

South Dakota Legislator Reference Book – December 2012

Legislative Research Council

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Chapter 1

THE SOUTH DAKOTA LEGISLATURE



Size and Apportionment

The South Dakota Legislature is bicameral, consisting of a Senate, comprised of 35 members, and a House of Representatives with 70 members.

The state constitution provides that the Senate shall consist of not fewer than 25 nor more than 35 members and that the House shall consist of not fewer than 50 nor more than 75 members. It also directs the Legislature to redistrict its membership once every ten years in accordance with the latest federal census. In 2006 after litigation under the Federal Voting Rights Act, a Federal Judge created a second single-member House district within District 26 and re-drew the boundaries of Districts 21 and 27. The last legislative reapportionment occurred in October 2011. The Legislature will again reapportion in 2021.

Article III, § 5 of the South Dakota Constitution provides for legislative reapportionment.

AN APPORTIONMENT SHALL BE MADE BY THE LEGISLATURE IN 1983 AND IN 1991, AND EVERY TEN YEARS AFTER 1991. SUCH APPORTIONMENT SHALL BE ACCOMPLISHED BY DECEMBER FIRST OF THE YEAR IN WHICH THE APPORTIONMENT IS REQUIRED. IF ANY LEGISLATURE WHOSE DUTY IT IS TO MAKE AN APPORTIONMENT SHALL FAIL TO MAKE THE SAME AS HEREIN PROVIDED, IT SHALL BE THE DUTY OF THE SUPREME COURT WITHIN NINETY DAYS TO MAKE SUCH APPORTIONMENT.

Legislative Sessions

Regular Sessions

The state constitution specifies the length of annual legislative sessions at the seat of government. The Legislature meets for a maximum of 40 legislative days beginning on the second Tuesday of January. An Amendment to Article III, § 6 establishing a uniform maximum length for all legislative sessions was passed by popular vote in the 2008 election. Legislative days do not include Sundays, holidays, or days of legislative recess. The term "legislative days" is not specifically defined in the constitution or by statute, although it has been general practice in the Legislature that a legislative day is any day during which the Legislature holds a formal session. In recent years, it has become a common practice to save one or two legislative days at the end of the session. This allows the Legislature to reconvene about two weeks later to consider gubernatorial vetoes and emergency measures.

Special Sessions

In 1990, the voters agreed to a constitutional change that allows the Legislature to call itself into special session. The Governor's authority has not been changed; however, in addition to that method, the Legislature through agreement of two-thirds of its membership may convene a special session. Article IV of the constitution gives the Governor authority to convene the Legislature or either of its houses in a special session. Only the business encompassed in the Governor's stated purpose for calling the special session can be transacted. The last special session was for the purpose of adopting a legislative redistricting plan and was held in October, 2011.

Legislative Qualifications and Duties

Qualifications

Each state senator and representative must be at least twenty-one years of age, a United States citizen, a resident of the state for the two years just prior to election, and a qualified elector in the legislative district from which elected.

Terms and Vacancies

The term of office for both senators and representatives is two years. A senator or representative may not serve more than four consecutive terms (eight years) as a senator or as a representative, respectively. These limitations were effective after January 1, 1993.

Resignations are submitted to the presiding officer or, when the Legislature is not in session, to the Governor. The constitution provides that the Governor shall make appointments to fill any vacancies which may occur in either house of the Legislature between general elections.

Legislative Immunity

Legislators are granted full immunity for any statements made in any speech or debate in either house of the Legislature.

Compensation and Expenses

The constitution provides that a legislator receive a salary and a reimbursement of five cents per mile for one round trip during the legislative session. This mileage payment is made at the end of the legislative session. The salary established by statute, SDCL 2-4-2, is \$6,000 for the regular legislative session. For special sessions, legislators receive a per diem calculated by the director of the Legislative Research Council equal to the normal daily compensation for the regular session immediately preceding the special session. Salaries are paid semi-monthly on the regular state payroll days. Direct deposit of salary checks and travel reimbursement checks is required. In addition to the salaries and the five cents per mile payment already described, and effective January 1, 2001, legislators receive an expense allowance of \$110 per day for each day of any session as a prepaid reimbursement for living expenses. The 1976 Legislature also provided for reimbursement after the legislative session for actual mileage or its equivalent, traveled to and from home, not to exceed once each weekend during a regular session. The reimbursement rate is set by rules of the state board of finance. The current rate is 37 cents per mile for the most direct route from the capital to the legislator's home.

If you are appointed to serve on an interim committee, you will receive an expense allowance of \$110 per day for each day of attendance at a scheduled meeting plus travel expenses (mileage, overnight accommodations, and meals at the established state rates).

(For further information on compensation and expenses, see **Chapter 9** of this reference.)

Leave of Absence from Employment

South Dakota law (SDCL 2-4-1.1) requires employers to grant a temporary leave of absence without loss of job status or seniority to any of their employees who are members of the Legislature. The leave of absence can be with or without pay, at the discretion of the employer.

Organization of Legislature for Business

Pre-session Legislative Organizational Activity

Following the November general election, the existing leadership within each political party calls for separate party caucuses of those persons elected from each party to serve in the upcoming legislative session. The legislators-elect are asked to select a leader and an assistant leader for the next session. If the party appears to have a majority in either or both houses of the Legislature, it will also propose nominees for officers of each body, as appropriate, to be officially elected at the start of the legislative session. These nominees are for speaker of the House, speaker pro tempore, and president pro tempore of the Senate. The caucus also discusses any legislative program on which the party may wish to take a position during the legislative session. In addition, the elected leadership may wish to request standing committee appointment preferences from members of its party in the respective houses.

First Day of the Regular Session

The legislative session convenes at 12:00 noon on the second Tuesday in January as provided in the constitution. One of the first orders of business is to elect new presiding officers for the two houses. The Secretary of State presides in the House of Representatives until the speaker is chosen. The other officers and employees of the two houses are then named and take their oaths of office. The two bodies convene in a joint session in the chamber of the House of Representatives to receive the Governor's State-of-the-State Address and recommended legislative program.

Following the joint session, standing committee appointments are announced by the presiding officers. Pre-filed bills and resolutions are introduced and referred to committees.

Presiding Officers, Other Officers, and Employees

Each house of the Legislature, as provided in the constitution, has a presiding officer. Presiding in the House of Representatives is the speaker, and the Lieutenant Governor presides as President of the Senate. The Senate elects from its membership a president pro tempore, and the House elects a speaker pro tempore to preside in the absence or disability of the president or speaker. However, the presiding officer may from time to time call upon any member to preside.

The constitution provides that each house shall choose its own officers and employees. In addition to the presiding officers, the main officers elected by the two bodies are the chief clerk of the House of Representatives and the secretary of the Senate. Other officers and appointed

employees include assistants to the chief clerk and secretary, secretaries, sergeants-at-arms, documents clerk, and pages. These persons are either nominated by the majority party and elected in each body or appointed by the presiding officers as provided in the rules of the two houses. **(Organizational charts for session employees are found later in this chapter.)**

Rules of Procedure

The method of conducting the business of each house of the Legislature is governed by the United States Constitution, state constitution, *South Dakota Codified Laws*, laws contained in the session laws not printed in the code, Joint Rules of the Senate and House, the Senate and House Rules, and custom.

Mason's Manual of Legislative Procedure is the official guide in interpreting parliamentary law unless otherwise specifically provided in the joint rules or rules of the bodies. The joint rules are the most frequently used source of reference.

Daily Routine

Standing committees of the Senate and House of Representatives meet each day of the legislative session. Meetings generally begin at 7:45 a.m. and last until the daily session begins in the afternoon. Most committees meet from one to two hours two or three days per week. A number of committees also meet at predetermined times in the afternoon or evening after the daily floor session.

Legislative party caucuses are usually held immediately preceding the call to order in daily session. At caucuses, party strategy on various issues facing the legislative body is discussed and the daily calendar is reviewed. The daily session generally begins at 2:00 p.m. (CT). All floor sessions are webcast live by South Dakota Public Broadcasting (SDPB) and also archived for later access.

The political party mechanism serves as a major tool for organizing the body and filtering legislative proposals. It is through the party that the leadership is chosen and through the leadership that many of the crucial decisions are made. Issues develop within this structure and the party leadership ascertains the views of the membership and the possible need for a concerted stand on a given matter. The caucus also provides the members with an opportunity to express, in an informal manner, their opinions on a particular proposal. Recesses during the floor session for party caucuses are occasionally taken.

Calendar

The calendar committee in each house, which consists of the presiding officer, the majority leader, and the minority leader, determines the daily legislative calendar. The chief clerk of the House and the secretary of the Senate prepare the daily legislative calendars. The purpose of the calendar is to inform members of the Legislature and other interested persons of the motions and resolutions, committee reports, second reading of bills and resolutions, and consent calendar bills and resolutions to be considered. The House and Senate calendars are posted at the Legislature's home page on the Internet.

Voting Procedure – Types of Majorities

The members of each house express their will or opinion regarding the business placed before them by means of voting. If a legislator is on the floor, he may not abstain from voting when a question is put to a vote.

A majority of the members-elect of each house is necessary to transact business, but a smaller number may adjourn from day to day or may compel the attendance of absent members. There are several methods of taking votes. A roll call vote requires that each member's vote be recorded individually; this vote is required, in most instances, to be recorded in the journals. In the Senate, a roll call vote is taken by calling out the name of each member and the member answering "aye" or "nay." The roll call vote is taken by an electronic voting recorder in the House, which not only displays how each member voted but also tallies and records the vote on ballot sheets containing the members' names. Votes are not displayed until all members present have voted.

A voice vote is expressed by saying either "aye" or "nay" when a question has been put and is an uncounted vote. In these instances, when the presiding officer is in doubt as to who is in the majority, he can ask for a show of hands, ask the members to stand, or call for a roll call. One-sixth of the members present in the Senate or House may demand that a roll call vote be taken on any question.

Certain majorities, depending on the question, are required by the constitution and the legislative rules. Those majorities set forth in the constitution are customarily referred to as "constitutional majorities" and are as follows:

- A majority vote of the members-elect is required on the final passage of any bill to become a law;
- A majority vote of the members-elect is required on the final passage of the general appropriation bill;
- A majority vote of the members-elect is required to propose, by a joint resolution, a constitutional measure or to propose amendments or repeal of an existing constitutional section;
- A two-thirds majority of the members-elect is required to pass a special appropriation bill;
- A two-thirds majority of the members-elect is required to approve a bill containing an emergency clause;
- A two-thirds majority vote of the members-elect of both houses is required to override a gubernatorial veto, other than Style and Form vetoes ; and
- A two-thirds majority vote of the members-elect of both houses is required to increase existing taxes or to impose a new tax.

All motions of final disposition require a roll call vote, and the results must be recorded in the respective daily journals to conform with constitutional requirements or rules of the Legislature.

The rules of each house set forth the type of vote required for various procedural matters. **(Several of the more common motions are attached as Appendix II.)** Other motions may be found in the *Official Directory and Rules of the Senate and House of Representatives and Joint Rules of the Senate and House* ("Red Book"), printed for each session, or in the rules printed in the daily journals. (See Chapter 3 for the complete text of all legislative rules.)

Motions – Voting Requirements

A motion may be made by any member of the Legislature and requires a second before any other action on it may be taken. A motion cannot be withdrawn after the presiding officer restates it unless all members agree. The various motions, in order of precedence, are:

- | | |
|--------------------------------------|---|
| (1) To adjourn | (6) To postpone indefinitely |
| (2) To recess | (7) To postpone to a day certain |
| (3) For a call of the House | (8) To commit |
| (4) To lay on the table | (9) To amend. |
| (5) For the previous question | |

Committee System

Procedure

Every legislature divides itself into committees in order to make a systematic study of each proposal placed before it. Proposals for legislation are so numerous and varied that examination by the full body would exceed the time available. It becomes a necessity, therefore, that small groups of each legislative body, the committees, be formed to carry on most of the deliberative work required of a policy-determining body.

Each house has two general classifications of committees. The committees that process bills are called either standing or conference committees. The other committees are procedural or select committees. These latter committees are charged with the duties of general housekeeping functions and procedural matters for each chamber. The committee structure in both houses of the Legislature is identical. In 1891, there were 34 standing committees in each house. In the 1930s and 1940s, there were more than 50 committees in each house. The number of standing committees in each house has remained at thirteen since 1982.

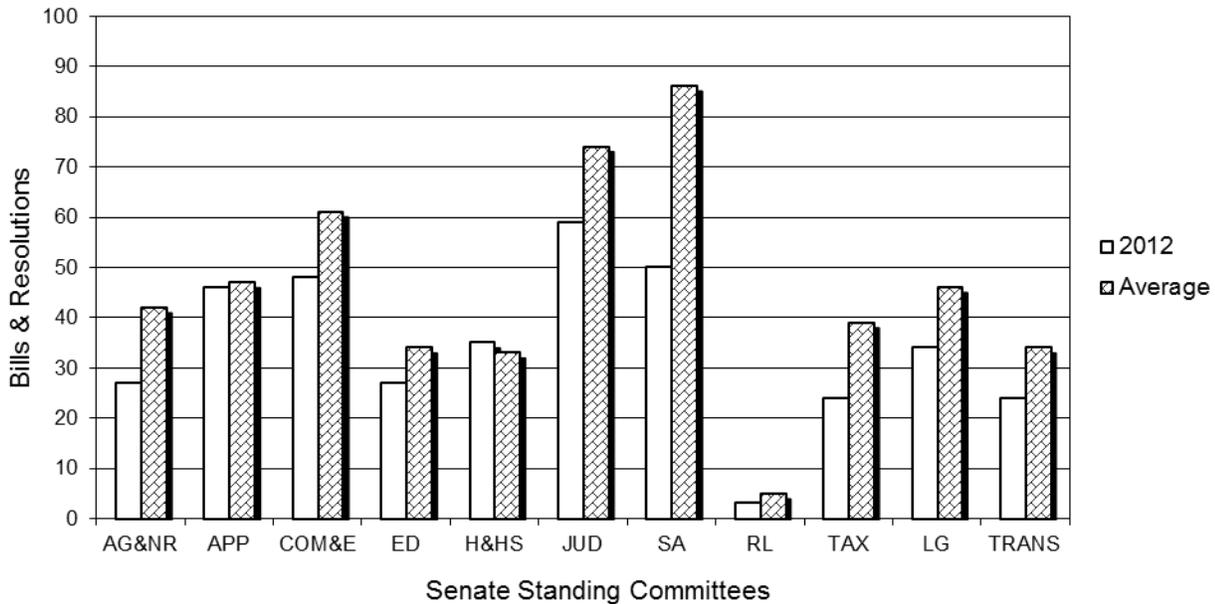
Standing Committees

The following is a list of standing committees and their traditional subject areas:

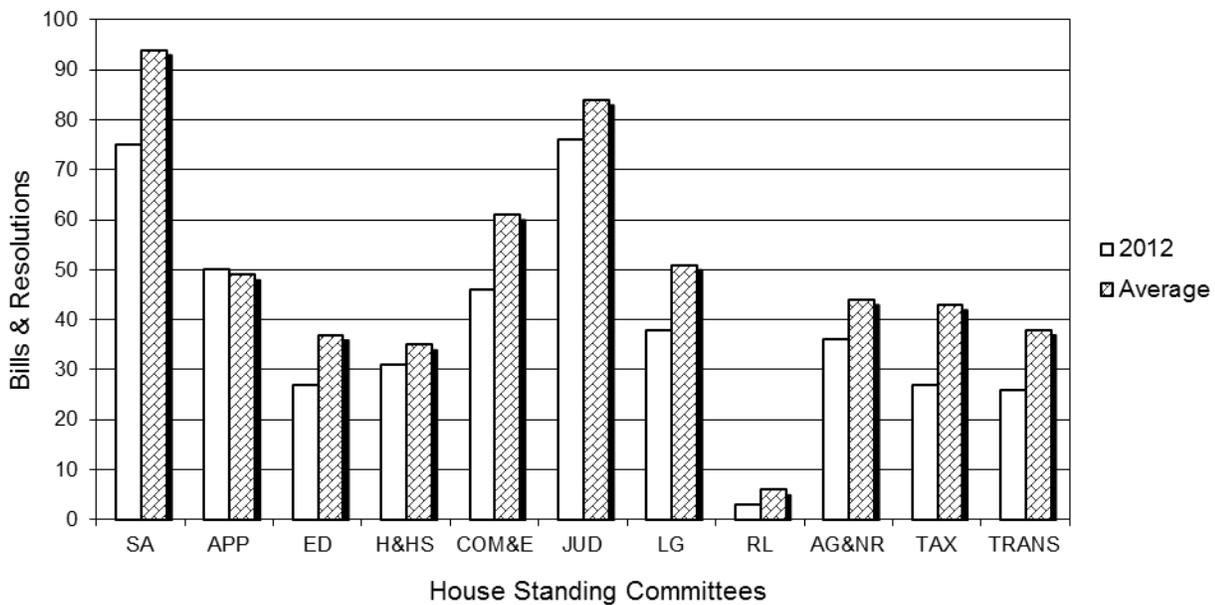
COMMITTEE	SUBJECT AREAS
<i>Agriculture and Natural Resources</i>	Bills relating to the production and distribution of agricultural products; soil conservation; animals and livestock; the state fair; regulation of grain elevators, pesticide and fertilizer dealers and livestock auctions; and brand inspection. Bills relating to game, fish and parks; mining; water development and irrigation; forestry; environmental protection; energy conservation; trespass laws; and nuclear waste disposal.
<i>Appropriations</i>	The general appropriation bill, which contains the budgets of all departments of state government; all bills for special appropriation of state revenues; and bills relating to the appropriation process.
<i>Commerce and Energy</i>	Bills relating to insurance; banking; investment; loans and interest; labor; liquor; mercantile transactions; regulation of professions and occupations engaged in commerce; Uniform Commercial Code; OSHA; corporations; property; litter; and minimum wage.
Education	Bills relating to the school districts; the finance, operations, and curriculum of public schools; the teaching profession; special education; higher education; the board of regents; the department of education; and vocational-technical education.
<i>Government Operations and Audit</i>	Bills relating to legislative auditing of state and local government departments and agencies; oversight of juvenile corrections monitoring.
<i>Health and Human Services</i>	Bills relating to health matters; mental illness; drugs; chemical dependency; the aged or disabled; the medical and nursing professions; medical malpractice; welfare assistance; regulation of hospitals and nursing homes; state institutions for the mentally ill, visually impaired, hearing disabled, or mentally challenged; spousal abuse; and abortion.
<i>Judiciary</i>	Bills relating to the courts and court administration; the legal professions; crimes; criminal procedure; law enforcement; personal rights; civil law and procedure; domestic relations; succession and probate; guardianship; administrative procedures; prisons and jails; code commission; and human rights.
<i>Legislative Procedure</i>	Bills relating to legislative procedures; the Legislative Research Council; and basic housekeeping matters during the legislative session.
<i>Local Government</i>	Bills relating to the organization and administration of county, municipal, and township government; special districts; elections; and planning and zoning.
<i>Retirement Laws</i>	Bills relating to the pensions, annuities, and benefits of employees and officers in public service.
<i>State Affairs</i>	Bills relating to the organization of the executive branch of state government; policy decisions of overriding state concern; public employees; workers' compensation; public fiscal administration; veterans and military affairs; the state legislature; the state constitution; relations with the Indian tribes; the state building authorities and state authorized bonds; and regulation of electrical and telephone utilities. Bills not clearly identified with any other committee or subject area will usually find their way to the State Affairs Committee.
<i>Taxation</i>	Bills relating to the levying and collection of property, sales, and other taxes; assessment procedures; mill levies; and classification of property.
<i>Transportation</i>	Bills relating to highways and bridges; motor vehicles; public safety; regulation of motor carriers; traffic ordinances; and licensing.

This practical index of bill subject references reflects only probable committee assignments. Actual committee assignments are the prerogative of the presiding officer and the legislative body.

2012 SENATE COMMITTEE WORKLOAD Compared to Average Year



2012 HOUSE COMMITTEE WORKLOAD Compared to Average Year



Generally, the political mix of standing committee membership is in accordance with each party's proportion of the total membership of that particular house; that is, if the membership of one party represents two-thirds of the total, that party's representation on each standing committee will generally reflect this same proportion. The committee chairs and vice-chairs will likely be members of the majority party.

House committees usually have thirteen members, and Senate committees usually have seven or nine members. The Appropriations Committee has 9 members from each house and usually meets jointly.

In the Senate, standing committee appointments are announced by the Lieutenant Governor after the actual selections are made by the majority leader, president pro tempore, and the minority leader. In the House of Representatives, all committee appointments are made by the speaker. In actual practice, the speaker consults with the majority and minority leaders prior to making the appointments. In the House most members serve on two standing committees and most members of the Senate serve on three.

By rule in both houses, the person whose name is listed first on the appointment list to a standing committee is the chair. The next-named individual who is present serves as vice chair and in the chair's absence assumes those duties. The chair is required by rule to ensure that the minutes of each meeting are recorded by a committee secretary and include the names of all members present at each meeting, the bills or resolutions discussed and a brief explanation of those bills or resolutions, the names of all persons who appear in relation to any bill or resolution and the interests they represent, a record of how each committee member voted when action was taken, and the action taken. These minutes are open to the public for inspection. Following the legislative session, the minutes are retained in the Legislative Research Council Library.



Standing committee meetings are webcast by South Dakota Public Broadcasting and are available at the Legislature's home page (<http://legis.state.sd.us>). Committee proceedings are webcast live and are archived for later access. A member of the public can easily track legislation because each bit of information related to a bill is pulled together and archived. The webcast icon also appears in the bill status. Click on the SDPB icon to hear the debate.

The various standing committees meet in their assigned meeting rooms at the hour and day set by the speaker of the House and the Senate president pro tempore. Meeting times are established to avoid scheduling conflicts. The rules require the chair to prepare a schedule of times and places of the meetings of the committee and a list of the bills and resolutions to be considered. This schedule must be posted on the bulletin board by 5:00 p.m. in order to allow for an intervening legislative day between the date of posting and the date of consideration; however, by a two-thirds vote a committee may act on a matter at any time. Also, all standing committee agendas and minutes are posted at the Legislature's home page on the Internet.

The requirement of notices of meetings and the listing of bills and resolutions to be considered is designed to provide an opportunity for the citizens of the state to voice their opinions on any bill or resolution before a committee.

The primary function of a standing committee is to thoroughly consider each bill or resolution assigned to it and to make a specific recommendation on what action should be taken regarding the bill or resolution. A standing committee is required to take final action **on every legislative proposal submitted to it**. A committee, by rule, can make any of the following recommendations or reports to the full body:

- (1) **"Do Pass,"** which means that the bill or resolution has been recommended for passage and that there are no changes recommended in the bill as presented to the committee.

- (2) "**Do Pass Amended**," which means that a committee has voted that the bill, as presented, be changed in some way; and if the whole body agrees with the changes, then the bill is recommended for passage.
- (3) "**Do Not Pass**," which means that a committee found the bill to be important enough to warrant consideration by the whole body but believes that the bill should not pass, at least not in its present form.
- (4) "**Without Recommendation**," which means that a committee has no feelings one way or another about the bill or resolution or has been unable to agree, and that the whole body should make its own determination as to the merits of the bill or resolution.

In addition to the foregoing recommendations, if there is unanimous agreement among the members present, a committee may also recommend that the bill be placed on the **consent calendar**. The joint rules provide that any "uncontested" bill or resolution which receives a "do pass" or "do pass as amended" recommendation may be placed on the consent calendar. Revenue measures cannot be placed on the consent calendar, however.

If a committee, in considering a bill or resolution, is unable to agree upon a single recommendation, then a divided committee report may be filed. In this instance two reports are filed: a majority report and a minority report. Each of these reports will contain one of the four recommendations set forth above, and each report may include the reasons for the recommendation. A bill or resolution may be re-referred to a committee by a majority vote of the members-elect. In addition, a bill or resolution may be re-referred from one committee to another committee.

Measures must be reported out of committee to the house of origin by the twelfth legislative day prior to adjournment *sine die*, except for the general appropriation act. If a committee does not do so, then such bills "die" in committee. The whole body may withdraw a bill from a committee, however, by a vote of one-third of the members-elect. This procedure is done under Joint Rule 7-7 and is referred to as a "smoke-out." When a committee kills a bill by tabling it or postponing it indefinitely or to some date after the *sine die* adjournment of the legislative session, it must report such action to the full body in an informational report.

All final actions by standing committees require a majority vote of the members-elect, except in the special committee on appropriations, where a two-thirds vote of the full membership is required for any type of "Do Pass" recommendation on special appropriation bills.

Conference Committees

When a bill or resolution has passed its house of origin, it is presented to the other house for its consideration. If the other house should amend the bill or resolution as passed by the house of origin, it is returned to the house of origin for approval of the changes. If the house of origin does not agree to the changes, one house or the other can request that a conference committee be established to work out an agreement. Upon the request of one house, the other house must appoint three members from its body to meet with three members of the requesting house. The rules provide that conference committee members should be representative of the decision made in their respective houses on the issue under consideration.

The members appointed from each house for a conference comprise separate committees, with the first-named in each instance being chair. The two chairs are required to set a time and

place to meet in an attempt to settle the differences. Conference committees meet in open session. Notice of the meeting is posted, minutes are kept and votes are recorded. The presiding officer of the house of origin announces to that body the time and location of each conference committee meeting. Any agreed-upon compromise between the two must be approved by a majority vote of the members of **each** of the committees; therefore, a conference committee does not operate as a single committee, but as two sets of conferees.

If conference committees cannot agree, they report this fact to their respective houses and a new conference committee is usually appointed. (Only one conference committee is required.) If no agreement is reached after several conference committees are appointed, the bill or resolution will die, as it must pass both houses in the same form to become law.

Joint Committees Generally

For the convenience of the public and the information of the members, similar standing committees of both houses sometimes meet in joint session. Joint meetings are generally used only when there is legislation of considerable magnitude which affects many citizens. Joint meetings conserve the time of those appearing before the committees and promote understanding between the two houses. The chair of a joint committee is the chair of the committee of the house before which the bill or resolution is then pending. The members of a joint committee in such circumstances do not vote as a single committee; rather, they meet together for informational purposes only and vote on the bill or resolution in their own committees. The Government Operations and Audit, Legislative Procedure, and Retirement Laws Committees usually meet jointly.

Committee of the Whole

The Committee of the Whole includes all the members of one house acting as a regular legislative committee. The purpose of a Committee of the Whole is to permit a more free and less formal discussion of a question than would be possible by a deliberative body acting under its ordinary rules of procedure. It is not often used in the South Dakota Legislature, except during special sessions.

Whenever either house sits as a Committee of the Whole, the presiding officer names one of the body members to serve as chair. The general rules of the body apply, but the Committee of the Whole cannot take final action on any proposed law or resolution. Also, the previous question rule is not enforced and the time of speaking is not limited.

Procedural Committees

The Legislative Procedure Committee recommends corrections to and approval of the daily Senate and House Journals, certifies to the two houses that measures have been correctly engrossed and enrolled, and certifies the delivery of bills to the Governor and joint resolutions to the Secretary of State. This committee also considers and recommends new rules and amendments to existing rules for the conduct of legislative business.

Select Committees

The principal function of select committees is the performance of housekeeping duties for each house. Select committees usually have three members from each house. One can readily discern their responsibilities from their titles. Select committees are most frequently established to:

1. Arrange for joint session to hear message of Governor;
2. Notify Governor that the Legislature is duly organized;
3. Formulate joint rules;
4. Arrange for days of recess;
5. Determine compensation of legislative employees;
6. Print and distribute bills, journals, and legislative handbooks;
7. Select the chaplains and other professional service providers;
8. Arrange a joint memorial service;
9. Notify Governor that the Legislature has completed its work and is ready to adjourn; and
10. Determine the time of adjournment *sine die*.

Senate Confirmation of Gubernatorial Appointees

The constitution and state law require that a number of appointees of the Governor be subject to confirmation by the Senate. Nominations from the Governor are referred to a Senate standing or select committee for consideration and recommendation to the full Senate. The Senate considers the recommendation and either consents to or rejects confirmation of the nominee. The appointees requiring Senate confirmation are listed in the following tables.

Appointees Requiring Senate Confirmation

APPOINTEE	AUTHORITY(IES)
Assistant Adjutants General	SDCL 33-1-10.1
Building Authority, South Dakota	SDCL 5-12-1
Career Service Commission	SDCL 3-6A-4
Corrections, Secretary of	SDCL 1-15-1.3
Crime Victims' Compensation Commission	SDCL 23A-28B-3
Education, South Dakota Board of	SDCL 1-45-6.1
Educational Telecommunications, S.D. Board of Directors for	SDCL 13-47-1
Game, Fish & Parks Commission	SDCL 41-2-1
Housing Development Authority Commissioners	SDCL 11-11-12
Human Rights Commissioners	SDCL 20-13-2
Human Services Department Secretary	SDCL 1-36A-1.2
Lottery Commission	SDCL 42-7A-17
Multistate Tax Commission	SDCL 10-54-2
Pardons & Paroles Board	SDCL 24-13-1
Personnel, Commissioner of	SDCL 1-33-10
Railroad Authority, South Dakota	SDCL 49-16B-3
Regents, Board of	S.D. Const. art. IV, § 3, and SDCL 13-49-1
Revenue and Regulation, Secretary of	SDCL 10-1-2
Science and Technology Authority	SDCL 1-16H-5
South Dakota Energy Infrastructure Authority	HB 1260, 2005 Legislative Session
Southwestern Low-Level Radioactive Waste Disposal Commission	SDCL 34-21B-3

All Other Department Heads

APPOINTEE	AUTHORITY(IES)
Agriculture	S.D. Const. art. IV, and SDCL 1-32-3
Education	S.D. Const. art. IV, and SDCL 1-32-3
Environment & Natural Resources	S.D. Const. art. IV, and SDCL 1-32-3
Game, Fish & Parks	S.D. Const. art. IV, and SDCL 1-32-3
Health	S.D. Const. art. IV, and SDCL 1-32-3
Labor	S.D. Const. art. IV, and SDCL 1-32-3
Military & Veterans Affairs	S.D. Const. art. IV, and SDCL 1-32-3
Public Safety	S.D. Const. art. IV, and SDCL 1-32-3
Social Services	S.D. Const. art. IV, and SDCL 1-32-3
Tourism and State Development	S.D. Const. art. IV, and SDCL 1-32-3
Transportation	S.D. Const. art. IV, and SDCL 1-32-3

The following page contains a graphic which follows a bill through the legislative process.

How an Idea Becomes Law



A bill is simply an idea that someone would like to see become law. It could be anything from the penalty for committing a crime to the amount of money that can be spent on a state program.

The idea can come from anyone, but only a State Representative or Senator can take that idea and guide it to final passage through the State Legislature.



Drafting a bill means putting the idea into legal language. The drafting is done by the Legislative Research Council, an agency of state government.

Introduction of a bill can be made by any member of the House or Senate, and more than one legislator generally sponsors a bill. The legislator whose name appears first on the bill is the "prime sponsor."



The BILL is introduced in the House or Senate



Proposals which start in the House are House Bills.

A bill is given to the Chief Clerk of the House or the Secretary of the Senate and is assigned a number. If the bill is sponsored by a Senator, it is a Senate Bill. The bill is given a First Reading in the "House of Origin" (in the House if sponsored by a Representative; in the Senate, if sponsored by a Senator). A First Reading means the bill's number and title are read aloud.

The Senate President or Speaker of the House then assigns the bill to a committee.

Committee action is crucial to the legislative process. A committee's responsibility is to examine a bill carefully, take testimony for and against the bill, and decide whether to send the bill to the "floor" (the full House or Senate) for consideration by the full body.



The committee can send the bill to the floor with a "Do Pass" recommendation. They can "Table" the bill, which means it is dead unless the full body orders the committee to send the bill to the floor. Or the committee can "Defer to the 36th or 41st Legislative Day" which also kills the bill, since there are only 35 or 40 legislative days in an annual session. In rare cases, if a committee cannot get enough votes to pass or kill the bill, a measure may be sent to the floor without recommendation. In that case, the full body must vote whether they want to place the bill on the "calendar" (agenda) for consideration.



Once a bill reaches the floor, it is debated and voted on. If it passes, the bill is forwarded on to the other body, where it goes through the same committee process.

If a bill passes both the House and Senate, it is sent to the Governor.



If he signs it, the bill becomes law. If he vetoes it, the Legislature has an opportunity to decide whether to override or uphold his veto. If the Legislature votes to override the veto, the bill becomes law.

The Legislative Process

(NOTE: In 1997, the South Dakota Legislature began using LawMaker, a custom legislative information system. LawMaker integrates the legislative process in a client-server personal computer environment, providing “real time” information and Internet availability. All bills and resolutions are available at the Legislature’s Web site.)

A Bill

A bill is an idea presented by an individual legislator, several legislators, or a committee, recorded on paper in a certain form, and presented to the Legislature for its approval. A bill is the vehicle by which present laws are changed or repealed and by which new laws are made. (An example of a typical bill is included in **Appendix III.**)

Resolutions

In addition to bills, the only other types of documents which may be introduced in either house of the Legislature are:

- (1) A House resolution or Senate resolution, which pertains to the affairs of one house only and requires action only by the legislative chamber concerned. It is used to express an opinion; to make a request of the other house; to express thanks; and to regulate procedure;
- (2) A concurrent resolution, which expresses opinions and principles of the Legislature not having the force of law. It is used to propose joint rules, sessions, or committees; to express recognition of service or sorrow over death; to memorialize; to instruct a department of state government; to petition federal agencies; and to request interim studies by the Legislative Research Council;

State of South Dakota	
SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004	
525J0761	HOUSE CONCURRENT RESOLUTION NO. 1004
Introduced by: Representatives Schafer, Bartling, Begalka, Bradford, Deadrick (Thomas), Engels, Garnos, Gassman, Gillespie, Glenski, Hunhoff, Klautd, Kroger, Lange, Lintz, Nesselhuf, and Sigdestad and Senators Kloucek, Jaspers, Nachtigal, Olson (Ed), Reedy, and Sutton (Duane)	
1	A CONCURRENT RESOLUTION, In support of the Historic Preservation Fund and Historic
2	Barn Preservation Act.
3	WHEREAS, historic preservation provides an opportunity to rapidly employ diverse sectors
4	of the economy, revitalize neighborhoods, communities, and rural areas, entice private capital
5	investment nationwide, and foster heritage tourism; and
6	WHEREAS, the State Historic Preservation Offices implement the National Preservation
7	Program with funds provided by the Historic Preservation Fund; and

- (3) A joint resolution, which contains matters of legislation only. (An example of a typical joint resolution is included in Appendix III.) It is used to refer a matter for referendum to the people; to place a constitutional amendment on the ballot at the next general election; and to ratify proposed amendments to the United States Constitution; and

(4) A resolution of disapproval, which is used to stop an action which the Governor has recommended through an executive order.

Parts of a Bill

The overwhelming majority of the legislative proposals with which legislators must deal comes before them in the form of bills. Every bill consists of three principal parts: the title, the enacting clause, and the body. By constitutional provision, no law may embrace more than one subject, which must be expressed in the title. This is designed to inform the people of the subjects of legislation being considered. Also, it is unconstitutional to put material in a bill that is not described in the title. Other introductory parts of a bill are its bill number and the names of the sponsor or sponsors.

The purpose of the enacting clause is to show that everything following it is to become the law of the state: South Dakota's Constitution prescribes the following as the exact form of this clause: **"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA."** If this clause is omitted from the bill or removed by amendment, the bill has no force of law.

The body of a bill is that portion which actually becomes law when the enactment is approved according to constitutional requirements. It is divided into numbered sections to facilitate reading and reference to specific parts. In the South Dakota Legislature, the lines of each page of a printed bill are numbered for ease of reference.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

394J0073

SENATE BILL NO. 1

Introduced by: Senators Schoenbeck, Abdallah, Ham, Kelly, Moore, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Fryslie, Gamos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

SPONSORS

1 FOR AN ACT ENTITLED, An Act to provide for a Criminal Code Revision Commission and

2 to declare an emergency.

TITLE

**ENACTING
CLAUSE**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Executive Board of the Legislative Research Council shall establish a

5 Criminal Code Revision Commission during the 2004 legislative interim. The commission shall

BODY OF BILL

Form and Style of a Bill

All legislators may use the drafting services provided by the staff of the Legislative Research Council (LRC).

All bills and resolutions to be introduced in the Legislature are required by joint rule to be in the form and style prescribed by the LRC. For a discussion of style and form, see the South Dakota Legislative Research Council *Drafting Manual*, a separate document which is available at the Legislature's Internet home page: <http://legis.state.sd.us>.

By joint rule of the houses, two copies of every bill, commemorative, or resolution must be filed with the bill clerk in the house of origin at least two hours prior to the opening of the daily session. Senate bills and resolutions begin with the number 1 and are printed on yellow paper; House bills and resolutions begin with the number 1001 and are printed on blue paper. All bills and resolutions are prepared in the Legislative Research Council and are delivered to the prime legislative sponsor.

If a bill amends an existing statute, that portion constituting the new material must be designated by underlining the new material. Any matter contained in a present statute but deleted in the proposed amended statute must be included in the bill and set off from the remainder of the text by a line stricken through the deleted material.

Introduction and Reference to a Standing Committee

Bills, joint resolutions, and concurrent resolutions may be introduced by a member or members of the house of origin and may be joined by members of the other house as co-sponsors. Committees may introduce bills under specific limited provisions set out in the joint rules. The final day for introduction of individual bills and joint resolutions is established by the Legislative Procedure Committee. Committee bills and joint resolutions may be introduced for one additional day. There is no deadline for introduction of concurrent resolutions. (**NOTE:** All legislative deadlines are found in Chapter 17 of the Joint Rules. See Chapter 3.)

When a new bill is introduced, its title is read before the house of introduction. This is known as "the first reading." The bill is then assigned by the presiding officer to the standing committee which is concerned with the particular subject matter of the bill, unless the body by motion decides that it should be assigned to another standing committee, a select committee, or to the Committee of the Whole. The journal will record the official introduction, the title of the bill, and the identity of the committee to which the bill was referred. Following this introduction and reference, the bill is ready for committee action.

Prefiling of Bills

South Dakota law provides that any person who has been elected or appointed to serve in the Legislature may prefile measures with the Director of the LRC thirty days prior to the formal opening of the annual legislative session. An interim committee of the LRC may also prefile measures under the names of individual sponsors on behalf of the interim committee.

By joint rule, all executive agencies are required to prefile any legislation that they wish to have considered. The sponsor of executive agency legislation is a standing committee. The agency must secure the permission of the standing committee chair before the bill may be prefiled. Although all prefiled measures are assigned a number and printed prior to the opening of the formal session, they are not officially introduced until the first day of the session; therefore,

printed copies of prefiled bills are not available until the Legislature convenes; however, they may be viewed on the Internet: <http://legis.state.sd.us>.

Committee Action

Once a bill has been referred to a committee, the chair will post the date, time, and place when the bill will be presented for hearing before the committee. On the date named for the hearing, the committee convenes in its assigned meeting room. The committee is called to order by the chair, who will announce the bills to be considered. The author of the bill, who will have been notified that the proposal is to come under examination, may be present to speak in support of the bill. Other persons who are interested in the bill may be on hand to present their views. The committee's final decision on the bill is made in a session which is open to the public, but often no further testimony is taken. At this time, the committee's report is prepared for submission to the chamber.

Committee Reports – Action by Chamber

The rules require a committee to report its recommendations or other final action on a bill or resolution to its parent house. The committee recommendation determines how the body will proceed to consider the bill. Any of the following recommendations can be made to the full body:

- (1) A "**Do Pass**" recommendation automatically places the bill on the calendar for second reading and disposition on the next legislative day.
- (2) A "**Do Pass Amended**" recommendation is read on the day the committee reports and is placed on the calendar for action the next legislative day. The report is not subject to change or amendment at the time it is read. Such reports are by custom perfunctorily adopted.
- (3) A "**Do Not Pass**" or "**Without Recommendation**" report terminates the measure unless the parent body takes positive action to place the measure on the calendar for second reading and disposition.

Informational reports from standing committees do not require action by the parent body; e.g., to inform the body that a committee has tabled a bill.

Engrossment

All bills amended by the Senate or House must be engrossed (changes incorporated into the body of the bill) before their second reading and final passage. When a bill is engrossed, all the amendments adopted by the chamber are inserted in proper order on the bill.

Second Reading and Final Passage

When a bill or resolution has reached the stage of second reading and final consideration, it is about to complete its journey through that house. It is often at this stage that it will receive its most vigorous debate before being voted on. Before a bill is voted on for final passage, a request may be made that it be read at length prior to the vote. The vote must be recorded and printed in the journal. A majority vote of the members-elect is required for passage of a bill or resolution. If the bill includes an emergency clause, a special appropriation, or the institution or increase of a tax, a two-thirds vote of the members-elect is required for passage.

A legislator has the right to change his vote, but this request must be made prior to the announcement of the vote by the speaker or president, unless the member is given unanimous consent to change the vote. Any member may ask for a verification of a vote. The member may also, immediately following the announcement of any vote, explain his vote and request that these remarks be printed in the journal.

Reconsideration

After a bill or resolution has been voted upon for final passage and while the bill is still in the possession of that house, any member may move for reconsideration. Notice of Intent to reconsider must be given before the body moves to the next item of business. A move for reconsideration asks that the vote by which a bill was passed or defeated be reconsidered, and if the motion is successful it has the effect of canceling the original vote and reopening the question of final passage. The motion to reconsider must be made no later than the next legislative day. The motion requires a majority vote of the members-elect. No motion to table is subject to reconsideration.

When a member, in explaining his vote, states that the vote was for the purpose of reconsideration, such statement is automatically taken as giving notice of intention to move for reconsideration.

Procedure in the Other House

When a bill or resolution has been passed by its house of origin, the same process begins in the second house. If it is passed by the second house without change, it is ready to be enrolled in the Legislative Research Council. If, however, it is amended by the second house, the bill or resolution, as amended, must be returned to its house of origin for further action. If the house of origin approves the amendments, the bill or resolution is then ready to be enrolled. If the amended bill is not approved by its house of origin, it is usually sent to a conference committee.

Enrollment

When a bill or resolution has passed both houses in the same form, it is ready to be enrolled (preparation of the bill in the form that it would be signed into law). The Committee on Legislative Procedure then certifies the correctness of the enrollment. When a bill has been properly enrolled, it is ready for signing by the presiding officer of each house.

Signing of Bills

The constitution requires that all bills and joint resolutions which have passed the Legislature be signed by the presiding officer of each house in the presence of that house, and that immediately before the signing the bill titles be publicly read and the fact of signing entered in the journal. When a bill has been properly signed by both presiding officers, it is sent to the Governor for approval.

Signing of Bills by Governor and Timeline for Veto

When the Legislature is in session, a bill presented to the Governor for signature becomes law when the Governor signs the bill or fails to veto it within five days (not including Saturdays, Sundays, or holidays) of presentation. A vetoed bill is returned by the Governor to the Legislature, together with the Governor's objections, within five days (not including Saturdays, Sundays, or holidays) of presentation if the Legislature is in session or upon the reconvening of

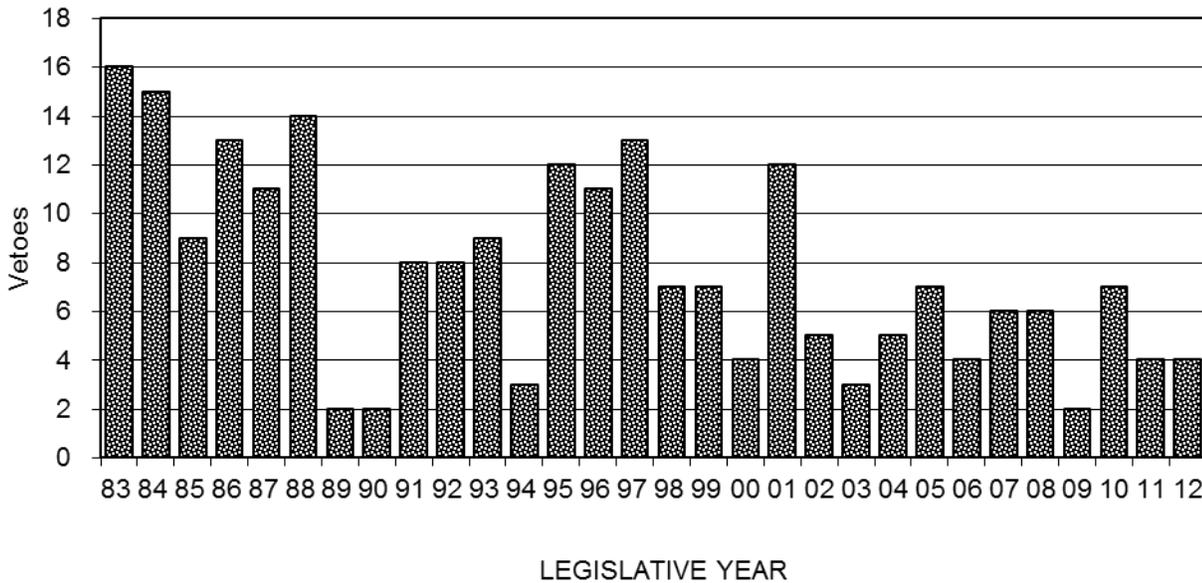
the Legislature from a recess. These vetoed bills may then be reconsidered by the Legislature, and if two-thirds of the members-elect of each house pass the bill it becomes law.

When a bill has been presented to the Governor and the Legislature has adjourned *sine die* or recessed for a period longer than five days before the Governor is required to act on the bill, the Governor must deliver the vetoed bill within fifteen days after such adjournment or start of the recess. When the Legislature adjourns at the end of a legislative day but not in final conclusion of the current session, this adjournment is a recess for the purposes of returning vetoes.

The Governor may strike individual items from the general appropriation bill passed by the Legislature. The procedure for reconsidering items struck by the Governor is the same as the procedure prescribed for overriding the executive veto. All items not removed become law.

Bills with errors in style or form may be returned to the Legislature by the Governor with specific recommendations for change. Bills so returned are treated in the same manner as vetoed bills except that specific recommendations for change in style or form may be approved by a majority vote of all the members of each house. If the Governor certifies that the bill conforms with the specific recommendations, the bill then becomes law. If the Governor fails to certify the bill, it is returned to the Legislature as a vetoed bill.

VETOES 1983-2012



Effective Date of Laws Passed

The constitution provides that no Act of the Legislature may take effect until **ninety days** after the close of the session. Statute provides that the effective date of laws passed at a regular session shall be **July 1** unless a different effective date is specified in the Act. The Legislature, however, by vote of two-thirds of the members-elect in each house, is permitted to declare a bill an emergency measure. An emergency measure takes effect and is in force immediately after its passage and approval by the Governor.

The two types of emergencies are:

- (1) For the support of state government and its existing public institutions; and
- (2) For the immediate preservation of the public peace, health, or safety.

Final Three Days of Legislative Session

The Joint Rules of the Legislature provide that the three days preceding the final day of the legislative session are reserved for concurrence by each house with actions of the other house and for action upon conference committee reports. The rules have sometimes been suspended to allow passage of bills on these three days. The general appropriation act is usually debated and adopted sometime during these three legislative days.

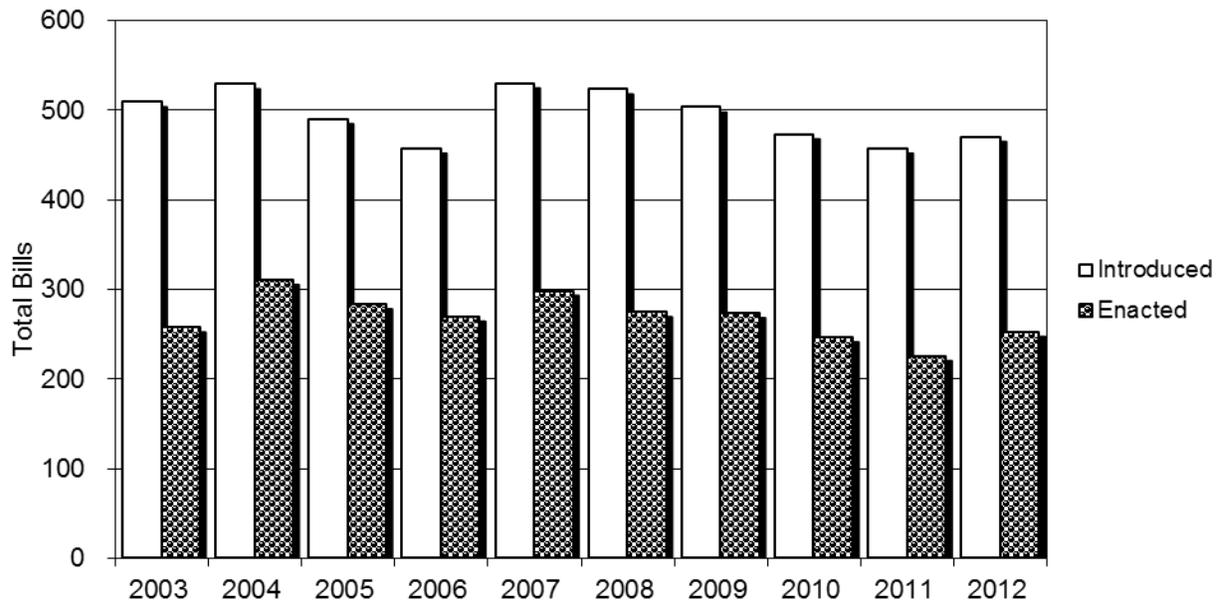
Last Day Reserved for Consideration of Vetoes

Since 1977, the final legislative day has been reserved and held more than 15 days later for consideration of vetoes.

Success of Legislation

The following graph shows information on the number of bills introduced and the number passed and delivered to the Governor for the last ten annual sessions.

DISPOSITION OF LEGISLATIVE BILLS 2003-2012



Legislative Documents and Reference Materials

*Available at the Legislature's Web site: <http://legis.state.sd.us>

Rules*

On the first day of the session, each house of the Legislature adopts its temporary rules and procedures. Normally, the rules of the previous session are adopted, although there may be changes made at any session. When the permanent rules for that session are later adopted, they are printed in either the Senate or House Journal and in the *Red Book*.

Daily Calendars*

Each house issues a daily calendar of regularly scheduled business. This calendar is distributed to all legislators and interested parties primarily by electronic means.

Bills and Resolutions*

Bills and joint resolutions are printed and distributed to each legislator. The pages place the printed bills and joint resolutions in the bill books located on each chamber floor. Each legislator is entitled to three copies of each bill and joint resolution, of which two copies may be sent to constituents within the legislator's district if the postage is paid. Concurrent resolutions are printed only in the journal.

House and Senate Journals*

The constitution requires the House and Senate to keep and publish journals of their proceedings. The journal contains a record of each day's proceedings and actions with respect to all bills, resolutions, executive communications, and committee reports. Debates are not covered in the journals, but a legislator may request that the explanation of his vote be recorded in the journals. Journals are posted at the Legislature's Web site after the conclusion of each daily session. The journals are available prior to the opening of session the following day. Certified copies of the compiled and corrected journals are filed with the Secretary of State no later than forty days after the adjournment of the Legislature.



Gavel-to-gavel coverage of floor proceedings is webcast by South Dakota Public Broadcasting and is available at the Legislature's home page (<http://legis.state.sd.us>). Live audio webcast is provided for daily sessions of the Senate and House. These proceedings are later archived by bill and date. Audio files on individual pieces of legislation are usually available by mid-evening of the same day. Click on the SDPB icon to hear the debate.

Bill Status Report*

A computerized Bill Status Report is prepared daily during session. This report gives an up-to-date picture of the current status of each bill and resolution introduced in both houses.

Date	Action	
Senate Bill 131		
Senators Duenwald and Ham-Burr and Representatives Miles , Bradford , Glenski , Hemmes , Klaudt , Michels , and Van Norman		
An Act to revise the hours of supervision required for certification as a licensed professional counselor - mental health.		
Subject Index: Professions and Occupations		
01/22/2004	First read in Senate and referred to Senate Commerce S.J. 111	
01/26/2004	Senate Referred to Senate Health and Human Services S.J. 142	
02/02/2004	Scheduled for committee hearing on this date	
02/04/2004	Scheduled for committee hearing on this date	
02/04/2004	Senate Health and Human Services Amendment (131ja)	
02/04/2004	Senate Health and Human Services Amendment (131jb)	
02/04/2004	Health and Human Services Do Pass Amended Passed, YEAS 6, NAYS 0 . S.J. 313	
02/06/2004	Senate Do Pass Amended Passed, YEAS 34, NAYS 0 . S.J. 371	
02/07/2004	First read in House and referred to House Health and Human Services H.J. 459	
02/18/2004	Scheduled for committee hearing on this date	
02/18/2004	Health and Human Services Do Pass Passed, YEAS 13, NAYS 0 . H.J. 637	

**Click on Icon
for archived
Webcast**



Daily Reader*

The *Daily Reader* is a separate publication made for each chamber. This publication contains all amended bills that are to be considered under second reading. The bills are presented in their current form. The *Daily Reader* is available at the Legislature's Web site.



Session Laws*

All laws, resolutions proposing constitutional amendments, initiated and referred measures, executive orders, and Supreme Court rules which affect statutes are published in the bound session laws. The session laws are prepared by the Code Counsel in the office of the LRC and are printed within three months after the legislative session. A copy of the session laws is sent, upon request, free of charge, to each legislator.

South Dakota Legislative Index

Following the close of the legislative session, each legislator receives a bound index to the daily journals and a CD containing the final legislative documents and session laws.

The South Dakota Codified Laws*

Each legislator is entitled to use a set of the *South Dakota Codified Laws* ("SDCL" or the "code") during his term of office. Most use the CD version. Extra sets of the code are also placed in both chambers and committee rooms during the session for immediate reference by any legislator. At each regular session orientation program, the makeup and the use of the code is explained in detail. Legislators may obtain a copy of the code or copies of individual volumes of the code from the LRC Librarian. (**Chapter 2** provides information on using the Code.)

Legislative Research Council Report*

Each year the Legislative Research Council prepares a report covering the council's work during the previous interim. Contained in this report are the reports and recommendations on each interim subject studied by the council. Study assignments are determined by resolution of the previous Legislature, statute, or direction of the LRC Executive Board. This report is available at the Legislature's Web site.

