



# MINUTES

## Executive Board

**Third Meeting**  
**2008 Interim**  
**June 9, 2008**

**Legislative Conference Room 1**  
**State Capitol**  
**Pierre, South Dakota**

The third 2008 interim meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Larry Tidemann at 8:55 a.m. (CT), June 9, 2008, in Legislative Conference Room 1 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene Abdallah, Julie Bartling, Bob Gray, Tom Hansen, Jim Hundstad, Jean Hunhoff (Vice Chair), and Gil Koetzle; and Representatives Quinten Burg, Richard Engels, Kristi Noem, Gordon Pederson, Carol Pitts, J.E. "Jim" Putnam, and Larry Tidemann. Representative Thomas Deadrick was excused.

Staff members present included James Fry, LRC Director, and Teri Retrum, 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.)

**(NOTE:** On Sunday, June 8, 2008, the Technology Subcommittee met at 7:30 p.m. On Monday, June 9, 2008, the Legislative Intern Subcommittee met at 7:45 a.m.; the Investment Council Subcommittee met at 8:15 a.m.; the Personnel Subcommittee met at 8:00 a.m.; and the Technology Subcommittee met at 12:00 p.m.)

### **Approval of Minutes**

**REPRESENTATIVE PITTS MOVED, SECONDED BY SENATOR BARTLING, THAT THE MINUTES OF THE MAY 12, 2008, MEETING BE APPROVED. The motion prevailed unanimously on a voice vote.**

### **Approval of Agenda**

**Chair Larry Tidemann** noted that the Executive Board would be in Executive Session for the Investment Council interviews.

**Senator Gil Koetzle** asked why the proceedings of the Executive Board meetings were not webcast. **Mr. Jim Fry**, LRC Director, said that the Executive Board meetings are not webcast because the meetings are administrative in nature. Mr. Fry said that the Board can change the policy as it wishes. Chair Tidemann said that he has been following previous procedure.

**SENATOR KOETZLE MOVED, SECONDED BY REPRESENTATIVE BURG, THAT DISCUSSION OF WEBCASTING EXECUTIVE BOARD MEETINGS BE ADDED TO THE AGENDA. The motion prevailed on a voice vote. Representative Gordon Pederson voiced a NAY vote.**

**REPRESENTATIVE BURG MOVED, SECONDED BY SENATOR KOETZLE, THAT THE AGENDA BE APPROVED AS AMENDED. The motion prevailed on a voice vote.**

### **Report of Ethanol Retailers**

**Ms. Brenda Forman**, Association of Cooperatives, distributed copies of an excerpt from the May 2008 issue of the "South Dakota Association of Cooperatives (SDAC) Newsletter" (**Document #1**); and **Ms. Dawna Leitzke**, Petroleum Marketers Association, distributed copies of a memo sent to marketers from the Department of Revenue and Regulation, Motor Fuel, and supplemental information, as it appeared in the Association's April 2008 newsletter (**Document #2**). Ms. Foreman and Ms. Leitzke briefed the Board on the issue of ethanol blender pumps. Both Associations support blender pump use. The problem that arose concerns guidance on how to collect the tax on blended fuels. Ms. Leitzke said that the only thing that marketers are concerned about is that they are properly collecting tax based on statute. Ms. Forman said that SDAC members do not have a problem with the new reporting form developed by the Department of Revenue and Regulation to give retailers an easier way to calculate and remit the correct tax. The concern of the marketers is calculating the wrong tax on blender-pump sales and being audited, charged, and fined.

**Representative Rich Engels** asked the status of the letter that the Board directed be mailed to the Governor urging him to rescind his direction to the Department of Revenue and Regulation to notify South Dakota fuel retailers of a new tax return for remitting fuel tax on blended fuels and that such fuel retailers are to remit tax on any new mid-grade ethanol products. Representative Engels said that that he has reviewed the fuel-tax laws and that the Governor does not have the authority to circumvent the actions of the 2008 Legislature.

As directed by Board members at the May 12 meeting, Chair Tidemann stated that a draft letter was sent to all Board members soliciting their response to the draft. The Chair said that four members responded (2 responded to hold the letter; 2 responded to send the letter), so he decided to address the matter further at this meeting.

The Board agreed to further discuss the blended fuel issue later during today's meeting.

