



MINUTES

Executive Board

**Three hundred thirty-third Meeting
Tuesday
April 18, 2006**

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

Tuesday, April 18, 2006

The three hundred thirty-third meeting of the Legislative Research Council Executive Board was called to order by Chair Senator Ed Olson at 9:00 a.m. (CT), April 18, 2006, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Mike Broderick, Bob Gray, Ed Olson, and Jim Peterson; and Representatives H. Paul Dennert, Phyllis Heineman, Jean Hunhoff, Barry Jensen, Matthew Michels, Gordon Pederson, and Elaine Roberts. Senators William Earley, Gil Koetzle and Lee Schoenbeck; and Representative J.E. "Jim" Putnam were excused.

Staff members present included James Fry, Director; Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services; Fred Baatz, Principal Research Analyst; Sue Cichos, Senior Fiscal Analyst; Annie Mehlhaff, Principal Fiscal Analyst; Aaron Olson, Fiscal Analyst; David Ortbahn, Principal Research Analyst; and Jacquelyn Storm, Principal Legislative Attorney.

(**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.)

Approval of Minutes

SENATOR GRAY MOVED, SECONDED BY REPRESENTATIVE ROBERTS, THAT THE EXECUTIVE BOARD APPROVE THE MINUTES OF THE NOVEMBER 27 AND 28, 2006, AND FEBRUARY 27, 2006, MEETINGS AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Approval of Agenda

There being no objection, Chair Olson declared that discussion of the South Dakota Legislature's participation in the Midwestern Higher Education Compact (MHEC) would be added to today's agenda.

Introductory Remarks

Chair Ed Olson announced the resignation of **Representative Pat Haley** from the Executive Board and the appointment of **Representative Elaine Roberts** as his replacement. Chair Olson commented on the fine contribution to the Board made by Representative Haley and expressed welcome to Representative Roberts.

Director's Report and Correspondence

Legislative Research Council (LRC) Director James Fry reported that the Children's Home Society and Poetry Out Loud organizations used the Senate Chambers to conduct meetings, and the Teenage Republicans used both the House and Senate Chambers to hold its conference. Mr. Fry said that all organizations left the chambers in excellent condition, and the deposit check from each was returned.

Mr. Fry presented the financial statement for the period ending 4/7/06 (**Document #1**). He stated that the budget was in good condition.

Mr. Fry told the Board that discussions are underway on how best to remedy the condition of the chairs in both chambers.

Also noted by Mr. Fry was the hiring of an LRC support staff person to fill one of the two vacant support staff positions in the office.

Mr. Fry informed the Board that **Mr. Fred Baatz**, Principal Research Analyst, has requested to step down as the LRC representative to the Personnel Management Advisory Board (PMAB), and **Ms. Annie Mehlhaff**, Principal Fiscal Analyst, has asked to be the new LRC representative to the PMAB.

REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR BRODERICK, THAT THE EXECUTIVE BOARD APPOINT MS. ANNIE MEHLHAFF AS THE LRC REPRESENTATIVE TO THE PMAB. The motion prevailed on a voice vote.

Representative Jean Hunhoff asked if there were any reports available outlining the activities of the PMAB.

Mr. Fry said that the LRC representative verbally discusses with him the activities of the PMAB and asked Representative Hunhoff if she wants a formal report given to the Executive Board's Personnel Subcommittee. Representative Hunhoff responded affirmatively, and Chair Olson directed the LRC PMAB representative to report to the Executive Board's Personnel Subcommittee on the activities of the PMAB.

Discussion on the Selection of Chairs and Vice Chairs Regarding the Sexual Assault and Visitation Task Forces

Mr. Fry referred the Board members to preliminary rosters of appointees to the Sexual Assault and Visitation Task Forces (**Documents #2 and #3, respectively**).

Representative Matthew Michels stated his dissatisfaction with the appointment process to legislative mandated task forces and expressed his opinion that such mandated studies should be discouraged. Representative Michels said that there is not a formal mechanism to find out names of people who would be interested in serving on task forces and that he is still working on his appointments. Representative Michels suggested that the Board wait until all the legislators are appointed before selecting the chairs and vice chairs of the task forces.

Chair Olson agreed with Representative Michels' comments, and the decision of the chairs and vice chairs of the task forces will be on the Board's May 15, 2006, meeting agenda.