Administrative Rules of South Dakota*

The Legislative Research Council prints all administrative rules and regulations promulgated by state government agencies in the *Administrative Rules of South Dakota* (ARSD). Rules and regulations can only be promulgated by administrative agencies to carry out legislative mandates. The authority to adopt rules is usually granted when an agency has special expertise that the Legislature does not have time to acquire, when frequent changes, such as dates or fees, need to be made, or when a general law needs to be made more specific. All legislators are entitled to receive a copy of the complete set of ARSD upon request to the LRC.

Audits of State Agencies

Copies of financial audits of all state agencies are available from the Department of Legislative Audit (DLA). The DLA Internet address is listed below.

<http://www.state.sd.us/legislativeaudit/home.htm>

Governor's Budget Report

Each legislator receives a printed copy of the Governor's budget report and recommendations. This document must be transmitted by the Governor no later than the Tuesday following the first Monday in December (SDCL 4-7-9). In addition, information regarding budget data of the Bureau of Finance and Management (BFM) is available upon request by any legislator. Detailed information regarding the executive budget is presented to the Appropriations Committees of the Legislature. Visit the BFM Web site for other budget information.

<http://www.state.sd.us/bfm/index.htm>

Additional Constitutional Limitations on the Legislature

Quorum

A majority of all the members of each house constitutes a quorum, but a smaller number may adjourn from day to day or may compel the attendance of absent members in such a manner and under such penalty as each house may provide.

When Sessions Are Open to the Public

The constitution provides that the sessions of each house and of the Committee of the Whole shall be open to the public, unless the nature of the business warrants that it be kept secret. However, the joint rules provide that all committee or subcommittee meetings shall be open to the public.

Length of Adjournment or Recess

Neither house may adjourn without the consent of the other for more than three days, nor may either house adjourn to any other place than where the two houses are sitting.

Local or Special Laws

The Legislature is prohibited from enacting any private or special law in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns, and villages; changing or amending the charter of any town, city, or village; or laying out, opening, vacating or altering town plats, streets, wards, alleys, and public ground.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the state.
8. Remitting fines, penalties, or forfeitures.
9. Granting to an individual association or corporation any special or exclusive privilege, immunity, or franchise whatever.
10. Providing for the management of common schools.
11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

(S.D. Const. Art. III, § 23.)

The Legislature may, however, repeal any existing law relating to these items. In all other cases where a general law is applicable, no special law may be enacted.

Impeachment Power

The House of Representatives has the sole power of impeachment. The concurrence of a majority of the members-elect is necessary for impeachment. All impeachments are tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. No person can be convicted without the concurrence of two-thirds of the members-elect. When the Governor or Lieutenant Governor is on trial, the Chief Justice of the Supreme Court presides over the proceeding.

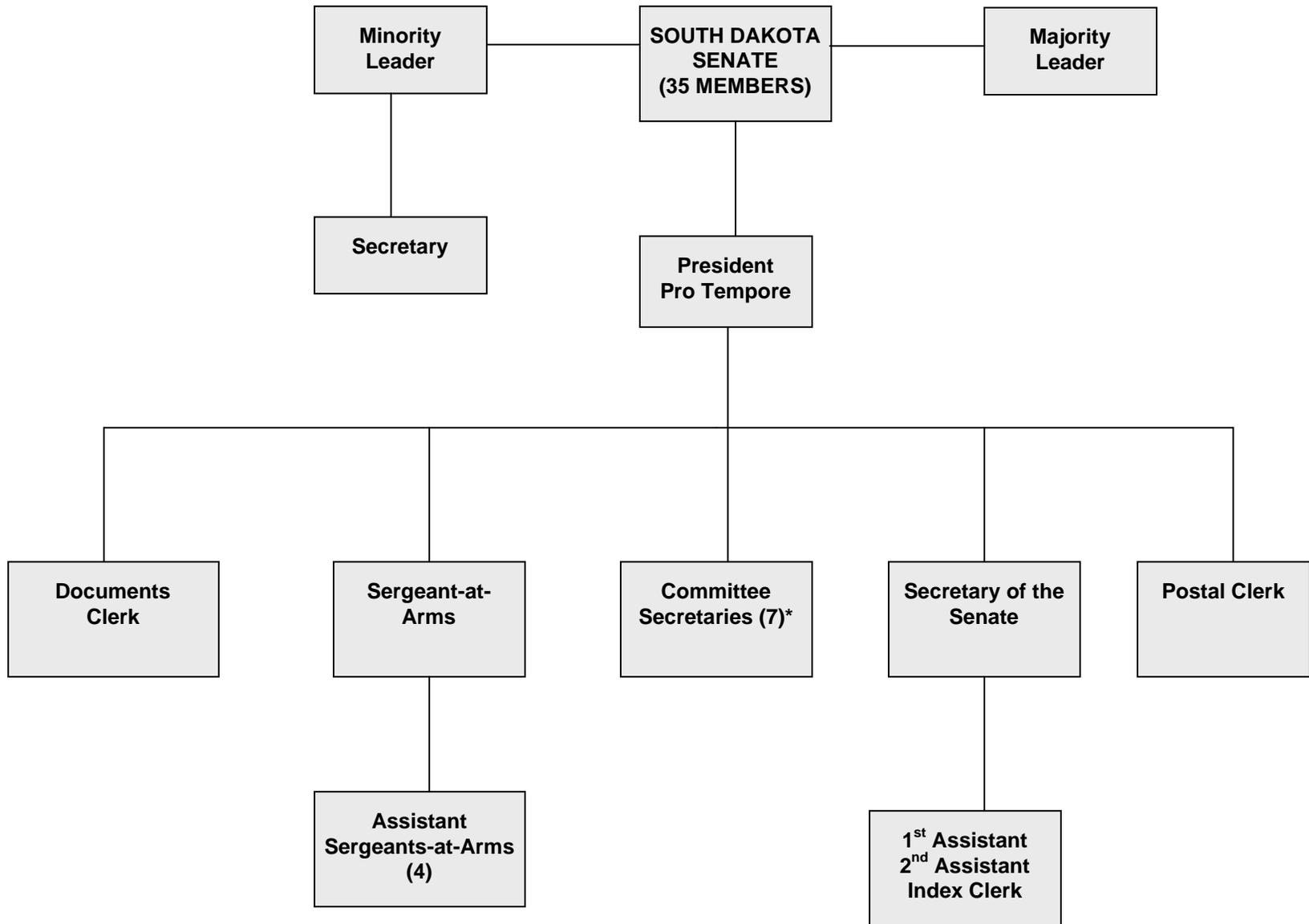
Oath of Office

Before entering upon their official duties, members of the Legislature and its officers take and subscribe to the following oath or affirmation:

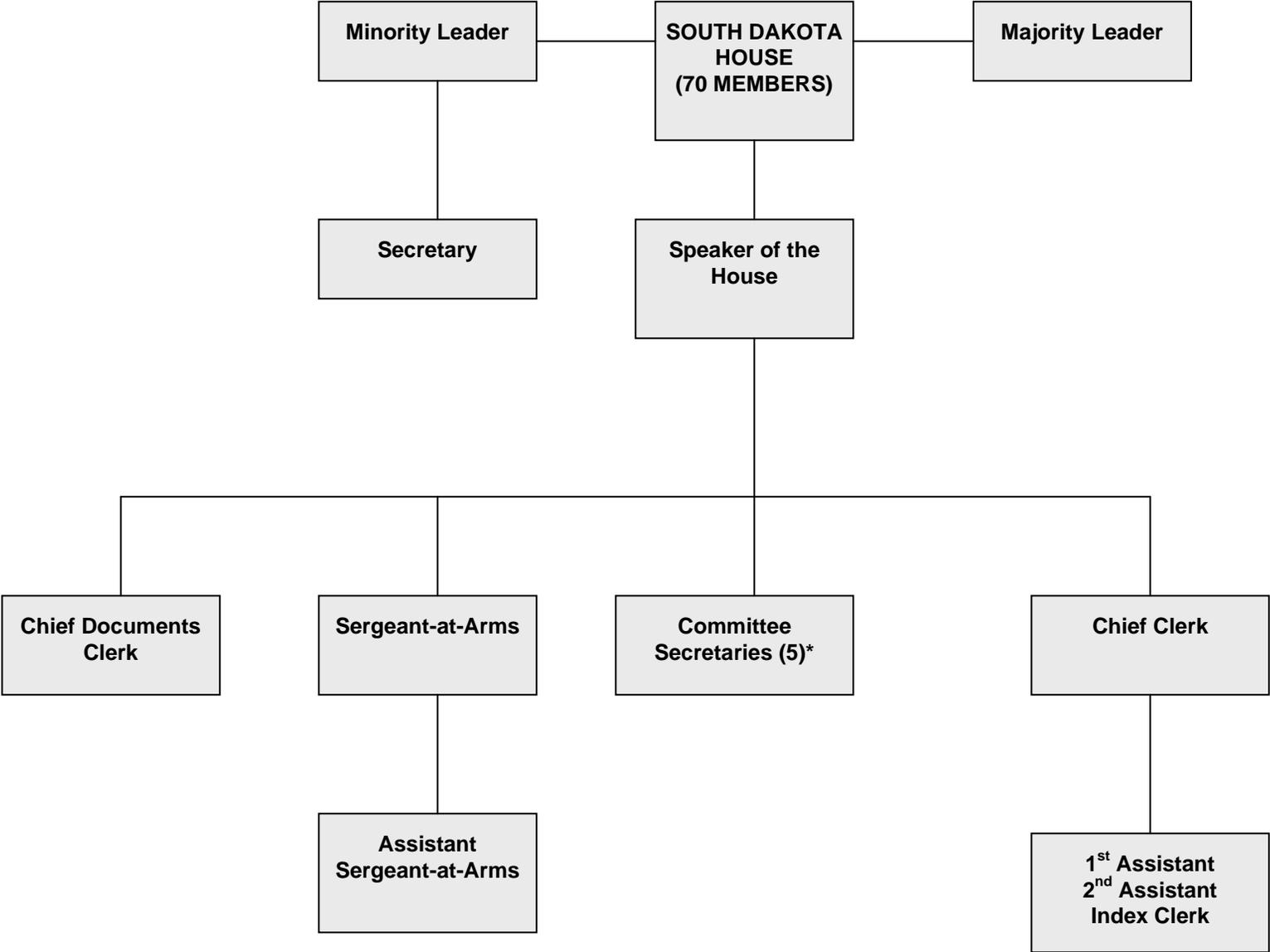
I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any other official act.

This oath is administered by a Justice of the Supreme Court or Judge of the Circuit Court or the presiding officer of either house. The Secretary of State records and files the oath subscribed to by each member and officer.

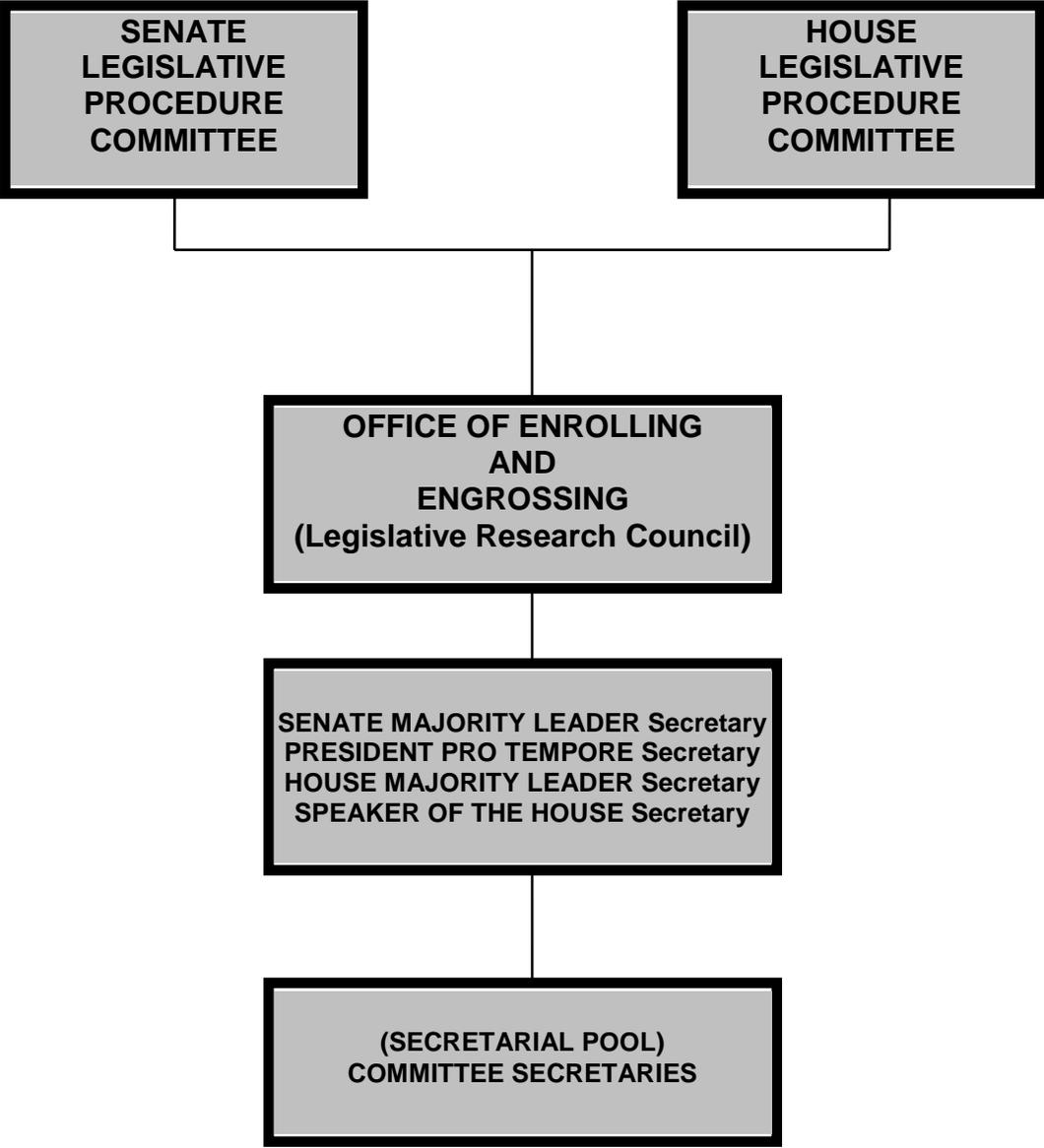
**SOUTH DAKOTA SENATE SESSION
EMPLOYEE ORGANIZATIONAL CHART**



**SOUTH DAKOTA HOUSE OF REPRESENTATIVES
SESSION EMPLOYEE ORGANIZATIONAL CHART**



ENROLLING AND ENGROSSING OFFICE ORGANIZATION



APPENDIX II

Legislative Procedure At A Glance

(Format: Action / Cite / Required Vote)

Adjournment / J.R. 5-4 / Termination of meeting / Majority of members present / Not debatable.

Amendment, to state constitution (by Joint Resolution) / S.D. Const. Art. XXIII, § 1 / Majority of members-elect.

Appeal the Decision of the Chair / J.R. 1-3 / Majority of members present.

Appointments, confirmation of gubernatorial / SDCL 1-7-9, S7-1 / Majority vote of senators-elect.

Appropriations (other than General Appropriation Bill) / S.D. Const. Art. XII, §2 / 2/3 vote of the members-elect.

Calendar, placing of bills on:

"Do Not Pass" bills / J.R. 6F-6 / Majority of members-elect.

"Without Recommendation" bills / J.R. 6F-6 / Majority of members-elect.

Call of the House / J.R. 2-2 / Compel attendance of absent members / 1/6 of members-elect.

Change of Vote / J.R. 12-4 / Unanimous consent.

Changing Order of Business / J.R. 4-3 / Revert to or pass to a new order of business / Majority of members present.

Conference Committee Report Adoption / J.R. 8-3 / Same as final passage of the bill or resolution.

Consideration of Matters Not Posted / J.R. 7-1.5 / 2/3 of committee members-elect.

Discipline of Disorderly Member / J.R. 1-11 / 2/3 of members-elect.

Division of Question / J.R. 5-9 / No vote necessary / Decision of presiding officer.

Emergency Measure / S.D. Const. Art. III, § 1 / Bills necessary for the immediate preservation of the public peace, health, or safety or the support of the state government / 2/3 vote of members-elect.

General Appropriation Bill / S.D. Const. Art. XII, § 2 and SDCL 4-8A-1(1) / Majority of members-elect.

Lay-Over Motion / J.R. 5-17 / Final action upon pending amendment delayed until one legislative day has intervened / Not amendable / Not debatable / 1/5 of members-elect.

Postpone Indefinitely or to a Date Beyond Adjournment / J.R. 5-8.1 / Majority of members-elect.

Previous Question Motion / J.R. 5-6 / Not debatable / Majority of members present.

Recess / J.R. 5-3 / Suspension of meeting / Majority of members-elect.

Reconsideration / J.R. 5-11.1 / Majority vote of members-elect. Unanimous consent if motion to reconsider same question made twice. (Only final disposition of bills and joint resolutions and override of vetoes may be reconsidered.)

Resolutions / J.R. 12-5 / All resolutions require a majority vote of the members-elect.

Roll Call Vote, request for / S.D. Const. Art. III, § 13 / 1/6 of members present.

Rules Adoption / J.R. 11-2, S5-1, H4-1 / Majority of members-elect.

Rules Amendment / J.R. 11-1, S5-1, H4-1 / 2/3 of members-elect.

Rules Suspension / J.R. 11-1, S5-1, H4-1 / 2/3 of members-elect.

Smoke Out / J.R. 7-7 / Requires a committee to deliver a bill to the floor by the next legislative day / 1/3 of members-elect.

Special Orders / J.R. 4-2 / Majority of members present.

Strike Enacting Clause / J.R. 5-10 & J.R. 7-1.7 / Majority of members-elect.

Table, Lay on the / J.R. 5-5 / Not debatable / Majority of members-elect, when motion effects disposition of a bill; majority of members present required on all other tabling motions.

Table, Take from the / J.R. 5-5.2 / Debatable / Majority of members-elect.

Tax Increases and New Taxes / S.D. Const. Art. XI, § 14 / Any new tax or increase in an existing tax / 2/3 vote of the members-elect.

Veto, Override / S.D. Const. Art. IV, § 4 / 2/3 of the members-elect.

Withdrawal of Motion / J.R. 5-2.2 / Unanimous consent of members present.

APPENDIX III

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0322

HOUSE BILL NO. 1024

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to authorize counties to use the South Dakota grassland fire
2 index to regulate the use of fireworks.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-37-19 be amended to read as follows:

5 34-37-19. Any county may, by resolution, regulate or prohibit the use of fireworks outside
6 the boundaries of any municipality in those areas where the fire danger, as determined by use
7 of the ~~rangeland fire index as established by rule promulgated pursuant to chapter 1-26, by the~~
8 ~~secretary of agriculture~~ South Dakota grassland fire danger index published by the National
9 Weather Service, has reached the extreme category in that county during the period from June
10 twentieth to July second, inclusive. During such period, the county's action is suspended if the
11 rangeland fire index falls below the very high category and shall again become effective if the
12 rangeland fire index reaches the extreme category.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

736J0316

SENATE JOINT RESOLUTION NO. 5

Introduced by: Senators Brown, Albers, Dempster, Jaspers, Kloucek, Kooistra, Olson (Ed), Reedy, Sutton (Dan), and Symens and Representatives Peterson (Bill), Cutler, Elliott, Fryslie, Lange, Olson (Ryan), Solum, and Wick

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election
2 an amendment to Article III, section 6 of the Constitution of the State of South Dakota,
3 relating to legislative term limits.

4 BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE
5 OF REPRESENTATIVES CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendment to
7 Article III, section 6 of the Constitution of the State of South Dakota, as set forth in section 2
8 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state
9 for approval.

10 Section 2. That Article III, section 6 of the Constitution, of the State of South Dakota, be
11 amended to read as follows:

12 § 6. The terms of office of the members of the Legislature shall be two years; they shall
13 receive for their services the salary fixed by law under the provisions of § 2 of article XXI of
14 this Constitution, and ~~five cents for every mile of necessary travel in going to and returning from~~
15 ~~the place of meeting of the Legislature on the most usual route~~ mileage.

350 copies of this document were printed by the South Dakota
Legislative Research Council at a cost of \$.027 per page.



Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

APPENDIX IV

Glossary of Legislative Terms

ACT--a bill passed by the Legislature.

ACTION--disposition of any question before the Legislature.

ADJOURNMENT--termination of a meeting; occurs at the close of each legislative day upon completion of business, with the hour and day of the next meeting set prior to adjournment.

ADOPTION--approval or acceptance; usually applied to amendments or resolutions.

AMENDMENT--any alteration made or proposed in a bill, motion, or clause thereof by adding, changing, substituting, or omitting.

ANNOTATION--the official annotations are the compilation of histories of sections of the statutes, interpretative notes, court decisions and attorney general's opinions. They are published following each section of the South Dakota Codified Laws.

APPORTIONMENT--division of the state into districts from which legislators are elected.

APPROPRIATION--money set apart by formal action for a specific use.

BICAMERAL--a legislature consisting of two chambers.

BILL--a proposed law introduced during a session for consideration by the Legislature.

BILL BOOK--bills are numbered consecutively as introduced and all bills, as they are printed, are placed in bill books, or binders, in numerical order. All legislators, and many other persons who work with the Legislature, are provided with bill books.

BLUE BOOK--the *South Dakota Legislative Manual* prepared in odd-numbered years by the Secretary of State. This book contains historical data about the state and biographical data on members of the legislative, executive, and judicial branches of government.

BODY OF A BILL--the body of a bill is the text or lawmaking part of the bill. Everything following the enacting clause is part of the body of the bill.

CALENDAR--the schedule which determines the order in which bills are taken up for further consideration or debate by the Legislature following committee action.

CASTING VOTE--the deciding vote the Lieutenant Governor, as President of the Senate, may cast in case of a tie vote in that chamber.

CATCHLINE--the catchline is the boldface material between the section number and the section material in all the sections of the South Dakota Codified Laws. The catchline is a summarization, prepared by the Code Commission, of the material in the section, but it is not a part of the statute.

CHAIR--a traditional designation of the current presiding officer.

CHIEF CLERK--an officer of the house of representatives responsible for the direction of the clerical staff and the preparation of daily and general publications.

CODE--the *South Dakota Codified Laws* (formerly referred to as the South Dakota Compiled Laws).

COMMEMORATION--an expression of the Legislature recognizing service or achievements of national or statewide importance or sorrow over death or loss.

COMMITTEE REPORT--a committee report documents the proposed changes made by a committee or conference committee.

CONCURRENCE--practice whereby one house agrees with an action taken by the other house.

CONCURRENT RESOLUTION--a form of legislation expressing the opinion of the Legislature. It does not have the force of law.

CONFIRMATION--approval by the Senate of certain gubernatorial appointees.

CONSENT CALENDAR--schedule of bills on which there is general agreement that opposition is not anticipated.

CONSTITUENT--citizen residing within the district of a legislator.

CONSTITUTION--the fundamental organic law of the state. Amendments to the Constitution are proposed by joint resolution and must be approved by a vote of the people.

CONSTITUTIONAL AMENDMENT--a resolution adopted by the Legislature affecting the state constitution which requires an affirmative vote of the electorate to become effective.

DISTRICT--the geographic division of the state represented by a legislator.

DO PASS--the affirmative recommendation made by a committee in sending a bill to the floor for final vote.

DRAFT--any piece of written legislation, at whatever stage of preparation, that has not yet been introduced as a bill.

DRAFTING ORDER--a work sheet which accompanies a bill draft through its various stages of preparation in the Legislative Research Council. Only LRC staff members have access to drafting order forms.

ENACTING CLAUSE--that portion of a bill indicating that all following material is to become law. By constitutional provision each proposed law must be preceded by this clause: "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA."

ENGROSSMENT--incorporating the amendments into the text of a bill as it moves through the legislative process.

ENROLLMENT--incorporating the amendments and corrections into the text of the bill after it has passed both houses in the same form.

EX OFFICIO--the holding of a particular office or position by virtue of holding another office or position.

FLOOR--a traditional description of the interior of either house; "floor action" describes the consideration of measures by the entire membership of the respective chamber.

HOGHOUSE--a procedure used in the Legislature whereby a committee or a member from the floor will move to strike everything after the enacting clause of a bill and insert in lieu thereof the substance of an entirely new bill.

HOUSE--when used generally, house refers to either the Senate or the House of Representatives. The term, the House, refers to the House of Representatives.

HOUSE RESOLUTION--one form of a resolution.

IMPEACHMENT--a procedure to remove from office public officials accused of misconduct.

INTERIM--the interval between regular sessions of the Legislature.

INTERNAL REFERENCE--a citation within the body of a bill to another section of the bill or an existing section of law.

INTERSTATE COMPACT--legislation enacted in identical form by two or more states. Only changes which affect the internal operation of the compact within the state may be made in drafting an interstate compact, even though its style and form may vary from normal South Dakota usage.

JOINT RESOLUTION--used primarily to propose amendments to the South Dakota Constitution and to ratify amendments to the United States Constitution.

JOURNAL--the official chronological record of the proceedings of the respective houses; printed daily in pamphlet form and subsequently certified, indexed, and bound at the close of each session.

LAW MAKER--the South Dakota Legislature's legislative information system, which is available on the Internet. This integrated system performs all the functions associated with bill drafting, tracking of legislative documents, and chamber automation; i.e., bill drafting, committee report preparation, committee minutes preparation, committee agenda preparation, amendment preparation, journal and calendar preparation, and bill status.

LAY ON THE TABLE--postpone a matter before the Legislature; may later be brought up for consideration by motion from the floor.

LEADLINE--introduces a section which amends or repeals existing law or which contains new material that should be placed within a particular portion of the code.

LEGISLATIVE DAY--a day on which a formal legislative floor session is held.

LOBBYIST--an individual engaged to present and promote the views of a group, organization, or industry on measures under consideration by legislators.

MINUTES--an official record of the proceedings of a meeting.

MOTION--a formal suggestion offered while the Legislature is in session.

PASSAGE--favorable action on a measure before the Legislature.

PER DIEM--daily expense allowance.

PETITION--formal request submitted by an individual, group, or organization to individual members or the Legislature as a whole.

POINT OF ORDER--motion calling attention to a breach of order or rules.

PRESIDENT PRO TEMPORE—"President for a time" presides over the Senate Chamber in the absence of the Lieutenant Governor. The President Pro Tem is elected by the members of the Senate at the beginning of each session.

PROCEDURE--the rules and traditional practices of the Legislature.

REAPPORTIONMENT--a redistricting of the state for election purposes.

RECONSIDERATION--a motion which, when passed by a house, allows another vote annulling or reaffirming an action previously taken.

RED BOOK--*Official Directory and Rules of the South Dakota Legislature*. It contains the legislative rules and information about the legislative members.

REFERENDUM--the method by which a measure adopted by the Legislature may be submitted to the electorate for popular vote.

RESCIND--annulment of an action previously taken.

RESOLUTION OF DISAPPROVAL--a resolution of disapproval is used to suspend the operation of an executive order.

RULES--the methods of procedure determined by the Legislature at the beginning of a session.

SECRETARY OF THE SENATE--an officer of the upper house elected by the members to direct the clerical staff and to assist the presiding officer in administrative and procedural matters.

SENATE RESOLUTION--one form of a resolution.

SERGEANTS-AT-ARMS--officers of the House and the Senate charged with maintaining order and carrying out the directives of the presiding officers or the members.

SESSION--period during which the Legislature meets.

SESSION LAWS--the compilation of all bills enacted during any one year.

SINE DIE--adjournment "without day" being set for reconvening; final adjournment of the Legislature.

SMOKE OUT--invoking of Joint Rule 7-7 whereby one-third of the members of a house can require a committee to deliver a bill to the full body by the next legislative day.

SOUTH DAKOTA CODIFIED LAWS (SDCL)--current codification of South Dakota statutes of a general nature. It does not include local, appropriative, or special laws. SDCL is divided into chapters and sections.

SPEAKER--presiding officer of the House of Representatives, elected by the members at the beginning of each session.

SPECIAL ORDER--matter of business set for a special designated time and day regardless of its place on the calendar.

TITLE--may mean a group of related chapters in the code or the title of a bill or other proposal.

UNIFORM ACT--certain suggested legislation is published by the National Conference of Commissioners on Uniform State Laws in its annual handbook and by the Council of State Governments annually in a volume called *Suggested State Legislation*. The drafting of a uniform act may require a great deal of additional work to remove contradictory provisions that may already exist in state law, as well as style, spelling, and format changes.

VETO--formal disapproval of a measure by the Governor.

WEBCAST-- A broadcast of legislative proceedings on the Internet. South Dakota Public Broadcasting's posting of the audio files of the daily Senate and House floor sessions and standing committee meetings at the South Dakota Legislature's home page on the Internet (<http://legis.state.sd.us>). A complete audio record of legislative proceedings for reference through the Internet.

APPENDIX V

The Capitol Building and Capitol Complex

South Dakota's State Capitol stands on the second plateau of the rolling bluffs overlooking the Missouri River. South Dakota became a state in 1889 along with her sister state, North Dakota. Pierre was named the temporary capital at that time but did not receive the permanent designation until 1904. The permanent site was only decided after two lengthy and exhaustive campaigns which involved Mitchell and Huron.

The first capitol was a wooden building located just west of the permanent structure. The grounds were an expanse of raw prairie scarred by a deep gulch.

In 1910, the ambitious dreams of the planner were realized. The gulch was filled and today holds Capitol Lake, the year-round home of flocks of mallard ducks and Canadian geese. Trees and landscaping were added to produce the effect now seen.

Over the years the original building began to deteriorate, and changes to reflect the times were made. Impractical skylights were closed; an annex built to the north of the original structure shut off much natural light, so the electric lighting was updated and many of the original fixtures were replaced with modern practical versions. In addition, due to the expense of restoration, ornate wall decorations, mainly paintings and murals, were covered with paint as they became soiled. Several years ago, legislators and other state officials made a study of the costs of renovation and/or restoration. The building that cost less than \$1 million to erect in 1910 would cost over \$40 million to replace today.

Out of an awareness for the historic value and the practicality of restoration versus replacement, a plan was proposed for the restoration of the public areas of the capitol and remodeling of offices. Since 1976, the restoration project has included many major renovations and improvements. A five-member Capitol Complex Restoration and Beautification Commission, appointed by the Governor, now plans and oversees the work being done.

Some of the earliest renovations were done in the Governor's reception room. During the summer of 1978, the 96-foot-high dome was reinforced and repainted and its stained glass was cleaned and repaired. The stained glass skylights on the third floor were also restored, and marble and brass fixtures throughout the building were cleaned and repaired. The Supreme Court hearing room was refurbished in 1979 and intricate wall and ceiling designs were replaced.

More extensive interior renovation projects began in the 1980s. After exhaustive research and actual paint-stripping exploration, many different painted designs on the walls and ceilings of hallways, lobbies, and other public areas were uncovered. A Sioux Falls architectural firm and two Pierre painting contractors were hired to repaint these areas as they were at the Capitol's opening in 1910. Light fixtures and chandeliers have been restored, or, if lost, replaced. The Governor's portraits have been rehung on the first floor. The First Ladies' inaugural gown collection is displayed on the first floor of the Capitol.

During the state's Centennial year, the legislative chambers underwent a major

restoration. Through careful investigation an exact duplicate of the original carpet was created for installation. Artistic license was taken in weaving three state seals into the carpet of each chamber.

The House of Representatives installed a state-of-the-art voting system which was manufactured by Daktronics of Brookings, South Dakota. All the original furniture in each chamber was removed and restored. The Speakers' and Presidents' lobbies behind each chamber were restored to their original beauty.

Several structural changes also have been made. Cracked mosaic floor tiles have been replaced with new tiles from the same Italian quarry. Legislative offices built into the House and Senate lobbies were removed and the areas restored to their original design. The roof drainage system has been improved, and a new service entrance has been added to the east end of the capitol annex. The exterior of the capitol and annex has been cleaned and tuck-pointed.

The capitol area grounds also have received considerable attention. Capitol Lake was dredged and a new walkway/maintenance path and riprap was installed. Added next to the flaming fountain was a carved marble memorial to South Dakotans who died in the Korean conflict and Viet Nam War. Each honoree is listed under his home county. Plans are underway for a memorial to World War II veterans.

Across from the lake, the Becker-Hansen Building (formerly known as the Department of Transportation Building) received new sidewalks. A new park with a lighted pathway, arched bridge, and reservoir was created in Hilger's Gulch west of the Kneip and State Library Buildings.

The parking lot north of the capitol was redesigned for aesthetic and safety

reasons and replaced in the summer of 1986. The new lot has sixty additional spaces as well as a separate entrance and parking area for handicapped employees and visitors. A drainage system was installed in the new lot, and expanded lawn areas received underground sprinklers. The driveway and parking circle in front of the capitol also saw similar attention.

Also, in 1991 the Duling family donated a statue which rests at the rear entrance to the capitol. The sculpture, entitled "The Citadel," was created by South Dakota artist Dale Lamphere.

On April 19, 1994, the Fighting Stallions Memorial was dedicated as a lasting memorial to the eight South Dakotans who perished in an airplane crash on April 19, 1993. Five state employees, including Governor George S. Mickelson, and three Sioux Falls corporate leaders were on an economic development mission.

The memorial is located on the capitol grounds near Capitol Lake. "Fighting Stallions" is enlarged in bronze from the 1935 mahogany carving by South Dakota sculptor Korczak Ziolkowski. The sculpture symbolizes South Dakota's struggle to overcome adversity, desire for achievement, and courage to believe in the future. It is a tribute to those who have made the ultimate sacrifice.

The Capitol Club, a group of legislator spouses, donated a panel of hand leaded stained glass for the semi-circular window in the center panel of the front doors of the Capitol. The dedication was made during a special ceremony which took place during the 1996 Legislative Session. The Capitol Club made this donation in remembrance of the eight victims of the April 19, 1993, plane crash. All segments of the design are in divisions of eight. Warvi Stained Glass of

Rapid City worked on this glass for over a year.

In 1997, the former capitol maintenance shop was relocated, and the structure was remodeled into the Visitor Center. This facility has a large and a small meeting room, as well as a kitchen furnished with the “basics.” The meeting rooms are available by reservation only. The gallery may not be reserved and is open to the general public from 8:00 a.m. to 10:00 p.m. daily.

Governor William J. Janklow, in March 2000, announced the construction of a World War II Memorial on the Capitol grounds to honor all the men and women who contributed to the war effort. Lee Leuning, Pierre, and Sherri Treeby, Aberdeen, were selected as the memorial artists. The slightly larger-than-life statuary consists of six bronze figures representing the branches of service in which South Dakotans served in WWII. The statues are on a peninsula that was constructed into Capitol Lake.

The memorial was dedicated on September 15, 2001, just four days after the terrorist attacks on the United States. The formal program on the Capitol

grounds concluded with the release of 68,000 balloons, each representing a South Dakotan who served in World War II.

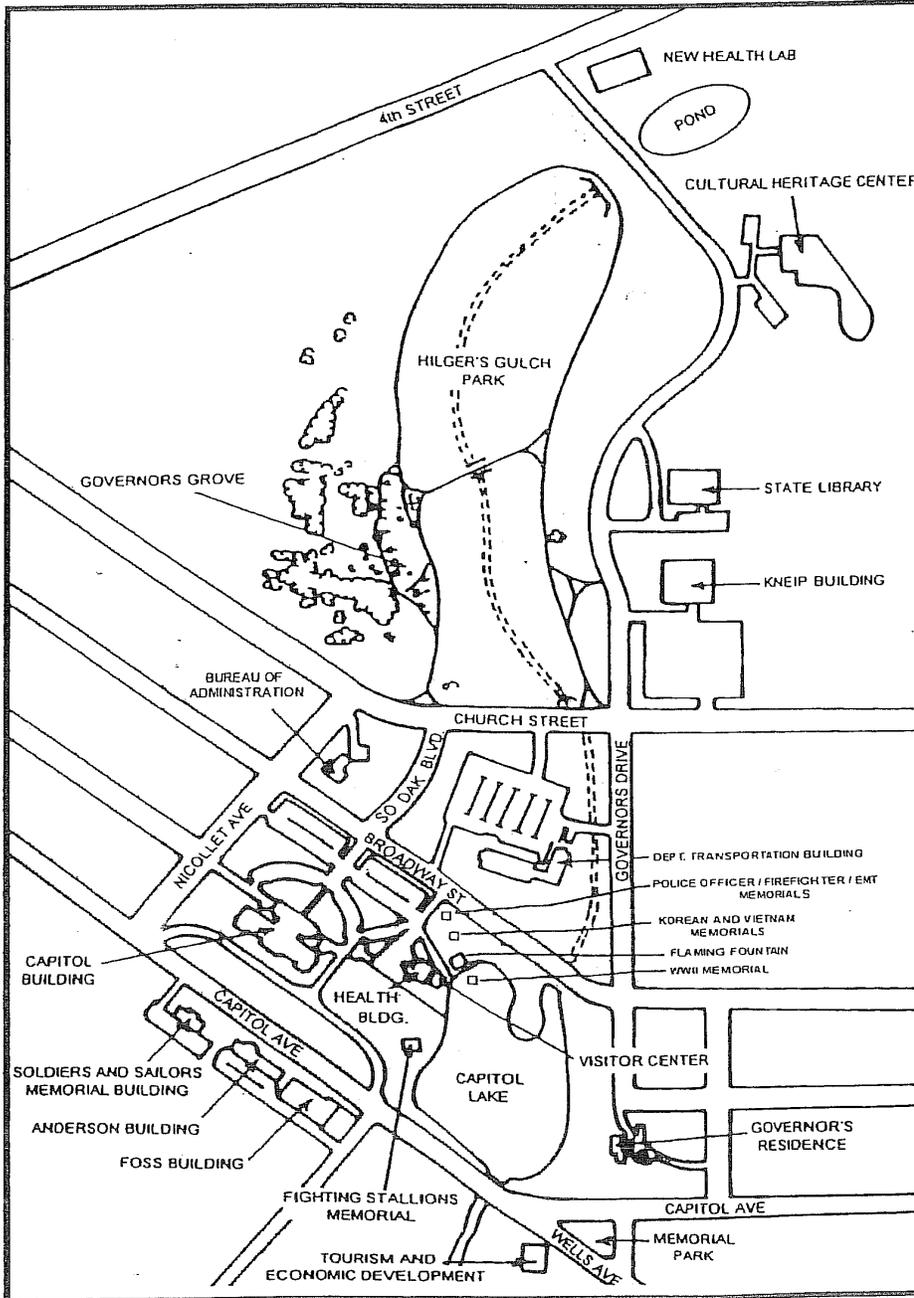
In 2002 a project to enhance Capitol Lake was undertaken. The peninsula area contains a walking path surrounded by flowers, benches, perennials, bushes, and centered by a fountain that uses recirculating city water. An arbor is located at the far end of the circle. The lighting used corresponds with that used on the Capitol grounds. The area is a destination for visitors and for local citizens.

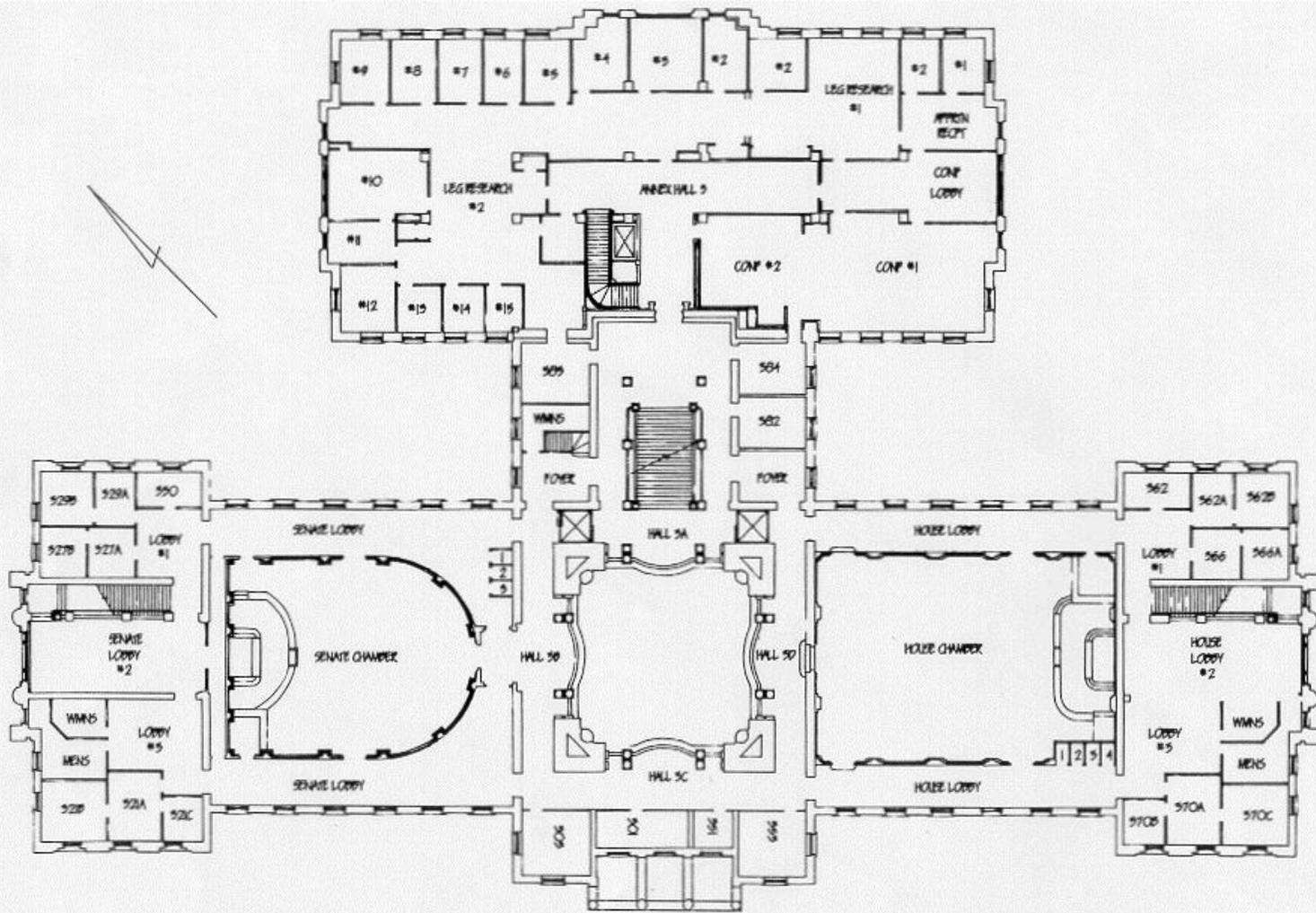
A Korean War Memorial was installed on the Capitol grounds and dedicated in September 2004.

In September 2006, Governor M. Michael Rounds held a Vietnam War Memorial celebration. The formal program on the Capitol grounds included the dedication of a life-size statute honoring the men who served in the war. The “Traveling Wall of Fallen Soldiers” was placed for public viewing in Hilger’s Gulch Park. Over 40,000 people attended the event; including Vietnam War disc jockey, Adrian Cronauer.

APPENDIX VI

The South Dakota Capitol Complex

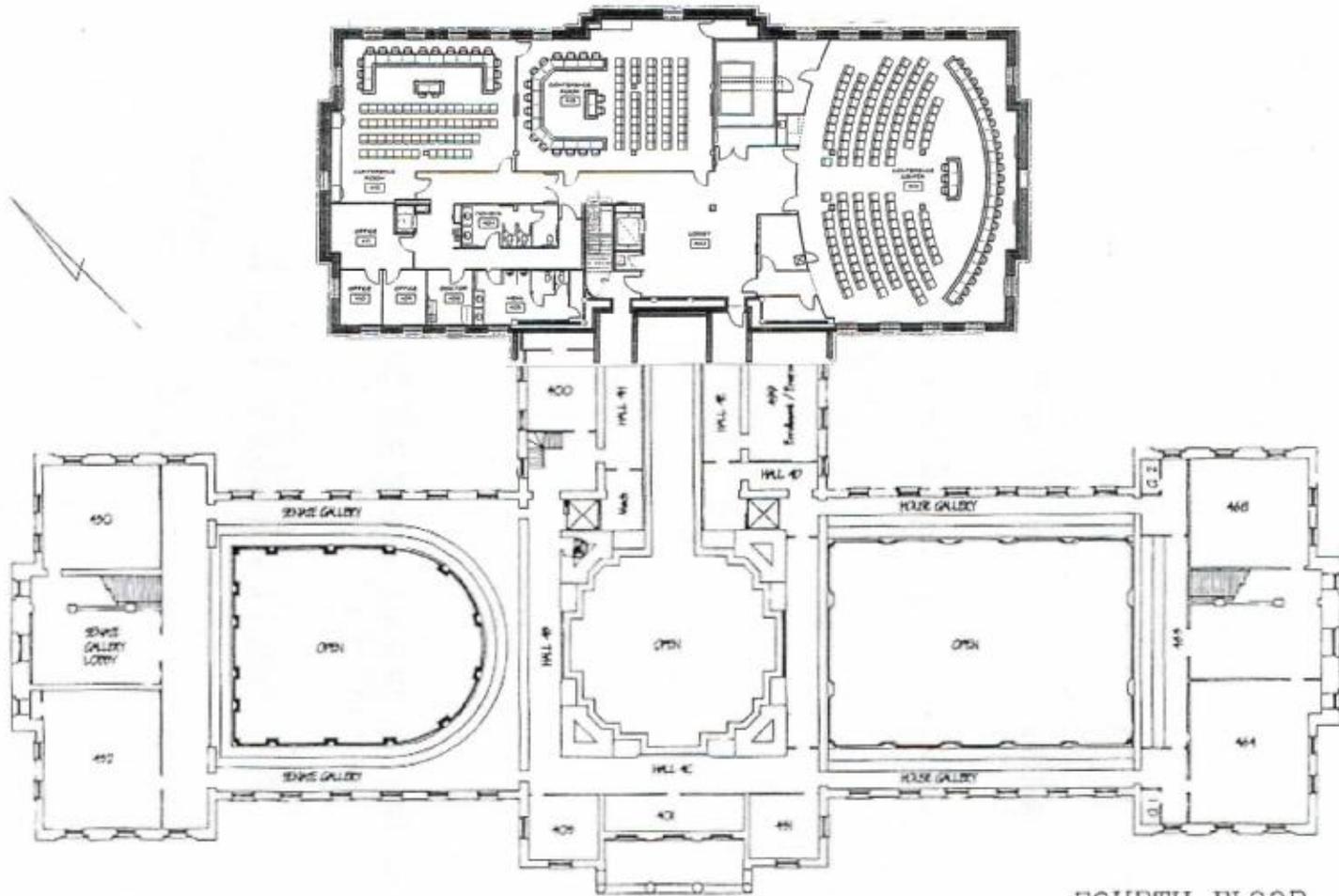




THIRD FLOOR

SOUTH DAKOTA

STATE CAPITOL



FOURTH FLOOR

SOUTH DAKOTA

STATE CAPITOL

APPENDIX VII

POLITICAL CONTROL OF S.D. GOVERNORSHIP & LEGISLATURE (1903-2009)

YEAR	GOVERNOR			SENATE			HOUSE		
	REP.	DEM.		REP.	DEM.	Others	REP.	DEM.	Others
1903	x			41	3	1	76	6	5
1905	x			41	2	2	87	2	
1907	x			38	7		80	9	
1909	x			39	6		95	9	
1911	x			33	11	1	99	4	1
1913	x			33	11	1	88	14	1
1915	x			35	10		85	18	
1917	x			35	10		91	12	
1919	x			43	2		90	10	3
1921	x			44	1		94	4	5
1923	x			34	9	2	84	10	9
1925	x			34	10	1	85	11	7
1927		x		29	16		81	21	1
1929		x		33	12		83	20	
1931	x			31	14		79	24	
1933		x		16	29		33	70	
1935		x		14	31		40	63	
1937	x			22	23		66	37	
1939	x			30	5		62	13	
1941	x			31	4		65	10	
1943	x			31	4		69	6	
1945	x			35	0		72	3	
1947	x			35	0		71	4	
1949	x			27	8		64	11	
1951	x			29	6		66	9	
1953	x			35	0		73	2	
1955	x			29	6		57	18	
1957	x			18	17		48	27	
1959		x		15	20		43	32	
1961	x			23	12		57	18	
1963	x			26	9		58	17	
1965	x			18	16	1	45	30	
1967	x			29	6		64	11	
1969	x			27	8		59	16	
1971		x		24	11		46	29	
1973		x		17	18		35	35	
1975		x		16	19		37	33	
1977		x		24	11		48	22	
1979	x			24	11		48	22	
1981	x			25	10		49	21	
1983	x			26	9		54	16	
1985	x			25	10		57	13	
1987	x			24	11		48	22	
1988*	x			25	10		48	22	
1989	x			20	15		46	24	
1991	x			18	17		45	25	
1993**	x			15	20		42	28	
1995	x			19	16		46	24	
1997	x			22	13		48	22	
1999	x			22	13		51	19	
2001	x			24	11		50	20	
2003***	x			25	10		49	21	
2005	x			25	10		51	19	
2007****	x			19	15	1	50	20	
2009	x			21	14		46	24	
2011	x			30	5		50	19	1

* David Lautsen (D-Aberdeen) resigned from the Senate; Governor George S. Mickelson appointed William R. Taylor (R-Aberdeen) to fill the vacancy.

** Lt. Gov. Walter D. Miller (R) succeeded to office of Governor due to the death of Governor George S. Mickelson on April 19, 1993.

*** Richard "Dick" Hagen (D) elected posthumously. Governor M. Michael Rounds appointed Michael LaPointe (R) to fill the vacancy.

**** Alan Hanks (R-Rapid City) resigned from the House; Governor M. Michael Rounds appointed Brain Gosch (R-Rapid City) to fill the vacancy.

Chapter 2 LEGISLATIVE SERVICES

Legislative Research Council

The South Dakota Legislative Research Council was established by action of the 1951 Legislature. The legislative research movement began in Kansas in 1933. Currently every state has established some type of legislative service operation.

By statute, the LRC consists of all members of the Legislature. It is the function of the council to consider legislative policies between sessions. The council is directed by a fifteen-member executive board, consisting of eight representatives and seven senators who are elected by their respective houses. Informally, the caucuses select members for the executive board so that each party is represented. The executive board assigns subjects for review to the various standing committees for detailed analysis of major policy issues. The interim committees report the results of their studies, including any recommendations for legislative action. In addition to committee staffing, the LRC staff provides continuing research and fiscal services to individual legislators, including technical assistance in drafting legislation. **(A list of the LRC staff and their areas of expertise in bill drafting can be found later in this chapter followed by the LRC fiscal staff assignments and a listing of employees and an organizational chart for the LRC.)**

The Legislative Research Council Library is the primary repository for South Dakota legislative documents. All bills, journals, committee minutes, and other legislative documents are housed there. The recent materials are available in hard copy, and older legislative documents are available on microfilm and microfiche. The library also contains a variety of reference materials and research documents. More importantly, the Legislative Librarian is readily available to gather information from other sources, including the South Dakota State Library Network, the National Conference of State Legislatures (NCSL), and the Council of State Governments (CSG). The librarian can also quickly retrieve legislation and information from other states. The library is open to the public during regular business hours. It has a conference table that legislators may reserve for gatherings of up to eight people.

The South Dakota Legislature is a member of the Council of State Governments (which includes the Midwestern Legislative Conference) and the National Conference of State Legislatures. These organizations do issue research on a national and regional basis. In addition, they sponsor various training seminars throughout the year. The state of South Dakota is also a member of the Education Commission of the States (ECS) and the Uniform Laws Commission (ULC). The South Dakota Legislature's home page (<http://legis.state.sd.us>) contains links to these organizations' Web sites. A listing of mailing addresses, telephone numbers, fax numbers, and Internet addresses is provided toward the end of this chapter.

Legislative Audit

Another function of the legislative branch of state government is administered through the Department of Legislative Audit (DLA). The department is headed by the Auditor General, who must be an experienced public accountant. The Auditor General is appointed for an eight-year

term by concurrent resolution adopted by both houses of the Legislature. The LRC Executive Board directs the Auditor General's activities. The current Auditor General is Martin L. Guindon.

The department is charged with the post-auditing of state and local governmental agencies. Post-audit is the final review or examination of completed state and local financial transactions. It is undertaken to assure that revenues have been collected in compliance with statute, that funds have been spent within the scope of the legislative intent and sound fiscal practice, and that the assets of the state and local governments are safeguarded and utilized properly. The purpose of this service is to provide the Legislature with formal, objective information on revenues that have been collected and funds that have been expended, and to provide a basis for legislative action to improve the fiscal structure and transactions of the state. Visit the DLA Web site: <http://www.state.sd.us/legislativeaudit/home.htm>.

Legislative Intern and Page Programs

Each year a maximum of twenty-two college student interns are selected to work during the session for the two houses of the Legislature. The student interns are chosen and assigned by the leadership of the two political parties. The program is administered by the LRC. Any college student may apply to be an intern. Preference is given to students in their junior and senior years. In addition, several high school seniors are selected to serve as pages during each legislative session. Pages serve for appointed terms and run errands, assemble documents for legislators, answer phones, and attend committee meetings.

Lobbyists

All lobbyists are required by South Dakota law to register with the Secretary of State. Many representatives of organized groups are present during the legislative session to protect the interests of their organizations. They are employed to present their opinions to the legislators and to track legislation affecting their interests. The term "lobbyist" has an unfavorable connotation to many, but often lobbyists are useful sources of information for legislators. Lobbying can be described as the constitutional right of petition by citizens to their Legislature, on an organized basis. The Secretary of State maintains a legislative docket which contains the names of all persons who are registered as lobbyists during the session, and this docket is open to the inspection of any citizen at any time during the regular business hours of the Secretary of State. The law relating to lobbyists is contained in SDCL 2-12. Information on registering to become a lobbyist and a link to the listing of all registered lobbyists is available at the Secretary of State's home page on the Internet: <http://sdsos.gov>; click on "Lobbyist Registration" under Administrative Services.

The rules of the House and Senate prohibit lobbyists from being on the floors of the chambers for three hours before the opening of the daily session and one hour following the close of session.

Mailing and Postal Service

Postal facilities for receiving and sending legislative mail are provided in Room 353, located between the Senate and House chambers on the third floor of the Capitol. No mailing or postage allowance is provided for members of the Legislature. Legislators may purchase stamps at this office, however.

