

**South Carolina Retirement System Investment Commission
Meeting Minutes**

December 22, 2011

**15th Floor Conference Room
1201 Main Street
Columbia, South Carolina 29201**

Commissioners Present:

Mr. Allen Gillespie, Chairman (via telephone)
Mr. Reynolds Williams, Vice Chairman (via telephone)
Mr. Edward Giobbe (via telephone)
Mr. James Powers (via telephone)
Dr. Travis Pritchett (via telephone)
State Treasurer Curtis Loftis (in person)

Other present for all or a portion of the meeting on Thursday, December 22, 2011:

Bob Borden (via telephone), Sarah Corbett, Hershel Harper, Robert Feinstein, Adam Jordan, Nancy Shealy, Heather Muller, James Manning, and Brian Wheeler, from the South Carolina Retirement System Investment Commission (Commission); Bill Leidinger, Bill Condon, Shakun Tahiliani, Dinah Raven, and Brian DeRoy, from the State Treasurer's Office (STO); Tammy Nichols and Travis Turner from the South Carolina Retirement Systems (SCRS); Jeff Stronkowsky, David Barnes, and Rhett Humphreys (via telephone) from New England Pension Consultants (NEPC), Jim Holly (via telephone) from the Comptroller General's Office, Christine Williamson (via telephone) from Pension and Investments.

I. CALL TO ORDER; ADOPTION OF PROPOSED AGENDA

Chairman Allen Gillespie called the conference call meeting of the South Carolina Retirement System Investment Commission to order at 10:02 a.m. Chairman Gillespie referred to the proposed meeting agenda and asked for a motion to approve. Mr. Edward Giobbe made a motion, which was seconded by Dr. Travis Pritchett, and passed unanimously, to approve the agenda as presented.

II. RATIFICATION OF CHAIRMAN'S ACTIONS REGARDING INTERIM APPOINTMENTS

Chairman Gillespie reviewed actions that had been taken to date. He stated that Mr. Robert Borden submitted a resignation letter on December 2, 2011, and noted that the Commission has the responsibility to appoint the CEO/CIO. Chairman Gillespie referenced the Commission's governance policy authorizing the Deputy CIO to serve as the acting CEO/CIO in the event of a sudden loss of services of the CEO/CIO until such time as the Commission selects a new CEO/CIO and that person assumes the position on a full-time basis. Chairman Gillespie noted that he had appointed Mr. Hershel Harper as Acting CIO, and Mr. Adam Jordan as Acting CEO to handle administrative matters, so as to permit Mr. Harper to focus on the investment function. Chairman Gillespie stated that Mr. Borden's trading and investment authorizations had been revoked effective December 2, 2011. Mr. Reynolds Williams made a motion to acknowledge Mr.

Borden's resignation and ratify the actions taken naming Mr. Harper and Mr. Jordan acting CIO and CEO, respectively. Mr. Giobbe seconded the motion.

Discussion ensued regarding the motion. Questions relating to Mr. Borden's resignation and employment status were reviewed. In response to a question, Chairman Gillespie noted that the Commission had asked Mr. Borden to provide a 60-day notice of resignation, and confirmed that the Commission was not obligated to extend Mr. Borden's employment subsequent to December 2, 2011, the date on which Mr. Borden tendered his resignation. Chairman Gillespie explained that the purpose of the 60-day notice was to permit an orderly transition, particularly with regard to the Commission's strategic partnerships. Mr. Gillespie noted that he had asked Mr. Borden to serve as a Senior Advisor to assist the Commission and RSIC staff in implementing the transition of responsibilities, and indicated that this transition period would conclude on January 13, 2012.

The question was called. In response to a procedural question, it was clarified that the motion, as presented, called for the Commission to (i) acknowledge Mr. Borden's resignation and (ii) ratify the actions taken naming Mr. Harper and Mr. Jordan acting CIO and CEO, respectively. Chairman Gillespie requested a roll call vote on the motion. Mr. James Powers, Mr. Loftis, Mr. Giobbe, Mr. Williams and Chairman Gillespie all voted in favor of the motion.

