



MINUTES

Executive Board

**Third Meeting
2009 Interim
June 8, 2009**

**Legislative Conference Rooms 1 & 2
State Capitol
Pierre, South Dakota**

The third 2009 interim meeting of the Legislative Research Council Executive Board was called to order by Chair Senator Jean Hunhoff at 9:00 a.m. (CT), June 8, 2009, in Legislative Conference Rooms 1 & 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene G. Abdallah, Dan P. Ahlers, Jean M. Hunhoff (Chair), Ryan Maher, and Craig Tieszen; and Representatives Quinten L. Burg (Ranking Minority Member), Dustin Cronin, Larry Lucas, J.E. "Jim" Putnam, Larry Tidemann, and Charles M. Turbiville. Senators Bob Gray and Kathy Miles and Representatives Shantel Krebs (Vice Chair), and Tim Rave were excused.

(Note): In lieu of **Representative Vice Chair Shantel Krebs'** excused absence, **Representative Quinten L. Burg, Ranking Minority Member**, served alongside **Chair Jean Hunhoff**.

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

(Note): For the purpose of continuity, these minutes are not necessarily in chronological order. Also, all material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

(Note): On Monday, June 8, 2009, the Legislative Intern Subcommittee met at 7:45 a.m., and the Investment Council Subcommittee met at 8:15 a.m.

Approval of Minutes

REPRESENTATIVE TURBIVILLE MOVED, SECONDED BY REPRESENTATIVE CRONIN, THAT THE MINUTES OF THE MAY 11, 2009, MEETING BE APPROVED. The motion prevailed unanimously on a voice vote.

Approval of Agenda

There being no changes to the agenda, **Chair Jean Hunhoff** declared the agenda approved.

Chair Hunhoff explained that the Executive Board will follow precedence and will be in Executive Session for the portion of the agenda reserved for Investment Council interviews and discussion of the Investment Officer's salary.

Director's Report

Mr. Jim Fry, LRC Director, reported that the LRC budget is in good condition. Money will be left over to revert to the general fund. Some of the money budgeted for the renovation of fourth floor can be used to technologically update Rooms 423 and 464 and Legislative Conference Rooms 1 and 2. That left-over money must be used or reverted to the state general fund by the end of FY 2011. Mr. Fry commented that the newly remodeled meeting rooms on fourth floor are in high demand, and nearly all are reserved by state agencies for meetings this summer.

Chair Hunhoff asked that this topic be added to the agenda for the next meeting. She also asked for a report on the room usage.

Representative Larry Lucas asked for the status of legislative travel requests to attend out-of-state meetings. Chair Hunhoff said that she has honored all requests from legislators who are a member of a national committee.

Representative Lucas asked for a list of NCSL attendees.

South Dakota Investment Council (SDIC) Report

Representative Larry Tidemann, Chair of the Investment Council Subcommittee, asked **Mr. Matt Clark**, Investment Officer, to discuss the status of the SDIC.

Mr. Clark distributed copies of the Investment Council Report (**Document #1**). Included in the report were copies of the Investment Council's organizational chart; a graph depicting assets managed for fiscal years 1973 to 2008 and an estimate for Fiscal Year 2009 through May 31, 2009; a summary of trust fund value and asset allocation; and a copy of the 2006 compensation/incentive study.

Mr. Clark reported that the term of current Chair, Mr. Curt Johnson, expires June 30, 2009, and announced that Mr. Paul Livermore will be the new Chair of the Investment Council, and Mr. Haven Stuck will serve as Vice Chair.

Beginning his report, Mr. Clark stated that he, and others, cautioned that the markets were too good to last but that they did not expect it to be as bad as this market occurrence. Although, Mr. Clark said that the investment outlook is currently more optimistic than it has been. He said that most of the management assets continue to be from the SDRS. The SDRS has lost about 19.5% of its value since last July but is in much better condition than it was when the holdings were down as much as 40% a few months ago. Mr. Clark said that the SDIC is the only public investment office in the country that uses merger arbitrage. The Council is currently fully staffed—among the Council's employees are 22 professional investors and 4 CPAs in investment accounting.

