

**South Dakota Science and Technology Authority Board of Directors
Special Telephonic Meeting Minutes
Tuesday, May 1, 2018
Lead, South Dakota**

The Board of Directors of the South Dakota Science and Technology Authority (SDSTA) convened at 9:02 a.m. Mountain Time (MT) on Tuesday, May 1, 2018, via teleconference. Listening posts for the public were established at the office of the SDSTA at 630 E. Summit Street, Lead, South Dakota, and at the Dolly-Reed Plaza in the Treehouse conference room, 711 East Wells Avenue, Pierre, South Dakota.

MEMBERS OF THE BOARD IN ATTENDANCE BY TELEPHONE

Mr. Paul Christen
Vice-Chairperson Dana Dykhouse
Secretary/Treasurer Patricia Lebrun
Chairperson Casey Peterson
Vice-Chairperson Ron Wheeler
Dr. Robert Wilson

MEMBERS OF THE BOARD ABSENT

Dr. Ani Aprahamian
Dr. Jim Rankin

SDSTA STAFF IN ATTENDANCE

Mr. Tim Engel, Legal Counsel (by phone)
Mr. Mike Headley, Executive Director
Ms. Mandy Knight, Administrative Services Manager
Ms. Connie Walter, Communications Director

ITEM 1. CALL TO ORDER

Chair Peterson called the meeting to order at 9:02 a.m. (MT). Chair Peterson declared a quorum was present, consisting of board members Mr. Christen, Vice-Chair Dykhouse, Ms. Lebrun, Chairperson Peterson and Mr. Ron Wheeler. Those absent were Dr. Aprahamian and Dr. Jim Rankin.

Chair Casey Peterson asked participants at the listening posts in Pierre and Lead to identify themselves. There was no response at the Pierre listening post. SDSTA staff listed above were present at the Lead office, except SDSTA Legal Counsel Mr. Tim Engel who joined by phone.

ITEM 2. APPROVE AGENDA

Chair Peterson asked for a motion to approve the agenda.

Dr. Wilson joined the meeting at 9:03 a.m.

Motion by Ms. Lebrun and second by Mr. Christen to approve the agenda as presented. By roll call vote, the motion passed unanimously.

ITEM 3. EXECUTIVE SESSION

Motion by Mr. Dykhouse and second by Mr. Wheeler to enter into executive session to discuss personnel matters and to consult with legal counsel concerning contractual matters. Motion passed unanimously by roll call vote.

The board entered into Executive Session at 9:05 a.m. and reconvened in open session at 9:28 a.m.

ITEM 4. REPORT FROM EXECUTIVE SESSION

Roll call was taken, and Chair Peterson declared a quorum was present.

Chair Peterson reported that the board consulted with legal counsel concerning contractual and legal matters. No action was taken.

Motion by Ms. Lebrun and second by Mr. Christen to approve the executive session report. By roll call vote, the motion passed unanimously.

ITEM 5. APPROVAL TO BIND INSURANCE, APPROVAL OF PREMIUM FINANCING PLAN AND APPROVAL OF FUTURE FUND GRANT AGREEMENT

Mr. Engel said as the members of board will recall, a condition of the Property Donation Agreement (PDA) is SDSTA must maintain commercial general liability (CGL) coverage insuring all of the SDSTA activities at the facility with a limit of not less than \$75 million. With the imminent addition of the Long Baseline Neutrino Experiment/Deep Underground Neutrino Experiment (LBNF/DUNE), SDSTA Executive Director Mr. Mike Headley and Mr. Engel have been working to find ways to insure the risks associated with that project to maintain compliance with the PDA. The captive's actuarial report indicates it would cost approximately \$1 million/year for 5 years to take on the new risks; accordingly, coverage through the captive is not cost effective.

Mr. Headley and Mr. Engel also worked with the South Dakota Office of Risk Management to seek commercial coverage for LBNF/DUNE only, which was determined it is more cost effective. The proposed single pay premium for a 5-year owner's interest CGL policy for LBNF/DUNE is approximately \$1.3 million, which is cheaper than the captive.

Mr. Headley and Mr. Engel also looked at insuring everything commercially. It is not cost effective and would cost approximately \$560,000/year over 5-years. Alternately, the proposal to have the captive insure non-LBNF/DUNE exposures plus this CGL policy financed over 5-years is approximately \$433,000/year.