III. DISCUSSION OF INTERIM TRANSITION ISSUES

Mr. Williams made a motion to ratify Mr. Borden's continuing employment with the Commission as Senior Advisor for purposes of assisting the Commission and staff with the transition of responsibilities for the period commencing December 2, 2011, and ending no later than 60 days thereafter, at the discretion of, and at a date to be selected by the Chairman, in consultation with the Acting Chief Investment Officer. Dr. Pritchett seconded the motion. In the ensuing discussion, Chairman Gillespie stated that he would prefer to establish Mr. Borden's last day of employment since the separation date would determine the amount of his unused annual leave payment. Ms. Nancy Shealy, the Commission's General Counsel, reviewed the state laws which determine the payment which Mr. Borden would be eligible to receive for unused annual leave upon his separation from employment. In response to a question from Mr. Loftis, it was clarified that Mr. Borden would continue to serve as a state employee at his existing rate of pay.

Mr. Loftis stated his opposition to compensating Mr. Borden at his current salary, since, in Mr. Loftis' opinion, his level of service to the State had diminished. Mr. Loftis noted that Mr. Borden had tendered his resignation soon after receiving a significant salary increase (from \$353,000 to \$485,000 a year). Mr. Loftis opined that to keep Mr. Borden employed under the terms outlined was a breach of the Commission's fiduciary responsibilities, and expressed the opinion that there was a lack of controls over Mr. Borden's schedule and responsibilities during the transition period. Mr. Loftis noted that there had been some discussion of options such as lowering Mr. Borden's salary to its pre-increase level, and compensating Mr. Borden on an hourly basis, and asked about the status of those discussions.

Mr. Williams responded that he was very comfortable granting discretion to Chairman Gillespie, with input from RSIC senior management, to oversee, and make determinations regarding, Mr. Borden's service during the transition period.

Mr. Loftis noted that he was in possession of Mr. Borden's calendar over the last two fiscal years, and stated that it was not possible to definitively determine Mr. Borden's activities from

the records provided. Mr. Williams noted that the Commission had not required its employees to maintain minute-by-minute time records, given the nature of the employees' work.

Mr. Williams requested that the question be called as to the motion ratifying Mr. Borden's continuing employment. The Chairman requested an opportunity to address the rate of pay which Mr. Borden would receive during the transition period. The Chairman identified reasons both for and against adjusting Mr. Borden's salary during the transition period, and Mr. Loftis offered further explanation for his opposition to compensating Mr. Borden at his current salary.

Mr. Williams thereupon formally moved that the question be called as to the motion ratifying Mr. Borden's continuing employment. In response to a request from Messrs. Giobbe and Powers, the motion was restated as follows:

"That the Commission ratify Mr. Borden's continuing employment as Senior Advisor, at his current rate of pay, for purposes of assisting the Commission and staff with the transition of responsibilities for the period commencing December 2, 2011, and ending no later than 60 days thereafter, at the discretion of, and at a date to be selected by the Chairman."

A roll call vote was taken. Messrs. Williams, Powers and Giobbe voted in favor of the motion. Mr. Loftis and Chairman Gillespie opposed the motion.

Mr. Williams moved to adjourn the meeting, and Mr. Giobbe seconded the motion. It was confirmed that a motion to adjourn takes precedence over all other business and is non-debatable, and the motion to adjourn was thereupon brought to a vote. The motion failed by a vote of 4-1, with Mr. Williams voting in support of the motion, and Chairman Gillespie, and Messrs. Loftis, Giobbe and Powers voting against the motion.

