Mr. Olson informed the Board that the next meeting was set for Monday, August 16, 2004, and that meeting will focus on the digitization of South Dakota Public Broadcasting.

Department of Education Agency Review Interim Committee: Senator Olson, Interim Committee Chair, advised that the first meeting occurred on June 15, 2004, with Reuben Bezpaletz, Chief Analyst for Research & Legal Services for LRC, instructing the committee about the sunset process. Dr. Rick Melmer, Secretary, Department of Education, presented the director of each division with each of them giving a description of their job and their division's goals. Senator Olson requested the Department of Education to respond to questions submitted to them by the committee and that process is to be completed by September 1, 2004.

At the September 22 meeting there will be public testimony from individuals who have had communication with the Department of Education. Senator Olson advised that money from the federal government pertaining to No Child Left Behind passes straight through to the Department of Education without the Legislature being a part of the process. The federal government requires this money to be spent within twenty-seven months. The Executive Board expressed concern that the Legislature was being left out and questioned if the school districts receiving the money had to have a performance plan. Senator Olson advised that the possibility was very strong that the district could be audited and that they are made aware of that possibility.

Budget Subcommittee: **Representative Cradduck**, Subcommittee Chair, reported the subcommittee supported the LRC and Legislative Audit budgets that had been presented earlier. Discussion is moving forward for an RFP process which would permit the Legislature to have its own economic forecasting component. She advised that the information would be distributed to those that they know would have an interest. The subcommittee's intent is for the Executive Board and the Appropriations Committee to have their own forecast group. Each respondent to the RFP will explain what assistance and information they can provide to the Legislature. This forecast would be reviewed by the Appropriations Committee, LRC, and the Executive Board.

The subcommittee also held extensive discussions regarding who needs a copy of the fiscal staff's analysis budget. The final decision is that 60 copies will be printed and distributed to leadership of the Appropriations Committee and staff. Should a legislator feel that he must have a copy of the budget he can access that copy electronically; however, if that person does not feel comfortable reading an electronic copy, a page can make a paper copy and hole punch it for his use.

Space Planning Subcommittee: **Senator Olson**, Chair, turned the discussion over to Director Fry who updated the Board on the progress of space acquisition for a "Twenty-First Century conference room." He advised there is at least one stumbling block that must be attended to before any location changes take place. That stumbling block is whether the area on first floor to be occupied by BOP can be structurally changed to fit their needs. Director Fry feels that the building of the mansion and DCI building has first priority with any decisions of capitol building occupancy being addressed closer to session. A copy of the First Draft of "A Case Statement for Legislative Accommodations in the Capitol Building" was reviewed (**Document #3**).

Legislative Interns Subcommittee: **Senator Brown** reported to the Executive Board about the work being done by Jacquelyn Storm and David Ortbahn. The consensus of the subcommittee is the need for legislators to visit various colleges around the state. Suggestions were also made by the group that it is necessary to more effectively utilize the interns. On the first day of session the chair and vice-chair should get together to determine how the legislators can use the interns to the best possible advantage. Representative Michels responded by suggesting that when the Legislators Procedure Committee goes through the calendar in November, they add a second afternoon meeting during the first week of session. It is the consensus of the Executive Board that interns are an important part of the legislative process and they can be assigned a wide array of tasks to maximize their usefulness.

Computer Technology Subcommittee: **Ms. Lou Adamson**, LRC Legislative Information System Coordinator, distributed a handout entitled, "Lease Proposal for State of South Dakota Legislative Council" (**Document #4**). This document showed that the annual payment for the use of the laptops is \$102,130.02. Ms. Adamson contacted BIT to get their opinion with regard to the Gateway situation and was informed by them that they were not nervous in the least. The coordinator informed the Board that the legislators cannot buy the

laptop computer they used in the 2004 session as they are leased and must be turned back to Gateway...

REPRESENTATIVE HEINEMAN MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD ACCEPT THE LEASE PROPOSAL BETWEEN THE STATE OF SOUTH DAKOTA AND GATEWAY. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Director Fry briefed the board on the installation of a wireless network for lobbyists, who then will be able to login to the internet from the area around the chambers and from the annex committee rooms including access to different printers. Representative Heineman expressed the desire to have extra power sources made available to the legislators, with the Director responding that they would find a way to have more power sources available in committee rooms.

