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WORKERS' COMPENSATION
ADVISORY COUNCIL MEETING

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KNEIP BUILDING
700 GOVERNORS DRIVE
PIERRE, SOUTH DAKOTA

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TUESDAY, SEPTEMBER 23, 2008

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24 Reported by Carla A. Bachand, RMR, CRR, Capital Reporting
Services, P.O. Box 903, Pierre, SD 57501 (605) 224-7611.

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1 TUESDAY, SEPTEMBER 23, 2008

2 CHAIRMAN DAUGAARD: Call the meeting to order. It's

3 one o'clock and I'll ask the secretary to call the roll.

4 (Whereupon, roll call was taken and the following

5 members were present: Chairman Dennis Daugaard, Secretary Pam

6 Roberts, Secretary Paul Kinsman, Connie Halverson, Randy

7 Stainbrook, Paul Aylward, Carol Hinderaker, Chris Lien, Guy

8 Bender, Glenn Barber, and Jeff Haase.)

9 CHAIRMAN DAUGAARD: Thanks, everyone, for coming. You

10 have the agenda before you. And you can see the agenda under

11 item five proposes that the council take action with no further

12 testimony on those items listed under number five because we

13 have had pretty good testimony and discussion in a prior

14 meeting, so the proposal is just for us to take action on those

15 three items. And I would note that we received an e-mail from

16 Fern Johnson, who had proposed to review the impairment guides,
17 that's issue four, and she has withdrawn her wish to have us
18 consider changing the guide that's being used. So unless
19 there's an objection to that, I propose that we eliminate
20 item -- issue number four from any further consideration. Is
21 there any objection to that? I think her intent is to research
22 it further and bring it forward at another date. So I don't
23 think it's a matter of ultimate disposition, but just at this
24 time. Any objection? All right, then we will dispose of issue
25 four, discuss it no further.

1 Then those issues listed under number six, that's
2 issues six, seven and eight under our agenda number six, those
3 will take some additional public testimony because they are
4 relatively fresh items, some brand new, just raised at the tail
5 end of our last meeting. And then I propose that we take
6 action on those three issues after hearing additional public
7 testimony. So everybody follow? Any questions or anything on
8 the agenda that needs changing? Is everyone agreeable? We
9 will proceed on that basis.

10 First everyone should have a copy of the minutes. Are
11 there any questions or comments on the minutes? If not, I
12 would accept a motion to approve the minutes.

13 MR. AYLWARD: So moved.

14 CHAIRMAN DAUGAARD: Moved by Paul. Seconded by Glenn.

15 Any discussion? Those in favor say "aye."

16 (Whereupon, the motion passed unanimously.)

17 CHAIRMAN DAUGAARD: I don't have any opening remarks

18 beyond those I have already made. Pam, do you? Let's move to

19 agenda item five. The first issue is issue number one,

20 required training for insurance representatives. You can see

21 that attached to the agenda is sort of a draft of our annual

22 report and there's blanks left intentionally where we have yet

23 to take action and so it might be helpful to look at issue

24 number one in the annual report draft.

25 It just essentially recites that Pavels' experience

1 with their adjuster was very unsatisfactory and they testified
2 about that. And then the Department of Labor reported that the
3 majority of the states require licensure but not training and
4 that the National Association of Insurance Commissioners have
5 drafted a model act, which will be considered for adoption this
6 fall. So the issue is whether the council wishes to recommend
7 that insurance representatives receive training before handling
8 claims. Is there any motion on that -- in that regard one way
9 or the other?

10 SECRETARY ROBERTS: I move that the council defer
11 making a recommendation for mandatory training of insurance
12 representatives until the National Association of Insurance
13 Commissioners take action on model legislation this fall.

14 CHAIRMAN DAUGAARD: Is there a second?

15 MR. BARBER: I would second that.

16 CHAIRMAN DAUGAARD: Any discussion.

17 MR. AYLWARD: Is there a proposal that they are going

18 to recommend?

19 MR. MARSH: Most of the states have already seen it.

20 Apparently they have hashed over it for the last five years and

21 this fall they are voting on it as a group to determine if it's

22 appropriate. What I'm hearing from the insurance folks is that

23 it may very well go through.

24 MR. BARBER: I think some of the -- are you through,

25 Paul?

1 MR. AYLWARD: Yes.

2 MR. BARBER: I think some of the things we heard last
3 time regarding the unfortunate situations that happened would
4 have been prevented had someone been properly trained as far as
5 how to address the situation. So I agree, I think it's time
6 for that to happen.

7 CHAIRMAN DAUGAARD: Further discussion. Chris.

8 MR. LIEN: Can I ask a clarifying question? James,
9 follow up from Paul, when he says is there a proposal, I know
10 there's broad legislation being proposed, but is there
11 specifically regarding training of folks in the insurance
12 industry regarding this issue within that legislation or
13 proposed legislation?

14 MR. MARSH: Yes, as I understand it, it addresses it.

15 SECRETARY ROBERTS: Do you know more about it, Paul?

16 MR. KINSMAN: I don't.

17 SECRETARY ROBERTS: My understanding is the licensure

18 would require training and follow-up training. Like most

19 licenses do, you have to have continuing education

20 requirements, and we could have a report on it at the first

21 meeting of next year, if you would like, just to see what

22 happened and if anything happened. So I guess my motion was

23 more just to defer it and see if they do take action this fall

24 and then it would be handled.

25 CHAIRMAN DAUGAARD: Further discussion. Anyone else?

1 Okay, the motion is to defer action on this until we see what
2 the National Association of Insurance Commissioners does, and
3 again, Pam has volunteered to be sure that we get a further
4 report on what they do this fall at our next meeting if we
5 don't see it in the legislature. Any further discussion? The
6 motion is to defer action, those in favor say "aye." Since
7 this disposes with finality, let's have the secretary call the
8 roll.

9 (Whereupon, the motion passed unanimously.)

10 CHAIRMAN DAUGAARD: Motion carried. Next on the
11 agenda is issue number two, reimbursement/compensation for
12 nondependent family members. Again you can see in your draft
13 annual report, page two at the top, it's kind of a summary and
14 public testimony is also summarized there. The question is do
15 we want to offer reimbursement or compensation to nondependent

16 family members or expenses associated with being with the
17 worker during medical treatment or some sort of other
18 compensation in case of death.

19 SECRETARY ROBERTS: Mr. Chairman, at the last meeting
20 there was a motion that the Department of Labor come back with
21 some type of a discussion item and so we do have just a little
22 something ready to hand out for you guys to look at and
23 discuss. I also wanted to remind everybody that the Pavels did
24 submit more written information that maybe needs to be looked
25 at as we decide to take action on numbers two -- number two.

1 CHAIRMAN DAUGAARD: That just came, didn't it?

2 SECRETARY ROBERTS: It just came I believe yesterday.

3 CHAIRMAN DAUGAARD: While that's being passed out,
4 let's just take a minute and make sure everyone has a chance to
5 look at the additional information from the Pavels.

