

MINUTES OF STATE BUDGET AND CONTROL BOARD MEETING

August 8, 2012 -- 10:00 A. M.

The Budget and Control Board (Board) met at 10:00 a.m. on Wednesday, August 8, 2012, in Room 252 in the Edgar A. Brown Building, with the following members in attendance:

Governor Nikki R. Haley, Chair;
Mr. Curtis M. Loftis, Jr., State Treasurer;
Mr. Richard Eckstrom, Comptroller General;
Senator Hugh K. Leatherman, Sr., Chairman, Senate Finance Committee; and
Representative W. Bryan White, Chairman, Ways and Means Committee.

Also attending were Budget and Control Board Executive Director Marcia Adams; Chief of Staff Steve Elliott; General Counsel Paul Koch; Governor's Deputy Chief of Staff for Policy, Budget, and Cabinet Affairs Ted Pitts; Treasurer's Chief of Staff Bill Leiding; Comptroller General's Chief of Staff James M. Holly; Senate Finance Committee Budget Director Mike Shealy; Ways and Means Committee Chief of Staff Beverly Smith; Board Secretary Delbert H. Singleton, Jr., and other Budget and Control Board staff.

Adoption of Agenda for Budget and Control Board

Upon a motion by Senator Leatherman, seconded by Mr. White, the Board adopted the Budget and Control Board agenda as proposed.

Minutes of Previous Meeting

Mr. Loftis submitted a letter that put in writing his objections to some of the facts that were discussed at the July 12, 2012, Board meeting. The letter was added as additional information to the minutes and is attached and incorporated herein by reference.

Upon a motion by Mr. Loftis, seconded by Mr. White, the Board approved the minutes of the June 27, 2012, and July 12, 2012, Budget and Control Board meetings and received a letter from Treasurer Loftis for inclusion as part of the July 12, 2012, meeting minutes.

Blue Agenda

Upon a motion by Mr. White, seconded by Senator Leatherman, the Board approved the blue agenda items.

**Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 2**

State Treasurer: Bond Counsel Selection (Blue Agenda Item #1)

The Board approved the following notification of the assignment of bond counsel for conduit issues (for ratification of issuer's counsel only) for which Board approval was requested:
CONDUIT ISSUES: (For ratification of Issuer's Counsel only)

Description of Issue	Agency/Institution (Borrower)	Borrower's Counsel	Issuer's Counsel
\$65,000,000 SC JEDA	SCE&G	McNair Law Firm	Haynsworth Sinkler Boyd
\$37,000,000 SC JEDA	CSRA Senior Living, Inc.	Haynsworth Sinkler Boyd	Nexsen Pruet
\$15,000,000 SC JEDA	Coker College	Haynsworth Sinkler Boyd	Howell Linkous & Nettles
\$3,800,000 SC JEDA	All Saints Episcopal Day School	Haynsworth Sinkler Boyd	Pope Zeigler

Information relating to this matter has been retained in these files and is identified as Exhibit 1.

Division of General Services: Easements (Blue Agenda Item #2)

The Board approved the following easements in accordance with the SC Code of Laws as requested by the Division of General Services:

- (a) County Location: Charleston
From: Budget and Control Board
To: Commissioners of Public Works of the City of Charleston
Consideration: \$700
Description/Purpose: To grant a 0.095 acre easement for the installation, operation and maintenance of a sewer force main beneath Long Creek, a tributary of the Stono River, and surrounding marsh. The easement is part of a project to construct a new regional pump station serving the Red Top area. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

- (b) County Location: Charleston
From: Budget and Control Board
To: Commissioners of Public Works of the City of Charleston

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 3

Consideration: \$700
Description/Purpose: To grant a 0.589 acre easement for the installation, operation and maintenance of a sewer force main beneath a tributary of the Stono River and surrounding marsh. The easement is part of a project to construct a new regional pump station serving the Red Top area. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

(c) County Location: Pickens
From: Budget and Control Board
To: Fort Hill Natural Gas Authority
Consideration: \$875
Description/Purpose: To grant a 0.075 acre easement for the installation, operation and maintenance of a natural gas line and facilities along the property line of the National Guard Armory in Pickens fronting on Stephens Road. The easement will facilitate the expansion of natural gas service in Pickens County. Consideration is \$500 plus the Pickens County assessed value.

The Board concurred and acquiesced in granting the following easement in accordance with the SC Code of Laws:

(d) County Location: Richland
From: Midlands Technical College
To: City of Columbia
Consideration: \$1
Description/Purpose: To approve the transfer of title to water and sewer lines together with an easement for the purpose of ingress, egress, operation and maintenance of said lines serving the new Engineering/Science Classroom Facility at Midlands Technical College's Northeast Campus. The easement is being sought by Midlands Tech for the benefit of the property.

