State of South Dakota

# 2014 Interim Committee Reports

Legislative Research Council

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# 2014 Interim Committee Reports

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# 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;
3. The changes, if any, that must be made to pension fund levy, capital outlay levy, or special education tax levy to ensure that the total amount of additional taxes that may be generated on agricultural land by a school district pursuant to the provisions will not provide a substantial property tax revenue increase or decrease for the school district, pursuant to the implementation of the productivity; and
4. 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 July 22. Mr. Michael Houdyshell, Director of Property and Special Taxes Division for the Department of Revenue, presented the Report on Productivity Valuation for the 2015 Assessment Year. The items of note for 2015 that were reported are:

- The cropland olympic average increased 14.12 percent on a statewide basis (compared to 13.59 percent in 2014).
- The noncropland olympic average increased 2.00 percent on a statewide basis (compared to 1.49 percent last year).

Mr. Houdyshell said that there have been some issues with the Natural Resources Conservation Service (NRCS) websoil survey and the new data that has been made available. Counties have reported that NRCS is showing new map units with new soil types and the counties tables don't reflect that new information. The Department of Revenue is working with the counties to address this issue, which may cause some confusion for the land owner during that process.

A group of landowners from Pennington County visited with the task force about the criteria used for classification of land as agricultural property. The group believes that the criteria are outdated and unclear. It is their position that the law contains ambiguities and lacks clear definitions of terms resulting in inconsistent interpretation and application of the law for small ag landowners with less than 160 acres. The task force has taken the matter under consideration and may propose legislation amending SDCL 10-6-31.3.

During the second meeting on September 15, Dr. Burton Pflueger, Economics Department, South Dakota State University spoke to the task force about the landlord share factor and the capitalization rate or multiplier. Dr. Pflueger recommended, after reviewing several sources of data for South Dakota and the surrounding states, that there be no change in the present landlord share factor of 35%. Dr. Pflueger also recommended that the capitalization rate or multiplier of 6.6% remain unchanged, at this time. Both are factors used for determining agricultural income value and ultimately the individual's property tax assessment

Dr. Eluned Jones, Department Head, Economics Department, South Dakota State University, introduced Dr. Matthew Elliott as a new department assistant professor. Dr. Matthew Elliott briefly reviewed his professional background. Dr. Elliott will be working with the Department of Revenue and the task force concerning the productivity valuation system model.

Fred Baatz, Principal Research Analyst provided the task force with information on how surrounding states and Colorado classify agricultural property. He reviewed how these states used the following criteria used to determine an ag property classification: defining an ag purpose, setting acreage and income requirements, and whether property was contiguous or part of a management unit.

Mr. Houdyshell referred to a handout that summarizes the 2012 interim task force's suggestions for legislative fixes to allow for adjustments for conservation easements on lands with crop-rated soils. The suggestions involved making adjustments based on the soil type, making straight percentage adjustments, or possibly placing a time trigger on any adjustments made. He said in making conservation easement allowances one should consider the monetary benefit to the landowner who has been granted easements and who then could get a tax break on the same property, versus the concerns of future owners who didn't get the immediate monetary benefit. There is concern that not all of the county directors of equalization use the statutory allowed adjustments tools available to them. The department does encourage and provide guidance to directors to make adjustment where valid.

Ms. Brenda Forman, representing several agricultural associations and organizations said that they favor actual use for determining whether land is assessed as cropland or noncropland. They are requesting the task force to support a SDSU research project that would determine the impact of changing from highest and best use to actual use. She said actual use assessments will result in a shifting from cropland to noncropland and vice versus. The questions are: to whom, how much, and will it be appropriate? She said additional research, data collection, and analysis is needed.

The final meeting was held on November 18 and Mr. Houdyshell gave a report from the Summer Work Group regarding School District Capital Outlay Taxes. The work group found that there is growth in school capital outlay tax revenues which may be related to the growth in agricultural land valuations. There is also a growth in the capital outlay reserve funds. The work group is working on a compromise that will limit or slow capital outlay growth, while also protecting the school districts' financial needs. He said negotiations and discussions are ongoing.

Dr. Matthew Elliott, Assistant Professor, Economics Department, SDSU presented the task force with two proposals for a SDSU research project that would determine the impact to property tax assessments if the current productivity valuation system was comprehensively adjusted to reflect actual use instead of highest and best use. The first proposal would be for a one year with an estimated $151,000 budget and the second proposal would be for two years with an estimated budget of $343,000.

Seven draft bills were presented to the task force for discussion. The draft bills involved the school capital outlay and pension tax levies, studying actual use for assessing agricultural land, and 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 school district pension fund and capital outlay fund tax levies and to provide property tax opt-out procedures for the capital outlay levy.*
   The draft limits the capital outlay levy for school districts and repeals the current pension levy limitation language that's in statute. The draft provides that the tax levy request be made in total dollars requested in lieu of dollars per thousand of taxable valuation.

2. *An Act to revise certain provisions concerning the pension and capital outlay tax levies for school districts.*
   The proposed legislation provides for the same schedule on the limitations for the school district capital outlay and pensions fund property tax levies as for phasing in the full productivity assessment value for agricultural land.

3. *An Act to make an appropriation for research concerning the administrative and financial impact of actual use on agricultural land assessments and to declare an emergency.*
   The draft requested a general fund appropriation of $151,000 for the purpose of requesting South Dakota State University Department of Economics to conduct research concerning the assessment and taxation of agricultural land based on actual use.

4. *An Act to revise certain provisions concerning the assessment and taxation of real property.*
   This draft deleted some obsolete provisions concerning nonagricultural acreage property classification and the implementation of the productivity system for assessing agricultural land.

5. *An Act to revise the criteria for classifying property as agricultural land and to provide for additional requirements for small agricultural acreages and timber land to be classified as agricultural land.*
   This draft revised several provisions related to the criteria for classifying property as agricultural property. It also provided definitions and means to determine whether small acreages or acreages covered with timber qualify as agricultural property.

## Summary of Meeting Dates & Places

The task force met on July 22, September 15, and November 18 in Pierre.

**Listing of Task Force Members**

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.

**Listing of Staff Members:**

Staff members were: Fred Baatz, Principal Research Analyst; Cindy Tryon, Senior Secretary; and Rena Ortbahn, Secretary.

# Alcoholic Beverage Shipping and Distribution Interim Committee

## Study Assignment:

A comprehensive review of alcoholic beverage shipping and distribution regulation in South Dakota. The study included:

(1) The three-tier system of alcohol distribution in the state to determine if the current system is necessary and appropriate in today's society;

(2) The intrastate and interstate shipping of wine, beer, and spirits, including how the shipping would affect the three-tiered system including equality of taxation, enforcement, equality for retailers - both in-state and out-of-state, social issues, and permits and licenses; and

(3) The possibility of creating a direct-to-consumer winery shipping law.

## Summary of Interim:

The committee began its examination of alcoholic beverage shipping and distribution laws in June. After an initial review of the scope of the committee, Heather Morton from the National Conference of State Legislatures reported on systems used around the country for alcohol distribution and shipment. Ms. Morton reported that each state has a three-tiered distribution system, consisting of 1) manufacturers and producers, 2) distributors and wholesalers, and 3) retailers, including stores, bars, and restaurants. This is meant to provide a system of checks and balances to ensure the quality of the alcoholic beverages and simplify the collection of taxes. Each state is either a license or a control state. A control state operates the distribution tier and may participate in the retail tier through state-run liquor stores. A license state does not participate in distributing or selling alcoholic beverages, it merely issues licenses to do so. South Dakota is a license state.

Jason Evans from the Department of Revenue made a presentation regarding the regulation and taxation of alcoholic beverages in the state. Mr. Evans reported that under the three-tier system, only manufacturers are allowed to sell alcohol to wholesalers, only wholesalers can sell to retailers, and only the retailers can sell alcohol to the end consumer, which maximizes control over the industry and minimizes tax administration and enforcement. There are currently 60 alcohol taxpayers in the state, and 5,394 retail liquor/beer licensees. Mr. Evans explained that there are three exceptions to the three-tier system. The first exception was implemented in 1989 and applies to malt beverage manufacturers who produce 5,000 barrels or less and sell the product for on premise consumption only. There are 10 such licensees at this time and there is a $500 annual license fee. The second exception was implemented in 1996 and allows farm wineries that produce up to 150,000 gallons annually to sell their product for either on-premise or off-premise consumption. Currently, there are 26 such licensees and the license costs $100 annually. The third exception to the three-tier system is the artisan distillers. An artisan distiller can produce up to 50,000 gallons annually and can sell their product for either on-premise or off-premise consumption. The artisan distiller may sell to wholesalers and to end consumers but cannot sell directly to retailers. There are four such licensees and the license costs $500 annually. Mr. Evans reminded the committee that a change to the three-tier system would likely require more staffing for the Department.

