

Introduction .....	3
Interim Committee Reports.....	3
Agricultural Land Assessment Implementation and Oversight Advisory Task Force.....	3
Joint Committee on Appropriations .....	5
Code Commission .....	8
Domestic Abuse Study .....	9
Education Funding Formula Study .....	13
Legislative Planning Committee.....	16
Rules Review .....	16
State-Tribal Relations.....	19
Watershed Task Force.....	22
Issue Memoranda .....	29
NCSL Recommendations .....	29
RECOMMENDATION 1: .....	29
RECOMMENDATION 2: .....	29
RECOMMENDATION 3: .....	30
RECOMMENDATION 4: .....	31
RECOMMENDATION 5: .....	31
RECOMMENDATION 6: .....	31
RECOMMENDATION 7: .....	31
RECOMMENDATION 8: .....	32
RECOMMENDATION 9: .....	32
RECOMMENDATION 10: .....	32
RECOMMENDATION 11: .....	32
RECOMMENDATION 12: .....	32
Unnumbered Recommendation: .....	33
Other Recommendations.....	33
Delivery of Key Budget Information.....	33
Fiscal Notes .....	33
Document Distribution .....	34



## **Introduction**

This report contains information concerning the activities of the Executive Board of the South Dakota Legislative Research Council during to 2013 interim period. As such, it includes recommendations concerning legislation and actions formulated by its interim study programs and the reaction to the Management and Performance Audit performed on the agency.

## **Interim Committee Reports<sup>1</sup>**

### **Agricultural Land Assessment Implementation and Oversight Advisory Task Force**

The Agricultural Land Assessment Implementation and Oversight Advisory Task Force consists of four members of the House of Representatives, four members of the Senate, and six members of the general public (at least two of the general public members shall have an agricultural background and at least two of the general public members shall have a business background).

#### **Study Assignment**

The Task Force shall review the implementation of the provisions of law concerning the assessment and taxation of agricultural land and advise the Department of Revenue regarding the rules promulgated by the Department to administer the provisions concerning the assessment and taxation of agricultural lands. In addition, the Task Force shall make recommendations in the following areas:

1. The proper percentage of annual earning capacity to be used to determine the agricultural income value for cropland and noncropland;
2. The proper capitalization rate that minimizes the shift in total taxable value between agricultural land and the other property classifications; and
3. The distribution of the local effort for the general fund of school districts between the classifications of real property for the general fund of school districts. The task force shall also consider the other taxes paid by agricultural property, the relationship of the total assessed value of agricultural property to the total assessed value of all real property, and other factors the task force deems appropriate.

#### **Summary of Interim**

The interim Agricultural Land Assessment Implementation and Oversight Advisory Task Force held its first meeting on June 12. Mr. Fred Baatz, Principal Research Analyst, Legislative Research Council, gave a presentation to the task force providing a history of the property tax legislation and laws in South Dakota, starting with the 1977 Legislative Session through today. The presentation also included an in-depth look at productivity value legislation which was first passed in the 2008 Legislative Session.

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<sup>1</sup> In addition to the Interim Study Committees, the Government Operations and Audit Committee, the Investment Council, and Bonding Committee report to the Executive Board periodically with separate reports.

Mr. Michael Houdyshell, Director of Property and Special Taxes Division for the Department of Revenue, gave a presentation concerning property assessment and taxation in South Dakota. The presentation was a history of property taxes, which, in addition to the laws, also included determining the taxable value, establishing the tax rate, levy limits, computing the tax, presenting the tax bill, and the assessment process.

Mr. Houdyshell also presented a report on agricultural land assessment under the productivity system. Beginning with the 2010 property tax assessments (payable in 2011), agricultural land in South Dakota is assessed based upon its productivity (agricultural income) value rather than fair market value. The data used to establish that value is from official estimates published by the United State Department of Agriculture, National Agricultural Statistics Services (USDA/NASS). These official estimates are based on satellite data, objective yield surveys, and surveys of farmers, ranchers and agribusinesses.

Mr. Jim Terwilliger, Bureau of Finance and Management, presented an overview of the state aid to general education formula and general fund levy for school districts adjustment. The formula for funding general K-12 education took effect January 1, 1997, with several major changes made by the 2007 Legislature and the 2010 Legislature. The base formula starts with the same amount of funding per student (per student allocation or PSA). The general funding for K-12 schools is paid by a combination of money raised by local property taxes and money raised by the state through statewide taxes. Per statute, the targeted proportion of local funding and state funding must remain constant when making the levy adjustment. The current target is 53.8% state funding with the remaining coming from local property taxes. One new addition for FY2014 is the Limited English Proficiency (LEP) adjustment.

During the second meeting on July 25, the Ms. Colleen Skinner, Property Tax Program Manager, SD Department of Revenue, presented information regarding the 2014 assessment report showing the change by county in 2014 ag land assessments. The 2014 assessment year productivity Information for the crop olympic average increased 13.59% this year and the non-crop olympic average increased 1.49%. Ms. Skinner also distributed a memo that was sent to the Directors of Equalization with the 2014 productivity assessment information. This memo explained how the Directors should make adjustments for factors affecting the productivity of land.

Mr. Michael Houdyshell, distributed several documents regarding the median ratio of agricultural land sales and number of good sales by county; South Dakota property taxes paid as a percentage of income with farm earnings vs. nonfarm earnings; total taxes levied for school purposes for taxes paid years 2003 through 2012; the taxes payable for years 1998 through 2012 broken down by the property tax classes; the soil survey table data update; two South Dakota maps showing a county-by-county breakdown of equalized unlimited crop and non-crop productivity dollar per acre value; and an explanation of capital outlay and pension levy limitations. Mr. Houdyshell said that the Department of Revenue will be sending letters to all school districts reminding them of the tax limitations, especially the 10% limitation, regarding valuations on real property within the school district and taxes that may be levied.

During the third meeting on October 29, eleven draft bills were presented to the Task Force for discussion. The draft bills involved the application and setting of school property tax levies, green acres tax provision, revising the productivity formula used to determine agricultural land assessed valuation; revising the name of the agricultural land assessment implementation and oversight advisory task force and the duties assigned to it; provide for assessment of agricultural land based on actual use; revising the criteria for classifying property as agricultural land.

During the interim testimony was presented by several associations representing various organizations and industries, individual farmers and ranchers, the directors of equalization, and the Department of Revenue concerning the draft legislation and other matters presented and discussed by the Ag Land Task Force.

### **Listing of Legislation Adopted**

1. An Act to revise certain provisions concerning the assessment and taxation of agricultural property.

The proposed legislation provides for the same schedule for phasing in the increased assessed property valuations for property and the tax revenue controls on the capital outlay and pensions fund imposed by school districts. The legislation also removes certain obsolete provisions.

2. An Act to provide for the assessment and taxation of agricultural land based on its actual use.

The proposed legislation requires the director of equalization to assess cropland and noncropland based on its actual use for agricultural purposes.

### **Summary of Meeting Dates & Places and Listing of Task Force Members**

The Task Force met on June 12, July 25, and October 29 in Pierre.

Task Force members were: Senator Larry Rhoden, Chair; Representative Justin Cronin, Vice Chair; Senators Jason Frerichs, Al Novstrup, Billie Sutton; Representatives, Julie Bartling, Mark Mickelson, and Jim Peterson; and Public Members Walt Bones, Kirk Chaffee, H. Paul Dennert, Curt Everson, Tom Hansen, and Lyle Perman.

Staff members were: Fred Baatz, Principal Research Analyst, and Cindy Tryon, Legislative Secretary.

### **Joint Committee on Appropriations**

#### **Study Assignment**

A continuing review of the appropriations process.

#### **Summary of Interim**

The Special Committee on Appropriations met on March 25, 2013. The following FY2014 Letters of Intent were approved:

- **Department of Education:** Clarified the distribution method used for one-time funding approved in HB1137 for Technical Institutes (\$200,000) and K-12 Education (\$5,829,318).
- **Department of Education:** Clarified the distribution method used for one-time funding approved in the General Appropriations Act for the Technical institutes (\$500,000).
- **School and Public Lands – State Owned Dam Maintenance and Repair –** The 2012 Interim Joint Committee on Appropriations specified that the funding appropriated for maintenance and repair could *not* be used for studies or assessments. The current Committee authorized

the SPL to use the funding for a monitoring system needed to gather data before maintenance and repair could take place.