Discussion on the South Dakota Legislature's participation in MHEC

Chair Olson reported that **Dr. Tad Perry**, Executive Director of the South Dakota Board of Regents, told him that it would be beneficial for South Dakota to belong to both MHEC and the Western Interstate Commission for Higher Education (WICHE) and not one over the other. In their discussion, Chair Olson stated that Dr. Perry said that he wants to continue the state's long-standing and successful relationship with WICHE. Chair Olson said that membership to MHEC would cost \$90,000 annually.

Representative Roberts said that, from reading the materials that Representative Haley gave to her, she believes there is not only a benefit to the Legislature but a real benefit to interested students. She expressed a belief in the continuum of education. Representative Roberts said that she views participation in such organizations not as an expenditure but as an investment.

Senator Mike Broderick said that he would like to give the matter some more thought and suggested that Board members review the materials and make a decision at a future meeting.

Representative Jean Hunhoff said that she would like a comparison between WICHE and MHEC and costs and options available of each. Representative Hunhoff said that she, too, would prefer to wait before making a final decision.

Chair Olson agreed that the decision could be made at the next meeting and asked that it be included on the May 15 agenda.

Representative Roberts requested information from the Bureau of Information and Telecommunications on how this could come together technologically.

Request from the Broadcasters of the Vietnam War Memorial Festivities

Mr. Fry explained that the broadcasters of the Vietnam War Memorial Ceremony have requested to put their equipment in and broadcast from the LRC Conference Room.

There being no objections, **SENATOR BRODERICK MOVED, SECONDED BY REPRESENTATIVE DENNERT, TO GIVE PERMISSION TO THE BROADCASTERS OF THE VIETNAM MEMORIAL CEREMONY TO PUT THEIR EQUIPMENT IN AND BROADCAST FROM THE LRC CONFERENCE ROOM.** The motion prevailed on a voice vote.

The Executive Board recessed at 9:50 a.m. and reconvened at 10:20 a.m.

Public Testimony on Interim Study Requests (Document #4)

Mr. Greg Dean, South Dakota Telecommunications Association (SDTA), testified in support of Study Topic L—A study of state and local taxes and fees imposed on the telecommunications industry and how the taxes and fees are distributed. Mr. Dean said that the study is important due to technological and regulatory changes in the telecommunications industry. Also, Mr. Dean said that it would provide an opportunity to discuss the revenue impact to local governments.

Discussion and Selection of State Agencies to be Reviewed During the 2006 Interim

Representative Michels said that a regental review this interim would be appropriate due to the discussion during the 2006 Legislative Session concerning the University of South Dakota Sioux Falls (USDSF). According to Representative Michels, one of the questions to be answered is whether the Board of Regents is a "fourth branch of government or a twig of a third branch of government."

Responding to a question from **Senator Bob Gray**, and on behalf of Representative Michels, **Ms. Jacquelyn Storm**, Principal Legislative Attorney, LRC, distributed copies of the enabling Act to provide for the periodic review of the agencies of state government (**Document #5**).

REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR BRODERICK, THAT THE BOARD SELECT THE SOUTH DAKOTA BOARD OF REGENTS AS ONE OF THE AGENCIES TO BE REVIEWED DURING THE 2006 INTERIM. The motion prevailed on a voice vote.

Representative Phyllis Heineman asked staff what the agency review committees should expect and request from the agencies selected for review.

At the request of Chair Olson, **Mr. Reuben Bezpaletz**, Chief of Research Analysis and Legal Services, LRC, addressed Representative Heineman's concerns. Mr. Bezpaletz said that an agency review should be a legislative oversight of that agency. He encouraged agency

review committees to enlist the agency's help in identifying concerns and problems that people and organizations have with the agency's way of doing business so that the committee gets a true overview of the agency.

Representative Hunhoff commented that the reviews should allow the committees to explore whether an agency is working on the problems of the public and asked how to improve the trust of state agencies and the public to better serve the citizens of the state.

Chair Olson agreed that the legislative review committees should work in an oversight capacity but not in a punitive posture. He said that the committees will have to rely on staff to guide the process.

Representative Heineman asked staff to design a process by which the agency review committees can get the information required for a successful review and present it to the Board at its next meeting.

Further discussion on what agencies to review included a suggestion from **Representative H. Paul Dennert** who said that, with the concern over Avian flu, the Department of Health would be a good selection. Representative Michels said that, with the utilization of the South Dakota National Guard in the world situation, perhaps the Department of Military and Veterans Affairs would present a focused and topical review.

Representative Gordon Pederson expressed support for Representative Michels' suggestion.