6 (Brief pause.)

7 Does anyone want some more time? Anybody want more
8 time? All right, again, the issue before us is really I guess
9 twofold. One is the issue of compensation for expenses, sort
10 of a payment to compensate for expenses in some fashion, and
11 combined with this and I guess another way of looking at it is
12 a payment as compensation for the loss beyond expense
13 reimbursement, so you might see some variability in those
14 states that have differing levels.

15 I'm guessing it bears somewhat upon how that state

16 views the payment, whether it's compensation for expenses
17 reimbursement or it's compensation for the outright loss of
18 pain and suffering, loss of companion or that sort of thing,
19 sort of in the nature of a wrongful death action. This is all
20 combined into one action because otherwise there is no
21 compensation allowed under current law for nondependents on the
22 wrongful death situation. So with that, are there any comments
23 or motions?

24 MR. BARBER: Before we have a motion, I'd like to ask,
25 is there a real clear definition of a nondependent? We are

1 kind of opening a can of worms here if we go -- how far do you
2 go and that type of thing? Because it can be pretty extensive
3 in some families and so I think if at all possible, a
4 definition would be important beyond what I know of right now.

5 MS. HALVERSON: I have that question as well.

6 MR. KINSMAN: Wouldn't there already be a definition
7 of dependent in the statute? Because if there are dependents,
8 then they would be entitled to some type of payment. So while
9 there probably isn't a definition of nondependent, there is a
10 definition of dependent.

11 MR. BARBER: The dependent part is clear, I think.

12 MR. KINSMAN: Well, if you look at the motion under
13 option one, it essentially pays it to the estate of a deceased
14 employee where they have no dependents as defined by the
15 statute. So it kind of avoids that whole nondependent issue.

16 It says if you don't have anybody that qualifies as a

17 dependent, then \$3,000 is paid to the estate of the deceased.

18 CHAIRMAN DAUGAARD: In fact I'd prefer that we start

19 with a motion, because then we know what we are debating about

20 and that's the rule that legislative committees and other

21 deliberative bodies follow, always start with a motion.

22 Someone who wants to do something and then we debate whether we

23 agree that should be done or not. So if there is a motion,

24 maybe we should start with that. If someone has a notion about

25 what they would like to do for starters.

1 MR. AYLWARD: Mr. Chairman, I would make a motion that
2 we entertain legislation that would reimburse nondependents of
3 a deceased worker killed on the job.

4 CHAIRMAN DAUGAARD: Can you give me more specifics
5 than that? Because that's essentially what we have to do. Do
6 we want to -- we need to offer something with more specificity
7 than that, and if we can't, we need to defer it.

8 MR. AYLWARD: I would, looking at this sheet, I would
9 move that we propose legislation as spelled out underneath
10 option one. If no payment is payable under 62-4-12, 62-4-14 or
11 62-4-15, I think it should be more than \$3,000, I'm going to
12 say \$7,500 should be paid to the deceased employee's estate for
13 injury to the employee resulting in death.

14 CHAIRMAN DAUGAARD: Is there a second?

15 MR. STAINBROOK: I'll second that. I also have a

16 question, too.

17 CHAIRMAN DAUGAARD: Second. Discussion.

18 MR. STAINBROOK: Is there a definitive amount that a
19 dependent would get? What is that amount?

20 MR. MARSH: It varies quite a bit. If there is a
21 spouse, for example, she receives or he receives a weekly
22 benefit that the person is eligible for, so if their temporary
23 total rate would have been \$250 a week, the spouse receives
24 that \$250 a week until she remarries or dies. If there are
25 children, no spouse, then the children split up that benefit

1 among themselves on a weekly basis and that's how most states
2 do it. And in addition, the children each, if they are under
3 18, receive \$50 a month.

4 CHAIRMAN DAUGAARD: Thank you, James.

5 MR. LIEN: Question for James. It's an original
6 intent question. I apologize for missing the last meeting, so
7 I missed the Pavels' testimony, but my understanding was they
8 were looking for some compensation for reimbursement of
9 expenses from the original time that they offered that
10 testimony because it was allowed for dependents, but there was
11 no provision for nondependents. Is there something for
12 dependents definitive for reimbursement of expenses or is there
13 just a benefit for dependents based upon the event that
14 occurred?

15 MR. MARSH: There is a compensation benefit for

16 dependents but no I guess I'd call it attendant expense where
17 they are paid for the travel costs.

18 MR. LIEN: It would not be accurate to think we were
19 taking something that exists and modifying it to a
20 nondependent, we are actually charting brand new territory for
21 allowing for expenses of somebody who is not a dependent for
22 the act, and in addition they would like to see some added
23 expense for some form of death benefit in addition to that?

24 MR. MARSH: That's correct.

25 CHAIRMAN DAUGAARD: Another way to look at it, though,

1 if you look at the way this is worded, it says nothing about
2 expenses. We might be talking about the intent behind creating
3 this, but it says nothing about expenses. It's simply a lump
4 sum and it goes to the estate. So then the estate flows
5 through to whoever the heirs are and if there were heirs that
6 came and incurred expenses, then they will get a share if
7 there's anything left, they will help reimburse them. If there
8 are heirs that don't show up, didn't really know the deceased
9 that well or had a conflict or didn't like the deceased, they
10 will get a share, whether they incurred expenses or not. So I
11 think we need to keep in mind the way this is worded is just a
12 simple lump sum. Lots of expenses, minimal expenses, no
13 expenses, doesn't really matter. Carol, you had a comment or
14 question.

15 MS. HINDERAKER: Part of my question is what Chris

16 asked, but your response just made me think. If the deceased's
17 estate goes to someone other than a family member, a
18 nondependent family member, that nondependent family member
19 still gets no reimbursement in the event of the death, the way
20 this would be worded.

21 CHAIRMAN DAUGAARD: Right, the way this is worded, it
22 goes to whoever gets the estate, if there is any.

23 MS. HINDERAKER: If it happened to be a favorite
24 nephew or a brother or a best friend or whatever, there's no
25 provision that it would go to nondependent family members and

1 thereby perhaps not pay the expenses after all.

2 CHAIRMAN DAUGAARD: Right. That's the way I read it.

3 Further discussion.

4 MR. KINSMAN: If I might, really if we are going to

5 head down this direction, I think this is the only way that you

6 can do it. Because if you were to try and write something that

7 would take care of the nondependents, you would need a

8 definition of what a nondependent is and a nondependent is

9 simply someone who is not dependent upon the person who has

10 passed away, and that could be anyone. So there's no way to --

11 MS. HINDERAKER: Or a foundation or anything.

12 MR. KINSMAN: An organization, it could be anything.

13 Anyone who is not dependent upon the deceased, and that could

14 be all of us. So there is no way that you can define that, so

15 you have to tie it into the estate of the deceased and then it

16 would have to go according to their wishes, or if they didn't
17 have a will, or according to succession at probate.