Bob Riter, a registered lobbyist for the South Dakota Beer Distributor's Association, gave a summary of the history of alcohol sales, going back to prohibition. Mr. Riter pointed out that there were less than 50 brewers in the country in 1950, and now there are more than 2,400. Mr. Riter also briefly explained how the distribution territories worked with the consumers, in that retailers can only buy alcohol from a certain distributor, which has to sell to all retailers at the same price. A retailer cannot buy from a different distributor, pursuant to an agreement with the manufacturers.

Jeremiah Murphy, a registered lobbyist for Republic National Distributing Company, and Tim Dougherty, a registered lobbyist from the Licensed Beverage Dealers of South Dakota, both testified that their clients would

not oppose wine shipment provided the taxation were equal between in-state and out-of-state wineries and distributors. Jim Hood, a registered lobbyist for the Wine Institute, and Diana Miller, a registered lobbyist for South Dakota for Better Wine Laws, both testified that their clients supported direct shipment of wine, promoting the economic benefits to the state from wine shipped to residents.

At the second meeting, Roxanne Hammond, Legislative Attorney, presented to the committee on the alcohol-related legislation from 2010-2014. Ms. Hammond reported that since 2010, 63 alcohol-related bills have been introduced, and 24 of those bills passed. The bills passed include a law creating a combination license for the sale of both malt beverages and wine, a law allowing alcoholic beverage licensees to charge a corkage fee, and a law to allow wineries to pay taxes quarterly. A handful of bills that would have allowed direct shipment of wine were introduced, but failed.

Jeremiah Murphy and Tim Dougherty presented draft legislation, as requested during the first meeting. The template for the draft legislation was the wine shipment bill used in 2014 (SB 114), with some additions brought by their clients. Changes included defining a "wine carrier"; requiring wineries to choose to register a wine label for either direct shipment or retail, but not both; the increase of the wine shipment registration fee from $150 to $250; as well as administrative changes to the reporting to the Department of Revenue and penalties. Diana Miller spoke against the proposed bill, stating that her client does not support the registration of wine carriers, and the increase of the fee is disproportionate compared to surrounding states.

Paul Lewis, owner of Black Hills Dakota Distillery, pointed out several discrepancies between artisan distilleries and farm wineries, including a $500 license fee for distilleries ($100 for farm wineries), and the inability of distilleries to sell to distributors and retailers like farm wineries. Mr. Lewis presented two proposed bills that would allow artisan distilleries many of the same rights as farm wineries. Bob Riter spoke in favor of giving the same rights to craft brewers as well. The committee also heard public testimony in favor and opposition to direct wine shipment.

At the third meeting, three pieces of legislation were presented for committee consideration. The first draft was based on the draft presented at the prior meeting by Tim Dougherty and Jeremiah Murphy. Some changes to the legislation included the addition of a 1% direct shipment tax applied to the retail price of all wine shipped into the state, in lieu of the 2% wholesale tax applied to other alcohol sold through wholesalers in South Dakota. The bill also included a section requiring the Department of Revenue to keep a list of registered wine labels available to the public, and a section prohibiting wine to be sold below the wholesale cost.

Jeff Carol, Vice President of Compliance, ShipCompliant, of Boulder, CO, testified via telephone. Mr. Carol said that his company runs shipment compliance services for wineries that are allowed direct shipment to other states. ShipCompliant is a software program that tracks state wine shipment laws and ensures that businesses that use their services are compliant with each state's wine laws.

Dianna Miller spoke in favor of the first piece of legislation. Jeremiah Murphy presented a document entitled "Level Playing Field". Mr. Murphy said that making the list of wines delivered into South Dakota available will help South Dakota's wholesalers in knowing what wines are being sold through direct shipment. Tim Dougherty testified in favor of registering wine carriers. Jason Evans from the Department of Revenue requested a delayed implementation date in order to allow the department to prepare for the new system. The committee agreed that the current legislation was not up to standard and should be revised and resubmitted at the next meeting.

During the final meeting, the committee heard discussion on four bills. Roxanne Hammond from the LRC went through the changes made to the direct wine shipment bill draft from the previous meeting. Tim Dougherty, Dianna Miller, Jim Hood, Don Roesler, Bob Riter, Jeremiah Murphy, and Yvonne Taylor all spoke in favor of, or

acceptance of, the draft proposal. Jason Evans said the department does not support nor oppose this draft. Tim Dougherty suggested several amendments, and three amendments were integrated into the draft. The suggestions to raise the fee to $250 and add local mark ups were rejected. The committee discussed using bottles versus weight to track the amount of wine shipped into the state, ultimately deciding to use weight.

The committee then discussed the second draft legislation, a bill allowing artisan distillers to sell their products directly to retailers and wholesalers. Bob Riter testified that in-state businesses must be given the same rights as out-of-state businesses, and carving a specific niche may cause problems later. Paul Lewis and Jeremiah Murphy testified in favor of the draft.

The committee then heard testimony on the third draft, creating an appropriation to the Department of Revenue to aid in the electronic submission of reports and taxes related to direct shipment of wine and alcoholic beverages.

Finally, the committee heard testimony on the fourth draft, a bill to abolish the wholesaler tax and transfer costs into the occupational tax. Jeremiah Murphy and Tim Dougherty both testified in favor of the bill.

## Listing of Legislation Adopted by the Committee

1. An Act to establish a wine direct shipment license and wine carrier license to enable the direct shipments of certain wine in South Dakota.
   This bill provides for the direct shipment of wine to consumers, as well as sets up infrastructure for the payment of taxes for the wine shippers, and creates penalties for failure to register prior to wine shipment.
2. An Act to allow for the direct sale of distilled spirits from artisan distillers to retailers and wholesalers.
   This bill allows artisan distillers to sell their distilled spirits directly to retailers and wholesalers, up to a certain gallon amount.
3. An Act make an appropriation to fund the Department of Revenue to aid in the electronic submission of reports and taxes related to alcoholic beverages and to declare an emergency.
   This draft allocates $100,000 to the department to be used to create infrastructure to allow out-of-state wineries and other alcohol taxpayers to submit their taxes electronically.
4. An Act to abolish the alcohol wholesaler tax and transfer costs to the occupational tax on certain alcoholic beverages.
   This bill eliminates the 2% wholesaler tax and increases the amount of the taxes paid per gallon under the occupational tax.

## Summary of Meeting Date and Places

The Alcoholic Beverage Shipping and Distribution Committee met in Pierre on June 10th, July 7th, September 2nd, and October 20th, 2014.

## Listing of Committee Members

Committee members were: Representative Roger Solum, Chair; Senator Corey Brown, Vice Chair; Senators Jim Bradford, Ryan Maher, and Craig Tieszen; and Representatives Brock Greenfield, Troy Heinert, and Timothy Johns.

## Listing of Staff

Staff members were: Roxanne Hammond, Legislative Attorney, Fred Baatz, Senior Research Analyst, Doug Decker, Code Counsel, Aaron Olson, Fiscal Analyst, and Cindy Tryon, Senior Legislative Secretary.

# Joint Interim Committee on Appropriations

## Study Assignment

**SDCL 4-8A-3. Powers and duties of special committee (also known as the "Joint Interim Committee on Appropriations").**

*The special committee shall serve to release sums of money from any general contingency funds appropriated for contingent purposes by the general appropriation act or any special act. The special committee shall also serve to continually review, evaluate, and coordinate state fiscal and budgetary policy including, but not limited to, the adoption of any new programs by any department of state government and shall also carry out any assignments made by the Executive Board of the Legislative Research Council.*

*The committee may hold public hearings to review the budget report submitted by the Governor and the long-term capital improvements budget as required in § 4-7-19. The committee may summon and examine witnesses.*

*Source: SL 1974, ch 44, § 3; SL 2014, ch 28, § 1.*

## Summary of Interim

On March 31, 2014, the Joint Interim Committee on Appropriations approved the following letters of intent.