Representative Dennert said that he also liked Representative Michels' proposal of reviewing the Department of Military and Veterans Affairs.

Representative Hunhoff said that one of the things that often comes up is that there is no oversight of boards and commissions and that concern probably should be addressed at some time.

REPRESENTATIVE DENNERT MOVED, SECONDED BY REPRESENTATIVE GORDON PEDERSON, THAT THE BOARD SELECT THE SOUTH DAKOTA DEPARTMENT OF MILITARY AND VETERANS AFFAIRS AS THE SECOND AGENCY TO BE REVIEWED DURING THE 2006 INTERIM. The motion prevailed on a voice vote.

SENATOR BRODERICK MOVED, SECONDED BY REPRESENTATIVE MICHELS, THAT THE EXECUTIVE BOARD SELECT STUDY TOPIC LETTER L—A STUDY OF STATE AND LOCAL TAXES AND FEES IMPOSED ON THE TELECOMMUNICATIONS INDUSTRY AND HOW THE TAXES AND FEES ARE DISTRIBUTED. THE STUDY SHALL INCLUDE THE FOLLOWING ELEMENTS: EXAMINE ALL TYPES OF TECHNOLOGY AND THE TAXES AND FEES PAID; DETERMINE WHETHER THE GROSS RECEIPTS TAX ON WIRELESS TELECOMMUNICATIONS INDUSTRY LEVELS THE PLAYING FIELD IN THE TELECOMMUNICATIONS INDUSTRY; IDENTIFY ALTERNATIVE SOURCES OF REPLACEMENT REVENUE IF ANY TELECOMMUNICATIONS TAXES AND FEES ARE

DECREASED OR REPEALED; COMPARE THE IMPACT OF THE GROSS RECEIPTS TAX ON A COMPETITIVE COMMUNICATIONS INDUSTRY VERSUS A REGULATED COMMUNICATIONS INDUSTRY; COMPARE THE TAXES AND FEES PAID BY SOUTH DAKOTA TELECOMMUNICATIONS COMPANIES AND CONSUMER TO THE AMOUNT PAID IN THE SURROUNDING STATES; DETERMINE WHETHER THE GROSS RECEIPTS TAX CAPTURES ANY INCOME FROM NONRESIDENTS WHEN THEY UTILIZE WIRELESS COMMUNICATIONS SERVICES IN SOUTH DAKOTA; REVIEW THE IMPACT OF NEW TECHNOLOGY INCLUDING VOICE OVER INTERNET PROTOCOL (VoIP) ON CURRENT PROVIDERS AND THE ABILITY OF THE STATE TO IMPOSE TAX AND FEES ON NEW TECHNOLOGY; REVIEW CURRENT FEDERAL LEGISLATION AND DOCKETS AT THE FCC WHICH MIGHT INVOLVE SOUTH DAKOTA'S ABILITY TO APPLY TAXES, FEES AND REGULATIONS TO TELECOMMUNICATIONS AND INFORMATION DEVELOPMENT, AND DETERMINE WHETHER THESE TAXES AND FEES AFFECT THE AFFORDABILITY OF CERTAIN TELECOMMUNICATIONS SERVICES OR INFLUENCE THE TYPE OF TELECOMMUNICATIONS SERVICE SELECTED FOR USE. THE COMMITTEE SHALL MAKE RECOMMENDATIONS ON THE TYPE AND AMOUNT OF TAXES AND FEES THAT SHOULD BE LEVIED ON THE TELECOMMUNICATIONS INDUSTRY AND HOW THAT MONEY SHOULD BE DISTRIBUTED. THE RECOMMENDATIONS SHALL CONSIDER THE EQUITY, EFFICIENCY, NEUTRALITY AND SIMPLICITY IN ADMINISTERING ANY TAXES AND FEES LEVIED ON THE INDUSTRY. The motion prevailed on a voice vote.

Responding to Representative Michels' question regarding whether the Board should select more topics for interim study, Mr. Fry said that, with the selection of the telecommunications taxation topic, and with the heavily-staff involved agency reviews, the staff will be working hard to complete the selections already made. He said that there is enough staff to complete the interim course of study as it now stands.

Chair Olson said that the Board wants staff to structure the agency reviews in a manner that will be the most beneficial.

Chair Olson declared that the Board be at ease at 11:25 a.m. to informally discuss Representative Heineman's question about how to address the concerns outlined in Survey Letter E—A study of all the children in the state who are between the ages of 16 and 18, and who have dropped out of school or are in an alternative program. A review of the number of children in this category, why they dropped out, and the services and programs available to them, the costs of the services and programs, and how successful they are and an examination of innovative approaches being used in other states to keep at risk youth in school.