Office Supplies

During the legislative session office supplies and legislative stationery may be secured by making a request to the Chief Documents Clerk (located in the Room 353). Pages frequently deliver supplies directly to a legislator's desk.

Each legislator has a desk on the floor of the chamber. Personal possessions may be stored in this desk; however, approximately two weeks after the close of each session all desks are emptied, since the chambers are sometimes used for public meetings during the year. If a member wishes to retain any of the items left in the desk, he should take them home after session or make arrangements with LRC for storage.

Parking

During the legislative session, a parking lot located on the north side of the Capitol Building is reserved for legislative parking. Each legislator will receive one hangtag. Each tag has a unique number. This hangtag authorizes parking in the area reserved for legislators. Capitol Security ensures that only vehicles bearing this hangtag are parked in the lot. Unauthorized vehicles will be ticketed.

Legislators are also issued two parking stickers. The stickers DO NOT authorize parking in the reserved area; only the hangtag authorizes parking in the area reserved for legislators.

The Press

Legislative news is covered by the wire services, individual newspapers, and radio and television stations. South Dakota Public Television (SDPTV) also televises a number of committee meetings and floor sessions. (As noted in Chapter 1, South Dakota Public Broadcasting webcasts floor proceedings and standing committee meetings.) Both chambers of the Legislature provide special areas for members of the press.

Computer Technology and Connectivity

South Dakota Legislators are among the best connected in the nation. Each member receives a state-of-the-art notebook computer with standard office software such as word processing, e-mail, and spreadsheet tools. Just as importantly, that notebook is equipped to connect to a wireless network deployed throughout the legislative area of the Capitol. That connection lets legislators send and receive e-mail, check bill and statute information, and print documents no matter where on third or fourth floor they may be. To ensure that every legislator can make full use of the tools and services available with this technology, we offer training for everyone. Our computer support specialists will organize classes and small group sessions to explain the basics. At any time, a legislator can schedule a time to cover topics of particular interest to the legislator or receive a refresher course on topics covered previously. It is recommended that legislators schedule sessions with computer support early in the legislative session so that the use of computer services can be fully understood and utilized from the very beginning. Early preparation can be an advantage when time becomes more of an issue later in the session. (See also **Chapter 19**.)

Legislative Web Site

In a fast-paced legislative session, it is an advantage to have services and information readily available. Your Legislative Web site can put almost all session information on your desktop (or on your notebook in this case) for easy reference. The Web site is designed to be a focal point for the legislative process. One can quickly find bill drafts and the status of bills, the language of existing statutes, and information on committee and floor schedules. Legislators can also create a personal tracking system that lets them include bills of interest to them on an alert system. Any change made to a monitored bill or any time that bill is scheduled for action, an e-mail message will be sent to alert the legislator. A legislator can also listen to committee or floor debate when he or she cannot be in the committee room or on the floor. South Dakota Public Television webcasts audio of committee and floor activity through the Legislative Web site so legislators can remain involved even when legislative business requires their presence elsewhere. Legislators can remain in touch with any number of legislative activities or use the power of their notebook computers to be productive no matter where their responsibilities take them. (See also **Chapter 19**.)

Telephones

During the legislative session, telephone service is provided for legislators in telephone booths immediately outside each chamber. Each legislator is provided a key to access these booths.

Out-of-state long-distance calls should be made on Legislative Research Council office phones. Also, each legislator is issued a seven-digit user code for use during session to place in-state long-distance calls from any legislative telephone in the Capitol complex. Instructions for using the state's telephone system are provided on the back of the user code card provided to each legislator.

How to Use the South Dakota Code

History

In 1866, the Dakota Territory was the first government in the United States to enact a comprehensive civil code of laws, other than Louisiana that inherited the Code Napoleon from France. Before that time the common law was used, which was expressed in court decisions and miscellaneous legislative enactments. The territorial legislature adopted the "Field Code," which was written by a New York code commission under the direction of Mr. Justice Field but never adopted in that state.

The code reduced into written and systematic order, not only the rules and decisions of the common law on the subjects embraced, but also, to the same extent, the whole body of the law, whether denominated as written or unwritten, tribunal or statutory. The use of a written code allowed the Legislature to modify or supersede the common law without going through the court system.

The original code was soon made obsolete by the passage of new material and the amendment and repeal of material previously included. To that end, additional codes were published from time to time. However there were no cumulative supplements which incorporated new legislative enactments into the existing codes. Legal researchers had to go through all the Session Laws printed since the enactment of the last code to make sure their research was up-to-date.

The South Dakota Compiled Laws of 1967 (actually published in 1968) was the first South Dakota code to provide a yearly cumulative pocket supplement so all the law could be found in one place. In 1974, the name was shortened to the *South Dakota Compiled Laws*. In 1976, the name was changed to the *South Dakota Codified Laws* to reflect the fact that the publication was, in fact, a code and not a compilation.

The following is a list of codes and compilations of the Dakota Territory and the state:

The (Dakota Territory) Code of 1877
*Levissee's Code of 1883**
*Levissee's Code of 1885**
The Compiled Laws of 1887
*Grantham's Annotated South Dakota Statutes of 1889**
The Revised Codes of South Dakota (1903)
The Compiled Laws of South Dakota (1908)
The South Dakota Revised Code of 1919
*The Compiled Laws of South Dakota (1929)**
The South Dakota Code of 1939
The 1952 Supplement to the South Dakota Code of 1939
The 1960 Supplement to the South Dakota Code of 1939
The South Dakota Compiled Laws of 1967

* Unofficial Compilations

The South Dakota Compiled/Codified Laws was originally published by The Allen Smith Company of Indianapolis, Indiana, a law book publisher. In 1985, The Allen Smith Company was purchased by The Michie Company, a law book publisher located in Charlottesville, Virginia. Since then the Michie Company has been bought and sold several times, with Lexis/Nexis Publishing being the most recent parent company. The current code is published by Thomson West.

Contents

Bills and Resolutions

Most, but not all, of the code is derived from legislative acts and resolutions. Bills signed into law, or approved without the Governor's signature, are divided into individual sections, which are then arranged according to subject matter. Each section is given a catchline or lead line that outlines its contents.

Joint Resolutions, which contain constitutional amendments or laws that must be voted on by the electorate before becoming law, are printed in the code, but they are not given section numbers until they have been approved by the electorate.

Supreme Court Rules

The Supreme Court has the constitutional authority to adopt rules governing the practice and procedure in state courts, the administration and terms of state courts, and the admission to practice and the discipline of attorneys. These rules are placed in the code in the same manner as legislative enactments. They may be amended or repealed by the Legislature. The Supreme Court may also amend or repeal statutes passed by the Legislature in these subject areas.

Executive Orders

The Governor has the constitutional authority to reorganize the executive agencies by combining or splitting existing agencies or creating new departments of government. The power does not extend to the legislative or judicial branches or to the constitutional offices, such as the Attorney General or Secretary of State.

These changes must be defined by Executive Orders that are presented to the Legislature on or before the fifth day of each legislative session. If either house disapproves an executive order anytime during the remainder of that session, the Executive Order is void. If not disapproved, changes outlined by Executive Orders are then incorporated into the code. Executive Orders may be superseded by subsequent legislation.

During the remainder of the year the Governor may establish special commissions, declare holidays, implement federal programs, or perform any other function that he has the constitutional or statutory authority to perform. These are usually done by issuing Executive Orders. These orders may not be disapproved by the Legislature, because the Governor is exercising powers already delegated to him. However, the Legislature may limit the Governor's authority to issue future Executive Orders by passing a statute or proposing a constitutional amendment.

Interstate Compacts

Interstate compacts are agreements between states to act together to perform some function. They are passed as bills and go through the same procedure as other bills. They are printed in the code the same as other legislation and may be repealed or amended in the same manner as other legislation. However, some compacts require a waiting period before a state may withdraw from them. Some also require permission from the other compact members before a compact may be amended.

Examples of interstate compacts include: The Multistate Tax Compact, The Interstate Library Compact, The Interstate Compact to Conserve Oil and Gas, and The Belle Fourche River Compact.

Annotations

Besides the basic statutes, the code also contains additional material to aid in its use. A **source note**, printed after each section, gives the Session Law chapter and section number that shows where that section originated and each time it was amended. The source note also gives a citation number if that section was printed in the 1939 code. These allow the user to trace the history of the section to see how and when it was amended.

If a statute was copied from another state or from a uniform law, the **section number** of the other code is listed. This enables the user to see if there were court cases in other jurisdictions interpreting the section.

Case notes follow each section that has been interpreted by the South Dakota Supreme Court or the federal courts. The case note summarizes the part of the case involving that particular section. In 1997, the Code Commission decided to delete case notes over seven years old from the code. However, this decision has been reversed. Whenever a Supreme Court decision interprets a section of law, the case will be cited.

Attorneys' General opinions are also cited under the appropriate sections. Additional information includes **cross-references** to other statutes that affect the statute in question, ***South Dakota Law Review* articles** published by the law school at the University of South Dakota, and references to the **West key-number system of law digests**. Also included are references to the legal encyclopedias, ***American Jurisprudence***, ***Corpus Juris Secundum*** and ***American Law Reports***.

The following example is a composite of several statutes that shows all of the types of annotated material that is used in the code.

<i>Section Number</i>	§ 15-9-1.
<i>Catch Line</i>	Security for costs required of nonresident plaintiff.
<i>Statute Text</i>	In cases in which the plaintiff is a nonresident of the state or a foreign corporation or a foreign limited liability company at the time of commencing the action or if the plaintiff removes from the state after its commencement, the plaintiff shall furnish sufficient security for costs.
<i>Source Note</i>	Source: SDC 1939 & Supp 1960, § 33.1820; SL 1994, ch 351, § 36.
<i>Other State's Code</i>	See Cal Code Civ Proc, § 1036.
<i>Amendment Note</i>	Amendments. The 1994 amendment, near the middle of the section, inserted "or a foreign limited liability company" following "corporation," substituted "if the plaintiff" for "where he" preceding "removes," and substituted "the plaintiff shall" for "he must" preceding "furnish."
<i>Cross-References to SDCL</i>	Cross-References. Costs allowed, Chapter 15-17. Undertaking for costs or deposit required on appeal to Supreme Court, §§ 15-26A-23, 15-26A-24.
<i>Collateral References</i>	Collateral References.
<i>West's Key System</i>	Costs ● 110.
<i>Legal Encyclopedias</i>	20 Am Jur 2d, Costs, §§ 38, 39. 20 CJS, Costs, § 128. Joinder or addition of resident, nonresident's duty to furnish security for costs as affected by, 158 ALR 737.
<i>American Law Reports</i>	Security for costs, what is an action within statutes requiring, 131 ALR 1476. Statute regarding security for costs as mandatory or permitting exercise of discretion, 84 ALR 252. Waiver of statute or court rule requiring nonresident plaintiff to give security for costs, 8 ALR 1510.

Excluded Material

The code contains only statutes of a continuing and general nature. Temporary programs and commissions, transitional provisions and instructions to the code commission are not included. Appropriations, since they are usually effective for only one year, are also excluded. However, all the excluded material is printed in the Session Laws.

Arrangement of Subjects and Numbering System

The code is broken into 70 major subjects that are called titles.

South Dakota Codified Laws

Title	Title
1. State Affairs and Government	30. Probate and Guardianship Procedure [Repealed and Transferred]
2. Legislature and Statutes	31. Highways and Bridges
3. Public Officers and Employees	32. Motor Vehicles
4. Public Fiscal Administration	33. Military Affairs
5. Public Property, Purchases and Contracts	34. Public Health and Safety
6. Local Government Generally	34A. Environmental Protection
7. Counties	35. Alcoholic Beverages
8. Townships	36. Professions and Occupations
9. Municipal Government	37. Trade Regulation
10. Taxation	38. Agriculture and Horticulture
11. Planning, Zoning and Housing Programs	39. Food and Drugs
12. Elections	40. Animals and Livestock
13. Education	41. Game, Fish, Parks and Forestry
14. Libraries	42. Recreation and Sports
15. Civil Procedure	43. Property
16. Courts and Judiciary	44. Liens
17. Notice and Publication	45. Mining, Oil and Gas
18. Oaths and Acknowledgments	46. Water Rights
19. Evidence	46A. Water Management
20. Personal Rights and Obligations	47. Corporations
21. Judicial Remedies	48. Partnerships
22. Crimes	49. Public Utilities and Carriers
23. Law Enforcement	50. Aviation
23A. Criminal Procedure	51. Banks and Banking [Transferred]
24. Penal Institutions, Probation and Parole	51A. Banks and Banking
25. Domestic Relations	52. Savings and Loan Associations
26. Minors	53. Contracts
27. Mentally Ill and Retarded Persons [Transferred]	54. Debtor and Creditor
27A. Mentally Ill Persons	55. Fiduciaries and Trusts
27B. Developmentally Disabled Persons	56. Guaranty, Suretyship and Indemnity
28. Public Welfare and Assistance	57. Commercial Code [Transferred]
29. Succession and Wills [Repealed]	57A. Uniform Commercial Code
29A. Uniform Probate Code	58. Insurance
	59. Agency
	60. Labor and Employment
	61. Unemployment Compensation
	62. Workers' Compensation

*

In addition, Volume 1 contains the Magna Carta, Declaration of Independence, Articles of Confederation, Indian Treaties, Organic Law, Enabling Act and the state and federal constitutions.

Each title is broken into chapters and each chapter is broken into sections. The numbering system reflects this breakdown. It is a series of three numbers separated by hyphens, such as 1-6-8. The first number is the title. In this illustration, the name of title 1 is "State Affairs and Government." The first two numbers are the chapter numbers. Chapter 1-6 is named "State Emblems." All three numbers are the section numbers. The catchline of section 1-6-8 is entitled

"State animal." The text of § 1-6-8 is "The coyote is hereby designated as the state animal of South Dakota."

At the beginning of each title, the chapters within that title are listed, as follows:

TITLE 2	
LEGISLATURE AND STATUTES	
Chapter	Section
2-1.	INITIATIVE AND REFERENDUM..... 2-1-1
2-2.	LEGISLATIVE DISTRICTS..... 2-2-1
2-3.	EMERGENCY INTERIM LEGISLATIVE SUCCESSION [REPEALED].
2-4.	SESSIONS OF LEGISLATURE..... 2-4-1
2-5.	LEGISLATIVE OFFICERS AND EMPLOYEES..... 2-5-1
2-6.	LEGISLATIVE COMMITTEES AND INVESTIGATIONS..... 2-6-1
2-7.	LEGISLATIVE PRINTING, RECORDS AND JOURNALS..... 2-7-1
2-8.	LEGISLATIVE FISCAL NOTES [REPEALED].
2-9.	LEGISLATIVE RESEARCH COUNCIL..... 2-9-1
2-10.	REVISOR OF STATUTES [REPEALED].
2-11.	COMMISSION ON UNIFORM LEGISLATION..... 2-11-1
2-12.	LOBBYISTS..... 2-12-1
2-13.	PUBLICATION AND DISTRIBUTION OF ACTS AND SESSION LAWS..... 2-13-1
2-14.	CONSTRUCTION AND EFFECT OF STATUTES..... 2-14-1
2-15.	CONVENTIONS FOR AMENDMENT OF UNITED STATES CONSTITUTION..... 2-15-1
2-16.	CODES AND COMPILATIONS..... 2-16-1
2-17.	CONSTITUTIONAL REVISION COMMISSION [OBSOLETE].

At the beginning of each chapter, the section catchlines are listed, as follows:

CHAPTER 2-4	
SESSIONS OF LEGISLATURE	
Section	
2-4-1.	Time and place of regular sessions.
2-4-1.1.	Leave of absence from employment for legislative service—Restrictions on employee's right to serve in Legislature void.
2-4-2.	Salary and expense allowances of legislators.
2-4-2.1.	Items constituting uncompensated expenses of legislators.
2-4-2.2.	Salary or per diem for members of the Legislature serving on committees.
2-4-3.	Superseded.
2-4-3.1.	Per diem of lieutenant governor for duties as board member.
2-4-4.	Time of payment of salaries and allowances.
2-4-5.	Repealed.
2-4-6.	Preventing Legislature or members from meeting as felony.
2-4-7.	Preventing legislator from attending or voting as misdemeanor.
2-4-8.	Compelling adjournment of Legislature as felony.
2-4-9.	Disturbance or disorderly conduct in Legislature as misdemeanor.
2-4-10.	Compelling action or inaction by Legislature as felony.
2-4-11, 2-4-12.	Repealed.
2-4-13.	Forfeiture of office by legislator convicted of violation—Disqualification from public office.
2-4-14.	Contempt of Legislature—Punishment.
2-4-15.	Contempt of Legislature as misdemeanor.

The numbering system is flexible so insertions can be made without disturbing the topical arrangement. If a new title should go between two existing titles, a letter is added to the title number. So, the new title 23A was inserted between the previous titles 23 and 24. The same arrangement is used for chapters. The new chapter 1-1A was inserted between the old chapters 1-1 and 1-2. Insertions between sections are made by adding a numerical suffix to section numbers. For example, when a new section was needed between sections 2-4-1 and 2-4-2, the new section was numbered 2-4-1.1.

Codification

A compilation is a collection of laws. A code is a collection of laws that has been enacted, or codified, by a legislative body. As noted above under "History," some of the previous "codes" were, in fact, compilations rather than codifications. A bill is introduced each year to reenact or "codify" the legislation passed at the previous session that was published in the current pocket supplements to the code.

Codification is done for two reasons: First, enacting the previous year's legislation as part of the code prevents lawsuits challenging the procedure followed for the enactment of that legislation. For example, the Constitution requires that the title of a bill reflect what is in its body. If for some reason, because of amendments or otherwise, the title did not reflect what was in the bill, the courts can, and have in the past, find that a bill is void because its enactment was unconstitutional. Once a statute is incorporated into the code, that type of lawsuit can no longer be entertained. This provides for certainty in the law, because it removes a cloud that might otherwise hang over previous legislation.

Second, by continually codifying the pocket supplements, it is no longer necessary to refer to previous Session Laws in bill titles. For example, the title to Senate Bill 173 in 1966 read: "An Act to amend section 15.3004 of the 1960 Supplement to the South Dakota Code of 1939, as amended by Chapter 77, Session Laws of 1961, Chapter 82, Session Laws of 1963, Chapter 44, Session Laws of 1964 and Chapter 53, Session Laws of 1965, relating to school privileges for exceptional children."

Construction and Effect of Statutes

Chapter 2-14 contains instructions on how statutes in the code are to be construed. For example, § 2-14-1 states "Words are to be understood in their ordinary sense except also that words defined or explained in § 2-14-2 are to be understood as thus defined or explained." Section 2-14-2 contains many definitions. For example, the word "day" means the period from midnight to midnight.

The remainder of the chapter contains instructions on how the code is to be interpreted. For example, masculine gender words include the feminine gender, singular words include the plural, and when a statute is amended twice by the same legislative session both amendments are to be given effect whenever possible.

Effective Dates

The constitution (Art III, § 22) provides that an act may not become effective until ninety days have passed from the adjournment of the session in which it was passed, unless the Legislature declares it to be an emergency and passes it by a two-thirds vote of each house.

To bring consistency to effective dates, § 2-14-16 was adopted. It says that unless another date is specified in an Act, all acts passed at a regular session become effective on the July 1 following the adjournment of that session. If a session lasts beyond April 1, the July 1 effective date must be moved back because the constitutional provision takes precedence over the statutory provision.

Some legislation is passed with a delayed effective date, usually to allow affected persons to prepare for the changes required by that legislation. When this happens, the statutes are printed with a note in the catchline that reads (Effective July 1, 1996). Occasionally the same section is amended several times with different effective dates. In that case, the different versions of the statute are all printed, and each version is preceded with a note such as: (Effective through June 30, 1998) on the first version, (Effective July 1, 1998 through June 30, 1999) on the second version, and (Effective July 1, 2000) on the third.

The Indexes

The general index to the code is republished every year in two softbound books, so it is always current. It is a topical index, not a random word index. Random entries in an index to statutes are misleading since they result in split or partial treatment. A systematic arrangement of main topical headings avoids this split treatment. Main headings treat subject matter exhaustively unless cross-references are made to other headings. Cross-references keep the index to a manageable size by reducing the amount of repetition under different headings.

Main headings were derived from the language used in the code, from the phraseology commonly used in the courts of South Dakota and from terminology commonly used in the legal profession. In addition phrases commonly applied to code sections have been added, such as frequently used nonlegal terms.

One of the most useful listings is the heading WORDS AND PHRASES. If a user wants to know if the word "contract" is defined, the index will show that the general definition is in § 53-1-1, but additional definitions are included in the chapters regulating buying clubs, discrimination in insurance, business and commerce, etc.

WORDS AND PHRASES

Contracts, 53-1-1
Agricultural machinery and equipment,
37-5-5
Business and commerce, 57A-1-201
Buying clubs, 37-26-1
Electronic transactions, 53-12-1
Franchises, 37-5-12.3
Insurance, discrimination, 58-33-13.2
Loans, licenses and permits, 54-4-36
Prompt payment, 5-26-1

Parallel Tables

There is a separate volume of the code entitled "Parallel Tables." This contains cross-references between the 1919 Code, the 1939 Code and its supplements, and the Session Laws to the *South Dakota Codified Laws*. This allows a user with only a reference to one of the previous codes or to a Session Law citation to locate that provision in the *South Dakota Codified Laws*.

Session Laws of 1998		
Ch.	Sec.	SDCL
1	1	Omitted; see note following § 92-4-2
2	2	Omitted; see note following § 92-8-15
3	1	Omitted; see note following § 92-8
	2	Omitted; see note following § 92-8-2
	3	Omitted; see note following § 92-8-3
	4	Omitted; see note following § 92-8-7
	5	Omitted; see note following § 92-8-11
	6	Omitted; see note following § 92-8-13
4	1	1-1-2.5
5	1	1-5-11
6	1	1-5-10

Copyright

Although legislative acts themselves are in the public domain and cannot be copyrighted, the added catchlines, reference sources, and the arrangement of material in the code are copyrighted by the State of South Dakota. The copyright was required by statute when the current code was authorized in 1966 to prevent persons from printing their own version of the official code. This had been a problem in prior years because the accuracy of private printings could not be guaranteed. Private persons may still publish their own codes if they provide their own editorial work.

Use the PC to Find the Law

The entire text of the code, the federal and state constitutions, and the administrative rules are stored on the Legislative Research Council's computer server. These databases are used to print the code, bills, and the Session Laws. They can also be searched for particular words and phrases.

The law is on the WEB! You can use the Legislature's WEB Page to find, read and copy sections of the Constitution, statutes or administrative rules. Go to the Legislature's WEB Page at <http://legis.state.sd.us> and click on the South Dakota Codified Laws icon or the Administrative Rules icon. You'll see a menu that lets you choose the way you want to find the law. If you already know the statutory cite, you can use Quick Find. If you have an idea about what words or phrases may appear in a statute, you can enlist the aid of the Text Search

capability. Once you find what you need, you can read it, copy it to your word processor or print it. Whenever you have access to the Web, you also have access to the law.

Code Commission

The South Dakota Code Commission is the body charged with publishing material passed by the Legislature. The commission is composed of five members--a Senator appointed by the majority leader, a Representative appointed by the speaker, a member appointed by the Executive Board of the Legislative Research Council, and two members of the State Bar appointed by the president of the State Bar.

The editorial duties of the commission are contained in statute:

2-16-9. Arrangement, correlation and text changes in code. The South Dakota code commission is hereby authorized to make such changes as may be necessary to correct apparent errors, to correlate and integrate all the laws to harmonize, to assign new title and other designations, to eliminate or clarify obviously obsolete or ambiguous sections that exist, and to substitute terms or phraseology, and names of boards, commissions and agencies, wherever the Legislature has expressly or by implication indicated an intention to do so, so as to provide consistency in the law.

Other Publications

South Dakota Law on CD-ROM

The statutes are available on CD-ROM. The disc contains everything printed in the bound volumes of the *South Dakota Codified Laws*, along with the complete text of the *Administrative Rules of South Dakota* and South Dakota Supreme Court Opinions.

Session Laws

The *Session Laws* contain all the bills and joint resolutions approved at each session, all Supreme Court Rules adopted since the last Session Laws were published, and the Governor's Executive Orders that effect the reorganization of state agencies. The bills and resolutions, rules, and orders are printed exactly as enacted, including spelling and grammatical errors except that, to help people doing legal research, overstrikes and underscores are retained to show exactly how each section was amended. Individual bills and resolutions are arranged according to the subject order of the *South Dakota Codified Laws*.

Administrative Rules of South Dakota

Administrative rules of executive branch agencies and constitutional officers are published by the Legislative Research Council in the *Administrative Rules of South Dakota*.

In 1972, the Legislature passed the Administrative Procedures Act (SDCL 1-26) which provided a procedure for adopting administrative rules, created the Interim Rules Review Committee to review all administrative rules, and required the publishing of all current rules. Before that time rules could be adopted by merely filing them with the Secretary of State. Most agencies did not publish their rules, and many did not even know which rules were currently in effect.

The *Administrative Rules of South Dakota* is divided into thirty-one titles. The rules of each department are contained in separate titles. The titles are broken into 298 articles by major activity. So, for example, the Department of Revenue and Regulation is title 20. The rules of

the Insurance Division in that department are in article 20:06. Each article is broken into chapters and sections in much the same manner as the code is broken into chapters and sections. The hierarchy is as follows:

Title 1.
Article 1:23.
Chapter 1:23:45.
Section 1:23:45:67.

Chapters and sections may be inserted between existing numbers by using decimal points. So, if a new chapter were inserted between chapter 1:23:45 and 1:23:46, it would be numbered chapter 1:23:45.01. If a section is inserted between section 1:23:45:67 and section 1:23:45:68, it would be numbered section 1:23:45:67.01.

Administrative agencies can only adopt rules authorized by the Legislature. Each rule must cite the statute that authorized the rule and the statutes that are implemented by the rule. If the Legislature repeals a statute that authorizes rules, all rules passed pursuant to that statute become void.

South Dakota Register

The *South Dakota Register* is a weekly newsletter that contains notices of hearings on proposed rules and proposed amendments of rules; synopses and effective dates of adopted rules, executive orders, executive appointments, and Supreme Court rules; and a list of pending public hearings. The publication is designed to keep interested persons informed of changes in administrative rules.

Definitions

Administrative Rules of South Dakota (ARSD)

The ARSD is a compilation of the rules and regulations of the executive branch and the constitutional officers. It is printed on 8 ½ x 11 inch paper with three punch holes so the pages fit into standard three-ring binders. It is continually updated.

Code Commission

The Code Commission has the duty to provide for, and supervise, the publishing of the code. It also adopts guidelines for the editorial work in this publication and decides which volumes of the code will be reprinted each year.

Code Counsel

The Code Counsel is appointed by the Legislative Research Council Executive Board. The Code Counsel's job is to carry out the editorial and printing instructions of the Code Commission.

Session Laws

The *Session Laws* is a one-volume, softbound book containing all the bills and joint resolutions passed by the Legislature each year. The publication also contains Supreme Court rules and certain of the Governor's Executive Orders. The laws passed at special sessions are included in the following year's *Session Laws*.

South Dakota Codified Laws (SDCL, The Code)

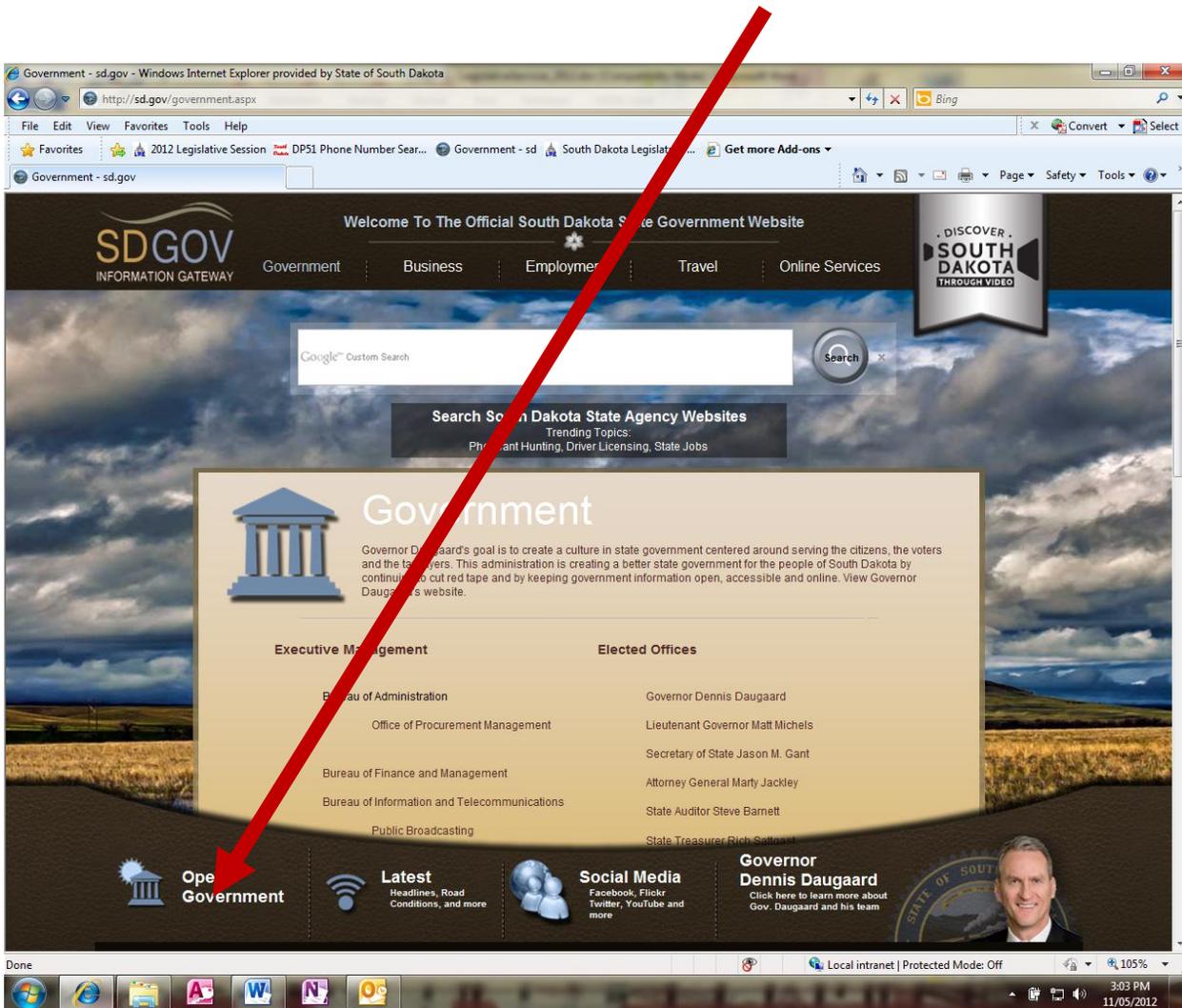
The *South Dakota Codified Laws* is the official code of the State of South Dakota. It is a set of 35 hardbound books with yearly pocket supplements and a yearly two-volume, softbound general index. References to "the code" in statute mean this publication. The books have brown covers, red and brown spines and gold printing on the covers and spines.

Technological Tools

On-Line State Telephone Directory

An on-line listing is available to anyone with Internet access. You can search for a phone number by name, agency, number, or office. Toll-free numbers and conference room numbers can also be searched. Agencies are responsible for updating their telephone directory information.

Go to the State's Home Page at <http://sd.gov/government.aspx> and click on Open Government. That will take you to the state telephone directory.



How to Search the On-Line Journals

It is easy to locate a particular bill in any given day's House or Senate Journal. Pressing "CNTRL" and "F" brings up the "Find" dialogue box. Type in the bill number, and the cursor goes to the first occurrence of that item in the Journal.

The screenshot shows a Microsoft Internet Explorer browser window displaying the website for the 79th Legislative Session Committees of the State of South Dakota. The address bar shows the URL: <http://legis.state.sd.us/sessions/2004/comm.htm>. The page features navigation tabs for Members, Calendars, Journals, Agendas, and Readers. On the left and right sides, there are vertical menus for Senate and House committees, including Agriculture & Natural Resources, Joint Appropriations, Appropriations, Commerce, Education, Government Operations & Audit, and Health & Human Resources. The main content area displays a list of journal entries with dates and times, and a detailed view of a journal entry for 01/27 at 02:00 PM. The entry text includes: "FOR AN ACT ENTITLED, An Act to revise the township inspection schedule for culverts on secondary highways. Was read the first time and referred to the Committee on Transportation. HB 1108 Introduced by: Representatives Rounds, Bartling, Begalka, Cutler, Gillespie, Hennies, Madsen, McCaulley, Murschel, Novstrup, Olson (Ryan), Rhoden, and Schafer and Senators de Hueck, Abdallah, and Kleven. FOR AN ACT ENTITLED, An Act to revise the definition of unlawful sexual contact. Was read the first time and referred to the Committee on Transportation. HB 1051 Introduced by: Representatives Peterson, Kroger, and Olson and Senators de Hueck, Abdallah, and Kleven. FOR AN ACT ENTITLED, An Act to use tax on the purchase of food as the revenue from the streamlined sales tax project increases and to exempt the sales and use tax on the purchase of food when the revenue from the streamlined sales tax project reaches a certain level. Was read the first time and referred to the Committee on Taxation. SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS Rep. Bill Peterson moved that HB 1051, 1012, 1013, and 1078 be deferred." A "Find" dialog box is open over the text, with "Find what:" set to "HB 1051" and "Direction" set to "Down".

Road Reports

<http://safetravelUSA.com/sd>

The Department of Transportation publishes the Winter Road Condition Report three times a day beginning early November through late March. After late March the Department provides intermittent reports only when a major storm causes poor road conditions over a major portion of the state. A statewide map is displayed at the Web site. Click on the area you are traveling through for winter driving conditions.

Staff for Research and Bill Drafting

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Administrative Rules & Regulations (Style & Form)	Doug Decker
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Insurance (General)	Amanda Reiss
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Insurance (Motor Vehicle)	David Ortbahn
Insurance (Unemployment Insurance)	Amanda Reiss
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SUBJECT AREA	STAFF
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Mining	Thomas Magedanz
Motor Vehicles	David Ortbahn
Natural Resources	Thomas Magedanz, Aaron Olson
Nuclear Waste	Thomas Magedanz
Nursing Homes	Sue Cichos, Amanda Reiss
Page Program	Phyllis Perkovich
Planning & Zoning	Fred Baatz, Thomas Magedanz
Probate	Reuben Bezpaletz
Professional Boards & Commissions	Sue Cichos, Amanda Reiss
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Railroads	David Ortbahn
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Retirement	Denice Houlette
Salary Policy (State Employees)	Annie Mehlhaff
School & Public Lands	Reuben Bezpaletz, Annie Mehlhaff
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State Affairs	David Ortbahn
Taxation (General)	Fred Baatz
Taxation (Income Tax)	Fred Baatz
Taxation (Estate Tax)	Fred Baatz, Reuben Bezpaletz
Taxation (Motor Vehicle Tax)	David Ortbahn
Taxation (Precious Metals Tax)	Fred Baatz
Taxation (Sales Tax Estimates)	Fred Schoenfeld
Taxation (Severed Mineral Interests)	Reuben Bezpaletz
Telecommunications	David Ortbahn, Fred Baatz
Transportation (Highways)	David Ortbahn, Aaron Olson
Tribal & State Relations	Reuben Bezpaletz, Thomas Magedanz
Water	Thomas Magedanz, Aaron Olson
Workers' Compensation	Reuben Bezpaletz

LEGISLATIVE LIBRARY: General information requests regarding the legislative history of a bill, laws of other states, or background research available for legislative use should be directed to Ms. Clare Charlson, Senior Research Analyst.

LRC Fiscal Staff Assignments

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Office of the State Auditor
Office of the Secretary of State
Legislative Department
Office of the State Treasurer
Bureau of Finance and Management
Office of Governor
Department of Tribal Relations

Annie Mehlhaff

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Department of Education (K-12)
Board of Regents (Higher Education)
Department of Labor and Regulation
Office of School and Public Lands
Unified Judicial System
Human Resources

Sue Cichos

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Department of Human Services
Department of Health
Bureau of Administration
Office of the Attorney General
Public Utilities Commission

Aaron Olson

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South Dakota Investment Council
Department of Environment and Natural Resources
Department of Agriculture
Department of Transportation
Bureau of Information and Telecommunications
Department of Revenue

Denice Houlette

Senate Appropriations Committee
Department of Corrections
Department of Public Safety
Office of Economic Development
Department of Military
Department of Veterans' Affairs
Department of Tourism
South Dakota Retirement System and
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as of November 15, 2012

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Bezpaletz, Reuben	Chief Analyst for Research & Legal Services
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Cichos, Sue	Senior Fiscal Analyst
Decker, Doug	Code Counsel
Fry, James	Director
Hiatt, Jesse	Programmer/Analyst
Houlette, Denice	Senior Fiscal Analyst
Huber, Carol	Finance Officer
Magedanz, Thomas	Principal Research Analyst
Mehlhaff, Annie	Principal Fiscal Analyst
Olson, Aaron	Senior Fiscal Analyst
Ortbahn, David	Principal Research Analyst
Pirnat, Marjorie	Senior Legislative Secretary
Purkapile, Rhonda	Supervisor of Text Editing Services
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Retrum, Teresa	Administrative Assistant
Schneider, Kris	Senior Legislative Secretary
Schoenfeld, Fred	Chief Fiscal Analyst
Tryon, Cindy	Legislative Secretary/Receptionist

Total: 21



Legislative Research Council

LEGISLATIVE RESEARCH COUNCIL
105 Members

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15 Members

DIRECTOR
James Fry

Staff Organizational Chart

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CHIEF ANALYST/RESEARCH & LEGAL SERVICES
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ADMINISTRATIVE ASSISTANT
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Amanda Reiss

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Cindy Tryon

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Jesse Hiatt

INFORMATION SYSTEM COORDINATOR
Lou Adamson

 Management/Technical Staff

Chapter 3 LEGISLATIVE RULES

Senate Rules

Table of Contents

- Chapter 1. Presiding Officer
- Chapter 2. Floor Privileges, Seating, And Meetings
- Chapter 3. Officers And Employees
- Chapter 4. Committees
- Chapter 5. Rules
- Chapter 6. Consent Calendar
- Chapter 7. Nominations From The Governor
- Chapter 8. Discipline And Expulsion Of Members

Chapter 1. Presiding Officer

Constitutional Provisions

Art. IV, Sec. 5. Powers and duties of lieutenant governor.

THE LIEUTENANT GOVERNOR SHALL BE PRESIDENT OF THE SENATE BUT SHALL HAVE NO VOTE UNLESS THE SENATORS BE EQUALLY DIVIDED.

Rules

S1-1. President pro tempore presides in absence of president. If the president is absent or unable to serve, the president pro tempore shall act as presiding officer of the Senate. The acts of the president pro tempore have the same validity as those of the president.

S1-2. Presiding officer in absence of president and president pro tempore. If the president and the president pro tempore are absent or unable to serve, any member called to the chair by the Senate may serve as presiding officer. When in session, the presiding officer, in the absence of the pro tempore, may designate any member to perform the duties of the presiding officer, but the designation may not extend beyond an adjournment. The acts of such a member have the same validity as those of the president.

Chapter 2. Floor Privileges, Seating, And Meetings

S2-1. Repealed.

S2-2. Seating assignments. The president pro tempore of the Senate, with the advice of the minority leader, shall make the seating assignments for the floor of the Senate.

S2-3. Hour of meeting. The hour of meeting of the Senate is 2:00 p.m. on each legislative day unless otherwise ordered by the Senate.

S2-4. Introduction of honored guests. Any Senator may, with the prior approval of the presiding officer, present honored guests for introduction on the floor of the chamber. Any honored guest should be a representative of some noteworthy event, charity, or benevolent organization or the recipient of some significant honor, title, or award and shall be briefly conducted onto the Senate floor from the legislators' side lobby. However, all such presentations may only occur during the first hour of business, and the honored guests may not address any remarks to the Senate. Introduction shall be made by the presiding officer or their designee.

Chapter 3. Officers and Employees

S3-1. Elective officers. The officers of the Senate are a president pro tempore of the Senate, a secretary of the Senate and such other officers necessary to conduct the business of the Senate, who shall be formally elected by a majority vote of the members-elect of the Senate. Employees necessary to conduct the business of the Senate shall be appointed by the president pro tempore and their appointment shall be announced at the opening of the session.

Chapter 4. Committees

S4-1. Standing committees. The presiding officer of the Senate shall announce the members of the following standing committees after their selection by the president pro tempore and the minority leader. The number of members is indicated after each committee:

1. Agriculture and Natural Resources (9)
2. Appropriations (7)
3. Commerce (7)
4. Education (7)
5. Government Operations and Audit (5)
6. Health and Human Services (7)
7. Judiciary (7)
8. Legislative Procedure (7)
9. Local Government (7)
10. Retirement Laws (5)
11. State Affairs (9)
12. Taxation (9)
13. Transportation (7)

The president of the Senate is an ex officio member of the committee on legislative procedure.

S4-2. Chairs of standing committees. The president pro tempore of the Senate shall serve as the chair of the legislative procedure committee. For other committees, the member of a committee announced first is the chair. In the absence of the chair, the member announced next shall act as chair, and so on as often as necessary.

S4-3. Referral of bills to committee. Upon the first reading of a bill, the president pro tempore of the Senate or his designee shall assign that bill to an appropriate committee for hearing.

Chapter 5. Rules

S5-1. Adoption, suspension, or amendment of rules. A motion to adopt the rules of the Senate shall be decided by a majority of the members-elect, subject to debate. A motion to suspend or amend a rule of the Senate shall be decided by a two-thirds majority of the members-elect, subject to debate.

S5-2. Proceedings governed by Mason's Manual. *Mason's Manual of Legislative Procedure* governs the proceedings of the Senate in all cases not covered by these rules or the Joint Rules.

S5-3. Conflicting rules. If the Senate rules and the Joint Rules conflict, the Senate rules govern.

Chapter 6. Consent Calendar

S6-1. Consent calendar. Notwithstanding Joint Rule 13-1, a bill requiring a two-thirds vote of the members-elect may not be voted on the Senate consent calendar. If such a bill is placed on the Senate consent calendar, the presiding officer shall order it removed and placed on the next legislative day's regular bill calendar.

S6-2. Approval of consent calendar is final disposition. Notwithstanding Joint Rule 13-4, after allowing a reasonable time for questions from the floor on the bills and resolutions on the consent calendar and after permitting the proponents to answer the questions, the president of the Senate shall call for a vote on the consent calendar. Approval of the consent calendar by a majority of the members-elect of the Senate is considered final disposition of all the bills and resolutions on the consent calendar.

Chapter 7. Nominations from the Governor

S7-1. Confirmation procedure. Nominations from the Governor shall be referred to a standing or select committee. A committee receiving such a referral shall conduct hearings on the fitness and qualifications of the nominee to serve in the post for which the nominee has been nominated. After the hearings and subsequent deliberations, the committee shall report to the full Senate its recommendation that the nomination should or should not receive the consent of the Senate. Following the committee report, action on the confirmation shall be set for a day certain on the legislative calendar. In committee and on the floor, consideration of the Governor's appointments that require Senate confirmation shall take place in open session unless otherwise ordered by a majority of the body present.

S7-2. Time for taking final action. Final action on nominations by the Governor may not be taken until the second legislative day after receiving the nomination. This rule does not apply to a nomination received during the three final legislative days.

S7-2.1. Uncontested nomination on consent calendar. Each standing committee may report an uncontested nomination out of committee with recommendation that it be placed on the consent calendar where it shall be subject to Joint Rules 13-2, 13-3, and 13-4.

S7-3. Motion of advice and consent. On considering nominations from the Governor, the presiding officer shall put the following question: "Does the Senate advise and consent to the

executive appointment of _____ (name) _____ pursuant to the executive message as found on page _____ of the Senate Journal?"

S7-4. Vote requirements. Confirmation of nominations from the Governor requires a majority vote of the members-elect.

S7-5. Reconsideration of vote. While a nomination from the Governor remains within the Senate, the members may reconsider any vote taken on it.

S7-6. Written notice of final action. Upon final action, the secretary of the Senate shall notify the Governor and the secretary of state in writing of the action of the body.

Chapter 8. Discipline And Expulsion Of Members

S8-1. Select Committee on Discipline and Expulsion. Any two senators may by written motion first delivered to the President Pro Tempore move for the establishment of a Select Committee on Discipline and Expulsion to investigate the conduct of any other senator. Upon being seconded, the motion is debatable, and passage of the motion requires a majority vote of the members elect. The Select Committee on Discipline and Expulsion shall be composed of nine members of the Senate. The chair and vice chair of the select committee shall be chosen by the President Pro Tempore and may not both be members of the same political party. The other seven members of the select committee shall be chosen by the President Pro Tempore in consultation with the majority leader and the minority leader. No more than five members may be of the same political party.

S8-2. Meetings; notice; quorum; vote. All meetings of the Select Committee on Discipline and Expulsion shall be held in the Capitol. A majority of the members of the committee constitutes a quorum. The affirmative vote of majority of those present and voting, assuming a quorum, is required for actions of the committee.

All meetings of the Select Committee on Discipline and Expulsion are open meetings in like manner to any other Senate committee meeting. All meetings shall be webcast and archived in like manner to any other Senate committee meeting.

All meetings of the Select Committee on Discipline and Expulsion shall be scheduled at times that are not in conflict with any other official Senate business. All members of the Senate have the right to be present during all of the select committee's meetings.

S8-3. Oath. Prior to consideration of any matter referred to it, except establishing a quorum, the members of the select committee shall subscribe to the following oath, which shall be administered by the Secretary of the Senate.

"I do solemnly swear (affirm) that in all things appertaining to the matter referred to this select committee, I will do impartial justice according to the Constitution, laws, Joint Rules, and Senate Rules of the State of South Dakota. I do solemnly swear that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a member of the Senate Select Committee on Discipline and Expulsion in the aforesaid matter, according to the best of my ability and understanding, so help me God."

S8-4. Procedure in committee.

The Select Committee on Discipline and Expulsion shall:

- (1) Conduct all hearings in like manner to any other Senate committee meeting, and only after informing the member who is the subject of the hearing in writing of the date and time of each meeting held for the purpose;
- (2) Invite the member who is the subject of the hearing to attend all meetings of the committee in person and to be accompanied by legal counsel, or to be represented at the hearings by legal counsel of the member's choice and at the member's own expense;
- (3) Afford the member full opportunity to present the member's position, to present witnesses in support of the member's position, and extend the opportunity to confront and to question witnesses called by the committee;
- (4) Advise the member immediately of the date and time of each meeting, in cases where the committee adjourns prior to completing its work and submitting its report to the Senate.

If the Senate is called into special session for the express purpose of investigating the conduct of a Senator, the member is deemed to have received constructive notice within the provisions of this rule.

S8-5. Subpoena power; punishment for contempt. The select committee is hereby specifically and expressly granted the power and authority, with the written approval of the chair of the committee, or the approval of a majority of the members of the committee, to hold hearings, subpoena witnesses, administer oaths, require the production of books and records, and to do all other things necessary to accomplish the purpose of its hearings and deliberations.

If a subpoena is not honored, the select committee also has the power to punish for contempt and to provide for the prosecution of any person for refusal to testify, false swearing, or perjury before the select committee in accordance with law.

S8-6. Receipt of resignation; authority of the chair. If, prior to resolution of the investigation, a written resignation signed by the senator who is the subject of the investigation has been received by the chair, the chair may terminate the meetings of the select committee.

S8-7. Select committee report. Any action to expel, censure, discipline, or exonerate a senator shall be proposed in a select committee report of the Select Committee on Discipline and Expulsion. If the select committee report calls for expulsion, censure, or discipline, the report shall set forth the causes and grounds for which expulsion, censure, or discipline is being recommended by the Senate, and it shall state the particular form of action recommended to the Senate. If the select committee report calls for exoneration, the report shall set forth the reasons why exoneration is appropriate.

S8-8. Procedure in the Senate. Adoption of a select committee report for the expulsion of a senator requires the favorable vote of a two-thirds majority of the elected members. Adoption of a select committee report for the censure or discipline of a senator requires the favorable vote of a three-fifths majority of the elected members. Adoption of a select committee report for the exoneration of a senator requires the favorable vote of a majority of the elected members.

House Rules

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Chapter 1. Presiding Officer

Statutory Provisions

§ 2-5-3. Elective officers of house.

The elective officers of the House of Representatives shall be a speaker and a speaker pro tempore, who shall be members of that body, one chief clerk and such other officers as shall be necessary to properly conduct the business of the House of Representatives.

§ 2-5-3.1. Tie vote for organizing House of Representatives.

In the event that there is a tie vote for purposes of organizing the House of Representatives then, for the purposes of organization, the political party's candidate for speaker of the house, speaker pro tempore and clerk, then having a member of its party duly elected as the Governor of the state of South Dakota shall be deemed to be elected.

Rules

H1-1. Elective officers, employees. The officers of the House of Representatives are a speaker, a speaker pro tempore, a chief clerk and such other officers necessary to conduct the business of the House, who shall be formally elected by a majority vote of the members-elect of the House. Employees necessary to conduct the business of the House shall be appointed and announced by the speaker.

H1-2. Actions of the speaker pro tempore, other presiding officers. The speaker pro tempore shall act as presiding officer of the House of Representatives if the speaker is absent or unable to serve. The acts of the speaker pro tempore have the same validity as those of the speaker. If the speaker and the speaker pro tempore are absent or unable to serve, any member called to the chair by the House of Representatives may serve as presiding officer. When in session, the presiding officer, in the absence of the pro tempore, may designate any member to perform the duties of the presiding officer, but the designation may not extend beyond an adjournment. The member's actions have the same validity as those of the speaker.

H1-3. Votes by the speaker. The speaker shall vote on all questions taken by yeas and nays and shall vote in any election or division called for by any member. The speaker may, by relinquishing the chair, assume all rights and privileges of a member of the House.

H1-4. Hour of meeting. The hour of meeting of the House of Representatives is 2:00 p.m. on each legislative day unless otherwise ordered by the House.

H1-5. Seating assignments. The speaker of the House shall, with the advice of the majority and minority leaders, make seating assignments for the floor of the House of Representatives.

Chapter 2. Decorum

H2-1. Repealed.

H2-2. Repealed.

H2-3. Repealed.

Chapter 3. Committees

H3-1. Appointment of standing committees. The speaker of the House of Representatives shall, with advice from the minority leader, appoint the members of the following standing committees with the number of members as indicated after each committee and shall appoint the chair and vice chair of each committee:

1. Agriculture and Natural Resources (13)
2. Appropriations (9)
3. Commerce (13)
4. Education (15)
5. Government Operations and Audit (5)
6. Health and Human Services (13)
7. Judiciary (13)
8. Legislative Procedure (7)
9. Local Government (13)
10. Retirement Laws (5)
11. State Affairs (13)
12. Taxation (15)
13. Transportation (13)

In the absence of the committee chair, the vice chair shall act as chair. The speaker and speaker pro tempore are members of the legislative procedure committee, and the speaker shall serve as chair of the legislative procedure committee.

Chapter 4. Rules

H4-1. Adoption, suspension, or amendment of House rules. A motion to adopt rules of the House of Representatives shall be decided by a majority of the members-elect and is subject to debate. A motion to suspend or amend a rule of the House of Representatives shall be decided by a two-thirds majority of the members-elect and is subject to debate.

H4-2. Proceedings governed by Mason's Manual. *Mason's Manual of Legislative Procedure* governs the proceedings of the House of Representatives in all cases not covered by these rules or the Joint Rules.

H4-3. Conflicting rules. If the rules of the House of Representatives and the Joint Rules conflict, the rules of the House of Representatives govern.

Chapter 5. Voting Procedure

H5-1. Electronic voting system. The electronic voting system is under the control of the presiding officer and shall be operated at the presiding officer's direction by the chief clerk or the chief clerk's designee. The names of the members shall be listed on the electronic roll call board in alphabetical order, except the name of the speaker of the House, which shall be last.

H5-2. Votes to be taken on the electronic system. On any question requiring the "yeas" and "nays" to be entered upon the journal, the electronic voting system shall be used. On any such question, neither individual votes nor vote totals may be displayed to any person including the presiding officer until the time for voting has expired and the voting system has been locked. If the electronic voting system is not in operating order at the time to vote on any such question, the presiding officer shall order that all "yea" and "nay" votes be taken by calling the roll in alphabetical order, except the name of the speaker of the House, which shall be last.

H5-3. Other votes. On all other questions to be voted upon, except upon elections, the presiding officer may order the "yeas" and "nays" to be taken by the electronic voting system, voice vote, or standing vote. Upon demand of a member requesting a division before the result of a vote has been announced by the presiding officer, the "yeas" and "nays" shall be taken by the electronic voting system.

H5-4. Electronic voting system malfunctions. The vote of any member which has not been recorded because of malfunction of the electronic voting system shall be entered upon the journal, if the member was in the House chamber at the time of the vote and voted at the appropriate time, and the malfunction is reported to the presiding officer before the presiding officer's announcement of the result of the vote.

H5-5. Voting procedures. When the House is ready to vote upon any question using the electronic voting system, the presiding officer shall state: "The question is . . . (designating the matter to be voted upon). All in favor of such question shall vote 'yea', all opposed shall vote 'nay'." The presiding officer shall then direct the chief clerk to unlock the voting system and announce, "The House will now proceed to vote."

When, in the judgment of the presiding officer, reasonable time has been allowed all members present in the House to vote, the presiding officer shall ask the question: "Have all members present voted?" After a pause, the presiding officer shall direct the chief clerk to record those members who are "Absent" or "Excused" and to lock the voting system after late votes, if any, are recorded, and to display and record the individual and total votes. The presiding officer shall then announce the vote. The chief clerk shall enter upon the journal the result in the manner provided by the joint rules of the Legislature.

H5-6. Changing votes. Any member may change a vote after the vote recording equipment has started to operate if the member rises and, when recognized by the presiding officer, announces the change before the result of the vote has been announced by the presiding officer.

H5-7. Voting records. On any question requiring the "yeas" and "nays" to be entered upon the journal, the chief clerk shall retain one copy of the recorded vote on the electronic voting system and provide it for purposes of the daily journal.

