

# MINUTES

## Executive Board



Representative Steven Haugaard, Chair  
Senator Brock L. Greenfield, Vice Chair  
Senator Troy Heinert, Ranking Minority Member

**Seventh Meeting, 2019 Interim**  
**Tuesday, December 03, 2019**

**Room 413 – State Capitol**  
**Pierre, South Dakota**

The seventh meeting of the Executive Board for the 2019 Interim was called to order by Representative Steven Haugaard at 9:00 a.m. in Room 413 of the State Capitol, Pierre, South Dakota. A quorum was determined with the following members answering the roll call: Representatives Spencer Gosch, Randy Gross, Chris Johnson, John Mills, Sue Peterson, Lee Qualm, and Jamie Smith; Senators Jim Bolin, Bob Ewing, Kris Langer, Jim Stalzer, and Jim White; Senator Troy Heinert, Ranking Minority Member (via telephone); Senator Brock L. Greenfield, Vice Chair; and Representative Steven Haugaard, Chair.

Staff members present included Jason Hancock, Director; Sue Cichos, Deputy Director; Wenzel Cummings, Code Counsel; David Ortbahn, Chief Analyst for Research and Legal; Tamara Darnall, Chief Fiscal & Program Analyst; Scott Darnall, Information Technology Manager; and Cindy Tryon, Senior Legislative Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at [sdlegislature.gov](http://sdlegislature.gov).*

### **Interim Committee Reports**

A draft of the LRC 2019 Interim Committee Final Reports is available on the LRC website ([Document #1](#)).

**Mental Health Task Forces - Senator Deb Soholt** said the five mental health task forces were established through the passage of 2019 Senate Concurrent Resolution 2. The chairs for the task forces worked together throughout the interim. The final reports for the task forces can be found starting on page 41 of document #1. Senator Soholt presented the reports for the first three task forces.

Task Force 1 - Redefine Acute Mental Health Hospitalization was chaired by Representative Mike Diedrich. This task force did not suggest any legislation but may bring a joint concurrent resolution to the 2020 legislature requesting the study continue for another year.

Task Force 2 - Reduce the Overall Use of Acute Mental Health Hospitalizations was chaired by Senator Alan Solano. The task force will be offering several pieces of legislation during the 2020 legislative session.

Task Force 3 - Leverage Telehealth and Telemedicine was chaired by Senator Soholt. There will be several pieces of legislation introduced based on this task force's findings. Language will need to be placed in statute to address statutes currently limiting the use of telehealth.

Task Force 4 - Redefine Nursing Home Criteria and Build Capacity was chaired by Representative Jean Hunhoff. **Representative Rebecca Reimers** served as vice chair of the task force and gave the final report. The task force did not adopt any legislation but did prepare a list of recommendations found in the final report.

Task Force 5 - Increase Community Services and Caregiver Supports was chaired by **Representative Tim Reed** who gave the final report. The task force will draft a concurrent resolution asking the Department of Social Services to

study the implementation of a peer specialist program. In addition to the resolution, the task force has several recommendations included in the final report.

Senator Soholt said after two years of studying mental health issues it is now time to make things happen. These studies can drive meaningful transformations of the current system of mental health services in South Dakota.

**Industrial Hemp Interim Study – Representative Lee Qualm**, Chair, gave the committee’s final report (page 21 of Document #1). Prior to the committee’s first meeting, four committee members travelled to Kentucky to see the industrial hemp process in person. The committee heard from several states that have legalized the growing and processing of industrial hemp. Representatives from various companies provided information to the committee about the development of hemp products.

The committee adopted one piece of legislation which is an act to legalize the growth, production, and processing of industrial hemp and derivative products in the state, and to declare an emergency.

**Electric Services in an Annexed Area – Mr. Alex Timperley** gave an update on committee activity since Senator Solano presented the final report at the November Executive Board meeting. Two conference calls have been held and an in-person meeting is scheduled for December 13 in Pierre with a few representatives from each side of the issue meeting with Representative Brunner and Representative Reed to see if an agreement on Senate Bill Draft 227 can be reached (page 10 of Document #1).