- **Office of Attorney General, Unified Judicial System, and the Department of Corrections** – Directed these agencies to develop a solution to the over-expenditure of the Law Enforcement Officers Training Fund (LEOTF).
- **Department of Education** – Clarified specifics of a grant program for Technology Infrastructure Upgrade Funding approved in the General Appropriations Act (\$500,000).
- **Department of Veterans' Affairs** – Required the Department to review the statutes and rules related to County Veterans' Service Officer's and provide a written report to the Committee.
- **Provider Allocation** – Clarified the payment criteria of a one-time, nonrecurring increase to Providers in SB90. The criteria for payments include establishing a minimum payment of \$100, and clarifying that only in-state facilities qualify for the payment.
- The committee received LRC staff reports on the following:
  - Summary of the FY14 Budget
  - FY13 and FY14 Sources and Uses Scorecard
  - FY14 General Bill Summary

**The Special Committee on Appropriations met for a second time in conjunction with the East River Appropriations Tour.** The meeting was held on the campus of the University Center in Sioux Falls on June 25, 2013, and included the following:

- Approved the proration of interest earnings as recommended by the Bureau of Finance and Management and received a report on various transfers of funds.
- Heard reports from Bureau of Finance & M on FY13 fiscal close, FY14 budget implementation, and distribution of FY2014 Pooled Salary Policy Funds.

**June 24-26 East River Appropriations Tour:**

The tour included the following locations:

- Human Services Center, Yankton
- University of South Dakota, Vermillion
  - Sports Performance Enhancement Project
  - Beacom School of Business
  - Noteboom and Julian Halls
  - School of Medicine
- Community Support Provider – SESDAC, Inc., Vermillion
- Good Earth State Park, Canton
- Southeast Technical Institute, Sioux Falls
- South Dakota State Penitentiary, Sioux Falls

- South Dakota Investment Council, Sioux Falls
- Bel Brands USA (maker of Laughing Cow & Mini Babybel Cheese), Brookings
- South Dakota State University, Brookings
  - Alfred Dairy Science Hall
  - Avera Health & Science Center
  - Davis Dairy Plant
  - Medary Commons
  - Dykhouse Student-Athlete Center
  - Future Swine Education and Research Facility
- United Living Community, Brookings

### **Budget Drivers and Performance Indicators**

- The committee continues to work with the Government Operations and Audit Committee, the Governor’s Office, and BFM toward a joint effort to review, broaden, and sharpen the existing budget drivers and performance indicators in the Governor’s Budget Book.
- The Department of Corrections, the Office of the State Treasurer, and the Department of Education presented to the Government Operations and Audit Committee in September and October.
- The Special Committee and the Joint Committee on Appropriations will continue to monitor the progress of this effort.

**The Special Committee will schedule a December meeting** in conjunction with the Governor’s Budget Address for the following purposes:

- Initial reaction to Governor’s budget
- Discussion of Joint Committee on Appropriations agency budget hearing procedures
- Directions to staff

### **Listing of Legislation Adopted**

None

### **Listing of Committee Members**

Committee members were: Representative Fred Romkema, House Lean Co-Chair; Senator Deb Peters, Senate Co-Chair; Representative Lance Carson, House Co-Vice Chair; Senator Larry Tidemann, Senate Co-Vice Chair; Representatives Jim Bolin, Dan Dryden, Don Hagggar, Spencer Hawley, G. Mark Mickelson, Dick Werner, and Susan Wismer; Senators Stanford Adelstein, Phyllis Heineman, Tom Jones, Al Novstrup, Billie Sutton, Bill Van Gerpen, and Jim White.

## **Staff**

Annie Mehlhaff, Chief of Fiscal Analysis and Budget, Sue Cichos, Principal Fiscal Analyst; Aaron Olson, Senior Fiscal Analyst, and Denice Houlette, Senior Fiscal Analyst.

## **Code Commission**

### **Study Assignment**

The Code Commission supervises the publication of the South Dakota Codified Laws (Code), corrects errors to the code, assists the code counsel, makes recommendations to the Legislature, and contracts for replacement volumes.

### **Summary of Interim**

Replacement Volumes – The Code Commission met on June 19, 2013, to conduct routine business regarding the ongoing update of the Code. In that regard, the Commission authorized the reprinting of Volumes 3, 16, and 21 of the Code.

Publishing Contract – The Code Commission extended the contract with Thomson West for publication of the Code for another year. The term of the contract extension begins on July 1, 2013, and continues until June 30, 2014, unless terminated earlier.

Microfiche of Superseded Volumes – The Code Commission authorized a contract with the William S. Hein Co. to microfiche the volumes of the Code that are reprinted.

Copyright Policy Review – The Code Commission reviewed the current copyright policy in use for the protection of the State's copyright pursuant to SDCL § 2-16-8.

Apparent Error Correction Policy – The Code Commission adopted the apparent error correction policy to be used by the Code Counsel to correct typographical errors that occur in the Code.

### **Listing of Legislation Adopted**

Annual codification of the previous year's legislation.

An Act to codify legislation enacted in 2013.

The Code Commission will consider an amendment to SDCL § 2-16-7.1 to allow the contract for the publication of the Code to be extended from one to five years instead of year to year.

### **Summary of Meeting Dates and Places**

The Code Commission met one time. They met in conjunction with the State Bar Association annual meeting on June 19, 2013, in Pierre.

### **Listing of Committee Members**

Code Commission members were Michael DeMersseman (Chair), Margaret Gillespie (Vice-Chair), Representative Brian Gosch, Senator Shantel Krebs, and Tom Lee.



## **Listing of Staff Members**

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

## **Domestic Abuse Study**

### **Study Assignment**

A comprehensive review of Domestic Abuse in South Dakota. The focus of this study will include a) a review of current state and federal regulations; b) an examination of the effectiveness of state policies and programs with respect to domestic abuse; c) a study of the prevalence of domestic abuse across the state, including related crimes; and d) a discussion of potential options with respect to domestic abuse statutes in South Dakota.

### **Summary of Interim**

The Domestic Abuse Committee began its study by taking an in-depth look at the current laws affecting Domestic Abuse in the state as well as changes proposed to the law over the past few years. Legislative Research Staff gave the committee an overview of the current statutes located mainly in SDCL chapter 25-10, Protection from Domestic Abuse and Chapter 22-19A, Stalking. In an effort to identify the recurring issues in the area of domestic abuse, LRC Staff provided the committee with an overview of the domestic abuse bills presented to the Legislature over the past ten years along with disposition of those bills.

A major issue of recurring concern identified by the committee is the second amendment rights of South Dakota citizens due to federal domestic abuse laws. There has been concern over the past few years that changing the domestic abuse laws in the state may bring more people under the Federal Brady Law gun ban. LRC staff and Charlie McGuigan, Office of the Attorney General, each explained that federal laws prohibiting a person convicted of a misdemeanor crime of domestic violence from owning a firearm are completely separate from any state law. The federal law contains an established and superseding definition of a misdemeanor crime of domestic violence and both LRC staff and the Attorney General's office agreed that a change to the state's definition neither exempts people from the federal ban, nor brings more individuals under the ban.

Former Legislator and practicing attorney Lee Schoenbeck discussed his experience with domestic abuse laws and discussed the Legislative criminal code revision that amended some of the laws. In addition, he discussed SDCL 22-14-15.2, a statute that he introduced some years ago that was intended to address the federal gun ban on convicted domestic abuse offenders. The statute responded to the federal legislation that seemed to allow the states to enact their own gun bans upon a conviction and reinstate those rights after a year, as opposed to the lifelong federal ban. However, after the legislation was passed, the federal government did not recognize the state statute and continued to enforce the lifelong ban.

Charlie McGuigan from the Office of the Attorney General presented state domestic abuse statistics.

In 2012, 7 of 15 homicides in the state involved domestic abuse and over 1,000 domestic abuse assaults have been reported in the state during 2013. He shared the training requirements for law enforcement and state's attorneys as well as some of the changes to the victims' information system that are being implemented as a result of the passage of SB 70 during the 2013 session.

The Department of Social Services presented information regarding the crime victim's compensation fund that the department administers. Lori Martinec shared that in FY 2012, 12,971 victims received services with grant funds that the department administers and that 26 shelter agencies received funds through the grants. Virginia Wieselen updated the committee that in FY 2012, 569 or 16.5% of the child abuse cases assigned for assessments involved domestic abuse. At the third meeting, Lynne Valenti provided the committee with a clarification of where the financial aid the Department distributes to domestic abuse programs in the state actually comes from. She indicated that \$225,000 came from the South Dakota general fund last year with all other funding coming from the Federal government and private donors.

Chief Justice Gilbertson and Susan Starr of the Unified Judicial System advised the committee that the courts are generally satisfied with the current domestic abuse laws and that they are working as intended. UJS does not hold regular trainings in domestic abuse for the judges.

At the second meeting, Krista Heeren-Graber from The Network Against Family Violence and Sexual Assault discussed domestic abuse in the state and The Network's role in providing services and education. She advised the committee that the Network held 28 domestic abuse trainings for law enforcement personnel over 12 months.

