

MINUTES

Executive Board



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

**Third Meeting, 2020 Interim
Monday, June 8, 2020**

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

The third meeting of the Executive Board for the 2020 Interim was called to order by Senator Brock Greenfield at 10:00 a.m. in Room 413 of the State Capitol, Pierre, SD. In accordance with COVID-19 guidance regarding limiting group gatherings to fewer than 10 people, the majority of the members attended the meeting remotely.

A quorum was determined with the following members answering the roll call: Senators Jim Bolin (remote), Bob Ewing (remote), Jim Stalzer (remote), and Jim White (remote); Representatives Spencer Gosch, Randy Gross (remote), Chris Johnson, John Mills (remote), Sue Peterson (remote), and Jamie Smith (remote); Senator Troy Heinert, Ranking Minority Member (remote); Representative Steven Haugaard, Vice Chair; and Senator Brock L. Greenfield, Chair (remote). Excused: Senator Kris Langer and Representative Lee Qualm.

Staff members present included Reed Holwegner, Director; Sue Cichos, Deputy Director; Scott Darnall, IT Manager; Tamara Darnall, Chief Fiscal and Program Analyst; David Ortbahn, Chief Research and Legal Analyst; Wenzel Cummings, Code Counsel; and Cindy Tryon, Senior Legislative Secretary (remote).

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.

Approval of Minutes

Representative Haugaard moved, seconded by Representative Johnson, to approve the minutes of the April 20, 2020, Executive Board meeting. Motion prevailed on a voice vote.

Amend the Agenda

Senator Heinert requested an item be added to the agenda allowing the Executive Board to discuss the state's response to the tribal checkpoints set up in response to the Coronavirus pandemic.

Senator Heinert moved, seconded by Representative Haugaard, to amend the June 8, 2020, Executive Board agenda by adding an item regarding the state's response to the tribal checkpoints. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Gosch, and Qualm.

Update on Funding for Coronavirus Pandemic

Ms. Tamara Darnall, Chief Fiscal and Program Analyst, presented information regarding funding for addressing the coronavirus pandemic ([Document #1](#)) ([Document #2](#)). Congress has passed four relief packages to assist state and local governments in addressing the pandemic. Not all funds flow to the state; some go directly to local governments or hospitals. The federal allocations are made available to the states but some of those funds may not be needed.

One of the major funding programs is the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) which provides funding for the Coronavirus Relief Fund (CRF), education funds, and several other programs.

Responding to a question from Senator Bolin regarding the enhanced Medicaid rate, Ms. Darnall said the funding for the enhanced rate is available as long as there is a national emergency. The total amount the state will require depends on the number of claims.

The Higher Education Relief Fund will be divided in half with 50% going to the students to defray costs and 50% going to the universities for COVID related expenses.

The Elementary and Secondary Schools Emergency Relief Fund (ESSER) will mostly go to school districts based on Title I allocations. A small percentage will go to districts that do not receive much in Title I funding, and an even smaller percentage will go to the Department of Education for the administration of the grants.

The state is applying for additional funding for the Governor's Emergency Education Relief Funds (GEER), which will complement the ESSER funding. Some will go to the Board of Technical Education to support workers displaced due to layoffs or closures of businesses through scholarships.

Ms. Darnall said LRC's tracking of revenues shows receipts at a negative (\$2.4M), up from the previous month. This small negative amount is a result of insurance tax, tobacco tax, and unclaimed property coming in higher than expected, while sales tax, lottery, and bank franchise revenues are lower than expected. To reach the adopted revenue target, the state needs receipts of \$150.95M in the last month of the fiscal year. Any revenue shortfall will be made up by reversions to the general fund. More detailed information on state general fund receipts can be found on the LRC website at sdlegislature.gov.

Investment Council Subcommittee Report

Representative Smith said the Investment Council Subcommittee discussed the Executive Board's responsibility to annually make an appointment to the State Investment Council ([Document #3](#)). Mr. Loren Koepsell was previously appointed to the council to complete the term of a member who resigned. The subcommittee recommends appointing Mr. Koepsell to a full 5-year term on the State Investment Council beginning July 1, 2020.

Representative Smith moved, seconded by Senator Bolin, to appoint Mr. Loren Koepsell to a 5-year term on the State Investment Council beginning July 1, 2020. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Gosch, and Qualm.