Chair Olson called the Board back to order at 11:35 a.m.

Selection of Issue Memoranda

REPRESENTATIVE HEINEMAN MOVED, SECONDED BY REPRESENTATIVE ROBERTS, THAT STAFF WRITE AN ISSUE MEMORANDUM TO ADDRESS THE CONCERNS OUTLINED IN SURVEY LETTER E. The motion prevailed on a voice vote.

After discussion of what information to include in an issue memorandum on government competing with private enterprise, **REPRESENTATIVE GORDON PEDERSON MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE BOARD SELECT THE TOPIC AS AN ISSUE MEMORANDUM BUT THAT THE DETAILS OF WHAT INFORMATION SHOULD BE INCLUDED WILL BE ADDRESSED AT THE NEXT MEETING. The motion prevailed on a voice vote.**

In developing what information should be included in the issue memorandum concerning government competing with private enterprise, Representative Hunhoff said that revenue impacts should be involved in the written discussion.

Representative Dennert suggested an issue memorandum on study topic letter P—A review of the Division of Railroads, the Railroad Authority, the Railroad Trust Fund, and the regional railroad authorities as to how all these entities are presently promoting agricultural economic development and how these efforts can be further enhanced in the future.

At this time, Senator Broderick expressed his concern with the proposed ballot initiative—Amendment D—concerning rolling back property taxes. He requested that an issue memorandum be written to address the affect such a rollback would have on the State of South Dakota, on the counties and municipalities in the state, and the citizens of the state.

SENATOR BRODERICK MOVED, SECONDED BY REPRESENTATIVE ROBERTS, THAT STAFF WRITE AN ISSUE MEMORANDUM TO ADDRESS THE EFFECT ON REVENUES TO THE STATE OF SOUTH DAKOTA, COUNTIES, MUNICIPALITIES, IF AMENDMENT D PASSES. The motion prevailed on a voice vote.

Representative Michels said that such a paper also should include discussion of the effect on the 150% rule and NA-Z property.

Chair Olson said that the effect on school districts also should be included.

Senator Jim Petersen said that he does not support Amendment D; however, he does not believe that it should be a topic for an issue memorandum.

Representative Michels stated that there is so much misinformation on this issue and said that he is not sure that it should be addressed in an issue memo.

Senator Broderick said that it does not have to be an issue paper, but he does want a report to address the issue for his personal information and that he will share the information with Board members.

Chair Olson asked staff to put this issue on the May agenda for dialogue and information.

Mr. Fry said that staff can provide the main issues; however, for hard data, staff most likely would need to ask the Department of Revenue for input.

Mr. Shawn Lyons, Executive Director, South Dakota Retailers Association, said that his association has not taken a formal position; however, he indicated that a coalition of organizations has been formed to oppose Amendment D. The coalition will be discussing an educational campaign and review Department of Revenue data at a forthcoming meeting.

Chair Olson asked Mr. Lyons to apprise Director Fry of any data and information that becomes available.

Mr. Lyons said that he would provide any information and data to Director Fry.

At Senator Broderick's request, Chair Olson directed that an informational report be written concerning Amendment D instead of an issue memorandum and that that request be reflected in Senator Broderick's motion.

Senator Broderick's motion, with the concurrence of the second, and with the change from an issue memorandum to an informational report, prevailed on a voice vote.

REPRESENTATIVE DENNERT MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT STAFF WRITE AN ISSUE MEMORANDUM ON SURVEY TOPIC LETTER P—A REVIEW OF THE DIVISION OF RAILROADS, THE RAILROAD AUTHORITY, THE RAILROAD TRUST FUND, AND THE REGIONAL RAILROAD AUTHORITIES AS TO HOW ALL THESE ENTITIES ARE PRESENTLY PROMOTING AGRICULTURAL ECONOMIC DEVELOPMENT AND HOW THESE EFFORTS CAN BE FURTHER ENHANCED IN THE FUTURE. The motion prevailed on a voice vote.

Representative Heineman suggested that survey study topic I concerning a review of the makeup of standing committees be placed on the Board's agenda at some point during the year.

Chair Olson directed that the issues outlined in survey study topic I be placed on the Board's agenda for its June 12 meeting.

Adjournment

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

The Executive Board adjourned at 12:15 p.m.



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