The committee heard testimony from Judge Sabers and Judge Riepel of the 2<sup>nd</sup> Judicial Circuit. The judges explained that the laws regarding protection order are somewhat unclear and are not being enforced in the same manner across the state. They shared that often, a victim will fill out a domestic abuse protection order form, but that the facts do not support the domestic abuse, instead supporting a stalking protection order. The judges mentioned that in some jurisdictions, the court will grant the appropriate order, but some jurisdictions do not believe the court has that authority. The judges suggested merging the forms or clarifying that a judge may grant either protection order when the facts support the order, there would be more consistency across the state. Additionally, the judges relayed their experience hearing protection order cases and expressed their concern that many times, a person who is being assaulted is in a romantic relationship with their abuser or pregnant with the abuser's child but cannot obtain a protection order because the victim is not married to the abuser, does not live with the abuser, or does not have a child with the abuser. The judges indicated that the need for a protection order is very strong in these cases, but the victims do not qualify for a domestic abuse or a stalking protection order under the current law.

Sharron Kallemeyn, victim's services advocate in Pennington County, described her experiences with domestic abuse victims to the committee. She explained that safety and security are the most important things to the victims and that the current laws, especially the mandatory arrest statutes, protection order laws, and the strangulation laws have had a significant impact in protecting victims and alerting

the offenders that the behavior is unacceptable. She also indicated that if she were to change anything about the domestic abuse laws in the state she would make the domestic abuse laws inapplicable to roommates and extend the protections to pregnant women and those involved in a dating type relationship with the abuser.

Ryan Kolbeck, President of the South Dakota Association of Criminal Defense Lawyers, spoke regarding issues of current domestic abuse laws that affect his group. He suggested that protection orders should be modifiable, that victims of domestic abuse should be granted some amount of amnesty from arrest on previous warrants if they report a domestic abuse incident, and that the loss of pre-trial hearings passed by SB 70 last year should be addressed. Additionally he shared concern that there are lasting consequences when a person is arrested for domestic abuse and that protection orders are often used misused, with the holder encouraging contact with the offender, and then calling police for a violation of the protection order.

At the third full meeting, the committee heard from Hollie Strand, children's forensic interviewer with the Children's Advocacy Center of the Black Hills. She discussed there are often lasting and measurable effects on children when they witness domestic abuse. She advised the committee that many states have implemented laws aimed at protecting children from these situations by either enhancing the penalty for the underlying crime if a child is present, or by classifying domestic abuse in the presence of a minor as a separate crime. She stated that these laws make it clear that the abuse in front of a minor is unacceptable.

Chief Brian Paulson, of Yankton, spoke about the need to include dating relationships under the domestic abuse statutes. He explained that mandatory arrest statutes and protection orders are necessary for cases of domestic abuse, and that training and domestic abuse programs in the state are helping the situation, but more could be done with more funding. Krista Herren-Graber discussed some of the work the Network performs and the coordination between the Network and the Yankton Police Department, expressing a desire to continue that work and extend it throughout the state. She presented a draft budget of the costs and explained that the Network has many hope to continue expanding their work, but presently funding is a barrier.

State's Attorney Mark Vargo discussed the current domestic abuse laws. He indicated that domestic abuse laws are meant to protect people in the type of relationships where it is extremely hard for one party to break away from. He also shared that dating relationships should be protected by the statutes because these relationships have the same intimacy ties that a marital relationship or parenting a child hold, they just do not share the formality. He also indicated that merely sharing a house does not mean that the parties involved share those intimate ties.

State's Attorney Michael Moore discussed his role in training police, prosecutors, and others and that the training is an important part in dealing with domestic abuse cases and that mandatory arrest provisions of the law are very necessary.

The committee also held four public sub-committee hearings in Sioux Falls, Aberdeen, Yankton, and Rapid City. Approximately 100 people collectively attended these meetings and shared their experiences

and ideas with the committee members. Common themes were that domestic abuse is a cycle of power and control, physical abuse is only a portion of what domestic abuse is, that dating relationships need to be afforded protection, organized community response teams are important, there needs to be more support for victims assistance work, and that all citizens in South Dakota deserve to be protected from domestic abuse. Additionally there was consistent testimony that past work addressing strangulation as a component of domestic abuse, mandatory arrest and protection orders are a very strong component of current law.

### **Listing of Legislation Adopted by the Committee**

Draft 103 (This is the updated version of Draft #105 that was presented to the committee on October 21)- An Act to modify the persons eligible for protection from domestic abuse and to revise certain terminology.

Draft 96- An Act to provide for the delayed arrest, under certain circumstances, in regard to certain outstanding warrants for victims of domestic abuse with minor children.

Draft 97- An Act to provide for continuity in the judicial review of certain lawsuits, complaints, and petitions between parties to a petition for certain protection orders.

Draft 98- An Act to ensure, by service, notice to the respondent and opportunity for the respondent to be heard prior to enforcement of certain foreign domestic protection orders.

Draft 102-An Act to permit the court reciprocal discretion to hear certain petitions for protection orders due to domestic abuse and for protection orders due to stalking or physical injury.

Draft107-An Act to establish the crime of committing certain acts of domestic abuse in the presence of a minor child.

The committee also spent a significant amount of time discussing the impact of enacting a stand-alone domestic abuse statute. However, the committee determined that these were remaining questions about enacting a stand-alone statute that should be studied before action is taken. The committee recommended that the issue be reviewed again at a later date.

### **Additional Committee Recommendations**

The Committee recommended that the Department of Social Services move forward and conduct an assessment of whether SD is doing enough as a state to address victim's assistance, and assess whether additional domestic abuse funding, coordination, and training would be possible to enhance statewide response consistency.

The Committee heard much testimony regarding protection orders being violated because the protected party invites or encourages contact with the abusing party. The committee considered two bill drafts, one that would provide an affirmative defense for the violator if contact is initiated by the protected person and one that would require that a protection order to specifically state that no contact, even contact initiated by the protected person, is allowed under the protection order. After

extensive dialogue, the committee did not adopt moving forward at this time, but recommend that this is an area of concern to be considered and addressed by the legislature in the future.

The Committee also recommended continued assessment of the allocation of all federal domestic abuse funding, as well as all state funding, to ensure that the domestic abuse programs receiving financial support are in compliance with all state and federal regulations and that the money is allocated in an appropriate manner.

### **Summary of Meeting Dates and Places and Committee Members**

The full Committee met on June 17, 2013, August 1, 2013, September 4 2013, and October 21, 2013. The committee also held four public subcommittee meetings around the state in August to hear testimony from the public and gain a broader perspective on the impact of Domestic Abuse throughout the state.

Committee members were Senator Deb Soholt, Chair, Representative Mike Stevens, Vice Chair, Senators Craig Tieszen and Deb Peters, and Representatives Jim Bolin, Kristen Conzet, Peggy Gibson, Tona Rozum, and Karen Soli.

Staff members to the committee were Reuben Bezpaletz, Chief Analyst for Research and Legal Services, Amanda Reiss, Legislative Attorney, and Cindy Tryon, Legislative Secretary.

### **Education Funding Formula Study**

#### **Study Assignment**

The LRC Executive Board instructed the Education Funding Formula Study Committee to focus on the following three areas:

- The state aid to education funding formula and how responsive it is to improving graduation outcomes;
- The manner in which technology is affecting education with particular attention to the manner in which it has changed teaching methods; and
- Why certain school districts have come to rely on opt-outs from the property tax limitations, and similarly, how certain school districts have been relying on revenue from their capital outlay funds.

#### **Summary of Interim**

At the committee's first meeting, committee members reported on the various listening sessions they had attended in Aberdeen, Rapid City, Hartford, and Mitchell. The listening sessions were sponsored by the School Administrators of South Dakota and the Associated School Boards of South Dakota and brought together legislators, school officials, and others to discuss education funding, the challenges school districts are currently facing, and how those challenges might be overcome. Clare Charlson of the LRC Staff provided the committee with information on past legislative interim studies that have focused on education. In addition, the committee heard from Mike Houdyshell with the Department of Revenue who provided a history and explanation of property taxation in the state and of property tax assessment. Jim Terwilliger provided a primer on the state aid to general education formula, and Tamara Darnall with the Department of Education discussed the various types of funding that school districts receive. She also reviewed prior school funding formulas and all the education data that is available to the public on the Department of Education's website.

The second meeting was a two-day meeting that provided members with a unique learning opportunity. On the first day, members witnessed a variety of ways in which technology is impacting teaching methods and learning. The day included a visit to the eighth grade computer lab at Pierre's Georgia Morse Middle School where teachers and administrators provided an overview and demonstrations of various hardware and software, and answered committee questions. Committee members especially enjoyed a demonstration from a group of second graders from the Platte-Geddes School who demonstrated their monarch butterfly project on an iPad. On the second day, the committee's attention turned to programs and practices that are being used in various school districts today and are having a positive impact on student success and graduation rates. Some of the programs discussed included Project Lead the Way, Jobs for America's Graduates (JAG), and SD GEARUP. The committee also learned about the Career and Technical Education Academy in Sioux Falls, the Wagner Early Learning Center, and the improvements that were accomplished in the New Underwood School District in large part due to a School Improvement Grant that it received. Dr. Melody Schopp with the Department of Education spoke to the committee about the department's recent efforts to target students who will require college remediation and offer them the opportunity to take free remedial courses online before they enter college.