Investment Council Report

Mr. Matt Clark, State Investment Officer, gave the Investment Council Update ([Document #4](#)). The SD Retirement System (SDRS) investments are up about .5%. The trust fund's investment returns range from 1% to 2%. The estimated transfer to Dakota Corps Scholarship program for July 2020 is \$1,075,000. These funds provide money to South Dakota schools for scholarships.

Mr. Loren Koepsell, State Investment Council Chair, explained the role of the Investment Council. One of the council's duties is to recommend the State Investment Officer's compensation package to the Executive Board for approval.

Representative Smith moved, seconded by Representative Peterson, that the total compensation for the State Investment Officer payable in FY2021 be comprised of FY2020 base salary increased by state salary policy plus 1.75% and continuation of the investment performance incentive plan, with any earned incentive to be paid following completion of the audit. Motion prevailed on a roll call vote with 13 voting AYE; 2 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer and Qualm.

South Dakota Retirement System (SDRS) Report

Mr. Travis Almond, Executive Director, SDRS, gave an update on the SDRS [\(Document #5\)](#). Barring a dramatic downturn in the markets in June, SDRS will remain fully funded and no corrective action will be required. The COLA will equal inflation for the prior year of 1.56%.

The SDRS Board members and staff are reviewing and updating the plan for recommended actions in a severe economic downturn. SDRS will likely recommend legislation in 2021 enhancing the ability for SDRS to endure economic downturns without corrective actions.

Commission on Uniform Legislation Appointment

Senator Greenfield said Mr. Brian Gosch's term on the Commission on Uniform Legislation is expiring on July 31, 2020. Mr. Gosch is interested in being reappointed to the commission [\(Document #6\)](#). There was one other application submitted for consideration.

Senator Stalzer said there is a long learning curve for new appointees to the commission and Mr. Gosch is doing a good job serving South Dakota.

Senator Bolin moved, seconded by Representative Gosch, to reappoint Mr. Brian Gosch to a 3-year term on the Commission on Uniform Legislation beginning August 1, 2020. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Peterson, Qualm.

Executive Session to Discuss Auditor General Position Vacancy

Representative Gosch moved, seconded by Representative Haugaard, that the Executive Board go into executive session to discuss items relating to personnel. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Peterson, Qualm.

The Executive Board went into executive session at 11:20 a.m.

Representative Gosch moved, seconded by Representative Gross, that the Executive Board come out of executive session and that the record reflect no action was taken. Motion prevailed on a voice vote.

The Executive Board came out of executive session at 11:35 a.m.

Auditor General Position Vacancy

Senator Ewing said Auditor General Marty Guindon is retiring and it is the responsibility of the Executive Board to hire his replacement. Senator Ewing chaired the Interview Subcommittee, which interviewed several highly

qualified individuals. After much deliberation the subcommittee recommends Mr. Russell Olson, who is currently the Local Government Audit Manager for the Department of Legislative Audit, be hired.

Senator Ewing moved, seconded by Senator Bolin, to hire Mr. Russell Olson with the Department of Legislative Audit as the new Auditor General. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Peterson, and Qualm.

Senator Stalzer moved, seconded by Senator Bolin, that the LRC Director and the new Auditor General have equal compensation on July 1, 2020, totaling \$133,639 plus the 2% state employee increase. Motion prevailed on a roll call vote with 12 voting AYE; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, Peterson, and Qualm.

State Response to Tribal Checkpoints

Senator Heinert said Governor Noem's letters to the tribes regarding the tribal checkpoints refer to the "State" as making certain requests. Senator Heinert added that he has issues with the Governor using that generalization. The Legislature has not discussed this issue and has not been able to offer any type of opinion to the Governor's Office. The Legislature should have at least been included in the conversations. Once crossing over the boundaries onto the reservations the laws are different, based on signed treaties and acts of Congress. The legislators living on or near the reservations could have been a bridge to assist in this issue.

Senator Heinert explained that each tribe is handling the checkpoints differently, based on the needs of the tribal members. The health checkpoints are for contact tracing for COVID-19 and limiting exposure to the tribal members.

Representative Gosch agreed there needs to be a friendly approach in working with the tribes. Non-tribal members from certain communities are not allowed to enter the reservations while tribal members can spend time in off-reservation communities and then return to their homes. This type of travel does not seem to meet the claimed reasoning for the checkpoints.

Senator Heinert said there are two main issues: the tribes trying to do what is in the best interest and protection of their members; and the state entering onto these reservations without invitation, releasing letters or conducting investigations when the state does not have the legal jurisdiction to do so. Leadership should determine how to best work together and support the tribes who are lacking the necessary resources for fighting and treating the virus.