Treasurer Loftis voiced several concerns regarding the manner in which the meeting was being conducted, and returned to the topic of the monies which Mr. Borden would be eligible to receive for unused leave upon separation from employment. Mr. Loftis indicated that, according to his calculations, Mr. Borden might be eligible to claim \$53,000 in unused leave, and asked how this claim would be verified and approved. In the ensuing discussion, Ms. Shealy first clarified that State law permits only certain amounts of unused annual leave to be paid out to permanent State employees upon separation from employment; unused sick leave cannot be similarly monetized. Ms. Shealy described in detail how annual leave is calculated, and stated that an employee can be paid for up to 45 days of unused annual leave. Ms. Shealy also noted the very different treatment of contractual or temporary employees with regard to receipt of benefits under State law.

In response to a question from Mr. Loftis, the process by which Mr. Borden's leave requests were being processed was reviewed. Mr. Loftis noted that the Commission does not receive a signed statement of annual leave verification and asked how the Commission would be able to verify if Mr. Borden's annual leave payout of \$53,000 is correct. Chairman Gillespie asked Ms. Shealy to clarify for the Commission how annual leave records are documented. Ms. Shealy explained to the Commission that previously, with the old E-Leave system, there was a leave statement that was given to each employee at the end of the year to sign which certified that their annual and sick leave amounts were correct. Currently, with the new South Carolina Enterprise Information System ("SCEIS"), there is no mechanism in place for an agency head to have their leave verified by someone else. Ms. Shealy added that someone has to enter the leave on the system, but unlike subordinates who send leave requests for a supervisor to

approve, there is no certification or approval of an agency head's leave time. After additional discussion took place, Mr. Loftis reiterated his concerns with regard to both past practice and the process by which Mr. Borden's leave during the transition period will be handled.

Mr. Loftis requested that the Commission convene again sooner than in another three or four weeks. Mr. Loftis also suggested that an examination of the Commission's fiduciary responsibilities and obligations would be in order.

Mr. Borden asked to be heard. He reviewed the recent history of the Commission's consideration of his compensation. Mr. Borden noted that the Commission had taken action in July, 2011 to adjust his compensation, but then revisited the topic in its September and November meetings, changing material elements of the agreement which had been reached in July. Mr. Borden stated that he acted in good faith throughout this process, not only by informing the Commission of the discussions that he had regarding possible new employment back in early October, but also by providing the Commission with the requested advance notification of his decision to accept a new job. Mr. Borden offered to sever his employment relationship with the Commission immediately if that was the Commission's preference, and noted that he was attempting to assist the Commission in implementing a smooth, successful transition. Mr. Borden concluded by encouraging the Commission to return its focus to the investment and management of the SCRS trust funds' portfolio.

Mr. Giobbe thanked Mr. Borden for his comments and concurred, noting that during this unusually challenging time in the markets, the Commission needed to focus its attention on the portfolio. Mr. Giobbe added that the Commission should move forward in the spirit of cooperation.

In response to questions from Mr. Powers regarding the language of the motion which had been adopted relating to Mr. Borden's employment status, discussion ensued, which clarified that the two elements highlighted below in bold were intended to be part of the motion as adopted:

*"That the Commission ratify Mr. Borden's continuing employment as Senior Advisor, **as a State employee and** at his current rate of pay, for purposes of assisting the Commission and staff with the transition of responsibilities for the period commencing December 2, 2011, and ending no later than 60 days thereafter, at the discretion of, and at a date to be selected by the Chairman, **in consultation with the Acting Chief Investment Officer.**"*

It was the consensus of the body that the highlighted language should be incorporated into the motion as adopted.

IV. ADJOURNMENT

Mr. Powers made a motion to adjourn, which was seconded by Mr. Loftis, and passed unanimously. The meeting adjourned at 11:04 a.m.

[Staff Note: In compliance with S.C. Code Ann. §30-4-80, public notice of and the agenda for this meeting were delivered to the press and to parties who requested notice, and were posted at the entrance and in the lobby at 1201 Main Street, Columbia, South Carolina, prior to 10:00 a.m. on December 21, 2011.]