Information relating to this matter has been retained in these files and is identified as Exhibit 2.

Division of Procurement Services: Procurement Audits and Certifications (Blue Item #3)

In accord with Section 11-35-1210, the Board granted the following procurement

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 4

certification within parameters described in the audit reports for the following limits (total potential purchase commitment whether single-or multi- year contracts are used) for the following agencies:

- a. South Carolina Law Enforcement Division (SLED) (for a period of three years): supplies and services, \$100,000* per commitment; information technology, \$100,000* per commitment; consultant services, \$100,000* per commitment.

*Total potential purchase commitment whether single or multi-term contracts are used.

The audit confirms SLED's Procurement Office has the internal controls and expertise to ensure compliance with applicable requirement for the certification requested. Further, SLED requested to remain at its current certification levels.

- b. Department of Transportation (DOT) (for a period of three years): supplies, \$1,000,000* per commitment; services, \$500,000* per commitment; consultant services, \$100,000* per commitment; information technology, \$100,000* per commitment; construction services, \$500,000 per commitment; construction contract change order, \$100,000 per change order; architect/engineer contract amendment, \$25,000 per amendment.

*Total potential purchase commitment whether single or multi-term contracts are used.

**DOT requested lower construction certification levels because it does not need the higher dollar levels.

The audit confirms DOT's Procurement Office has the internal controls and expertise to ensure compliance with applicable requirements for the certifications requested. Further, DOT requested to remain at its current certification levels except for an increase in consultation services.

Information relating to this matter has been retained in these files and is identified as Exhibit 3.

Division of Human Resources: Appointment of State Employee Grievance Committee Members (Blue Agenda Item #4)

Section 8-17-340 (A) of the S.C. Code of Laws provides that members of the State Employee Grievance Committee be appointed by the Board. The Division of Human Resources recommends the reappointment of the following members for three year terms: Glenise Elmore, Ami Franklin, Christopher Johnson, Michael Jones, Florence McCants, Gerald Murphy, David

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 5

Slimmer and Leroy Taylor.

Agencies have submitted nominations, and the Division of Human Resources recommends the appointment of the following new members: Patricia Butler, Department of Insurance; Terri McGee, Department of Natural Resources; Kenneth Norris, Vocational Rehabilitation; and Anne Wolf, Lt. Governor's Office. Ms. Butler will serve the remaining two year of a resignee's uncompleted term. Ms. McGee, Dr. Norris and Ms. Wolf will serve the remaining one year of three resignees' uncompleted terms.

The Board approved the following recommended appointments of new State Employee Grievance Committee members to be effective when training by the Division of Human Resources is completed:

Patricia Butler, Department of Insurance; Terri McGee, Department of Natural Resources; Kenneth Norris, Vocational Rehabilitation; and Anne Wolf, Lt. Governor's Office. Ms. Butler will serve the remaining two year of a resignee's uncompleted term. Ms. McGee, Dr. Norris and Ms. Wolf will serve the remaining one year of three resignees' uncompleted terms.

Information relating to this matter has been retained in these files and is identified as Exhibit 4.

Public Employee Benefit Authority: South Carolina Deferred Compensation Commission Appointments (Blue Item #5)

According to SC Code of Laws Ann. 8-23-20, members of the South Carolina Deferred Compensation Commission are appointed for three-year terms (and until their successors are appointed and qualify) by the State Budget and Control Board.

The terms of three members of the South Carolina Deferred Compensation Commission expire this month:

State Employee – Dale M. Rhodes, CPA
State Employee – Peggy G. Boykin, CPA
Retired Public Employee – Mary M. Greene

All three members are seeking re-appointment to the Commission at this time. It is understood that the terms of these members (and all remaining members of the Commission) will expire on December 31, 2013, in accordance with the amendment to SC Code of Laws Ann. 8-

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 6

23-20 that takes effect January 1, 2014, when PEBA (Public Employee Benefits Authority) takes over responsibility for the Deferred Compensation Program.

The Board appointed the following three members to the South Carolina Deferred Compensation Commission:

State Employee – Dale M. Rhodes, CPA
State Employee – Peggy G. Boykin, CPA
Retired Public Employee – Mary M. Greene

Information relating to this matter has been retained in these files and is identified as Exhibit 5.