Representative Haugaard said this was a missed opportunity for the Governor to reach out to the Legislature's State-Tribal Relations Committee. The committee did send a letter to the Governor regarding the fact the State-Tribal Relations Committee could have been the legislative voice in addressing this issue.

Senator Heinert thanked the board for allowing him the time to discuss this issue and said he is willing to work with anyone regarding the tribal checkpoints and invited those concerned about the checkpoints to reach out to him.

Management Reports

Mr. David Ortbahn, Chief Research & Legal Analyst, said most of the research and legal staff have been working remotely. The staff are editing rules packages although the number of those packages has decreased because of COVID-19. There have been two ballot issue requests submitted for review that will be eligible for the 2022 ballot; one is a constitutional amendment and one is an initiated measure both regarding Medicaid expansion.

Mr. Ortbahn has been reviewing applications for the research analyst position made vacant with Ms. Clare Charlson retiring from the LRC after 31 years. Senator Greenfield expressed his appreciation to Ms. Charlson for her years of service saying that she has his utmost and undying respect. Representative Haugaard said the institutional knowledge Ms. Charlson is taking with her will be greatly missed.

Ms. Clare Charlson, Principal Research Analyst, thanked the board for the kind words adding that she had not expected to stay so long at LRC but her love for the Legislature and the process kept her here for 31 years.

Ms. Tamara Darnall, Chief Fiscal & Program Analyst, announced the LRC fiscal staff received a Certificate of Impact award from NCSL's National Legislative Program Evaluation Society for the 2019 Dual Credit Program evaluation report. Senator Greenfield thanked the staff for their work on this project which spurred legislation and prompted changes in the program.

Ms. Darnall said the fiscal staff continues to work on policies and procedures for program evaluations and are doing follow-up on the 2018 program evaluations. The contracts for the 2019 Lean reviews will have to be renewed as the contractors were not able to do the work because of COVID-19. The staff is also developing RFPs for the 2020 Lean reviews which include the Department of Education, the Attorney General's Office, and the LRC fiscal staff.

The fiscal staff continues reviewing the process and language for appropriation bills, is putting together the 2020 Session Summary document, as well as researching COVID-19 related funding and impacts.

Mr. Scott Darnall, Information Technology Manager, said the IT Division is in the process of finishing upgrading the servers, updating the web infrastructure for faster performance, developing a replacement for Board Papers, and working on making some changes to the website. The IT staff continues working on the lawmaker updates which includes improvements to the bill drafting system.

The new iPads and laptops for the 2021 session have been selected. The IT staff are reviewing ways to make both chambers Team accessible in preparation for what could happen with COVID-19. This will better prepare the Legislature for any remote meetings that may be needed during the 2021 session. South Dakota was one of the first states to remotely conduct veto day. Because of the success of the process designed by the LRC staff there have been many calls from other states asking for more information.

Ms. Sue Cichos, Deputy Director, reported on the Operations Division. The Legislator Update newsletter has returned to the monthly format. The new featured staff segment in the newsletter will continue with the intent of improving relationships between staff and legislators. The approved travel policy has been sent out to all legislators and is on MyLRC+. Travel requests will be considered by the Speaker and President Pro Tem on a case-by-case basis.

Ms. Carol Richardson, the LRC Business Manager, has processed all the final per diem payments for legislators and is now working on processing year end details. Ms. Rhonda Purkapile is finalizing the Session Laws for printing. Ms. Purkapile also maintains the rules database which is posted to the website. Ms. Kelly Thompson and Ms. Rachael Person have completed the certification of the House and Senate Journals and Ms. Thompson is finalizing the Legislative Index for printing and posting to the website. Ms. Cindy Tryon continues preparing for JCA and Executive Board meetings.

Mr. Reed Holwegner, Director, said since re-starting with LRC on May 4, much time has been devoted to conversations with LRC staff and Executive Board members. The LRC staff is a multi-talented ensemble and a second round of conversations will be held with them to help better understand programs and policies. The staff has been encouraged to work from home because of the pandemic. Working arrangements will be reassessed after studying what needs to be done to make the office safe for everyone.

An affidavit that was signed by former Director Hancock regarding the contractors' excise tax and the Santee Sioux Tribe will be part of an upcoming trial and Mr. Holwegner may be called as a witness in the case.

Senator Greenfield welcomed Mr. Holwegner back to the South Dakota LRC.