Committee members, at the third meeting, heard from Superintendent Jim Holbeck of the Harrisburg School District who spoke about many of the funding inequities that he feels exist among school districts. The committee also heard from several other school officials from across the state, both in person and in writing, about their use of opt-outs and capital outlay funds and the measures they have taken to balance their budgets during these tough economic times. Lastly, the committee took public testimony and started reviewing and discussing the recommendations that had been submitted by individual members of the committee.

The fourth and final meeting provided committee members the opportunity to thoroughly examine and discuss the suggestions brought forth by the members, to take public input, and to develop their final recommendations which are listed below.

### **Listing of Legislation and Resolutions Adopted**

- **An Act to revise the state aid to general education formula to include an adjustment for certain school districts that increase the length of the school term.**

This bill creates a school term adjustment in the state aid to general education formula that would benefit school districts that increase the number of hours in the school term if the increase is accompanied by improvements in the academic achievement of students. The goal of the bill is to have school districts increase the number of hours in the school term by sixty hours (or approximately ten days) over a period of five years.

- **An Act to set the per student allocation in the state aid to general education formula for school fiscal year 2015.**

This bill sets the per student allocation at \$4,805 for school fiscal year 2015. That would return the per student allocation to where it was in FY 2011 prior to the budget cuts of FY 2012.

- **An Act to revise the definition of the index factor in the state aid to education formula to include a minimum annual percentage increase of two percent.**

This bill redefines the index factor in the state aid to general education formula to include a two percent minimum increase so school districts would know that two percent is the least amount they will receive in any given fiscal year.

- **An Act to appropriate funding to provide technology-oriented professional development for teachers.**

This bill provides funding to school districts on a per-teacher basis to allow them to provide two days of professional development for teachers to train them on technology.

- **An Act to gradually reduce, over a period of four years, the percentage of capital outlay funds that school districts may use for certain purposes.**

This bill gradually lessens the percentage of a school district's capital outlay funds that may be spent for certain expenses which are normally considered general fund expenses until 2018 when school districts will no longer be able spend any of their capital outlay funds for these purposes.

- **A Concurrent Resolution, Encouraging school districts to build on their individual strengths by working together with other school districts to provide a rich educational opportunity for all students.**

Through this resolution, the Legislature encourages school districts to share resources and work together to provide students with the best educational experiences possible.

- **A Concurrent Resolution, Recognizing the teacher shortage in this state and the difficulties school districts in South Dakota face in attracting and retaining qualified teachers.**

Through this resolution, the Legislature recognizes the struggles that school districts currently face in finding and keeping good teachers, and joins in acknowledging that teachers are a valued resource in the state and in exploring ways to attract and keep good people in the teaching profession.

### **Listing of Committee Recommendations**

#### **Focus Area 1—The funding formula and how responsive it is to improving graduation outcomes.**

- **That articulation agreements be established to allow students who enroll in a postsecondary technical institute to earn credit for certain career and technical education courses they may have taken while still in high school;**
- **That a test be provided for students who plan to enroll in a postsecondary technical institute; and**
- **That regional high school career and technical education centers be established or portable career and technical education units be created to benefit all students, but most especially those in the state's most rural schools.**

#### **Focus Area 2—The manner in which technology is affecting education with particular attention to the manner in which it has changed teaching methods.**

- **That school districts be encouraged to collaborate and use technology in order to provide quality curriculum in small schools in the state;**
- **That the technology infrastructures in school districts be assessed to determine if they are keeping pace with technological advancements; and**



- **That the state continue to provide funding and technical expertise to school districts to maintain and improve the infrastructures of the school districts to allow for the expanded use of technology.**

**Focus Area 3—Why certain school districts have come to rely on opt-outs, and similarly, how certain districts have been relying on revenue from their capital outlay funds.**

- **That school districts develop a plan to reduce their reliance upon capital outlay funds for general fund expenses.**

### **Summary of Meeting Date and Places and Listing of Committee Members**

The Education Funding Formula Study Committee met in Pierre on the following dates: June 19, 2013; July 29-30, 2013; September 23, 2013; and October 21, 2013.

Committee members were: Representative Jacqueline Sly, Chair; Senator Larry Tidemann, Vice Chair; Senators Jim Bradford, Jean Hunhoff, Al Novstrup, Billie Sutton, Bill Van Gerpen, and Chuck Welke; Representatives Dan Dryden, Mary Duvall, Don Haggar, Jenna Haggar, Anne Hajek, Kathy Tyler, and Mike Verchio.

Staff members were Clare Charlson, Principal Research Analyst; Annie Mehlhaff, Chief Analyst for Fiscal Services; and Traci Thompson, Legislative Secretary.

## **Legislative Planning Committee**

### **Rules Review**

#### **Study Assignment**

A review of proposed state agency rules.

#### **Summary of Interim**

The Interim Rules Review Committee has had a busy summer. The committee reviewed rules for the following agencies: Department of Transportation; Department of Revenue: South Dakota Lottery Commission; Department of Environment and Natural Resources: Board of Minerals and Environment; Department of Social Services: Board of Addiction and Prevention Professionals; Department of Public Safety; Attorney General: Law Enforcement Officers Standards and Training Commission; Department of Education: Board of Education; Public Utilities Commission; Department of Public Safety: 911 Coordination Board; Department of Labor and Regulation: Cosmetology Commission; Department of Public Safety; Secretary of State; Secretary of State: Board of Elections; Department of Health: Board of Pharmacy; Department of Game, Fish and Parks; Department of Agriculture: Division of Agricultural Services; Department of Game, Fish and Parks; Department of Environment and Natural Resources: Board of Water and Natural Resources; Department of Social Services: Division of Medical Services; Department of Game, Fish and Parks; Department of Education: Board of Education; Department of Labor and Regulation: Division of Insurance; Department of Revenue: South Dakota Lottery Commission; Department of Environment and Natural Resources: Board of Minerals and Environment; Department of Social Services: Divisions of Economic Assistance and Medical Services; Department of Social Services: Division of Child Care Services; Department of Social Services: Division of Child Protection Services;



Department of Labor and Regulation: Division of Labor and Management; Department of Labor and Regulation: South Dakota Board of Accountancy; Secretary of State: Board of Finance; Governor's Office of Economic Development: Board of Economic Development; Department of Health: South Dakota Board of Examiners of Speech-Language Pathology; Department of Agriculture: South Dakota Animal Industry Board; Department of Agriculture: South Dakota Weed and Pest Control Commission; Department of Game, Fish and Parks; Department of Game, Fish and Parks; Department of Transportation; Department of Labor and Regulation: Division of Insurance; Bureau of Administration; Department of Labor and Regulation: South Dakota Retirement System; Department of Health: Division of Health and Medical Services; Department of Agriculture: State Brand Board; Department of Game, Fish and Parks; Department of Game, Fish and Parks; Department of Transportation; Department of Revenue: Commission on Gaming; Department of Revenue: South Dakota Lottery Commission; Department of Environment and Natural Resources: Board of Minerals and Environment; Department of Education: Board of Education; Department of Labor and Regulation: State Plumbing Commission; Department of Revenue: Commission on Gaming; Department of Labor and Regulation: Division of Insurance; Department of Human Services: Division of Developmental Disabilities; Department of Social Services: Board of Examiners of Psychologists; Department of Agriculture; Department of Agriculture: SD Value Added Finance Authority; Department of Game, Fish and Parks, Department of Game, Fish and Parks; Department of Transportation; and Department of Environment and Natural Resources: Board of Water and Natural Resources.

At the December 17<sup>th</sup> meeting the committee will review rules from the Governor's Office of Economic Development; Department of Health: Board of Medical and Osteopathic Examiners; Department of Labor and Regulation: Appraiser Certification Program; Department of Education: Board of Education; Department of Revenue: Commission on Gaming; Department of Agriculture: State Brand Board; Department of Transportation; Department of Labor and Regulation: Board of Technical Professions; and the Department of Revenue. Any additional rules filed between now and the December meeting will be added to the agenda.

The committee and staff have reviewed the statutory authority and style and form for 1,888 rules thus far not counting the December 17<sup>th</sup> agenda.

The Department of Public Safety's proposed rules to define unprofessional or dishonorable conduct for purposes of emergency medical technician-basic licensure were reverted back to a prior step for further consideration. These rules were subsequently approved.

The Department of Agriculture: Division of Agricultural Services' proposed raw milk rules were reverted back to a prior step for additional public input pursuant to SDCL § 1-26-4.7 (8) as the rules were not a reasonable implementation of the law as it affects the convenience of the general public or persons likely affected by the proposed rule.

At the November 12<sup>th</sup> meeting, the Rules Review Committee accepted the raw milk rules as proposed.

### **Listing of Legislation Adopted**

No legislation is proposed as of the date of this report.