Executive Director: Revenue Bonds (Blue Agenda Item #6)

The Board approved the following proposals to issue revenue bonds:

- a. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$3,800,000 Economic Development Revenue Refunding Bonds (\$3,703,436 refunding involved)
Allocation Needed: -0-
Name of Project: All Saints' Episcopal Day School
Employment Impact: maintain 48 jobs for All Saints' Episcopal Day School
Project Description: refunding of Series 2007 Bond used to construct a multi-purpose building and a media and administration center for the borrower, and costs of issuance
Note: *private sale*
Bond Counsel: Benjamin T. Ziegler, Haynsworth Sinkler Boyd, P. A.
(Exhibit 6)
- b. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$10,000,000 Economic Development Revenue Bonds
Allocation Needed: \$10,000,000
Name of Project: BauschLinnemann North America, Inc.
Employment Impact: maintain existing employment for 17 people and provide additional employment for 18 people within 12 months and approximately 24 people within 24 months, all within the county.
Project Description: the proceeds of the bonds will be primarily used for the acquisition, construction and equipping of a facility in Horry County and to (i) defray the costs of the project; (ii) to pay capitalized interest, if any, on the bonds; (iii) fund the debt service reserve requirement, if any, with respect to the bonds; and (iv) pay certain costs of issuance with respect to

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 7

- the bonds.
Note: *negotiated private sale*
Bond Counsel: April C. Lucas, Nexsen Pruet, LLC
(Exhibit 7)
- c. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$100,000,000 Economic Development Revenue Bonds
(\$49,200,000 refunding involved)
Allocation Needed: -0-
Name of Project: CareAlliance Health Services, D/B/A Roper St. Francis
Healthcare
Employment Impact: maintenance of approximately 5,300 employees
Project Description: providing financing (1) to defray the cost of refunding the
remaining callable portion of the Charleston County
Revenue Bonds, Series 199A bonds and (2) to defray the
cost of acquiring capital assets and undertaking capital
improvements to its medical and office facilities.
Note: *private sale*
Bond Counsel: Jeremy L. Cook, Haynsworth Sinkler Boyd, P.A.
(Exhibit 8)
- d. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$15,000,000 Economic Development Revenue Bonds
Allocation Needed: -0-
Name of Project: Coker College
Employment Impact: maintain 180 jobs and add 9 jobs within 24 months
Project Description: construct and equip a wellness center to replace current
gymnasium and construct and equip new residence halls to
accommodate enrollment growth.
Note: *private sale*
Bond Counsel: Kathleen Crum McKinney, Haynsworth Sinkler Boyd, P.A.
(Exhibit 9)
- e. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$15,000,000 Economic Development Revenue Bonds
Allocation Needed: -0-
Name of Project: New Horizon Family Health Services, Inc.
Employment Impact: maintain 150 jobs and add 24 in 12 months and 48 in 24
months
Project Description: acquire land, a building or buildings, and necessary
furnishings and equipment for a new health center in
Greenville County
Note: *private sale*
Bond Counsel: Kathleen Crum McKinney, Haynsworth Sinkler Boyd, P. A.
(Exhibit 10)

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 8

- f. Issuing Authority: Jobs-Economic Development Authority
Amount of Issue: N/E \$65,000,000 Industrial Revenue Bonds (\$65,000,000 refunding involved)
Allocation Needed: -0-
Name of Project: South Carolina Electric & Gas Company
Employment Impact: maintaining approximately 651 jobs
Project Description: refinance all or a portion of \$56,910,000 original principal amount South Carolina Jobs-Economic Development Authority Industrial Revenue Bonds, Series 2002A incurred to refinance certain air and water pollution control facilities and sewage and solid waste facilities at the V. C. Summer plant in Fairfield Count.
Note: *private sale, for public reoffering thereafter*
Bond Counsel: William M. Musser, McNair Law Firm, P.A.
(Exhibit 11)
- g. Issuing Authority: State Housing Finance and Development Authority
Amount of Issue: \$7,000,000 Multifamily Housing Revenue Bonds
Allocation Needed: -0-
Name of Project: Columbiana Ridge
Employment Impact: n/a
Project Description: to finance a portion of the costs of acquiring and renovating a 180-unit apartment development located at 401 Columbiana Drive in the City of Columbia, Richland County
Bond Counsel: Samuel W. Howell, IV, Howell Linkous & Nettles, LLC
(Exhibit 12)
- h. Issuing Authority: State Housing Finance and Development Authority
Amount of Issue: N/E \$90,000,000 Mortgage Revenue Bonds (\$68,670,000 refunding involved)
Allocation Needed: -0- (The Authority has sufficient carryforward ceiling allocation)
Name of Project: Mortgage Revenue Bonds
Employment Impact: n/a
Project Description: Mortgage Revenue Bonds
Bond Counsel: Rion D. Foley, McNair Law Firm, P. A.
(Exhibit 13)

Executive Director: Economic Development (2012 Ceiling Allocations) (Blue #7)

The initial balance of the 2012 state ceiling allocation is \$444,526,850. In accord with Code Section 1-11-520, \$177,810,740 (40% of the total) was designated as the state pool and

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 9

\$266,716,110 (60% of the total) was designated as the local pool. There is presently a state ceiling balance of \$424,526,850 remaining for 2012. Allocation requests for 2012 totaling \$42,500,000 have been received thus far.