Mr. Wenzel Cummings, Code Counsel, said this is his final management report as he has accepted a job with the Nevada Legislature. Mr. Cummings praised the LRC staff for the work done during this past year in designing the new bill drafting system and thanked the staff for putting up with him as he made changes to the rules review process. Mr. Cummings also praised Ms. Rhonda Purkpile for all the work she does.

Representative Peterson asked Mr. Cummings to comment on the reason he is leaving and what needs to be done to make improvements for the LRC staff.

Mr. Cummings thanked the Executive Board members for having the confidence to hire him as Code Counsel one year ago. Some things happened during the past session to make him decide he could not spend any more time working for this legislative body. Mr. Cummings encouraged the Executive Board to find a way to foster the bright, talented staff who work in the LRC office.

Interim Committee Appointments Mental Health Services Delivery Task Force (HCR 6004)

Senator Greenfield said HCR 6004, passed during the 2020 session, creates the Mental Health Services Delivery Task Force ([Document #7](#)). The Executive Board is to appoint the task force members. There are several legislators who have expressed interest in serving.

Representative Haugaard moved, seconded by Representative Peterson, to appoint Representatives Diedrich, Duba, Healy, Hunhoff, Kevin Jensen, Perry, and Reed, and Senators Foster, Schoenfish, Stalzer, and Steinhauer to the Mental Health Services Delivery Task Force. Motion prevailed on a roll call vote with 13 voting AYE; 2 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer and Qualm.

Representative Haugaard suggested appointing Representative Jensen to serve as Chair and Senator Steinhauer to serve as Vice Chair.

Senator Heinert said he would like to see the Chair and Vice Chairs represent the different political parties. Senator Greenfield said the Executive Board has been making a real effort to have bi-partisan leadership on the interim study committees and would like the Board to continue that practice.

Representative Peterson pointed out that Representative Kevin Jensen has served on a national mental health task force and is eminently qualified to serve as the leader of this committee.

Representative Haugaard said these appointments should be based on experience in the field.

Representative Peterson moved, seconded by Representative Gross, to appoint Representative Kevin Jensen as Vice Chair and Senator Steinhauer as Chair of the Mental Health Services Delivery Task Force. Motion prevailed on a roll call vote with 8 voting AYE; 5 voting NAY; and 2 EXCUSED. Voting AYE: Bolin, Stalzer, Gosch, Gross, Johnson, Mills, Peterson, and Haugaard. Voting NAY: Ewing, White, Smith, Heinert, and Greenfield. EXCUSED: Langer and Qualm.

Senator Greenfield said the Executive Board can appoint additional task force members from outside the Legislature if the board chooses to do so in the future.

Mental Health of First Responders (HCR 6023)

Representative Milstead talked about creating an interim legislative study to address the mental health of first responders ([Document #8](#)). Representative Milstead said HCR 6023 passed overwhelmingly in the House and Senate to encourage a study of the mental health of first responders focusing on post-traumatic stress syndrome (PTSD). Study members should include those in the field serving as first responders and legislators who have a real interest in this issue.

The board discussed the possibility of establishing a workgroup to look at this issue rather than creating an interim study. In response to questions from the board, Ms. Cichos said that with approval from the Speaker and the President Pro Tem, the workgroup members could be reimbursed for travel and expenses, but they would not receive a salary like members of an interim study receive.

Representative Gosch said during the 2020 Legislative Session he would support an interim study on this topic. He encouraged the board to give full support to this study.

Representative Peterson moved, seconded by Representative Gosch, to establish an interim study committee regarding the mental health of first responders based on HCR 6023.

Senator Bolin said the state should not be involved with this issue as most of the first responders are employees of local government agencies and the local government has requested the state allow the local officials to control what happens within local government.

Representative Peterson said this is a statewide issue. During the bill hearings for this resolution the chamber galleries were filled with local responders asking the State for help.

Senator Ewing moved, seconded by Representative Gosch, to call the question. Motion prevailed on a roll call vote with 11 voting AYE; 2 voting NAY, and 2 EXCUSED. Those voting AYE: Ewing, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. Voting NAY: Bolin and Stalzer. EXCUSED: Langer and Qualm.

Representative Peterson moved, seconded by Representative Gosch, to establish an interim study committee regarding the mental health of first responders based on HCR 6023. Motion prevailed on a roll call vote with 12 voting AYE; 1 voting NAY; and 2 EXCUSED. Voting AYE: Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. Voting NAY: Bolin. EXCUSED: Langer and Qualm.