***A motion was made by Senator Greenfield, seconded by Representative Gross, to accept the Interim Committee Final Reports as presented and approve the Industrial Hemp Committee’s proposed legislation as meeting the scope as assigned by the Executive Board. Motion prevailed on a roll call vote with 15 members voting AYE. Voting AYE: Gosch, Gross, Johnson, Mills, Peterson, Qualm, Smith, Bolin, Ewing, Langer, Stalzer, White, Heinert, Greenfield, and Haugaard.***

### **GOAC Education Subgroup**

Representative Sue Peterson said every state agency is required to present performance measures to the Government Operations and Audit Committee (GOAC). The Department of Education (DOE) has submitted the same measures for four years. GOAC asked DOE to bring a new plan including performance measures that are meaningful, but DOE has not done that. In response, GOAC appointed an education subgroup. The subgroup met yesterday and adopted a scope of work and will proceed with an RFP to find a third party to evaluate the Department of Education’s performance indicators. Once the RFPs have been screened and there is a detailed proposal, GOAC will go to the Executive Board or to the legislature as a whole for the funding. GOAC does want to work collaboratively with the Department of Education. GOAC’s goal for this subgroup is to determine how South Dakota’s system of public education can be made better.

Senator Greenfield said as of now GOAC does not know what the new DOE Secretary will come with as far as new assessments. Proceeding with the RFP process takes the legs out from under the new department secretary.

Senator Bolin said the standards set by the DOE are wrong in that basing the DOE’s work on the work of students on a standardized test does not measure the work of the department.

Senator Heinert said he does not support the RFP process for these issues and these concerns should be brought to the Education standing committees.

Senator Langer said she is not in favor of the RFP process and the new DOE Secretary should be given an opportunity before taking any such action.

Senator Greenfield asked that the Secretary of Education be allowed to respond.

**Dr. Ben Jones, Secretary, Department of Education**, said the timing of the proposed RFP is concerning. If this subgroup moves forward with the RFP there will be a big question mark until this is resolved. Dr. Jones has been Secretary of DOE for six months and said he plans to roll out his strategic plan for the DOE tomorrow.

Representative Peterson said it is the subgroup's intent to work collaboratively with the DOE. The information shared in the Secretary's strategic plan may help GOAC move forward. The education subgroup is considering adding advisory members.

Senator Ewing said the Secretary of Education deserves the opportunity to work through these issues.

A motion was made by Senator Ewing that the Executive Board not recognize any expenditure of money by the GOAC subgroup.

A motion was made by Senator Greenfield, seconded by Senator Bolin, that the Executive Board direct GOAC to cease and desist with the education subgroup moving forward with an RFP procedure until more information is available. Representative Peterson called point of order stating the subgroup is acting at the direction of GOAC giving the subgroup the authority to exist and rules of procedure do not allow for interference.

Representative Haugaard said GOAC is a statutory committee and has independent authority. The motion is outside the scope of what the Executive Board can do.

***A substitute motion was made by Representative Smith, seconded by Senator Greenfield, stating that the Executive Board does not support GOAC issuing an RFP and does not support funding of the same. Motion prevailed on a roll call vote with 8 members voting AYE, 7 members voting NAY. Voting AYE: Smith, Bolin, Ewing, Langer, Stalzer, White, Heinert, and Greenfield. Voting NAY: Gosch, Gross, Johnson, Mills, Peterson, Qualm, and Haugaard.***

### **Sales Tax Reduction from Remote Sales Issue Memo**

**Mr. Wenzel Cummings, Code Counsel, and Mr. Jeff Mehlhaff, Senior Fiscal & Program Analyst**, presented the Sales Tax Reduction from Remote Sales Issue Memorandum ([Document #2](#)) and the E-Commerce Primer ([Document #3](#)). The E-Commerce Primer defines and illustrates E-Commerce, includes national data, and illustrates the trend in e-commerce over time. The Sales Tax Reduction from Remote Sales Issue Memo uses rules of interpretation provided by the SD Supreme court to provide an interpretation of SDCL 10-64-9. The Issue Memo concludes that because of the ambiguities in the language of the amendment to HB1162 which is the basis for SDCL 10-64-9, the Legislature may want to consider amending the law.