H5-8. Members to vote electronically from their desks, exceptions. A member may vote on the electronic voting system only when at the member's desk. However, the presiding officer may authorize the chief clerk to call the names of members who are on the floor but not at their desks at the time of a vote and to record the votes of such members on the electronic voting system. If a member other than the speaker of the House is presiding, the chief clerk shall switch the voting system to allow the designated member presiding to vote in the presiding officer's station.

H5-9. Voting by proxy prohibited. No member may vote for another member; nor may any other person cast a vote for a member, except as otherwise provided in these rules. Any member who votes or attempts to vote for another member, or a person not a member who votes or attempts to vote for a member, is in contempt of the House and may be punished pursuant to law.

H5-10. Tampering with electronic voting equipment prohibited. Any member or other person who willfully tampers with or attempts to disarrange, deface, impair or destroy in any manner whatsoever the electronic voting equipment used by the House of Representatives, or who instigates, aids or abets with the intent to destroy or change the record of votes thereon, is in contempt of the House and may be punished pursuant to law.

H5-11. Voting machine for session use only. The electronic voting equipment may only be used when the House of Representatives is in session.

Chapter 6. Discipline And Expulsion Of Members

H6-1. Select Committee on Discipline and Expulsion. Any two representatives may by written motion first delivered to the Speaker move for the establishment of a Select Committee on Discipline and Expulsion to investigate the conduct of any other representative. Upon being seconded, the motion is debatable, and passage of the motion requires a majority vote of the members-elect. The Select Committee on Discipline and Expulsion shall be composed of nine members of the House of Representatives. The chair and vice chair of the select committee shall be chosen by the Speaker of the House and may not both be members of the same political party. The other seven members of the select committee shall be chosen by the Speaker of the House in consultation with the majority leader and the minority leader. No more than five members may be of the same political party.

H6-2. Meetings; notice; quorum; vote. All meetings of the Select Committee on Discipline and Expulsion shall be held in the Capitol. A majority of the members of the committee constitutes a quorum. The affirmative vote of a majority of those present and voting, assuming a quorum, is required for actions of the committee.

All meetings of the Select Committee on Discipline and Expulsion are open meetings in like manner to any other House of Representatives committee meeting. All meetings shall be webcast and archived in like manner to any other House of Representatives committee meeting.

All meetings of the Select Committee on Discipline and Expulsion shall be scheduled at times that are not in conflict with any other official House of Representatives business. All members of the House of Representatives have the right to be present during all of the select committee's meetings.

H6-3. Oath. Prior to consideration of any matter referred to it, except establishing a quorum, the members of the select committee shall subscribe to the following oath, which shall be administered by the Chief Clerk of the House of Representatives:

"I do solemnly swear (affirm) that in all things appertaining to the matter referred to this select committee, I will do impartial justice according to the Constitution, laws, Joint Rules, and House Rules of the State of South Dakota. I do solemnly swear that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a member of the House Select Committee on Discipline and Expulsion in the aforesaid matter, according to the best of my ability and understanding, so help me God."

H6-4. Procedure in committee.

The Select Committee on Discipline and Expulsion shall:

- (1) Conduct all hearings in like manner to any other House of Representatives committee meeting, and only after informing the member who is the subject of the hearing in writing of the date and time of each meeting held for the purpose;
- (2) Invite the member who is the subject of the hearing to attend all meetings of the committee in person and to be accompanied by legal counsel, or to be represented at the hearings by legal counsel of the member's choice and at the member's own expense;
- (3) Afford the member full opportunity to present the member's position, to present witnesses in support of the member's position, and extend the opportunity to confront and to question witnesses called by the committee;
- (4) Advise the member immediately of the date and time of each meeting, in cases where the committee adjourns prior to completing its work and submitting its report to the House of Representatives.

If the House of Representatives is called into special session for the express purpose of investigating the conduct of a Representative, the member is deemed to have received constructive notice within the provisions of this rule.

H6-5. Subpoena power; punishment for contempt. The select committee is hereby specifically and expressly granted the power and authority, with the written approval of the chair of the committee, to hold hearings, subpoena witnesses, administer oaths, require the production of books and records, and to do all other things necessary to accomplish the purpose of its hearings and deliberations.

If a subpoena is not honored, the select committee also has the power to punish for contempt and to provide for the prosecution of any person for refusal to testify, false swearing, or perjury before the select committee in accordance with law.

H6-6. Receipt of resignation; authority of the chair. If, prior to resolution of the investigation, a written resignation signed by the representative who is the subject of the investigation has been received by the chair, the chair may terminate the meetings of the select committee.

H6-7. Select committee report. Any action to expel, censure, discipline, or exonerate a representative shall be proposed in a select committee report of the Select Committee on Discipline and Expulsion. If the select committee report calls for expulsion, censure, or discipline, the report shall set forth the causes and grounds for which expulsion, censure, or discipline is being recommended by the House of Representatives, and it shall state the particular form of action recommended to the House of Representatives. If the select committee report calls for exoneration, the report shall set forth the reasons why exoneration is appropriate.

H6-8. Procedure in the House of Representatives. Adoption of a select committee report for the expulsion of a representative requires the favorable vote of a two-thirds majority of the elected members. Adoption of a select committee report for the censure or discipline of a representative requires the favorable vote of a three-fifths majority of the elected members. Adoption of a select committee report for the exoneration of a representative requires the favorable vote of a majority of the elected members.

Joint Rules

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Chapter 1. Presiding Officer - Order and Debate

Constitutional Provisions

Art. III, Sec. 19. Signing of bills and resolutions.

THE PRESIDING OFFICER OF EACH HOUSE SHALL, IN THE PRESENCE OF THE HOUSE OVER WHICH HE PRESIDES, SIGN ALL BILLS AND JOINT RESOLUTIONS PASSED BY THE LEGISLATURE, AFTER THEIR TITLES HAVE BEEN PUBLICLY READ IMMEDIATELY BEFORE SIGNING, AND THE FACT OF SIGNING SHALL BE ENTERED UPON THE JOURNAL.

Statutory Provisions

§ 2-4-9. Disturbance or disorderly conduct in Legislature as misdemeanor.

Every person who intentionally disturbs the Legislature of this state, or either of the branches composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either branch of the Legislature tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a Class 2 misdemeanor.

§ 2-4-14. Contempt of Legislature--Punishment.

The Senate or the House of Representatives may punish, as a contempt, by imprisonment, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses:

- (1) Knowingly arresting a member or officer of the Senate or the House of Representatives, or procuring such member or officer to be arrested in violation of his privilege from arrest;*
- (2) Disorderly conduct in the immediate view of the Senate or the House of Representatives, and directly tending to interrupt its proceedings;*
- (3) Refusing to be examined as a witness either before the Senate or the House of Representatives, or a committee thereof, or before any person authorized to take testimony in legislative proceedings;*
- (4) Giving or offering a bribe to a member, or attempting, by menace or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same;*

but the term of imprisonment which the Senate or House of Representatives may impose for any contempt specified in this section shall not extend beyond the session of the Legislature.

§ 2-7-22. Forfeiture of office on conviction of legislator--Disqualification from public office.

The conviction of a member of the Legislature of any crime defined in § 22-12A-17 or § 22-12A-18 involves as a consequence, in addition to the punishment prescribed therein, a forfeiture of his office and disqualifies him from ever thereafter holding any public office under this state.

Rules

1-1. Presiding officers. The presiding officer of the Senate is the president and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting.

1-2. Order of business. Each house shall begin each session as follows: call to order, prayer by the chaplain, pledge of allegiance, roll call, and determination of a quorum, then proceed with the daily order of business. A majority of the members present may demand that the journal for the preceding day be read.

1-3. Questions of order. The presiding officer of each house shall decide all questions of order, subject to a motion of appeal, by a majority of the members present. No member may speak more than once on an appeal without the consent of a majority of the members present.

1-4. Recognition of members for remarks. When a member desires to speak, that member shall respectfully address the presiding officer. When the presiding officer recognizes the member, that member is entitled to the floor. The member first to address the presiding officer shall speak first. If two or more members address the presiding officer at the same time, the presiding officer shall name the member who is to speak first.

1-5. Time allowed for a member to speak. Each member may speak on the pending subject before any member speaks twice. No member may speak more than twice nor longer than ten minutes on the same subject without the consent of a majority of the members present. However, a member may speak an additional twenty minutes if the time is yielded by individual members of the body. In computing the time allowed for argument, the time consumed in asking questions is considered. If a member consents to the question, the time consumed by the answer is taken out of the time allowed to the person answering the question.

1-6. Questions on the floor. If a member wishes to ask a question of another member, that member shall courteously do so through the presiding officer and with the consent of the member to whom the question is addressed. Any question addressed to a member shall relate to a question before the body and shall be concisely asked for the sole purpose of obtaining information. No question may reflect upon the character or conduct of any official, contain argument or debate, or inquire about the course a member proposes to follow.

1-7. Call to order. If a member is called to order, that member shall remain silent until the presiding officer determines whether the member is in order. The decision of the presiding officer is subject to a motion of appeal.

1-8. Signing of documents by presiding officer. The presiding officer of each house shall sign all concurrent resolutions and commemorations and all writs, warrants, and subpoenas issued by the house over which the officer presides.

1-9. Those permitted to speak to the body. No person other than a member of a house may speak upon any subject before the house unless a member makes a motion to allow another person to speak and the members present unanimously consent. However, the speaker of the House and the president pro tempore of the Senate may allow any person other than a member of the body to speak subject to advance notice to the majority and minority leaders. A motion objecting to the decision of the presiding officer shall require a majority vote of the members-elect.

1-10. Dissent against an act or resolution. Any two members of a house may dissent or protest in respectful language against any act or resolution which they think injurious to the public or to any individual and have the reason for their dissent or protest entered upon the journal. However, if an objection is made that the language of the dissent or protest is not respectful, a majority of the house may refer the dissent or protest back to the dissenting or protesting members for emendation.

1-11. Repealed.

Chapter 1A. Decorum

1A-1. Preservation of decorum. The presiding officer of each house shall preserve order and decorum and, in the case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1A-2. Smoking prohibited. Smoking is prohibited in all areas of the Capitol.

1A-3. Alcoholic beverages prohibited. No alcoholic beverage, beer, wine, or other beverage containing alcohol may be stored or consumed in any area of the Capitol that is under the control of the Legislature.

1A-4. Sexual harassment prohibited. All members are responsible for ensuring that the workplace is free from sexual harassment. All members shall avoid any action or conduct which could be viewed as sexual harassment. A member shall report any sexual harassment complaint to the presiding officer of the house to which the member belongs. If the situation is not resolved, the member shall forward the complaint to the Executive Board of the Legislative Research Council.

1A-5. Discrimination prohibited. The Legislature is an equal opportunity employer and provides equal access to facilities and services without regard to race, color, creed, religion, sex, disability, ancestry, or national origin.

1A-6. Person with a disability may request assistance. Individuals requesting assistance pursuant to the Americans with Disabilities Act must contact the Legislative Research Council at least forty-eight hours in advance of the needed assistance.

1A-7. Use of chambers for campaign photographs. Legislators and candidates for the Legislature may use the chambers for campaign photographs; however, no changes may be made to the arrangement of either chamber.

1A-8. Items distributed to the members' desks. Before any person may distribute an item to the members' desks on the floor of the Senate or the House of Representatives, that person must obtain the approval of the secretary of the Senate or the chief clerk of the House, subject

to the review of the speaker of the House and the president pro tempore of the Senate, respectively. Any item distributed to the members' desks on the chamber floor must clearly bear the name of the item originator.

1A-9. Cellular telephones prohibited. Cellular telephones may not be used in either chamber or gallery while the Legislature is in session.

1A-10. Presiding Officer's power to maintain order. The presiding officer may have any member temporarily removed in order to preserve order and decorum.

1A-11. Repealed.

Chapter 1B. Legislative Code of Conduct

1B-1. Maintenance of ethical standards. The people of South Dakota require that their legislators maintain the highest of moral and ethical standards as such standards are essential to assure the trust, respect and confidence of our citizens. Legislators have a solemn responsibility to avoid improper behavior and refrain from conduct that is unbecoming to the Legislature or that is inconsistent with the Legislature's ability to maintain the respect and trust of the people it serves. While it is not possible to write rules to cover every circumstance, each legislator must do everything in his or her power to deal honorably with the public and with his or her colleagues and must promote an atmosphere in which ethical behavior is readily recognized as a priority and is practiced continually, without fail.

1B-2. Compliance with specified requirements. Each legislator will comply with all Constitutional and statutory requirements regarding conflicts of interest. Legislators will timely file all required disclosure statements including Statements of Organization, Campaign Finance Reports and Statements of Financial Interest. Legislators must also avoid any conflict of interest which would interfere with their duties and responsibilities as legislators, interfere with the exercise of their best judgment in support of the State of South Dakota or create an improper personal benefit.

1B-3. Professional conduct and civility. The South Dakota Legislature will strengthen and sustain an atmosphere of professional conduct and civility among its members and with all staff and will not tolerate harassment or offensive behavior based on race, color, religion, national origin, gender, age, or disability. Legislators must refrain from any and all such harassment or offensive conduct. This prohibition against harassment also encompasses sexual harassment including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexually harassing nature, when: (1) submission to the harassment is made either explicitly or implicitly a term or condition of employment or other employment determinations, or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

1B-4. Action in event of violation. Failure to observe the highest standards of public conduct will subject a legislator to appropriate action, pursuant to the rules of the Chamber and Mason's Manual of Legislative Procedure.

Chapter 2. Meetings, Quorums, And Attendance

Constitutional Provisions

Art. III, Sec. 7. Convening of annual sessions.

THE LEGISLATURE SHALL MEET AT THE SEAT OF GOVERNMENT ON THE SECOND TUESDAY OF JANUARY AT 12 O'CLOCK M. AND AT NO OTHER TIME EXCEPT AS PROVIDED BY THIS CONSTITUTION.

Art. III, Sec. 14. Elections viva voce.

IN ALL ELECTIONS TO BE MADE BY THE LEGISLATURE THE MEMBERS THEREOF SHALL VOTE VIVA VOCE AND THEIR VOTES SHALL BE ENTERED IN THE JOURNAL.

Art. III, Sec. 15. Open legislative sessions--Exception.

THE SESSIONS OF EACH HOUSE AND OF THE COMMITTEE OF THE WHOLE SHALL BE OPEN, UNLESS WHEN THE BUSINESS IS SUCH AS OUGHT TO BE KEPT SECRET.

Art. III, Sec. 16. Adjournment of legislative houses.

NEITHER HOUSE SHALL WITHOUT THE CONSENT OF THE OTHER ADJOURN FOR MORE THAN THREE DAYS, NOR TO ANY OTHER PLACE THAN THAT IN WHICH THE TWO HOUSES SHALL BE SITTING.

Art. III, Sec. 9, Par. 2. Quorum.

A MAJORITY OF THE MEMBERS OF EACH HOUSE SHALL CONSTITUTE A QUORUM, BUT A SMALLER NUMBER MAY ADJOURN FROM DAY TO DAY, AND MAY COMPEL THE ATTENDANCE OF ABSENT MEMBERS IN SUCH A MANNER AND UNDER SUCH PENALTY AS EACH HOUSE MAY PROVIDE.

Rules

2-1. Those permitted on the floor during session. In addition to current legislators, only the following persons are entitled to the floor of the House of Representatives or Senate during sessions: justices of the Supreme Court or persons who are or have been Governor, Lieutenant Governor, or members of the Congress of the United States from South Dakota; former members of the South Dakota Legislature, except those currently serving in any elective state or local office other than Governor or Lieutenant Governor; current legislative employees; and news reporters. However, these persons may not be on the floor if acting in a manner to influence legislation. No other person may be admitted to the floor without consent of the presiding officer.

2-2. Call of the house. One-sixth of the members-elect of either house may compel the attendance of absent members by ordering a call of the house of which they are members, but a call of the house may not be made after voting commences.

2-3. Procedure after a call of the house. When a call of the house is ordered, the doors shall be closed and the absentees noted. No member may leave the room until permission is given by the presiding officer, the sergeant at arms' report is received and acted upon, or the house is adjourned. Until the sergeant at arms' report is received, proceedings under the call may not be suspended except by two-thirds of the members present.

2-4. Access to chamber and lobbies. Except as otherwise provided in Joint Rule 2-1, no person, except current legislators and legislative employees, may enter either chamber or space reserved for members of the Legislature adjacent to either chamber at any time during a session or for the period of three hours preceding a session except upon invitation of a member of the chamber. However, under no circumstances may a lobbyist enter either chamber or reserved space for a period of three hours preceding a session or one hour after adjournment of the chamber.

Chapter 3. Legislative Employees

Constitutional Provisions

Art. III, Sec. 9, Par. 3. Rules of proceedings--Officers and employees.

EACH HOUSE SHALL DETERMINE THE RULES OF ITS PROCEEDINGS, SHALL CHOOSE ITS OWN OFFICERS AND EMPLOYEES AND FIX THE PAY THEREOF, EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION.

Statutory Provisions

§ 2-5-2. Elective officers of Senate.

The elective officers of the Senate shall be a president pro tempore of the Senate, who shall be a member of that body, one secretary and such other officers as shall be necessary to properly conduct the business of the senate.

§ 2-5-3. Elective officers of house.

The elective officers of the House of Representatives shall be a speaker and a speaker pro tempore, who shall be members of that body, one chief clerk and such other officers as shall be necessary to properly conduct the business of the House of Representatives.

§ 2-5-5. Appointment of legislative employees by presiding officers.

The speaker of the House of Representatives shall appoint employees necessary to properly conduct the business of the House and the president pro tempore of the Senate shall appoint employees necessary to properly conduct the business of the Senate.

§ 2-5-8. Determination of amount of compensation of legislative employees.

All elective and appointed officers and employees of the Senate and House of Representatives designated in §§ 2-5-2, 2-5-3, and 2-5-5 shall receive compensation determined and agreed upon by a joint select committee of both houses.

Rules

3-1. Appointment of legislative employees. The president pro tempore of the Senate shall appoint all necessary employees for the Senate. The speaker of the House of Representatives shall appoint all necessary employees of the House. All employee positions shall be described in a uniform compensation and classification manual which shall be annually reviewed by the Executive Board of the Legislative Research Council and approved by the Joint Select Committee on Compensation.

3-2. Duties of the secretary of the Senate and chief clerk of the House. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the president pro tempore of the Senate or the speaker of the House, respectively. Their duties are:

- (1) To supervise the keeping of a daily journal, the engrossing and enrolling, and the handling of bills and resolutions;
- (2) To assist the calendar committee in the preparation of a daily calendar listing motions and resolutions, committee reports to be introduced, and bills and joint resolutions ready for second reading, and to assist the calendar committee in preparation of a daily consent calendar;
- (3) To sign the certificate of origin of all bills passed by the Legislature;
- (4) To attest the signature of the presiding officer to all bills, memorials, resolutions, commemorations, writs, warrants, and subpoenas issued by the house;
- (5) To deliver to the secretary of state at the close of each session the journals and all books, bills, documents, resolutions, and papers in possession of the Legislature;
- (6) To preserve one true copy of each printed bill, joint resolution, and concurrent resolution of each legislative session; to attach the copy together with a signed certificate that it is a true and complete copy of each printed bill, joint resolution, and concurrent resolution of the legislative session; and to file such certified copies with the secretary of state within ten days after adjournment of the Legislature; and
- (7) To perform all other acts appertaining to the office as may be required by the house or its presiding officer.

3-3. Office of Engrossing and Enrolling. The Legislative Research Council shall perform all engrossing and enrolling duties. In addition, each house may hire secretaries necessary to conduct the business of the standing committees. Any secretary appointed to a committee is responsible to the committee chair. In each house, a secretary is provided to the minority party.

3-4. Engrossing and enrolling. The engrossing and enrolling duties of the Legislative Research Council are:

- (1) To engross and enroll all bills delivered to them;
- (2) To provide and supervise secretarial assistance to legislators as requested;

(3) To collect from the secretaries of all standing and special committees the minutes of such committees and retain them in the Legislative Research Council Library; and

(4) To correct clerical errors, with the consent of the secretary of the Senate or chief clerk of the House of Representatives, in any bill originating in the house by which they are employed. Clerical errors which may be corrected are: errors in spelling, errors in numbering sections, errors of omission or commission due to addition or deletion of material, and errors due to copying incorrectly from the most recent statute. The secretary of the Senate and the chief clerk of the House shall inform the principal sponsor of all such corrections.

3-5. Chaplains. The chief chaplain shall schedule a chaplain to serve in each house for each legislative day. The duty of the chaplain of each house is to open each day's session with a prayer.

3-6. Disputes or complaints involving a legislative session employee. Any dispute or complaint involving the competency or decorum of a legislative session employee, including any violation of SDCL 2-12, shall be referred to the president pro tempore of the Senate or the speaker of the House. The officer may dismiss, suspend, or otherwise discipline the employee.

3-7. Sexual harassment prohibited. All employees are responsible for ensuring that the workplace is free from sexual harassment. All employees shall avoid any action or conduct which could be viewed as sexual harassment. An employee shall report any sexual harassment complaint to the president pro tempore of the Senate, speaker of the House or any supervisor. If the situation is not resolved, the employee shall forward the complaint to the Executive Board of the Legislative Research Council.

Chapter 4. Order of Business

4-1. Daily order of business. After call to order, the daily order of business shall be as follows:

- (1) Prayer by the chaplain and pledge of allegiance;
- (2) Roll call and determination of a quorum;
- (3) Approval of the journal;
- (4) Communications and petitions;
- (5) Reports of standing committees;
- (6) Reports of select committees;
- (7) Messages from the other house;
- (8) Motions and resolutions;
- (9) Consideration of committee reports;
- (10) Introduction, first reading and reference of bills and joint resolutions originating in the house;
- (11) First reading and reference of bills and joint resolutions originating in the other house;
- (12) Second reading of consent calendar bills and resolutions;
- (13) Second reading of bills and joint resolutions originating in the house;
- (14) Second reading of bills and joint resolutions originating in the other house;
- (15) Announcements.

To revert to an old order of business or to pass to a new order of business requires a majority vote of the members present. Any message or communication from the Governor or other state officer may be received at any time.

4-2. Special orders. Any bill, resolution, memorial or other subject matter may be made a special order for some subsequent time by a majority vote of the members present.

4-3. Order of bills and resolutions. Each bill and resolution up for consideration under any order of business shall be listed and taken up in the order in which it is listed on the daily calendar unless otherwise ordered by a majority of the members present.

Chapter 5. Motions

5-1. Entertainment of motions. No motion may be entertained and debated until it is seconded. Following the second of a debatable motion, the presiding officer shall first recognize the member making the motion.

5-2. Restatement and reading of motions. When a motion is made and seconded, it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be displayed electronically or reduced to writing and read aloud.

5-2.1. Provision of copies of motions. If a motion to amend is displayed electronically or offered in writing or if each member of the body has been given a copy of the motion, the reading of that motion is automatically waived.

5-2.2. Withdrawal of motions. After a motion is stated by the presiding officer, it may not be withdrawn without unanimous consent of the members present.

5-3. Priority of motions. When a question is under debate, no motion may be made except the following motions which have precedence in the order listed:

- (1) To adjourn;
- (2) To recess;
- (3) To call the house;
- (4) To lay on the table;
- (5) To call the previous question;
- (6) To defer indefinitely;
- (7) To defer to a day certain;
- (8) To refer to committee;
- (9) To amend.

5-4. Priority of motion for adjournment. A motion for adjournment is always in order, unless the roll is being called or the previous question has been ordered, and shall be decided without debate.

5-5. Application and nondebatability of motions to lay on the table. A motion to lay on the table which effects a disposition on the merits of any bill or resolution requires the vote of a majority of the members-elect to carry and shall be decided without debate. Any other motion to lay on the table requires the vote of a majority of the members present and shall be decided

without debate. No member may make introductory remarks prior to making a motion to lay on the table.

5-5.1. Scope of motions to lay on the table. A motion to lay on the table may be made so as to apply either to the main question or to a proposed amendment or to the bill and all pending amendments, and the motion shall clearly state to which it is intended to apply.

5-5.2. Motion to take from the table. Whenever any bill or resolution is laid on the table, it requires a majority vote of the members-elect to take it from the table. The motion to take from the table is debatable.

5-5.3. Scope of motion to defer to day certain beyond sine die. The rules pertaining to motions to table and to defer to a day certain beyond sine die shall be the same except that a motion to defer to a day certain beyond sine die is debatable.

5-6. Motion to call the previous question. A motion for the previous question shall be decided immediately by a majority of the members present and without debate. The motion shall clearly indicate the question to which it applies. No member may make introductory remarks prior to making a motion to call the previous question. The effect of adopting a motion to call the previous question is to close debate, to prevent the moving of amendments or other subsidiary motions, and to bring to vote immediately the question to be voted upon. The effect of defeating a motion to call the previous question is to allow continuation of debate on the question before the house.

5-7. Priority of vote after call of the previous question. After a motion to call the previous question has prevailed, it is not in order to move a call of the house or to move to adjourn, prior to a decision of the question before the house.

5-8. Dilatory motions to defer or refer. If a motion to defer to a day certain, to defer indefinitely or to refer to committee is decided in the negative, such motion is not again in order at the same stage of consideration of the bill or proposition.

5-8.1. Motion to postpone as final action. A motion to defer indefinitely or to a date beyond the sine die adjournment of the Legislature requires the vote of a majority of the members-elect.

5-9. Division of the question. Any member may call for a division of the question. The presiding officer shall divide the question if it contains questions so distinct that, one being taken away, the rest may stand as a separate proposition.

5-10. Motions to strike the enacting clause. A motion to strike the enacting clause of a bill has precedence to a motion to amend, and if carried, is equivalent to the rejection of the bill.

5-11. Notice of intention to reconsider. Notice of intention to move for reconsideration shall be made before the body proceeds to the next item of business. If any member fails to give notice of intention to reconsider, the vote on a question shall be deemed to have been moved for reconsideration and such motion for reconsideration to have been laid on the table.

5-11.1 Motions to reconsider. Having given notice of intent to reconsider, the member giving notice may move to reconsider the question not later than the next legislative day, except as provided in Joint Rule 5-13. Any motion to reconsider shall be made under order of business No. 8, except as provided in Joint Rule 5-13, and takes precedence over all other motions except to recess or to adjourn. No motion to reconsider the same question may be made twice

in the same house without unanimous consent. Every motion to reconsider shall be decided by a majority vote of the members-elect on a roll call vote. No question may be reconsidered except the final disposition of bills and joint resolutions and the override of vetoes. No motion to lay on the table is subject to reconsideration.

5-12. Failure to make timely motion for reconsideration. If any member has given notice of intent to move for reconsideration and does not move for reconsideration before the stated deadline, the presiding officer shall immediately state that any member may move for reconsideration.

5-13. Motion for reconsideration during final legislative days. During the seven final legislative days, any member who has given notice of intent to move for reconsideration shall make such motion at a time prior to the conclusion of business on the legislative day that the question sought to be reconsidered was acted upon. Such motion may be made at any time prior to adjournment.

5-13.1. Immediate consideration of emergency measures. If the affirmative vote for a bill containing an emergency clause is less than two-thirds but more than one-half of the members-elect, the vote shall be immediately reconsidered.

5-14. Germaneness of amendments. No motion to amend a bill is in order unless it is germane to the subject as expressed in the title of the bill.

5-15. Order of questions. All questions, other than privileged questions as listed in Joint Rule 5-3, shall be put in the order they are moved.

5-16. Limitations on number of motions to amend and substitute motions. When a motion or proposition is under consideration, a motion to amend and a motion to amend that amendment is in order. It is also in order to offer a further amendment as a substitute, but such substitute is not subject to amendment.

5-17. Motion to delay action on amendments. Final action upon any amendment to a bill or resolution may not be had until one legislative day has intervened, if a request for delay is made and is supported by at least one-fifth of the members. However, no such request is in order during the last fourteen days of the session. This rule cannot be invoked more than two times on the same bill in each house.

5-17.1. Motion to delay action on amendments is nondebateable. No member invoking Joint Rule 5-17 may speak to the merits of the amendment or make any other introductory remarks.

Chapter 6. Bills, Resolutions, and Commemorations

A. Form of Bills--Definitions of Resolutions—General provisions

Constitutional Provisions

Art. III, Sec. 21. One subject expressed in title.

NO LAW SHALL EMBRACE MORE THAN ONE SUBJECT, WHICH SHALL BE EXPRESSED IN ITS TITLE.

Art. XII, Sec. 2. Contents of general appropriation bill--Separate appropriation bills.

THE GENERAL APPROPRIATION BILL SHALL EMBRACE NOTHING BUT APPROPRIATIONS FOR ORDINARY EXPENSES OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL DEPARTMENTS OF THE STATE, THE CURRENT EXPENSES OF STATE INSTITUTIONS, INTEREST ON THE PUBLIC DEBT, AND FOR COMMON SCHOOLS. ALL OTHER APPROPRIATIONS SHALL BE MADE BY SEPARATE BILLS, EACH EMBRACING BUT ONE OBJECT, AND SHALL REQUIRE A TWO-THIRDS VOTE OF ALL THE MEMBERS OF EACH BRANCH OF THE LEGISLATURE.

Art. III, Sec. 18. Enacting clause--Assent by majority--Recording of votes.

THE ENACTING CLAUSE OF A LAW SHALL BE: "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA" AND NO LAW SHALL BE PASSED UNLESS BY ASSENT OF A MAJORITY OF ALL THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE. AND THE QUESTION UPON THE FINAL PASSAGE SHALL BE TAKEN UPON ITS LAST READING, AND THE YEAS AND NAYS SHALL BE ENTERED UPON THE JOURNAL.

Statutory Provisions

§ 22-12A-18. Fraudulent alteration of bill after passage as felony.

Any person who fraudulently alters a bill which has been passed by the Legislature of this state, with intent to have it approved by the Governor, certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed by the Legislature, is guilty of a Class 6 felony.

Rules

6A-1. Legislative documents. Only bills and the following may be introduced in the Legislature:

- (1) A House or Senate resolution, which shall pertain to the affairs of one house only and require action only by the legislative chamber concerned. A House or Senate resolution may be used to express an opinion or principle of one house, to express an opinion to or request of the other house, to regulate procedure, or to refer the subject matter of bills to the Legislative Research Council;
- (2) A concurrent resolution, which shall express opinions and principles of the Legislature not having the force of law. A concurrent resolution may be used to authorize interim studies, joint rules, sessions or committees, to memorialize or instruct a department of state government, or to petition federal agencies;
- (3) A joint resolution, which shall contain matters of legislation only. A joint resolution may be used to refer a matter for referendum to the people, to place a constitutional amendment on the ballot at the next general election, to ratify proposed amendments to the United States Constitution, or to grant a water right pursuant to § 46-5-20.1;

(4) A House or Senate resolution of disapproval as provided under Article IV, Section 8, of the South Dakota Constitution; and

(5) A legislative commemoration, which shall express recognition of service or achievements of national or statewide importance or express sorrow over death or loss.

6A-2. Format of bills and joint resolutions. If a bill amends an existing statute, the new matter shall be underscored and the omitted matter shall be overstricken. If an entire title, chapter, section, subdivision, or subsection is to be repealed, only the code citation need be listed.

6A-3. Format of joint resolutions. If a joint resolution amends an existing provision of the Constitution, the omitted matter shall be overstricken and the new matter shall be underscored. A joint resolution shall contain sufficient introductory wording to give reasonable notice of the effect of the proposed amendment.

6A-4. Bills at the request of the Governor, executive agencies, and the Chief Justice. A bill introduced at the request of the Governor, Chief Justice of the Supreme Court, a department, board, commission, or any other agency of state government, shall indicate in the title at whose request such bill is being introduced.

6A-5. Review of bills by the Legislative Research Council. Before a bill, resolution, or commemorative may be introduced, it shall be reviewed by the Legislative Research Council for style and form. No bill or joint resolution may be submitted to the Legislative Research Council for review less than forty-eight hours of the final introduction date for bills or joint resolutions as provided in Joint Rule Chapter 17.

6A-6. Title of repealed law. A bill introduced for the sole purpose of repealing an existing law shall include in its title the general subject to which the law relates.

6A-7. Placement of emergency clause. Any bill containing an emergency clause shall have the emergency clause added at the end of the bill.

6A-8. Title and sponsors placed on bills and resolutions. Before a bill or resolution is introduced, its title and the name or names of the member, members, or committee introducing the bill or resolution shall be printed on it.

B. Introduction and Sponsorship

Statutory Provisions

§ 2-7-4. Prefiling of bills and resolutions with Legislative Research Council--Rules for handling.

Any person who has been duly elected or appointed to serve during a regular session of the Legislature may file bills and resolutions with the State Legislative Research Council at any time within thirty days prior to the convening of such regular session. Notwithstanding the provisions of § 2-7-6.1, any interim committee of the Legislative Research Council may file bills and resolutions under the provisions of this section. The Executive Board of the State Legislative Research Council shall prescribe rules for the handling and placing in proper form of such bills and resolutions, subject to the provisions of §§ 2-7-4 to 2-7-6, inclusive.

§ 2-7-5. Numbering, printing and disposition of prefiled bills--Date of introduction.

The director of the Legislative Research Council shall, within the confines of such rules, receive such bills and resolutions, place them in proper form, assign them numbers for introduction in the proper house, and deliver copies to the printing contractor for pre-session printing. The director shall deliver the original and one copy of each bill and resolution to the secretary of the Senate or the chief clerk of the House of Representatives, as the case may be, on the day when the session convenes. However, the director may not deliver any prefiled bill or resolution until every sponsor of such bill or resolution has been duly sworn into office.

Upon prefiling, such bills and resolutions become the property of the Legislature and may not thereafter be withdrawn. Prefiled bills and resolutions shall be considered as introduced on the day of their delivery to each house.

§ 2-7-6.1. Committee introduction of bills and resolutions.

No bill or joint resolution may be introduced in either house of the Legislature by any committee thereof, except:

- (1) A bill or a joint resolution introduced by any standing committee of either house;*
- (2) A bill or joint resolution referred to the Legislature from an interim committee of the State Legislative Research Council;*
- (3) A bill or joint resolution introduced at the request of the interim Rules Review Committee, interim Government Operations and Audit Committee, the interim Retirement Laws Committee, the interim Joint Bonding Review Committee, and the interim State-Tribal Relations Committee by one or more committee members upon majority vote of the interim committee; or*
- (4) A bill or joint resolution introduced at the request of the Governor, an executive agency or of the chief justice of the Supreme Court.*

The committee shall obtain a written request for such introduction from either the council, the Governor, department head of an executive agency, a constitutional officer or board, or the chief justice and shall retain such request in its file. Committee bills introduced on behalf of a department head of an executive agency, a constitutional officer or board may be introduced by the chairman without a vote of the committee for purposes of prefiling. Nothing in this section prohibits one or more legislators from introduction of a bill or a joint resolution.

Rules

6B-1. Time for introduction of bills, number of copies for introduction, bills are property of Legislature. Any member or committee desiring to introduce a bill or resolution shall file two copies of the bill or resolution with the bill clerk at least two hours prior to the opening of the daily session. Any bill or resolution filed with the bill clerk and duly numbered becomes the property of the Legislature and may not thereafter be withdrawn.

6B-2. Numbering of bills and resolutions. Bills shall be numbered consecutively as introduced, beginning with No. 1 for Senate bills and with No. 1001 for House bills. Resolutions

shall be numbered consecutively as introduced, beginning with No. 1001 for House resolutions and with No. 1 for Senate resolutions.

6B-3. Limit on number of bills that may be introduced. No legislator may introduce as prime sponsor more than three individual bills or joint resolutions during the last three days for bill introduction prescribed by Joint Rule Chapter 17.

6B-4. Sponsorship of bills and resolutions. Any bill, joint resolution, or concurrent resolution may be introduced by any member or members of the house of origin. Any member or members of the other house may join the member or members of the house of origin in introducing the bill or resolution.

6B-5. Bill introduction by standing committees. Before a bill or joint resolution can be introduced by a standing committee pursuant to § 2-7-6.1, the bill or resolution shall have received an affirmative vote of a majority of the members of a standing committee at one of its regular meetings with a statement of such fact on a separate slip attached to the cover of the bill and signed by the chair of the committee.

6B-6. Pre-filing of agency bills. No bill or resolution introduced at the request of a department, board, commission, or any other agency of state government, except bills or resolutions introduced at the request of the Governor or Chief Justice, may be considered by the Legislature unless such bill or resolution is pre-filed with the director of the Legislative Research Council at least forty-eight hours before the opening of a legislative session and available for introduction on the first legislative day.

6B-7. Disposition of copies of bills when introduced. An original and one copy of each bill or resolution introduced shall be disposed of as follows:

- (1) The original, which shall have endorsed thereon the word "Original," shall be retained by the house of origin; and
- (2) The copy shall be delivered to the prime sponsor.

C. Fiscal Notes and Actuarial Statements

Rules

6C-1. Bills and resolutions that require fiscal notes. Any bill or resolution prefiled or introduced which has an effect on the revenues, expenditures, or fiscal liability of the state shall include a fiscal note incorporating an estimate of such effect. This rule does not apply to the cost of legislative processing or appropriation measures carrying specific dollar amounts.

6C-1.1. Request for fiscal note by any member. A fiscal note may be requested by any member if supported by one-fifth of the members of the house in which the bill or resolution is to be considered, at the time of the second reading, if the bill or resolution has an effect on the revenues, expenditures, or fiscal liability of the state. However, the request shall not extend final consideration of the bill over two days beyond the last day for passage from the house of origin.

6C-2. Legislative Research Council to prepare fiscal notes. If the presiding officer determines a bill or resolution requires a fiscal note at the time of introduction, the presiding officer shall request the Director of the Legislative Research Council to prepare the fiscal note,

in consultation with the Bureau of Finance and Management. The Director of the Legislative Research Council shall prepare a fiscal note for prefiled bills or resolutions.

6C-3. Deferral of bills without fiscal note. The original copy of a bill or resolution for which a fiscal note has been requested shall be stamped by the bill clerk with the initials "F.N." before referral to committee. If such bill or resolution is reported back to the house without a fiscal note, the presiding officer shall defer placing the bill or resolution on the calendar until the requested fiscal note is received, unless in the presiding officer's opinion a fiscal note is no longer required.

6C-4. Committees may request fiscal note. If the presiding officer has not requested a fiscal note on a bill or resolution having a fiscal effect, the committee, or its chair, considering the bill or resolution may request a fiscal note. The committee may request an amended fiscal note if a bill or resolution is amended.

6C-5. Attaching fiscal note to bill. If a fiscal note is available, it shall be attached by the Office of Engrossing and Enrolling at the end of the original copy of the bill or resolution.

6C-6. Local government fiscal notes. In addition, if requested by the presiding officer or any legislator, a bill or resolution which has an effect on the revenues, expenditures, or fiscal liability of any political subdivision of the state shall have attached a fiscal note, prepared by the Director of the Legislative Research Council, in consultation with the Bureau of Finance and Management.

6C-7. Retirement system actuarial statement. Each bill introduced affecting the benefits payable by the state or a local government retirement system shall have an actuarial statement requested by the sponsor and attached to the bill. The actuarial statement shall be requested from the governing board of the retirement system affected and the statement shall identify the costs of the proposed change in the law as stated by the actuary for the affected retirement plan. If there is a doubt as to the need for an actuarial statement, the presiding officer shall make the final decision. After the bill is introduced, the Chief of Enrolling and Engrossing shall attach the actuarial statement to the original bill.

D. First Reading and Referral

Constitutional Provisions

Art. III, Sec. 17. Reading of bills.

EVERY BILL SHALL BE READ TWICE, BY NUMBER AND TITLE ONCE WHEN INTRODUCED, AND ONCE UPON FINAL PASSAGE, BUT ONE READING AT LENGTH MAY BE DEMANDED AT ANY TIME BEFORE FINAL PASSAGE.

Rules

6D-1. Referral of bills and resolutions to standing committees. Unless otherwise ordered, all bills and joint resolutions, except the general appropriations bill, shall be referred to a standing committee after their first reading. The presiding officer may waive the referral to standing committee of concurrent resolutions. Copies of all concurrent resolutions shall be distributed to each member before being acted upon.

6D-2. Referral of resolutions of disapproval. Any resolution of disapproval shall be referred to a committee unless ordered to be placed directly on the calendar by a majority vote of the members present.

E. Amendments and Substitute Bills

Constitutional Provisions

Art. XXIII, Sec. 1. Amendments.

AMENDMENTS TO THIS CONSTITUTION MAY BE PROPOSED . . . BY A MAJORITY VOTE OF ALL MEMBERS OF EACH HOUSE OF THE LEGISLATURE.

Rules

6E-1. Amendments to be germane to bill. No amendment to a bill or joint resolution may embrace more than one subject, which shall be expressed in the title of the bill.

6E-2. Hoghouse amendments. Any substitute bill shall be treated as an amendment and shall be governed by the rules governing amendments.

6E-3. Message required when one house amends bill or resolution of other house. Whenever a bill or joint resolution is passed in one house and amended and passed in the other, a message to the house of origin shall indicate that the bill or resolution has been amended.

F. Second Reading

6F-1. No second reading until engrossment. No bill or resolution amended after introduction may be read the second time until it is correctly engrossed.

6F-2. Second reading at least one day after committee report. No bill or joint resolution may have its second reading or receive final passage until at least one legislative day after it has been reported to the house by the committee to which the same has been referred and such report has been read to the house.

6F-3. Action on committee reports. No report of any standing committee or select committee may be acted upon until at least one legislative day after it has been read to the body, except the report of the committee on legislative procedure, or the reports of standing committees requesting referral to another standing committee of a bill or resolution which may be acted upon immediately. However, during the last three days of the session, reports of conference committees may be acted upon the same day as reported.

6F-4. Placement of unamended bills and resolutions on calendar. If any committee makes a report that a bill or resolution "Do Pass" without proposing any amendment thereto, the bill or resolution shall be placed upon the calendar for second reading on the next legislative day.

6F-5. Placement of amended bills and resolutions on calendar. If any standing committee returns a bill or resolution to the house with the recommendation that the bill or resolution do pass with proposed amendments, the report shall be received, read and entered upon the journal. The committee report shall be placed on the calendar for adoption the following legislative day and the bill shall be placed on the calendar for floor action on the legislative day following the adoption of the committee report. On the final day for the committee to act upon a bill, the report may be placed directly on the calendar for floor action. A report recommending the passage of a bill or resolution with proposed amendments is not subject to change or amendment.

6F-6. Placement of bills and resolutions not receiving a "Do Pass" recommendation on the calendar. Any bill or resolution reported "Do Not Pass" or "without recommendation" shall fail if no motion is made for its disposition under the order of business of Consideration of Committee Reports on the next legislative day after delivery to the house. On the final day to use Joint Rule 7-7, a motion must be made before adjournment on that day. A motion to place a bill or resolution on the calendar where a committee reports a bill or resolution "Do Not Pass" or "without recommendation" shall require the vote of a majority of the members-elect to carry. A bill or resolution failing to be placed on the calendar is lost after time for reconsideration has passed.

G. Printing, Engrossing, And Enrolling

Statutory Provisions

§ 2-7-13. Selection of printing process and contractor for bills and resolutions.

The Bureau of Administration, in consultation with the Legislative Research Council, shall, before the commencement of any session of the Legislature, determine whether the house and senate bills and joint resolutions of the legislative session will be printed by a private contractor, and select the printing process to be used, or whether the documents will be prepared by the use of a duplicating process.

§ 2-7-14. Time allowed for printing of bills and resolutions.

The contractor for printing of the house and senate bills and joint resolutions of any kind shall deliver them, completed, to the Legislature within two days after receiving the copy.

§ 2-7-15.1. Fees for copies of bills and journals--Mailing fees--Disposition.

The Executive Board of the Legislative Research Council is authorized to recover up to one-half of the printing costs of legislative bills and journals by establishing uniform fees for the distribution of legislative printed materials, to public agencies, lobbyists and individuals. Fees for estimated mailing costs may also be charged for mailing printed materials. Fees collected may be deposited in a special fund within the state treasury, the proceeds of which shall be used to pay for printing and postage costs, or transferred to the state general fund.

§ 22-12A-17. Fraudulent alteration of bill or resolution as felony.

Any person who fraudulently alters the draft of any bill or resolution which has been presented to either house of the Legislature to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a Class 6 felony.

§ 2-7-17. Certification and filing of printed bills and resolutions--Judicial notice.

It shall be the duty of the secretary of the Senate and chief clerk of the House of Representatives to preserve one true copy of each printed bill, of each printed joint resolution, and of each printed concurrent resolution of each session of the Legislature; and to attach same together, to attach thereto, their signed certificate that they are true and complete copies of all the printed bills, joint resolutions, and concurrent resolutions of the certain session of the Legislature, and to file said copies so certified in the Office of the Secretary of State within ten days after adjournment of the session.

All copies so certified and filed shall be subject to judicial notice in all courts of record.

§ 2-7-18. Engrossment of bills and amendments.

All bills, in either house of the Legislature, which have been favorably acted upon, preparatory to going upon the calendar shall be engrossed if amendments have been made thereto. Amendments to any bill made by either Senate or House of Representatives, after engrossment, shall likewise be engrossed.

§ 2-7-19. Enrollment of bill after passage by both houses.

A bill which has passed both houses of the Legislature shall at once be enrolled by the house in which it originated.

§ 2-7-20. Presentation of bill to Governor--Filing with secretary of state--Photocopy to code counsel.

The original copy of each enrolled bill shall be signed by the president of the Senate, secretary of the Senate, speaker of the House of Representatives, and chief clerk of the House of Representatives and presented to the Governor. If the Governor approves the bill, the Governor shall sign and transmit it to the secretary of state who shall deliver a photocopy of the signature page to the code counsel to be used in preparing copy for session laws. The secretary of state shall provide a permanent form of binder for the original enrolled bills and the bills vetoed with the veto message attached. The secretary of state shall also provide the code counsel with a photocopy of the signature page of each vetoed bill and veto message.

Rules

6G-1. Determination of procedures. The committees on legislative procedure shall jointly determine uniform procedures for the printing, engrossing and enrolling of bills and joint resolutions.

6G-2. Reprinting of bills and joint resolutions. If a bill is amended, the amendment shall be engrossed on the bill before the bill advances to the next stage of the legislative process. The engrossed bill shall become the original bill.

6G-3. (Reserved).

6G-4. Printing without consent. Each house may print bills, messages, and reports without the consent of the other.

6G-5. Engrossing of bills and joint resolutions. All bills or joint resolutions in either house of the Legislature, which have been favorably acted upon and amendments have been made thereto, before going upon the calendar shall be engrossed. Amendments to any bill or joint resolution, made by either house after engrossment, shall likewise be engrossed upon the original bill or joint resolution.

6G-6. Report to committee on legislative procedure. The chief of the office of engrossing and enrolling shall examine all amended bills and joint resolutions.

6G-7. Enrolling of bills and joint resolutions. A bill which has passed both branches of the Legislature shall be at once enrolled. An enrolled bill or joint resolution shall be free from erasures, marks and interlineations, and each sheet thereof shall be initialed by the chief of engrossing and enrolling and numbered for identification. The cover of the bill or joint resolution shall indicate the house of origin.

6G-8. Review and signing of bills and joint resolutions. The committee on legislative procedure and the chief of engrossing and enrolling shall compare enrolled with engrossed bills and joint resolutions as passed by both houses and make a report thereon to the house of origin. If a bill or joint resolution is reported by the committee as correctly enrolled, it shall be presented to the presiding officers of both houses for their signatures.

6G-9. Presentation of bills and joint resolutions to Governor. After a bill or joint resolution is signed by the officers of both houses, the chairmen of the committees on legislative procedure shall jointly cause such bill to be presented to the Governor for the Governor's signature and such joint resolution to the secretary of state for filing. The committees shall, at any time, report such presentations to both houses.

H. Commemorations

6H-1. Introduction of commemorations. Any member may introduce a legislative commemoration, which may be cosponsored by other members of either house, by filing it with the bill clerk of that member's house. The prime sponsor shall submit all necessary information to the legislative research council prior to introduction. However, no member may introduce a legislative commemoration during the last three legislative days of the session.

6H-2. Numbering of commemorations. Each legislative commemoration shall be numbered consecutively as introduced beginning with No. 1 for the Senate and No. 1001 for the House of Representatives.

6H-3. Printing and calendaring of commemorations. Upon introduction, the presiding officer shall order the legislative commemoration printed in the journal of that legislative day. Subsequently the presiding officer shall place each pending legislative commemoration along with a notation of the page upon which it is printed in the journal on the calendar of the next legislative day following its printing.

6H-4. Approval of commemorations in the house of origin. Any member of the body may object to the approval of any legislative commemoration by so stating on the floor of the body at any time before adjournment on the legislative day upon which the legislative commemoration is calendared. If no such objection is made, the legislative commemoration shall be deemed approved and the presiding officer shall deliver it to the other house. If there is objection, the legislative commemoration shall be deemed disapproved.

6H-5. Calendaring of commemorations in the second house. Upon receipt of a legislative commemoration from the other house, the presiding officer shall place it on the next day's legislative calendar along with a notation of the page upon which it is printed in the journal.

6H-6. Approval of commemorations in the second house. Any member of the receiving body may object to the approval of any legislative commemoration by so stating on the floor of the body at any time before adjournment on the legislative day upon which the legislative commemoration is calendared. If no such objection is made, the legislative commemoration shall be deemed approved and the presiding officer shall deliver it to the house of origin. If there is objection, the legislative commemoration shall be deemed disapproved.

6H-7. Enrollment of commemorations. The secretary of the Senate or the chief clerk of the House of Representatives shall deliver the original enrolled legislative commemoration to the prime sponsor.

I. Computerized Information System

6I-1. Bill Status. The bill status, created by the computerized information system, is the official record of action to the bill.

Chapter 7. Committees

Statutory Provisions

§ 2-6-1. Administration of oaths by committee member.

Any member of the Senate or House of Representatives, while acting as a member of any committee thereof, shall have authority to administer oaths to such persons as shall be examined before such committee.

§ 2-6-2. Composition and appointment of Government Operations and Audit Committee-- Duties and reports--Assistance.

There shall be appointed at each regular session of the Legislature a Government Operations and Audit committee of ten, consisting of five members of the Senate appointed by the president pro tempore of the Senate, one of whom shall be a member of the Judiciary Committee, and five members of the House of Representatives appointed by the speaker of the House, one of whom shall be a member of the Judiciary Committee, for the purpose of inquiry and review of any phase of the operations and the fiscal affairs of any department, institution, board, or agency of the state, to review any findings of abuse or neglect in a juvenile corrections facility, to make a continuing study of the operation of the state's correctional system, and to make a detailed report to the Senate and House of Representatives and submit a copy of its report to the

appropriation committee of each house of the Legislature at the next succeeding session of the Legislature or any special session of the Legislature upon request of the body.

The Department of Legislative Audit shall provide assistance, including clerical help, to the committee upon request.

§ 2-6-4. Investigative powers of Government Operations and Audit Committee.

The Government Operations and Audit Committee may examine all records and vouchers, summon witnesses, and thoroughly examine all expenditures and the general management of each department.

§ 2-6-5. Disobedience of legislative summons as misdemeanor.

Any person who is summoned to attend as a witness before either house of the Legislature or any committee thereof authorized to summon or subpoena witnesses, and who refuses or neglects without lawful excuse to attend pursuant to the summons or subpoena, is guilty of a Class 2 misdemeanor.

§ 2-6-6. Refusal to testify or produce evidence before Legislature as misdemeanor.

Any person who, being present before either house of the Legislature or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material or proper books, papers, or documents in his possession or under his control, is guilty of a Class 2 misdemeanor.

§ 2-6-7. Forfeiture of office by legislator in violation--Disqualification from public office.

The conviction of a member of the Legislature of any crime defined in § 2-6-5 or 2-6-6 involves as a consequence, in addition to the punishment prescribed therein, a forfeiture of his office and disqualifies him from ever thereafter holding any public office under this state.

§ 2-6-8. Retirement laws study committee created--Purpose.

There is hereby created the South Dakota Retirement Laws Committee to make a continuing study of the pension and annuity and benefit laws relating to employees and officers in public service.

§ 2-6-9. Appointment and terms of Retirement Laws Committee members--Political affiliations.

The Retirement Laws Committee shall consist of five members of the House of Representatives to be appointed by the speaker of the House of Representatives and five members of the Senate to be appointed by the president pro tempore of the Senate. The members of the Retirement Laws Committee shall be appointed biennially for terms expiring on January first of each succeeding odd-numbered year and shall serve until their respective successors are appointed and qualified. No more than three from each legislative body may be from the same political party.

§ 2-6-10. Officers of Retirement Laws Committee--Staff assistance.

The Retirement Laws Committee shall select a chairman and vice-chairman and shall be provided with staff assistance from the Legislative Research Council staff.

§ 2-6-11. Study of retirement laws by committee--Emphasis.

The Retirement Laws Committee shall continue the study of the retirement and pension laws applicable to employees and officers in government service throughout the state and shall appraise and evaluate existing laws relating to retirement and pension. It shall give particular study and consideration to the financial affairs of the retirement funds and shall recommend revisions in financial provisions and methods of amortizing the accrued liabilities of such funds without impairment of any of the rights and equities of participants and beneficiaries but in conformity with sound and established principles of financing retirement fund obligations.

§ 2-6-12. Legislative drafts and recommendations by Retirement Laws Committee--Reports--Review of proposals.

The Retirement Laws Committee shall present legislative drafts to effect sound and equitable public employees retirement programs. The Retirement Laws Committee shall study and make recommendations concerning the extension of retirement coverage to public employees to whom retirement protection has not been accorded. The Retirement Laws Committee shall from time to time report to the Legislature which report shall include but not be limited to the financial soundness of the system. The Retirement Laws Committee shall review all proposed legislation that affects public employee retirement in the state and shall make its report to the Legislature. During the legislative session, however, the standing committees established to review retirement laws legislation shall review proposed legislation that affects public employee retirement.

§ 2-6-14. Joint Bonding Review Committee established--Agencies subject to review by joint committee.

An interim joint bonding committee, established pursuant to the rules of the Legislature, shall review the operations, programs, accomplishments and financial status of the South Dakota Housing Development Authority, the South Dakota Health and Educational Facilities Authority, the South Dakota Building Authority, the South Dakota Conservancy District, the South Dakota Railroad Authority, and any other agency, board or commission authorized to conduct statewide programs in the State of South Dakota and to issue bond and note indebtedness.

§ 2-6-15. Reports by bonding entities to joint committee--Contents--Other assistance.