- **Unified Judicial System – Courthouse Remodel Funding.** The 2014 Legislature approved a $400,000 one-time appropriation in HB1040 to the Unified Judicial System to be used for courthouse remodeling projects. The Letter of Intent clarified the money was to remodel courthouses in Beadle, Meade and Pennington counties.
- **Bureau of Human Resources - State Employee Health Insurance Reserve.** The 2014 Legislature approved the creation of a health insurance reserve fund. The Letter of Intent requested periodic reports be made to the interim and standing appropriations committees. The reports shall be provided at any time the balance of the State Employee Health Insurance Reserve Fund is less than $3,043,802, and at any time the Bureau deems necessary or is requested by the Committee. During the 2014 interim, the level of the reserve fund did not necessitate a formal report from the Bureau of Human Resources, however, the Bureau reported to the Government Operations and Audit Committee that the fund had a larger than anticipated positive ending cash balance.
- **Department of Transportation – Railroad Trust Fund.** The 2014 Legislature approved a special general fund appropriation of $7.2M to the railroad trust fund through HB1041. The letter further clarified the intent of the Committee to use $1.2M for the rehabilitation of the railroad bridge spanning the Missouri River from Chamberlain to Oacoma and approximately $6M be used to rehabilitate the state-owned rail line between Chamberlain and Presho.
- **Department of Veterans Affairs – State Veterans Home Construction.** The Committee requested quarterly reports containing State Veterans Home construction timelines, budget updates, and any projected deviations from the proposal as presented to the Legislature.
- **Department of Transportation – Aeronautics Fund.** The Committee directed the Department to use $500,000 in general funds appropriated through SB53 to partially reimburse the Aeronautics Fund for transfers previously approved in the 2010 legislative session.
- **Governor's Office of Economic Development – Ellsworth Air Force Base.** Requested the Office of Economic Development to use funding appropriated in SB53 for the purpose of funding the Readiness and Environmental Protection and Integration (REPI) buffer program at Ellsworth Air Force Base. The Letter of Intent specifies that the Office of Economic Development should use the money as match for a federal program related to sound concentric zones near air bases. The Office was directed to provide quarterly reports on the progress of the project. The September 30, 2014 quarterly report received from the SD Ellsworth Development Authority reported no expenditures to date..

- **Board of Regents – SDSM&T Shale Research.** Requested the Board to provide information on the shale research being conducted at the South Dakota School of Mines and Technology. SB53 appropriated $464,000 in general funds.
- **Department of Education – State Aid to General Education.** The Committee issued a specific policy guideline concerning the use of a 0.36% increase in the PSA authorized in SB188. The intent of the JCA was that the 0.36% (approximately $16.72 per student) be used by the local school districts to increase the ongoing average salaries of all certified teachers.
- **FY 15 Discretionary Provider Inflationary Base Rate Increase** – The 2014 South Dakota Legislature approved a 3% discretionary FY15 rate increase to providers. Additionally, a 0.30% base increase to providers was approved for community based providers and nursing homes. This Letter of Intent included details of the increases for each type of provider.

At the June 17, 2014 meeting, the JCA:

- Approved a final Letter of Intent relating to funding provided in SB53 during the 2014 Legislative Session. The JCA notified the Department of Environment and Natural Resources that the intent of the funding was to provide a zero percent interest reimbursable grant to be used as an advance on anticipated federal funding for the Lewis and Clark Regional Water system.
- Adopted the proposed interest proration submitted by the Bureau of Finance and Management.
- Received an update from the Bureau of Finance and Management (BFM) on the new format for reporting budget transfers precipitated by changes in the 2014 Legislative session. SB84 eliminated the requirement that BFM provide transfer summary report during the interim. However, BFM will continue to provide electronic notifications to the Joint Committee when a transfer is approved and will maintain a physical record of all authorizations for inspection by the public.

At the July 28, 2014 meeting, the JCA:

- Received interim revenue estimates as per HB1203 approved by the 2014 Legislature. The new legislation requires the Bureau of Finance and Management and the Legislative Research Council to prepare independent revenue projections by July 31st of each year.
    - The Legislative Research Council projected general fund revenue for FY2015 to be $1,393,700,340, which was $1,863,907 higher than the adopted revenue estimate.
    - The Bureau of Finance and Management projected general fund revenue for FY2015 to be $1,392,052,374, which is $215,941 higher than the adopted revenue estimate.
    - Both entities reminded the Committee that the projections were very preliminary as not even one month of actual data was available for analysis.
- Received a report from LRC staff on the Key Performance Indicator project being developed by the Government Operations and Audit Committee (GOAC). Pilot agencies were selected to modify the performance indicators as they currently exist in the Governor's Budget Book to include agency goals, activities, and outcome measures (including historical trends and targets for each). A new tool is being developed that will assist not only the GOAC, but also the Appropriations Committee and other policy committees.
- Various Agencies provided requested information:
    - South Dakota Health and Education Facilities Authority – status of state debt reduction;
    - Department of Transportation – future of federal highway funding;
    - Department of Social Services – effects of Modified Adjusted Gross Income (MAGI) on CHIP and Medicaid eligibles;
    - Department of Social Services – update on the periodic adjustment of provider reimbursement rates;
    - Department of Education – State Aid to Education and Special Education funding transfers; and
    - Bureau of Human Resources – State Employee Health Insurance Fund update.

The West River Appropriations Tour was conducted from October 8 through October 10, 2014. The tour is typically scheduled every two years and includes visits to state-owned facilities or those conducing activities that receive state funding. The 2014 tour included stops at the following sites:

- Camp Rapid, Joint Force Headquarters Readiness Center
- Sanford Underground Research Facility (SURF)
- Shale Research Initiative presentation from SDSM&T
- State Veterans Home construction site
- Custer State Park
- Department of Corrections – Juvenile Detention Center (STAR Academy, Patrick Henry Brady Academy, Youth Challenge Center)

## Listing of Legislation Adopted

None.

## Listing of Committee Members

**Senator Deb Peters, Chair**
**Representative Fred Romkema, Vice Chair**
Senator Phyllis Heineman
Senator Tom Jones
Senator Al Novstrup
Senator Alan Solano
Senator Billie Sutton
Senator Larry Tidemann
Senator Bill Van Gerpen
Representative Jim Bolin
Representative Lance Carson
Representative Dan Dryden
Representative Don Haggar
Representative Spencer Hawley
Representative Mark Mickelson
Representative Dick Werner
Representative Jim White
Representative Susan Wismer

## Staff

Annie Mehlhaff, Chief Fiscal Analyst
Aaron Olson, Principal Fiscal Analyst
Denice Houlette, Senior Fiscal Analyst
Jason Simmons, Senior Fiscal Analyst
Stephanie Gruba, Fiscal Analyst
Cindy Tryon, Senior Legislative Secretary

# Highway Needs and Finance Committee

## Study Assignment

The committee was established to study the current and future conditions and financial needs to maintain, repair, and improve the state and local highways, roads, and bridges. The study should specifically evaluate:
The immediate and short-term financing needs to tackle the quality of the local roads and bridges;
The long-term financing needs to maintain the quality of the state highway and bridge system;
The inventory of state & local road & bridge conditions;
The strategies for creating greater efficiency in financing state and local roads;
The projected federal, state, and local revenues in relation to actual road and bridge needs; and
The impact of the 2011 and 2013 motor vehicle license fee increases.

## Summary of Interim

During the interim, the committee heard testimony from the Department of Transportation, Department of Revenue, Department of Public Safety; county, municipal, and township officials; National Conference of State Legislatures and Council of State Governments; and a number of associations and organizations that rely on roads to serve their members. There are several PowerPoint presentations, supporting documents, tables, graphs, etc. that were submitted to the committee that may be found under the link for committee documents during the 2014 interim at:
http://legis.sd.gov/Interim/CommitteeDocuments.aspx?KeywordID=397&Session=2014

There are 83,650 miles of roads in South Dakota, of which 8,850 miles are state highways and about 67% of the traffic occurs on the state system. There are 4,436 structures classified as bridges in South Dakota, 72% are locally owned (3,173 bridges) and 28% are state owned (1,263 bridges). However, 60% of the total bridge deck area is on state owned bridges while 40% of the deck area is on locally owned bridges. Information was presented to the committee regarding the number of bridges that are structurally deficient (bridges that should be considered for repair to address the deficiency) and functionally obsolete (bridges that have a substandard feature, but it is not an indicator that a bridge is structurally unsafe).