18 MR. BENDER: Would a simpler way of doing this,
19 instead of starting something new, just increase the death
20 benefit? It's doing the same thing, correct?

21 CHAIRMAN DAUGAARD: Well, there is no death benefit
22 for --

23 MR. BENDER: Or make it -- it's 5,000.

24 CHAIRMAN DAUGAARD: The 5,000 goes to pay for funeral
25 expenses.

1 MR. BENDER: Oh, it just pays funeral expenses. I
2 understand.

3 CHAIRMAN DAUGAARD: We increased that or that's in our
4 report to increase that to \$7,500.

5 MR. BARBER: That's pretty tight.

6 MS. HINDERAKER: My question would be in view of this,
7 if we are attempting to address the concerns of the Pavel
8 family, that they were not reimbursed for expenses nor were
9 they compensated for the tragic loss of their son, we aren't
10 insuring that that would happen to a nondependent survivor, and
11 that concerns me, and I certainly appreciate your opinion
12 there, Paul, because I understand what you are saying in terms
13 of where it goes, it could go to -- it could go to a favorite
14 charity, which would be fine, but that doesn't address the
15 concerns that we were trying to resolve here.

16 SECRETARY ROBERTS: Mr. Chairman, when you look at
17 page two, though, on the most recent Pavel letter, down in the
18 second to the last paragraph, they did talk about expenses of
19 settling an estate and obviously those expenses would come out
20 of the estate before it would be passed on, like going through
21 probate. Those were expenses that the Pavels had to pay out of
22 pocket, and so -- they were estate expenses, so I do think that
23 this resolution would help in that manner and that is
24 specifically what they asked for in this last letter.

25 As we discussed this, giving it to an estate, we

1 talked about all kinds of different situations and it's really
2 difficult to make adjustments for all the different cases that
3 could be out there. For instance, if I'm a 55-year-old man
4 who -- say I'm a young man and I have had no contact with a
5 father and that father, over the years -- it was somebody that
6 the mother raised the child, the mother maybe was deceased, a
7 father that was never in the picture and maybe nobody wanted
8 him in the picture could come back and under the scenario that
9 if we just said nondependent family members, that father might
10 inherit, and if there's a will in the case, maybe the young
11 person would rather have had the money go to a foundation or go
12 to a family friend.

13 So I guess from my perspective, I thought that the
14 will was the way to go and let that deceased employee make that
15 determination himself. With no will, it would go probate

16 according to family, then. So we did have quite a bit of a
17 discussion and thought process on it, just to let you know.

18 CHAIRMAN DAUGAARD: Further discussion.

19 MR. SHAW: Mr. Chairman.

20 CHAIRMAN DAUGAARD: I'm going to leave it to the
21 council. Do we want to open it up for outside testimony?

22 MR. SHAW: Just one comment, and respectfully, I
23 realize that you don't want to open up a can of worms, but the
24 Pavels submitted written proposals to you folks apparently
25 yesterday. I was on the Web site yesterday, they weren't

1 there. We haven't had a chance to take a look at them and I
2 don't think it's fair for this council to proceed on a written
3 proposal that hasn't been submitted to the public for review
4 and also for comment. That is what I wanted to state. There's
5 quite a bit more, but you may not want to hear it today.

6 CHAIRMAN DAUGAARD: Well, I think what's being
7 suggested here is what's been passed out and that was the
8 recommendation by the department that we asked be made. Was
9 that on the Web site, the recommendation?

10 SECRETARY ROBERTS: No. None of our -- we are just
11 reporting back to the council, so I guess we could leave it up
12 to the council if you want to open that back up.

13 CHAIRMAN DAUGAARD: It's relatively simple I would
14 say. The issue is do we give a lump sum payment to the estate
15 or not? Now the current law, that is not done.

16 MR. AYLWARD: Mr. Chairman, I think we did discuss the
17 issue. It was open for public testimony, the issue was.

18 CHAIRMAN DAUGAARD: And I think Mr. Shaw is raising a
19 fair question. There is no proposal that's being offered by
20 the Pavels, just their restatement of some of the same things
21 that they have talked about before. I don't see anything
22 significantly different.

23 MR. SHAW: I beg to differ, Mr. Chairman. The motion
24 that was made, I never heard at the last meeting, nor is it in
25 the minutes from the last meeting. And I don't know what's on

1 your sheet, and I do trust you and the rest of the members here
2 to tell us what that is, but we don't even have a chance to
3 look at it as we sit here today. I just don't -- I don't
4 consider that to be a fair public hearing.

5 SECRETARY ROBERTS: We did have a -- if I could
6 explain, we did have a fair public hearing last month on the
7 issue and the issue was just all of the Pavel issues. The
8 Pavels wrote written testimony, all of which, if anybody wrote
9 written testimony, it was given to the council. But in my mind
10 we have had a good public hearing on it. There's no new
11 issues. We are talking about doing a death benefit for
12 nondependents, which is what we have been discussing all along.
13 Anybody could have talked about that at the last meeting. So I
14 really do think that we have had a fair public hearing. I
15 disagree.

16 MR. LIEN: Can I ask a process question, Mr. Chair?

17 In terms of our report to the Governor that's carried to the

18 legislature, does it require we have specific legislation or

19 are they just recommendations? So through the recommendation

20 process, is that through specific recommended legislation

21 language or in the past have we been able to say we would like

22 to have the legislature take a look at this because this is

23 public testimony that we heard that was an issue out there

24 among the people of South Dakota?

25 CHAIRMAN DAUGAARD: I think our charge is broad enough

1 we could simply recommend something, general language, without
2 specific legislative language. In the past we have done a
3 little of both I'd say.

4 SECRETARY ROBERTS: Mr. Chairman, frankly, we are not
5 required to have any public hearing. I think we do go over and
6 above most advisory councils in trying to get public testimony
7 on everything. At some point we are at the end of the game and
8 our report is due October 1 and so this is really just a
9 hearing or just a committee meeting to finalize
10 recommendations. The department brought a proposed motion
11 based on former testimony that was given. I think we have
12 really gone over and above. Then the chairman wanted to allow
13 testimony on some of those new issues from last time. I really
14 do think that this council does a good job of going over and
15 above on the public testimony stuff. Yeah, it's just

16 recommendations. Before anything would be enacted in law,

17 there would have to be legislation and more public hearings.

18 Thank you.

19 CHAIRMAN DAUGAARD: Maybe the Governor won't agree

20 with anything we recommend anyway. Then it would be up to the

21 legislator to carry it forward, if one wanted to do that, or if

22 the Governor is interested in doing it, then one of the

23 agencies could do it, labor could do it. Or if the Governor

24 doesn't like the idea, it wouldn't be done by the department.