Each of the entities shall submit to the joint committee a complete and detailed report no later than December first of each year, setting forth:

- (1) Its operations and accomplishments;*
- (2) Its receipts and expenditures during its fiscal year for its operating and capital outlay purposes;*
- (3) Its assets and liabilities at the end of its fiscal year;*
- (4) A schedule of its notes and bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year; and*
- (5) Information relating to the selection, evaluation and compensation of its professional service providers.*

Each of the entities shall assist the joint committee in a continuous review of programs and projected plans for the entities.

§ 2-6-16. Reports to joint committee on particular issues of bonds or notes--Contents.

For each issuance of bonds or notes of any such entity, there shall be provided to the joint committee a report of the details of the issuance, including a citation to the resolution providing for the issuance of the bonds and notes, the use of the proceeds of such issuance, the maturity date or dates of the bonds or notes, the interest rate or rates of the bonds or notes, the anticipated source of revenue from which the bonds or notes are to be repaid, and the rating, if any, given by a standard rating service on the bonds or notes.

§ 2-6-17. Detailed accounting to committee on underlying security and investments.

The joint committee may request at any time a detailed accounting of the security underlying outstanding bonds or notes, the ability to make timely repayment of bonds or notes, or the investments of such entity.

§ 2-6-18. Agency explanation to committee of programs and operations.

The joint committee may at any time require the governing board, or its designee, of any such entity to appear before it to provide detailed explanations of the public purpose underlying any of its programs or detailed explanations of any of its operations or activities.

§ 2-6-19. Water Development Oversight Committee created--Purpose.

There is hereby created the Legislative Water Development Oversight Committee. The committee shall consist of four legislators, one each appointed by the majority and minority leaders of the Senate and one each appointed by the majority and minority leaders of the House of Representatives. The committee shall monitor the meetings and actions of the Board of Water and Natural Resources and the Water Management Board. The secretary of the Department of Environment and Natural Resources shall cooperate with the members of the committee and assist them in carrying out their responsibilities. The secretary of the Department of Environment and Natural Resources shall inform the members of the committee of the time and place of all meetings of the Board of Water and Natural Resources and Water Management Board and shall forward to the members of the committee copies of all materials sent to the members of those boards.

The committee shall select a chairperson from among its members and shall from time to time report to the Executive Board of the Legislative Research Council on its activities. Members of the committee shall receive compensation as would any member of an interim legislative committee authorized by the Executive Board of the Legislative Research Council under chapter 2-9.

Rules

7-1. Committee procedure--Relaxed debate. The rules of procedure in a committee are the same as the rules of the body insofar as the rules are applicable to committee procedure. However, as conditions permit, the rules limiting debate may be relaxed to allow free discussion

and to facilitate the work of the committee. Discussion and debate may be permitted by the chair on an amendment that has not been moved.

7-1.1. Subcommittees. The president pro tempore of the Senate, speaker of the House or a chair of a standing committee may designate subcommittees, the number of members to serve on each subcommittee, the chair of each subcommittee, the members of the subcommittee, and the period of time the subcommittee shall serve.

7-1.2. Committee action on bills and resolutions. Unless otherwise ordered under Joint Rule 6D-2, all bills or resolutions shall be referred to one of the standing committees. The chair of a standing committee may then assign a bill or resolution to a subcommittee of that standing committee. All subcommittees shall return such bills or resolutions as are assigned to them for consideration, to the standing committee with or without recommendation and within the time which will permit the full standing committee to act upon the bill or resolution.

7-1.3. Meetings open to public. Subject to Article III, Section 15 of the Constitution, all committee or subcommittee meetings shall be open to the public.

7-1.4. Posting of agendas. Agendas of the bills, resolutions, and other proposals to be considered at any meeting of a standing committee or subcommittee shall be posted on the bulletin board of the respective house. At least one legislative day shall intervene between the date of posting and the date of consideration. An agenda must be posted by 5 p.m. in order to allow for an intervening legislative day. However, if a day of legislative recess intervenes between the date of posting and the date of consideration, the requirement of posting is fulfilled only if posting is made prior to adjournment of the session of the particular house on the day before the legislative recess.

7-1.5. Consideration of matters not posted. A two-thirds majority of the committee members present may bring a matter up for consideration at any time.

7-1.6. Formal action required on all legislative proposals. Standing committees shall take formal action regarding each legislative proposal submitted for their consideration.

7-1.7. Vote requirement. Final disposition on a bill or resolution requires a majority vote of the committee members-elect taken by roll call.

7-1.8. Final disposition. Final disposition is any action which moves a bill out of a committee to the floor of a house or to another committee or which removes it from further consideration by the committee. Examples of final disposition include "Do Pass," "Do Pass, Amended," "Refer to Another Committee," "Lay on the Table," and "Defer to a Day Certain Beyond the End of the Session."

7-1.9. Attachment of amendments to bills or resolutions reported unfavorably. Unless a bill has been ordered to be delivered pursuant to Joint Rule 7-7, a committee may amend a bill or resolution that it reports "Do Not Pass" or "Without Recommendation."

7-1.10. Amendment of a previously tabled bill. If a bill is removed from the table and amended so that it requires a title amendment, the title must be amended and then the bill reported for a new hearing pursuant to Joint Rule 7-1.4, unless placed by Joint Rule 7-1.5.

7-2. Committee reports. Each committee shall report final committee actions on legislative proposals. The chair of a committee shall sign the reports of the committee and present them to

the body when the call for committee reports is made. The chair is responsible for the accuracy and propriety of the chair's statements and shall answer any questions pertaining to the report. This rule does not prohibit the committees on legislative procedure from reporting at any time. Formal actions shall be reported to the body not later than the next legislative day in an informational committee report which is printed in the daily journal.

7-3. Reports of select committees. Select committees to which matters are referred shall in all cases report a statement of facts and their opinion on the matters to the body.

7-4. Dissenting reports. If the members of a committee cannot agree on its report, the majority and minority may each make a report. Any member dissenting in whole or in part from the reasoning and conclusions of both majority and minority may also present a statement of the member's reasoning and conclusions. All reports must be decorous in language and respectful to the house and shall be entered in the journal.

7-5. Filing of committee minutes. The minutes of all standing committees shall be prepared and filed on a computerized legislative information system. Computer terminals shall be available in the Presidents' and Speakers' lobbies of the capitol.

7-6. Contents of committee minutes. Minutes of standing committees filed pursuant to Joint Rule 7-5 shall contain the number of each proposal considered; the title or a brief summary of each proposal's major provisions; the committee's action, if any, on each proposal, including a brief minority report if requested by any committee member; a record of how each committee member voted when action was taken, including votes on motions to postpone consideration of proposals; and a list of all persons testifying before the committee on each proposal and the interest they represent. Minutes of budget hearings conducted by an appropriations committee may contain a synopsis of testimony received. Minutes shall be open to the public for inspection.

7-7. Demand for delivery of bill or resolution to house--"Smoke-out." Each house may by motion order its committee to deliver a bill or resolution under its consideration to that house. If the motion is supported by the vote of one-third or more of the members-elect, the committee shall, not later than the next legislative day, deliver the bill or resolution to the house with or without recommendation. The bill or resolution shall be delivered to the house in the same form as it was when it was tabled or deferred to a nonexistent day by the committee.

7-8. Placement of "smoked-out" bill or resolution on calendar. If a bill or resolution is delivered to the House of Representatives or Senate pursuant to Joint Rule 7-7 on the last day for passage and it was not reported "Do Pass," the bill or resolution may, by motion approved by a majority of the members-elect of the House of Representatives or Senate, be placed on that day's calendar.

7-9. Calendar committee. The calendar committee in the Senate consists of the President Pro Tempore, the Senate Majority Leader, and the Senate Minority Leader. The calendar committee in the House consists of the Speaker of the House, the House Majority Leader, and the House Minority Leader. The committee shall determine the daily legislative calendar.

7-10. Co-chairs of joint committees. Chairs of standing committees operating and voting as joint committees shall serve as co-chairs of the joint committees.

7-11. Introduction of general appropriation bill. The general appropriation bill shall be introduced by the Senate Committee on Appropriations in even-numbered years and by the

House Committee on Appropriations in odd-numbered years. The general appropriation bill shall be introduced no later than the sixteenth legislative day.

7-12. Structure of appropriations committee. The Senate and House Committees may meet in joint session or form combined subcommittees to hear agency budget presentations. All Joint Appropriations Committee action on the general appropriations bill shall be approved by a majority vote of the Joint Committee unless a member calls for a separate vote of the House Appropriations Committee and the Senate Appropriations Committee in which case a majority vote of each committee is required for adoption. Such action shall constitute the committee report of the house of origin on the general appropriation bill.

7-13. Entertainment of motions. No motion may be debated until it is seconded. Following the second of a debatable motion, the chair shall first recognize the member making the motion. No member of the House of Representatives may make introductory remarks prior to making a motion.

7-14. Restatement and reading of motions. When a motion is made and seconded, it shall be restated by the chair.

7-15. Withdrawal of motions. After a motion is stated by the chair, it may not be withdrawn without consent of the members who made and seconded the motion.

7-16. Motions. When a question is under debate, no motion may be made except the following motions:

- (1) Adjourn;
- (2) Recess;
- (3) Call the previous question;
- (4) Lay on the table;
- (5) Defer to a day certain beyond the end of the session;
- (6) Do pass;
- (7) Do pass, amended;
- (8) Do not pass;
- (9) Without recommendation;
- (10) Defer to a day certain;
- (11) Refer to another committee;
- (12) Amend;
- (13) Appoint a subcommittee.

7-17. Application and nondebatability of motions to lay on the table. A motion to lay on the table which effects a disposition on the merits of any bill or resolution requires the vote of a majority of the committee members-elect to carry and shall be decided without debate. No other motion may be made until the members have voted on the motion to lay on the table. Any other motion to lay on the table requires the vote of a majority of the committee members present and shall be decided without debate. No committee member may make introductory remarks prior to making a motion to lay on the table.

7-18. Scope of motions to lay on the table. A motion to lay on the table may be made so as to apply either to the main question or to a proposed amendment or to the bill and all pending amendments, and the motion shall clearly state to which it is intended to apply.

7-19. Motion to take from the table or to reconsider the bill. Whenever any bill or resolution is laid on the table or deferred to a day certain beyond sine die, it requires a majority vote of the committee members-elect to take it from the table or to reconsider the bill or resolution which was deferred. The motion to take from the table or to reconsider is debatable.

7-20. Scope of motion to defer to day certain beyond sine die. The rules pertaining to motions to table and to defer to a day certain beyond sine die shall be the same except that a motion to defer to a day certain beyond sine die is debatable. A member of the Senate may make introductory remarks prior to making a motion to defer to a day certain beyond sine die.

7-21. Motion to call the previous question. A motion for the previous question shall be decided immediately by a majority of the committee members present and without debate. The motion shall clearly indicate the question to which it applies. No committee member may make introductory remarks prior to making a motion to call the previous question. The effect of adopting a motion to call the previous question is to close debate, to prevent the moving of amendments or other subsidiary motions, and to bring to vote immediately the question to be voted upon. The effect of defeating a motion to call the previous question is to allow continuation of debate on the question before the committee.

7-22. Priority of vote after call of the previous question. After a motion to call the previous question has prevailed, it is not in order to move to adjourn, prior to a decision of the question before the committee.

7-23. Dilatory motions to defer or refer. If a motion to defer to a day certain, to defer indefinitely or to refer to another committee is decided in the negative, such motion is not again in order at the same stage of consideration of the bill or proposition.

7-24. Motion to postpone as final action. A motion to defer indefinitely or to a date beyond the sine die adjournment of the Legislature requires the vote of a majority of the committee members-elect.

7-25. Germaneness of amendments. No motion to amend a bill is in order unless it is germane to the subject as expressed in the title of the bill.

7-26. Limitations on number of motions to amend and substitute motions. When a motion or proposition is under consideration, a motion to amend and a motion to amend that amendment is in order. It is also in order to offer a further amendment as a substitute, but such substitute is not subject to amendment.

7-27. Division of the question. Any member may call for a division of the question. The chair shall divide the question if it contains questions so distinct that, one being taken away, the rest may stand as a separate proposition.

7-28. Committee procedure -- Remote electronic testimony. During any regular or special session of the Legislature, a committee may, upon the unanimous consent of the members present, permit a person to appear from a remote site and give testimony before the committee by electronic audio/video means.

Chapter 8. Conference Committees

8-1. Appointment and composition of conference committees. In every case of disagreement between the two houses, if either house requests a conference and appoints a committee for that purpose, the other house shall appoint a committee to confer with a like committee of the other house upon the subject of the disagreement, and to report back to its house of appointment. Each conference committee shall consist of three members of each house. The members from the House of Representative shall be appointed by the speaker of the House and the members from the Senate shall be appointed by the president pro tempore of the Senate. Insofar as possible, members appointed to conference committees shall be representative of the decision within the house upon the issue under consideration.

8-2. Conference committee meetings, committee reports, and reports must be germane. Conference committees shall meet in open session, and minutes shall be taken and prepared in a like manner as provided for in Joint Rule 7-6. The presiding officer of the house of origin shall announce to that body the time and location of each conference committee meeting. The co-chairs of each conference committee shall report the results of each meeting to the body in a conference committee report jointly signed by both. The conference committee report must be germane to the title of the bill as submitted to the conference committee. The adoption of any conference committee report constituting final disposition must be approved by the recorded affirmative vote of at least two members from each house.

8-3. Final disposition of report and distribution of reports. Adoption of a conference committee report recommending passage of a bill or adoption of a resolution constitutes final disposition. The vote required to concur in the amendments of the other House or to adopt a conference committee report shall be the same as that required for final passage of the bill or resolution taking such bill or resolution as a whole. Before the final vote on the adoption of a conference committee report may be taken, any member of the body may require that the report be distributed in written form to the members of the body.

8-4. Member may move to not appoint a subsequent conference committee--Final disposition. However, if a conference committee report is not adopted, any member may move not to appoint a new conference committee. If that motion prevails it constitutes final disposition of that bill or resolution.

Chapter 9. Committee of The Whole

9-1. Designation of committee of the whole chair. If either house sits as a committee of the whole, the presiding officer shall name one of the members as chair, who shall be vested with all the authority of the presiding officer of the house concerned while the committee of the whole is in session.

9-2. Rules of the committee of the whole. The rules observed by the house concerned shall govern as far as practicable, except that:

- (1) The yeas and nays may not be called;
- (2) The previous question may not be enforced; and
- (3) The time of speaking may not be limited.

9-3. Adjournment of the committee of the whole. A motion that the committee rise is always in order and shall be decided without debate.

Chapter 10. Journal

Constitutional Provisions

Article III, § 13. Legislative journals--Recording of yeas and nays.

EACH HOUSE SHALL KEEP A JOURNAL OF ITS PROCEEDINGS AND PUBLISH THE SAME FROM TIME TO TIME, EXCEPT SUCH PARTS AS REQUIRE SECRECY, AND THE YEAS AND NAYS OF MEMBERS ON ANY QUESTION SHALL BE TAKEN AT THE DESIRE OF ONE-SIXTH OF THOSE PRESENT AND ENTERED UPON THE JOURNAL.

STATUTORY PROVISIONS

§ 2-7-7. Officers to keep legislative journals--Custody and disposition of bills and documents.

It shall be the duty of the secretary of the Senate and chief clerk of the House of Representatives to keep correct journals of the proceedings of the senate and house, respectively; to have the custody of all records, accounts, and other papers committed to them and at the close of each session of the Legislature to deposit for safekeeping in the Office of the Secretary of State all books, bills, documents, resolutions, and papers in the possession of the Legislature, correctly labeled, folded, and classified, and generally to perform such duties as shall be assigned them by the senate or house, respectively; provided, such journals shall be deposited within forty days after the adjournment of the Legislature.

§ 2-7-8. Time of delivery of daily legislative journals--Penalty for delay--Waiver.

The contractor for printing and binding of the journals of the Legislature shall deliver the daily journals to the Legislature at least two hours before the convening of the Legislature on the following legislative day and, if he fails to do so, he is subject to a penalty of ten dollars per hour for each hour's delay to be deducted from any sum due him on the contract, or recovered from his performance bond in the event such deduction from contract cannot be made. The director of the Legislative Research Council may waive the penalty provisions of this section if failure to deliver the daily journals as required is due to circumstances which the director considers to be sufficiently extenuating.

§ 2-7-10. Permanent journals as official record of proceedings

The corrected daily copies of the journal of the Senate and House of Representatives, together with the index thereof, shall constitute, and be the official permanent record of the legislative proceedings.

§ 2-7-11. Time of delivery of permanent journals--Distribution and price.

The contractor for printing the journal indexes of the Legislature shall deliver them to the Legislative Research Council within ninety days after copy therefor has been furnished. The Legislative Research Council shall provide for the distribution of the journals. Price and

distribution of the journal indexes shall be determined by a joint-select committee of the Legislature.

§ 2-7-12. Certified copies of journals as prima facie evidence of proceedings.

Duly certified copies of such journals shall be received in all courts of the state as original evidence, and the volumes wherein the same are published by authority of the state, shall be prima facie evidence of such proceedings.

Rules

10-1. Daily journal. A journal of each house shall be made available daily and laid upon the desks of the members and officers the following morning. The journal need not be read unless ordered. The secretary of the Senate and the chief clerk of the House shall report on the correctness of the journal to the committees on legislative procedure. The committees on legislative procedure shall in turn report to their respective houses.

10-2. Journal contents. In keeping a correct journal, the secretary of the Senate and the chief clerk of the House shall record in the journals of their respective houses the motions, resolutions, rules and decisions of the respective houses.

10-3. Journal format and certification. The secretary of the Senate and the chief clerk of the House shall each furnish a corrected copy of their respective compiled daily journals to the printer having the contract for the printing of the journals. The secretary and the chief clerk shall preface the journals by a title to appear on the first page of the permanent volumes of the journals, substantially as follows:

(Proceedings of the Senate or
House of Representatives)
of the
Legislative Session
State of South Dakota

(Seal of State)
Begun and Held at Pierre South Dakota
on
Tuesday, January ____ 20__
and Concluded
_____ March, _____ 20__
Published under the Direction and
Authority of the Legislature

On the second page of the journal the secretary or chief clerk shall certify that the record contains a full, true, and correct proceeding of the legislative session.

One copy each of the daily permanent journals of the House and Senate shall be certified as follows:

I hereby certify that the following (Senate or House) journal of the _____ legislative day is correct.

Secretary of the Senate

(or Chief Clerk of the House)

The certified copies shall be filed with the secretary of state not later than forty days after the adjournment of the Legislature.

Chapter 11. Rules

11-1. Joint rule suspension or amendment. No joint rule may be suspended or amended without the concurrence of a two-thirds majority of the members-elect of either house. The final vote on any amendment may not be taken upon the same day it was offered.

11-2. Adopting joint rules. A joint rule may be adopted by concurrence of a majority of the members-elect of each house.

11-3. Proceedings governed by Mason's Manual. *Mason's Manual of Legislative Procedure* governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

Chapter 12. Voting Requirements and Procedure

Constitutional Provisions

Article III, § 18. Enacting clause--Assent by majority--Recording of votes.

THE ENACTING CLAUSE OF A LAW SHALL BE: "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA" AND NO LAW SHALL BE PASSED UNLESS BY ASSENT OF A MAJORITY OF ALL THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE. AND THE QUESTION UPON THE FINAL PASSAGE SHALL BE TAKEN UPON ITS LAST READING, AND THE YEAS AND NAYS SHALL BE ENTERED UPON THE JOURNAL.

Art. XI, § 14. Vote required to impose or increase taxes.

THE RATE OF TAXATION IMPOSED BY THE STATE OF SOUTH DAKOTA IN REGARD TO ANY TAX MAY NOT BE INCREASED AND NO NEW TAX MAY BE IMPOSED BY THE STATE OF SOUTH DAKOTA UNLESS BY CONSENT OF THE PEOPLE BY EXERCISE OF THEIR RIGHT OF INITIATIVE OR BY A TWO-THIRDS VOTE OF ALL THE MEMBERS ELECT OF EACH BRANCH OF THE LEGISLATURE.

Article XII, § 2. Contents of general appropriation bill--Separate appropriation bills.

THE GENERAL APPROPRIATION BILL SHALL EMBRACE NOTHING BUT APPROPRIATIONS FOR ORDINARY EXPENSES OF THE EXECUTIVE, LEGISLATIVE AND JUDICIAL DEPARTMENTS OF THE STATE, THE CURRENT EXPENSES OF STATE INSTITUTIONS, INTEREST ON THE PUBLIC DEBT, AND FOR COMMON SCHOOLS. ALL OTHER APPROPRIATIONS SHALL BE MADE BY SEPARATE BILLS, EACH EMBRACING BUT ONE OBJECT, AND SHALL REQUIRE A TWO-THIRDS VOTE OF ALL THE MEMBERS OF EACH BRANCH OF THE LEGISLATURE.

Article XXIII, § 1. Amendments.

AMENDMENTS TO THIS CONSTITUTION MAY BE PROPOSED BY INITIATIVE OR BY A MAJORITY VOTE OF ALL MEMBERS OF EACH HOUSE OF THE LEGISLATURE. AN AMENDMENT PROPOSED BY INITIATIVE SHALL REQUIRE A PETITION SIGNED BY QUALIFIED VOTERS EQUAL IN NUMBER TO AT LEAST TEN PER CENT OF THE TOTAL VOTES CAST FOR GOVERNOR IN THE LAST GUBERNATORIAL ELECTION. THE PETITION CONTAINING THE TEXT OF THE PROPOSED AMENDMENT AND THE NAMES AND ADDRESSES OF ITS SPONSORS SHALL BE FILED AT LEAST ONE YEAR BEFORE THE NEXT GENERAL ELECTION AT WHICH THE PROPOSED AMENDMENT IS SUBMITTED TO THE VOTERS. A PROPOSED AMENDMENT MAY AMEND ONE OR MORE ARTICLES AND RELATED SUBJECT MATTER IN OTHER ARTICLES AS NECESSARY TO ACCOMPLISH THE OBJECTIVES OF THE AMENDMENT.

Statutory Provisions

§ 4-8A-1(1). *Definition of terms.*

Terms as used in this chapter, unless the context otherwise requires, mean:

(1) "General appropriation act," the bill enacted by the Legislature in accordance with the provisions of S.D. Const., Art. XII, § 2, requiring a majority vote of all the members of each house of the Legislature; [.]

Rules

12-1. Voting required, exceptions, passes. Each member who is in the chamber when a question is put shall vote unless the body excuses the member. A member may pass only once on any roll call vote.

12-2. Voting restrictions. No member may vote on any question unless within the chamber and voting before the result of the vote is announced.

12-3. Voting procedures. Questions shall be put in this form: "As many as favor the question, as stated, say 'Yea'; as many as are opposed to the question, as stated, 'Nay'." If the presiding officer doubts the result of a vote or if a division is called for, the members shall divide. Those in the affirmative shall first rise from their seats and remain standing until counted and then those in the negative shall vote in like manner.

12-4. Changing votes. If the yeas and nays have been taken on any question, no member may change a vote after the decision is announced from the chair, unless by unanimous consent of the house.

12-5. Majority vote required for resolutions. Any joint or concurrent resolution requires a majority vote of the members elected to each house of the Legislature, and the yeas and nays shall be entered upon the journal. Any House or Senate resolution requires a majority vote of the members elected to that house, and the yeas and nays shall be entered upon the journal.

Chapter 13. Consent Calendar

13-1. Consent calendar recommendations by standing committees. Each standing committee may report an uncontested bill or resolution out of committee with the recommendation that it be placed on the consent calendar. As used in this rule, an "uncontested bill or resolution" is any bill or resolution, except a revenue measure, which receives a do-pass or do-pass-as-amended recommendation from the committee to which it is referred, by unanimous vote of the members present and has no opposition expressed by any person present at the committee meeting with respect to the final version of the bill or resolution as approved by the committee.

13-2. Consent calendar placement, objections. Any bill or resolution certified by the committee chair as an uncontested bill or resolution shall be placed by the secretary of the Senate or the chief clerk of the House of Representatives, on the consent calendar, upon an affirmative vote therefor of all the members present of the committee reporting the bill or resolution to its respective house. Upon objection of any member to the placement or retention of any bill or resolution on the consent calendar, the bill or resolution shall be removed from the consent calendar and may be placed on the house calendar for second reading on the following legislative day. No consent calendar bill or resolution may be considered for adoption until the legislative day following the day of its placement on the consent calendar.

13-3. Consent calendar scheduling. The calendar committee in each house may schedule consent calendar bills and resolutions at any time.

13-4. Consent calendar items--Questions, voting. Bills and resolutions on the consent calendar are not debatable. The president of the Senate or the speaker of the House of Representatives shall allow a reasonable time for questions from the floor and shall permit the proponents of the bills or resolutions to answer the questions. Immediately before voting on the first bill or resolution on the consent calendar, the president of the Senate or the speaker of the House of Representatives shall call to the attention of the members the fact that the next roll call will be the roll call on the bill or resolution on the consent calendar.

Chapter 14. Effective Date of Legislation and Veto Considerations

Constitutional Provisions

Article III, § 22. Effective date of acts--Emergency clause.

NO ACT SHALL TAKE EFFECT UNTIL NINETY DAYS AFTER THE ADJOURNMENT OF THE SESSION AT WHICH IT PASSED, UNLESS IN CASE OF EMERGENCY, (TO BE EXPRESSED IN THE PREAMBLE OR BODY OF THE ACT) THE LEGISLATURE SHALL BY A VOTE OF TWO-THIRDS OF ALL THE MEMBERS ELECTED OF EACH HOUSE, OTHERWISE DIRECT.

Article IV, § 4, Par. 1, 2, 3, 4. Veto power.

WHENEVER THE LEGISLATURE IS IN SESSION, ANY BILL PRESENTED TO THE GOVERNOR FOR SIGNATURE SHALL BECOME LAW WHEN THE GOVERNOR SIGNS THE BILL OR FAILS TO VETO THE BILL WITHIN FIVE DAYS, NOT INCLUDING SATURDAYS, SUNDAYS, OR HOLIDAYS, OF PRESENTATION. A VETOED BILL SHALL BE RETURNED

BY THE GOVERNOR TO THE LEGISLATURE TOGETHER WITH THE GOVERNOR'S OBJECTIONS WITHIN FIVE DAYS, NOT INCLUDING SATURDAYS, SUNDAYS, OR HOLIDAYS, OF PRESENTATION IF THE LEGISLATURE IS IN SESSION OR UPON THE RECONVENING OF THE LEGISLATURE FROM A RECESS. ANY VETOED BILL SHALL BE RECONSIDERED BY THE LEGISLATURE AND, IF TWO-THIRDS OF ALL MEMBERS OF EACH HOUSE SHALL PASS THE BILL, IT SHALL BECOME LAW.

WHENEVER A BILL HAS BEEN PRESENTED TO THE GOVERNOR AND THE LEGISLATURE HAS ADJOURNED SINE DIE OR RECESSED FOR MORE THAN FIVE DAYS WITHIN FIVE DAYS FROM PRESENTATION, THE BILL SHALL BECOME LAW WHEN THE GOVERNOR SIGNS THE BILL OR FAILS TO VETO IT WITHIN FIFTEEN DAYS AFTER SUCH ADJOURNMENT OR START OF THE RECESS.

THE GOVERNOR MAY STRIKE ANY ITEMS OF ANY BILL PASSED BY THE LEGISLATURE MAKING APPROPRIATIONS. THE PROCEDURE FOR RECONSIDERING ITEMS STRUCK BY THE GOVERNOR SHALL BE THE SAME AS IS PRESCRIBED FOR THE PASSAGE OF BILLS OVER THE EXECUTIVE VETO. ALL ITEMS NOT STRUCK SHALL BECOME LAW AS PROVIDED HEREIN.

BILLS WITH ERRORS IN STYLE OR FORM MAY BE RETURNED TO THE LEGISLATURE BY THE GOVERNOR WITH SPECIFIC RECOMMENDATIONS FOR CHANGE. BILLS RETURNED SHALL BE TREATED IN THE SAME MANNER AS VETOED BILLS EXCEPT THAT SPECIFIC RECOMMENDATIONS FOR CHANGE AS TO STYLE OR FORM MAY BE APPROVED BY A MAJORITY VOTE OF ALL THE MEMBERS OF EACH HOUSE. IF THE GOVERNOR CERTIFIES THAT THE BILL CONFORMS WITH THE GOVERNOR'S SPECIFIC RECOMMENDATIONS, THE BILL SHALL BECOME LAW. IF THE GOVERNOR FAILS TO CERTIFY THE BILL, IT SHALL BE RETURNED TO THE LEGISLATURE AS A VETOED BILL.

Statutory Provisions

§ 2-14-16. Effective date of legislative acts.

Subject to the provisions of the Constitution and statutes relating to vetoes and the referendum, an act of the Legislature which does not prescribe when it shall take effect, if passed at a regular session, takes effect on the first day of July after its passage and if passed at a special session on the ninety-first day after the final adjournment of such session.

§ 2-7-20.1. Certificate of conformity by Legislature in form and style.

Whenever the Governor certifies, pursuant to paragraph four of section 4 of article IV of the Constitution, that the Legislature has conformed a bill to his recommendations, that certificate shall be typed and signed on the enrolled bill.

§ 2-7-20.2. Veto of bills passed before last four session days--Message to house of origin--Reconsideration--Filing with secretary of state.

Whenever the Governor vetoes any bill or any items of a bill which was presented to him five or more calendar days before an adjournment or a recess of the Legislature, he shall transmit his veto message with the original bill to the secretary of the Senate or chief clerk of the House of Representatives, whichever was the house of origin, on the date of his exercise of the power but no later than noon on the last legislative day prior to adjournment or recess. The officer of the

house receiving the veto message shall certify on the original copy of the bill whether reconsideration was had and the vote on any reconsideration and shall transmit the bill and veto message to the secretary of state for filing when the time for reconsideration has passed.

§ 2-7-20.3. Veto of bills too late for return to Legislature--Transmittal to secretary of state

Whenever the Governor vetoes a bill or any items of a bill which was presented to him during the final four days preceding an adjournment or a recess and it cannot be transmitted to the house of origin in session, he shall transmit the original bill and his veto message to the secretary of state within one day following his veto but no later than the sixteenth day following adjournment or recess.

§ 2-7-20.4. Bills becoming law without Governor's signature or objections.

Whenever the Governor fails to veto any bill which shall become law without his signature or the certificate referred to in § 2-7-20.1, he shall deliver it to the secretary of state who shall note, beneath the signature line provided for the Governor, that it was delivered by the Governor without his signature and without his objections. No communication relating to his reasons for not signing the bill shall be filed or recorded by the secretary of state.

Chapter 15. Interhouse Communications and Transmissions

15-1. Communications by messages. Any communication between the Senate and the House of Representatives shall be by message which shall be signed by the secretary or chief clerk, respectively, and sent to the house to which it is addressed.

15-2. Notification of bill or resolution rejection. If a bill or joint resolution which has passed one house is rejected by the other, the house of origin shall be immediately notified of this action.

15-3. Notification of bill or resolution deferred to 36th or 41st day. If the consideration of any bill or joint resolution which originated in one house shall be postponed in the other house to a day so distant that it will not be taken up again by the present session, the house of origin shall be immediately notified of such action.

Chapter 16. Joint Session

16-1. Organization of a joint session. While the two houses are acting together on any matter, the president of the Senate shall preside and all questions of order shall be decided by the president, subject to an appeal of both houses, as though but one body was in session.

16-2. Call of the house. A call of the members of either house may be had in joint session by order of the house in which the call is desired.

16-3. Recording of the proceedings. The secretary of the Senate and the chief clerk of the House shall be the clerks of the joint session and keep a record of the proceedings and enter the record in the journals of the Senate or of the House.

16-4. Motion to defer or adjourn. Any motion to defer or adjourn shall be decided by a joint vote of both houses, and, if required, the yeas and nays shall be entered upon the journals of both houses.

16.5. Suspension of floor privileges. During a joint session, former Governors, Lieutenant Governors, members of the Congress of the United States from South Dakota and former members of the South Dakota Legislature will not be admitted to the chamber. The presiding officer will instruct the sergeant at arms to provide a reserve seating section in the chamber gallery for these former officials who wish to witness the joint session.

Chapter 17. Legislative Deadlines

Legislative Deadlines		
Legislative Action	40 Day Session	33 Day Session
Final day for introduction of individual bills and joint resolutions	15 th Day	10 th Day
Final day for introduction of committee bills and joint resolutions*	16 th Day	11 th Day
Last day upon which Joint Rule 5-17 can be invoked on a bill or resolution in either house	26 th Day	19 th Day
Last day to move required delivery of bills or resolutions by a committee to the house of origin*	27 th Day	20 th Day
Last day to pass bills or joint resolutions by the house of origin*	28 th Day	21 st Day
During the seven final legislative days motions to reconsider and reconsideration being made upon the same day (any time before adjournment)	34 th Day on	27 th Day on
Last day to move required delivery of bills or resolutions by a committee to the second house*	35 th Day	28 th Day
Last day for a bill or joint resolution to pass both houses*	36 th Day	29 th Day
Two days preceding the final day of a legislative session shall be reserved for concurrences or action upon conference committee reports	37 th Day 38 th Day	30 th Day 31 st Day
The final day of a legislative session is reserved for the consideration of vetoes	40 th Day	33 rd Day
* This deadline does not apply to the general appropriations bill.		

17-1. Calendar less than 40 days. If a Session Calendar is adopted for a period of thirty-six (36) days to thirty-nine (39) days, inclusive, the legislative deadlines set forth in Chapter 17 of the Joint Rules for a thirty-five (35) day session shall be increased by the same number of days by which the length of the adopted calendar exceeds thirty-five (35) days.

Chapter 4

AGRICULTURE

Agriculture is South Dakota's largest industry and the foundation of the state's economy. At the state level, agriculture is regulated by the South Dakota Department of Agriculture, which consists of the Office of the Secretary, the Division of Agricultural Development, the Division of Resource Conservation and Forestry, the Division of Agricultural Services, the Division of Wildland Fire Suppression, and various agricultural boards and commissions and commodity check-off programs as follows:

South Dakota Department of Agriculture

(<http://sdda.sd.gov>)

Office of the Secretary

Administrative
Information Dissemination
Legislative Support

Division of Agricultural Policy

Division of Agricultural Development

Finance Programs
Assistance Programs
Farm Loan Mediation and Ag Finance Counseling
Value Added and Crop Marketing
Livestock Development and Marketing
Business Development
Dairy Retention and Enhancement
DakotaFlavor.Com
Farm Link Program
Organic Cost Share Program

Division of Agricultural Services

Apiary
Container Recycling and Water Pesticide Collection Program
Dairy
Egg
Feed and Animal Remedy
Fertilizer and Soil Amendment
Nursery
Pesticide

Plant Protection
Regulatory Compliance and Enforcement
Rodent Bait Manufacturing
Seed
Weed and Pest Control

Division of Resource Conservation and Forestry

Conservation
Forest Stewardship
Forest Health
Urban and Community Forestry
Forest Inventory Analysis
Grants and Loans

Division of Wildland Fire Suppression

Suppression
Prevention
Urban Interface
Prescribed Fire
State Fire Information
Rural Fire Assistance
Training/Qualification
Fire Business Management
Aviation

State Fair Park Division

Agriculture Boards and Commissions

Animal Industry Board
Brand Board
Conservation Commission
Seed Certification Board
State Fair Commission
Value Added Finance Authority
Veterinary Medical Examiners Board
Weed and Pest Commission

Commodity Check-Off Programs

American Dairy Association of South Dakota - Brookings
Corn Utilization Council - Sioux Falls
Soybean Council - Sioux Falls
Oilseeds Council
Pulse Council
Wheat Commission

Funding Sources for the Department

The Department of Agriculture's budget for FY2013 is approximately \$44.2 million with 222.5 FTEs. Of that total, approximately \$5.6 million comes from the state general fund and \$7.5 million comes from federal sources. The balance, \$31.1 million, is budgeted as other fund authority. The cash for the other fund authority is derived from a variety of license and registration fees on fertilizer, feed, pesticides, dairy, and apiary. The commodity boards and commissions generate revenue through check-off fees on their respective commodities. More information on the South Dakota Department of Agriculture and its functions is available on the Internet at <http://sdda.state.gov>.

Statutory Overview

The primary statutes relating to agriculture are found in Titles 38, 39, and 40 of the South Dakota Codified Laws (SDCL). Agricultural activities are also regulated by Article 12 of the Administrative Rules of South Dakota (ARSD).

SDCL Title 38 deals with agriculture and horticulture and addresses such topics as regulation and use of pesticides and fertilizers, plant quarantine and treatment, weed and pest control, seed standards and labeling, apiaries, and commodity check-off programs. Commodity check-off programs generally involve an assessment by farmers or producers on grain or other products at the time that the products are sold. Proceeds from the assessments are used for research or promotional purposes. South Dakota currently has check-off programs on wheat, corn, soybeans, oilseeds (sunflowers, safflower, flax and canola), pulse crops (dry peas, lentil, chick peas, turnips) and milk (a federal program). Title 39 addresses food and drugs and includes regulation of meat and dairy products, eggs and butter, commercial feeds, and other products. Title 40 regulates livestock production, particularly in areas of disease control. The Animal Industry Board, administered by the State Veterinarian, is responsible for many of the livestock regulation functions in Title 40. Title 40 also regulates livestock auctions, dealers, and packers and provides for livestock brand registration, use, and inspection.

Trends in Agriculture

The most noticeable long-term trend in South Dakota agriculture has been a steady reduction in the number of farms and a corresponding increase in the size of farms, with the amount of land in farms remaining essentially stable. This trend has continued over a long period of time and does not appear to have been affected to any significant degree by short-term economic changes or weather conditions. This trend corresponds with the loss of rural population experienced in South Dakota in past decades. However, the loss of farms seems to have stabilized in the last ten to fifteen years. Table 1 presents the number, average size, and total acreage of farms in South Dakota from 1935 to the present.

Agriculture is at the center of South Dakota's economy. Cash receipts from crops, livestock, and government payments in 2010 totaled about \$8.1 billion in South Dakota, an increase of 56% from \$5.2 billion in 2006. In 2011, South Dakota was first in the nation in the production of sunflowers, hay, and bison; third in flax seed and millet; fourth in oats, and sorghum; and fifth in beef cows that calved. Tables 2 and 3 compare South Dakota's crop and livestock production with other leading agricultural states. Table 4 shows land values in South Dakota from 1980-2011.

TABLE 1
Number of Farms, Average Farm Size, and Land in Farms,
South Dakota – 1935-2011

Year	Number of Farms (Thousands)	Average Farm Size (Acres)	Land in Farms (Acres)
1935	83.4	446	37,200,000
1940	72.5	545	39,500,000
1945	68.8	626	43,100,000
1950	67.1	669	44,900,000
1955	63.5	717	45,500,000
1960	58.4	781	45,600,000
1965	52.0	877	45,600,000
1970	47.0	978	45,500,000
1975	43.0	1,056	45,400,000
1985	36.5	1,219	44,500,000
1990	35.0	1,266	44,300,000
1995	33.0	1,333	44,000,000
2000	32.5	1,354	44,000,000
2005	31.4	1,392	43,700,000
2010	31.5	1,387	43,700,000
2011	31.3	1,395	43,650,000

Source: South Dakota Agricultural Statistics Service, South Dakota Agriculture - 1984-1990 and South Dakota Agriculture - 2012.

TABLE 2
Crop Production, South Dakota and Leading States--2011

Item	Unit	1	2	3	4	5	SD Rank
Corn (grain)	Mil. Bu.	Iowa 2356.4	Illinois 1946.8	Nebraska 1536.0	Minnesota 1201.2	Indiana 839.5	6 653.4
Oats	Mil. Bu.	Wisconsin 7.1	Minnesota 5.9	N. Dak. 4.4	S. Dak. 4.1	Iowa 3.3	4 4.1
Wheat (all)	Mil. Bu.	Kansas 276.5	N. Dak. 199.9	Montana 175.0	Wash. 167.9	Idaho 116.0	6 104.8
Winter Wheat	Mil. Bu.	Kansas 276.5	Wash. 129.8	Montana 89.8	Colorado 78.0	Oklahoma 70.4	6 66.8
Durum Wheat	Mil. Bu.	N.Dak. 18.2	California 12.5	Montana 10.8	Arizona 8.0	Idaho 0.8	6 0.2
Other Spring Wheat	Mil. Bu.	N. Dak. 167.8	Montana 74.4	Minnesota 69.0	Idaho 52.1	Wash. 38.1	6 37.8
Barley	Mil. Bu.	Idaho 46.5	Montana 31.0	N. Dak. 16.5	Wash. 8.5	Arizona 8.0	18 0.5
Flax Seed	Mil. Bu.	N. Dak. 2.4	Montana 0.2	S. Dak. 0.1	Minnesota 0.05	-----	3 0.1
Sorghum (grain)	Mil. Bu.	Kansas 110.0	Texas 56.4	Louisiana 10.8	S.Dak. 6.6	Nebraska 6.6	4 6.6
Soybeans	Mil. Bu.	Iowa 466.1	Illinois 416.4	Minnesota 270.3	Nebraska 258.4	Indiana 238.1	8 150.6
Sunflower	Mil. Lbs.	S. Dak. 777.0	N. Dak. 766.3	Kansas 149.4	Colorado 124.2	Nebraska 75.9	1 777.0
All Hay	Mil. Ton	S. Dak. 8.6	California 7.9	Missouri 6.3	Nebraska 5.6	Montana 5.6	1 8.6
Alfalfa Hay	Mil. Ton	S.Dak. 6.3	California 6.1	Montana 4.4	Idaho 4.3	Minnesota 4.1	1 6.3
Other Hay	Mil. Ton	Missouri 5.6	Kentucky 4.6	Texas 4.0	Tenn. 3.9	Virginia 2.8	9 2.3
Proso Millet	Mil. Bu.	Colorado 6.2	Nebraska 1.7	S. Dak. 1.3	-----	-----	3 1.3
Dry Edible Beans	Mil. Cwt.	N. Dak. 4.9	Michigan 3.4	Minnesota 2.2	Nebraska 2.1	Idaho 1.9	13 0.2

Source: South Dakota Agriculture, 2012.

TABLE 3 - Livestock, South Dakota and Leading States -- 2012

Item (million head)	1	2	3	4	5	SD Rank
All Cattle and Calves	Texas 11.9	Nebraska 6.5	Kansas 6.1	California 5.4	Oklahoma 4.5	8 3.7
Beef Cows that Calved	Texas 4.4	Nebraska 1.9	Missouri 1.9	Oklahoma 1.7	S. Dak. 1.6	5 1.6
Calves Born (2011)	Texas 4.7	California 2.0	Oklahoma 1.9	Missouri 1.8	Nebraska 1.7	6 1.6
Cattle on Feed	Texas 2.9	Nebraska 2.7	Kansas 2.4	Iowa 1.3	Colorado 1.2	8 0.3
Sheep and Lambs	Texas 0.7	California 0.6	Colorado 0.5	Wyoming 0.4	Utah 0.3	6 0.3
Hogs and Pigs	Iowa 20	N. Carolina 8.9	Minnesota 7.8	Illinois 4.7	Indiana 3.9	11 1.2
Bison (2007)	S. Dak. .04	Nebraska .02	N. Dak. .02	Colorado .02	Montana .01	1 .04

Source: South Dakota Agriculture, 2012

Farm Assistance Programs

The Legislature and the Department of Agriculture have made numerous attempts over the years to provide assistance to the farm economy, particularly during the difficult conditions experienced during the 1980s. Some of these efforts include the following:

Rural Renaissance Program. The Rural Renaissance program, in operation from 1985 to 1987, provided educational opportunities, legal assistance, financial counseling, energy assistance, temporary employment, health and nutrition services and food stamps for farm families. During the existence of the program, over 1700 individuals sought assistance.

Value Added Finance Authority (Agricultural and Business Development Authority). During the 1980s, several proposals were advanced to make money available at reduced interest rates to farmers and other businesses through the use of bonding mechanisms. Basically, the state would issue tax-free bonds, creating a pool of capital that could be passed on to lenders at an interest rate significantly below the commercial rate, allowing lenders to make loans to qualifying borrowers at reduced interest rates. State bonding authorities are used in South Dakota to finance state buildings, public housing, railroads, and health facilities.

In 1983, the Legislature created the Agri-Business Development Authority to provide capital for agricultural, industrial, and commercial enterprises through the sale of tax-exempt state revenue bonds. In 1986, with agricultural conditions becoming worse and financing either unavailable or at interest rates too high to allow persons to continue their farming or business operations, the Legislature replaced the Agri-Business Development Authority with the Agricultural and Business Development Authority. However, tax-exempt status on these types of bonds was eliminated by Congress in 1986, and in 1987 Governor Mickelson abolished the authority by executive order.

The authority was rejuvenated in 1995 when the Legislature combined the functions of the South Dakota Agricultural Processing and Value Added Development Board and the Beginning Farmer Bond Program and placed them under the Agriculture and Business Development Authority, which was renamed the Value Added Finance Authority. The Value Added Finance Authority currently administers the Beginning Farmers Board Program and works with the Department of Agriculture to promote the production and marketing of agricultural commodities and producer goods generated in South Dakota.

Additional programs for agricultural assistance and development are discussed in the section on the Division of Agricultural Development.

TABLE 4
South Dakota Farm Real Estate Values -- 1980-2011

Year	Total Value (Million Dollars)	Average Value Per Acre (Dollars)	Average Value Per Operating Unit (Dollars)
1980	\$13,140	\$292	\$341,300
1981	14,706	329	387,000
1982	15,530	349	414,100
1983	15,486	348	418,500
1984	16,154	363	436,689
1985	12,861	289	352,291
1986	11,882	267	330,012
1987	10,543	238	297,024
1988	11,917	269	340,554
1989	12,094	273	345,618
1990	12,891	291	368,406
1991	12,951	293	370,059
1992	12,641	286	361,218
1993	12,067	273	349,713
1994	12,641	286	371,800
1995	13,288	302	402,566
1996	13,640	310	419,740
1997	14,300	325	440,050
1998	15,312	348	471,192
1999	15,840	360	487,440
2000	16,720	380	516,040
2001	17,780	405	555,660
2002	18,834	430	592,110
2003	20,148	460	637,560
2004	21,462	490	679,140
2005	25,783	590	821,280
2006	29,716	680	949,280
2007	33,649	770	1,078,770
2008	40,204	920	1,284,320
2009	38,893	890	1,234,430
2010	42,389	970	1,345,390
2011	48,015	1100	1,534,500

Source: South Dakota Agriculture, 1984-1990; South Dakota Agriculture, 2003; South Dakota Agriculture, 2012.

Division of Agricultural Development

The Division of Agricultural Development of the Department of Agriculture administers several agricultural loan programs, as well as counseling and mediation services. The Rural Development Agricultural Loan Participation program provides loans of up to \$300,000 for innovative ideas, alternative agriculture, and projects that use agricultural products. The Value Added Livestock Underwriting (VALU) Guaranty program provides a 50% guaranty on livestock purchase loans, with a maximum term of 26 months. Under the Livestock Loan Participation program, the Agricultural Development office joins with a local lender in providing livestock loans. Each lender provides 50% of the loan, with a maximum loan participation of \$200,000. Other financing programs include Cooperative Stock Guaranty, Conservation Tillage Loan, Beginning Farmer Downpayment Guaranty, and the "Building Our South Dakota Rural Communities" program, which provides grants to youth organizations for community development and improvement projects. The division's Dakota Flavor Program (at www.dakotaflavor.com) provides a directory of South Dakota agricultural products, producers, and processes. The division also operates programs for agriculture assistance, business development, dairy retention and enhancement, and livestock development and marketing.

In addition to its loan and community development programs, the Division of Agricultural Development operates the Ag Finance Counseling Program, which provides one-on-one assistance to farmers and ranchers in financial management, financial planning, cash flow management, and advice on difficult financial situations. The Farm Loan Mediation Program allows borrowers and creditors to meet with a neutral third party to attempt to arrive at a mutually agreeable solution.

The 1994 Legislature authorized the Beginning Farmer Bond Program to provide loans for individuals who wish to start farming or ranching. The 1994 Legislature also established the South Dakota Agricultural Processing and Value Added Development Board to promote value-added agricultural processing activities. In 1995 in SB 190, the Legislature combined these functions and placed them under the Agriculture and Business Development Authority, which was renamed the Value Added Finance Authority. SDCL Chapter 1-16E governs the Authority's activities. Currently, the Value Added Finance Authority administers the Beginning Farmer Bond Program and Agri-Business Bonding Program, the Livestock Nutrient Management Program, and the Value Added Agribusiness Relending Program.

Division of Resource Conservation and Forestry

The Division of Resource Conservation and Forestry provides technical, administrative, and financial support to the conservation districts and other entities in the state. The coordinated natural resources conservation fund provides grants to conservation districts for various projects. Money comes into the fund from the unclaimed tax refunds from the sale of motor fuel for nonhighway agricultural uses. The division also develops and implements state policy for land conservation and range management.

The division oversees South Dakota's diverse forest resources, which include pine, spruce, aspen and birch forests in the Black Hills, cottonwood bottom lands along the James and Big Sioux Rivers, oak forests along the Missouri River Breaks, and upland hardwood forests in the northeastern part of the state. South Dakota has 1.7 million acres of forestland, most of which is located in the Black Hills. The division conducts programs in forest management, forest stewardship, tree insect and disease management, urban and community forestry, shelterbelt

and woody cover establishment, and tree improvement and production. Forestry programs are funded in part by federal funds through the US Forest Service. The division operates the mountain pine beetle program in response to the epidemic in the Black Hills.

Division of Wildland Fire Suppression

The Division of Fire Suppression administers the department's wildland and forest fire suppression and response activity. The division's activities and programs include fire suppression, fire prevention, increasing the ability of home and property owners to defend their property from wildland and forest fires through "urban interface" preparations, prescribed fire activity, state fire dispatch and coordination, rural fire assistance, and training programs.

Division of Agricultural Services

The Division of Agricultural Services operates a variety of regulatory and inspection programs. The Plant Protection Program includes the Weed and Pest Control program, which implements and enforces South Dakota's weed and pest law (SDCL 38-22) and requires both public and private landowners to control certain noxious weeds and pests. The Division also oversees pesticide application and licensing requirements (SDCL 38-21) and conducts the Pest Survey program and the Biological Control program, which uses natural enemies, rather than pesticides to control certain weeds and pests. Fertilizer regulation is another responsibility of the division. The division is also involved in various inspection programs, including dairy plants, dairy farms (grade A and manufacturing grade), egg inspection, and apiary inspection, as well as operating the feed/animal remedy, nursery, and seed programs.

State Fair Park Division

The South Dakota State Fair has been held in Huron since 1905. SDCL Chapter 1-21 governs the state fair. In recent years, the state fair has become the subject of controversy over its attendance, financial situation, and starting date, and in 2003 (SB199), the fair was placed under the direct supervision of the Department of Agriculture with the State Fair Commission continuing its operations as a part of the State Fair Park Division. Attendance at the 2012 State Fair was more than 192,000, a 15% increase from 2009 and a 22% increase from 2007. State Fair attendance has increased each year since 2007.

SD Certified Beef Program and SD Certified Enrolled Cattle Program

In 2004, Governor Rounds and the Department of Agriculture introduced the South Dakota Certified Beef Program as a way to market South Dakota beef as a premium beef product. SB 220 (in 2005) established the program in statute and is codified as SDCL Chapter 39-24. Administrative rules for the program are found in ARSD Article 12:79. The program adds value to South Dakota beef by requiring producers who wish to participate to follow certain specific production, feeding, and management practices in producing beef cattle. These cattle are then certified as having met the program's stringent production standards and can be offered for sale and marketed as South Dakota Certified Beef. The goals are to increase profitability for South Dakota producers by ensuring a premium beef product, increase consumer confidence and demand for the product, and promote economic and agricultural development in South Dakota.

The South Dakota Certified Enrolled Cattle Program is a related program that not only certifies cattle as South Dakota Certified Beef, but also provides certification of cattle as being free from

certain diseases, age verification, certification of being corn-finished for at least 100 days, and other special characteristics that qualify the cattle for various specialty markets, such as the market for natural and organic foods.

Ethanol Development and Promotion

Ethanol promotion and development is not a formal activity of the Department of Agriculture. However, ethanol has been the subject of frequent discussion and activity in South Dakota's agricultural community. The use of ethanol as an alternative fuel or as a supplementary fuel blended with gasoline has been the subject of national interest for many years, particularly after the oil crisis of the 1970s. In addition, agricultural producers see ethanol as a market for corn and other grains, which could benefit South Dakota's agricultural economy. South Dakota state government has made numerous efforts over the years to promote the development of ethanol fuel, both as a way of increasing markets for South Dakota farm products and as a value-added agricultural processing industry. Ethanol production in South Dakota has grown significantly in recent years; there are currently numerous ethanol plants in South Dakota that are either operating or being developed.

South Dakota's efforts to promote ethanol fuel production and use have taken two major forms: a two-cent per gallon fuel tax reduction for ethanol blended motor fuel (SDCL 10-47B-4), and a direct production incentive payment to ethanol producers of twenty cents per gallon of ethanol produced in South Dakota (SDCL 10-47B-162). The tax reduction for ethanol was revised in 2009 so that a tax is placed on ethyl alcohol for blending purposes, with the resulting tax on the ethanol blend being less than the conventional motor fuel tax and less for larger percentages of ethanol blend. The production incentive payment program is being phased out. Currently, payments are available only to ethanol producers that have produced ethanol before December 31, 2006, and are limited to no more than \$10 million total for any one facility.

In 1993, the Legislature passed HB 1353, the "Omnibus Construction and Funding Act" to address ethanol funding, along with several other state programs and construction projects. HB 1353 established the State Capital Construction Fund, which would receive revenues from several sources, including online lottery sales. Funds would then be transferred from the capital construction fund to the ethanol fuel fund on a regular basis, to provide steady and predictable ethanol funding that is separate from the annual appropriations process. Since January 1, 2003, 25.6% of monthly Capitol Construction Fund revenue has gone into the ethanol fuel fund (SDCL 5-27-4). In addition, 50% of the revenue collected from the fuel tank inspection fee (SDCL 34A-13-20) is deposited in the ethanol fuel fund.