## **Summary of Meeting Dates and Places**

The Rules Review Committee met via the Dakota Digital Network (DDN) in Pierre and at other DDN sites in the state, via teleconference, and in person on the following dates: March 8, 2013; April 2, 2013; May 20, 2013; June 4, 2013; July 9, 2013; July 31, 2013; August 20, 2013; and September 17, 2013. The committee is scheduled to meet on November 12, 2013, and has tentatively set December 17, 2013, to consider any rules that need to be considered before the legislative session begins.

## **Listing of Committee Members**

Committee members were Representative Timothy Johns (Chair), Senator Mike Vehle (Vice Chair), Representatives Peggy Gibson and Anne Hajek; and Senators Angie Buhl and Jean Hunhoff.

## **Listing of Staff Members**

Staff members for the committee meetings were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary. Members of the research staff who performed the initial review for legality and style and form are – Principal Research Analysts: Fred Baatz, Tom Magedanz, and Dave Ortbahn, and Legislative Attorney Amanda Reiss. Marge Pirnat, Senior Legislative Secretary, updated the administrative rules data base.

## **State-Tribal Relations**

### **Study Assignment**

The State-Tribal Relations Study Committee is an ongoing interim committee that was created in statute.

### **Study Assignment**

The State-Tribal Relations Study Committee is an ongoing interim committee that was created in statute (SDCL 2-6-20 through 2-6-23) in 1993 as a part of the state's reconciliation efforts. The statute directs the committee to make a continuing study of the relations between the state and its political subdivisions and the tribes and their tribal governments. The committee provides a forum within state government for discussion by of issues affecting the Native American community and issues involving Tribal governments and State government. The committee also serves as a way of familiarizing legislators with such issues.

### **Summary of Interim**

The State-Tribal Relations Study Committee held three meetings during the 2013 Interim: at the Capitol in Pierre on June 11, 2013, a meeting in Rapid City on September 26, 2013, and a meeting at Lower Brule on September 14, 2013. Senator Jim Bradford was elected to serve as Chair and Senator Stan Adelstein as Vice Chair for the 2013-14 interims.

June 11, 2013 – Pierre. At the June 11 meeting in Pierre, the committee heard presentations by state agencies on topics affecting South Dakota's Native American population. Secretary J.R. LaPlante of the Department of Tribal Relations briefed the committee on his goals and activities for the department, which was created in 2011 as a cabinet-level department. He introduced new members of his staff and discussed his department's projects and activities. Some of these include the criminal justice initiative,

economic development, Good Earth State Park, intergovernmental meetings and dispute resolution, the SD Board of Geographic Names, tribal ID, and state-tribal taxation agreements. He and his staff are continuing with visits and meetings in reservation areas.

Dr. Craig Howe of the Center for American Indian Research and Native Studies (CAIRNS) gave a presentation on Native American history and culture, particularly relating to the Lakota, Dakota, and Nakota people in this region.

Mr. David Wiest, Deputy Secretary, Department of Revenue briefed the committee on tax collection agreements between the state and several of the tribes. Eight of the nine tribes in South Dakota has some type of tax collection agreement with the state. Mr. Denny Kaemingk, Secretary, Department of Corrections, discussed the South Dakota Criminal Justice Initiative established by the 2013 Legislature in SB 70 and detailed the Native American Pilot Program component of the Criminal Justice Initiative. Dr. Melody Schopp, Secretary, Department of Education, discussed the department's Indian Education Office and programs and introduced Mr. Keith Moore, the interim director. They discussed the gap in graduation rates for Native and non-Native students and some of the programs and activities they are using to try to address these issues.

The committee also heard public testimony at this meeting.

September 26, 2013 – Rapid City. The committee's second meeting was held on September 26 in Rapid City and addressed numerous topics affecting Rapid City's Native American population and issues of concern for Native Americans living off the reservation in urban areas. In the area of education, the committee heard presentations by Oglala Lakota College's He Sapa branch in Rapid City, the United Tribes Technical College of Bismarck which recently opened a learning center in Rapid City, and Mr. Jr. Bettelyoun, Director of Indian Education for the Rapid City school system.

Law enforcement issues were addressed by Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System, who discussed additional programs and activities of the Criminal Justice Initiative (SB 70). Rapid City Police Chief Steve Allender and Officer Eric Dwyer discussed issues and challenges that the police department faces in Rapid City relating to the city's Native American population.

Mr. Mark Lauseng, Executive Director, SD Housing Development Authority, discussed housing issues and programs, some of which involve significant numbers of Native American participants. He noted that the SDHDA has partnered with federal agencies and tribes on a number of programs.

Ms. Emily Iron Cloud-Koenen, Executive Director, LOWO-Oglala Sioux Tribe Child Protection program and Ms. Patricia Catches the Enemy discussed LOWO's activities and programs as the Oglala Sioux Tribe's centrally administered child welfare agency. LOWO operates on a contract with the SD Department of Social Services and has nearly 400 children in its system.

Ms. Lori Pourier, First Peoples Fund of Rapid City, discussed the First Nations Development Group and its efforts to promote community economic development with artists in the Northern Plains area. There is

a significant market for Native art, and Native art contributes to tourism and local economic development.

The committee also heard public testimony.

November 14, 2013 – Lower Brule. The committee's third meeting was held at Lower Brule on November 14, 2014. Chairman Michael Jandreau, Chairman of the Lower Brule Sioux Tribe, discussed a variety of issues with the committee and noted that the state and the tribe need to work closely with each other while retaining their independence and autonomy. He discussed the history of the tribe and the Lower Brule Reservation, its current activities and status, and issues of concern. He also discussed the tribe's proposed casino near Oacoma.

Judge Laurie Miner, Tribal Court Judge for the Lower Brule Sioux Tribe, discussed law enforcement, tribal court, incarceration, probation, and child protection issues and areas of interaction with the state, both positive and negative.

Ms. Clare Green, Cultural Resources Officer, Lower Brule Sioux Tribe, discussed her office's activities, which include preservation of cultural, archeological, and historical sites, as well as other natural and human resources. She discussed the need for cooperation with the Corps of Engineers and with state agencies such as the Department of Game, Fish and Parks.

Public testimony was presented by Ms. Rhonda Hawk of the Crow Creek Sioux Tribe on youth programs and on economic development.

The committee toured several sites at Lower Brule, including the tribal law enforcement and corrections center, the Lakota Foods popcorn factory, areas along the Missouri River with severe shore erosion problems, and a replica of an Arikara earth lodge of the type that was in the immediate area before the arrival of the Lakota people.

### **Listing of Legislation Adopted**

None

### **Summary of Meeting Dates and Places and Listing of Committee Members**

The committee met in Pierre on June 11, in Rapid City on September 26, and in Lower Brule on November 14, 2013.

Members of the committee included Sem. Jim Bradford (Chair), Sen. Stan Adelstein (Vice Chair); Senators Russell Olson, Ernie Otten, Billie Sutton, and Craig Tieszen; and Representatives Troy Heinert, Kevin Killer, Elizabeth May, Lee Qualm, and Mike Verchio.

Committee staff members were Tom Magedanz, Principal Research Analyst; and Cindy Tryon, Legislative Secretary.

## **Watershed Task Force**

### **Study Assignment**

The Regional Watershed Advisory Task Force was created by SB 169 in the 2012 Legislative Session. SB 169 established the task force to operate until January 2015 and to address issues relating to watershed management, drainage, erosion, flood control, reclamation, and environmental protection and improvement of lands, soils, waters. The task force is to consider potential alternative organizational structures and entities to address such issues, including the proper role and structure for regional and local water and natural resources-related special purpose districts and local governments. The task force is also directed to review the role of special purpose districts and other state and local government entities with respect to drainage issues, including drainage management, resolution of drainage disputes, and recommendations for potential realignment of responsibilities for drainage matters.

The task force consists of fourteen members, including four members of the House of Representatives, four members of the Senate, and six members of the general public with backgrounds in natural resources law, science, or management; agriculture; or business. Original members served until January 2013, with new members appointed for a two-year term at that time. The Regional Watershed Advisory Task Force Chair is Representative Brian Gosch and the Vice Chair is Senator Mike Vehle.

During the 2012 interim, the task force met once in Pierre and once in Brookings. A third meeting scheduled in Aberdeen in December of 2012 was cancelled because of a winter storm.

### **Summary of Interim**

During the 2013 Interim, the Regional Watershed Advisory Task Force met in Mitchell on April 22, in Aberdeen on July 1-2, and in Webster on September 15-16. The task force will hold a fourth meeting in Pierre on December 2, 2013.

April 22, 2013 – Mitchell. The task force held its first meeting of the 2013 interim in Mitchell and continued to hear presentations intended to provide necessary background information on water management issues. Most of the agenda items for the April 22 meeting had been scheduled for December 10, 2012 in Aberdeen but was cancelled because of a winter storm.

Dr. Dennis Todey, South Dakota State University, State Climatologist, discussed climate and precipitation trends in South Dakota and noted that overall precipitation has been increasing in the state since the 1930s with an increase in heavy precipitation events.