### **South Dakota Investment Council (SDIC) Report**

**Senator Bob Gray**, Chair of the Investment Council Subcommittee, introduced **Dr. Angeline Lavin**, Chair of the South Dakota Investment Council (SDIC); **Mr. Rob Wylie**, Executive Secretary of the South Dakota Retirement System (SDRS); and **Mr. Matt Clark**, Investment Officer.

Dr. Lavin and Mr. Clark distributed copies of the Investment Council Report (**Document #3**). Included in the report were copies of the Investment Council's Compensation/Incentive Study. Addressing the report, Dr. Lavin noted the Council's organization chart. She said that that most of the management assets continue to be from the SDRS. Dr. Lavin commented

that the Council continues to operate with low internal asset costs of management fees per \$1,000--\$0.93.

Mr. Clark summarized the trust value and asset allocation of the following:

- Health Care Trust Fund;
- Education Enhancement Trust Fund;
- Dakota Cement Trust Fund; and
- School and Public Lands Trust Fund.

Representative Engels asked SDIC to provide a report of what is in each of the funds. Mr. Clark said that he would provide such a report.

**Representative Quinten Burg** said that the information is in a book that he received as a member of the Government Operations and Audit Committee and that he will provide that information to Representative Engels.

Chair Tidemann thanked Dr. Lavin and Mr. Clark for their report. As Dr. Lavin's SDIC term is ending, the Chair also thanked her for serving on the Investment Council. Dr. Lavin responded in-kind. Chair Tidemann also commended the Council on the continuing success of the SDIC.

Board members echoed Chair Tidemann's comments.

### **Investment Council Interviews and South Dakota Investment Officer's Salary**

**REPRESENTATIVE PEDERSON MOVED, SECONDED BY SENATOR HUNDSTAD, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF INTERVIEWING VIA TELECONFERENCE AN APPLICANT FOR APPOINTMENT TO THE SOUTH DAKOTA INVESTMENT COUNCIL AND FOR THE PURPOSE OF SETTING THE FY 2009 BASE SALARY OF THE SOUTH DAKOTA INVESTMENT OFFICER. The motion prevailed on a voice vote.**

The executive session commenced at 10:00 a.m. and concluded at 10:50 a.m.

**SENATOR GRAY MOVED, SECONDED BY SENATOR ABDALLAH, THAT THE FY 2009 BASE SALARY OF THE SOUTH DAKOTA INVESTMENT OFFICER BE SET AT \$388,356 (4.68% INCREASE). The motion prevailed unanimously on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Abdallah, Bartling, Gray, Tom Hansen, Hundstad, Koetzle, Burg, Engels, Noem, Pederson, Pitts, Putnam, Hunhoff, and Tidemann. Those EXCUSED: Deadrick**

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

**Legislative Research Council (LRC) Director James Fry** presented the financial statement for the period ending 5/31/08 (**Document #4**). Mr. Fry stated that the budget was in good

condition. A portion of the initial construction bill was paid from the operating budget to help provide a contingency fund for the project.

For discussion purposes, Chair Tidemann asked for direction on approving travel for legislators who are not returning to the Legislature.

**Representative J.E. “Jim” Putnam** said that perhaps each travel request should be assessed individually; however, a legislator is elected for a two-year term and serves in that capacity until the returning and newly-elected legislators take their oaths of office. Representative Putnam said that a serving legislator should be considered eligible for travel until the end of the legislative term. Legislators should not be punished because they are term limited.

Senator Koetzle said that different factors should be weighed when making that type of decision.

**Senator Tom Hansen** said that it would be difficult to put in place a hard and fast rule for such travel considering the potential learning experience by attending meetings.

### **Webcasting Executive Board Meetings**

Senator Koetzle said that when webcasting of legislative meetings began, it was at the discretion of the committee chair; then it was decided that committee meetings should be webcast for public consumption. Senator Koetzle proposed that Executive Board meetings be webcast, except for executive sessions.

**Representative Kristi Noem** asked whether meetings such as TCAP also will be webcast. Mr. Fry said that the LRC does not staff that committee so the Board would not have jurisdiction to require webcasting.