25 Good question, though. Thank you for raising that.

1 MS. HINDERAKER: Could I ask one more question? James
2 or Madam Secretary, can you tell us why you chose the \$3,000?
3 I know that the motion is at 7,500.

4 MR. MARSH: There isn't any -- wasn't any magic to
5 that. Of the various states that have those kind of
6 provisions, that was frankly the smallest amount. We felt we
7 needed to start somewhere.

8 MS. HALVERSON: I don't remember if there was any
9 discussion on the numbers we think that this might affect. Are
10 we talking 50 cases a year or five cases a year? Do we have
11 any idea?

12 MR. MARSH: Best estimate is somewhere between six and
13 10 on an annual basis.

14 SECRETARY ROBERTS: That's with dependents, too.
15 So -- of those six to ten, most of them I would assume would

16 have dependents.

17 CHAIRMAN DAUGAARD: The way this is phrased, if no

18 amount is payable under this, this and this, those are all

19 payments to dependents, right? So this would only crop up if

20 there is a death of a worker with absolutely no dependents.

21 MR. AYLWARD: Mr. Chairman, again I don't think we are

22 talking a big amount of money and I've thought about this a

23 lot, too. I don't know how else you would do it rather than --

24 I mean, how would you put into law who you are going to

25 reimburse? Do we just reimburse mother and father or is it

1 grandmother and grandfather? How do you do that? I was raised
2 by my uncle, do we reimburse him? I don't know how you would
3 do it other than something like this. And I don't know if --
4 can people present those type of bills to an estate to be paid
5 or is that legal?

6 MR. MARSH: I'm no probate expert, but my
7 understanding is that's a method of dealing with it, yes.

8 MR. AYLWARD: \$7,500, the only reason that stuck in my
9 mind is because we talked about raising the funeral expenses to
10 7,500 and that's not very much money any more to deal with
11 expenses. You can spend \$1,000 in a week's motel and meals
12 very easily.

13 CHAIRMAN DAUGAARD: Further discussion. All right, we
14 will call the question. The motion is to adopt the proposed
15 option one recommendation with the dollar amount being 7,500.

16 Secretary will call the role.

17 MS. TREBESCH: Paul.

18 MR. AYLWARD: Yes.

19 MS. TREBESCH: Randy.

20 MR. STAINBROOK: Aye.

21 MS. TREBESCH: Guy.

22 MR. BENDER: Aye.

23 MS. TREBESCH: Carol.

24 MS. HINDERAKER: I vote no.

25 MS. TREBESCH: Connie.

1 MS. HALVERSON: Aye.

2 MS. TREBESCH: Jeff.

3 MR. HAASE: Aye.

4 MS. TREBESCH: Chris.

5 MR. LIEN: No.

6 MS. TREBESCH: Glenn.

7 MR. BARBER: No.

8 MS. TREBESCH: Dennis.

9 CHAIRMAN DAUGAARD: Aye.

10 MS. TREBESCH: Six "ayes."

11 CHAIRMAN DAUGAARD: The motion carries. The next item

12 on the agenda is the public hearing on issue number six. We

13 had a little bit of presentation on this last time. Again, I'd

14 refer you to your draft annual report and that is on page three

15 of the draft annual report, there's a little summary. And we

16 can take further public hearing or further public testimony on
17 this. Anyone who wishes to testify on this issue?

18 MR. MCELHANY: Mr. Chair, fellow council members, I'm
19 Tyler McElhany with the Watertown Fire Rescue, Watertown. I'm
20 also with the Professional Firefighters of South Dakota and we
21 are the ones that are bringing this information towards you.
22 Like last meeting, we were here to testify that in our line of
23 work, it is very different than most job fields across the
24 state where we as firefighters, we answer calls to people that
25 need help. We don't have the option to pick and choose what

1 calls or who is injured, anything like that where we can go and
2 help them or we can't. We simply have to take whatever call
3 comes up and go and do our job. Our job is to try to help and
4 stabilize the situation.

5 With that, we are putting ourselves in an atmosphere
6 that we don't know about and one of the things, just like last
7 time when we talked, many of the blood-borne pathogens and
8 stuff like that, we are putting ourself at risk and we don't
9 even know it. That's the worst part. So a lot of times we
10 don't find out about the atmosphere that we are in when we are
11 doing our job until sometime later, and therefore, that's why
12 you are seeing the bill we are putting forth now, to try to
13 correct this situation for the firefighters of South Dakota.

14 We also testified that there's several states that
15 have enacted such health benefits such as this already, so we

16 are not the only ones out there trying to come up with
17 something like this. And we feel it's only fair for our people
18 in our line of work to have legislation like this on record. I
19 guess if you have any questions for me, I could go on and on
20 for days of examples with stories, but you probably don't want
21 to hear that. So if there's any questions for me, I'd
22 certainly be glad to answer them.

23 CHAIRMAN DAUGAARD: Any questions of Tyler, Mr.
24 McElhany? Any questions of Mr. McElhany? Thank you, sir.

25 MR. MCELHANY: Thank you.

1 CHAIRMAN DAUGAARD: Any further proponents of this
2 proposal?

3 MR. SENGER: Mr. Chairman, members of the council, my
4 name is Rob Senger, I'm president of the Professional
5 Firefighters of South Dakota, also a lieutenant, Aberdeen Fire
6 Rescue, and I'm a paramedic as well. Our membership is spread
7 across the state. We have members in Rapid City, Aberdeen,
8 Watertown, Mitchell, Sioux Falls, and Sioux Falls airport. Our
9 members cover the majority of the population in this state.

10 Our response is like Tyler said, we never know what we
11 are going to get. The question that we are bringing up is like
12 Tyler said, we can't pick and choose what calls we go on. The
13 question is presumptive. There is so many times we go out on
14 calls and you never know that you are exposed to anything. The
15 hospital employees might know because they run the tests, final

16 tests, and they find out about things later, but they can't
17 pass that information on to us. There is HIPAA concerns there.
18 So once the patient is out of our hands, we have no more
19 information. The Ryan White Act was no longer in the distance,
20 it doesn't provide a benefit to us.

21 So the protections that used to be in place or
22 somewhat in place were not a benefit. Unless we can pinpoint
23 exactly what patient that we are exposed to, we are in trouble.
24 Now, there is already presumptive protections under the pension
25 system, heart and lung. But that doesn't cover every

1 firefighter across the state, which is Sioux Falls primarily
2 because they are under a separate pension system. But this is
3 totally separate because it deals exactly with presumptive for
4 infectious disease, blood-borne pathogens, anything infectious
5 related, and there are several other states that have enacted
6 this same proposed legislation we are offering to you.