Funding for the ethanol production incentive program has been a frequent issue in the South Dakota Legislature, with ethanol legislation of one kind or another introduced in nearly every session since 1979. Although ethanol promotion has widespread public support in South Dakota, there has also been opposition to subsidization of the ethanol industry and disagreement over the appropriate amount, source, and duration of ethanol development assistance. There also has been attention in recent years to the production of ethanol from other organic sources and byproducts, such as cellulosic ethanol, to avoid the diversion of food crops for fuel purposes. Technologies are being researched and developed in this area, but are not currently available for large-scale production. Ethanol has become a major factor in South Dakota economy, and discussion on its production and use will continue.

Weed and Pest Control

Weed and pest control has always been a serious issue for South Dakota agriculture, but the situation has become more complicated in recent years with environmental questions over the use of pesticides and the resulting reluctance of some federal agencies to address weed and pest problems on federal land in traditional ways. South Dakota's weed and pest control law is found in SDCL Chapter 38-22, while laws governing pesticides are located in SDCL Chapters 38-20A and 38-21. The statutes create the state Weed and Pest Control Commission to work in conjunction with the state Department of Agriculture and direct the commission to formulate a program for the "prevention, suppression, control, and eradication of weeds and pests in South Dakota."

SDCL 38-22-9 and 38-22-11.1 direct the commission to promulgate rules that designate plants and animals are weeds and pests and to establish procedures for the enforcement of weed and pest control. The basic weed and pest control enforcement mechanism is found in SDCL 38-22-16, which states that weed or pest-infested land constitutes a public nuisance. If the landowner fails to rid the area of the weeds or pests, the state may enter the property and perform protective operations. The owner must pay the costs of the protective operations, and if the owner fails to pay, the costs become a lien against the property. The statutes also require each county to establish a county weed and pest board to pursue programs for the control of weeds and pests and to conduct annual inspections of weed and pest conditions in the county. The county boards have essentially the same enforcement powers and methods available to them as do state personnel.

One source of state funding for weed and pest control purposes is the weed and pest control fund, established in 1989. The Weed and Pest Control Commission may use money in the fund to provide financial assistance to counties and other entities for weed and pest control projects. In addition, the public lands weed and pest fund handles weed problems on state-owned lands, and the pesticide regulatory fund is used for implementing the pesticide program requirements. Money enters these funds in large part by the pesticide application fee established in SDCL 38-20A-4. (See also SDCL 38-20A-59.)

The biennial pesticide application fee is paid by manufacturers on each type of pesticide product to be offered for sale in South Dakota (between 6000 and 7000 separate products), and the statutes specify how the money in the fund will be allocated. Before 1988, the fee was \$25 per pesticide product registered, and the fee was deposited in the general fund. The Legislature changed the fee and the purposes for which it could be used in 1988, 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1998, 2008, and 2009, with the highest level being at \$200 per product per year and the current level at \$240 per product every two years. Currently, the pesticide application fee is divided among the pesticide regulatory fund, weed and pest fund, the public lands weed and pest fund, the agricultural experiment station, the cooperative extension service, and the pesticide recycling and disposal fund.

Another issue facing state and local officials and private landowners is the lack of consistent weed and pest control policies at the federal level. Reluctance of some federal agencies to aggressively address weed problems on federal lands, sometimes due to environmental pressure, has caused controversy. Besides contributing to weed infestation, the federal example can make state enforcement efforts more difficult. State-federal contacts on this issue are ongoing, but the issue is difficult to resolve.

Biocontrol or the use of organisms that are the natural enemies of weeds or insect pests is a recent innovation in weed and pest control. Biocontrol provides an alternative to pesticides in infested areas that are environmentally sensitive or inaccessible and have the potential to provide self-renewing and environmentally sound management tools that can be used as part of an integrated pest management program for South Dakota.

Corporate Farming and Large-Scale Livestock Operations

Corporate farming and large scale livestock operations have been recurring issues in the South Dakota Legislature. The issue of large-scale hog farms raised controversy during the 1988 Session and reappeared in the late 1990s. In 1987, National Farms, Inc., a corporate hog feeder based in Kansas City, contacted state and local officials about locating a large-scale hog production facility near Pierre.

Although the South Dakota Family Farm Act (SDCL Chapter 47-9A) provided a general prohibition against corporate farming, the Act also contained three exceptions to the general prohibition: first, the corporate acquisition of agricultural land for the purpose of feeding livestock; second, the corporate acquisition of land for a nonfarm purpose; and third, the acquisition of land by family farm corporations.

In 1988, after an Attorney General opinion concluded that the Family Farm Act did not prohibit the proposed National Farms facility, initiative petitions revising the Family Farm Act were filed with the Secretary of State. The initiated measure prohibited any corporation except a family farm corporation from owning or operating a hog confinement facility. The initiated measure further defined a family farm corporation to include a "corporation founded for the purpose of farming and the ownership of agricultural land in which a majority of the voting stock is held by resident stockholders who are family farmers and are actively engaged in farming as the primary economic activity." In the 1988 election, the voters approved the initiated measure, and its provisions have been codified as SDCL 47-9A-13.1 and 47-9A-14.

The corporate hog farm issue resurfaced in the mid-1990s in a somewhat different form with large corporations proposing to contract with local farmers to feed large numbers of hogs. The physical facilities would be owned by the local operator, while ownership of the animals would remain with the corporation. Opponents feared that these large feeding operations would pose environmental dangers and odor problems and weaken the family farm system. In response to questions about the legal status of these operations under the Family Farm Act, the Attorney General in Opinions 89-05 and 95-02 noted that because SDCL 47-9A-13.1 (the initiated measure) prohibits corporate hog confinement operations involved in the "breeding, farrowing, and raising" (rather than "or raising") of swine, an operation that was not engaged in all three activities is not subject to the prohibition. The issue also resulted in county zoning disputes and generated a great deal of controversy. So far, however, SDCL 47-9A-13.1 has not been amended. The 1997 Legislature did provide for additional inspections of large scale feeding operations and the 1998 Legislature passed SB 239 dealing with liability arising from large-scale feeding operations and SB 240, which established an environmental clean-up fund for large-scale livestock operations. Frustration over corporate farming and large-scale agriculture in general continued during the late 1990s. This frustration resulted in additional legislation and amendment of the state constitution.

In 1998, the voters approved Constitutional Amendment E (Article XVII, Sections 21 to 24, of the South Dakota Constitution), which revised South Dakota's corporate farming laws by placing corporate farming restrictions directly in the state constitution. These restrictions were modeled

on the corporate farming restrictions in the Nebraska State Constitution. Amendment E was similar to South Dakota's existing corporate farming law, with a basic prohibition of corporate farming activities coupled with a series of exemptions, although portions of the proposed amendment were more stringent than the corporate farming restrictions in SDCL 47-9A. Under Amendment E, farming was not limited to the cultivation of land, and the regulation of feeding operations was broader than simply singling out corporate hog confinement facilities, as in SDCL 47-9A-13.1. Amendment E was controversial and was under litigation shortly after its adoption. In May of 2002, Amendment E was declared unconstitutional and is not being enforced. Corporate farming and protection of the family farm remain sensitive and complex issues.

In 1999, the Legislature enacted Senate Bill 95 (SDCL 40-15B-1 to 40-15B-7), which attempted to regulate livestock packer transactions and contracting practices by requiring meat packers to make daily reports on prices paid for livestock and prohibiting certain forms of price discrimination by large-scale packing operations. Several area states also passed legislation on these or related topics in 1999 in response to nearly unprecedented low prices and serious financial distress for livestock producers. While the causes of the crisis are open for debate, assertions about the concentration of livestock packing operations in the hands of a few large packing corporations led to calls for restrictions on the powers and scope of activity of large-scale packing operations. With the passage of SB 95, the American Meat Institute and John Morrell and Company quickly filed suit in U.S. District Court challenging the constitutionality of SB 95. The court overturned the provisions of SB 95 related to price discrimination but upheld the bill's price reporting requirements.

The development of large-scale livestock feeding operations or concentrated animal feeding operations (CAFOs) continues to be a controversial subject. CAFOs have implications for status of the conventional family farm and they raise other concerns as well, including environmental and health implications and quality of life impacts, such as odor control. Some, but not all, of South Dakota's counties have zoning ordinances that have been used to try to prevent the development of particular CAFO operations, and there have been numerous local controversies over the development of proposed CAFOs. The Department of Environment and Natural Resources is responsible for the regulation of CAFOs, and more information on DENR's role is provided in the Natural Resources chapter of this document.

Environmental Regulation Issues

The rise of the environmental movement in the 1970s has led to continuing tension between agricultural interests and environmental groups. Some of this environmental consciousness has probably led to more responsible use of agricultural resources, but it has also caused controversy and the feeling by some farmers and ranchers that traditional agriculture is coming under unwarranted criticism. As the nation's rural population and rural political influence continue to decline and as urban populations and urban growth and development pressures continue to grow, more conflict and more pressure on agriculture can be expected.

Nonpoint source pollution prevention is one important area of environmental regulation at the state and federal levels. Nonpoint source pollution involves the contamination of surface water or groundwater when pollutants are carried with runoff throughout a watershed rather than from a specific "point" source, such as a factory drainpipe. Examples of nonpoint source pollution include runoff of pesticides and fertilizers or runoff of animal wastes from feedlots into tributaries and larger streams or into aquifers. Regulation, particularly from the federal level, of pesticide and fertilizer handling and application practices is becoming more stringent as the focus

expands from protecting the health of the applicator and people and property in the area into larger environmental issues. Regulation of feedlot runoff and feedlot practices is also increasing at federal and state levels and involves many of the same issues.

Wetlands protection can involve severe penalties to landowners who drain or disturb wetlands or potential wetlands. There has been controversy over federal wetlands regulation and efforts to define and identify wetlands. Controversies over proposed grazing restrictions and other restrictions on land have also developed. More stringent federal air quality regulations dealing with particulate matter and “regional haze” have raised concern that additional farming practices may be affected.

Activities by the animal rights movement and by groups concerned about the health impacts of traditional farm products, also threaten traditional agricultural practices and products and add to the feelings of uneasiness about agriculture's future. These frustrations have surfaced in the South Dakota Legislature with such proposals as SB 179, which passed in 1994 and provides civil liability for the disparagement of agricultural products and practices; SCR 3, which was adopted in 1994 to express opposition to certain governmental land acquisition policies; and SB 320, which was tabled in 1990, but would have appropriated money to produce a film depicting the humane treatment of animals in agriculture.

While most landowners wish to protect the environment, both for its own sake and to preserve the source of their livelihood, many feel threatened by restrictions or attacks on agricultural activities that have been carried on for decades, often with the general public's approval and admiration in earlier years as signs of progress, technology, perseverance, and hard work. As urban influence in the U.S. increases, the sense of frustration in rural areas can be expected to continue.

Prairie Dogs

Another source of controversy is the potential listing and protection of certain animals as endangered species, which can restrict agricultural activity. The protection of certain animals, such as prairie dogs, that have been viewed by farmers and ranchers as pests has been a contentious issue in South Dakota in recent years.

Damage caused by prairie dogs to grazing lands in certain parts of the state has been severe and is exacerbated by drought and by the failure of federal agencies on adjacent lands to control prairie dogs. Also, in the Conata Basin, federal agencies have reintroduced the black-footed ferret, an endangered species that needs prairie dog towns as part of its habitat. The reintroduction of the ferret further hindered the ability of state agencies and private landowners to control prairie dogs. When it appeared likely that the prairie dog was on its way to being listed as an endangered species, the 2001 Legislature in SB64 (SDCL Chapter 34A-8A) authorized the Department of Agriculture and Department of Game, Fish, and Parks to designate certain species as “species of management concern” and directed the departments to develop a prairie dog management plan in the hope of staving off federal designation of prairie dogs as an endangered species. The “South Dakota Black Tailed Prairie Dog Conservation and Management Plan” was completed in February 2005. In the summer of 2004, the federal Department of Interior removed the prairie dog from the endangered species candidate list after bipartisan efforts by South Dakota's state officials and congressional delegation. This decision will allow increased prairie dog control measures in the state, although significant challenges and opposition by environmental groups remain a possibility and disputes about the control of prairie dogs will continue.

Recent Issues

A variety of issues continue to affect South Dakota agriculture. In recent years several bills and resolutions were introduced in the Legislature to require or support country of origin labeling (COOL) of meat and other agricultural products. These bills and resolutions failed because of the difficulty of a single state attempting to require such labeling. However, the Federal Farm Bill of 2002 included a provision requiring country of origin labeling for meat, perishable commodities and peanuts. Implementation of the federal COOL provisions for most products was delayed until 2009. Program implementation is the responsibility of USDA's Agricultural Marketing Service.

Mad cow disease or bovine spongiform encephalopathy (BSE) has caused worldwide concern after it was discovered in Europe in the 1990s and in Canada in 2003. BSE is believed to be spread through rendered animal food products. It is not contagious from animal to animal. The South Dakota Animal Industry Board, like its counterparts in other states, has taken aggressive steps to prevent the spread of BSE in the US. These include increased regulation of livestock feed manufacturing and storage practices and more strict regulation of the importation of beef.

Potential participation by South Dakota in a national livestock animal identification program is another issue that has caused controversy in the Legislature in recent years. Legislation was introduced in the South Dakota Legislature in 2008 (HB 1305), 2009 (HB 1224), and 2010 (HB 1149) to restrict or limit South Dakota's participation in a national animal identification system. These bills did not pass, but do indicate a level of concern about the issue by some of the state's livestock producers.

Another controversial national issue that affects South Dakota agriculture is the potential use of biotechnology and genetically modified organisms. There is significant opposition to these technologies from environmental groups and from foreign markets, particularly in Europe, but these methods hold much promise for improved agricultural production.

As agriculture continues to be a fundamental part of South Dakota's economy, national and international developments in agriculture reverberate in our state, and South Dakota state government will continue to protect and develop South Dakota agriculture.

Chapter 5

BOARD OF REGENTS

The state university, the agriculture college, the school of mines and technology, the normal schools, a school for the deaf, a school for the blind, and all other educational institutions that may be sustained either wholly or in part by the state shall be under the control of a board of five members appointed by the Governor and confirmed by the senate under such rules and restrictions as the Legislature shall provide. The Legislature may increase the number of members to nine.

-- *South Dakota Constitution, Article XIV, § 3*

The control of the public postsecondary educational institutions of the state offering college credit which are sustained wholly or in part by the state shall be vested in a board of nine members, designated as the Board of Regents. The members shall be appointed by the Governor, by and with the consent of the senate.

-- *South Dakota Codified Law § 13-49-1*

The regents who are regular members shall be persons of probity and wisdom and selected from among the best known citizens, residents of different portions of the state, no two of whom may be residents in the same county and not more than six shall be members of the same political party. One regent shall be the student regent as provided in § 13-49-6.1. A regent's residence is determined by where the regent is registered to vote.

-- *South Dakota Codified Law § 13-49-2*

Introduction

South Dakota's public higher education system is composed of six state-supported universities governed by a single board. The Board of Regents is the constitutionally-created entity which controls: Black Hills State University, Spearfish; Dakota State University, Madison; Northern State University, Aberdeen; the South Dakota School of Mines and Technology, Rapid City; South Dakota State University, Brookings; and the University of South Dakota, Vermillion. All but one of these universities existed, either on paper or as a normal school, before South Dakota became a state. This chapter of the Legislator Reference Book means to portray in descriptive form--as opposed to fiscal or statistical--a picture of public higher education in South Dakota from an historical, legislative perspective. More topical information can be found in Chapter 11, Government Finance.

Creation and Evolution of the Board

The South Dakota Constitution says little about the style, form, or substance of the more than 120 year-old system of higher education in South Dakota. Just one section composed of two sentences pertains to what has become over the years a huge part of state government. By

comparison, there are many more sections that pertain to the legislature and its organization and operation, or even to topics such as school lands, handling of state investments, or the property tax.

Governors, through appointment power and budget influence, have been able to shape the board and its system over the years. However, the legislature, through laws, appropriations, and confirmation of gubernatorial appointments, has probably had more overall influence. Yet the board exists, arguably, as a fourth branch of state government, much like it did over a hundred years ago. As the times have changed, so have the needs of the state of South Dakota. As the state's needs have changed, so have the names and missions of the institutions. While the board, at least in its seminal concept, has always been there, it bears very little resemblance today to that which existed over a hundred years ago at the dawn of South Dakota's statehood.

Today's board is a very streamlined model compared to what was originally adopted by the Legislature of Dakota Territory in 1862. The "Regents of Education," as the group was then known, was originally created as an 18-member board, all of whom were residents of Vermillion and Yankton. That group's purpose was to govern just the University of Dakota Territory, also created in 1862 and located in Vermillion.¹

During the exciting, chaotic years immediately preceding South Dakota's statehood, an entire territory was being organized, and deals were being made on all sorts of topics. Dakota Territory was huge, rugged, and sparsely populated. In the days before electronic communication and rapid transportation, sudden events or developments combined with volatile populations meant a few influential people could make a tremendous difference in the territorial legislature.

For almost two decades, not even the location of the territorial capital was permanent. Several towns wanted it desperately, and competed fiercely. Every prize after capital was second place, it would seem. "On the same day that Yankton became the capital [March 1862], a bill was introduced locating a territorial university at Vermillion and was given final approval later in the session. Clay County interests considered an educational institution a fair trade."² With those two questions settled, at least for the moment, the legislature could move on to all the other details of organizing the territory and getting ready the application to become a state. Even though the capital would eventually be moved more than once, "Vermillion's reward was not to materialize until 20 years later."³

Thus, the seedling of higher education in the Dakotas, the University of Dakota, existed only on paper for 20 years, with the concept of a logical and effective statewide system of higher education governance unthought-of for even longer. There was much significant legislative action in the 1880s triggered by the renewed territorial growth that came after the Gold Rush of the 1870s and the subsequent boom period. By 1889 all but one of South Dakota's postsecondary institutions was established, thanks to the efforts of ambitious communities and their representatives in the territorial legislature.

Often the territorial governors tried to block the efforts to establish new institutions. One territorial governor in particular had many disagreements with the legislature. "The legislative body showed a special predilection for normal schools, authorizing institutions at Alexandria, Madison, Spearfish, Springfield, and Watertown without providing any appropriations. ... [Territorial Governor Nehemiah] Ordway objected to overburdening the territory with such institutions for the gratification of local interests and unsuccessfully tried to limit the authorization

to a single school at Madison."⁴ He attempted to stop the establishment of other institutions, including the School of Mines which he vetoed in 1883 (it came back in 1885).⁵

Then Territorial Governor Ordway's battles with the legislature and the rest of the territory's voters grew to the point where his political baggage outweighed him and he was soon thereafter replaced. The political balances shifted enough that the capital was moved from Yankton to Bismarck with the appointment of Governor Ordway's successor and Bismarck remained the capital for the final territorial years. This unified the Republican leaders of the southern half of the territory, and for "the remainder of the territorial period...[there was] a further scramble for spoils in the allocation of institutions."⁶ New Territorial Governor Gilbert Pierce tried to stop these, like his predecessor, by use of the veto pen. Ironically, one of the bills he vetoed would have established a third university at Ordway. After Pierce came Louis Church, who vetoed in 1887 a bill to establish a university at Aberdeen.

The territorial legislature acted rapidly in the 1880s to establish institutions, so eventually brick-and-mortar projects were bound to occur somewhere. There was finally construction of a facility in Vermillion for the University, and classes were held at the University in the 1882-83 academic year. The following fall, the territorial legislature opened the College of Agricultural and Mechanical Arts at Brookings. That institution came as a result of congressional action 20 years earlier, the Morrill Land Grant College Act of 1862.⁷ When that school opened, the legislature put it under the control of a five-member board of trustees and created another group of six regents to govern them. The two governing boards operated completely independently, and both had their clout. The territorial governor even served as president of the Brookings college's board.⁸

In short order the legislature had founded three normal schools and a school of mines, each with its own separate governing body. All told there were six governing boards in place at one time, plus boards of trustees, operating in the early 1880s. By 1883, though, the legislature had shrunk the board for Vermillion to nine members and designated that those include the governor and the president of the university. Most of the territory's institutions' boards were allowed to operate with consistency for the rest of the territorial days. The college in Brookings, however, underwent a number of legislative changes seeing its boards abolished and replaced several times. In 1889 all of this came together under one governing board.

In applying for statehood, the Constitutional Convention of 1889 settled on a higher education plan which it wrote into its proposed constitution. The governance structure then proposed was much sleeker than its relatively chaotic predecessor. However, these nine Regents of Education were still authorized to appoint a five-member board of trustees for each state institution. When the state's Constitution was adopted in 1889, this system was only temporarily cemented, being in effect only until 1896. In November of that year, the electorate approved the 1895 Legislature's Session Law Chapter 36, which proposed the question of amending the Constitution as it pertained to the Board of Regents.

This sweeping constitutional revision did away with all the boards of trustees and created the initial five-member Board of Regents. A provision was added to the Constitution, though, that made it permissible for the legislature to "increase the number of members to nine." The board has grown accordingly, but there were several interesting twists along the way in that growth of four members.

For almost 60 years the Board of Regents had only five members. The first, and a relatively simple, expansion step was taken in 1955 when the legislature increased the board to seven

members (1955 S.L. Chapter 38). In 1976 the legislature added a non-voting, student member to the board (1976 S.L. Chapter 126). This brought the size of the board to eight, although only seven members were "regular," official members able to vote. In 1979 the legislature again increased the size of the board, this time to the full nine allowable (1979 S.L. Chapter 125), but kept the student regent as an unofficial, non-voting member. In 1988 (S.L. Chapter 154), the legislature made the student regent an official, voting member of the board's nine members.

Besides the size of the board and the specification that one of its members be a student of one of the public postsecondary institutions under control of the board, there have been other controversies and revisions. The most significant change over the years concerning the qualifications for members of the Board of Regents dealt with their residency. According to § 13-49-2, as it was enacted in 1897 (S.L. Chapter 58), no regent could be appointed from a county "in which any of the state educational institutions are located." This measure, intended to avert conflicts of interest, stood until 1986 (1986 S.L. Chapter 138). There has always been a requirement that members be from "different portions of the state," but the 1986 change added that no two members "may be residents in the same county."

There is not, nor has there ever been, any minimum education level for a member of the Board of Regents. The statute has always stated that members be "persons of probity and wisdom" selected from "among the [best and] best known citizens." As for political party representation, the original law specified that "persons selected shall be of the different political parties existing at the time" the appointments are made. There is now a prohibition on more than six members being of the same political party. Interestingly, the term for a member of the board has always been six years (§ 13-49-3), except for the student regent's, which has always been two years (§ 13-49-6.1).

Every state in the union assigns responsibility for the operation of public colleges and universities to governing boards such as the Board of Regents.⁹ While similarities exist among states' systems, no two are just alike. Of all those entities--and in some cases there are several to a state--only two states have either governing or coordinating boards for their state systems that are older than the South Dakota Board of Regents. Only New York (1784 by statute, 1938 by constitution) has a governing board that is older. Pennsylvania's State Department of Education was created in 1837, but it is a coordinating, as opposed to governing, board. South Dakota's Board of Regents is considered by the Education Commission of the States to be a "consolidated governing board," or basically a powerful, centralized controlling entity. This differs from a coordinating board, which functions mainly to advise or coordinate single-institution governing boards.

An elegant system is one that is powerful yet simple in design. South Dakota's Board of Regents is indeed elegant in that sense. This single board of nine members governs all six of the state's universities. There are 10 states (plus the District of Columbia and Puerto Rico) which have consolidated governing boards for all public institutions. Only Idaho's education system might be considered more elegant than South Dakota's because it consists of an eight-member board which governs all public education in Idaho (i.e., elementary, secondary, postsecondary, and vocational). Of its eight members, seven are appointed by the governor and one, the superintendent of public instruction, is elected.

Hawaii is another example of a very elegant governing board, one which South Dakota could emulate. The Board of Regents of the University of Hawaii governs their single university system. The University of Hawaii is "a statewide multi-campus system of seven community

colleges, a complex land-grant university campus, a comprehensive undergraduate campus, and an upper-division campus."¹⁰ Hawaii's 15-member board also governs vocational education.

Evolution of the System and Its Institutions

Unlike the board's composition, its basic domain of control has not changed much over the years. Basically, the board has always governed about the same number of degree-granting institutions; however, the number of campuses has increased. All but two of its institutions are postsecondary and offer college credit.¹¹ The Board of Regents also governs the South Dakota School for the Deaf in Sioux Falls and the South Dakota School for the Blind and Visually Impaired in Aberdeen.

These two residential institutions, also known as "the special schools," serve only kindergarten through twelfth grade students and were not always under the control of the Board of Regents. In 1943 the Legislature enacted Session Law Chapter 264 (House Joint Resolution 3), which placed on the November 1944 ballot a revision of South Dakota's Constitution. The proposal passed, and the special schools were moved out of the domain of the Board of Charities and Corrections and into the Board of Regents.¹² Since then the concept of whether the special schools and their students are well served under the Board of Regents has been discussed many times. Several of these discussions have been in formal committee hearings during session, or by an interim study committee. However, the legislature has yet to pass a measure seeking to remove governance of the special schools from the Board of Regents. Such a change would require constitutional revision, and therefore a vote of the people.

A 2010 decision by a federal judge allowed the state to close the School for the Deaf campus in Sioux Falls. The parents of eight deaf or hearing impaired students sued the Board of Regents after they proposed to close the campus. The board, governor, and legislature agreed on the closure citing low attendance numbers. The board now provides deaf education through outreach services in the local school districts.

In terms of controversy or potential upheaval to the system, the two most noteworthy events are quite opposite in that one was positive and the other negative. That is, one created a school, the other closed an institution (by changing it into a prison). The former case was the Legislature's enactment in 1974 of then Governor Richard Kneip's recommendation to build a four-year medical school at the University of South Dakota. The latter case was the closure of the University of South Dakota--Springfield at Governor Bill Janklow's urging so that it could be made a prison.

Recent modifications to the system have come through the addition of "outreach" campuses that were designed to attract non-traditional students without creating new degree-granting institutions. There are outreach campuses or University Centers, located in Pierre, Rapid City, and Sioux Falls.

Recurring Controversies: Budgets and Control

In over a century of higher education in South Dakota, the continuing--or recurring-- topics of controversy have been budgeting, control, and the number of institutions. Almost every other issue could be put under the heading of one of these. Governors have tried to steer the board through their political appointments of members. Legislatures have refused to confirm appointments of members. Both the governor and legislature have made attempts to close institutions or consolidate some or all of them. Neither the governor nor the legislature, though,

could necessarily claim to be a better friend--or that the other is a foe--of higher education on the basis of appropriations.

The liveliest debates, and often the most emotional, have concerned the number, creation, or closing of institutions. Governor Janklow's proposal in 1984 to turn the University of South Dakota--Springfield into a prison was incredibly divisive, but a hundred years earlier governors were fighting the Legislature over the number of institutions, too. "It seemed in a number of cases that the need for and the optimum location of the institutions were given less consideration than were the logrolling purposes they served."¹⁶

In the late 1800s, and not necessarily just because of the number of institutions, higher education funding was in turmoil, if not a crisis. Appropriations for the institutions were significantly less in 1890 than they had been in 1889, and there was no significant improvement until after the turn of the century. No one could get a continuing source of funding passed that would support, much less enrich, higher education. Controversy over the number of institutions was exemplified by the vehement discussion over whether the state could afford to operate the School of Mines.

Yet, some thought the "northern quarter of the state needed institutions"¹⁷ so the legislature established more. It opened the Northern Normal and Industrial School (now Northern State University) in Aberdeen, the School for the Feeble Minded (now South Dakota Developmental Center--Redfield) in Redfield, and the School for the Blind in Gary. The legislature clearly was not yet convinced to pull back the reins or scale down the system.

Having so many institutions creates a great need for money to operate them. Many peoples' frustrations with the funding needs of higher education have led to sentiments for consolidation, either of particular institutions or the system as a whole. While these sentiments were strong in the early part of this century, "in the main, such [plans have been] held to be unwise and impractical."¹⁸ During the late 1800s and on into the Twentieth Century there was discontent over the number of institutions and their roles which was voiced by at least one governor. In 1905, Governor Samuel Elrod said in his message to the legislature that there was "too much engineering taught at the University and too much Latin at the Agricultural College."

World War I meant tremendous hardships for the higher education community because of lost monetary support and students so people talked of closures and consolidation. The Great Depression was also extremely hard on the system as it brought massive cutbacks in funding. In 1933 the Board of Regents itself sent recommendations to Governor Tom Berry and the legislature that were very drastic. These recommendations included suspension of one or two normal schools, discontinuance of engineering at the university, and discontinuance of many, many courses at all the schools. "The reports of the various state schools incorporated during the [1930s] a continuous story of cuts--staff cuts, salary cuts, and appropriations cuts--and of unfulfilled needs and decreasing enrollments."¹⁹

After the Great Depression years, there was World War II, the Korean War, and the Vietnam War. Ultimately, though, the regental system has survived all the downswings in enrollments (of course there were great upswings, too, thanks especially to the G.I. Bill) and appropriations with all of its institutions (until closure of the University of South Dakota-Springfield in 1984, that is). Of course, someone has always thought there must be a better way of doing things, and probably the most ambitious, in-depth, and highest profiled formal study of the system happened in 1953.

That year the legislature hired the national consulting firm of Griffenhagen and Associates for \$20,000 to submit a report on the entire executive branch and the Board of Regents. The "Report on Certain Aspects of Public Higher Education in South Dakota" touched on many topics throughout the entire system and made many recommendations for improvement. The report's findings included these points:

"1. The use of state money for each institution's individual recruitment program is not justifiable competition. This service could be performed by a central information agency for all of them.

9. Nursing education should be transferred from State College to the University School of Medicine; likewise all divisions of pharmacy.

12. Engineering at the School of Mines and State College should be consolidated.

13. Arts and sciences on the graduate level, and music as a major subject, should be reserved for the University.

16. The schools for the deaf and the blind . . . should be removed from the Regents' supervision to the state Board of Education.

18. It is recommended that there be established a single consolidated university, to consist of all the colleges supported by the state. It should be headed by a single president or chancellor, responsible directly to the Board of Regents for the general administration of the University at all its several locations."²⁰

The report was heard by the legislature and other policy makers, but to no avail. It "brought a volley of objections, refutations, and arguments from the state supported institutions of higher learning... As a matter of fact, the changes made as a result of the \$20,000 report were, in general, of no major import."²¹ The Griffenhagen Report was not the first mention of these points, nor was it the last. Especially with regard to the last point, consolidation of the system, there has been interest, if not outright discussion, for decades. It is usually prominently featured any time a study is done of the system, and it probably exists as a strong, if unarticulated sentiment among voters. Many bills have been introduced, by both sides of the aisle of both houses, to form a single university system. Within the last forty years, beginning with the Kneip administration, there have been several bills introduced that would somehow consolidate one or more institutions, if not outright merge them all into a single university.

These ideas and others to significantly reshape the system are always strongly opposed by the Board of Regents, its institutions, and its staff. One of the only areas where the legislature has been able to enact law is in the stature of the board's central office. Increasing or diminishing the size or power of the board's central office has been one way the legislature has exerted some control over the board, without making any of what some would call the "real" or "hard" decisions.

The Board of Regents now describes itself as a "unified system". They point to their strong central office and active governing board. One could question, though, how unified they really are, in light of how each institution performs so many functions independently. They are definitely apart from the rest of state government in that they maintain their own payroll and fund accounting systems. Board of Regents employees are not even paid on the same schedule as the rest of state government (their paychecks are monthly versus semimonthly). The

Griffenhagen Report had questioned individual recruitment and other administrative efforts 40 years ago, and nothing has changed significantly since.

As for the controversy associated with the number of universities, the board has actually increased its number of sites in recent years. In 1996, the board voted to proceed with building a \$7.4 million facility in Sioux Falls to house the University Center – Sioux Falls (UCSF). The Center was actually a joint venture by Dakota State University, South Dakota State University, and the University of South Dakota which had been in operation for several years but operating out of leased space and classrooms across Sioux Falls.

After much urging and promises that UCSF would *not* become a seventh university, the Board of Regents and the administration of UCSF convinced the 2006 legislature that they were outgrowing their facilities in Sioux Falls and needed a more permanent facility. The legislature authorized the board to accept a \$5.8 million grant from the Great Plains Education Foundation for the purpose of acquiring 263 acres of land in northeast Sioux Falls. They also provided \$8 million in state funds for the construction of a classroom building on the site.

In the 2008 Legislative Session, the legislature approved two “replacement” site-delivery pieces of legislation which authorized: 1) the acceptance of donated land to be used for the University Center - Rapid City; and 2) the lease of instructional space in a Pierre building provided by the Capital University Center Foundation and Advisory Board.

The center in Sioux Falls is a considerable presence by the Board of Regents system in the state's largest community. The School of Medicine (renamed the Sanford School of Medicine after a \$20M gift from philanthropist T. Denny Sanford) has become more and more prominent over the years in Sioux Falls, too, especially thanks to a major gift of a building from Sanford Health. The building and the electronic library addition were both funded through grants and donations outside of the legislature's control. Current law (SDCL 13-51-1) would appear to prohibit the Board of Regents from constructing buildings without legislative authority and approval, but they have done so over the years (dormitories at Black Hills State University and South Dakota State University, the School of Medicine building in Sioux Falls). Arguments can be made that other statutes allow the board to spend money raised from outside sources as they see fit. Even though members of the legislature may not approve of an expansion of public higher education campuses, the board was able to get the legislature to allow for bonding.²²

So, where is the real power over public higher education in South Dakota? The governor clearly has powers and rights to recommend appropriations and staffing levels and make appointments to the board. However, the governor cannot unilaterally close one of the board's institutions or even change its mission. The legislature had to act to create a correctional facility at the University of South Dakota-Springfield. The legislature also had to enact the change of Dakota State University from a teaching college to a computer school.

The legislature rules the purse by actually appropriating money for support of the system, except for those moneys it allows the board to raise and spend at will.²³ The legislature also has the right to confirm the governor's appointments to the board, and in the extreme could abolish one board and mandate a new one be appointed. Likewise, if the Board of Regents were itself to actually decide to make true and significant reforms, the legislature could vote them out of existence again (it happened in territorial days, as well as in the late 1880s) and mandate that a new board be appointed.

The board could also take the Legislature and the Governor to court to fight a significant change, and probably would. The board maintains that all six universities--at the current sites--and their administrative infrastructures are necessary to continue to provide public higher education in South Dakota. Alarms are sounded when infrastructures are threatened, not to mention individual universities. The board controls its own financial resources to the extent that they set tuition rates and can (until there is a change in law) spend as much of this money as they raise.

Conclusion

In ways, South Dakota's Board of Regents has changed much since its inception. The board itself is bigger than it was when South Dakota became a state, but it is not as big as it was during the days of Dakota Territory. It governs a system that serves thousands of students, as opposed to just hundreds. It has a professional staff of its own, located in Pierre, rather than having to rely upon a board member, stenographer, and bookkeeper. The power of its executive officer has seen considerable growth and then diminishment. It may have once been headed toward becoming a single university system with a very powerful chief executive, but it now operates and governs a system of six universities and two special schools. Even that differs from its antiquated system of one university and a collection of six colleges and normal schools.

On the other hand, the board has not changed. It is arguably the oldest and most elegant governing board in the country. It is still, to no small extent, its own branch of government because of its constitutional responsibilities and statutory powers. Ultimately, it will remain so until the people decide otherwise by rewriting the Constitution.

End Notes

1. Hoagland, Monica. "Organizing the System of Higher Education: The South Dakota Board of Regents." From Idea to Institution: Higher Education in South Dakota. (Vermillion: University of South Dakota Press, 1989), p. 3.
2. Schell, Herbert S. History of South Dakota (Lincoln: University of Nebraska Press, 1961), p. 95.
3. *ibid.*
4. *ibid.*, p. 205.
5. *ibid.*, p. 208.
6. *ibid.*, pp. 214, 215, and 218.
7. Hoagland, p. 4.
8. *ibid.*
9. McGuinness, Aims C., Jr. State Postsecondary Education Structures Handbook 1994 (Denver: Education Commission of the States, 1994), p. 2.
10. Information on Idaho and Hawaii, et al, is from: McGuinness, Aims C., Jr. State Postsecondary Education Structures Handbook 1994 (Denver: Education Commission of the States, 1994), pp. 64-75 and 173-175.
11. A curious break in governance exists in that there are four postsecondary "educational institutions that [are] sustained...in part by the state" which are not governed by the Board of Regents. SDCL Chapter 13-39 assigns governance of the four technical institutes to the Department of Education and Cultural Affairs. These institutions, in ways indistinguishable from community colleges, are technically "owned" by their local school districts, despite their considerable state general fund support. Through articulation agreements, students at the technical institutes can receive college credit for some of their course work.
12. Originally, Article XIV § 1 read "The charitable and penal institutions of the state of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school." Article XIV § 2 placed these institutions under the control of the Board of Charities and Corrections. In 1988 the electorate approved a change in the Constitution which allowed the Legislature to create the Department of Human Services and the Department of Corrections. The original Article XIV § 3 listed only the "state university, the agricultural college, the normal schools and all other educational institutions that may be sustained either wholly or in part by the state" as under the control of the Board of Regents. The 1944 change also added the School of Mines and Technology to the Regental list.
13. This law took effect without the signature of then-Governor Frank Farrar.
14. Held at Bismarck, the territorial capital, between January 8, 1889, and March 9, 1889.
15. Held at Pierre, January 7, 1890, to March 7, 1890.

16. Thorpe, Cleata B. "Education in South Dakota: Its First Hundred Years 1861-1961," South Dakota Department of History Report and Historical Collections Volume XXXVI (Pierre: State Publishing Company, 1972), p. 235.

17. *ibid.*, p. 251.

18. *ibid.*

19. *ibid.*, pp. 323, 324.

20. *ibid.*, pp. 378- 380.

21. *ibid.*, p. 381.

22. The Legislature gave the Board of Regents the power to use its Higher Education Facilities Fund to pay rent for facilities "necessary to the proper and efficient delivery of instruction" (1998 SL Ch. 102).

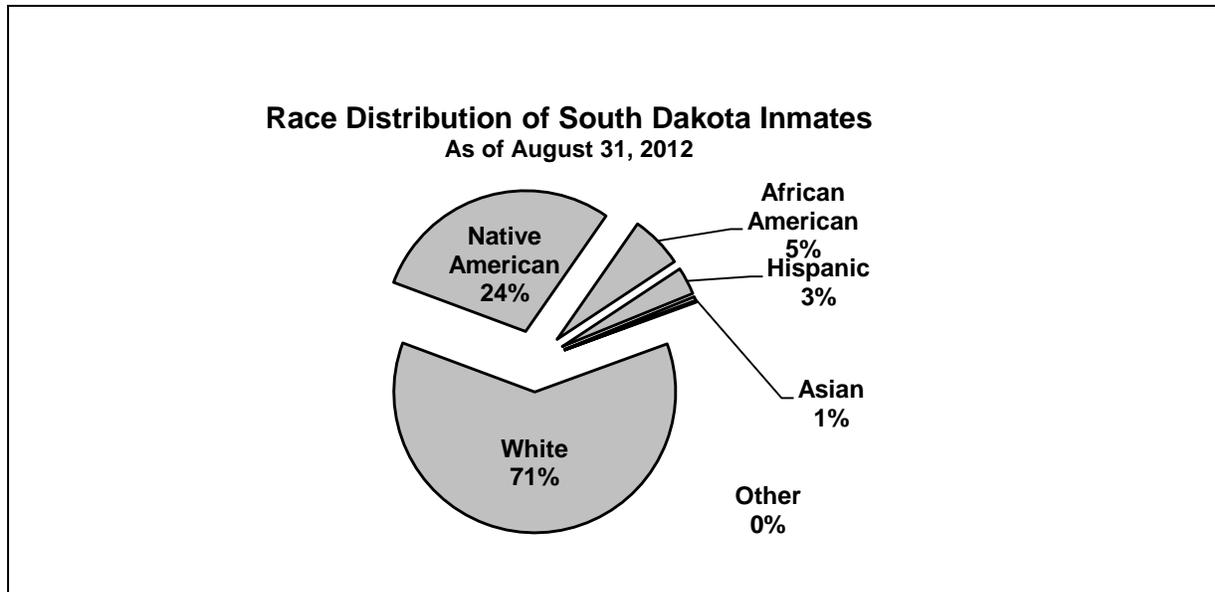
23. The Board of Regents, with the blessing of law, does control a very significant amount of its financial resources already through the ability to be able to spend as much money as it can raise. SDCL § 13-53-6 gives the Board power to set rates for tuition and fees. SDCL § 13-53-15 creates the Tuition and Fees Fund and continuously appropriates it to the Board of Regents.

Chapter 6 CORRECTIONS

The South Dakota Department of Corrections was established on July 1, 1989, as part of the reorganization of the state institutions formerly under the Board of Charities and Corrections. There are six adult and five juvenile correctional facilities/programs in the state, which are located from Yankton to Pierre to Custer. Each is unique to the types of prisoners it houses and the services it provides to those incarcerated. This chapter will attempt to explain the physical structure, the budget, population, and other information on each program and facility.

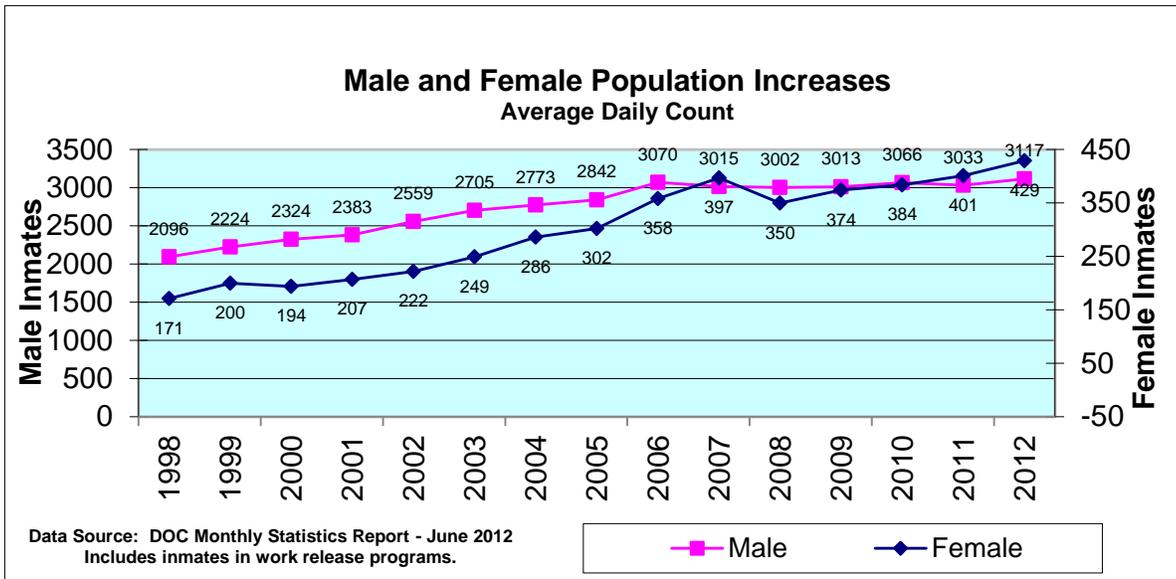
PART I: Adult Corrections

On June 30, 2012, the South Dakota adult prison system contained 3,546 inmates, including 3,117 males and 429 females.

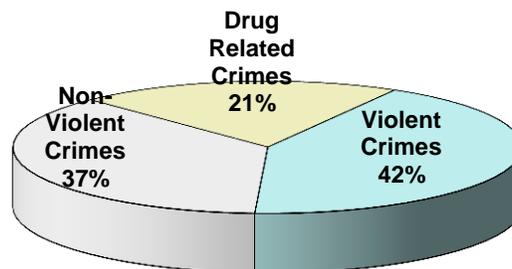


Forty-two percent of the inmate population was serving time for crimes of violence (murder, rape, robbery, etc.). Thirty-seven percent were incarcerated for non-violent crimes (burglary 3rd, DWI, grand theft, forgery, etc.). Twenty-one percent were incarcerated for drug related crimes (possession or distribution of a controlled substance or marijuana).

The average sentence of the inmates admitted during FY2012 was 3 years for males and 2 years for females, not including those with life sentences. The average time served by inmates released to parole or suspended sentence supervision in FY2012 was 20 months for males and 12 months for females.



Crimes of South Dakota Inmates As of June 30, 2012



Violent Crimes (1,535 Inmates)

- Aggravated Assault, Child Abuse, Aggravated Assault Baby, Aggravated Assault Law Officer, Kidnapping, Manslaughter (I and II), Murder (I and II), Rape (I, II, and III), Rape (IV Violent), Robbery (I and II), Sexual Contact, Riot, Arson (I, II, and III), Stalking, Burglary (I and II), Discharge Firearm at Structure, Comm. of Crime While Armed, Sliming, Sexual Contact w/pers Incap of Consent, Incest, Discharging Firearm from Moving Vehicle, Simple Assault 3rd Offense, Simple Assault on a Law Officer, Photoing Child in Obscene Act, Criminal Pedophilia

Non-Violent Crimes (1,334 Inmates)

- Vehicular Homicide, Entice Away Child Under 14, Tampering w/a Witness, Vehicular Battery, Removal of Child from State, Burning to Defraud, Burglary III, Damage to Property, Forgery, Grand Theft, Aggravated Grand Theft, No Acct./Non-suff Funds Check, Burglary IV, Identity Theft, Compounding a Felony, Bigamy, Bribery, Escape, Escape II, Failure to Appear, False Report of Bomb, Obstruction of Justice, Perjury, Possession of Burglary Tools, Poss. of a Concealed Weapon, Poss. of a Controlled Weapon, Poss. of Firearm by Felon, Poss. of Vehicle/Altered Serial #, Procuring Prostitution, Subornation of Perjury, Falsification of Evidence, Failure to Pay Sales Tax, Nonsupport of Child, Hit & Run with Injury, Poss. of Weapon by Prisoner, Threatening Judicial Officer, Indecent Exposure, Possession of a Forged Instrument, Intent Exp to HIV Infection, Sexual Contact with an Inmate, Violation of Protection Order, Possession of Child Pornography, Failed to Reg as Bail Bondsman, Illegal Importing of Livestock, Eluding Law Enforcement Officer, Sexual Exploitation of a Minor, Failed to Reg as Sex Offender, Failed to Reg as Sex Offender 2nd Offense, Failed to Reg Foreign Sex Offender, Sex Offender Failed to Update Address, Violation of Community Safety Zones, Aggravated Incest, Solicitation of a Minor, Mishandle Ammonia or Tamp w/Eq., Intent Interrup of Comm. Transp, Concealment of Escaped Prisoner, Accessory to a Crime, Marshal Holds, Receive/Transfer of Stolen Vehicle, DWI, DWI 4th, DWI 5th

Drug Related Crimes (744 Inmates)

- Distribution of Cont. Substance, Distribution of Marijuana, Possession of Cont. Substance by Inmate, Violation of a Drug Free Zone, Poss. Contraband by an Inmate, Dist Control Sub, Dist Marijuana, Poss Marijuana, Obtain Cont Sub Thru Theft, Mis, Keeping a Place for Controlled Sub., Paraphernalia Sales, Poss. w/Intent to Deliver Inmate, Poss Counterfeit Drug (These figures do not include Federal or Out of State Boarders.)

South Dakota State Penitentiary

The State Penitentiary was built in 1881 in Sioux Falls as a territorial prison and served the Dakotas until 1889 when South Dakota became the 40th state. It was the only adult facility for over 100 years and has endured many structural changes. It now serves as a medium security facility and houses approximately 800 inmates.

Jameson Annex

The Jameson Annex opened in February 1993 as a secure unit adjacent to the main building of the South Dakota State Penitentiary. The annex is named for G. Norton Jameson, who served as warden of the Penitentiary from 1938 to 1963. It contains three housing units within a secure perimeter, Units A, B, and D (added in 2005). These units are used for maximum custody inmates and as a disciplinary segregation unit. Unit C is a minimum security unit located outside the perimeter fence.

Inmates are assigned to units within the Penitentiary and Jameson Annex based on the inmate's current needs, past record, length of sentence, and institutional behavior.

Inmate employment within the Penitentiary falls into two basic categories: institutional support and prison industries. Institutional support includes those employed in food service, as clerks for various departments, as cell orderlies, and those working in maintenance. Prison Industries consists of upholstery, printing, sign, decal, license plates, carpentry, book bindery, machine shop, Braille unit, garments, and data entry. All but the garment and data entry work is done at the Penitentiary. Most of the work is done for government agencies.

Inmates are offered literacy, Adult Basic Education, and GED classes.

The state Department of Health provides medical, dental, and optometric services for the adult corrections system. The state Department of Human Services provides mental health and chemical dependency services.

Treatment is also offered for sex offenders.

Mike Durfee State Prison

The Mike Durfee State Prison (MDSP) is located on the campus of the former University of South Dakota at Springfield. The 1984 Legislature closed USD/S and authorized the Board of Charities and Corrections to establish the correctional facility. Springfield State Prison opened in December of 1984 when the female inmates from the Women's Correctional Facility in Yankton were transferred to the new institution. Male inmates began transferring to the institution in January 1985.

The institution remained co-ed with both males and females located on the same campus for several years. With the opening of the Herm Solem Public Safety Center in Pierre in November 1997, the women were transferred to the South Dakota Women's Prison within the Solem Public Safety Center, and the Springfield State Prison became an all-male institution for the first time.

On September 10, 1999, the prison was renamed in honor of Mike Durfee, Deputy Director of the South Dakota Department of Corrections.

Most inmates at MDSP are Low Medium custody inmates. There is also a disciplinary segregation unit at MDSP. The prison is home to many programs, including Literacy, Adult Basic Education, and GED classes. Vocational Education classes in Welding, Machine Tool, Auto Body, Landscape/Horticulture and Auto Mechanics are also offered. Treatment programs are available for chemical dependents and sex offenders. Many of the inmate work programs are based at the Durfee State Prison.

Durfee State Prison also supervises minimum-security units in Yankton and in Rapid City.

The Governor's Inmate Housing Project is largely done at this facility. The project, which began in April 1996, was originally created to build houses for the elderly and disabled. It has since been expanded to include all South Dakotans with some income eligibility guidelines. The budget for this project is included in the budget for the South Dakota Housing Authority.

Yankton Minimum Unit

The Yankton Minimum Unit is a minimum security male facility under the direction of the Mike Durfee State Prison. It opened in the early 1970's to provide support services for the Human Services Center and it has grown over the years to a working unit with a population of 150 to 240 adult inmates.

The unit supplies workers for several different programs. On a daily basis, inmates work for support services for the Human Services Center, Community Service Projects, and Work Release.

The unit provides GED classes, elective classes for education, a wide range of recreational activities, and a variety of religious services. The unit also provides a treatment unit with drug and alcohol treatment classes, both long-term and relapses.

Rapid City Minimum Unit

The Black Hills Correctional Transition Center is a 55,294 square-foot minimum security male facility under the direction of the Mike Durfee State Prison and Warden Bob Dooley. The Center opened in May 2012 as a result of a \$5.6M appropriation by the 2010 Legislature.

In 2009, the state finalized the purchase of 11.3 acres of land for \$2.2 million along Creek Drive in Rapid City for the new minimum security unit. The 2010 Legislature appropriated \$3.8 million including \$1.8 million in General Funds, for the renovation of the existing buildings on-site that now house the inmates and parole offices. The project converted an old warehouse on Creek Drive and added a new 9,000 square foot building to the existing structure, providing some much needed space. The new facility can house 416 inmates at full capacity.

On a daily basis, inmates work on community service projects, such as firefighting or helping thin timber in the Black Hills. Other inmates that are on work release status work in the community for various businesses.

South Dakota Women's Prison

The South Dakota Women's Prison is part of the Solem Public Safety Center, a unique facility that houses a prison, state corrections offices, and law enforcement agencies of the state, county, and city governments. In 1995, legislation was introduced that authorized the construction of a new women's prison in Pierre. After the passage of the bill, an idea was pursued to join resources with local governments to best utilize the new facility.

The completed facility includes the new state Women's Prison, the Central Office of the State Department of Corrections, Pierre Police Department, Hughes County Sheriff's office, a State Highway Patrol station, and State Division of Criminal Investigation agents. The South Dakota Women's Prison opened and was dedicated on October 23, 1997.

The Women's Prison portion of the facility constitutes the majority of the 78,000 square foot building. There is a minimum security unit located outside the perimeter fence, known as Unit E. Another minimum security unit, the Intensive Methamphetamine Treatment Unit, is located nearby in the former DCI Training Building.

The Intensive Methamphetamine Treatment Unit at the South Dakota Womens' Prison (SDWP) is part of a 15-month prison and community based intensive treatment program for women with methamphetamine dependencies. The program is a joint effort between DOC, the Department of Human Services and Department of Health. The program began in August 2006. Participants are involved in approximately 50 hours of structured programming each week including chemical dependency treatment, life skills classes, mental health services, academic instruction, and family and parenting work.

Prison Industries at the Women's Prison includes data entry for government agencies.

Inmates can take classes for literacy, Adult Basic Education, and GED as well as receive treatment for chemical dependency and for sex offenses.

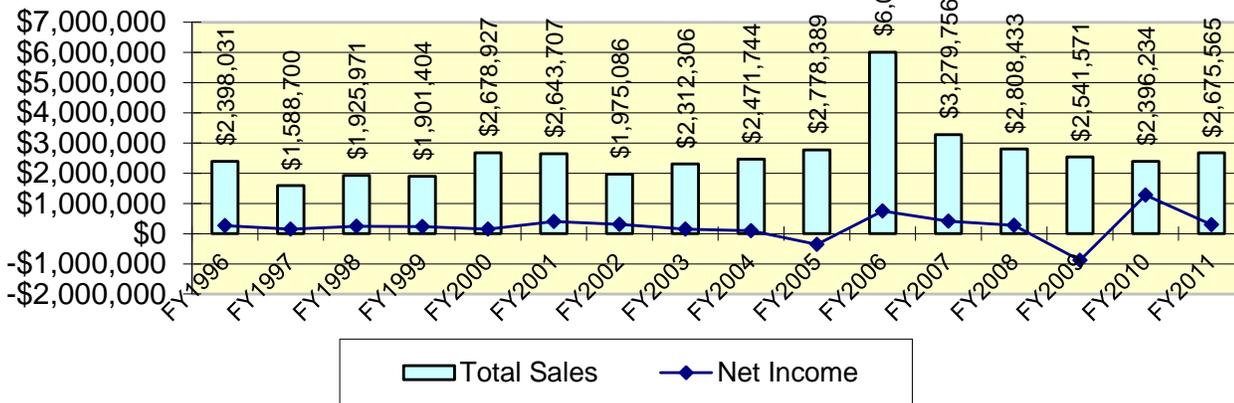
Pheasantland Industries

South Dakota Prison Industries, now known as Pheasantland Industries, was established at the State Penitentiary during the 1920s. Among the first products manufactured were license plates, twine, and rag rugs. Shoe repair was also once performed by Prison Industries.