The average highway construction cost per mile to reconstruct is as follows:

- urban 5 lane concrete - $4,950,000/mile;
- interstate to concrete (4 lane) - $2,050,000/mile;
- rural 2 lane (asphalt) - $1,360,000/mile;
- rural 2 lane (concrete) - $1,450,000/mile;
- mill & overlay 2 lane asphalt roadway - $215,000/mile;
- chip seal 2 lane asphalt roadway - $25,000/mile;
- 100’ long bridge - $745,000.

DOT evaluates the surface conditions of the highway system. At this time, 42% are in excellent condition, 47% are in good condition, 9% are in fair condition, and 2% are in poor condition. The federal stimulus program that was provided to the states from 2009 to 2011 had a significant influence on the current surface conditions. In comparison, the pavement conditions in 1999 were 17% in excellent condition, 53% in good condition, 21% in fair condition, and 9% in poor condition.

The committee reviewed the revenue information regarding the federal, state, and local funding sources. During the interim, these sources were referred to as a six-legged stool. The six legs listed as primary revenue sources for roads and bridges included the motor vehicle excise tax, motor fuel excise tax, registration fees, property taxes, wheel taxes, and federal funding.

South Dakota's motor vehicle excise tax rate of 3% is the lowest rate in comparison to the surrounding states, except for certain counties in Montana which may have set a lower tax rate. The collections for the motor vehicle excise tax in FY2014 were $75.8 million.

The last time the state motor fuel tax was increased was 1999. Motor fuel taxes raised approximately $138 million in FY2014. The last increase in the federal gas tax was 1993. As a nation, the number of overall miles travelled has flattened while the fuel efficiencies of vehicles have increased. The cost of construction continues to rise but the revenues collected by motor fuel taxes have leveled out.

Motor vehicle registration fees resulted in FY 2014 revenue of $86.6 million and the prorate license fees provided another $16 million. Of the fees collected by the county, 41.75% is retained by the county and 58.25% is sent to the state primarily for redistribution to the counties, townships, and municipalities. The counties' share of the fees is distributed as follows: 22.5% to county road and bridge fund; 14% to special highway fund (townships); 5% to municipalities; and .25% to the county treasurers. The balance of the fees is distributed as follows: 54% to local government highway and bridge fund; 2.5% to the state license plate revolving fund; and 1.75% to the motor vehicle fund. The prorate license fees that are collected by the state are distributed as follows: 41.5% remains with the county which is apportioned between the counties, townships, and municipalities, and 58.5% is sent to the state which 97% of that money is deposited in the Local Government Highway and Bridge Fund.

The revenue from property taxes that are expended on roads and bridges is difficult to discern, but it was estimated that more than $80 million of such funds were expended by the counties and townships.
The wheel tax is imposed at a rate not to exceed $4 per wheel or a total of $16 per vehicle. Currently, 46 counties collect a wheel tax and 30 of those counties impose the maximum amount of $4/wheel. In CY2014, a total of $12.4 million was collected by the counties from the wheel tax.

Secretary Bergquist reported that the DOT fleet has 4,705 pieces of equipment that must be maintained. The backlog of equipment needs within the department was $8 million in 2012 and $15.5 million in 2013. DOT is managing its fleet in the most cost-effective manner because of the lack of funding. There are 435 snowplows in the state fleet. A snowplow could be purchased for $145,000 in 2008. The cost of a snowplow in 2013 was $285,000.

On most projects there is an 80-20 (federal-state) split regarding the funding. Interstate projects are a 90-10 (federal-state) split. The state does share some of the federal funding with local entities. Federal funding comes through obligation authority. The federal government approves the project and allocates a set amount for that project. As the costs occur, then funding is reimbursed from the federal highway trust fund to the state. DOT sends bills to the federal government every three days.

The interim committee held six regional meetings across the state to discuss surface transportation needs and funding solutions. Meetings were held in Yankton and Sioux Falls on July 1, Watertown and Aberdeen on July 2, and Belle Fourche and Rapid City on July 23. There were approximately 360 people in attendance at the six regional meetings and about 110 people testified on the state and local highway needs and financing.

Nineteen draft bills were presented to the committee for discussion. The draft bills dealt with the following subjects: motor vehicle excise taxes, motor fuel excise taxes, dyed special fuel, the petroleum release compensation fund, motor vehicle registration fees, fees for electric and hybrid vehicles, wheel taxes, property taxes, creation of a bridge fund, local planning requirements, and annual progress reports to the Legislature.

## Listing of Legislation Adopted

An Act to finance improvements on the public highways and bridges by establishing or increasing the motor vehicle excise tax, taxes on fuel, motor vehicle registration fees, and wheel taxes, to provide for the distribution of certain revenue, and to establish certain state and local planning and reporting requirements concerning the condition of public highways and bridges.

This draft provided a comprehensive approach to addressing highway financing and needs by including a proposed increase to the motor vehicle excise tax and motor fuel tax (per gallon rate and a wholesale tax), a new tax on dyed diesel fuel, a reallocation of the tank inspection fees, an increase to the motor vehicle registration fees, a dedication of funds to a local bridge grant program, a requirement for annual county highway and bridge plans, and an annual report by DOT to the Legislature regarding the condition of the state highways and bridges and funding needs.

## Summary of Meeting Dates & Places

The committee met on June 17, August 26-27 and November 6-7 in Pierre. There were six regional meetings held across the state to discuss surface transportation needs and funding solutions. Meetings were held in Yankton and Sioux Falls on July 1, Watertown and Aberdeen on July 2, and Belle Fourche and Rapid City on July 23.

## Listing of Committee Members

Committee Members Were: Senator Mike Vehle, Chair; Representative Mary Duvall, Vice Chair; Senators Bob Ewing, Jean Hunhoff, David Omdahl, Larry Tidemann, Chuck Welke, Jim White; Representatives David Anderson, Gary Cammack, Scott Parsley, Jim Peterson, Jim Schaefer, Mike Verchio, Dick Werner.

## Listing of Staff Members

Staff members were: Fred Baatz, Principal Research Analyst; Stephanie Gruba, Fiscal Analyst; David Ortbahn, Chief of Research and Legal Services; Amanda Jacobs, Research Analyst; and Traci Thompson, Secretary.

# Jolene's Law Task Force 2014

SDCL 2-6-31 is An Act to establish the Jolene's Law Task Force to study the impact of sexual abuse of children in this state and to make recommendations to the Legislature on policies to effectively address the issue.

The task force was charged to study the impact of child sexual abuse (CSA) in the state and make a report to the 2015 Legislature on the prevalence of sexual abuse of children in the state and make policy recommendations to address the following areas:

1. Methods to increase awareness of issues regarding sexual abuse of children, including warning signs that may indicate that a child is the victim of sexual abuse and the actions and language a child may use to express that they are a victim of sexual abuse;
2. The actions that a child who is the victim of sexual abuse could take to obtain assistance and intervention;
3. How to best provide support and assistance to children who are victims of sexual abuse;
4. Policies to encourage adults to take responsibility for the protection of children from sexual abuse and to respond appropriately when sexual abuse of a child is suspected;
5. Collaboration of public and private organizations to assist in the recognition and prevention of sexual abuse of children, using research and evidence based practice; and
6. Any other recommendation the task force deems appropriate in addressing this issue.