Mr. Clark discussed the summary of trust fund value and asset allocation. He said that the principal of the Health Care Trust needs to be above \$84,631,024 in order to get a payout; however, the principal is only \$2 million below that amount. The Dakota Cement Trust is behind 32,172,960, and the Education Enhancement Trust is \$20,884,251 behind. Mr. Clark

said that, as the stock market continues to improve, those amounts will increase and will generate a payout.

Mr. Clark said that the Council is recommending a freeze in salaries, except for promotional increases, for Investment Council employees. Mr. Clark's salary is also recommended to be frozen at current pay.

State Investment Officer's Salary

REPRESENTATIVE BURG MOVED, SECONDED BY SENATOR AHLERS, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING AND SETTING THE STATE INVESTMENT OFFICER'S SALARY. The motion prevailed on a voice vote.

The executive session commenced at 10:30 a.m.

SENATOR MAHER MOVED, SECONDED BY REPRESENTATIVE BURG, TO CONCLUDE THE EXECUTIVE SESSION. The motion prevailed on a voice vote.

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

REPRESENTATIVE PUTNAM MOVED, SECONDED BY REPRESENTATIVE TURBIVILLE, THAT THE SALARY FOR THE STATE INVESTMENT OFFICER BE FROZEN FOR FY 2010 AND THAT THE INCENTIVE PAY PLAN BE CONTINUED. The motion prevailed on a roll call vote with 11 voting AYE and 4 EXCUSED. Those voting AYE: Abdallah, Ahlers, Maher, Tieszen, Burg, Cronin, Lucas, Putnam, Tidemann, Turbiville, and Hunhoff. Those EXCUSED: Gray, Miles, Krebs, and Rave.

(Note): The Board agreed to discuss the Investment Officer's incentive pay at the Board's August meeting.

Investment Council Interviews

REPRESENTATIVE TIDEMANN MOVED, SECONDED BY SENATOR TIESZEN, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF INTERVIEWING APPLICANTS FOR APPOINTMENT TO THE SOUTH DAKOTA INVESTMENT COUNCIL. The motion prevailed on a voice vote.

The executive session commenced at 11:30 a.m.

REPRESENTATIVE PUTNAM MOVED, SECONDED BY REPRESENTATIVE LUCAS, THAT THE EXECUTIVE SESSION CONCLUDE. The motion prevailed on a voice vote.

The executive session concluded at 3:30 p.m.

REPRESENTATIVE TIDEMANN MOVED, SECONDED BY REPRESENTATIVE PUTNAM, THAT HUGH BARTELS BE APPOINTED TO A FIVE-YEAR TERM ON THE SOUTH DAKOTA INVESTMENT COUNCIL, SAID TERM TO COMMENCE JULY 1, 2009, AND EXPIRE ON JUNE 30, 2014. The motion prevailed on a roll call vote with 11 voting AYE

and 4 EXCUSED. Those voting AYE: Abdallah, Ahlers, Maher, Tieszen, Burg, Cronin, Lucas, Putnam, Tidemann, Turbiville, and Hunhoff. Those EXCUSED: Gray, Miles, Krebs, and Rave.

Board members said that all applicants were very qualified and thanked all who participated in the interviews. They also encouraged the applicants to apply for next year's appointment.

Senator Gene Abdallah requested that Mr. Clark furnish the Executive Board with the following information:

- Terms of the Investment Council's contract with Mr. Steve Myers, former Investment Officer;
- Reason for the contract;
- Amount of Mr. Myer's compensation; and
- Length of contract.

Review of Legislative Issues and Standards

Code of Ethics

Representative Lucas addressed his concern regarding a legislative code of ethics. He suggested that training on such a code and sexual harassment could be provided to all new legislators and interested returning legislators, perhaps a legislative forum prior to the Governor's Budget Address.

Representative Burg asked Representative Lucas if there is a specific incident that precipitated his concern.

Representative Lucas responded that he was more interested in a preventative posture regarding his request. For example, Representative Lucas stated that the field of legislative candidates could be broadened if there were a more clear definition of legislative conflict of interest.

Senator Abdallah said that anyone currently serving in the Legislature could be considered to have a conflict of interest, such as a legislator who is a farmer and votes on farm issues or a legislator who works in the insurance industry and votes on insurance matters.

Representative J.E. "Jim" Putnam said that the Attorney General is the best source to determine whether a legislator or a legislative candidate has a conflict of interest.