In regard to the CGL coverage, Mr. Engel said he and Mr. Headley are proposing the captive will issue an exclusion, and it will no longer cover LBNF/DUNE-related exposures as of August 1, 2018. Also, on August 1, 2018, a separate commercial CGL policy will insure the LBNF/DUNE-related exposures. Hence, there will be two "towers". One "tower" (commercial insurance) will cover LBNF/DUNE-related risks and the other tower (the captive) will cover all other SDSTA-related risks. Each tower will cap out at \$75 million.

Mr. Engel said the other coverage needed are the Directors and Officers (D&O), Errors and Omissions (E&O) and Employment Practices Liability (EPL) coverages. He said the captive's actuarial report indicates the risk for EPL claims will increase due to the large number of new individuals on site during LBNF/DUNE construction. Mr. Headley and Mr. Engel again looked at the captive to insure everything for those types of risks, and it is not cost effective—it is less expensive to insure those risks commercially. The premium is approximately \$32,000/year. Hence, purchasing this new commercial insurance will cover LBNF/DUNE-related risks only and the captive tower will cover all other SDSTA-related risks related to D&O, E&O and EPL.

Mr. Engel said rather than pay the \$1.3 million premium in one lump sum, there is a proposal to finance it over 5-years. The first payment is due by August 1, 2018 in the amount of \$350,000. The remaining annual payments are due April 1 of each year in the amount of \$258,787.01/year. If the policy is

canceled, then payments will not be owed unless there is a claim prior to cancelation. If that is the case, the premium payment will then need to be addressed.

Mr. Engel said the last issue is Governor Daugaard has agreed to provide a Future Fund Grant to make the first-year premium payment on the CGL policy as well as pay for one year of D&O, E&O and EPL coverages. The Future Fund grant agreement is contingent upon the grant funds being the money of last resort. The Governor understands the SDSTA will continue to work with Fermi Research Alliance (FRA) and Department of Energy (DOE) to cover the costs. If this happens, there would be no Future Fund Grant needed and the Future Fund agreement would be canceled.

In conclusion, Mr. Engel suggested a motion to authorize the chairperson or executive director to bind commercial general liability coverage and Directors and Officers, Errors and Omissions, and Employment Practices Liability coverage by the end of the day today with commercial carriers as presented. Mr. Engel also suggested the motion include authorization for the chairperson or executive director to execute the financing agreement, and to execute the Future Fund grant agreement.

Motion by Mr. Wheeler and second by Ms. Lebrun to authorize the chairperson or executive director to bind commercial general liability coverage and Directors and Officers, Errors and Omissions, and Employment Practices Liability coverage with commercial carriers as presented, to execute the financing agreement and to execute the Future Fund grant agreement.

Chair Peterson asked if there were further questions or comments.

Dr. Wilson asked if the 5-year period for insurance is the total construction time for LBNF/DUNE and what happens if construction is delayed or takes longer? Chair Peterson said it is for the construction time and if construction takes longer, the insurance would need to be extended and most likely go out for quotes again.

Mr. Headley concurred with Chair Peterson and noted that the insurance was targeted to cover the civil construction period for LBNF. He said there has been discussions with Fermilab about an insurance approach for the DUNE installation and operations period. That insurance would likely need to be structured differently than what has been outlined here.

Mr. Engel said it is possible to extend these coverages, but it would be additional premium and would be contingent on the loss history.

Chair Peterson thanked the Governor, Mr. Engel and Mr. Headley for working on this. He said it is imperative to do this and the SDSTA needs to act now as the premium will increase if it is not bound today. He said he endorsed this motion.

By roll call vote, the motion passed unanimously.

ITEM 6. PUBLIC COMMENTS

Chairperson Peterson asked if there were any questions or comments from the public. There were none.

ITEM 7. ADJOURN

Chair Peterson reminded board members the next regularly scheduled board meeting will be held on Thursday, June 28 at 8:00 a.m. (MT) in the Education and Outreach Building and called for a motion to adjourn.

Motion by Dr. Wilson and second by Mr. Dykhouse to adjourn. By roll call vote, the motion passed unanimously.

Meeting adjourned at 9:40 a.m. (MT) on May 1, 2018.