The mission has always been to provide quality goods while teaching good work habits in an effort to prepare inmates for their return to society. It is also the mission of Pheasantland Industries to be a self supporting business.

Pheasantland Industries has established such industries as license plate manufacturing, upholstery, cabinets, signs and decals, custom furniture, garments, printing & bookbinding, data entry, refurbished wheelchairs, machinery, knitted stocking hats, and a Braille unit.

Pheasantland Industries Sales and Net Income History



(Transferred \$525,651 in FY2005 for prison construction.)
(Transferred \$1,000,000 in FY2009 to Office of Governor)
(Transferred \$1,000,000 in FY2010 from the Dept. of Revenue)

Adult Parole System

The Board of Pardons and Paroles is a nine member appointed board charged with the authority to make decisions of parole, the revocation of parole, and parole policy and procedure. Three of the board members are appointed by the Governor of South Dakota, three are appointed by Attorney General, and the remaining three are appointed by the South Dakota Supreme Court. One of the appointees by each appointing authority must be an attorney. Each member of the board must be a resident of South Dakota and be appointed with the advice and consent of the Senate.

The Board of Pardons and Paroles is administered under the jurisdiction and direction of the Department of Corrections but retains quasi-judicial, quasi-legislative, advisory and other non-administrative functions independent of the Department of Corrections.

Performance-Based Measures System (PBMS)

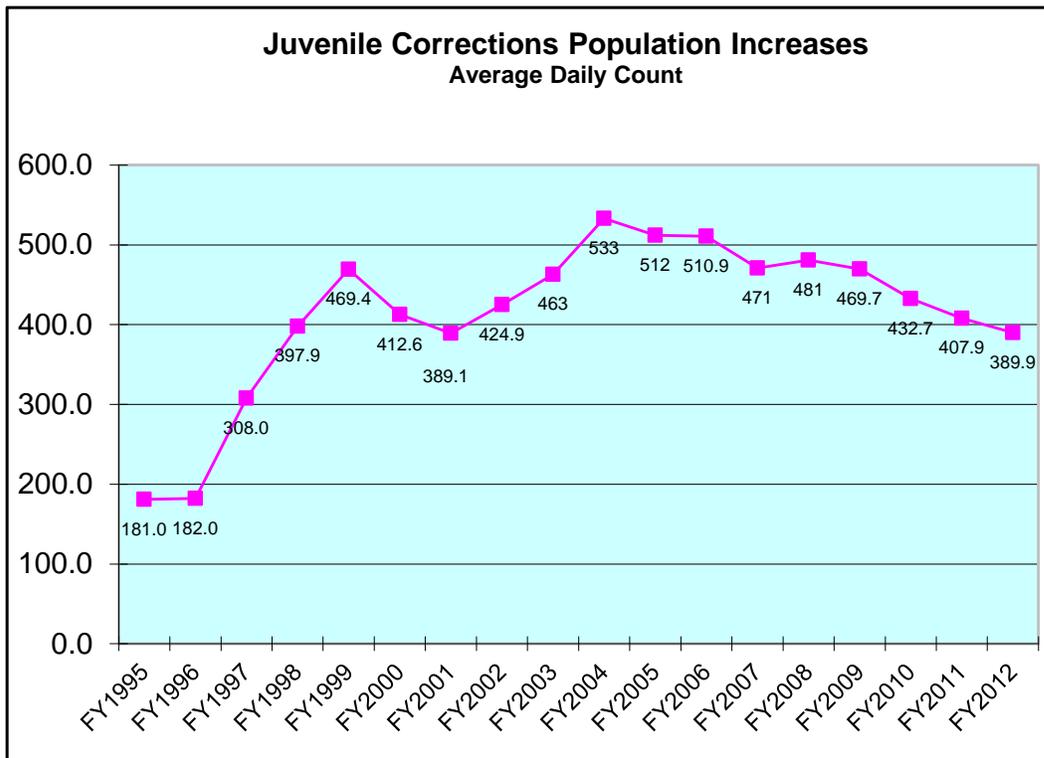
In March 2006, the South Dakota Department of Corrections initiated participation in the Association of State Correctional Administrators (ASCA) Performance-Based Measures System (PBMS). The PBMS system is an effort by state correctional administrators to develop standards that measure correctional performance, enabling review and research of performance across jurisdictions. South Dakota was one of the first seven states to participate in this initiative; which includes standards on public safety, institutional safety, substance abuse, mental health, justice, fiscal, and education. This involvement ensures "apples to apples" comparisons of key measures of correctional performance and will allow the South Dakota Department of Corrections to measure its adult institutional system against other states and eventually region and national averages and standards.

PART II: Juvenile Corrections

The Juvenile Corrections System consists of several different programs for juvenile offenders under the age of 21 who have been committed to the Department of Corrections. State law requires the court to sentence the juvenile to the Department of Corrections, not to the specific programs. It is the Department's responsibility, not the courts', to determine the appropriate program and facility for the child.

Prior to July 1, 1998, only youth adjudicated as delinquent were sentenced to serve in the juvenile correctional facilities. In 1998, the law was changed to allow the courts to sentence status offenders and Children in Need of Supervision (CHINS) to state correctional facilities.

Upon reaching the age of 21, a resident must be discharged from the state facilities if they have not been charged as an adult.



State Treatment and Rehabilitation Academy for Youth (STAR Academy)

The State Treatment and Rehabilitation Academy (STAR Academy) for juveniles is located approximately four-and-a-half miles south of Custer, SD on Highway 385.

The youth that are served by the STAR Academy have all been placed in the custody of the Department of Corrections by the court system. Both delinquent children and Children in Need of Supervision may be placed at the STAR Academy at the direction of the Director of Classification. Children in Need of Supervision must also be reviewed by a state level review team comprised of representatives from the Department of Social Services, Department of Human Services, Department of Education, Unified Judicial System, and the Department of Corrections.

Programs for male juveniles located on the campus are the Patrick Henry Brady Academy, two units of the Youth Challenge Center, and the Intake & Holding Center. Two programs for girls, QUEST and EXCEL, are also part of the STAR Academy. The girls programs are located in Custer State Park at the site of the former Youth Forestry Camp and are licensed as group care centers with the Department of Social Services.

STAR Academy operates an accredited middle and high school known as STAR Evergreen High School.

The state Department of Health provides medical, dental, and optometric services for the juvenile corrections system. The state Department of Human Services provides mental health and chemical dependency services.

Treatment is also offered for sex offenders.

STAR Academy Admissions

Processing through the Admissions Unit is the first step for youth entering placement at STAR Academy. It is here that newly adjudicated and recommitted youth come to receive a medical, mental health, chemical dependency, educational, social skills, and behavioral assessment to determine the best possible DOC program for them to complete.

While in the Admissions Unit, youth begin an exercise program, educational classes, group counseling, life skills classes, and work on laundry, food service, and janitorial details. Also, they practice self-discipline, self-accountability, and self-improvement through a daily regimented schedule and gain helpful information about living with the other youth and the proper responses to authority while in placement at STAR Academy.

Each new youth entering the Admissions Unit receives medical, physical, mental health, and chemical dependency assessments. Placement decisions are made after a final staffing that includes participation from education staff, medical staff, mental health staff, chemical dependency staff, program staff, Juvenile Corrections Agent, and parental input or participation to make a decision for placement into one of the various programs that STAR Academy has to offer. The average length of stay in the Admissions Unit is 14 days before a program placement decision is made.

Patrick Henry Brady Academy

The Patrick Henry Brady Academy, established in 1996, is an intensive short-term program that uses a highly regimented military-like structure for male juveniles committed to the Department of Corrections. It is located 4.5 miles south of Custer.

The Brady Academy itself is in a newly designed building to the rear of the main administration building for the campus. The living area is designed in a dormitory style, housing up to 48 juveniles between the ages of 14 and 18.

The juveniles receive education, individual counseling, group counseling, substance abuse services, mental health services, religious opportunities, a life skills program, physical activity, learning structure, and self-discipline.

Length of stay is determined by the treatment needs of the juvenile. Each student will progress through a series of levels comprising elements necessary to successfully complete the Brady Academy. Students in all levels are required to participate in educational services and counseling sessions throughout their stay in Brady Academy.

The Youth Challenge Center Program

The Youth Challenge Center serves male juveniles that have exhausted all the resources in their communities or have committed crimes that necessitate them being removed from the community. They may have committed felony or misdemeanor offenses, violated probation, have truancy or behavioral issues in school, and have difficulty in family relations. All students served at the Youth Challenge Center have been diagnosed as needing treatment for substance abuse.

The living area is designed in a dormitory style, housing up to 24 male juveniles between the ages of 14 and 18 in each unit.

A typical stay at Youth Challenge Center is 4 to 8 months and requires the students to participate in counseling, life-skills development, educational classes, vocational education, substance abuse treatment, wellness activity, and self-discovery.

QUEST Female Program

The QUEST (Quality Educational Services and Treatment) Program is located on the former grounds of the Youth Forestry Campus in Custer State Park. It is a licensed group home for girls, which began in December of 1996. The living area is designed in a dormitory style, housing 24 girls between the ages of 14 and 17.

This program serves 24 juvenile females that have been placed in the custody of the DOC by the court system for a variety of reasons. Both delinquent children and Children in Need of Supervision (CHINS) may be placed at QUEST. The girls in the QUEST program are generally low to medium risk and are primarily non-violent offenders.

QUEST serves girls that have, in many cases, been physically or sexually abused or have significant chemical dependency issues requiring a level of treatment that is generally not available within a community setting. A typical stay at QUEST will be 6 to 9 months and involves the girls participating in counseling, life skills development, educational classes, physical activity, learning structure, and self discipline.

ExCEL Female Program

The ExCEL (Excellence in Counseling, Education and Lifeskills) program for female juvenile offenders, like the QUEST program, is located on the former grounds of the Youth Forestry Campus in Custer State Park. The program began in July 2000. The living area is designed in a dormitory style, housing 24 girls between the ages of 14 and 17 (they may turn 18 while in placement).

The EXCEL program is designed to improve the quality of life for female offenders through a short-term comprehensive wellness approach that includes counseling, education, life skills development, and positive role modeling for participants.

EXCEL serves girls that have, in many cases, violated their conditions of probation, have truancy or behavioral issues in school, and may have difficulty in family relations. A typical stay at EXCEL will be four months and involves the girls participating in counseling, life-skills development, educational classes, physical activity, learning structure, and self-discipline.

West Farm

The West Farm program is a juvenile transitional care facility near Sioux Falls for boys age 14-17 who have completed correctional placement and are transitioning back into the community for work, post-secondary education, independent living, or the military.

Volunteers of America, Dakotas, a nonprofit organization based in Sioux Falls, operates the program as a Title XIX (Medicaid) Group Care Center through a contract with the State of South Dakota.

Treatment needs for the youth include, but are not limited to drug and alcohol services, anger management, mental health and/or illness, sexual offender, social skills development, independent living skills, sexual, and physical and/or emotional abuse.

The buildings at the West Farm are state property, with the state responsible for maintenance.

Intensive Juvenile Probation Program

In 1996, the Unified Judicial System developed and implemented a new program for high risk juvenile offenders referred to as the "Juvenile Intensive Probation Program." Through the program, the juveniles are held firmly accountable for their actions and are required to pay restitution, participate in community based programming services, and strictly abide by their court ordered terms and conditions of probation. The juvenile intensive probation officer has a smaller caseload than those in traditional programs, thus allowing for the close monitoring of the juvenile's daily actions and activities. The goal of the program is to keep more juveniles in their home communities receiving appropriate services and supervision. Statistics throughout the years since the program was started show that the program has been very successful for those non-violent offenders appropriate for this type of program. Many young people involved in the court system have been diverted from the Department of Corrections through the creative programming the intensive program is able to offer.

In FY2008, the number of juveniles placed in the program was approximately 187. Ninety-six of them successfully completed the program and 78 were transferred to a DOC program. In FY2010, 192 juveniles were placed in the program, 92 successfully completed the program, and 95 failed and were transferred to a DOC program. In FY2011, 193 juveniles were placed in the program, 85 successfully completed the program, and 108 failed and were transferred to a DOC program.

Aurora Plains Academy- Plankinton

Through an RFP process, Clinicare Corporation, based in Wisconsin, was able to obtain a lease for the facility and through accreditation and licensing now operates an intensive residential treatment facility in Plankinton. The facility delivers the highest level of care for juveniles in South Dakota. The facility opened in November of 2006 with approximately 40 youth (a mixture of boys/girls) and 100 staff. About half of the youth are DOC placements and the other half from the Department of Social Services. The academy also services tribal youth. Under the licensing requirements, the Academy is able house 66 youth. The Department of Social Services oversees the activities at this facility for licensing requirements.

Discontinued Juvenile Corrections Programs

Girls Boot Camp

In the fall of 1996, the Department of Corrections developed the Custer Intensive Intervention Program, more commonly known as the Girls Boot Camp. The program was changed in August of 1997, by adding more structure, and was moved to Plankinton in July of 1998.

On July 21, 1999, 14-year-old Gina Score died at the boot camp after she had completed a 2.7 mile run/walk as part of her physical training. Two staff members and a nurse were fired and charges of child abuse were filed against the staff members. In the spring and summer of 2000, the Girls Boot Camp was closed and the girls were moved to Custer to participate in the ExCEL and QUEST programs.

Lamont Youth Development Center

In 1982, the Legislature approved a work therapy program for adjudicated female juveniles. It authorized the state to build a facility in Redfield that could serve juvenile girls who had completed the eighth grade or who were fourteen years of age or older and who were "considered a proper candidate for custody, care, or training." In 1991, the terms "child in need of supervision" and "delinquent" were amended into that section of the code. Also in 1991, the center was renamed to the Lamont Youth Development Center, after longtime Aberdeen legislator, Frances, S. "Peg" Lamont.

In 1995, \$1.5M was appropriated to expand the Lamont Center to include a 40 bed facility with 24 group residential, eight detention, four orientation/intake, and four independent living units. The facility was in the design phase and would have been completed in the spring of 1997. During the 1996 session, however, the project was scraped and the Lamont Center program was moved from Redfield to Custer. The Lamont program was replaced by QUEST in 1999.

State Training School

The Dakota Reform School was established at Plankinton by the Territorial Legislature in 1886 and received its first student on November 3, 1888. It served both states of South Dakota and North Dakota until 1903 when North Dakota built its own school. The 1907 Legislature changed the name of the institution from Dakota Reform School to South Dakota State Training School.

In 2001, Governor Janklow closed the State Training School and the Juvenile Prison. The Governor reportedly closed the facility due to lower numbers of juveniles. The reason for the drop in children, he stated, was because "the needs of the students served at the State Training School (STS) have intensified over the last several years. With the Unified Judicial System (UJS) expanding intensive probation and the Department of Corrections (DOC) developing additional programs for lower risk offenders, only those youth with the most intensive treatment needs and presenting the greatest risks remain to be placed at the STS. The level of programming needed for each specific student is simply not available with the number of students and the needs presented. It has become much more practical to place these 'high needs' students in specific programs rather than develop a variety of programs on one campus to address multiple needs."

Capacity at the State Training School was 128 juveniles.

Juvenile Prison

The 1995 legislature appropriated \$3,723,000 for a juvenile prison to be built in Plankinton on the grounds of the State Training School. The Juvenile Prison opened in October of 1997 with a capacity of 40 juveniles. Governor Janklow closed the prison in December 2001.

Female Secure Unit

A portion of the State Training School Administration Building was renovated in 1998 to be a Female Secure Unit. The facility had locking devices on doors, gates and monitoring equipment. It held an average of about 18 female offenders until May 2000, when the Unit closed and the female juveniles moved to the Custer campus into either the ExCEL Program or the QUEST Program.

Living Center

In 1966, the Legislature and Governor Nils A. Boe created the Youth Forestry Camp, which has since been renamed the Living Center. The youth at the Living Center programs are Children in Need of Supervision (CHINS - which have committed offenses such as truancy, being out of control of their parents or curfew violations), adjudicated delinquents, and youth with suspended sentences from other correctional facilities. The emphasis of the Living Center program is on education, independent living skills, vocational and work skills, developing appropriate social skills, as well as employment and setting long-term attainable goals for their life. The department closed the Living Center in 2007 and transferred the few remaining juveniles to the STAR Academy.

Chapter 7 ELEMENTARY AND SECONDARY EDUCATION

Introduction

Article VIII, Section 1 of the South Dakota Constitution directs the legislature to "establish and maintain a general and uniform system of public schools" for the people of South Dakota. This has always been a challenge for legislators, but it has become even more so in recent years due to the state of the economy and the decline of rural America. As our small communities shrink, so do our schools. Declining enrollments mean less funding for schools since funding from the state is enrollment-driven. More and more, South Dakota's small, often geographically remote schools are having a difficult time providing children with the educational opportunities that are so vital to their futures.

The enactment of federal legislation, commonly known as *No Child Left Behind*, in 2001 has had a huge impact. Like never before, states are being forced by the federal government to hold their schools accountable, measure student progress, and involve parents in the education of their children. Clearly, state government is now required to take a more active role in education policy, often overpowering those wanting to maintain their traditional level of local control. Add these debates to a host of other education issues that legislators address every year, and it is easy to see that maintaining a quality system of education is a difficult task. It's also one with very high stakes because it deals with our state's most precious commodity, our children.

In general, education issues and discussions in South Dakota have centered on the somewhat conflicting goals of improving education through additional expenditures, increased teacher salaries, and additional programs while at the same time maintaining flexibility at the local school district level, striving for efficiencies and lower costs, and reducing the burden on property taxpayers.

Recent education issues in South Dakota have included such topics as school reorganization, open enrollment, changes to South Dakota's state aid to education funding formula, teacher evaluation and salaries, alternative certification, home schools, content standards, student assessment, curriculum requirements, and the length of the school year. Further information on many of those issues is provided below.

Schools at a Glance

The following are some statistics for South Dakota's public schools for the 2009-10 and 2010-11 school years that provide insight into public education in South Dakota:

	2009-10	2010-11
School Districts	156	152
K-12 Fall Enrollment	122,055	123,629
South Dakota Geographical Area in Square Miles	77,129	77,129
General & Special Education Fund Expenditures	\$991,871,969	\$991,596,651
State Aid to General and Special Education	\$387,286,866	\$390,222,099
Educational Expenditures Per Student*	\$7,958	\$8,065
State Aid to Education Per Student Allocation	\$4,804.60	\$4,804.60
Certified Teachers	9,227	9,300
Superintendents and Assistant Superintendents	116	114
Principals and Assistant Principals	389	401
Average Certified Teacher's Salary	\$38,836	\$39,253
Average Superintendent's Salary	\$84,402	\$85,770

*The expenditures per student vary widely among school districts. For a breakdown of the expenditures per student by school district for 2010-11, see the following:

<http://doe.sd.gov/ofm/documents/ExpDataRank11.pdf>.

The data in the above table was taken from the *Statistical Digest: A Statistical Profile of Education in South Dakota* that is produced annually by the Department of Education. It is an excellent source of data regarding K-12 education in South Dakota, and can be found at <http://doe.sd.gov/ofm/statdigest.aspx>.

School Funding Lawsuit

The perennial debate over paying for public education reached a new level in June 2006 when a lawsuit was filed against the state contending that the funding of its schools was not adequate. The path to the courtroom actually began in 2003 with the formation of the South Dakota Coalition of Schools, a group formed specifically to advocate for more money for schools. The coalition commissioned a study that, in January 2006, concluded that funding for schools in this state was short by more than one hundred million dollars. With the study in hand, the coalition sought contributions from the state's school districts to pay for a legal challenge of the state's education funding system, and the lawsuit (*Davis v. State of South Dakota*) was filed.

Almost immediately, the state filed a motion to dismiss the lawsuit, but that motion was rejected. Circuit Court Judge Lori Wilbur agreed to hear the case and determine whether the state's school finance system is adequate. At the same time, however, she ruled that the courts cannot order the legislature to appropriate additional money.

After the circuit court agreed to hear the case, state officials argued that school districts acted illegally when they contributed funds to the South Dakota Coalition of Schools in support of the lawsuit. To determine the validity of the state's assertion, a group of school board members initiated a separate legal action to determine whether the school districts did in fact have the standing necessary to finance the litigation against the state. This litigation is referred to as ***Olson v. Guindon***.

In August 2008, Judge Lori Wilbur ruled in favor of the state in ***Olson v. Guindon***, concluding that the school districts did act illegally when making contributions to help fund ***Davis v. State of South Dakota***. In her decision, Judge Wilbur asserted that the school districts lack the standing to sue the state because they were created by the legislature. She further pointed out that the real interested parties in the case were parents and students and not school districts, and that school districts lack the authority to sue because that power is not expressly granted to them in state law. The circuit court's decision in ***Olson v. Guindon*** was appealed to the South Dakota Supreme Court.

The South Dakota Supreme Court in July 2009 ruled that school districts do have limited standing to fund such a lawsuit, making it legal for the school districts to help pay expenses related to ***Davis v. State of South Dakota***. In the decision, the court made it clear that the standing was in a limited context and also agreed with the previous circuit court ruling that the courts could not order the legislature to appropriate more funds for education.

Davis v. State of South Dakota went to trial in September 2008, and in April 2009, the circuit court ruled that the state's school finance system does not violate the South Dakota Constitution. In the decision, Judge Wilbur concluded that education is not a fundamental right and that the SD Constitution does not guarantee a quality education, but rather it guarantees a basic high school education, which is a standard that school districts in the state are exceeding. She also noted that increased funding for education does not guarantee increased quality. The decision was appealed to the South Dakota Supreme Court.

In September 2011, the state Supreme Court upheld the constitutionality of the school finance system. As in the circuit court, the justices did not find causation, or a link between underfunding and low student performance. The court did, however, seem to leave the door open for future challenges to South Dakota's school finance system, but the ruling prohibits the plaintiffs from participating in another such lawsuit for at least ten years.

Other Issues Surrounding K-12 Education

State Aid to Education

In addition to setting policy, the legislature's other significant role in education is funding. Most of the funds provided to school districts from the state are distributed through a formula known as the state aid to education formula. The current formula was adopted by the legislature in 1995 and took effect in 1997. The state aid to education formula funds school districts on a per student basis and was designed to ensure that, between local tax revenue and the formula funds provided by the state, an equal amount of money is provided for each public school student in the state.

For fiscal year 2011, on a statewide aggregate basis, the state provided 56.1 percent of the amount needed to fund the state aid to education formula, and the local taxpayers provided the other 43.9 percent. This is a significant shift from the years prior to the adoption of the current formula when the state was only providing about 30 percent of school funding, and the local property tax payers were paying 70 percent.

Basically, the formula uses a calculation of statewide fall enrollment, multiplied by a per-student allocation, to determine statewide need. For each school district, the fall enrollment is multiplied by the per-student allocation to determine local need. For certain small school districts that qualify for it, the local need is also increased by a small school adjustment. Local need minus the amount of local effort (total property tax revenue) equals state aid (the amount of funding paid by the state). For the 2010-2011 school year, the total state aid for general and special education was over \$390 million.

The state aid to general education formula has withstood numerous attempts at modification since its adoption in 1995. The legislature, however, resisted making any significant changes until 2007 when the legislature instituted several changes that were proposed by a study committee comprised of legislators and a variety of other interested parties that met in 2006.

It was also in 2006 when the legislature voted to provide additional funds to sparse school districts. Sparse school districts are those districts that are generally small in population, large in geographic area, and too remote to be able to consolidate with a neighboring district. Most of them are located in the northwestern region of the state and have few options. The legislature in 2006 began providing sparse districts with extra financial assistance in the hopes that it will help them survive despite the challenges.

In order to qualify as sparse under the terms of the law, a district must meet several different criteria. Districts considered to be the sparsest receive a higher benefit than those which are somewhat less sparse, and the money is distributed to the sparse school districts separately from the state aid to education formula.

In 2007, the legislature made adjustments to benefit both districts losing enrollment from year to year and also districts with rapidly increasing enrollments like Sioux Falls and Harrisburg. Another big change came in 2010, when legislators began allowing the use of current enrollment figures when calculating the local need of a school district. In prior years, the fall enrollments used in the calculation were from the previous school year.

For a more in-depth explanation of the state aid to general education formula, see the issue brief provided by the Department of Education on this topic at http://doe.sd.gov/ofm/documents/StateAid_IssueBrief.pdf.

The state aid to special education formula is similar to the one used for general education in that “local need minus local effort equals state aid”, but beyond that, the workings of the two formulas are quite different.

Local need in the state aid to special education formula is a per-student allocation (for one of five levels of disability) multiplied by the number of students in those various disability categories.

Those disability levels are defined in SDCL 13-37-35.1 as follows:

1. a level one disability is a mild disability;
2. a level two disability is a cognitive disability or emotional disorder;
3. a level three disability is a hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury;
4. a level four disability is autism; and
5. a level five disability is multiple disabilities.
6. a level six disability is prolonged assistance.

To arrive at local need, the first step is to determine each school district's fall enrollment and to that add the fall enrollment of nonpublic schools within the district (see SDCL 13-13-35.1(16)) and multiply that number by 0.1062. This is the number of students in each school district defined to have a level one disability. In other words, for the purposes of state aid to special education, 10.62% of the students in both public and nonpublic schools within a school district are assumed to have a level one disability. For disability levels two through five, students are identified for each disability level by the school district.

The final step in determining local need is to multiply the number of students in each disability level times a per-student allocation. The following are the per-student allocations for FY 2013:

1. Level one disability, \$4,525;
2. Level two disability, \$11,124;
3. Level three disability, \$14,788;
4. Level four disability, \$13,204;
5. Level five disability, \$19,993; and
6. Level six disability, \$7,205.

Local effort for special education is the amount of tax generated by a levy of \$1.20 per \$1,000 of assessed valuation applied against the assessed valuation of the school district. Note that for the purpose of special education there is no differentiation between types of property, i.e. agricultural, owner-occupied, or commercial.

As mentioned earlier, state aid to special education is local need minus local effort. After that subtraction is made, the result is multiplied by the effort factor (which cannot exceed 1.0). The effort factor is the school district special education levy divided by a levy of \$1.20 per \$1,000 of assessed valuation. For FY2013, the legislature has appropriated \$45,613,203 as state aid to special education.

Due to the impact that one or two special needs students may have on the finances of a school district, the legislature in 1995 created an extraordinary expense pool that took effect in fiscal year 1999. When the state appropriation for state aid to special education is calculated, 5.75% of the total is set aside for the extraordinary expense pool. School districts incurring extraordinary expenses when providing special education services or programs may apply to an oversight board for special funding from this pool of money. The oversight board then makes recommendations for funding from the extraordinary cost pool to the secretary of the Department of Education who makes the final approval.

See **Attachment 1** at the end of this chapter for the recent history of funding for the state aid to education formulas.

School Attendance

The privilege of a free public education is available to any person with school residence in a school district until the person completes the secondary school program or reaches the age of twenty-one (SDCL 13-28-5). School residence is the residence where a student's parent or guardian is registered to vote (SDCL 13-28-9). Currently, every child between the ages of five and eighteen is required to attend public school, nonpublic school, or receive alternative instruction (SDCL 13-27-1, 2). This is a change from just a few years ago when only children between the ages of six and sixteen were required to attend school. On July 1, 2009, the compulsory attendance requirement was extended to include those children between the ages of sixteen and eighteen, and on July 1, 2010, kindergarten attendance became mandatory for any child who is at least five years old, but less than six years old.

It is a Class 2 misdemeanor for any person who is responsible for a child of compulsory school age to fail to require the child to attend school. For a second or subsequent offense, the penalty is a Class 1 misdemeanor (SDCL 13-27-11).

School Term

Under state law, a school board or governing body of the school must operate kindergarten through grade twelve in its schools for at least a nine-month regular term in any one school year. The regular term for grades 4-12 consists of a minimum of 962.5 hours in which the school is actually in session. The minimum time requirement is expressed in hours rather than in days to give the school districts the flexibility to meet for four longer school days each week instead of the traditional five days.

The school starting date has received a considerable amount of legislative attention over the years. Before 1984, state law allowed local school districts to establish the starting date for the school term as long as the minimum time requirements were met. However, there had been attempts since the mid-1970s to prohibit schools from opening the school session before Labor Day so as not to interfere with students attending the State Fair or working jobs in the tourist industry through the Labor Day weekend. In 1984, the voters approved, by fewer than 600 votes, an initiated measure that required the school session to begin after Labor Day.

In 1993, the legislature reversed this policy by once again passing a law which allows local school districts to set the school starting date before Labor Day subject to referral to the voters (SDCL 13-26-1, 2, and 9). The 1993 Legislature also allowed school districts to operate schools on a year-round basis. Since that time, there have been further attempts in the legislature and at the ballot box to once again require schools to start after Labor Day, but none of them have succeeded.

Curriculum

Prior to 1995, there were many curriculum requirements in statute. Among them were instruction on the importance of truthfulness, temperance, purity, public spirit, patriotism, obedience to parents, and due deference to old age. Now, however, most of those requirements have been repealed. The list is now quite small. It includes instruction on the United States and state constitutions, and instruction on character development. Children may be excused from school for one hour a week to receive religious instruction. State law also requires that American Sign Language be recognized as a language that may be offered as a for-credit elective.

Beyond that, much of the responsibility for curriculum development belongs to the South Dakota Board of Education. State law requires all public schools in the state to provide instruction in conformity to the accreditation standards set by the Board of Education, and the board determines what courses a student must take in order to graduate from high school.

Graduation Requirements

In 2004, the legislature required the Board of Education to develop a second set of graduation requirements that were more academically challenging in math and science than the graduation requirements already in place. Thus, the legislature wanted two educational programs that students could choose between to reach graduation.

Once the second educational program, the recommended high school program, was developed, most students chose to follow it. Other students, if their parents and a school counselor or administrator consented, followed the less challenging basic high school program.

In 2009 and again in 2010, the legislature made further changes to the graduation requirements. For students entering the ninth grade in the fall of 2010 and thereafter, the basic high school program is no longer an option. All students are required to meet the standards in the recommended program. The legislature's goal in making this change was to ensure that all students take the math and science courses necessary to succeed in life whether they choose to go to college, technical school, or enter the workforce upon graduation.

In addition, beginning with the ninth graders in 2010, students may earn up to one unit of fine arts credit for participation in extracurricular activities. Beginning with the ninth graders in 2013, all students will need to take at least one-half unit of health at some time during grades six through twelve.

Along with the recommended high school program established by the Board of Education, there is an even more challenging program that a high school student may follow. It is a program originally established by the Board of Regents that requires an extra year of math and science and has greater emphasis on foreign language. The Board of Regents designed it to be a program that would well prepare a student for success in higher education. It is the program that a student must follow in order to qualify for a South Dakota Opportunity Scholarship, a state scholarship that provides financial assistance to the most academically accomplished high school students who choose to attend a college or technical school located in South Dakota. That program too was changed by the legislature in 2010. It formerly required students to take two units of world language, but now students, beginning with the ninth graders in 2010, may take either two units of world language, two units of approved career and technical courses, or any combination of the two.

All students need 22 credits to graduate from high school. The number of credits necessary has increased twice over the last twenty years. It went from 18 to 20 credits in the mid-1980s and increased again to 22 in 2004.

The current graduation requirements were adopted in 2009 and apply to all students who entered the ninth grade in the 2010-2011 school year or later. To review them, see the following:

http://doe.sd.gov/octe/documents/GradRequirements_summary.pdf

Textbooks

Textbooks and any related workbooks designed for individual use in the public schools of this state are loaned without charge to all school age children attending nonpublic schools (SDCL 13-34-16.2). This policy as it applied to children attending any sectarian school was declared unconstitutional by the South Dakota Supreme Court (**Elbe v. Yankton Independent School District**, 1985). The 1986 Legislature passed a resolution which submitted to the electors a proposed constitutional amendment to authorize the loan of nonsectarian textbooks and workbooks to all school age children. The amendment, which was approved by the voters, allowed the legislature to authorize the loaning of nonsectarian textbooks to all children of school age, and in 1987, the legislature established a textbook loan program. The law requires each school board to loan without charge, to persons ages five through nineteen, non-sectarian textbooks that are designed for individual use and are normally furnished by the school board to students enrolled in public schools. It also requires each school board to approve the textbooks (SDCL 13-34-23 to 25). The 2012 Legislature expanded the definition of textbooks for the purposes of this law to include digital materials.

Open Enrollment

South Dakota's open enrollment law, enacted in 1997, represented a major change in K-12 education policy. With open enrollment between districts, a student may attend a public school outside the student's resident school district without paying tuition to the nonresident district. Intradistrict open enrollment allows students to select schools within their resident district, rather than being required to attend the particular school to which they are assigned. South Dakota's law allows for both interdistrict and intradistrict open enrollment in public schools, although there are some limits to the extent of open enrollment options available.

Previously, South Dakota relied on a traditional system in which students attended schools in their resident district or paid tuition to attend a school outside their resident district. The tuition rate was established by law, although the law allowed mutual waiver of tuition or payment of tuition by the resident district in certain circumstances. The tuition reimbursed the receiving district for its costs in accepting an additional, nonresident student, given the fact that the student's family did not pay property taxes in the receiving school district, and the district did not necessarily receive state financial aid for the student.

South Dakota's open enrollment program allows any K-12 student to enroll in any public school that serves the student's grade level, subject to certain conditions. The law also amended state aid to education procedures so that the state aid associated with the student will follow the student to reimburse the nonresident district for some of the expenses involved with educating that student. The resident district loses the amount of state aid associated with the student. Parents are responsible for transportation of students who transfer under the open enrollment program, although the receiving and resident districts are both authorized to provide transportation if they choose.

The open enrollment law requires that school districts accept students who wish to transfer into the district. The only grounds for refusal would be if the transfer would "result in an inability to provide a quality educational program" based on criteria and standards established in advance by the district. The standards must specify capacities of programs, classes, grade levels, and buildings as well as student-teacher ratios. Discrimination based on race, gender, religion, or disability is prohibited.

A somewhat different approach is used for special education students who wish to enroll in nonresident districts under the open enrollment program. A request for transfer of a student in need of special education or related services may be granted only if the resident and nonresident districts and the student's placement committee determine that the nonresident district is able to meet the student's special needs. The nonresident district is responsible for education and transportation costs for special education students.

The launch of open enrollment in South Dakota raised fears in many who worried that it might cause sweeping changes in enrollment in some school districts or that it might be used extensively for reasons relating to school athletics. Neither of these fears, however, has materialized to any great extent. In the 2010-2011 school year, school districts received a total of 7,184 open-enrolled students. That total represents just over five percent of the total student population of public schools in the state. Despite its relatively low use, however, open enrollment has caused problems for some school districts. Losing the state aid funds that follow even a few students can have a big impact on a school district budget, and losing too many students could mean the discontinuance of a class offering or even the closure of a school due to lack of funding.

In 2005, the legislature expanded open enrollment by passing a law that allowed the Secretary of the Department of Education to enter into an agreement with the appropriate parties in North Dakota to allow a student residing in a school district on either side of the border between the two states to cross that border to attend school. The law required that any such cross border enrollment options agreement stipulate the amount of money that the state sending the most students across the border would pay the other state for the excess number of students.

In 2007, the legislature passed further legislation that allowed the state to enter into similar agreements with the state of Iowa, and in 2008, the legislature decided to allow the state to enter into such an agreement with any border state. It also expanded the law to include not only cross border enrollment options agreements as noted above, but also tuition regulation agreements whereby the two bordering states would agree to a set level of tuition that would be paid for any student going from one state to the other to attend school. Currently, the state has such agreements in place with the states of North Dakota, Iowa, and Minnesota.

Home Schools

State law allows a child to be excused from school attendance if the child is receiving alternative instruction (SDCL 13-27-3). A parent applying to the local school district for such an excuse must identify who is instructing the child and where the child is taught. The instructors are not required to be certified. Children receiving alternative instruction do not take the standardized tests that children in accredited schools are required to take, but they are required to take a nationally standardized achievement test of the basic skills in grades two, four, eight, and eleven. During the 2009-2010 school year, there were 2,854 students receiving alternative instruction in the state, and that number increased to 3,038 in the 2010-2011 school year.

Children in these "home schools," as they are often called, are the subject of frequent debate in the legislature. In recent years, that debate has centered on whether these children should be eligible to participate in extracurricular activities in their local public school districts. The idea was discussed for several years. Finally in 2003, a bill was passed allowing students receiving alternative instruction to participate in any interscholastic activity sponsored by the South

Dakota High School Activities Association if the local school board approves. Since this law took effect, some school districts have allowed such participation while many others have not.

Other debates involving these children have focused mainly on the quality of their instruction and the measurement of their academic progress. Many people believe the state should do more to monitor home schools and that the children in them should be required to take the same standardized tests that other students take. Others point to the high test scores that many children receiving alternative instruction earn and believe that the current state laws in this regard are adequate.

In 2007, the legislature gave students receiving alternative instruction yet another option by allowing them to not only participate in extracurricular activities, but to also enroll in a school district on a partial basis. This, for example, would allow a student to continue to receive alternative instruction while at the same time enroll in a class or two at the local high school. The student may partially enroll in his or her resident school district or in an alternate school district if that alternate school district can accommodate the student under the terms of the school district's open enrollment policies.

School District Reorganization

The state's shrinking school populations inevitably lead to talk of school consolidation, and it is often a controversial subject. No one in rural South Dakota likes to see a school close or a school district cease to exist. It marks the end of an era for current and former students, and it usually strikes an economic blow to the community. By the same token, however, no one likes to see students in schools that aren't able to provide them with the educational opportunities they so desperately need, and providing those opportunities is becoming more and more difficult.

The legislature has debated the consolidation issue many times over. Some have suggested that the state redraw the lines and mandate a new configuration of school districts that would best serve the needs of students. Others agree with that goal, but disagree with the approach noting that local school districts know best and that the state should not force consolidation or reorganization on any school district.

Those disagreements continue, but in 2007, the legislature did establish a minimum school district size. Under the provisions of that law, any school district that has a fall enrollment below one hundred must reorganize within two years. The school district may opt to simply dissolve or reorganize with one or more existing school districts to form a new, larger school district. The only school districts that are exempt from the new minimum school district size requirements are the school districts that are sparse school districts as defined in statute. Many of those districts are located in the northwestern region of the state, and consolidation is simply not an option for them due to their geographic isolation.

School districts of all sizes are taking charge of their destinies in ways they haven't done in the past. Some of the smallest school districts are opting to consolidate even before they fall below the new state minimum size. Others are doing everything they can to keep their doors open as long as possible. This includes sharing teachers and sports teams with neighboring districts. It also includes the whole-grade sharing of students which was authorized by the legislature in 2009. Whole-grade sharing allows a school district to send all of its students in one or more grades to attend school in another district. The sharing may either be one-way involving one school district receiving the students in one or more grades from another district or it may be

two-way whereby one district would send students in one or more grades to another school district while at the same time receive students in one or more grades from one or more other school districts.

Due to both state and local efforts, several consolidations have taken place in recent years. The number of school districts has fallen from 176 in 2000 to 151 for the 2012-2013 school year. The downward trend is likely to continue since consolidation remains a viable alternative for many small school districts that do not meet the state's definition of a sparse school district. Prior to 2010, the state offered financial incentives to newly-consolidated school districts that included a per-student bonus for each of the first three years following the consolidation. Those incentives, however, were repealed in 2010 for two main reasons. The legislature decided that the state could not afford them in these tough economic times and also, there was not a lot of proof to show that the incentives were actually working to encourage consolidation.

Distance Learning

One way that students can obtain the coursework they need even if it is not offered within their own schools is through distance learning. In recent years, many small, rural schools have come to rely on this means when they do not have the resources available to offer a particular course or are not able to hire a qualified teacher for a particular course.

The state became involved in distance learning in 2005. It did so because schools were widely using this technology, and the Department of Education wanted to make sure that the education being offered through this means was of quality. At that time, the legislature officially defined distance learning as "the technology and educational process used to provide instruction when the student and primary instructor are not physically present at the same time or place." The legislature also required those instructors teaching distance learning courses to become certified.

Another important step in this area occurred in 2006 when the legislature created the South Dakota Virtual School. The virtual school is not a diploma-granting school, but rather an entity that offers consistency and structure to the delivery of online coursework to all of the state's schools, and ensures quality. All providers of virtual school courses must be approved along with each course they offer. Any student enrolled in a South Dakota school can take courses via the SD Virtual School. The student may be required to pay for the fees surrounding these courses or the fees may be paid by the school district that enrolls the student depending upon the individual circumstances. The address for the virtual school's website is <http://www.sdvs.k12.sd.us/>.

State Accountability System

In order to comply with the federal *No Child Left Behind Act* of 2001 (NCLB), every state is required to have a single, statewide accountability system. The purpose of the accountability system is to hold schools and school districts responsible for the academic achievement of their students, and to ensure that all public school districts are continuously improving the academic achievement of their students. The ultimate goal of NCLB is to ensure that by 2014, all students are making adequate yearly progress as defined by the accountability system.

As the NCLB target date of 2014 drew nearer, school officials across the country became increasingly frustrated with the requirements of NCLB and the inability of many schools to meet its lofty goals. They began wanting to establish their own accountability systems that better suit

their own schools and students, and in 2011, the U.S. Department of Education began inviting state educational agencies to request the flexibility to allow them to do just that.

The South Dakota Department of Education requested that flexibility and was granted a flexibility waiver on June 29, 2012. The waiver allowed the South Dakota Board of Education to craft a new accountability model specifically for South Dakota schools. The new model, rather than focusing almost exclusively on a single assessment of students as the previous one had done, focuses on multiple indicators.

The key indicators for high schools include student achievement, high school completion, college and career readiness, effective teachers and principals, and school climate. The key indicators for elementary and middle schools include student achievement, academic growth, attendance, effective teachers and principals, and school climate. The new system is based on a 100-point index called the School Performance Index. The index consists of the key indicators noted above, and a numeric value is assigned to each of the indicators.

The new accountability system is being phased in over the next two years, and will be fully implemented in the 2014-2015 school year. The new system will continue to hold schools accountable through annual public reporting and classification based on a ranking of schools.

Common Core Standards

The Common Core State Standards Initiative is an effort initiated by the states to establish a shared set of standards for English language arts and mathematics that can be used in any state for grades K-12. It was launched by the Council of Chief State School Officers and the National Governors Association Center for Best Practices.

Educators from South Dakota were able to review and provide input on the standards as they were being developed, and on November 29, 2010, the South Dakota Board of Education moved to adopt the common core standards.

The common core standards will be implemented in South Dakota schools in the 2014-2015 school year. This will give teachers the time necessary to become familiar with the new standards and how to implement them in their classrooms. The Department of Education will provide training for the teachers over a period of three years.

In addition, South Dakota, along with thirty other states, has joined the Smarter Balanced Assessment Consortium. The consortium is developing a set of assessments aligned to the common core standards. The assessments will go beyond the multiple-choice responses to include extended response and technologically enhanced items, as well as performance tasks that will allow students to demonstrate critical thinking and problem solving skills. The assessments will also provide teachers with meaningful feedback that will allow them to help their students succeed.

Measures on the 2012 Ballot

In November 2012, South Dakota voters rejected two initiated measures that would have had a big impact on education in the state.

Initiated Measure 15 would have increased the state's sales and use tax rate from four percent to five percent and evenly divided the increased revenue (projected to be about \$180 million per year) between K-12 public education and Medicaid. Those promoting the increased funding

for education saw the measure as a way to compensate schools for the cuts made in state education funding in recent years. Opponents, however, disagreed with how narrowly the funding was dedicated and disliked the fact that the legislature would not be able to spend the increased revenue where it was needed the most in any particular year. Plus, they believed the amount of money generated over time would be in excess of what was actually needed. The measure was soundly defeated.

The state voters also struck down Referred Law 16. The measure began as House Bill 1234, which was proposed during the 2012 legislative session by Governor Daugaard. It was a rather sweeping education reform bill that contained several key elements including merit pay for teachers, bonus pay for math and science teachers, scholarships for college students agreeing to teach in critical need areas in South Dakota after graduation, and a statewide standard evaluation system for teachers and principals. The bill also provided for the repeal of the continuing contract laws for teachers (or what is commonly referred to as teacher tenure).

The bill garnered both strong support and strong opposition within the legislature, and was vigorously debated throughout the session. Many legislators were opposed to the bill initially because it did not give the school districts enough flexibility in establishing their own reward systems for teachers. They proposed changes to the bill providing for additional local control, and many of those proposed changes were adopted. The bill, after passing the House of Representatives by just one vote, was signed into law. However, it never took effect because opponents gathered enough signatures to place it on the November ballot, where it was ultimately defeated.

Though neither of these measures were successful, it is likely that many of the provisions they contain will again be debated by legislators in the coming months. Also, the standard evaluation systems for teachers and principals that were part of Referred Law 16 will be implemented since they are part of the state's new accountability system that will become fully implemented in 2014.

Attachment 1

History of General Fund Levies

Classification of Property	2004 Payable in 2005	2005 Payable in 2006	2006 Payable in 2007	2007 Payable in 2008	2008 Payable in 2009	2009 Payable in 2010	2010 Payable in 2011	2011 Payable in 2012	2012 Payable in 2013
Agricultural	3.32	3.19	3.03	2.71	2.61	2.573	2.554	2.388	2.322
Non-Ag Z	4.32	4.19	4.03	3.71	3.61	3.573	n/a	n/a	n/a
Owner-Occupied	5.34	5.13	4.76	4.26	4.10	4.042	3.965	3.965	4.029
Non-Agricultural & Utilities	11.45	11.00	10.19	9.11	8.78	8.656	8.491	8.491	8.628

History of the Per Student Allocations

	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
General State Aid Formula	\$4,086.56	\$4,237.72	\$4,364.85	\$4,528.80	\$4,642.02	\$4,804.60	\$4,804.60	\$4,389.85	\$4,490.92
Total % Increase	3.00%	3.70%	3.00%	3.76%	2.50%	3.00%	0.00%	-8.60%	2.60%
Inflation %	2.20%	2.00%	3.00%	3.00%	2.50%	3.00%	1.20%	1.20%	2.30%
Teacher Salary Enhancement					\$22.64				
One Yr Enrollment Adjustment									
One-Time Allocations	\$58.88							\$97.64	\$30.73
One-Time Allocation	\$14.86							\$68.42	
Teacher Comp Asst. Program				est. \$33.00	est. \$33.00				
District AYP Eligible Alloc/ADM			est. \$54.00						

History of State Aid Fall Enrollment

	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012 estm.	FY2013 estm.
State Aid Fall Enrollment	121,382.02	121,927.67	121,338.31	121,553.04	122,779.49	123,924.56	125,151.92	125,987.88	125,987.88

History of State Aid to Special Education

Special Education Allocations:	FY2005 (adjusted)	FY2006	FY2007	FY2008	FY2009 (adjusted)	FY2010	FY2011	FY2012	FY2013 (adjusted)
Level 1 Disability (% of ADM)	\$3,533	\$3,604	\$3,712	\$3,823	\$4,057	\$4,057	\$4,057	\$4,057	10.04% \$4,525
Level 2 Disability (child count)	\$8,277	\$8,443	\$8,696	\$8,957	\$9,471	\$9,471	\$9,471	\$9,471	\$11,124
Level 3 Disability (child count)	\$12,581	\$12,832	\$13,217	\$13,614	\$15,220	\$15,220	\$15,220	\$15,220	\$14,788
Level 4 Disability (child count)	\$12,002	\$12,242	\$12,609	\$12,987	\$13,164	\$13,164	\$13,164	\$13,164	\$13,204
Level 5 Disability (child count)	\$15,882	\$16,200	\$16,686	\$17,186	\$16,539	\$16,539	\$16,539	\$16,539	\$19,993
Level 6 Disability (child count)	\$8,122	\$8,285	\$8,533	\$8,789	\$8,438	\$8,438	\$8,438	\$8,438	\$7,205

Level 1 = mild disability (speech/language, other health impaired, specific learning disability, preschool)
Level 2 = cognitive disability, emotionally disturbed
Level 3 = hearing loss, deafness, vision loss, deaf-blind, orthopedic impairment, traumatic brain injury
Level 4 = autism
Level 5 = multiple disability (must include 2 or more disabilities in levels 2 and/or 3 not including deaf-blind)
Level 6 = prolonged assistance

Extraordinary Cost Fund:	5.75% of Appropriation	Funds Requested	Funds Expended	# of Requests
School Year 2004-2005 (5.75%)	\$2,449,895	\$3,354,256	\$3,308,128	46
School Year 2005-2006 (5.75%)	\$2,478,645	\$3,281,009	\$3,233,607	38
School Year 2006-2007 (5.75%)	\$2,478,645	\$4,615,344	\$4,584,110	47
School Year 2007-2008 (5.75%)	\$2,478,645	\$4,750,130	\$4,381,806	41
School Year 2008-2009 (5.75%)	\$2,994,824	\$4,117,389	\$4,080,484	42
School Year 2009-2010 (5.75%)	\$2,690,744	\$1,622,712	\$1,616,435	15
School Year 2010-2011 (5.75%)	\$2,457,101	\$3,522,592	\$3,418,263	28
School Year 2011-2012 (5.75%)	\$2,622,759	\$3,927,980	\$3,720,804	31

Local Tax Effort Special Education Aid:	
Taxes Payable in 2005 = \$1.25	Taxes Payable in 2011 = \$1.20
Taxes Payable in 2006 = \$1.20	Taxes Payable in 2012 = \$1.20
Taxes Payable in 2007 = \$1.20	Taxes Payable in 2013 = \$1.20
Taxes Payable in 2008 = \$1.20	
Taxes Payable in 2009 = \$1.20	
Taxes Payable in 2010 = \$1.20	

Chapter 8 STATE EMPLOYEE SALARY AND BENEFITS

Foreword

The state's salary and benefit plan is an issue of great importance to all legislators. This chapter summarizes the salary and benefits for South Dakota state employees, with some historical perspective added as well.

Salary Policy

Since FY1973, the Legislature has approved a state-wide salary policy for its employees. Prior to that time, base salary increases varied from department to department. The chart shown below delineates the salary policies for FY1973 through FY2013.

Fiscal Year	Salary Policy	Notes
FY2013	3% across-the-board increase; 2.5% maximum for those below job worth for their pay range; and up to a maximum of 7% adjustment for Career Banding increases.	Career Banding Project increases the salary for identified critical occupations for better recruiting and retention. In FY2013, critical occupations were accountants, auditors, nurses, engineers, and environmental scientists.
FY 2012	Active, permanent employees hired before March 24, 2011, received a one-time payment based on hire date. No across-the-board increases or increases for those below job worth.	<p>One-time payment calculation:</p> <ul style="list-style-type: none"> • 5% if hired before 3/2009; • 3.4% if hired between 3/2009 and 3/2010; and • 1.7% if hired between 3/2010 and 3/2011. <p>The one-time payment for employees making less than \$46K was based on \$46K. The payments for employees making more than \$150K were based on \$150K.</p> <p>Excluded Governor, Lt. Governor, Attorney General, Secretary of State, State Auditor, State Treasurer, Commissioner of School and Public Lands, or Public Utilities Commissioners.</p> <p>See Chapter 41 of the 2012 Session Laws for more details.</p>
FY 2011 FY 2010	No salary policy or adjustment for those below job worth for their pay range.	
FY 2009 FY 2008 FY 2007	3.0% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	
FY 2006	2.25% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	
FY 2005	3% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	The definition of a Full-Time Equivalent (FTE) position was changed from 2,080 hours to the numbers of work days in a fiscal year multiplied by 8 hours.
FY2004	2% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	The pay period was changed from biweekly to semi-monthly for central payroll.
FY2003 FY2002 FY2001 FY2000 FY1999 FY1998	3% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	

Fiscal Year	Salary Policy	Notes
FY1997	2.5% maximum for those below job worth for their pay range.	No across-the-board increase.
FY1994, FY1995, FY1996	3% across-the-board with an additional 2.5% maximum for those below job worth for their pay range.	
FY1993	3% across-the-board salary adjustment with an additional 1% across-the-board salary adjustment from funds existing in agency budgets.	Agency budgets were also impacted to accommodate funding for movement to job worth for employees whose salaries are below the job worth.
FY1992	4% across-the-board	Additional funding was found in individual program budgets (with the exception of the Legislative Branch) for the following areas: 1. Longevity based on total years of service, rather than continuous service. 2. Salary adjustments for pay grades 6 through 11 according to a specified schedule. 3. Salary adjustments, not to exceed 2.5%, to employees that are below the midpoint of their range.
FY1991	3% across-the-board salary adjustment	Executive agency employees received a 3% adjustment implemented and distributed by the PACE system.
FY1990	3% across-the-board salary adjustment	The Performance and Compensation Equity (PACE) system was used for Career Service Act (CSA) and exempt employees of the Executive Branch and CSA employees of the Board of Regents. Other branches of state government could use the PACE system at their own discretion.
FY 1989	Greater of 2.75% or 21 cents per hour cost of living	Higher Education non-CSA personnel received 3% discretionary pool in lieu of cost of living. For the first time since FY1985, the merit matrix was not used.
FY 1988	3% discretionary including longevity pay	Longevity pay of \$10 per year for those individuals employed by the state for 10 years or more was included within the 3% pool.
FY 1987	4% discretionary	Offices under Governor's control use the merit matrix. Raises were based on combination of performance score and position in salary range.
FY 1986	4% discretionary	CSA and executive employees' pool distributed by merit matrix. Offices out of Governor's control could use merit matrix or develop own compensation plan. Regents faculty received 4% across-the-board. An additional \$3 million pool was established for discretionary increases for faculty.
FY 1985	4% cost of living	Exempt employees under the control of the Governor were provided a 4% pool distributed by a merit matrix (Hay Study) in lieu of cost of living.
FY 1984	4% cost of living	Any excess funds in the salary policy line item were to be used to facilitate the inclusion of the Board of Regents into the State health insurance plan.
FY 1983	5% cost of living	Any excess funds in the salary policy line item went to supplement the health insurance line item. A salary augmentation package was provided to higher education personnel. An additional discretionary pool was provided for engineering faculty at SDSM&T from a special engineering course fee.
FY 1982	7% for salaries below \$25,000; \$1,750 for salaries above \$25,000 (cost of living)	A discretionary pool of \$237,264 general funds, along with corresponding federal and other funds was divided for separate branches of government and certain constitutional offices and boards.
FY1981	7.75% plus \$312 (cost of living)	Board of Regents authorized to use 2% of the 7.75% as a discretionary pool for non-career service employees. Executive Branch critical salary pool of \$220,371 total funds (\$100,000 general). Board of Regents critical salary pool \$200,000 total funds (\$105,280 general). Department of transportation market

Fiscal Year	Salary Policy	Notes
		value adjustments \$386,388 other funds.
FY1980	5% cost of living 2% discretionary (EPP)	Exemplary performance pay (EPP) increases were not calculated into the base salary for future computations. Board of Regents non-career service employees had a 7% discretionary pool in lieu of a cost-of-living increase. Executive Branch critical salary pool \$218,340 total funds (\$100,000 general).
FY1979	3% plus \$603.02 cost of living 2.6% discretionary	Board of Regents non-career service employees had 5.6% and a \$603.20 discretionary pool in lieu of a cost-of-living increase. An additional \$475,000 from a \$1 tuition increase was also put into the Board of Regents discretionary pool.
FY 1978	\$250 cost of living	
FY 1977	\$400 cost of living 4%-5% discretionary	A discretionary pool was established in each department for employees above \$10,000 and below \$10,000. The amount in each pool was based on the salaries for the employees covered with a high of 12% for the lowest paid employee and a low of 4.6% for the highest paid employee. No individual could receive more than a 12% salary increase from the discretionary pool.
FY 1976	\$400 cost of living 2.5% discretionary	No individual could receive more than 8% salary increase from the discretionary pool.
FY 1975	\$400 cost of living 3% discretionary	Funds were provided to bring all employees into conformity with the career service classification and compensation.
FY 1974	4% administrative employees 6% professional-technical employees 8% classified employees (discretionary)	Administrators were not tied to the specific percentage increases.
FY 1973	3% administrative employees 5% professional-technical employees 7% classified employees (discretionary)	Administrators were not tied to the specific percentage increases.
There was no formal salary policy prior to FY 1973.		