**SENATOR KOETZLE MOVED, SECONDED BY REPRESENTATIVE BURG, THAT ALL LEGISLATIVE MEETINGS STAFFED BY LRC BE WEBCAST.**

Representative Engels asked about remote meetings, such as those conducted outside of Pierre.

Representative Putnam suggested adding “where practical” to the motion to clarify that not all meetings will be conducive to webcasting.

Senator Koetzle said that adding “where practical” would be acceptable.

**REPRESENTATIVE ENGELS MOVED, SECONDED BY SENATOR ABDALLAH, THAT THE PENDING MOTION BE AMENDED TO ADD “WHERE PRACTICAL” TO CLARIFY THAT NOT ALL MEETINGS WILL BE CONDUCTIVE TO WEBCASTING.** The motion prevailed on a voice vote.

**Senator Koetzle’s motion, as amended, prevailed on a roll call vote with 12 voting AYE, 2 voting NAY, and 1 EXCUSED. Those voting AYE: Abdallah, Bartling, Gray, Tom**

**Hansen, Hundstad, Koetzle, Burg, Engels, Noem, Pitts, Hunhoff, Tidemann. Those voting NAY: Pederson and Putnam. Those EXCUSED: Deadrick.**

### **Reports of Subcommittees**

#### Legislative Interns Subcommittee—Representative J.E. “Jim” Putnam, Chair

Representative Putnam distributed copies of “Legislator Evaluation of 2008 Legislative Intern Program” and “Intern Evaluation of 2008 Legislative Intern Program” (**Documents #5 and #6, respectively**).

Representative Putnam said that the subcommittee will work on the intern program for the 2009 Legislative Session at its August meeting. He said that the subcommittee wants to explore whether the intern program gives the interns the opportunity to pursue scholarship opportunities or hinders that opportunity. Representative Putnam stated that the Intern Program continues to be a valuable and successful program.

#### Personnel Subcommittee—Representative Larry Tidemann, Chair

**REPRESENTATIVE PUTNAM MOVED, SECONDED BY REPRESENTATIVE ENGELS, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF HEARING THE REPORT OF THE PERSONNEL SUBCOMMITTEE. The motion prevailed on a voice vote.**

**The executive session commenced at 11:30 a.m. and concluded at 11:50 a.m.**

**Senator Jean Hunhoff**, Executive Board Vice Chair, assumed the Chair.

Chair Tidemann said that **Mr. Martin Guindon**, Auditor General, briefed the Subcommittee on the personnel report of the Department of Legislative Audit. He said that Mr. Guindon reported that the department has hired three auditors who began working today and that the department will be hiring three more auditors in the future. These individuals will be replacing retiring employees.

**REPRESENTATIVE TIDEMANN MOVED, SECONDED BY REPRESENTATIVE PUTNAM, THAT THE EXECUTIVE BOARD ACCEPT THE FY 2009 SALARY RECOMMENDATIONS FOR THE DEPARTMENT OF LEGISLATIVE AUDIT, INCLUDING THE THREE PERCENT SALARY INCREASE FOR THE AUDITOR GENERAL. The motion prevailed on a roll call, with 14 voting AYE and 1 EXCUSED. Those voting AYE: Abdallah, Bartling, Gray, Tom Hansen, Hundstad, Koetzle, Burg, Engels, Noem, Pederson, Pitts, Putnam, Hunhoff, and Tidemann. Those EXCUSED: Deadrick.**

Representative Tidemann resumed the Chair.

The Executive Board recessed at 11:55 a.m. to tour the fourth floor renovation and reconvened at 1:15 p.m.

## **Reports of Subcommittees (Continued)**

### Computer Technology Subcommittee—Representative Carol Pitts, Chair

Representative Pitts said that the subcommittee met with **Ms. Lou Adamson**, Legislative Information System Coordinator, and Director Fry to discuss the type of computer to recommend for legislative use for FY 2009. She said that the main difference between the two computer choices is the size of the screen. Representative Pitts said that the subcommittee is undecided on which to recommend to the Executive Board and has voted to ask the Budget Subcommittee of the Executive Board to review the information to help the Technology Subcommittee make a decision. The subcommittee agreed to recommend that the two-year lease, with backup by the Bureau of Information and Technology (BIT), be continued. Representative Pitts said that the subcommittee also discussed the current use of legislative phone cards and the potential legislative use of a BlackBerry® on the state system. Representative Pitts said that the subcommittee will continue to review the situation. She said that discussion also centered on discontinuing phone cards and pursuing cell phone access. In that regard, Representative Pitts said that the subcommittee also is requesting the Budget Subcommittee's guidance on the idea of giving \$250 to each legislator to use toward telephone and internet reimbursement and to discuss the possibility of discontinuing the phone cards unless specifically requested.