7 So again, there's just no way for us to pinpoint this
8 exact patient. Obviously if I get a whole bunch of blood all
9 over my face, I'm going to document it, but I can't say that
10 this -- yep, this guy had HIV, we don't know, unless he can
11 tell us, and a lot of times he doesn't know. So that's where
12 that presumption comes in, that's our concern, that's why we
13 brought this legislation. I'd be happy to answer any questions
14 if you have it.

15 CHAIRMAN DAUGAARD: Any questions of Mr. Senger?

16 Thank you. Further proponents.

17 MR. RICHTER: Thank you, Mr. Chairman. I'm Mitch

18 Richter and I am working with the Professional Firefighters of

19 South Dakota on this legislation. I would point out that it's

20 very narrow in scope. We are talking about six professional

21 fire fighting departments in South Dakota. It's only those

22 firefighters. It doesn't cover volunteers, it doesn't cover

23 paramedics, it covers only firefighters in this particular

24 bill. So we are very narrow in scope and a very narrow pool of

25 folks that we are talking about.

1 If you look at Section 9, the employer can have them
2 prescreened for the diseases that we are talking about in this
3 piece of legislation, which I think is a good benefit for the
4 employer as well as for the employee. You will probably hear
5 things that the opponents will talk about on Supreme Court
6 cases. This is not unique or intrinsic to their work. There
7 have been Supreme Court cases like that, but not specifically
8 dealing with the issues that we are talking about that will
9 take place in this piece of legislation.

10 Thirty some other states have passed some type of
11 presumptive legislation, occupational disease like this. Maybe
12 not necessarily for blood-borne pathogens, but carcinogenic
13 agents and other presumptive diseases. So this is not -- we
14 are not breaking new ground here, this has been done in a
15 number of other states or is in the process of being done this

16 year.

17 With the world we live in today when the mode of
18 travel is so great and you ask these professional firefighters
19 to take care of you and provide safety that they do, they may
20 think they are going to a call for one thing and they get there
21 and it's something completely different. They react, they have
22 the protocols that they are supposed to follow, and they do
23 that when they can, but when the adrenalin is going and they
24 react the way they have to to save lives, I think this is a
25 fair piece of legislation to deal with today and to move

1 forward to the legislature for their consideration. Thank you.

2 CHAIRMAN DAUGAARD: Any questions of Mr. Richter?

3 Thank you. Any further proponents? Any opponents?

4 MR. SHAW: Good morning, Mr. Chairman, members of the

5 committee. I'm Mike Shaw and I am a lobbyist for the Property

6 Casualty Insurers Association of America. They are a group of

7 a trade organization of insurance companies and its members

8 make up the largest market share of workers' compensation

9 insurance sold in the state.

10 PCI has the utmost respect for firefighters and the

11 work and services they perform in the state of South Dakota.

12 It's a very demanding, challenging, and sensitive job and we do

13 certainly appreciate that. It will come as no surprise to them

14 that we rise in opposition to this proposal. And we do thank

15 you for providing a written proposal that we had a chance to

16 take a look at.

17 Currently the illnesses that are set forth in this

18 bill are compensable under South Dakota law, but under current

19 South Dakota law, there has to be demonstrable proof that the

20 disease was unique to their work and was caused by their

21 employment. And it's the employee's burden to prove that.

22 That's the law today.

23 So what the proponents of this bill ask you to do is

24 to make a 180-degree turn in the existing law. They want a

25 presumption that these diseases, these illnesses were caused by

1 work and they want to then place the burden upon the employer
2 to prove that it was not. We don't think that that's fair.
3 And I'll tell you why. Under existing law, the laws of
4 workers' compensation are construed in favor of the employee.
5 That means if there's a tie, the employee wins. This happens
6 time after time. Also, the employee does not have to prove his
7 case with absolute certainty. It's a burden much less than
8 that.

9 And our Department of Labor and our Supreme Court are
10 very well-acquainted with those rules and if you read the law
11 or the decisions that come from the Department of Labor and
12 from our Supreme Court, you will see that it's very difficult
13 for the employer to win most of their cases. Most -- the
14 lion's share of the cases out of those are ruled in favor of
15 the employee, and I'd have to say that's probably right because

16 of the way our laws are set up. The employee wins all ties,
17 the laws are construed strictly in favor of them.

18 Now, if this law changes, the cities and the
19 municipalities that employ firefighters are going to find it
20 very, very difficult to rebut this presumption when there's
21 evidence of other factors, lifestyle, heredity, or
22 nonemployment-related causes. Because of that, we think that
23 this marked departure, this 180-degree turn is something you
24 should consider very carefully before you support it.

25 This also unquestionably creates a precedence. Now,

1 the proponents have mentioned several times as I sat here today
2 and several times as I recall their testimony from last meeting
3 that this is just the professional firefighters, it's not the
4 volunteer firefighters, it's not the paramedics, the EMTs and
5 those guys. But we all know once you open the door, they are
6 going to be in line. Who is next, health care workers? Who is
7 next? Ask yourself that question.

8 The other thing is what other diseases are going to be
9 included? What other illnesses are going to be next in line
10 once this precedent has been created? Ask yourself if this is
11 truly the way you want to go, what will be the bottom line
12 here? What will be the cost to the cities and the
13 municipalities in the state of South Dakota? There should be
14 testimony given to consider that in this legislation.

15 Last I would like to comment, Mr. McElhany indicated

16 that as a firefighter they have no option to pick and choose
17 their jobs. Quite frankly, I don't as an attorney, as a
18 lobbyist, I don't get to pick and choose my jobs. How many
19 people have that luxury? How many health care workers have the
20 luxury to pick and choose who their patients will be? How many
21 EMTs have the luxury to pick and choose who they will go on
22 calls for? That same argument, that argument just doesn't hold
23 water. With that, we would ask you to think very carefully
24 before you pass this and to resist this proposal. Thank you.

25 CHAIRMAN DAUGAARD: Any questions of Mr. Shaw? Thank

1 you. Further opponents.

2 MS. JOB: I'm Lynn Job with the Bureau of Personnel

3 and we oppose for the same reasons as stated by Mr. Shaw, but

4 in addition, we would just like to reiterate the state has

5 concerns about the far-reaching implication that this

6 presumption could be broadened to include many other

7 professions, as Mike had stated.

8 CHAIRMAN DAUGAARD: Any questions? Thank you.

9 Further opponents.

10 MS. TAYLOR: Thank you, I'm Yvonne Taylor with the

11 South Dakota Municipal League. We represent the incorporated

12 cities and towns throughout South Dakota, which I'm sure are

13 probably the largest employers of the firefighters. I would

14 reiterate our respect and admiration for the firefighters and

15 work they perform, but as Mr. Shaw pointed out, this really

16 turns everything on its head and we would have no way of
17 proving almost that this wasn't, when you have to look at all
18 of the outside factors outside of their actual job, it would be
19 very, very difficult for us to be able to prove, disprove the
20 presumption.