Senator Greenfield directed the LRC staff to solicit from the Legislature which members would like to serve on this interim study committee.

Representative Gross moved, seconded by Representative Gosch, to direct the Executive Committee of the Executive Board to appoint the members of the interim study committee regarding the mental health of first responders. Motion prevailed on a roll call vote with 12 voting AYE; 1 voting NAY; and 2 EXCUSED. Voting AYE: Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. Voting NAY: Bolin. EXCUSED: Langer and Qualm.

Issue Memo Topic Selection

Mr. David Ortbahn, Chief Research & Legal Analyst, presented potential issue memo topics for the board's consideration. The following issue memo topics were either proposed by legislators or suggested by LRC staff: Sales Tax Exemptions, Expansion of Ellsworth Air Base, Education Funding Formula, Surrogacy Regulations, Residency Laws, Emergency Authority, and Redistricting.

Representative Gross moved, seconded by Senator Bolin, to authorize the issue memos regarding sales tax exemptions, expansion of Ellsworth Air Base, education funding formula, surrogacy regulations, residency laws, emergency authority, and redistricting. Motion prevailed on a roll call vote with 11 voting AYE; 1 voting NAY; 3 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. Voting NAY: White. EXCUSED: Langer, Gosch, and Qualm.

Technology Subcommittee Report

Senator Bolin said Mr. Darnall reported on the subcommittee meeting during the Management Reports. Senator Bolin added there will be new devices available for all legislators elected to serve in the 2021 session.

Budget Subcommittee Report/Travel Funds Allocation

Representative Gosch asked Ms. Darnall to give the Budget Subcommittee report. Ms. Darnall said the subcommittee discussed the COVID-19 funding and aid packages. The subcommittee reviewed the LRC budget and the anticipated reversion from the LRC budget is just under \$90,000. No money was expended from the Legislative Priority Fund this past year.

Ms. Darnall presented the proposed FY 2021 travel budget for the board members' consideration.

Representative Gosch moved, seconded by Senator White, that the Board allocate the FY 2021 non-session Legislative travel budget at 53.5% for the House of Representatives, 34.6% for the Senate, and 11.9% for non-Legislative member travel. Motion prevailed on a roll call vote with 13 voting AYE; 2 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer and Qualm.

Executive Session to Discuss Vacancy of Code Counsel Position

Senator White moved, seconded by Representative Gosch, that the Executive Board go into executive session to discuss items relating to personnel. Motion prevailed on a roll call vote with 13 voting AYE; 2 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, White, Gosch, Gross, Johnson, Mills, Peterson, Smith, Heinert, Haugaard, and Greenfield. EXCUSED: Langer and Qualm.

The Executive Board went into executive session at 3:00 p.m.

Representative Gosch moved, seconded by Representative Johnson, that the Executive Board come out of executive session and that the record reflect no action was taken. Motion prevailed on a voice vote.

The Executive Board came out of executive session at 3:25 p.m.

Board Action on Code Counsel Vacancy

Senator Greenfield appointed the Search Committee to address filling the Code Counsel vacancy. The committee will consist of Representative Smith, Chair; Senator Greenfield, Vice Chair; Representatives Haugaard and Qualm; Senators Heinert and Langer. The advertisement for the Code Counsel position will be based on the document used last year with Director Holwegner making any necessary updates and adjustments.

Senator Ewing moved, seconded by Senator Bolin, the Executive Board request the LRC Director post the position of the Code Counsel based on the previous job posting for this position with some adjustments regarding the closing date and salary. Motion prevailed on a roll call vote with 11 voting AYE; 4 EXCUSED. Voting AYE: Bolin, Ewing, Stalzer, Gosch, Gross, Johnson, Mills, Peterson, Heinert, Haugaard, and Greenfield. EXCUSED: Langer, White, Qualm, and Smith.

Public Testimony

Representative Taffy Howard thanked Mr. Cummings for the outstanding work he did during his time with the LRC. Representative Howard asked that in the future the Legislative body do a better job of retaining employees.

Representative Tina Mulally also thanked Mr. Cummings for his hard work and for helping her become the legislator she is today.

Other Business

The next Executive Board meeting will be held August 31, 2020.

Adjourn

Senator Bolin moved, seconded by Senator Stalzer, that the Executive Board be adjourned. The motion prevailed on a voice vote.

The board adjourned at 3:40 p.m.