Senator Koetzle said that the current practice is to provide \$100 phone cards to legislators and \$150 phone cards to legislative leaders and asked how the possible elimination would fit into the proposals. Mr. Fry said that communication provisions would encompass several options. Mr. Fry said that \$250 would not cover the cost of a BlackBerry®. He noted that that process might involve a possible tax obligation.

Representative Putnam asked if the plan is to eliminate phone cards. Mr. Fry responded negatively.

### **Discussion of the Letter to the Governor Regarding Blended Fuels**

Representative Putnam said that the audit that the retailers are concerned about is an audit by the Department of Revenue and Regulation not a legislative audit by the Department of Legislative Audit. He expressed his approval for the letter before the Board today (**Document #7**).

Representative Engels also expressed support for the letter and said that it should be mailed to the Governor today.

Representative Burg agreed.

Stating that he is concerned about the possibility that retailers could be harassed by the Department of Revenue, **Senator Jim Hundstad** said that the letter meets with his approval.

**Senator Gene Abdallah** said a legislative committee decided not to pass the 2008 legislation; it is a legislative issue and the Governor should abide by the Legislature's decision. The issue can be addressed during the 2009 Legislative Session.

Senator Bob Gray said that he voted for the letter not because it would tax ethanol blends but because the issue involves separation of governmental powers.

Representative Pitts said that she objected to the letter because she believes that, if there is an issue with the Governor, it should be discussed with the Executive Branch.

Representative Noem said that the proper process was taken and that she supports sending the letter to the Governor.

**SENATOR BARTLING MOVED, SECONDED BY REPRESENTATIVE BURG, THAT CHAIR TIDEMANN SIGN THE LETTER AND THAT IT BE SENT TO THE GOVERNOR TODAY.**

Senator Gray said that a motion is not needed because the Board already directed that a letter be sent at its May meeting.

Board members agreed, and the signed letter will be sent to the Governor.

**Member Change  
to the  
Interim South Dakota Highway Needs and Financing Committee**

Chair Tidemann informed the Board that Senator Bill Napoli has withdrawn his appointment to the interim South Dakota Highway Needs and Financing Committee and asked for direction on whether Senator Napoli should be replaced.

Representative Noem expressed her interest in serving on the committee.

**SENATOR ABDALLAH MOVED, SECONDED BY REPRESENTATIVE PUTNAM, THAT THE BOARD APPOINT REPRESENTATIVE KRISTI NOEM TO THE INTERIM SOUTH DAKOTA HIGHWAY NEEDS AND FINANCING COMMITTEE. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Abdallah, Bartling, Gray, Tom Hansen, Hundstad, Koetzle, Burg, Engels, Noem, Pederson, Pitts, Putnam, Hunhoff, and Tidemann. Those EXCUSED: Deadrick.**

**Investment Council Interviews (Continued)**

The Board went into Executive Session at 2:00 p.m. and came out of Executive Session at 4:35 p.m.

**Investment Council Appointment**

**REPRESENTATIVE BURG MOVED, SECONDED BY REPRESENTATIVE PEDERSON, THAT WESLEY G. TSCHETTER BE APPOINTED TO A FIVE-YEAR TERM ON THE SOUTH DAKOTA INVESTMENT COUNCIL. SAID TERM TO COMMENCE JULY 1, 2008, AND EXPIRE ON JUNE 30, 2013. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Abdallah, Bartling, Gray, Hansen, Hundstad, Hunhoff, Koetzle, Burg, Engels, Noem, Pederson, Pitts, Putnam, and Tidemann. Those EXCUSED: Deadrick.**

## Adjournment

**REPRESENTATIVE PEDERSON MOVED, SECONDED BY REPRESENTATIVE PITTS, THAT THE EXECUTIVE BOARD ADJOURN. The motion prevailed on a voice vote.**

The Executive Board adjourned at 4:40 p.m.