The recommendation from the Department of Commerce for allocations for this cycle totals \$10,000,000. The Department of Commerce makes the following recommendation for allocation from the local pool:

JEDA BauschLinnemann North America, Inc., (Horry County), \$10,000,000.

Board approval of this matter leaves an unexpended state ceiling balance of \$414,526,850 (state pool - \$177,810,740; local pool - \$236,716,110) to be allocated later in the calendar year.

In accord with Code Section 1-11-500 et seq. and upon the recommendation of the Department of Commerce, the Board granted the following tentative ceiling allocation from the local pool:

JEDA BauschLinnemann North America, Inc., (Horry County), \$10,000,000.

Information relating to this matter has been retained in these files and is identified as Exhibit 14.

Executive Director: Ceiling Allocation Reinstatement (Blue Agenda Item #8)

On May 9, 2012, the Board granted a tentative ceiling allocation for the Viva Recycling of South Carolina, LLC, project in the amount of \$20,000,000 with an expiration date of August 7, 2012. The Jobs-Economic Development Authority (JEDA) advised the Board that it is likely that the bonds for which the allocation was granted will close toward the end of August 2012, after the August 7, 2012, expiration date. JEDA requested that the allocation be reinstated in the amount of \$20,000,000 pursuant to S.C. Code of Laws Section 1-11-560(D) for a period of 30 consecutive calendar days from August 8, 2012. Section 1-11-560(D) provides, in part, that the Board “may reinstate for a period of not more than thirty one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously”. If the request to reinstate the allocation is granted by the Board, the reinstated allocation will expire on Friday, September 7, 2012, if the bonds are not issued on or before that date.

In accord with Code Section 1-11-560(D), the Board granted the Jobs-Economic

Development Authority's request for a 30-day reinstatement of the ceiling allocation to Viva Recycling of South Carolina, LLC, from August 8, 2012, through September 7, 2012, in the amount of \$20,000,000.

Information relating to this matter has been retained in these files and is identified as Exhibit 15.

Public Employee Benefit Authority (Employee Insurance Program): State Health Plan Benefits and Contribution Rates Effective January 1, 2013 (Regular Session Item #1)

Act 278 of 2012, effective July 1, 2012, transferred the Employee Insurance Program (EIP) to the Public Employee Benefit Authority (PEBA) from the Budget and Control Board. As part of Act 278, Section 1-11-710(A)(2) of the South Carolina Code of Laws was amended to provide that the Board of the Public Employee Benefit Authority must approve the State Health Plan benefits and contributions for the 2013 calendar year by August 15, 2012. It is unlikely, however, that the PEBA Board will be appointed and able to act prior to the August 15th deadline and under newly-enacted S.C. Code Ann. Section 9-4-45, coverage changes and contribution determinations of the Public Employee Benefit Authority are subject to approval by the Budget and Control Board.

There are no proposed benefit or eligibility changes to the State Health Plan in 2013. There is, however, an increase required in contributions due primarily to health expenditure growth. To cover the required increase in contributions, the General Assembly has funded the Plan in the FY 2012-2013 Appropriations Act with an aggregate 6.37% employer increase with no employee/retiree increase.

Accordingly, the Public Employee Benefit Authority staff calculated the proposed 2013 Employer contribution rates set out in Attachment 2 of this agenda item by increasing the employer contribution for each tier by 6.37%. No other changes are proposed for the State Health Plan in 2013.

The Budget and Control Board was asked to approve the 2013 contribution rates for the State Health Plan as set out in Attachment 2.

Bill Blume, PEBA Director, and Steve Van Camp, PEBA General Counsel, appeared before the Board on this matter. Governor Haley stated that this matter gave her some heartburn

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 11

only because of the progress that has been made to move in the right direction. She said she did not want to do this. She commented that her executive budget had the employee matching anything the employer gave. She noted that the Legislature funded the entire amount that was needed, but since the PEBA Board has been formed that changes things. Governor Haley acknowledged there is an August deadline to approve the item, but wanted to know if there was a way to postpone the matter until October. She noted that she had just appointed her three PEBA members the day before the Board meeting.

Mr. Blume stated that this is a procedural move even though it is statutorily required. He said notice has to be given to employers and this is one of the reasons for the August 15th deadline. In discussing the possibility of taking this matter up after August 15th, Governor Haley said she did not want to stall the matter if the Board is going to have to do this anyway. She said she is looking for a better way to do this by incorporating the PEBA Board in this decision instead of just throwing this on the taxpayers.