***A motion was made by Senator Greenfield, seconded by Representative Qualm to approve the Sales Tax Reduction from Remote Sales Issue Memorandum as presented. Motion prevailed on a roll call vote with 15 members voting AYE. Voting AYE: Gosch, Gross, Johnson, Mills, Peterson, Qualm, Smith, Bolin, Ewing, Langer, Stalzer, White, Heinert, Greenfield, and Haugaard.***

### **Appointment to Council for the Interstate Commission for Juveniles**

**Ms. Sue Cichos, Deputy Director**, said Senator Solano's resignation from the Senate creates a vacancy on the Council for the Interstate Commission for Juveniles. The Executive Board is responsible for appointing one State Legislator to the Council ([Document #4](#)).

***A motion was made by Senator White, seconded by Representative Gosch, to appoint Representative Kevin Jensen to the Council for the Interstate Commission for Juveniles. Motion prevailed on a roll call vote with 13 AYES, 2 EXCUSED. Voting AYE: Gosch, Johnson, Mills, Peterson, Qualm, Smith, Bolin, Ewing, Langer, Stalzer, White, Greenfield, and Haugaard. EXCUSED: Gross and Heinert.***

### **State Tribal Relations 2020 Interim Meetings Plan**

**Senator Jordan Youngberg, Vice Chair, State Tribal Relations**, said the committee is asking the Executive Board for approval and funding for the committee to visit the 9 tribes located in South Dakota during the 2020 interim.

Senator Greenfield encouraged the Executive Board to support this request and said the State Tribal Relations committee has previously visited some of the tribes but not to this extent. Visiting all tribes in one year is an aggressive plan and the committee may want to consider extending the time frame for the visits to two years.

***A motion was made by Senator Greenfield, seconded by Senator Bolin, to approve and fund the State Tribal Relations committee request to visit all nine tribes in South Dakota. Motion prevailed on a roll call vote with 13 AYES, 2 EXCUSED. Voting AYE: Gosch, Johnson, Mills, Peterson, Qualm, Smith, Bolin, Ewing, Langer, Stalzer, White, Greenfield, and Haugaard. EXCUSED: Gross and Heinert.***

Senator Langer said the Legislature should consider inviting Secretary Flute with the Tribal Relations Office to give the State of the Tribes address in 2020.

Representative Smith said there is some concern amongst the tribes regarding Secretary Flute giving the address because he works for the Governor's Office. A pattern has been established these past few years and many think that should not change.

Senator Greenfield said the State of the Tribes address should be a more meaningful experience for the Tribes and the Legislature. Committee chairs could suspend meetings and have tribal leadership at the table to discuss tribal concerns.

Senator Ewing said Secretary Flute has a good relationship with the tribes and would be a good choice to represent them all.

Representative Haugaard said there is some concern about the message this would send to the tribes by no longer giving them the opportunity to speak to the legislature.

Representative Peterson said the legislators representing the tribes should be a part of this discussion and feedback from those members needs to be heard before making a decision.

Representative Haugaard said the Speaker and the President Pro Tem invite the Tribal Chair to speak at the State of the Tribes address and he and Senator Greenfield will consider all suggestions and have a conversation regarding this suggestion.

Senator Greenfield said the State of the Tribes should be more meaningful and it may not serve that purpose to have someone from the administration tell the tribes what the administration wants to do rather than actually hearing from the tribes.

Senator White said there is a history on how the State of the Tribes address has evolved and caution should be taken when considering any change.