Dr. Chris Hay, SDSU, Agricultural and Biosystems Engineering, discussed agricultural drainage practices and issues. He addressed why South Dakota farmers are tiling, how tiling impacts hydrology and streamflow, and how tiling impacts water quality. Increasing commodity prices and land prices and improved drainage technology have provided an incentive to eliminate areas of poor drainage to improve agricultural production. Improved drainage benefits agricultural production, reduces crop stress due to excess water and high water tables, reduces soil compaction and the buildup of salts in the

soil, and enhances the ability to use other conservation practices. Dr. Hay said there is no simple answer regarding the impact of tile drainage on hydrology and streamflow. Regarding the water quality impacts of tile drainage, results have been mixed. Tile drainage reduces soil erosion, sediment loss, and phosphorous loss from the soil. However, with tile drainage, nitrogen (nitrates) in the water runoff often exceed drinking water standards. Dr. Hay stated that there are no simple answers for drainage impacts on hydrology and streamflow, but an understanding of fundamentals and models can help serve as a guide. There are positive and negative water quality impacts of drainage, and work continues on methods to reduce the negative impacts.

Mr. Jeff Zimprich and Mr. Jeff Hamenway, Natural Resources Conservation Service (NRCS), Huron, South Dakota, discussed soil health and its impacts on rainfall infiltration and showed a video of an outdoor rainfall simulator and the levels of rainfall infiltration cropland and rangeland under varying types of tillage and soil cover. Mr. Hamenway said that any kind of additional soil canopy increases rainfall infiltration rates into the soil.

Mr. Clark Moeckly, Upper Crow Creek Watershed District, Britton, discussed the history and activities of the Upper Crow Creek Watershed District in Marshall County, which was formed in 1968 for flood control purposes in conjunction with the federal PL 566 program. In the 1990s, increased water and flooding caused the district to enter into a coordinated resource management (CRM) program with Marshall and Brown counties. The CRM process fostered a better relationship among the affected parties, and grant money from state, federal, and private sources provided for the construction of one hundred small dams to retain water. The district also used tax revenues for small projects such as cleanout and dam construction.

County Perspectives. The task force heard presentations by four counties, Brown, Kingsbury, McCook, and Yankton, on their experience with drainage problems and issues.

Mr. Gary Vetter, Aberdeen, Brown County Director of Planning and Zoning, discussed serious flooding issues in Brown County in recent years, resulting in drainage issues as well. He discussed social and economic impacts, including damage to infrastructure, property, crops, livestock, and land. The county has received an overwhelming amount of requests relating to drainage problems and disputes, leading the county to eventually repeal its drainage ordinance in 2012. Issues include some of the following: litigation and liability of the county for drainage decisions; drainage from across state and county borders; lack of fines or charges strict enough to deter unauthorized drainage activity; urban and agricultural development that has blocked original drain ways, ditches and culverts; citizens draining onto neighbors who do not have the resources to take legal action; crisis mode prevents proper engineering analysis; numerous jurisdictions are involved. Mr. Vetter said that counties and townships need engineering help, a fine and enforcement structure, clarification of the county's liability for county drainage decisions, and a way of dealing with blockages caused by development activity.

Mr. Roger Lee, DeSmet, Kingsbury County Commissioner, stated that Kingsbury County has experienced major problems in recent decades relating to the expansion of Lake Thompson to an area much larger than in previous years, which has resulted in inaccessible roads, flooded farmland, and disputes over

drainage activity as owners attempt to deal with the inundated areas. Kingsbury County adopted a drainage ordinance in 1986 under South Dakota's 1985 county drainage law. The county repealed its drainage ordinance in 2011. The county was unable to recover its costs related to drainage regulation. Another factor was concern about liability for county actions and decisions. Also, the county has faced a large volume of permit applications, and the county does not have the time or the resources to address these requests.

Mr. Bill Smith, McCook County commissioner, stated that McCook County passed a drainage ordinance in the 1990's, which was revised in 2004 and 2011. The county's drainage permitting program minimizes adverse impacts to downstream landowners and fosters communication by allowing landowners who receive drainage to have a voice before the drainage project begins. Mr. Smith described the drainage ordinance and stated that the county has issued an average of 100 permits per year recently. They have concerns about liability, but they try to consult with experts before acting. The consensus of landowners is that the drainage ordinance is necessary.

Mr. Garry Moore, Yankton County Commissioner, discussed Yankton County's approach to drainage regulation and dealing with drainage. He noted that it is better to deal with issues before they worsen and go to court. Yankton County adopted a new drainage ordinance in 2012. The drainage regulation process allows the county to be aware of what is happening and to be organized in addressing issues. Mr. Moore stressed the need for using available technology and noted that the ordinance and permit process forces all parties to work together before undertaking drainage activity.

The task force took public testimony.

July 1-2, 2013 – Aberdeen. At the Aberdeen meeting, the task force heard presentations and proposals by agricultural producer groups and various water and conservation organizations.

Mr. Matt McCaulley, South Dakota Corn Growers Association outlined the legislative concepts the SDCGA and other agricultural groups would like the task force to consider. He stated that water management cannot be adequately addressed with the current regulatory system and the current state laws regarding water management need to be revised. He said that the SDCGA is open to water management organized by watersheds. He also commented about the difficult political realities that face the task force. Mr. McCaulley listed principles that should guide the task force: production agriculture is good for South Dakota; regulatory and tax policy should encourage productive use of land; we should seek a regulatory environment that is stable, predictable, and fair; and before making changes, the Legislature needs to define the problem. He also stated that private property rights must be respected; changes must be based on science and evidence; additional government structures are not needed; communication needs to be encouraged among landowners; and there should be a move in the direction of water management districts. There are no easy fixes to water management problems. The problem must be defined and common ground must be identified among the interested parties before the Legislature attempts to make changes in law. Mr. McCaulley indicated that the SDCGA and other agricultural groups had identified five possible areas of legislative action, although not all groups agreed on all proposals:



- (1) Mandatory mediation of disputes – this would encourage communication among neighbors and could possibly result in dollars otherwise spent on legal fees to be used to address the problem;
- (2) Standardized notice for new drainage projects – this would not be a permit but would be required for new projects. This notice would encourage communication, and engineering would not be a condition of this notice;
- (3) Catalogue infrastructure improvements – this would involve identifying existing systems and deficiencies, establishing a statewide database of the improvements and considering prior expenditures and designs before moving forward;
- (4) Fund research on best practices – research on the water management practices that would work best in the state; and
- (5) Water management districts – this proposal would divide the state into water management districts with boundaries based on hydrology and drainage basins.

Mr. Lorin Pankratz, South Dakota Soybean Association indicated that the association was supportive in concept of those areas of possible legislation listed by Mr. McCaulley. He said mandatory mediation of watershed disputes has merit and that disclosure of new projects could be supported by the association. He said that check-off dollars could possibly be used to fund research on the best water management practices. He also commented that the liability questions currently facing county commissioners regarding the issuance of drainage permits is an area where the law could be clarified. He encouraged the task force to look at what is occurring in other states, especially Iowa and Minnesota.

Mr. Wayne Smith, Executive Director, South Dakota Farm Bureau, commented that his organization is in favor of mandatory mediation. He also favored compiling an inventory of past and current water management projects, which would be helpful to plan for the future. Regarding funding for best practices research, he stated that research is important to help reduce the amount of nitrates getting into streams. On water management districts, the Farm Bureau supported smaller districts versus larger districts. He concluded by saying the Farm Bureau supports effective water management.

Mr. Mike Traxinger, Legislative Director, South Dakota Farmers Union (SDFU), said the SDFU believes the Legislature should address: a cleanup of existing statutes; whether or not county commissioners should be compelled to be an active drainage board under state law; whether or not there should be a process to require specific permits for all drainage, both surface and tile, on a specific permit; whether or not drainage permits and mapping should be required; and whether or not all drainage records should be held within the respective county. The Farmers Union held meetings in several counties in June to discuss water management issues and the five possible areas of legislative action outlined by Mr. McCaulley. He said at these meetings a large majority of the attendees do not believe the current drainage system is working. A majority of the attendees supported mandatory mediation of disputes, standardized disclosure of new projects, the identification of water management assets, and the formation of water management districts in state statute. He said the SDFU supports four areas of possible legislation but additional needs must be assessed prior to the group's support for the funding of

the best practices research. He said that the task force's issues are complicated. A state framework is needed but local control must be maintained.

Ms. Angela Ehlers, Executive Director, South Dakota Association of Conservation Districts, Pierre, discussed regional watershed management and stated that water management is not exclusively a drainage issue, agricultural issue, or an East River issue. She discussed a drainage basin approach to water management issues and noted that many factors contribute, not just drainage. Her organization supports mediation of drainage disputes. She also noted the importance of seeing how other states approach watershed management issues. Ms. Ehlers described some of the water-related districts in South Dakota and explained how hydrologic units are delineated. She stated that there are water management issues in all parts of the state but they vary over water quality and water quantity. Issues in the east often have to do with managing excess water, while scarcity is a problem for much of the western part of the state.