Senator Leatherman commented that Mr. Blume and Mr. Van Camp are the experts and that the action the Board is being asked to take is mandatory. Governor Haley commented that is why she wanted to hear from the experts. Mr. Van Camp acknowledged the statutory requirement that the rates be approved by August 15th. He noted the reason for that is that each October there is an annual enrollment or open enrollment during which employees can switch health plans and that this year is an annual enrollment. Mr. Van Camp stated the reason for the August deadline is because there are operational consequences in that things need to be in place by October. He said that is one reason he asked about meeting in September.

Governor Haley said that the Board has to consider the new statute not just the old statute. She said she knows that Senator Leatherman has his belief on that but she is looking to see if there is a way for the Board to meet in September and implement what has been passed by both the House and the Senate, signed into law, and go forward with the shared contributions. Mr. Blume asked whether the Board would be willing to extend the matter to September.

Mr. Eckstrom asked what needed to be done in order to move forward with this issue in terms of being able to come back to brief the Board. Mr. Blume stated that the people who are coming on the PEBA Board are not familiar with the situation and so there would be a good bit of education that would have to take place with those 11 commissioners at that point in time. He

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 12

said that process would be cumbersome and difficult but perhaps could be managed if it is the Board's choice to move the time for making the decision. Governor Haley said the reason she has been thinking about this that the PEBA Board can raise employee contributions and the Board cannot. She said she wants to put PEBA to work now and give them the time they need. She stated that she is not trying to put Mr. Blume in a bad spot but she wanted to enact the legislation passed by the House and Senate and to start on what the public was told would be done. She said the Board should not be going backwards at this time but it should be going forward. She said that the members of PEBA are going to be a very experienced group and with Mr. Blume's and Mr. Van Camp's expertise they can move forward. She said, however, she needed them to tell her if this is doable because she does not know if it is.

Mr. Loftis stated that he is worried whether this action is legal for the Board to do. He said that PEBA is part of the statute but it cannot be found. He said he is concerned about what happens if the Board takes this action and someone challenges it. Mr. Blume stated that this has been passed this by both PEBA's counsel and the Board's counsel and they have suggested that since the PEBA Board has not been organized yet, nominated, or sworn in that the "buck" is now statutorily passed to the Board. Mr. Blume stated that there is an initial determination by PEBA with respect to plan changes and with respect to contribution increases that is then approved by the Board. He said the question for the Board is whether by September 15th there are enough people appointed for there to be a board and that they are educated on the issue. Governor Haley asked whether there is deadline for filling the positions to which Mr. Blume responded there is no deadline. Mr. Blume said PEBA started July 1st but only five members are appointed.

Mr. Eckstrom asked Mr. Blume whether he understood him to say that the legal determination he received is that the Board stands in for the PEBA Board until the PEBA Board is established. Mr. Blume said that is correct. Mr. Eckstrom asked whether that means the same duties and responsibilities and the same latitude that the PEBA Board has devolves to the Board in this instance. Mr. Blume said that he is not sure that he would agree with that but that Mr. Eckstrom could ask counsel.

Ms. Adams asked Mr. Koch to speak to the issue. Mr. Koch stated that because there is no PEBA Board at this point in time and because there is the statutory deadline of August 15th, Attorney General opinions and rulings of the Supreme Court state that if there is a void in action

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 13

then the prior board or the individual can serve in that void in a *de facto* capacity. He stated that because there is no PEBA Board the Board not only serves in that capacity but also pursuant to the new law must approve any action the PEBA Board would take on this matter. He said at the current time the Board has two roles but in the future the Board would have one role in which the PEBA Board makes a determination that must be approved by the Board. Mr. Koch stated he believes the law would support the Board acting because there is the procedural deadline of August 15th. He said the Board can serve in the role of adopting this matter so that it does not go without being adopted. Mr. Eckstrom asked whether that meant assuming the functions of the PEBA Board to which Mr. Koch responded yes. Mr. Eckstrom indicated that he agreed and concurred entirely.

Governor Haley asked whether that meant the Board has the ability to put in employee contributions now. Mr. Koch stated that he believes the Board serves in that role at this point in time. He stated he did not know if such has been recommended or analyzed. Governor Haley asked whether there is a decision that can be made to do what the new legislation allows to be done as the Board until PEBA is put in place. Mr. Koch said he believes that is the case.

Senator Leatherman commented that the General Assembly has funded the employer contribution rate. He asked what is there to be done other than adopt what the General Assembly passed. Governor Haley said it is her opinion that just because the money is there does not mean it has to be spent. She said the legislation is one that the credit rating agencies and the public appreciate because the legislation states that when there is a deficit there will be a team effort of not just putting it all on the taxpayer but on the employees as well. She said she does not understand why the Board should wait when it now has the ability to do what the legislation allows.