## Legislative Resources Discussion

Representative Haugaard said after the November Executive Board meeting he sent a letter out asking legislators what can be done to assist them in better serving as a legislator. Some members come into the legislature thinking they will be serving on a part-time basis but quickly learn it takes much more time than expected. The opportunities legislators have need to be enhanced. More support could allow for better attention being paid to issues preventing things from getting to where they are, for example with the increasing prison population. Some people invest a lot of time and it would make sense to allow leadership the latitude to compensate those legislators.

Senator White said he compliments the Speaker on his dedication to his position. This proposal is one person's vision. Senator White said he cannot support this concept as it has no history or accountability. Perhaps some of the concerns could be addressed through standing committees.

Representative Haugaard said he will consider Senator White's suggestion regarding the committees.

## Title 2 Cleanup Draft Language

Director Hancock presented proposed changes to sections of Chapter 2 of the SD Codified Laws and related joint rules ([Document #5](#)). These proposed changes to the laws and rules will clean up language that is expired or redundant.

***A motion was made by Senator Langer, seconded by Representative Gosch, to approve moving forward with the proposed changes to statutes and joint rules found in Document #5. Motion prevailed on a roll call vote with 10 AYES, 5 EXCUSED. Voting AYE: Gosch, Johnson, Mills, Peterson, Smith, Bolin, Ewing, Langer, Stalzer, and Haugaard. EXCUSED: Gross, Qualm, White, Heinert, and Greenfield.***

## Legislative Standing Draft Language

**Mr. Wenzel Cummings, Code Counsel**, presented two pieces of draft legislation for consideration by the Executive Board, draft 304 ([Document #6](#)) and draft 305 ([Document #7](#)). Both draft bills basically do the same thing but in different ways. Currently there is nothing in statute requiring the Attorney General to defend legislators, only to defend the State. Draft bill 304 addresses those concerns. Draft 305 is specific to redistricting lawsuits only.

Senator Bolin said he believes the constitution protects legislators regarding what is said on the floor and that he is not convinced this legislative action is of imperative need.

Senator Ewing said if the Executive Board approves the motion to move forward with this legislation the bill will have to go through the full legislative process. Issues regarding the legislation can be addressed at that time.

***A motion was made by Representative Peterson, seconded by Representative Johnson, to move forward with draft 304 with a different funding mechanism based on the extraordinary litigation fund.***

Mr. Cummings explained there is no authority to use the extraordinary litigation fund for this action.

***A substitute motion was made by Representative Gosch, seconded by Senator Langer, to move forward with draft legislation 304 as presented. Motion prevailed on a roll call vote with 9 AYES, 1 NAY, 5 EXCUSED. Voting AYE: Gosch, Johnson, Mills, Peterson, Smith, Ewing, Langer, Stalzer, and Haugaard. Voting NAY: Bolin. EXCUSED: Gross, Qualm, White, Heinert, and Greenfield.***

### Executive Board 2020 Meeting Dates

Director Hancock proposed the following dates for the 2020 Executive Board meetings: March 30, April 20, June 8, August 31, and November 16. [\(Document #8\)](#).

***A motion was made by Senator Langer, seconded by Senator Ewing, to approve the 2020 Executive Board meeting dates as proposed. Motion prevailed on a roll call vote with 10 AYES, 5 EXCUSED. Voting AYE: Gosch, Johnson, Mills, Peterson, Smith, Bolin, Ewing, Langer, Stalzer, and Haugaard. EXCUSED: Gross, Qualm, White, Heinert, and Greenfield.***

### Executive Session

***A motion was made by Representative Smith, seconded by Representative Gosch, that the Executive Board go into Executive Session to discuss items relating to personnel. The motion prevailed on a voice vote.***

The Executive Board went into Executive session at 4:20 p.m.

***A motion was made by Senator Langer, seconded by Senator Ewing, that the Executive Board come out of Executive Session and that the record reflect no action was taken. The motion prevailed on a voice vote.***

The Executive Board came out of Executive Session at 4:40 p.m.

### Adjourn

***A motion was made by Senator Langer, seconded by Senator Ewing, that the Executive Board be adjourned. The motion prevailed on a voice vote.***

The Board adjourned at 4:40 p.m.