21 We are also concerned about the slippery slope we
22 would be sliding down with this legislation. The last time I
23 believe this came in was 2003 and its companion bill was all
24 cancers, any lung disease, and I forget the other three, but
25 these things generally travel in pairs or travel in packs and

1 we are worried about opening our self further. Thank you.

2 CHAIRMAN DAUGAARD: Any questions? Thank you.

3 Further opponents. Does any committee member have a motion to

4 start us in our discussion one way or the other?

5 MR. AYLWARD: I move that we recommend passage of the

6 presumptive legislation.

7 CHAIRMAN DAUGAARD: Is there a second?

8 MR. STAINBROOK: I'll second that for discussion.

9 CHAIRMAN DAUGAARD: Moved and seconded. Further

10 discussion. Do you want to start, Paul?

11 MR. AYLWARD: I just think that this is legislation

12 that is reasonable. Firefighters, paramedics, when we dial

13 911, we expect them to be there as soon as possible and take

14 care of any situation, and I don't think it's unreasonable for

15 us to offer them this protection in their line of duty. When

16 you say -- the statement was made that other people can't pick
17 and choose, but that's not true. Workers in other situations,
18 if they are put into a dangerous situation, have the right
19 under federal law to refuse to do that job, if it's imminent
20 danger, where firefighters don't, paramedics, firefighters,
21 they jump in and try to save lives. So I think this is
22 reasonable. And I don't really believe in the slippery slope,
23 especially with our legislature.

24 CHAIRMAN DAUGAARD: Further discussion.

25 MR. STAINBROOK: I would just say I read the

1 legislation and I think what they wrote is a pretty clear and
2 straightforward proposal and I guess I think that it deserves
3 to be looked at and debated in the legislature.

4 CHAIRMAN DAUGAARD: Further discussion. Any further
5 discussion? I take the motion to propose that we introduce the
6 specific language that was proposed. Is that the way everyone
7 understands it, the language that was given to us at the last
8 meeting?

9 MR. AYLWARD: Yes.

10 CHAIRMAN DAUGAARD: Seeing no further discussion,
11 secretary will call the role. Motion is to introduce that
12 legislation or recommend introduction of that legislation.

13 MS. TREBESCH: Paul.

14 MR. AYLWARD: Aye.

15 MS. TREBESCH: Randy.

16 MR. STAINBROOK: Aye.

17 MS. TREBESCH: Guy.

18 MR. BENDER: No.

19 MS. TREBESCH: Carol.

20 MS. HINDERAKER: No.

21 MS. TREBESCH: Connie.

22 MS. HALVERSON: No.

23 MS. TREBESCH: Jeff.

24 MR. HAASE: Aye.

25 MS. TREBESCH: Chris.

1 MR. LIEN: No.

2 MS. TREBESCH: Glenn.

3 MR. BARBER: Yes.

4 MS. TREBESCH: Dennis.

5 CHAIRMAN DAUGAARD: No. The vote is four "aye," five

6 "nay."

7 MS. TREBESCH: Correct.

8 CHAIRMAN DAUGAARD: Motion fails. We will move to

9 issue number seven, the penalty for -- penalty to insurance

10 companies for noncompliance. And again on your annual report,

11 that issue -- is that summarized on the first page?

12 SECRETARY ROBERTS: The council did request that we

13 bring back just a recommendation so if we could pass that out

14 at this time.

15 CHAIRMAN DAUGAARD: Why don't you go ahead and read

16 this, James, or Pam. Just so the audience can hear it.

17 MR. MARSH: This is the summary. It has been proposed

18 that insurers be penalized for failing to communicate with

19 injured workers, and for failing to timely act on claims.

20 Existing law requires insurers to "acknowledge and act within

21 30 days upon communications with respect to claims arising

22 under insurance policies and to adopt and adhere to reasonable

23 standards for the prompt investigation of such claims," under

24 the Claims Practices Act, 58-33-67(1). The law therefore

25 already establishes a duty to respond, and to promptly

1 investigate a claim. We would recommend that no proposal be
2 made at this time. If the council wants to further pursue this
3 issue, it should be added to the discussion items for the 2009
4 report so there can be full discussion and public testimony.

5 CHAIRMAN DAUGAARD: All right, any public testimony on
6 this issue?

7 MR. PAVE: Mr. Chair, good afternoon, Lieutenant
8 Governor and members of the council. This is Doug Pavel and we
9 are here with the family again. I apologize, the link between
10 Rapid City and Pierre is very choppy. Are you essentially not
11 making any recommendation or leaving things status quo; is that
12 what you are recommending in this proposal?

13 CHAIRMAN DAUGAARD: That's the department's proposal.
14 That's the department's proposal or recommendation. The
15 council has not taken any action yet. And we are open to

16 public testimony, so if you would like to offer some thoughts,

17 you are welcome to do so.

18 MR. PAVEL: Okay, yes, sir, I wanted to make sure that

19 that's what the Department of Labor was recommending, and in

20 fact since we were probably the ones to bring this up, we will

21 just state that we would agree with the Department of Labor.

22 We feel that there's already mechanisms in place. The issue,

23 however, is that members of the general public aren't aware of

24 all of the intricacies to something like this and that's why

25 if -- again if you would refer to our correspondence that we

1 just sent, and we apologize for getting it to you at the 11th
2 hour.

3 However, we mention in there that let's utilize what
4 we have in place now, but we would hope that we can work with
5 the Department of Labor or the industry could work with the
6 Department of Labor to develop an information packet for
7 families that face what we did so that they know their options
8 and they know what laws are available. Because if we continue
9 to just pass more laws and those laws, like everything else on
10 this very, very extensive codified law in South Dakota, most of
11 those are typically unknown to the average person anyway.
12 Let's use what we have got, do the best that we can to educate
13 the people who face situations like this and not complicate the
14 matters any further.

15 CHAIRMAN DAUGAARD: All right, thank you, Mr. Pavel.

16 Does anyone have any questions of Mr. Pavel? All right, thank
17 you, sir. Any other offer of public testimony or proponents of
18 this recommendation to not advance any proposal at this time?
19 Any other members of the public want to offer comments in
20 support of that?

21 MR. SHAW: Mr. Chairman, Mike Shaw, PCI. We would
22 agree with the department's recommendation of no action at this
23 time based upon the existence of the Unfair Claims Act in the
24 Division of Insurance code, SDCL 58-33 I think it is. Thank
25 you.

1 CHAIRMAN DAUGAARD: Thank you. Any other proponents
2 of that action?

3 SECRETARY ROBERTS: Mr. Chairman, I would just like to
4 offer that we would be happy to work with the Pavels and make
5 sure that we get something on the Web site that is easily
6 printable off of our Web site for explanation for family
7 members. I think that is a great idea. We will absolutely
8 work with them in the interim to get that done.

9 CHAIRMAN DAUGAARD: Any further public testimony on
10 this issue? Does any member wish to make a motion to adopt the
11 recommendation to make no proposal in this area? I would like
12 to take affirmative action in that regard, if that's agreeable.