Mr. Koch said the Board is serving as the PEBA Board. He said this is somewhat uncharted waters with the unusual situation of the lack of the appointment of a new board. He said whether this would survive a legal challenge would be left to the courts. Governor Haley said the Board is now technically serving as the PEBA Board. She said serving as the PEBA Board they can technically use the new legislation that is in place which is a shared contribution plan. Mr. Eckstrom commented that unless the Board can act with the full capacity of the PEBA Board then the Board is not acting as the PEBA Board. Mr. Koch stated that for this action the

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 14

Board can serve in that capacity because there is no PEBA Board.

Mr. White commented that what the Board is trying to do is take action on or by August 15th because the Board has always had to do so and it is upon the Board to make recommendations or adoptions of what will happen with the State Health Plan and retirement benefits. He said that under the PEBA statute the final authority still rests with the Board and that PEBA only makes a recommendation to the Board and the Board can adopt or change the recommendation. Ms. Adams said the Board can only approve or not approve the recommendations. Mr. White said whether a PEBA Board is in place or not the ultimate decision comes down to the vote the Board has before it to take. He said the Board can either fully fund the contributions as the General Assembly has said or change it with a majority vote. He said he does not think that has changed with the new legislation. Ms. Adams stated the legislation allows the Board to give an up or down vote. She said if PEBA was in place and brought the plan to the Board, the Board would vote “yes” or “no”. She said if the Board voted “no” the recommendation would not be in place.

Governor Haley inquired that since the Board is acting until the PEBA Board is established whether it is possible for there to be a motion that half will be funded by the employer and half by the employee. Ms. Adams said that what she is hearing from the legal advice is that it can be done but that the Board is warned that these are uncharted waters in which reliance is being put on Attorney General’s opinions and rulings of the Supreme Court. She said that the Board’s action could be tested. Governor Haley said that the worst that could happen is that the Supreme Court would say that the Board could not take such action in which case the Board would go back and fully fund the contribution.

Senator Leatherman asked Governor Haley whether her earlier comment was that just because the money was available it did not have to be spent to which Governor Haley said that is correct. Senator Leatherman said the General Assembly made that decision and it is not for the Board to look behind an action of the General Assembly to decide what it will or will not do. He commented that is the law as of July 1st. Governor Haley noted that the General Assembly made that decision prior to passage of the PEBA legislation. She said this is a situation where two pieces of legislation are coming together and she is pointing out that the PEBA legislation is the law that is now passed. Senator Leatherman commented that this is not the only time that there

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 15

are two laws on the same subject. Governor Haley said that is why the issue is open for debate. She said the question is whether the Board has the ability to split the contribution half and half and do as the legislation says. Senator Leatherman said that he does not believe that to be the case and that he will never vote to undo what the General Assembly did in the appropriation bill.

Mr. Eckstrom asked Senator Leatherman whether it was the General Assembly's intent that enrollees in the plan not incur any additional costs. Senator Leatherman said absolutely. Mr. Eckstrom asked whether that was a one time basis or because the PEBA Board had not been established. Senator Leatherman said that it was in this year's budget.

Mr. Eckstrom asked whether the Board acting as the PEBA Board could decide to allocate some of the costs to enrollees and some of the costs to employers and have any excess from the more than \$50 million that was appropriated go to the trust fund that is woefully underfunded. Senator Leatherman said that could not happen without action of the General Assembly. Governor Haley said it would sit in the General Fund for next year. Mr. Eckstrom said the General Assembly would be accomplishing the same thing by allowing those funds to remain in the General Fund until next year at which time they could be appropriated to the trust fund. Senator Leatherman said that the only way they would stay in the General Fund is if they lapsed or if they are not used the way the General Assembly specified. Mr. Eckstrom asked whether there would be a splitting of costs to which Senator Leatherman responded there would be no cost splitting because the General Assembly has already made the decision that the cost cannot be split. Governor Haley said the funds would lapse into the next executive budget. Mr. Eckstrom said that employers could not spend the funds if they were not drawn down as the employer contribution.

Senator Leatherman said that the funds are mandated to be drawn down as indicated in the Appropriations Act. He said neither the Board nor anyone else has the authority to go behind the General Assembly and not allow the funds to be used for employer contributions. Mr. Eckstrom said that he is suggesting that if all of the funds are not needed that they remain in the General Fund and be used by the General Assembly next year. Governor Haley asked Senator Leatherman whether he was saying that if the General Assembly chose to it could fully fund next year over the recommendations of the PEBA Board. Senator Leatherman said that the act of the General Assembly overrides any board. Mr. Eckstrom asked what then is the role of the PEBA