Mr. John Maursetter, Environmental Specialist, Lake County, Madison, described drain tiling activity in Lake County and the county's drainage permitting process. He discussed the history of drainage districts and projects in Lake County that predate the 1985 county drainage law. There has been a large increase in drainage permits issued and in tiling activity in the county in the last few years, and land use changes also impact drainage patterns. Mr. Maursetter said there are usually no major problems and the county would probably like to continue with its drainage powers, although the county would need technical support from a regional entity. It may be helpful to clarify penalties and enforcement options in state statute.

Mr. Jay Gilbertson, Manager of the East Dakota Water Development District in Brookings, and Mr. Brad Preheim, Manager of the Vermillion Basin Water Development District in Centerville, discussed watershed management and drainage issues. Mr. Preheim stated that there is more to watershed management issues than just drainage and tiling, and he noted that the current system needs to be revised. They would prefer to see watershed management conducted on a regional watershed or drainage basin basis. Mr. Gilbertson and Mr. Preheim discussed a potential regional water management district system. Mr. Gilbertson discussed the 1997 legislative interim study that addressed these issues and discussed the provisions of HB 1001 (1998), which resulted from the 1997 study. HB 1001 would have converted water development districts into regional water management districts and would have transferred drainage regulation powers from the counties to the new water management districts. The districts would have followed approximate watershed basin boundaries. The districts would have had taxing authority. HB 1001 did not pass, partly because including new areas of the state in new government entities with taxing power generated opposition. Mr. Gilbertson stated that a uniform statewide procedure for all would be acceptable but the regional districts would be the ones to act on drainage permits and issues. Mr. Gilbertson described watershed districts in Minnesota (which are structured differently and have different powers than those in South Dakota) and Nebraska's natural resource districts (NRDs). Some counties want to keep their drainage authority, while others have repealed their drainage ordinances, so the situation is mixed. Mr. Preheim noted that whether drainage authority lies with counties or water management districts it would still be necessary to address liability issues in state law.

The task force took public testimony.

On July 2, the task force toured affected areas in Brown and Marshall counties.

September 15-16, 2013 – Webster.

On September 15, the task force toured Bitter Lake and other affected areas in Day and Grant counties, as well as a tour of a tile drainage project that was being installed. On September 16, the task force met in Webster.

Mr. Dean Edson, Executive Director, Nebraska Association of Resources Districts, discussed the history and function of Natural Resource Districts in Nebraska. In 1969, Nebraska combined 154 special-purpose districts into 23 multipurpose districts based on river basin boundaries. These districts perform a wide variety of water management purposes. Local funding for these districts is by means of property taxes and occupation taxes. A board may levy a property tax of up to 8.5 cents per \$100 of valuation. Mr. Edson also told the task force that tiling of farm land has not been an issue in Nebraska.

Mr. Don Etler, Iowa Drainage District Association, discussed drainage laws in Iowa. Iowa's law has been in effect since 1906. He said there are currently 3,500 drainage districts in Iowa. With land prices spiking in the early 1900s many drainage ditches were constructed and rivers were channelized at that time. Drainage districts now primarily serve to make improvements to and to maintain existing drainage systems. He said drainage districts are mainly locally funded. Mr. Etler said that drainage districts are watershed based and a county or an individual farm could be in several different drainage districts. He said the state rarely gets involved in drainage issues and has never funded a state drainage coordinator despite attempts to do so in the past.

Mr. Jeff Nielsen, Southern Regional Supervisor, Minnesota Board of Water and Soil Resources, talked to the task force about Minnesota's governance on water management and drainage. Counties, soil and water conservation districts, and watershed districts all play a role in water and drainage management in Minnesota. He said in 1985 the Legislature gave counties the authority to do a comprehensive water plan and to serve as the local drainage authority. County plans get a lot of public input in their development must be approved by the state. If a landowner wants to dig a drainage ditch or install a drainage tile system, the landowner must petition the county. The county determines who pays how much. Each ditch or tile system has its own funds paid by the landowners. There are 46 watershed districts in the state. The boundaries of these districts are based on hydrologic areas. These districts were formed by petition for various reasons including lake water quality management, drainage management, flood control, and storm water quality management.

Mr. Jerome Deal, President, Minnesota Association of Watershed Districts, said the association has oversight of the watershed districts in the state. He said there are constant changes and mentioned a study underway at the state level to look at drainage laws and conservation laws. The process for the redetermination of benefits for drainage projects is one that watershed districts get involved in and this

is a costly process. Counties, soil and water conservation districts, and watershed districts each have their own plans, and they are currently working the in state to get these plans combined. Mr. Darrel Ellefson, Chair, Lac Qui Parle – Yellow Bank Watershed District, talked to the task force about his watershed district, which was formed in 1971. Drainage ditches in the area were first built in the early 1900s. Since 1971 the district has handled about 10,000 drainage permits. There is pattern tiling going into ditches in the district which he believes will reduce flooding. Ms. Trudy Hastad, Administrator, Lac Qui Parle – Yellow Bank Watershed District, added that the district involves three counties. She briefly explained the permit process.

Mr. Lance Yohe, Executive Director, Red River Basin Commission, Fargo, North Dakota, discussed the organization, mission, and activities of the Red River Basin Commission. He discussed the structure of the Red River Basin Commission and noted that it must deal with varying water law in three states (Minnesota, North Dakota, and South Dakota) and one Canadian province (Manitoba). He discussed differences between the member entities in how they pursue water management, types of projects and activities, funding and budgeting methods, permitting, planning, and governmental and district structure. He also discussed varying approaches in the regulation and permitting of drainage activity. He noted that water management activity in Minnesota is often addressed along watershed boundaries, while county boundaries are used more frequently in North Dakota.

Senator Larry Luick, North Dakota State Senate, was involved with changes to North Dakota's drainage law two years ago and discussed North Dakota's drainage and water management laws and practices. Before the 2011 legislation, all requests for local drainage projects had to go through the state, which tended to be slow. The 2011 legislation allowed local drainage boards to approve small drainage projects, while projects larger than eighty acres would need a state permit. Senator Luick supports tiling and feels that it increases productivity, but favors providing for some form of management and control over tiling water. He recognizes other issues such as salinity, nitrates, and wetlands. He sees the need for more management and control over drainage activity and is not in favor of allowing people to abandon the farm program in order to drain wetlands. Senator Luick said that the state has a uniform permit application form, which he feels works well. He believes that drainage questions should be handled on a watershed basis.

The task force heard public testimony and discussed future directions.

December 2, 2013 – Pierre. The task force will meet in Pierre on December 2 to discuss future direction and action going into 2014, its last year of operation.

### **Listing of Legislation Adopted**

None

### **Summary of Meeting Dates and Places and Listing of Committee Members**

The task force met in Mitchell on April 22, 2013, in Aberdeen on July 1-2, 2013, in Webster on September 15-16, 2013, and will meet in Pierre on December 2, 2013.

Members of the committee include Rep. Brian Gosch (Chair), Sen. Mike Vehle (Vice Chair); Senators Jason Frerichs, Tom Jones, and Jim White; Representatives Dennis Feickert, Spencer Hawley, and Leslie Heinemann; and Mr. Dennis Duncan, Mr. Mike Jaspers, Mr. Rick Sommers, Mr. Paul Symens, Mr. George Vandel, and Ms. Kim Vanneman.

Committee staff members are Tom Magedanz and Dave Ortbahn, Principal Research Analysts; and Kris Schneider, Legislative Secretary.

## **Issue Memoranda**

### **5 Major Funds – 01-13 Update**

At the May 13, 2013 meeting, The Executive Board asked staff to update the “Five Major Funds” issue memorandum. The memo was first written in 2002 and focused on five major funds in the state treasury: the Budget Reserve Fund; the Property Tax Reduction Fund; the Dakota Cement Trust Fund; the Education Enhancement Trust Fund; and the Health Care Trust Fund. Since 2002, there have been changes to statutes and to the Constitution which certainly merit an update of the memo. These changes along with an updated financial history of each of the funds are identified in the attached issue memorandum.

## **NCSL Recommendations**

At its April 23, 2013, meeting, the Executive Board entered into an agreement with the National Conference of State Legislators (NCSL) to conduct a Management and Performance Audit of the Legislative Research Council. This study was performed and the results presented to the Executive Board in September, 2013. A copy of the NCSL report is posted on the LRC website. This section of the report addresses the Executive Board response to date to these recommendations. In this same time frame, Executive Director Jim Fry retired from his post. Fred Schoenfeld was appointed as Interim Director to serve through the 2014 legislative session and work with a search committee for a permanent Director with the understanding that he would not be eligible to continue as Director after June 2014. Because of this, action on some of the recommendations in this report have been limited to preserve options of the permanent Director to the maximum extent possible.