13 MR. HAASE: I would move.

14 MS. HALVERSON: Second.

15 CHAIRMAN DAUGAARD: It's been moved to adopt the

16 recommendation that no further proposal be recommended at this
17 time or no proposal be adopted at this time. And on the
18 strength of Pam's commitment to work with the Pavels and any
19 other interested party to get some helpful material on the Web.
20 Discussion.

21 MR. AYLWARD: Question.

22 CHAIRMAN DAUGAARD: Yes.

23 MR. AYLWARD: Is there any penalty now or is the
24 penalty that they are found in bad faith? Is that the penalty?

25 MR. MARSH: Under the Unfair Claims Practices Act, the

1 insurance company can be punished in a number of ways for
2 violation of the law. They can have -- their certificate can
3 be challenged to do business here, they can be fined, there are
4 a lot of tools they have available to enforce it.

5 MR. AYLWARD: Does that ever happen?

6 MR. MARSH: I believe it does. I'm not from the
7 Division of Insurance so I can't give you statistics, but we
8 hear these things anecdotally at least and are aware they
9 happen.

10 MR. AYLWARD: One final question. The 30-day time
11 frame, has that always been 30 or did we change that not too
12 long ago?

13 MR. KINSMAN: I couldn't tell you whether or not we
14 have changed that or not. I think it's been in statute for
15 quite some time.

16 CHAIRMAN DAUGAARD: Any other questions or discussion?

17 Thank you, Paul, for raising those questions. The secretary

18 will call the roll. The motion is to not take any action on

19 this.

20 MS. TREBESCH: Paul.

21 MR. AYLWARD: No.

22 MS. TREBESCH: Randy.

23 MR. STAINBROOK: No.

24 MS. TREBESCH: Guy.

25 MR. BENDER: Aye.

1 CHAIRMAN DAUGAARD: Do you want to change your vote?

2 MR. STAINBROOK: No, I want to make sure that my vote

3 was recorded as I agree with the motion.

4 CHAIRMAN DAUGAARD: The motion is to not act. If you

5 agree, you should say "yes" or "aye."

6 MR. AYLWARD: I vote no.

7 MR. STAINBROOK: I vote yes.

8 MS. TREBESCH: Carol.

9 MS. HINDERAKER: I vote yes.

10 MS. TREBESCH: Connie.

11 MS. HALVERSON: Aye.

12 MS. TREBESCH: Jeff.

13 MR. HAASE: Aye.

14 MS. TREBESCH: Chris.

15 MR. LIEN: Aye.

16 MS. TREBESCH: Glenn.

17 MR. BARBER: Yes.

18 MS. TREBESCH: Dennis.

19 CHAIRMAN DAUGAARD: Aye. Motion carries. The next
20 issue is issue number eight, monthly death benefit for
21 dependent children. In the proposed report to the Governor,
22 it's the last page of the report, page four.

23 SECRETARY ROBERTS: Mr. Chairman, basically so the
24 audience knows what the department -- maybe I should read it
25 into the record.

1 SECRETARY ROBERTS: The Department of Labor is
2 reporting that most states, 36, do not provide a separate
3 benefit for children. Three states do have a law similar to
4 South Dakota, and remember the dependent benefit in South
5 Dakota is that if there's -- for each dependent child, they not
6 only get the dependent benefit, but they get \$50 for each child
7 on top of it. So three states do have a law similar to South
8 Dakota. North Dakota allows \$10 a week for each dependent
9 child. Rhode Island allows 40 a week for each dependent child
10 and Massachusetts, weekly benefits are allowed \$150. The
11 weekly death benefit is increased by \$6 a child until \$150 is
12 reached.

13 And then in seven states, Alaska, Arkansas, Iowa,
14 Kentucky, Pennsylvania, Utah and Washington, the percentage of
15 the deceased worker's earnings used for paying weekly benefits

16 increases for each dependent child. In Iowa the minimum weekly
17 benefit increases from \$140 to \$151, depending on the number of
18 dependents. So again there's 11 states, including South
19 Dakota, that do provide some type of a benefit for a dependent
20 child and there are 36 states that do not. It's just one
21 amount and then that's given to the spouse for dependent
22 children. It was something that we had just kind of came up
23 with at the end, we said we would do a little research on it to
24 make sure we weren't out of skew there.

25 CHAIRMAN DAUGAARD: I can't remember who asked that

1 research be done.

2 MR. AYLWARD: I did.

3 CHAIRMAN DAUGAARD: Do you have any proposal you want

4 to make or does this answer the questions you had?

5 MR. AYLWARD: Well, Mr. Chairman, the \$50 a week

6 seemed low to me, and I'm not even sure that I understand what

7 this research would show one way or the other. I know that our

8 benefits are low compared to a lot of states, so in the whole

9 scheme of things, I don't know how that -- I have not done any

10 other research.

11 SECRETARY ROBERTS: To further explain, the law was

12 changed so that in South Dakota two-thirds of gross earnings

13 formula was adopted, so that is inflated. My concern, because

14 I actually followed up with Paul and said we need to look at

15 that, but when we found out that the benefit is a formula that

16 automatically inflates, it made me feel more comfortable that
17 the \$50 death benefit or benefit for dependent children was
18 probably okay. It wasn't in immediate need to be changed.

19 MR. BARBER: You are saying the \$50 is the bottom,
20 that's the low end.

21 SECRETARY ROBERTS: What I'm saying is most of the
22 benefit is given to the spouse and that benefit has an adjuster
23 on it that's inflation related. The \$50 is an add-on and it's
24 an add-on that South Dakota does, but most states do not do.

25 CHAIRMAN DAUGAARD: If I'm killed and my wife Linda,

1 and we have three children, the benefits paid -- not killed, or
2 permanently disabled, or killed I guess, either one, if I
3 understand it right, the benefit Linda gets is inflated every
4 year depending upon what the inflation rate is going.

5 SECRETARY ROBERTS: Did I misspeak there?

6 MR. MARSH: The death benefit isn't inflation
7 adjusted.

8 SECRETARY ROBERTS: I'm sorry. Explain that last
9 sentence that you wrote.

10 MR. MARSH: In other words, as Pam and I were
11 discussing it, when the \$50 a month provision was originally
12 written in the law, it was back eons ago and back then the
13 formula we used for what our weekly benefits wasn't the same as
14 it is now. That was changed in the early seventies so we came
15 in conformity with what other states do and this \$50 a month

16 thing just sort of tailed on. They didn't get rid of it, it
17 just stayed out there. But it hasn't been changed since. So
18 when they looked at adjusting from year to year what the
19 compensation rate should be for people on these claims, they
20 did it on the two-thirds formula, which kind of in essence is
21 supposed to build in this \$50 a month. They just never
22 repealed it to collect that.