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 16

Board in determining whether costs should be split. Mr. Eckstrom noted that the General Assembly did a good thing with respect to the Retirement System with regard to increases that are seen year after year after year. He said there needs to be a very fair, balanced, and equitable way of dealing with those annual increases and the statute mandates that going forward to assure that balance and those costs are split equally. Governor Haley said the credit rating agencies expect that to happen. Mr. Eckstrom commented that is a very good approach to take in this instance with costs that are rising and those costs can be handled by reducing benefits or increasing premiums. He said given the fact that the level of coverage is being maintained the premium costs go up. He stated when his neighbors get a premium cost on their health insurance they pay. He noted that this is a very good plan that is not available to most of the citizens of South Carolina and the enrollees in the plan have more capacity to handle the cost of this almost "Cadillac" health plan than do their neighbors. He said our neighbors who are not state employees cannot afford this coverage and yet our neighbors are being asked to cover the entire increase for state employees.

Governor Haley said that she disagrees that if a PEBA Board is in place that the General Assembly can override anything it does. She commented that when laws are put into place that means something and that the power was never meant for the Legislature to change its mind. She said it concerns her now whether the Legislature is going to debate about fully funding or following PEBA.

Mr. Loftis said he agrees that cost sharing is important. He said he did not realize the cost for state line items for employer's for higher education, for example. He said if the insured is getting significant benefit and the State is insuring the workers' part this is an incentive to hire a lot of people. He said he likes the idea of cost sharing and if the Board is acting as the PEBA Board they should be able to look at that. He acknowledged, however, there is a timing problem.

Governor Haley said that technically the Board could decide to split the costs and go ahead with the legislation now. Mr. Loftis asked whether anyone has looked at what the percentages should be for cost sharing. Governor Haley said that the legislation provided for a 50/50 share. Mr. Van Camp stated that the plan needed a total of 4.6%. He said if it is all funded on the employer side that is 6.37% on the employer and nothing on the employee or it could be split as it was last year with 4.6% for the employer and employee.

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 17

Mr. White said reference continues to be made to the legislation but when it comes to splits and cost sharing that was more on the retirement contributions and not on the health insurance contributions other than saying PEBA would make recommendations about the State Health Plan. He said he did not think the legislation said anything about splitting the cost. Mr. Koch said with regard to the health care portion the law just simply changed the definition of board from Budget and Control Board to PEBA. He said the new PEBA Board now has the responsibilities the former Board had, for example, in approving a plan by August 15th. He stated the retirement legislation did not get very much into detail about ongoing costs and differentiating the employer and employee contribution rate looking forward. Mr. White said he has some concern with regard to the budgeting process because the Legislature did not fully fund the employer portion on an annual basis. He said the PEBA Board is not in place but the question is if it was in place what would the Board's action be. He said the Board would only have a straight up or down vote. He said if this matter comes to a vote he may lose but he is going to stay on the side of the General Assembly.

In further discussion, Mr. White stated that the General Assembly adopted the funding to go in this direction during the PEBA transition period. He said that agencies as the employer will have to pick up this cost from the employer contribution side. He said the employer contribution side is what is talked about as being fully funded. He said his concern is whether agencies have accounted for this because they have had their budgets set since July 1st based on an act of the General Assembly in the budgeting process. He said he understands the thought of everyone having some skin in the game but the taxpayer is still funding the agency and the employer. Governor Haley said a motion can be made to talk about the cost sharing.

Mr. Eckstrom called the Board's attention to Attachment 1 of the agenda item. He pointed out that Code Section 1-11-710 states that the PEBA Board when it is functioning can address the matter in a plan of how costs will be borne. Mr. Koch said that is the case and it would be done similar to how the Board has done it in the past. He said for example that last year the Legislature funded a portion of the employer rate so this Board made a decision to require an employer and employee increase. He noted this year the General Assembly has fully funded the employer rate. He said that is what is being presented by the PEBA staff for the Board to consider.