The Task Force included fifteen members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives: four legislators, three state executive agency members, seven professionals with significant experience in working with child sexual abuse and one survivor of child sexual abuse. The Task Force Members include:

(a) A child abuse pediatrician whose experience and clinical practice is associated with a child advocacy center in the state: **Nancy Free**, **DO, FACOP, FAAP,** Sioux Falls, Medical Director of Child's Voice, Sanford Children's Hospital, and Medical Director of Avera St. Mary's Central South Dakota Child Assessment Center, Pierre.
(b) A representative with a non-profit organization that provides training and education aimed at the prevention of sexual abuse of children: **Ms. Hollie Strand**, Rapid City, Education and Public Awareness Specialist, Children's Home Society.
(c) A representative from a child advocacy center in the state with experience serving children who have been subjected to sexual abuse: **Ms. Angela Lisburg**, **MS, RN, FNP-C,** Pierre, Nurse Practitioner, Avera St. Mary's Central South Dakota Child Assessment Center.
(d) A person who was a victim of sexual abuse as a child: **Ms. Jolene Loetscher**, Sioux Falls, who was abused at the age of 15-16 by a family friend.
(e) A representative from a tribal organization in this state with experience and training in the area of sexual abuse of children: **Ms. TateWin Means**, Pine Ridge, Oglala Sioux Tribe Attorney General.
(f) A representative of a law enforcement organization in the state with direct experience working with child sexual abuse investigations: **Mr. Cameron Corey**, Watertown, Division of Criminal Investigation (DCI).
(g) A victim's advocate who works directly with child victims of sexual abuse: **Ms. Daniele Dosch**, Rapid City, FBI Victim Advocate.
(h) A mental health professional with experience and training using trauma focused cognitive behavioral therapy in the area of child sexual abuse: **Ms. Christine Bisek**, Pierre, Capital Area Counseling Services.
(i) A representative from the Department of Social Services: **Ms. Virgena Wieseler**, Pierre, Division Director, Child Protection Services.
(j) A representative from the Department of Health: **Ms. Colleen Winter**, Pierre, Division Director, Health and Medical Services.
(k) Representative from the Department of Education: **Ms. Ann Larsen**, Pierre, Director of Educational Services and Support.
(l) Speaker of the House Appointee: **Representative Peggy Gibson**, Huron.
(m) Speaker of the House Appointee: **Representative Jenna Haggar**, Sioux Falls.
(n) President Pro Tem Appointee: **Senator Alan Solano**, Rapid City.
(o) President Pro Tem Appointee: **Senator Deb Soholt**, Sioux Falls.

## Summary of Interim

The task force met for the first time in August, and discussed assigned tasks. The bill was named Jolene's Law because Ms. Jolene Loetscher was willing to publicly speak about the abuse she had endured as a child and has become the South Dakota face for this piece of legislation.

Initial work involved learning about addressing child sexual abuse, not only from a psychological perspective, but also from the agencies that frequently deal with the victims, their families, and perpetrators. Presentations were heard from a Child Abuse Pediatrician, the Unified Judicial System, Department of Social Services, Department of Education, Department of Health, Department of Criminal Investigation, Child Advocacy Centers, Mental Health Centers, School Counselors, a States Attorney and others. Additional commentary was heard from task force members reflecting their depth of experience with the topic.

The task force explored the incidence of child sexual abuse in South Dakota, the associated mental, spiritual, physical and chronic adverse health consequences of this type of abuse, programs that could ease the disclosure of sexual abuse by a child, methods by which adults can be educated to recognize and support abuse victims, and what services are most effective in treating victims after abuse is disclosed. Expert Victor Vieth, JD, Consultant/Executive Director Emeritus from the Gunderson National Child Protection Training Center in Winona, MN, presented "An Awesome Opportunity: A National Plan to End Child Abuse" and spent time in dialogue regarding the most powerful strategies to eradicate this type of child maltreatment.

The task force came to understand that the sexual abuse of children is a serious and costly public health concern. Research from the Adverse Childhood Experiences (ACE) study estimates that 25% of females and 16% of males have experienced sexual abuse as children. The same study indicates that sexual abuse has been associated with significant short-term and long-term health impacts for the victims (Centers for Disease Control (CDC), 1997 & 2007, The Adverse Childhood Experience Study. Atlanta, GA: U.S. Department of Health & Human Services, Centers for Disease Control & Prevention.).

The conclusions reached by the Task Force were found to be in concert with the document prepared by the National Partnership to End Interpersonal Violence Across the Lifespan document: An Awesome Opportunity: The National Plan to End Violence across the Lifespan. This work provides evidence-based direction for next steps to eradicate child sexual abuse in South Dakota.

The task force met five times and at the final meeting on December 1, 2014, voted to introduce two pieces of legislation in the 2015 Session, one bill to continue the Task Force for an additional year and one to strengthen mandatory reporting law. If approved for continuance for the 2015 Interim, the Task Force also agreed on the following five major tenets around which to set goals, strategies for implementation and associated funding plans:

1. **Improving Education and Training***:* a) Undergraduate and Graduate level, b) Training in the field for all stakeholder disciplines;
2. **Improving Medical Health, Mental Health and Spiritual Care Responses to Instances of Violence:** a) Restructured medical and mental health care, b) Developing effective partnerships with faith communities;
3. **Improving Criminal Justice and Child Protection Responses to Instances of Violence***:* a) Improving the collection of evidence, b) From crime scene to trial: resolving cases more quickly, c) Improving the alternative or appropriate response system, d) Improving the mandated reporting system, e) Reducing vicarious trauma;
4. **Improving the Development and Delivery of Prevention Initiatives***:* a) Expanding prevention initiatives, b) Linking with youth serving organizations; and
5. **Improving Public Awareness, Public Policy and Research***;* a) Connecting research to the work of front line professionals, b) Public awareness, c) Public policy.

Based on heard testimony, along with the willingness of multiple organizations to begin moving forward with many of these ideas, the Task Force is optimistic that these tenets are attainable in South Dakota through meeting for an additional year to establish evidence-based outcome targets and infrastructure of support.

## Legislation Adopted

Draft #101: *An Act to require that mandatory child abuse reporter be available to answer questions when the report required by Section 26-8A-8 is made to authorities.*

Draft #134: *An Act to extend the Jolene's Law Task Force for an additional year, revise the membership of the task force, and to declare an emergency.*

## Summary of Meetings

The Jolene's Law Task Force met in Pierre on August 5th, September 15th, October 14th, November 17th and December 1st, 2014.

Staff members were: Amanda Reiss, Senior Legislative Attorney; Roxanne Hammond, Legislative Attorney; Jason Simmons, Senior Fiscal Analyst; and Cindy Tryon, Senior Legislative Secretary.

**August 5, 2014**

The August 5th meeting set the context for the study of child sexual abuse in the state in that this is an adult problem. Children are the victims and adults the perpetrators, and yet the responsibility to report has rested with the children. In no other way are children made responsible for themselves with adults providing for all other aspects of well-being, such as food, clothing, and shelter. Child sexual abuse is a difficult topic to discuss, and it is now time to open up a new conversation about this serious issue in South Dakota.

The day was spent hearing testimony from medical professionals and numerous state representatives that work with child sexual abuse cases regularly to gain an understanding of what child sexual abuse entails, how often it occurs, and how incidents are handled in South Dakota. Dr. Nancy Free, pediatrician specializing in child sexual abuse, explained the definition of child sexual abuse as any sexual activity with, or exploitation of, a child, other than play between same aged playmates, including pornography. She indicated that statistics show that 1 out of 4 girls and 1 out of 6 boys will be victims of sexual abuse sometime during childhood, though for a variety of reasons many children do not disclose the abuse they endure. Although many victims do not disclose the abuse and few exhibit physical signs of abuse, the long-term impact of child sexual abuse is significant, costing approximately $10 billion per year nationally.

Ms. Virgena Wieseler, Division Director of Child Protection Services, explained that DSS handles reports and investigations of suspected abuse and neglect in the state occurring within the home. She indicated that the majority of reports are from schools, family members, or the medical community and that in FY 2014, DSS received a total of 16,129 total reports of abuse and neglect, with 2,581 (16%) of the reports assigned for an assessment. Of the cases assigned for assessment, 2.79 % (72) were for sexual abuse, and 28% (20) of those cases were substantiated, though an unsubstantiated report does not mean that the reported incident did not occur. Taken in perspective, 75.8% of the cases were for neglect with 20% substantiated and 15.74% were for physical abuse with 12% of those substantiated.