Chair Hunhoff said that there is a difference between a code of ethics and a code of conduct and asked Representative Lucas to clarify his point.

Representative Lucas said that there could be a situation in which a Legislator should not be involved; if a vote can be influenced in such situation, there could be a conflict of which the legislator should be apprised.

Representative Putnam commented that it would be very difficult to put something into words to state that a Legislator is voting on an issue with which that Legislator has a conflict. He

reiterated that the Attorney General makes that decision if the matter is brought to his attention.

Senator Dan Ahlers suggested that something concerning ethics be offered to new legislators and a refresher course to returning legislators to learn how to make the best decisions regarding a possible conflict of interest. Senator Ahlers said that it does not have to be put into a "book of rules" or legislation but could be more informative in nature.

Representative Lucas agreed that it would be difficult to put it in writing but that information on the issue should be provided; perhaps a seminar to apprise legislators of situations that might cause trouble for legislators.

With the consensus of the Executive Board, Chair Hunhoff asked Representative Lucas to discuss the matter with LRC staff and to research what would be available in the orientation manual regarding a code of ethics and the possibility of asking the Attorney General to address the issue at legislative orientation.

Representative Burg said that maybe the Attorney General could visit with each caucus regarding the issue of conflict of interest.

Representative Lucas agreed to research the matter with LRC staff and report to the Executive Board at its next meeting.

Interim Tours by Committees, Criteria for Approval

Chair Hunhoff informed the Board that she approved a request by the Senate and House Standing Committees on Agriculture and Natural Resources to conduct an interim tour to gather information regarding agricultural assessment matters. She asked whether the Board wanted to set a policy regarding requests for tours from other interim committees.

Representative Burg said that the East River Tour and West River Tour taken by the Appropriations Committee during the interim has proven to be very valuable to the committee because it votes on funding those facilities visited. He said that there is merit to other committees taking tours; however, Representative Burg expressed some reservation about approving such tours in current economic circumstances.

Senator Ryan Maher said that he would rather have legislators travel within the State of South Dakota than travel to out-of-state meetings. Senator Maher said that LRC can include cost of in-state tours in its budget and let it go through the budget process.

Representative Burg said that it is a good idea to explore.

Representative Justin Cronin asked if outside sources could be used to pay for tours.

Chair Hunhoff suggested that the topic be reviewed and addressed at the next meeting.

Representative Turbiville expressed opposition to private funding of tours or meetings. He said that he prefers to find a method of funding so there is no appearance of conflict of interest.

Senator Abdallah stated that, as a general legislative travel policy, perhaps the focus should be on in-state travel rather than out-of-state travel.

Chair Hunhoff commented that the discussion has been a good place to start. The Chair said that she approved the Senate and House Agriculture and Natural Resources Committees' request to conduct an interim tour and that private industry will cover part of the travel expenses, such as meals.

Appropriations Committee—Accelerated Start Prior to Session

Representative Putnam said that the Appropriations Committee is the proper venue for discussion on an accelerated start of the Appropriations Committee prior to session. He said that many factors must be considered before a decision on such a change would be made. Representative Putnam said that lots of money and expenditures could be involved, plus staff time, etc.

Chair Hunhoff referred this discussion to the Appropriations Committee at its next meeting.

Representative Tidemann said that the request is noted.

Legislative Interns Subcommittee—Representative Larry Tidemann, Vice Chair

Representative Tidemann said that the Legislative Interns Subcommittee will review and report at the next meeting the results of the “Legislator Evaluation of 2009 Legislative Intern Program” and “Intern Evaluation of 2009 Legislative Intern Program.”

Representative Tidemann said that a total of 22 legislative interns worked during the 2009 Legislature—14 for the majority party; 8 for the minority party.

At this time, Chair Hunhoff suggested that subcommittees that have not yet met and want to schedule a meeting contact LRC staff to make those arrangements and get the subcommittee on the agenda for the next Executive Board meeting.

Adjournment

SENATOR ABDALLAH MOVED, SECONDED BY REPRESENTATIVE TURBIVILLE, THAT THE EXECUTIVE BOARD ADJOURN. The motion prevailed on a voice vote.

The Executive Board adjourned at 4:15 p.m.