### **RECOMMENDATION 1:**

**Amend South Dakota statutes [see SDCL 2-9-3] and rules as required to establish the Speaker of the House and the Senate President Pro Tempore as rotating chairs of the Executive Board.**

Draft bills reflecting alternative approaches to implementing this recommendation have been prepared for the consideration of the Subcommittee on Operations which will report to the full Executive Board regarding its recommendation(s).

### **RECOMMENDATION 2:**

**Amend the South Dakota statutes by adding the underlined language to current law:**

SDCL 2-9-8. Employment of director and personnel--Supplies and equipment. The executive board is hereby authorized and empowered to appoint a director of the Legislative Research Council and employ such clerks, assistants, and other help and provide such supplies and equipment as may be necessary. The director of the Legislative Research Council may be removed from office by a two-thirds (2/3) vote of the members of the executive board or by a majority vote of both houses of the Legislature.

Draft bills reflecting alternative approaches to implementing this recommendation have been prepared for the consideration of the Subcommittee on Operations which will report to the full Executive Board regarding its recommendation(s).

**RECOMMENDATION 3:**

**Institute a regular and ongoing orientation and training program for each newly elected Executive Board designed to educate its membership about the roles and responsibilities of the Board and the activities of the LRC staff.**

This recommendation has already been partially implemented by substituting a regular Management Team report for the previous Executive Director's report at Executive Board meetings. The beneficial effect of this approach will be to bring the Board members into closer touch with the Administration, Code Counsel, Research and Drafting, and Fiscal activities of the LRC staff. If the Interim Management remains in place when a new Executive Board commences after the 2014 Legislative Session, an educational session of the sort recommended will take place. However, it may be more appropriate to let a new permanent Executive Director set the tone for this activity, depending on how far the recruitment cycle has progressed.

#### **RECOMMENDATION 4:**

**Develop new strategies at the LRC to inform and educate rank and file members about LRC services, staff, policies and procedures that expand on the basic information presented at the current new member orientation program and staff information available on the Legislature's web site.**

The LRC staff finds this recommendation to be well taken and steps are underway to implement it. A December Executive Board meeting is recommended at which time a training session for all legislators could be offered under its auspices. It is currently thought this session could include the following:

1. Briefing on the expanded staffing services for caucuses and negotiating sessions as discussed elsewhere in this report.
2. The fiscal information regarding all state agencies which is available on the LRC web site and how to access and use it.

#### **RECOMMENDATION 5:**

**Establish and adopt procedures for setting performance goals and conducting annual performance appraisals for all LRC employees, including the director.**

The framework for implementing this recommendation is put into place in the draft personal policies and procedures recommended for Executive Board adoption under NCSL Recommendation No. 7 below. However, because effective performance appraisal requires advance agreement on goals and objectives by both the employee and the managers and follow-up after a performance evaluation, it is recommended that this process be deferred until a permanent Executive Director is in place to lead a consistent approach.

#### **RECOMMENDATION 6:**

**Hold regular (at least quarterly) staff meetings attended by all LRC employees and convened by the LRC director designed to foster internal communication among LRC employees and review and discuss matters relevant to the performance of the LRC.**

This recommendation is already implemented. Weekly Management Team meetings serve as the basis for enhanced communications both up and down the chain of command. A number of all-staff meetings have already been held at will continue at approximately once each month. A weekly meeting of the support staff with management will commence yet this month.

#### **RECOMMENDATION 7:**

**Develop official LRC personnel policies and procedures as deemed appropriate by the LRC director, with advice as required from appropriate human resources counsel, and seek the formal adoption of LRC personnel policies and procedures by the Executive Board.**

The recommended personnel manual is offered for Executive Board adoption.

**RECOMMENDATION 8:**

**Create a formal LRC Management Team whose members are the LRC director, the chief research and legal analyst and the chief fiscal analyst. Require the Management Team to present in person to each new Executive Board a “State of the LRC” report and assessment....**

This recommendation is largely in place already and routinely reporting to the Executive Board. As constituted, the Management Team was expanded to include the Code Counsel whose function is an important part of the LRC’s overall mission.

**RECOMMENDATION 9:**

**The LRC director and staff should engage in discussions with the Executive Board chair and legislative leaders of both political parties and both chambers that examine the nonpartisan practices of the LRC and that explore options and conditions that would allow the LRC to expand its services to include, among other practices, LRC staff participation in briefings before partisan caucus meetings while maintaining the full confidence of legislators and the Legislature in their nonpartisan credentials.**

The staff recommends this expansion of the LRC responsibilities. It is believed that it can be accomplished within the current staffing framework. Much of the existing non-partisan staff support for individual members of the legislature is ultimately used for partisan purposes. Expansion of this role to include party caucuses or negotiating sessions is primarily an extension of the number of legislators involved and the LRC workload when similar materials may have to be presented as many as four times in the interest of political balance. The staff is committed to making this work. It is recommended that the best approach to setting out rules and procedures is to incorporate it into the personnel policies. It was felt that simplicity was a better approach. This policy can be refined or expanded if initial experience demonstrates a need for adjustment.

**RECOMMENDATION 10:**

**Fund and fill a new drafting attorney position for the research and legal division of the LRC.**

**RECOMMENDATION 11:**

**Fund and fill a new legal editor/proofreader position for the research and legal division of the LRC.**

**RECOMMENDATION 12:**

**Fund and fill a new computer help desk/administrator position at the LRC.**

The staff believes that it can adequately support the legislature during the coming 2014 session once the two existing vacant positions are filled. In addition, one additional unfunded FTE exists which can be activated in an emergency with a supplemental appropriation. Further, it is felt that the new permanent Executive Director should properly have the option of molding the agency by means of these positions. However, for the new Executive Director to have this latitude, the LRC 2015 budget as originally submitted should be amended during the appropriations process to provide the necessary funds to support the new Director’s recommendation.



## **Unnumbered Recommendation:**

**The LRC should consider distancing its computer and technology function from the Executive Branch in the interest of separation of powers and enhanced security.**

Initial staff analysis indicates implementing this approach would incur substantial costs and logistical problems likely to exceed the Legislature's appetite for this change. Other, lower cost options for reassuring the members and staff of the security of the present arrangement need to be explored and tested prior to moving in this direction.

## **Other Recommendations**

The NCSL Audit reported the perception by some members that the Legislature relied too heavily on the Executive Branch for fiscal information. The point has merit and staff believes there are a number of ways to address this.

### **Delivery of Key Budget Information**

The Legislature could take a more participatory role in the budget process if **more information were available to the Legislature sooner.**

The following changes would allow the Legislature more time to prepare and plan for the Legislative session:

1. **Budget submission deadline:** Statutes require the budget be presented to the Legislature in early December – **change the deadline to early November.** This section of the code was written long before modern computerization and allowed the Governor and his staff more time to cull the requests and formulate a budget. The change would allow more time for legislative analysis with little to no impact on the Executive Branch's schedule.
2. **Earlier budget hearings:** The Interim Appropriations Committee could hold public hearings on a select number of agencies in November and December. The timely information and opportunity to study the Governor's Budget would put the Legislature in a better position when session began. (*Items 1 and 2 are addressed in attached draft #588V0134*)
3. **Long-term financial plan and Capital Budget:** A long-term financial plan and capital budget would provide a single, global perspective view preventing the Executive Branch from presenting fragmented, disjointed information in a divide-and-conquer strategy. Legislation would be needed to require a long-term financial plan; however, existing statutes already require a long-term capital budget in conjunction with the annual budget submittal. Unfortunately, the most recent submittal is essentially two lists of maintenance and repair projects. (*See attached draft #768V0132*)

## **Fiscal Notes**

The Legislature could gain independence from the Executive Branch by eliminating official procedures that require an action on the Executive's part prior to an action by the Legislature. Strike "in

consultation with the Bureau of Finance and Management” in Joint Rules 6C-2 and 6C-6. The Legislative Research Council will continue to confer with the Executive Branch, the Judicial Branch, and any appropriate elected official when preparing fiscal notes.

### **Document Distribution**

The rank and file legislators have become aware that in some instances BFM has LRC analyses before some legislators or appropriators get them. They have also become aware that the Governor is briefed on LRC revenue estimates the night before they are presented to the JCA in open meeting.

- 1) We believe these items contribute to the mistaken perception by some legislators, as reported by the NCSL, that the LRC fiscal staff does not exercise sufficient independence from the executive branch.
- 2) We propose to deal conclusively with these perceptions as follows:
  - a) We will adjust distribution of confidential documents, such as the amendment packet for the General Bill, so that the appropriators and the leaders of both parties receive them simultaneously.
  - b) We will brief the majority and minority leadership of both houses and the JCA regarding the revenue estimate prior to any engagement with the Governor. The leaders can then do what they wish with this information, including relaying it to their respective caucuses. If they wish, we will accompany them to provide an advance briefing to the Governor, with the understanding that the Governor's revenue estimate is to be made available to the minority in the same time frame.