Mr. Greg Sattizahn, State Court Administrator for the United Judicial System, provided the Task Force with information on the number of child sexual abuse cases in South Dakota (see Task Force Documents). He indicated that the numbers the court tracks show incidents where the prosecutor moved forward with a report and charged a person, however UJS does not have information regarding the number of reports that law enforcement and prosecutors receive. Additionally, UJS tracks charges and convictions, but he explained that each case may include numerous charges against a perpetrator and numerous children may be involved in each case, so the numbers may not be entirely indicative of the number of victims of CSA or perpetrators in the state.

Ms. Ann Larsen, Director of Educational Services and Support for the Department of Education, discussed that historically the South Dakota schools have been managed by local control and that each school makes the determination of how and whether certain content will be addressed with students. She explained that the Department maintains reference materials and conducts trainings throughout the year. She did indicate that in the past there have been a couple of mandates placed on the schools including requiring counselors and nurses in the schools, though these have been difficult to meet due to school finances. Recently schools were required to implement a bullying policy, however the mandate allowed schools to decide how to do that and what policy was best for each school.

There was discussion of the Youth Risk Behavior Survey that is done every two years, with a random sample of approximately 1800 students in grades 9-12 in South Dakota, that will be conducted in 2015 and the possibility of adding additional questions about CSA for additional understanding in our state.

**September 15, 2014**

The September meeting centered around the incidence of CSA in South Dakota as well as the different ways that a child sexual abuse case may be counted in South Dakota. Mr. Cameron Corey, Division of Criminal Investigation, explained that the DCI as well as 116 other state and local law enforcement units voluntarily send all reports of child sexual abuse to the National Incident-Based Reporting System (NIBRS) for inclusion in the statistics report. In 2013, there were a total of 506 reported incidents of sexual activity with a juvenile in South Dakota with 182 incidents of forcible rape, 15 incidents of forcible sodomy, 3 incidents of sexual assault with an object, 147 incidents of forcible fondling, 13 incidents of incest, and 146 incidents of statutory rape. These reports did not include reports taken by FBI, BIA, or other federal agencies, and may not include incidents reported to tribal agencies.

Mr. Corey also explained the process of CSA investigations in the state and that each new law enforcement officer is required to take a four hour course on sexual assault during the initial 13 week training session. However, he indicated that child sexual assault cases are difficult to investigate and that additional education, as well as the use of Sexual Assault Response Teams (SART), and Child Advocacy Centers greatly assist in investigating these cases and bringing a case to a successful close.

The Task Force took an in-depth look at the Child Advocacy Centers (CACs) throughout the state as presented by Ms. Casey Murschel, CACSD Chapter Coordinator. Currently there are five non-profit centers that operate in South Dakota in Rapid City, Sioux Falls, Fort Thompson, Pierre, and Pine Ridge, with each utilizing a network of multidisciplinary teams to assist in the investigation of child sexual abuse reports. Each CAC must meet 10 standards to be accredited and each generally provides forensic interviews, victim support and advocacy, medical evaluations or referrals, mental health services, case review, and case tracking in a child focused setting. The CACs are currently operating close to maximum capacity. The CACs desire to be more available in rural areas of the state to reduce victim and family travel times, but are not able to expand at this time due to fund limitations and operation size determined by grants, membership dues, and private donations.

Ms. Angela Lisburg, Avera St. Mary's Central South Dakota Child Assessment Center in Pierre, shared the CAC perspective when linked with a health system. They utilize the National Children's Alliance (NCA) to report cases to a national statistics center. The NCA utilizes a TRAK system that utilizes electronic report focused on case tracking, statistical reporting, and searching and allows those involved in a case to track a child across numerous cases. Each case that a Child Advocacy Center handles is reported to the NCA, including cases referred by the Tribes.

The US Department of Health and Human Services publishes a statistical document each year regarding cases of Child Maltreatment and includes cases reported to state child protection agencies and the number of screened in and screened out cases. However, the document does not utilize one consistent definition, and instead relies on each state to report based on their laws and the process that each child protection agency utilizes. As a result, it is difficult to utilize this document to compare screened in cases from state to state.

Ms. Tanya Fritz, Director of the Child Advocacy Center of the Black Hills, discussed the function of a CAC when a stand-alone operation. Best practice scenario is that when a CSA disclosure is made, the child is immediately connected with a CAC, which is not always possible in South Dakota.

Ms. Hollie Strand educated the task force on child's perspective of sexual abuse. Forensic interviewing is difficult because a child may not describe the abuse as an adult would, and may not even recognize sexual abuse as abuse at the time. It is essential for investigators to ask age appropriate questions and allow the child to tell his or her own story in his or her own words. It is important for the language of the story to remain as intact as possible for prosecution of the case.

Ms. Christine Bisek, Capital Area Counseling Services, explained the importance of getting a CSA victim the mental health assistance that he or she needs in order to move on with his or her life, but indicated that at times the extended timelines of CSA criminal and abuse and neglect cases can interfere with a child moving forward in his or her counseling.

**October 14, 2014**

At the third meeting, the Task Force heard the personal story of a South Dakota mother, Mary Beth Holzwarth, whose children were sexually abused by a relative. Her story reiterated the complexity of CSA cases and highlighted the importance of listening to our children and connecting them with the proper authorities and services to help them through the crisis.

The Task Force also heard from Ms. TateWin Means, Oglala Sioux Tribe Attorney General, and Ms. Daniele Dosch, FBI Victim Specialist, about how CSA cases are handled on the Pine Ridge Reservation. Ms. Means indicated that the cases may be investigated by the Bureau of Indian Affairs (BIA), Criminal Investigation Division, or the FBI depending on the age of the child victim. Additionally, the perpetrator may be prosecuted both Tribally and federally, as each entity has concurrent jurisdiction in Indian Country. Historical trauma is very common with about 90% of the mothers of CSA victims identifying as victims of abuse as well. Ms. Means also indicated that the Oglala Sioux Tribe handles their own child protection services and that there were 1343 child abuse referrals in 2013, with 127 of those being child sexual abuse referrals.

Mr. Brent Gromer, Division of Criminal Investigation, spoke about the recent increase and shift in the use of the internet in the sexual abuse of children. He indicated that in the past, offenders would use the internet to share child pornography, which was easily traceable. However, with new technology, perpetrators are able to share child pornography through more secure means. Additionally, perpetrators have shifted to targeting new victims through social media and often groom children, and eventually extort the children into providing pornographic pictures and movies of themselves and even convincing the child to meet them face to face. These technological advances show how important it is to educate children and adults on how the internet is used as a portal for sexual abuse of children.

Two school counselors spoke with the Task Force about the different ways that schools and counselors address CSA. They indicated that each school is operated by local control and any CSA education is dependent on what the administrators and school boards approve. They also explained that there are a number of different resources, and that CSA is a minimal topic in counseling college education and a minor aspect of what they provide students. As a result, school counselors may not know which programs are most beneficial to students.

Finally, the Task Force heard from Beadle County State's Attorney, Michael Moore, who has significant experience prosecuting child sexual abuse cases. Mr. Moore emphasized the complexity of CSA cases and explained the importance of proper interviews of children in prosecutions and the importance of getting CSA victims to a CAC as soon as possible, as the use of CAC's has increased the number of successful prosecutions. Moreover he explained the importance that CSA education for prosecutors and judges plays in the prosecution of CSA cases because the fewer times a child is questioned, the better and that jury education on CSA is vital to a case.

Ms. Colleen Winter of the Department of Health also reported that the CDC approved two additional questions, for a total of three, about CSA for the 2015 Youth Risk Assessment Survey. The Task Force hopes that this information can be used in the future to identify whether CSA cases are being reported.

The Task Force identified schools for members to contact to gain a preliminary understanding of CSA in K-12. The names of school districts will not be identified. Additionally, work groups were established to further understand statistics/benchmarks, CACs and statewide availability, professional education and public prevention.

**November 17, 2014**

The Task Force was honored to have as guest and hear an extensive presentation from Mr. Victor Veith, J.D., Senior Director and Founder of the Gunderson National Child Protection Training Center, Winona,

MN. Mr. Veith shared much of the work that his organization has done in the area of child sexual abuse and indicated that it is essential that professionals who investigate child sexual abuse or who work with children have proper education of CSA indicators as well as the steps that should be taken to connect the child to proper services. Mr. Veith discussed the program he founded at Winona State University in Minnesota that offers a program of Child Advocacy Studies (CAST) which has seen exponential growth and demand over the years. He explained that this program can be implemented separately or in conjunction with both undergraduate and graduate programs and that his goal is to have each state offering at least 2 CAST programs in the next five years. He believes that this is one of the most powerful levers to change the culture of child sexual abuse.