The recommendations by the Computer Technology Subcommittee suggest the use of an "opt in" procedure should the legislator wish a paper copy of the Bill Books; the Calendar or the Daily Reader. There will be no change in the committee books, Update or the Red Book.

Report on Dakota STEP Testing

Ms. Deb Barnett, Deputy Secretary of the Department of Education, informed the Board of the release of the 2004 adequate yearly progress (AYP) results for public schools and public school districts is on schedule and will be released August 2. A copy of an e-mail to all superintendents and CEOs was distributed to the Executive Board (**Document #5**). She discussed the school improvement status and stated that a school district on improvement status must improve within two years, however, improvement in any class can pull a school out of improvement status. At this point she turned the presentation over to **Mr. Gary Skoglund**, Assessment Director of the SD Department of Education. He distributed a handout entitled, "Fact Sheet," (**Document #6**) showing the results of students tested in Grades 3 through 8 and Grade 11. In the spring of 2004, 74,950 students took part in the testing process. Dakota STEP consists of two types of scores, those being NRT and CRT. CRT scores ONLY in reading and math as directed by NCLB. Mr. Skoglund commented that this test is an untimed test. Students felt they needed more time to complete the test. However, they kept track from last year and 90 percent completed the test in the recommended time frame. A general discussion followed his presentation. Mr. Skoglund responded to a question from Senator Dempster regarding how he perceives the testing. He liked the statistical value the tests provided but felt the tests were too long.

Legislators Back to School Program

Ms. Clare Cholik, LRC Senior Research Analyst, visited with the Board regarding the Legislators Back to School Program, listing the date of September 20 through the 24, which is the same time frame as last year. She offered to get whatever materials the legislators wanted such as video tapes, etc. At this time she does not have all of the material but legislators should begin to contact her the middle of August. Ms. Cholik advised that the time frame is flexible and should you not be able to go during the specified week in

September another time is acceptable. She responded to a question from Senator Olson by advising that the school districts are notified of this program through the SDEA.

Midwest Higher Education Compact

Dr. Robert “Tad” Perry, Executive Director, Board of Regents, met with the board to explain the Midwestern Higher Education Compact. A packet was distributed to the members entitled “MHEC Advancing Education Through Cooperation” (**Document #7**). Dr. Perry indicated to the Board that the compact is governed by a Commission comprised of five commissioners from each state with each member state having to enact a statute to join the compact. MHEC has three functions: cost-saving initiatives, student exchange and policy research. Dr. Perry advised the state membership cost effective July 1, 2005, will be \$90,000 with this being the least expensive of all the compacts.

The Board received information from Dr. Perry indicating that 1450 students came into South Dakota with 1145 going out to western states. He also discussed the programs such as veterinarian studies or dental programs not available in South Dakota. He has offered to come back to the Executive Board in November with cost benefit figures for South Dakota.

West River Working Group

Senator Dennert gave an update on the West River Working Group. He told the Executive Board members that there has been good attendance at the meetings being held. The working group has decided that two meetings will be held East River–Aberdeen and Sioux Falls. One topic of discussion is destruction by prairie dogs. The next meeting will be in August at Hot Springs.

On Line Airline Ticketing

Senator Olson brought to the Board the convenience of on-line ticketing for legislators’ travels. The Senator gave an example of the cost savings on his last meeting that required airline tickets. His suggestion is to send out information to all the legislators. It was discussed that using this type of process to obtain tickets would leave each legislator strictly on his/her own with LRC. unable to participate The discussion among the board brought different pros and cons to this type of reservation handling.

Mobile Voters

Representative Williamson brought his concerns to the Executive Board regarding the impact of the mobile voters (RV’ers) at the November election. He asked if LRC staff could put together a white paper relative to the South Dakota voting requirements which would be helpful to all of the legislators. Hopefully the paper will be completed before November. Representative Williamson felt the residency and absentee requirements are two areas for the staff to review.

REPRESENTATIVE WILLIAMSON MOVED, SECONDED BY SENATOR DEMPSTER, THAT A WHITE PAPER BE PRODUCED AND REVIEWED BY THE EXECUTIVE

COMMITTEE, REPRESENTATIVE WILLIAMSON AND SENATOR DEMPSTER AND THEN MAILED TO ALL THE LEGISLATORS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Next Meeting Date

The Board is scheduled to meet on November 22 and November 23.

SENATOR OLSON MOVED, SECONDED BY SENATOR BROWN, THAT THE EXECUTIVE BOARD ADJOURN. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.



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>).