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 18

Mr. Eckstrom asked Mr. Koch whether it is his legal opinion that the Board, previously, or the PEBA Board, prospectively, has a duty to reflect rates exactly as they were funded by the General Assembly. Mr. Koch stated that he did not believe that the General Assembly's appropriation can be disregarded. He said the General Assembly has appropriated the money for this purpose. Mr. Eckstrom asked whether that meant the PEBA Board had no discretion this year with regard to the employer contribution rate. Mr. Koch said if there were plan benefit changes or change of eligibility requirements or if the General Assembly decided not to fund the employer rate and there was a need to increase employee rates so that the plan does not go into a deficit, that is a decision the Board has made in the past and the PEBA Board would have to look at moving forward. He also noted that it will be up to the PEBA Board to decide what options to present to the General Assembly to deal with the health care plan moving forward. He said, for example, next year the PEBA Board may decide that the employee rate needed to increase and that is the approach they take when they meet with the General Assembly about funding the health plan. Mr. Eckstrom asked whether the statute can be carried out consistent with what Mr. Koch said in that the PEBA Board will go to the General Assembly by August 15th and say this is their recommended plan. He said at that point the plan could not possibly be effective for the next calendar year. Mr. Koch stated that PEBA would work with the General Assembly as EIP did prior to the adoption of the budget to determine what would be available to the health plan starting January 1st of the next calendar year. Mr. Eckstrom noted that the plan is not required until August 15th. Mr. Koch said the Board approves the plan for the upcoming calendar year. He said in this case the General Assembly appropriated funds in the budget to fund the six-month period from January 1 to June 30 of 2013. Mr. Eckstrom asked whether Mr. Koch was saying the plan could be considered part of the calendar year to which Mr. Koch responded yes. Mr. Eckstrom said he still does not see why the State would not explore not using all of the appropriation and let it lapse to the General Fund. He said if it is decided that the costs are split for an increase going forward the State is not out of anything. He said the individuals are not out of anything and as consumers they should expect to pay for what they consume. He said this is not a penalty that is being placed on anyone. He said he thinks his neighbors routinely get health care cost increases vastly higher than those the Board is considering. Mr. Eckstrom said this is a matter of fairness.

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 19

Governor Haley said this is a matter of whether the PEBA Board can set rates or whether it is at the mercy of the General Assembly to set the rates. Senator Leatherman commented that the General Assembly did consider what Mr. Eckstrom has discussed and will consider them in future budgets. He said the General Assembly has spoken and he cannot see himself trying to undo something the General Assembly has done. He said this debate should have come at the time the budget was being formulated and it is too late to consider the fairness of who pays what. He said that should be the recommendation of the PEBA Board to the General Assembly and the Board to help determine what actions need to be taken. He said whatever the General Assembly does is it. He noted that this is still a legislative state and he will not go behind the General Assembly and undo what it has done. Governor Haley commented that in her executive budget the cost has been split 50/50.

Mr. Eckstrom asked why this duty was given to the PEBA Board if the PEBA Board is bound by actions of the Board. Mr. White said the PEBA debate was going on along with the Retirement System. He said the discussion started out with retirement and then there was the creation of a public benefit board with insurance and retirement. He said the Board has the ultimate decision and the PEBA Board makes the recommendation. Mr. White said he agrees that everyone should share some costs. He noted that in previous years the General Assembly has proven it will do that and the General Assembly made the decision to fully fund the cost this year. Mr. White reiterated that the decision is the Board's as to how retirement is funded, how the State Health Plan is funded, or whether to make health plan changes regardless of whether PEBA is formed or not. He said the Board can only act on what PEBA recommends.

Mr. Eckstrom asked whether the PEBA Board would have any discretion to act this year if it was up and running. Mr. White said he thinks the PEBA Board would have had that discretion if done around January. He said the talk is to delay action until September but in doing so he does not think a full PEBA Board will be seated nor will actuaries be able to come in and get them up to speed on what is going to be done. He said the Board is up against the October open enrollment timeframe and that next year the Board will not find itself in this position. Mr. Eckstrom asked whether the PEBA Board would have discretion to come to the Board if it were in existence and recommend that the cost should go one way or another or split. Mr. White said he thinks if the PEBA Board were in existence they would have discretion but

Minutes of Budget and Control Board Meeting
August 8, 2012 -- Page 20

would recommend the Board fully funded the recommendation as approved by the General Assembly.

Mr. Loftis said that since he has been on the Board, the Board has operated on the theory that it can only change the employer side. Mr. Koch said that is not the case with healthcare but with retirement. Mr. Koch said that last year the Board adopted a split because that is what the General Assembly funded.

Upon a motion by Mr. Eckstrom, seconded by Mr. Loftis, the Board approved the cost increase for the State Health Plan be split equally between the employer and enrollee. Governor Haley, Mr. Eckstrom, and Mr. Loftis voted for the motion. Senator Leatherman and Mr. White voted against the motion.

Information relating to this matter has been retained in these files and is identified as Exhibit 16.

Future Meeting

Upon a motion by Mr. Eckstrom, seconded by Mr. White, the Board agreed to meet at 10:00 a.m. on Tuesday, October 30, 2012, in Room 252, Edgar A. Brown Building.

Adjournment

The meeting adjourned at 10:55 a.m.

[Secretary's Note: In compliance with Code Section 30-4-80, public notice of and the agenda for this meeting were posted on bulletin boards in the office of the Governor's Press Secretary and in the Press Room, near the Board Secretary's office in the Wade Hampton Building, and in the lobbies of the Wade Hampton Building and the Edgar A. Brown Building at 1:30 p.m. on Monday, August 6, 2012.]