Mr. Veith also discussed Adverse Childhood Experience (ACE) research that has been conducted by medical professionals over the years indicating that child abuse plays a significant role in increased risk for adverse medical conditions in adults. He believes that addressing child sexual abuse early will play a major role in reducing adverse medical conditions in adults over time.

Mr. Veith also suggested that the use of No Hit Zones in medical facilities may assist in the reduction and reporting of abuse and encourage the discussion of alternatives to abuse. He commended the Jolene's Law Task Force for embarking on this very important work, and validated the direction the group is headed in strategies for the future.

At this meeting, the Task Force also discussed results from school connections and questions asked, as well as information and recommendations the workgroups presented. With Task Force continuance into the 2015 Interim, this topic will be further studied and reported.

**December 1, 2014**

At this final meeting, the Task Force discussed the work of each workgroup regarding areas that the committee should investigate further (see page 8–13 of this report).

Additionally, the Task Force agreed on overarching tenets (see page 2-3 of this report) that require additional study to provide options for implementation.

Finally, the Task Force voted to introduce two pieces of legislation in the 2015 session.

# Legislative Planning Committee

## Study Assignment

The LRC Executive Board asked the Legislative Planning Committee to conduct a two-year study of K-12 education to improve educational outcomes in South Dakota that includes the following: the education funding formula; all revenues, expenditures, and accounting practices for education; salary needs; school district budget reserves; and levels of various education funding tax levies.

## Summary of Interim

The committee met in June, July, and September, and will meet for a final time this year in November. The first three meetings were focused on information gathering. At the first meeting, members took an in-depth look at education funding in the state that included a review of the state aid formula and the property tax system in the state. Dr. Melody Schopp, the Secretary of the Department of Education, provided the committee with information on the statewide initiatives currently being undertaken by the department, and the goals and objectives the department is working toward to improve educational outcomes in the state.

At its second meeting in July, the committee focused on the capital outlay funds that are generated for each school district and the other revenues that school districts receive which are distributed outside the state aid formula. Committee members also heard from several school administrators from school districts in the state who described the teacher shortages they are experiencing and the difficulties those shortages are causing in their schools.

During the third meeting in September, committee members focused on school district reserves and on how school districts budget. They reviewed two possible legislative proposals that seek to equalize among the school districts some of the funds the districts currently receive in often disproportionate amounts outside the state aid formula, and one possible legislative proposal that seeks to ease the teacher shortage by providing an increase in the salaries of teachers.

At its upcoming fourth meeting, the committee will undertake a review of all the information gathered so far and chart its course for the meetings to follow next year. They will also discuss possible interim legislation that would repeal the foundation program fund, a fund created in state law years ago that at one time held the funds appropriated for the state aid formula, but is no longer being used.

### Listing of Legislation Adopted

Possible legislation will be discussed at the November 17th meeting.

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

The committee met in Pierre on the following dates: June 16, 2014; July 21, 2014; and September 8, 2014. The committee is scheduled to meet on November 17, 2014.

### Listing of Committee Members

Members of the committee are Representative Scott Munsterman, Chair; Senator Mike Vehle, Vice Chair; Senators Corey Brown, Tom Jones, Ryan Maher, Bruce Rampelberg, and Billie Sutton; and Representatives Brian Gosch, Kristin Conzet, Jacqueline Sly, and Susan Wismer.

### Listing of Staff Members

Staff members for the committee are Clare Charlson, Principal Research Analyst; David Ortbahn, Chief of Research and Legal Services; Annie Mehlhaff, Chief Fiscal Officer; Traci Thompson, Committee Secretary; and Rena Ortbahn, Committee Secretary.

## Rules Review Committee

### Study Assignment

A review of proposed state agency rules.

### Summary of Interim

The Interim Rules Review Committee remains diligent in its oversight of executive branch agencies in the exercise of the agency's legislative authority regarding rule-making. The committee reviewed rules for the following agencies:

Department of Education: Board of Education, Department of Labor and Regulation: South Dakota Electrical Commission, South Dakota Investment Council, Department of Game, Fish and Parks, Department of Transportation, Department of Labor and Regulation: South Dakota Abstracters' Board of Examiners, Department of Environment and Natural Resources: Board of Minerals and Environment, Office of the State Auditor, Department of Labor and Regulation: South Dakota Retirement System, Department of Education: Board of Education, Department of Social Services: Child Care Services, Department of Social Services: Economic Assistance, Department of Social Services: Medical Services, Department of Social Services: Finance, Department of Game, Fish and Parks, Department of Social Services: Adult Services and Aging and the Department of Human Services: Developmental Disabilities, Department of Game, Fish and Parks, Department of Revenue: SD Commission on Gaming, Department of Social Services: Division of Economic Assistance,

Department of Labor and Regulation: SD Athletic Commission, Department of Health: SD Board of Nursing, Department of Education: Board of Education, Department of Labor and Regulation: Plumbing Commission, Department of Agriculture: Animal Industry Board, Department of Game, Fish and Parks, Department of Transportation, Department of Labor and Regulation: Division of Insurance, Secretary of State: Board of Finance, Attorney General: Law Enforcement Officers Standards and Training Commission, Department of Corrections, Department of Transportation, Department of Revenue: South Dakota Commission on Gaming, Department of Revenue: South Dakota Lottery Commission, Bureau of Human Resources and Civil Service Commission, Department of Labor and Regulation: Division of Unemployment Insurance, Department of Human Services: Division of Rehabilitation Services.

At the November 12th meeting the committee will review rules from the Department of Education: Board of Education, Department of Agriculture: Division of Ag Development, Department of Game, Fish and Parks, Department of Transportation, Department of Labor and Regulation: Division of Insurance, and Department of Social Services: Division of Economic Assistance.

The committee and staff have reviewed the statutory authority and style and form for 1,053 rules thus far. Any additional rules filed between now and the December 16th meeting will be added to the agenda.

***Rule of Note*** – The Office of the State Auditor has adopted a rule to require that claims seeking reimbursement from the State for travel expenses be received by the Office of the State Auditor within 60 days after the last day of travel.

## 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 12, 2014; May 6, 2014; June 3, 2014; July 8, 2014; August 12, 2014; and September 16, 2014. The committee is scheduled to meet on November 12, 2014, and has tentatively set December 16, 2014, 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 Jim Bradford 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 – Chief of Research and Legal Services David Ortbahn, Principal Research Analysts: Fred Baatz, Tom Magedanz, and Clare Charlson, Research Analyst Amanda Jacobs, Senior Legislative Attorney Amanda Reiss and Legislative Attorney Roxanne Hammond. 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 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 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 two meetings during the 2014 Interim and will conduct a third meeting on December 1 in Pierre.

The first meeting was held on May 23 in Pierre. The meeting focused on reports from executive agencies, including the Department of Tribal Relations, the Department of Education, and the Department of Revenue regarding state-tribal tax agreements.

The second meeting was held on September 29 at the Fort Randall Casino. The meeting focused on special circumstances of schools in Indian Country and highlighted some of the steps the superintendents and non-profit organizations in the area have taken to ensure the students in the schools are successful.

## Listing of Legislation Adopted

None

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

The committee met in Pierre on May 23, 2014, in Fort Randall on September 29, 2014, and will conduct a third meeting in Pierre on December 1, 2014.

Members of the committee include: Senator Jim Bradford (Chair); Representative Troy Heinert (Vice Chair); Senators Chuck Jones, Ernie Otten, Billie Sutton, and Craig Tieszen; and Representatives Kevin Killer, Elizabeth May, Lee Qualm, and Mike Verchio.

Committee staff members are Amanda Reiss, Senior Legislative Attorney; Stephanie Gruba, Fiscal Analyst; and Cindy Tryon, Senior Legislative Secretary.