23 CHAIRMAN DAUGAARD: The 50 is sort of on top of this
24 periodically changing amount that's based upon the earnings of
25 the worker.

1 MR. MARSH: Right.

2 SECRETARY ROBERTS: Thank you for clarifying. I'm

3 sorry if I misspoke.

4 MR. AYLWARD: But once you -- the rate is the rate,

5 that doesn't adjust.

6 MR. MARSH: That doesn't change.

7 MR. AYLWARD: It's not adjusted.

8 SECRETARY ROBERTS: That was my mistake. I thought it

9 did. Thanks for that.

10 MR. AYLWARD: If I'm killed today and my rate is \$500

11 a month, it's going to be \$500 a month 10 years from now.

12 MR. MARSH: That's correct.

13 CHAIRMAN DAUGAARD: Just following up, if it's \$500 a

14 month today, then for a similarly situated worker who is killed

15 or disabled five years from now, it will be --

16 MR. MARSH: \$600.

17 CHAIRMAN DAUGAARD: It will be \$600 prospectively. I

18 follow.

19 MR. AYLWARD: If I get killed twice. . . (Laughter)

20 MS. HINDERAKER: Mr. Chairman, so if the deceased

21 worker is 40 and has a spouse and three children who are

22 youngsters, 10, 11 and 12, the spouse gets that \$500 or

23 whatever monthly until she remarries or dies, and the children

24 then each get \$50 each month until the age of 18.

25 MR. MARSH: Right.

1 MR. BARBER: \$500 supposedly was based on two-thirds
2 of his earnings?

3 MR. MARSH: That's correct.

4 MR. AYLWARD: Up to the maximum of the average weekly
5 wage. So for some workers, if they are highly paid, it's less
6 than two-thirds.

7 MS. HINDERAKER: And so this discussion -- I had to
8 leave early last time and I apologize -- so this discussion was
9 just to clarify how it currently works?

10 MR. AYLWARD: The discussion came about, I guess we
11 were looking at the law and we saw \$50 a month and I said that
12 seems very low, when was the last time that was raised, and I
13 think James said probably never, and so I asked the department
14 if they would research that and with the intent of maybe
15 raising the \$50.

16 CHAIRMAN DAUGAARD: Do you want to make that proposal,

17 Paul?

18 MR. AYLWARD: Sure, I'll make a motion we make it a

19 hundred bucks.

20 CHAIRMAN DAUGAARD: Is there a second?

21 MR. AYLWARD: Can I second my own motion?

22 CHAIRMAN DAUGAARD: Motion dies for lack of a second.

23 Does anybody want to make any public testimony on this matter?

24 I don't hear any.

25 SECRETARY ROBERTS: Do you not know what it is?

1 MR. SHAW: I don't know what's being considered.

2 CHAIRMAN DAUGAARD: Well, I don't --

3 MR. STAINBROOK: \$50 to a teenager isn't much, that
4 won't even buy them 20 minutes at the mall.

5 MR. AYLWARD: You are right.

6 CHAIRMAN DAUGAARD: Well, the council won't take any
7 action on the proposed change because nothing. . . I don't
8 know that we have got anything left. It died for lack of a
9 second.

10 MR. AYLWARD: I tried to second it myself.

11 CHAIRMAN DAUGAARD: I believe that will conclude all
12 the issues that we had before us. And I think the department
13 should have enough to complete the 2008 annual report, do you
14 not?

15 SECRETARY ROBERTS: We do. If there are any comments

16 or wordsmithing on anything that's completed, then please let
17 us know either now or after the meeting and then there's not a
18 lot left to write, just basically the council actions on most
19 of them. So I would like to maybe set a time, and I know
20 that's the next agenda item, but to remind everybody that
21 October 1st we would like to get this over to the Governor and
22 to the legislature. So I was hoping that maybe yet this week
23 we could get -- we can get you something out first thing in the
24 morning for you to consider and look at and then if we could
25 have a conference call and take final action, that would be

1 great, on either Thursday or Friday, if it works for everybody
2 in the room or anybody in the room, just a telephone conference
3 call.

4 MR. STAINBROOK: Do you want to have an actual
5 conference call for discussion?

6 SECRETARY ROBERTS: My preference would be a
7 conference call with an official motion and vote. Is that
8 okay?

9 MR. STAINBROOK: I don't know where I'm going to be.

10 CHAIRMAN DAUGAARD: It will be tough for me, too.

11 SECRETARY ROBERTS: If we can get a quorum, I think we
12 could do it and then we could just add on that you guys. . .

13 CHAIRMAN DAUGAARD: We can all sign it if we agree
14 with it. I would prefer it Friday afternoon for me, that would
15 work best.

16 SECRETARY ROBERTS: We could even do it Wednesday if

17 that would help anybody here, or how about Monday of next week?

18 MR. BARBER: Friday would be better for me.

19 CHAIRMAN DAUGAARD: Friday would be better for me, or

20 Monday afternoon. Could we get a quorum Friday afternoon? Who

21 could do it Friday afternoon?

22 MS. HINDERAKER: Will we have a number to call into

23 and a code to enter?

24 SECRETARY ROBERTS: We will send that to you by

25 e-mail.

1 MS. HINDERAKER: We could do it from anywhere on the
2 telephone.

3 SECRETARY ROBERTS: Right. What time Friday
4 afternoon?

5 CHAIRMAN DAUGAARD: How about three o'clock central.

6 MR. BARBER: Friday, the 26th.

7 SECRETARY ROBERTS: Correct.

8 CHAIRMAN DAUGAARD: Would that work, three o'clock
9 central to call in?

10 SECRETARY ROBERTS: Again by morning you will have
11 this on your e-mail, the final version. Thank you.

12 CHAIRMAN DAUGAARD: That's all we have on the agenda.
13 Unless there's something else, I ask for a motion to adjourn.

14 MR. STAINBROOK: So moved.

15 MS. HINDERAKER: Second.

16 CHAIRMAN DAUGAARD: All those in favor say "aye."

17 (Whereupon, the motion passed unanimously.)

18 CHAIRMAN DAUGAARD: Thank you all for your work this

19 year.

20 (Whereupon, the proceedings were concluded at 2:20

21 p.m.)

22

23

24

25

1 C E R T I F I C A T E

2

3 STATE OF SOUTH DAKOTA)

) ss.

4 COUNTY OF HUGHES)

5 I, Carla A. Bachand, RMR, CRR, Freelance Court

6 Reporter for the State of South Dakota, residing in Pierre,

7 South Dakota, do hereby certify:

8 That I was duly authorized to and did report the

9 testimony and evidence in the above-entitled cause;

10 I further certify that the foregoing pages of this

11 transcript represents a true and accurate transcription of my

12 stenotype notes.

13 Dated this 30th day of September 2008.

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18 Carla A. Bachand, RMR, CRR
Freelance Court Reporter

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