# Tribal Economic Development Task Force

## Study Assignment

The Tribal Economic Development Task Force was created by the 2014 Legislature (HB 1213). The task force was directed to evaluate issues associated with economic development needs, initiatives, and barriers affecting South Dakota's Native American population and South Dakota's Indian tribes and tribal governments. Specifically, the task force was directed to analyze business and economic sectors and segments having potential for higher levels of success, as well as other possible approaches to improve economic conditions. The task force was also shall directed to o address workforce availability, including education and skills, related

demographics, salary and wage scales, and other issues affecting human resources necessary for the promotion of economic development for this segment of South Dakota's population.

## Summary of Interim

The Tribal Economic Development Task Force was established as a first of its kind, two-year task force between state representatives and representatives from each of the nine tribes. Because a task force between the nine tribes and the Legislature has not been attempted prior to this point, it is taking a significant amount of time to work towards achieving participation from each of the nine tribes. That being said, because this is a first of its kind task force, it is important to continue the purpose of the bill and the task force and utilize the two years to organize the membership and make the task force as successful as possible. Chair Haggar and the Department of Tribal Relations continue to work to make contact and have begun to make progress with some of the tribes. Additionally, Secretary Emery has just taken over the Department of Tribal Relations and November 4th was an election for numerous tribes and new leadership may take over at some tribes. As a result, the task force will continue to encourage the tribes to participate and remains optimistic that the task force will achieve participation from the tribes and still hopes to meet prior to the 2015 Legislative Session.

## Summary of Meeting Date and Places and Listing of Task Force Members

The Task Force did not meet this interim.

Committee members were: Representative Don Hagger, Chair; Senators Jim Bradford, Chuck Jones, Bruce Rampelburg, and Craig Tieszen; Representatives Elizabeth May and Kathy Tyler; and Mark De Vries.

Staff members were: Amanda Reiss, Senior Legislative Attorney; and Cindy Tryon, Senior Legislative Secretary.

# Regional Watershed Advisory Task Force

## Study Assignment

The Regional Watershed Advisory Task Force was created by the 2012 Legislature and directed to operate until January 2015 to address issues relating to watershed management, drainage, erosion, flood control, reclamation, and environmental protection and improvement of lands, soils, and 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.

## Summary of Interim

After spending the 2012 and 2013 interims on collecting information and getting public input, this interim the task force has concentrated on developing its recommendations to the 2015 Legislature. Four subcommittees of the task force worked this interim on formulating the recommendations for consideration by the task force. Subject areas that the subcommittees worked on this interim were mediation of drainage disputes; water management entities, including funding of best practices research and identification of water management assets; standardized disclosure of new projects and tracking of drainage and infrastructure activity; and the possibility of a retention pond pilot project.

The subcommittee that worked on mediation of drainage disputes was chaired by Mr. Dennis Duncan. Senator Jim White and Mr. Mike Traxinger also served on the subcommittee. The subcommittee discussed mediation and other forms of dispute resolution. The subcommittee discussed draft legislation which was patterned after two mediation programs administered by the Department of Agriculture. The subcommittee discussed whether such a program should be administered by the Department of Agriculture or the Department of Environment and Natural Resources. Third party intervention was also discussed, which would allow other parties, including counties and townships, to have the right to intervene in a dispute. The subcommittee decided that any such mediation program would best be administered by the Department of Agriculture. After meeting with representatives of the Department of Agriculture, the subcommittee recommended to the task force a draft bill that would create a mediation program for drainage activities in the Department of Agriculture.

The subcommittee that worked on water management entities was chaired by Ms. Kim Vanneman. Senator Jason Frerichs, Representative Spencer Hawley, and Mr. Mike Jaspers also served on the subcommittee. The subcommittee discussed the possibility of moving from a water management system regulated by counties to a system regulated by regional basin councils based on the major river basins. This concept was originally proposed by Ms. Angela Ehlers of the South Dakota Association of Conservation Districts at the task force final meeting of the 2013 interim. The subcommittee originally looked at basin councils that would be made up of conservation districts, but decided to pursue districts that would be based closely on the watersheds of river basins and the councils would be elected from the populations within those districts. The subcommittee discussed the concept with interested parties and many ideas were considered. The subcommittee ultimately decided to propose a draft bill to the task force which would divide the state into nine river basin natural resource districts. The elected councils for each district would have the responsibility to develop a water management plan for the district. The draft would also repeal the current county drainage laws and take counties out of the business of regulating drainage. The draft would provide for an oversight advisory task force which would meet in 2015 and 2016. The advisory task force would propose legislation specifying the boundaries of each district and divide each of the districts into three subdistricts based on population. The advisory task force would also recommend the guidelines to be used by the districts to establish a water management plan.

The subcommittee that was tasked with the responsibility of taking a look at standardized disclosure of new drainage projects and tracking of drainage and infrastructure activity was chaired by Senator Vehle. Senator Tom Jones, Representative Leslie Heinemann, and Mr. George Vandel also served on the subcommittee. The subcommittee discussed the option of making it mandatory to get a permit before any drainage projects could be started. The subcommittee also discussed the alternative of only requiring the disclosure of drainage activities and not requiring a permit. The subcommittee had three bills drafted for consideration. The first established a uniform county drainage permit application form. The second provided for the establishment of statewide drainage tracking system. The third established a technical assistance program for counties in matters relating to drainage activities. The subcommittee recommended to the task force a draft bill that would have provided for a uniform county drainage permit for those counties that have chosen to regulate drainage activities and to require the disclosure of drainage projects in those counties which do not issue drainage permits.

The subcommittee that was asked to look for the possibility of a retention pond pilot project was chaired by Representative Brian Gosch. Representative Dennis Feickert and Mr. Paul Symens also served on that committee. The subcommittee met with representatives of the Department of Agriculture, Department of Game, Fish and Parks, Department of Environment and Natural Resources, and Department of Transportation and representatives from the Office of School and Public Lands and from a couple of water development districts. The subcommittee tried to find a location where persistent flooding was adversely impacting a state

highway or productive agriculture lands and where a retention pond could be used to mitigate those impacts and could be used for recreational purposes. Although a couple potential sites were discussed, the subcommittee did not come up with an agreed upon site or potential funding.

The November 24 meeting of the task force brought to conclusion the work of the task force that began in 2012. The task force met nine times throughout the course of its study. The task force received input from experts in the areas of hydrology, watershed management, drainage, and the drainage laws of the state. The task force received testimony for a number of interested groups including county officials, agricultural groups, agricultural producers, contractors who install agricultural drainage system, representatives of conservation districts, water development districts, watershed districts, and lake associations. The task force also reviewed the drainage and watershed laws of Nebraska, Iowa, Minnesota, and North Dakota and talked to representatives of those states about those laws. After careful consideration of all the information received, the task force recommendations to the Legislature and the Governor are embodied to two bill drafts that were approved by the task force for introduction the 2015 Legislature.

## Listing of Legislation Adopted

**An Act to provide for the establishment of river basin natural resource districts and to repeal certain provisions regarding county drainage management.**

This draft provides for the management of drainage issues based on the entire area of a river basin rather than on a county to county basis. This bill would provide for a two-year transition to river basin districts. Nine river basin natural resource districts would be established. Districts would be governed by district councils. Council members would be elected from subdistricts created based on population. The councils would have authority to develop water management plans, to issue drainage permits, to hire persons to provide technical assistance, and to levy a tax to support district activities.

**An Act to provide for mediation of certain drainage disputes**.

This draft establishes a mediation program for drainage disputes under the Department of Agriculture.

## Summary of Meeting Dates and Places

The task force met in Pierre on the following dates this interim: July 24, September 24, and November 24, 2014.

## Listing of Task Force Members

Members of the task force are Representative Brian Gosch (Chair), Senator Mike Vehle, (Vice Chair), Representatives Dennis Feickert, Leslie Heinemann, and Spencer Hawley; Senators Jason Frerichs, Tom Jones, and Jim White; and Dennis Duncan, Mike Jaspers, Paul Symens, Mike Traxinger, George Vandel, and Kim Vanneman.

## Listing of Staff Members

Staff members for the task force were David Ortbahn, Chief of Research and Legal Services, Roxanne Hammond, Legislative Attorney, Stephanie Gruba, Fiscal Analyst, Kris Schneider, Senior Legislative Secretary, and Rena Ortbahn, Secretary.