Retirement System

The 1974 Legislature consolidated numerous public employee retirement systems throughout the state into the South Dakota Retirement System (SDRS). Included in the system are:

- Teachers, administrative and classified employees of South Dakota public school districts;
- Legislative, executive and judicial branch employees of the State of South Dakota;
- Faculty, administrative and classified employees of the South Dakota Board of Regents;
- South Dakota municipal employees; and
- South Dakota county employees.

Employees in the system are divided into two classes: Class A and Class B. It should be noted that there are actually three groups of employees since Class B is broken into two groups: Class B Judicial and Class B Public Safety. Class B Judicial includes justices, judges and law-trained magistrates. Class B Public Safety includes state law enforcement officials, municipal law enforcement and fire fighters, county sheriffs and deputy sheriffs, certain jailers, conservation

officers, penitentiary staff, and Air Rescue Fire Fighters, parole agents, campus security officers, and court services officers. All other members are considered Class A.

The system is funded by employee contributions matched equally by employer contributions. All state employees must participate in the system. They may acquire a right to retirement benefits after a vesting period of three years of credited service. Vested employees who leave public employment are entitled to either wait and draw a benefit from the system upon retirement, or to withdraw all of their contributions, as well as 85% of their employer's contributions in the system. A non-vested member who leaves public employment may leave his contributions in SDRS for up to ten years, and upon requesting a refund, is eligible for 100 percent of the employee contributions and 50% of the employer contributions.

Employees may also contribute pre-tax income to a supplemental retirement plan under Section 457 of the Internal Revenue Code; these plans are similar to 401(K)s for private employers.

Class A Members. The contribution rate for Class A members is 6% of salary which is matched by a 6% employer contribution. Retirement benefits for standard Class A are calculated as follows: 1.7% multiplied by final average compensation multiplied by years of credited service prior to July 1, 2008, plus 1.55% multiplied by final of average compensation multiplied by years of credited service earned after July 1, 2008.

Class B Public Safety Members. The contribution rate for Class B Public Safety members is 8% of salary, which is also matched in a like amount by the employer. Retirement benefits for this group are calculated as follows: 2.4% multiplied by final average compensation multiplied by years of credited service prior to July 1, 2008, plus 2% multiplied by final average compensation multiplied by years of credited service earned after July 1, 2008.

Class B Judicial Members. Class B Judicial members contribute 9% of compensation to the retirement system which again is matched by the employer. Class B Judicial members receive a retirement benefit calculated as follows: 3.733% multiplied by final average compensation multiplied by years of credited service prior to July 1, 2008, plus 3.333% of final average compensation multiplied by years of credited service earned after July 1, 2008. For credited service in excess of 15 years, 2.4% multiplied by final average compensation multiplied by years of credited service earned prior to July 1, 2008 plus 2% multiplied by final average compensation multiplied by years of service earned after July 1, 2008.

Normal Retirement. Normal retirement age is 65 for Class A and Class B Judicial members and age 55 for Class B Public Safety members, if a member as at least three years of contributory service under the South Dakota Retirement System. A member's normal retirement date is the first day of the month of their normal retirement age birthday. A member has several opportunities to retire before the normal retirement date, depending on their age and years of credited service.

Regular Early Retirement. A member may begin receiving retirement benefits from the system as early as ten years before normal retirement age; however, the member's benefits will be reduced by 3 percent for each year that payments are made before a member reaches normal retirement age. Thus, Class A members may retire at age 55 with a 30% reduction in benefits.

Special Early Retirement. Members may be eligible for early retirement without decreased benefits if certain requirements are met. Class A members who are at least 55 may retire without a reduction in benefits if the sum of the member's age and years of credited service is at

least the rule of 85. Class B Public Safety members who are at least 45 and the sum of the member's age and credited service is at least the rule of 75, may also retire without a benefit reduction. If a Class B Judicial member is at least age 55, and the sum of the member's age and credited service is at least the rule of 80, the member may retire without a benefit reduction.

Survivor. A family benefit and a spouse benefit are paid monthly if a member dies while actively participating in SDRS. The family benefit is payable when children under the age of 19 are in the home, and the spouse benefit becomes effective when the spouse reaches the age of 65. The family benefit equals 40 percent of the member's final average compensation, plus an additional 10 percent per child up to a maximum of 6 children or up to 100 percent of the final average compensation.

SDRS also pays survivor benefits to a member's spouse after they have retired. This benefit is equal to 60 percent of the benefit being paid to the member at the time of their death and will continue for the lifetime of the member's spouse with cost-of-living adjustments. If both a member and the spouse die before they have received the accumulated contributions, a named beneficiary or estate will receive the balance.

Disability. Each contributing member who has rendered at least three years of contributory service is eligible for a disability allowance, if the member becomes unable to perform the duties of their current job. The amount of the allowance shall be equal to 50% of the final average compensation, increased by 10% of such compensation for each child up to a maximum of four children. In 1995, legislation limited these benefits such that no member may receive more from disability plus earnings than their final salary. In 2006, additional provisions were enacted concerning the conditions for termination of disability.

Health Insurance

In 1972 the Legislature established a group health insurance plan for state employees. The plan was administered by the Board of Trustees of the State Retirement System through the appointed administrator of the State Retirement

System. The Legislature transferred the administration to the Bureau of Personnel (now referred to as the Bureau of Human Resources) in 1988.

The State of South Dakota provides to State employees the opportunity to select from a number of health plan options for themselves, their spouses, and their dependents. State employees are offered health, dental, vision, major injury protection, hospital indemnity, short term disability income protection, employee supplemental life coverage, dependent life coverage and long term care insurance. Annually, State employees are given the opportunity to select a health plan which best meets their needs. Also, State employees may participate in two flexible spending accounts (FSA's), a medical expense spending account and a dependent care spending account.

State government is the largest "self-insured" group plan in South Dakota covering over 27,800 state employees, dependents, retirees and COBRA eligible members.

Life Insurance

The State Life Plan offers \$25,000 basic employer paid term life coverage for employees. In addition to the employer paid coverage, employees may purchase additional amounts of supplemental group term life coverage of two to five times their annual salary level to a maximum value amount of \$400,000. If enrolled in supplemental life coverage, employees may also purchase dependent life coverage of \$10,000 for a spouse and each eligible dependent.

Annual Leave

State employees earn fifteen days of vacation leave per full year of employment pursuant to SDCL 3-6-6. Any employee with more than fifteen years of employment receives twenty days of vacation leave per full year. Leave may not accumulate over thirty days (240 hours) or forty days (320 hours) depending on whether the fifteen years of service threshold has been crossed. Upon retirement or resignation, state employees with six months of continuous service will be paid for accumulated vacation leave. The accumulated leave is paid at the rate of pay as of the employee's last day of payroll.

Sick Leave

Each employee also earns fourteen days of sick leave annually pursuant to SDCL 3-6-7. An employee may use up to five days per year of sick leave for personal emergency reasons. If employed for more than a year, an employee is allowed to use a maximum of twenty-eight days of advanced sick leave if that person's regular sick leave and vacation leave has been exhausted.

Any employee who has been continuously employed by the state for at least seven years shall receive a lump sum payment for one-fourth of accumulated sick leave up to twelve weeks of the employee's annual compensation upon termination pursuant to SDCL 3-6-8.3. The accumulated leave is paid at the rate of pay as of the employee's last day of payroll.

Longevity Pay

Longevity pay is a reward for years of service to the State of South Dakota. It is a way to recognize experienced and dedicated state employees. Longevity pay is based on the total number of years worked for the state. The years of service need not be continuous. Employees with seven through ten years of service receive a \$100 longevity check once per fiscal year. The rate increases by \$5 per year in five-year increments.

Tuition

The 1986 Legislature provided for a 50% reduction in tuition at state colleges and universities for full-time state employees. To qualify, an employee must have been continuously employed by the state for at least one year, complied with the college or university admission requirements, been a resident of the state, maintained an academic grade point of 2.0 or better, and have received a merit grade of competent or better in his last appraisal. The maximum number of credits provided under this program is six per semester. The instructor must

determine if there is space available in an individual course before any employee can participate in the reduced tuition program. Tuition reduction is only available for state supported classes.

Unemployment Compensation

The State provides for unemployment compensation benefits for state employees.

Worker's Compensation

The State provides for workers compensation insurance for employees which pays medical and disability benefits in the event they are injured or contract a disease as a result of and/or in the course of employment.

Moving Expenses

Per SDCL 3-9 and ARSD 5:01:07, new state employees and state employees required to transfer to a new location may receive a household moving allowance when that allowance is approved by their agency head and the State Board of Finance.

Additional Resources

For additional information please refer to the Bureau of Human Resources employee handbook which can be found at the following internet address: <http://bhr.sd.gov/policies/Handbook.pdf>.

Chapter 9 EXPENSE REIMBURSEMENT

How Do I Get Paid?

Legislative Session Compensation

A legislator's salary is \$12,000 for the two year term. \$6,000 is paid each session on the regular state payroll days (the 1st and the 16th, unless those days fall on a weekend or holiday). The state of South Dakota implemented mandatory direct deposit of payroll checks in January, 2004, as a way to cut costs and improve efficiency.

Legislators are also paid \$110 per legislative day prepaid living expenses, including meals and lodging, laundry, cleaning and pressing of clothing, and all other uncompensated expenses as defined in SDCL 2-4-2.1. This first payment will be made during the first week of the legislative session and will also be direct deposited. The second payment will be direct deposited at the end of session. Legislators who file the Legislator's Notice of Intent to Elect 162(h) treatment, will receive a deposit of the full \$110 per legislative day. Filing the Legislator's Notice of Intent to Elect 162(h) treatment will mean that any per diem paid to you during the legislative session will not appear on your W-2. If you choose not to file for the 162(h) treatment, the deposit of \$110 per legislative day will be reduced by withholding for FIT and FICA and the full amount will be included on your W-2. A schedule of payment dates will be provided to you before the start of session and also in the first edition of the *Update*.

After session, you will be paid for each weekend you traveled to your home and for your trip to Pierre for the final legislative day. One trip will be paid at .05 cents/mile per the constitution and the remaining trips will be paid at the state rate of .37 cents/mile, actual air fare or air charter, whichever is less. Forms to request this reimbursement will be provided to you during the last week of session.

Special Session

For each day's attendance at a special session, in addition to mileage and the \$110 living expenses, each member will receive a per diem calculated by the director of the Legislative Research Council equal to the normal daily compensation for the regular session immediately preceding the special session.

Interim Travel Expenses

Membership on interim committees is chosen by the Executive Board of the Legislative Research Council.

A salary of \$110 for each day of a scheduled interim meeting will be paid on the next regular payroll day following the meeting.

Travel reimbursement for attendees at interim committees and in-state events will be paid at regular state rates as follows:

- Auto mileage will be paid at the state rate of .37 cents/mile (no receipt required).

- Commercial and charter air travel must be approved by LRC in advance.
- Lodging will be reimbursed at the in-state rate of \$50.00 plus tax per night **provided you furnish an original receipt**. If you share a room with another legislator, you must ask the motel to split the charge so that each of you have an original receipt.
- Meals will be reimbursed at the state rate of:

Breakfast	\$ 5.00	(Must leave home by 5:30 a.m.)
Lunch	\$ 9.00	(Must return home after 12:59 p.m.)
Dinner	\$12.00	(Must return home after 7:59 p.m.)

An LRC Travel Expense Information form will be furnished to you at the beginning of each interim meeting and should be turned in to the LRC secretary or staff member before you leave.

All information in bold print must be completed and the perjury statement must be signed in order for your reimbursement to be processed.

If you are asked to serve on a committee or task force, not staffed by LRC, you must notify LRC of your attendance in order to be reimbursed.

Out-of-State Travel Expenses

All out-of-state travel MUST be pre-approved by the chair of the Executive Board.

Legislators may be selected by leadership to attend national or regional meetings or travel to various events or seminars of legislative importance. LRC will reimburse you for your out-of-state travel expenses once the following are completed:

1. **Completed Travel Information Form** - A LRC "Travel Expense Information" form will be sent to you. All information in bold print must be completed and the perjury statement must be signed.
2. **Original lodging receipt** - If traveling with another person and staying at a hotel or motel that is not part of the conference, you must ask the clerk to note the single rate on your receipt.
3. **Passenger receipt copy of airline ticket** - You must provide a copy of your passenger receipt whether you used your own travel agent, on-line reservations, or if LRC made your airline reservation. **LRC will not pay more than the two week advance price on an airline ticket.**
4. **Auto Mileage** - Allowable vehicle mileage for out-of-state travel may not exceed the cost of the most economical airfare available. You would also be allowed meals and lodging up to a maximum of two days each way.
5. **Agenda** - (Exception--if the meeting is sponsored by NCSL or CSG, the agenda is available on the internet and you will not need to send a copy to LRC.)

6. **Receipts for taxi fares over \$5.00** - If the taxi fare is over \$5 per ride, you must provide a receipt.
7. **Receipts for taxi fares under \$5.00** - No receipt is required; however, each taxi fare should be listed separately by date on the travel expense information form under "Comments".
8. **Airport parking receipt.**
9. **Registration receipt** - only if you paid the registration fee.
10. **Meals are paid at the current out-of-state rate** - no receipts required.

Travel payments will be direct deposited within 30 days of receipt of a **completed travel information sheet and all the necessary receipts.**

If you have any questions about reimbursements, please feel free to call Carol Huber at 773-3251.

Chapter 10

DEPARTMENT OF GAME, FISH AND PARKS

Introduction

The Department of Game, Fish and Parks is separated into three unique divisions, each with different functions, funding sources, and somewhat different policy-making structures. The Legislature has maintained fairly close budgetary control over the Divisions of Parks and Recreation including Custer State Park and Administration. The Division of Custer State Park was once a separate division within the Department of Game, Fish, and Parks until Executive Order 2004-01 was submitted to the Legislature and concurred with in January 2004. The executive order consolidated Custer State Park within the State Parks and Recreation Division to provide further efficiencies and savings to the South Dakota taxpayers. The Legislature has delegated budgetary control over the Division of Wildlife to the Game, Fish and Parks Commission, except for reporting purposes.

The statutes authorizing the appropriations authority regarding the Department of Game, Fish, and Parks are listed below. Note that the Parks and Recreation Fund is not continuously appropriated. The continuous appropriations serve as substitutes for the General Appropriations Act and special appropriations bills as the Legislature's "power of the purse."

41-2-35. Annual appropriation of departmental fund. All moneys in the department of game, fish and parks fund are hereby annually appropriated to be used with any moneys otherwise appropriated to pay the necessary expenses of effectuating the purposes of this title.

41-17-21. Parks and recreation fund created – Expenditure. There is created in the state treasury the parks and recreation fund. The parks and recreation fund shall be budgeted and expended in accordance with Title 4 on warrants drawn by the state auditor on vouchers approved by the secretary of game, fish and parks.

41-19-1. Snowmobile trails fund appropriated – Accumulation from year to year. The snowmobile trails fund established pursuant to 32-5-9.2 is hereby appropriated for the administration of 41-19-2 and shall not revert at the close of any fiscal year but shall accumulate.

In delegating budget control to the department, the Legislature removes its control through the annual budget process. The department control is divided between the Secretary and the Game, Fish and Parks Commission. The commission is composed of eight members appointed by the Governor. Membership is restricted so that no more than four members may be of the same political party, no fewer than four can be farmers, and three members must be from west river and five from east river. The secretary is appointed by the Governor from a list of three nominees submitted by the commission. The secretary serves at the pleasure of the Governor. In general, the secretary handles day-to-day operations, and the commission is responsible for policy decisions and for promulgating administrative rules. This rule-making power has become a more important part of the commission's duties since the Legislature delegated all of the fee-setting power to the commission in 1985. The commission now establishes the level of all fees for the department by administrative rule.

Wildlife Division

The Wildlife Division is charged with the duty to "maintain maximum wildlife populations compatible with available habitat, recreational demands and the public interest." The most visible aspect of this charge is the promulgation, administration, and enforcement of the state's hunting and fishing laws and administrative rules. The division also administers the state's boating laws, conducts and coordinates wildlife biological studies, manages the state's fish hatcheries, and plans and develops private and public land management practices to provide hunting and fishing opportunities to the people of the state.

One of the most distinctive aspects of the Wildlife Division is the fact that its main funding source, the Game, Fish and Park Fund, is continuously appropriated. Therefore, the division may expend any money it deposits in the Game, Fish and Park Fund with no authorization by the Legislature.

Parks and Recreation Division

The Parks and Recreation Division is charged with the management of all of the state's parks and recreation areas including Custer State Park. The division also provides the management of lakeside use areas and administers the Federal Land and Water Conservation Fund and the Snowmobile Trails Fund.

Approximately 18 percent of the budget comes from the State General Fund and 82 percent comes from park fees, other park revenues, and federal funds. User fees play a major role in the maintenance and operation on the state park system.

The South Dakota State Park system includes 12 state parks, 42 recreation areas, 5 nature areas, 1 historic prairie, 70 lakeside use areas, and 10 marina/resorts. In addition, the Division of Parks and Recreation manages the 114-mile Mickelson Trail, South Dakota's Snowmobile Trail Program, 240 public water access areas, and maintains 291 boat ramps with a total of 389 launching lanes. In 2011, South Dakota hosted 7.2 million park visitors. The number of overnight camping units at South Dakota state parks in 2011 totaled 239,038. This was down 9 percent over 2010, which was a record high for campground use. Flooding throughout the state closed over 550 campsites, which greatly impacted visitation and camping.

The Parks Division has a centralized reservation system that allows park users to call a toll free number or go online to obtain a reservation at any state park. Previously, park users were required to call each park individually and park officials were unable to assist users in finding a reservation at any other park.

On October 1, 2000, the United States Army Corps of Engineers began transferring 23 recreation areas on the Missouri River to the State of South Dakota. The Department of Game, Fish and Parks assumed management of these areas and operates and maintains them under a lease agreement with the Corps of Engineers.

The 2007 Legislature approved \$12 million in bonding authority for core improvements at the State Game Lodge, Legion Lake Resort, Blue Bell Resort, and Sylvan Lake Resort. Regency Inns Management of Sioux Falls, which is managing the state-owned resorts on a 15-year lease, will make annual franchise-fee payments toward retiring the bonds issued for the construction work.

Division of Administration

The Division of Administration includes the Secretary's Office, and all the central service programs such as fiscal, engineering, purchasing, reservations, and licensing. Prior to 1980, it was funded with money from the Wildlife Division. Since then, a cost share formula has been developed where each of the funding sources of the other two divisions contributes the same percentage of the revenue needed to fund the Division of Administration as the percentage they make up of the total department budget. Since there are general funds involved, the Legislature has watched this budget closely.

Funding Sources of the Department of Game, Fish and Parks

The Game, Fish and Parks Fund or Wildlife Fund, as it is often known, is unique in state government in that it is continuously appropriated and funds an entire division. The fiscal and budgetary oversight of the fund rests with the Game, Fish and Parks Commission rather than with the Legislature. There have been bills proposed from time to time to bring the fund under legislative control, but they have never been successful.

The primary funding source for the Wildlife Fund is hunting and fishing license fees. SDCL 41-6-10 classifies the licenses and stamps issued by the department, but the actual establishment of the fees for the licenses is done by the commission by administrative rule. License sales are projected to bring in \$29.2 million in fiscal year 2013.

Federal funding also provides a large part of the revenues for the Wildlife Fund. A federal excise tax on hunting equipment provides funds for the Pittman-Robertson program. The state receives grants, matched with state generated funds, for this program for approved projects to improve wildlife habitats. A similar program, Dingle-Johnson, provides grants to improve the state's fisheries from revenue derived from an excise tax on fishing equipment. Federal funds provide approximately \$16 million to the Wildlife Fund.

The S.D. Sportsmen's Access and Landowner Depredation Fund provided for in SDCL 41-2-34.2 was established during the 1998 Legislative Session. The revenue comes from a five dollar surcharge imposed by the Game, Fish and Parks Commission on most hunting licenses. Fifty percent of the money in the fund shall be used to acquire free public hunting through lease agreements. The other fifty percent shall be used to provide hunting access on landowners' land and for wildlife depredation and damage management programs. The money in the fund is continuously appropriated.

The Animal Damage Control Fund, provided for in SDCL 40-36-11, formulates programs to control crop and livestock damage from wildlife. Counties contribute according to a formula established in statute based on the number of cattle and sheep in the county. The Animal Damage Control Fund is matched two dollars for every one dollar of county appropriation by the Wildlife Fund. The program, administered by the Wildlife Division, conducts prairie dog control programs as well as trapping and hunting programs to control coyotes and other predators.

The Parks and Recreation Fund provides part of the funding for the operation and maintenance of the park system, including Custer State Park. Since it is spent in conjunction with general funds, the Legislature has a great deal of control on how it is spent.

The primary funding sources for the Parks and Recreation Fund are the park entrance license and camping fees. Setting the amount of these two fees has been a constant source of controversy. All of the increases in the entrance fees have been criticized. The private campground owners have consistently attempted to increase the camping fees to better reflect what they are charging.

Each July, an amount equal to the product of multiplying the number of licensed motorized boats as of the previous December 31st, times 140 gallons, times the motor fuel tax rate is transferred to the Parks and Recreation Fund for motor-boat fuel taxes. The money from motor fuel taxes has been used primarily in the Development and Improvement Program of the division to provide for capital construction for boating opportunities.

Custer State Park provided all of the funding needed to maintain the park for many years. In fact, prior to 1983, the park could retain only a maximum of 55 percent of the total fees collected by the system and had to turn over the rest to the Parks and Recreation Division. Funding for Custer State Park was previously continuously appropriated, but the Legislature now has more interest in the way it is spent since general funds are used in the park.

The Land and Water Conservation Fund is a federal revenue source administered by the Parks Division. The money comes from a federal tax on offshore oil drilling operations and is to be granted to projects promoting outdoor recreation. The department has made a policy decision to retain 50 percent of the funds received to be used on state projects and to allocate the remainder to local projects.

Land Acquisition and Development Fund is used to acquire by purchase or lease real property to be used primarily for game production and is required to remain open for public hunting. In addition, it is used to pay for the necessary expenses of acquiring the land, improving and maintaining game production areas, and the payment of taxes on public shooting areas. Not more than 25% of the fund, after the payment of taxes, can be used for the administration of the fund or for improving and maintaining game production areas. Three dollars received from the sale of each non-resident small game license provides the funding for this fund.

The Snowmobile Trails Fund is a special fund used to construct and maintain snowmobile trails. State statute earmarks snowmobile receipts, the snowmobile portion of the gas tax, and the 3 percent registration fee for new snowmobiles to this special fund. The approximately \$1 million raised each year is continuously appropriated in a separate program administered by the Parks and Recreation Division and is reviewed by the Legislature for informational purposes only.

GF&P Administration Cost-Share Fund is used to fund the Division of Administration. All of the funds in the department contribute to this fund on a cost-share formula.

The following chart lists the three divisions, the funds in each budget, and the major revenue sources for each fund.

Game, Fish and Parks Funding Structure

Division	Fund	Revenue Sources
Wildlife	Game, Fish & Parks	Hunting Licenses Fishing Licenses Fed Pittman-Roberts Fed Dingle-Johnson
	Animal Damage Control	Counties Wildlife Fund Federal ADC
	Revolving	Conservation Digest Cook Book Sales
	Land Acquisition and Development	\$3 from Non-Resident Small Game Licenses
Parks & Recreation (including Custer State Park)	Parks & Recreation	Park Entrance Fee Boat Licenses Camping Fees Concessions Motorboat Fuel Animal Sales Timber Sales CSP Big Game Licenses Project Reimbursements
	State General Fund	State Treasury
	Land & Water Conservation (LWCF)	Federal Grants From Offshore Oil Revenues
	Snowmobile Trails	Snowmobile Licenses Snowmobile Fuel Tax 3% Registration Fee Non-resident Permits
Administration	Cost-Share	All of the Sources Listed Above

Division of Wildlife's 2012-2013 Estimated Revenue

Nonresident license fees	\$18,610,896	37.4%
Resident license fees	\$10,541,864	21.2%
Federal Aid	\$16,383,583	33.0%
Misc. Revenue Items	\$1,615,000	3.2%
Dedicated Revenues from Previous Fiscal Years	\$2,549,417	5.1%
TOTALS	\$49,700,760*	100%

Revenue estimates are based on a fiscal year (July 1 - June 30).

* Includes almost \$2.2 million from \$5 surcharge on most hunting licenses dedicated to providing private land hunting access and enhanced depredation services.

Revenue Categories

Non-Resident License Sales:
 Big Game
 Small Game & Waterfowl
 Fishing

Federal Aid:
 Dingell-Johnson
 Pittman-Roberson
 Other

Resident License Sales:
 Big Game
 Small Game & Waterfowl
 Fishing
 Misc.

Misc. Revenue Items:
 Interest and Dividends
 Other Fees & Charges
 Misc. Items (Partnerships, e.g., mitigation)

**Division of Wildlife's
 2012-2013 Budget***

Wildlife Management	\$7,945,641	15.9%
Habitat Management	\$15,674,787	31.4%
Fish Management	\$6,811,769	13.6%
Law Enforcement	\$6,082,097	12.2%
Information & Education/Planning & Admin.	\$4,171,364	8.3%
Capital Development	\$4,281,800	8.6%
Support Services	\$5,030,000	10.1%
TOTAL	\$49,997,458	100%

*The expenditure budget is based on a fiscal year (July 1 - June 30).

Expenditure Categories

Wildlife Management: Surveys, research and wildlife damage management
 Habitat Management: Habitat and hunting access on private and public land
 Fish Management: Surveys, research, hatcheries, stocking and aquatic habitat management
 Law Enforcement: Resource protection and advocacy
 Information & Education/Planning & Administration: Information, education, planning and administration
 Capital Development: Habitat and access projects and facility improvements
 Support Services: Fiscal, licensing, legal, engineering and general administrative support

Chapter 11

GOVERNMENT FINANCE

PART I: The South Dakota Legislature's Appropriations Process

Introduction

The Legislature's appropriation process is the method by which spending is approved based on priorities and policy directions for the allocation of the public resources.

The Constitution

Most of Legislature's powers over fiscal policy reside in Article XII of the Constitution. Article XII, Section 1 states:

No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

In addition, Article XI, Section 9, requires that prior to any money paid from the state treasury, the Legislature shall enact an appropriation with a specific purpose.

Regardless of the source of money or "funds," the Legislature must first grant permission before it may be spent. Permission is granted through one of two types of legislation outlined in Article XII, Section 2, which states:

The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature.

Article XII, Section 2, speaks to "The general appropriation bill." The singular noun "bill" implies that the framers of the Constitution saw the end product of legislative deliberations on the budget as a single piece of legislation that would appropriate money for the ongoing operational expenses of state government. The Constitution, however, does not forbid the introduction, debate and even the legislative passage of multiple general appropriation bills so long as ultimately only one bill is made law. The general appropriation bill covers all governmental expenses that are routine and regular in nature. Embracing nothing but appropriations, it may not affect the duties, rights, or responsibilities found in substantive law. However, a general appropriation bill may place conditions, restrictions, or limitations on spending, including the modification of continuous appropriations that appear in the codified laws. The Constitution is silent as to the process by which a general appropriation bill is constructed. This is left primarily to legislative custom and statute.

Appropriations for expenses that are neither current nor ordinary in nature need to be approved through individual pieces of legislation, commonly referred to as special appropriation bills. As indicated above, these special appropriation bills require a two-thirds vote of all members of the

Senate and House of Representatives. They may have one or both of the following characteristics:

- Segregates money (either a finite amount or from a continuing amount) away from the State General Fund, usually for specific purposes.
- Grants permission to a state agency to spend money from specified sources for specific purposes.

Special appropriations bills cover expenses that are extraordinary in nature. A special appropriation bill approves funds directed toward a single object as required by the Constitution. Examples include property acquisitions, the construction of permanent buildings, and the reimbursement of election costs.

Emergency special appropriations allow for the immediate expenditure of money while the general bill and other special appropriations grant permission to spend money only after July 1st.

On occasion, legislative committees debate if certain appropriations are for "current" or "ordinary" expenses of state government or not. It may be beneficial for legislators to keep in mind an observation of the Supreme Court when it said that, "No inflexible rule can be written which will forever clarify and solidify the distinction between 'ordinary,' 'current' and 'extraordinary' expenses of state government. The line of demarcation is not clear, distinct, or static. Much must be left to the wisdom, integrity, and good judgment of our legislators."

Starting in 2000 the Legislature began amending, as a matter of routine, the general appropriation bill for the current fiscal year. This type of legislation is called a supplemental appropriation because it revises the expenditure limitations placed upon an agency or program. This practice recognizes that a budget is never "put to rest" because spending priorities can and do change during the course of a fiscal year. Supplemental appropriation bills usually take effect 90 days after the end of a legislative session, around June 28.

The Legislature's power to appropriate money is further limited by Article XII, Section 3, which states:

The Legislature shall never grant any extra compensation to any public officer, employee, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the state, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during his term of office: provided, however, that the Legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Finally, the Constitution mandates state government to have a budget; Article XII, Section 4 reads:

An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the Legislature shall provide, and such statement shall be submitted to the Legislature at the beginning of each regular session by the Governor with his message.

While the Constitution says the Governor will submit the itemized statement to the Legislature at the beginning of session, statute specifies that the Governor will submit a recommended budget to the Legislature by "not later than the first Tuesday after the first Monday of December immediately preceding the session". (SDCL 4-7-9) This allows the Legislature an entire session to consider the budget. The remaining statutes implementing this constitutional provision are summarized in the following section.

Appropriation Statutes

SDCL chapter 4-7 (sometimes referred to as the "Budget Act") prescribes the time frame by which the Legislature approves the state's budget. While the state's fiscal year begins on July 1 and ends on the subsequent June 30, the preparation for a budget begins shortly after the commencement of a new fiscal year. The state's budgeting process is incremental; the basis for a proposed budget is the current fiscal year's budget with modifications.

The process starts each summer, when state agencies assess their budgetary needs for the next fiscal year. Internal agency deliberations refine the initial budgetary assessment and result in the agency's official budget request. In late August, the agency budget requests are submitted to the Bureau of Finance and Management (BFM). Budget analysts then review the budget requests and make recommendations, based upon earlier directions from the commissioner of BFM and the Governor. At this point the commissioner, along with the budget analysts, forms a draft state budget for the Governor's consideration. The Governor then makes the final decisions based upon the Governor's priorities and meetings with BFM and the agency heads. This final decision is usually completed before Thanksgiving. The Governor submits a recommended budget to the Legislature by the first Tuesday after the first Monday in December. In gubernatorial election years, a newly-elected incoming Governor may subsequently modify the budget formulated by their outgoing predecessor.

SDCL 4-7-7 requires the Legislative Research Council to receive the agency budget requests from BFM by November 1, at the latest. The Legislature's staff begins analyzing the outlying fiscal year's budget prior to the start of session. After the Governor has released the recommended budget to the Legislature, the LRC staff then begins analyzing it. Prior to any public hearings by the legislature, members of the House and Senate will have available to them a budget analysis that explains the factual details of the budget. If a newly-elected Governor makes modifications to the budget as prepared by his predecessor, the legislative analyses will be adjusted to reflect those changes.

The Legislature's Appropriations Process

While the executive branch process in preparing a recommended budget has not changed significantly over the past forty years, the Legislature's appropriations process has been modified several times to reflect political differences of the House and Senate and the character of the committees. Past appropriation committees have either met separately or jointly—sometimes forming joint subcommittees—to hear testimony and deliberate. During recent Sessions, the two appropriations committees performed a major portion of their budgetary work jointly as a Joint Committee on Appropriations (JCA). After hearing individual agency budgets and matters related to the general appropriations bill, the Joint Committee would then debate and adopt amendments to the general bill. Under this arrangement, the two committees met separately, as House or Senate Appropriations Committees, to hear special appropriation bills and other legislation that was assigned by the respective presiding officers in the same fashion as other standing committees.

Different appropriation committee arrangements have their own benefits and detriments. There is no single, right way to conduct appropriation deliberations. It is up to the committees to decide how best to proceed in conjunction with organization of the new Legislature.

Some Technical Aspects of the General Appropriation Bill

In even-numbered years, the Senate Appropriations Committee introduces the bill, and the House Appropriations Committee introduces the bill in odd-numbered years. The Governor's recommended budget is customarily used as the basis for the general appropriation bill. Assuming that the two appropriations committees work jointly, the final work product is a committee report that amends the introduced general appropriation bill to increase or decrease the funding and personnel levels of the various programs, change the funding sources (e.g., reduce general funds and increase other funds) in the various programs, create new programs, or eliminate existing ones.

The format of the general appropriations bill has evolved very little since statehood. For the first eighty years of statehood, the Legislature appropriated two annual budgets. The funding source was simply identified as "money in the state treasury." Starting with FY 1968, approved during the 1967 Session, the Legislature appropriated funds for a single fiscal year, specifying the appropriation by program divisions within agencies. The funding sources were either "General Funds" or "Other Funds."

Over time the general appropriation bill has become slightly more detailed in distinguishing the appropriation for personal services and operating expenditures (travel, contractual services, supplies and materials, grants and subsidies, capital outlay, other). The bill also specifies the number of Full-Time Equivalent (FTE) positions per program division for each agency. An FTE, as defined by statute, is equal to one person working the number of weekdays in a fiscal year multiplied by eight hours, between 2,080 and 2,096 hours. The FTE level in the general appropriation bill sets the workforce size of state government, though not necessarily the number of employees.

The current form of the general appropriation bill appropriates from the State General Fund and the additional broad funding categories of federal funds and other funds. The Legislature sets expenditure limitations for these three funding categories. State agencies are then free to determine the specific federal funds or other funds in the state treasury that will be used to pay for programs. As the state's fiscal policy becomes more complex, the Legislature has become more willing in recent years to place conditions, restrictions, or limitations on spending rather than rely upon letters of intent which are explained below in the section about the interim appropriations process.

In order for an appropriation to be implemented, there first must be sufficient revenue or receipts available. If there is not, then the appropriation remains "empty." General appropriation bills are permissive in nature rather than imperative. This flexibility allows an agency to re-allocate funds should priorities change during the course of a fiscal year.

Money approved in the general appropriation bill is appropriated for one fiscal year and if unspent (with two exceptions), the money typically reverts to the fund from which it originated. The Legislature may then appropriate it again in the subsequent year. The exceptions to the one-year reversion rule are: 1) funds may be carried over into the next fiscal year if they have been encumbered for some expenditure; or 2) funds specifically appropriated for maintenance

and repair revert at the end of two fiscal years. Unspent money from the State General Fund is further explained in the following section.

Categories of Funding

Funds in the state treasury are created either statutorily or administratively as a consequence of the implementation of legislation. Funds, including statutorily created ones, are permitted by SDCL 4-4-5 to be consolidated by the BFM commissioner into "companies" on the state's accounting system.

The State General Fund (SGF), the single largest fund in the treasury, collects revenue from a number of sources. Taxes account for over 80% of the SGF. The remaining revenue comes from gaming revenue, permits, fees, fines, and investment income.

Closely related to the SGF are the Budget Reserve Fund and the Property Tax Reduction Fund. By law, any money in the State General Fund at the end of a fiscal year must be considered for transfer to one of these two funds. The Budget Reserve Fund receives any unspent money until the balance in the Reserve Fund is equal to 10% of the SGF appropriations from the prior fiscal year's general appropriation act. For example, if in the previous fiscal year \$900 million was appropriated, the Reserve Fund could have a balance of \$90 million. If the Reserve Fund reaches its maximum level, remaining money is transferred from the SGF to the Property Tax Reduction Fund if the Reduction Fund's balance is less than 15% of the SGF appropriations from the prior fiscal year's general appropriation act. In the unlikely event that the both the Reserve Fund and the Reduction Fund were to reach maximum levels, any further unspent money would remain in the SGF. The Property Tax Reduction Fund also receives revenue from video lottery, a cell phone tax, and the tobacco tax. During the course of a fiscal year, money may be transferred from the Property Tax Reduction Fund or the Budget Reserve Fund back to the SGF subject to certain requirements and then spent. The Budget Reserve Fund and the Property Tax Reduction Fund can generally be thought of as "accounts" of the State General Fund.

Federal funds refer to money received from the federal government to carry out federal programs. Many federal programs require a match from the state. For example, in the Department of Social Services, expenditures under Medicaid for FY11 are 65.09% federal funds and a "match" of 34.91% from the State General Fund. These match rates will vary between programs and may vary over time within a single program.

There are two types of funds that are classified as "other funds." The first type of other funds is money segregated from the SGF, usually fees or taxes dedicated to some specific purpose. For example, gasoline tax revenue is dedicated to the Department of Transportation for building and maintaining highways while revenue from hunting licenses is dedicated to the Department of Game, Fish and Parks for a variety of purposes. A second type of other fund is what could be called internal enterprise funds. These funds are involved when one state agency pays another state agency for services provided. For example, the Legislature appropriates general funds to the Legislative Research Council (LRC) for its operation. The LRC, in turn, uses this appropriation to pay the state computer center for computer time and printing to generate legislative documents. Once the invoices for these services have been paid and the computer center's account credited, the computer center pays its personnel and bills from those funds. The Legislature has given permission, through the appropriation of other funds, for the computer center to use the funds from the LRC to pay its bills and personnel. This "double budgeting" of money primarily occurs with the four service bureaus (Personnel, Finance and Management,

Administration, and Information and Telecommunications) within the Department of Executive Management.

The Interim Appropriations Process

Recognizing that the state's fiscal policy is subject to change quickly when the Legislature is not in session, the Special Committee on Appropriations was created. In recent years, the Joint Committee on Appropriations (JCA) has continued during the interim to serve as this committee. This Committee has four statutory powers:

- Extend expenditure or FTE limitations beyond that which is appropriated in the general appropriation bill.
- Approve the interdepartmental transfer of appropriations from one agency to another.
- Continuously review, evaluate, and coordinate fiscal policy, including the adoption of new programs in state government.
- Release money that had been appropriated to a contingency fund.

This Committee also issues letters of intent to various state agencies which give them direction regarding the implementation of the general appropriation bill and convey the committee's wishes regarding future budgets. The letters solely express the intent of the Special Committee and not the entire Legislature. The letters are a creature of legislative custom as they are not mentioned in either the Constitution or Codified Law. Thus, *letters of intent do not have the force of law*, and a state agency may chose to ignore any directive contained therein.

The Special Committee's membership is automatically compromised of the members of the Senate and House Appropriations Committees and, as noted above, the JCA has served as this Committee in recent years. Members do have the option not to serve on the Special Committee if they so chose; in which case, the presiding officer of the respective chamber appoints a replacement.

Governor's Veto

The Governor has line-item veto power over funds appropriated in the general appropriation bill (and any other bill appropriating money). Line-item veto power means that the Governor may veto various portions of an appropriation bill, leaving the rest of the bill as it stands. The authority for the line-item veto is found in Article IV, Section 4, of the Constitution which states, in part:

The Governor may strike **any items** [emphasis added] of any bill passed by the Legislature making appropriations. The procedure for reconsidering items struck by the Governor shall be the same as is prescribed for the passage of bills over the executive veto. All items not struck shall become law as provided herein.

Conceivably, an "item" is something that stands alone; it is independent and could be omitted without affecting other portions of a bill. It can be debated if an "item" refers to a letter, punctuation, a word, a phrase, a sentence, a bill section, or something else. In the past, the Governor has exercised this power against certain phrases; however, the Supreme Court has never considered this issue.

Revenue Estimate

Another part of the process that is governed by custom and tradition is the setting of a revenue estimate for the State General Fund. There is no provision for adoption of an official revenue estimate. Meeting jointly, the two appropriations committees adopt a revenue estimate after revenue estimates from the LRC staff and BFM are presented. The Joint Committee is free to adopt whatever estimate it chooses. Custom holds that the revenue estimate is that upon which both Senate and House Committees can agree. There is no contingency if the two committees cannot agree.

PART II: Definitions

Appropriation – The Legislature must first give itself, the Executive, and the Judicial agencies expenditure authority in the form of an appropriation before they can proceed to spend (or obligate) state funds. An appropriation is valid only if funds anticipated by the appropriation are forthcoming.

BFM - The Bureau of Finance and Management

BIT - The Bureau of Information and Telecommunications

Block grant - This is a federal grant for a rather broad purpose, e.g., the Social Services Block Grant. States have considerable flexibility in their administration of services, but must document that the money received was spent within federal guidelines.

BOA - The Bureau of Administration

BOP - The Bureau of Personnel

CCPR - County Catastrophic Poor Relief is the state program of reimbursing participating counties from a central pool for medical costs of certain indigents.

CHIP--Children's Health Insurance Program, a program of medical assistance created by the federal Balanced Budget Act of 1997, which allows states to expand Medicaid coverage to a wider range of poor children.

CMS - The Centers for Medicare and Medicaid Services, an agency of the U.S. Department of Health and Human Services, sets Medicaid and Medicare rates, promulgates federal rules, and audits for compliance. The agency was formerly called the Health Care Finance Administration (HCFA).

Condition Statement – A document prepared by the commissioner of the Bureau of Finance and Management in response to the request of a legislative committee or legislative committee chair regarding the fiscal status of any specified fund in the state treasury. This document must show the available fund balances and other information required by SDCL Chapter 4-7-41 for the last two concluded fiscal years as well as the projected status for the current and next fiscal year.

CSA Employees - Most state employees fall within the purview of the state Career Service Act. This act serves as the state's "civil service procedure."

DD/MR - Developmentally Disabled/Mentally Retarded

DOE - Department of Education

DOC - Department of Corrections

DOT - Department of Transportation

DRGs - Diagnosis-Related Groups. This is the cost-containment reform implemented for Medicare in 1983. This system bases payments for Medicare and Medicaid on the diagnosed ailment.

DSS - Department of Social Services

Entitlement program – A federal or federal/state-funded program known by its reference in title of public law. For example, Medicare is officially title XVIII of the 1965 Social Security Act. Once qualified, recipients are “entitled” to benefits.

Expenditure authority – See Appropriation.

Exempt employees - These are state employees who are not covered by the state's Career Service Act. Included under this classification are cabinet positions and top administrators in the executive branch, employees in the Governor's office and bureaus, employees of the Legislature and the Unified Judicial System; and faculty and administrators of higher education.

Federal fund – A type of fund in the state treasury that contains money appropriated by Congress. Two primary types of federal funds are open-end and closed-end. The latter refers to fixed appropriations, for example, block grants. The former refers to those funds, which are determined in amount, by how much the state can match. The more the state matches, the more is received from Congress.

Fiscal year - The state's fiscal year runs from July 1 to June 30 (e.g. Fiscal Year 2009 began July 1, 2008, and ends June 30, 2009). The federal fiscal year runs from October 1 to September 30, but many federal appropriations are made on a two-year basis. Fiscal years for local governments coincide with calendar years.

FMAP – The acronym for the Federal Medical Assistance Percentage. It sets the federal government's share of the state's Medicaid program. The FMAP is based upon per capita income.

Formula grant - This is a grant that specifies how certain percentages of the grant must be spent.

Four-R - Resurfacing, Rehabilitation, Restoration, and Reconstruction is a category of federal interstate highway funding.

FTE - A full-time equivalent correlates to one employee working the number of days, Monday through Friday, in a fiscal year multiplied by 8 hours. Depending upon the fiscal year, an FTE works between 2,080 to 2,096 hours.

FTE enrollment – A method of determining the enrollment at universities. The total number of credit hours taken at the institution is divided by 15 for undergraduate credit hours, 12 for graduate, 15 for law students, and 19 for medical students.

Future Fund – The statutorily-created Employers' Investment in South Dakota's Future Fund, provides money to the state's institutions of higher education and the technical institutes for the purpose of paying for research projects that will promote economic development in the state. The fund's revenue source is a portion of the state's unemployment tax.

General appropriation bill - The yearly appropriation measure for the ongoing and current expenses of state government as defined in Article XII, § 2 of the South Dakota Constitution; this is the only appropriation measure which can address more than one object. It is also the only appropriation measure that can pass with a simple majority vote.

GOED - The Governor's Office of Economic Development

Headcount enrollment – A method of determining enrollment at the universities. The method counts each student as one regardless of how many credit hours he or she is taking.

HEFF - The Higher Education Facilities Fund collects twenty percent of tuition and is used to make payments to the Building Authority on buildings with bonds outstanding, for maintenance and repair on existing buildings and to construct new buildings. At least \$1.25 million of the fund must be used for maintenance and repair each year.

HIPAA – Health Insurance Portability and Accountability Act of 1996. This federal law expands health care coverage for people who have lost their job or who are moving from one job to another. It generally guarantees the right to renew health coverage. HIPAA limits how insurance companies can use pre-existing medical conditions to keep people from getting health insurance coverage. HIPAA also strengthens patient privacy rights by requiring health care providers and anyone associated with them to obtain the patient's written permission prior to the conveyance of patient information.

Letter of Intent – A custom of the Special Appropriations Committee to address a letter to each agency regarding the implementation of the general appropriation bill. The letter solely expresses the intent of the Special Committee and not the intent of the entire Legislature. A letter of intent does not have the force of law.

Line Item - Any identifiable section, unit, or number in an appropriation act.

Match rate - Congress sets a ratio at which a state must match a given grant. The specific rate varies by grant, and refers to the percentage of the total amount (state plus federal) that must be non-federal funds. Not all federal funds require matches, and of those that do, not all matches must be in cash. Office space, equipment used, and other non-monetary items can sometimes qualify as in-kind matches.

NCLB – No Child Left Behind. A federal law related to the establishment of standards, accountability, and sanctions by the state and school districts.

Non-participating fund - Some special revenue or earmarked funds have their interest earnings deposited to the general fund and thus do not participate in the general proration of interest earnings.

OHE - Office of Hearings Examiners

Other fund – A type of fund in the state treasury that is not federal (appropriated by Congress) or the State General Fund. However, money from the State General Fund appropriated to one agency then paid to another is shown in the latter's budget as other funds.

Participating fund - This type of special revenue or earmarked fund keeps its interest income; earnings on comingled funds are prorated back to funds of this type..

Performance indicator - Statistics are kept by agencies on programs to determine utilization, clients served, licenses processed, applications received, etc., to measure effectiveness and/or efficiency.

Program - This is the identifiable service rendered by a department for an identifiable purpose as appropriated within a department budget. This definition can be found in SDCL 4-8A-1.

REDI Fund - Revolving Economic Development and Initiative Fund. This fund is used to make loans to businesses. The main criterion for receiving a loan is the anticipated new jobs that the loan will create. The REDI Fund may also lend money to the South Dakota Economic Development Finance Authority or the Export Development Authority for the purposes of assisting the credit enhancement of bond issues. The initial revenue source for the REDI Fund was the ten-month sales tax increase of one cent, which raised approximately \$40 million.

Reversion - The unexpended portion of an appropriation, as determined pursuant to SDCL 4-8-21, that becomes available for subsequent appropriation in the fund from which the initial appropriation was made.

RIS - The Regents' Information System is their centralized computer and student information system.

Salary Policy - The yearly change in the level of compensation adopted by the Legislature for state employees.

SDRS - The South Dakota Retirement System is the consolidated retirement system for public employees in the state, including state employees, school district employees, municipal employees, and county employees.

Special appropriation bill - This refers to an appropriation measure addressing an object of an extraordinary nature, usually a one-time appropriation to build a building or an on-going appropriation that warrants special attention such as state aid to education or personal property tax replacement. Such an act requires a two-thirds majority vote of the Legislature.

Special Committee on Appropriations - This special committee is comprised of the members of the House and Senate Appropriations Committees and serves between regular sessions of the Legislature. This committee, as created by SDCL 4-8A, meets as needed to approve additional appropriations, to approve transfers, and to continually review, evaluate, and coordinate state fiscal and budgetary policy.

State General Fund - The State General Fund is that fund into which the state's general (non-earmarked) revenues are deposited and from which money is appropriated to pay the state's general expenses. The major source of revenue is the state's sales and use tax. Other major sources are the cigarette tax, the insurance company tax, the contractors' excise tax, the inheritance tax, the bank franchise tax, and the transfers from the Cement, Education Enhancement, Health Care Trust Funds, and the Property Tax Reduction Fund. Interest income earned through investments is deposited to the State General Fund, as is the interest income from non-participating funds.

TANF--Temporary Assistance for Needy Families, a federal welfare assistance program created by the Personal Responsibility and Work Opportunity reconciliation Act of 1996. TANF replaced the former entitlement program, Aid to Families with Dependant Children.

Title XIX - Medicaid, the federal/state-funded medical assistance program for the indigent.

Transfer - An agency, by applying to and getting permission from the Bureau of Finance and Management, can move money between appropriated line items or between programs. Money can also be moved between agencies. The Special Appropriations Committee's approval is necessary for these alterations of the General Appropriations Act if the transfers are not for the purpose of executive reorganization. The Bureau of Finance and Management must report to the Special Committee, for informational purposes only, on all transfers made.

Chapter 12

HEALTH AND HUMAN SERVICES

This chapter discusses the three state agencies that are primarily concerned with the health and welfare of South Dakotans. These agencies are the departments of Health, Human Services, and Social Services.

Department of Health

Public health is an organized community effort to prevent disease and promote health. It affects people every day in ways that they may not realize, such as food safety, clean water, immunization, disease surveillance and intervention, and safe health care facilities. The difference between public health and health care is that public health deals with the whole population while health care provides service to individual consumers.

The Legislature initially addressed public health in 1895 by creating the State Board of Health and the Public Health Advisory Committee. In 1973 the Legislature consented to the executive branch's reorganization which created the current Department of Health. The agency is headed by a secretary that is appointed by the governor. There are approximately 30 distinct programs in the Health Department which are organized into three program divisions:

The **Administration Division** provides financial management, computer systems, communications, health planning, grant writing, correctional health, public health laboratory and health data and collection services to the entire department.

The **Health Systems Development and Regulation Division** licenses and inspects health care facilities, ambulance services, food service, lodging, and campground establishments. It trains and certifies emergency medical technicians. It also assists in the recruitment and retention of health care providers in under-served areas.

The **Health and Medical Services Division** works to reduce communicable diseases and control epidemics. It also designs and implements a network of health services, education, and training programs to ensure a healthy quality of life.

In addition, the following Boards are a part of the Regulation Division of the Department of Health:

- Board of Chiropractic Examiners
- Board of Dentistry
- Board of Hearing Aid Dispensers and Audiologists
- Board of Funeral Service
- Board of Medical and Osteopathic Examiners
- Board of Nursing
- Board of Nursing Facility Administrators
- Board of Examiners in Optometry
- Board of Pharmacy
- Board of Podiatry Examiners
- Board of Massage Therapists

The remainder of this section describes some of the larger and newer programs in the Health Department. This includes: (1) Vital Records and Statistics, (2) Rural Health, (3) the State Laboratory, (4) West Nile Virus, (5) Women with Infant Children (WIC), (6) Tobacco Control, (7) Bioterrorism Preparation, and (8) Correctional Health. The last portion of the section deals with the budget for the agency.

Vital Records and Statistics

Located within the Administration Division, the Vital Records Program conducts statistical analysis of health data gathered through the agency's vital records data base, the cancer data collection system, the behavioral risk factor surveillance system, and the annual survey of hospitals and nursing homes in the state. It also maintains birth, death, marriage, and divorce records and issues certified copies of the records.

Selected Health Statistics, 2009 – 2010

	2010	2009	% Change
Number of Births	11,795	11,930	-1.1
Rate per 1,000 Population	14.5	14.7	-1.4
Number of White Deaths	6,471	6,340	+2.1
Rate per 100,000 Population	925.2	888.3	+4.2
Number of Native American Deaths	534	502	+6.4
Rate per 100,000 Population	743.6	658.7	+12.9
Number of Marriages	5,939	5,887	+0.9
Rate per 1,000 Population	7.3	7.2	+1.4
Number of Divorces	2,774	2,686	+3.3
Rate per 1,000 Population	3.4	3.3	+3.0

Source: Department of Health website.

Rural Health

The Office of Rural Health, organized under the Health Systems Development and Regulation, works to improve the delivery of health services to medically under-served communities. The office's programs include recruitment of health professionals, assistance to rural health facilities so that they may remain open, improving the health care infrastructure, and general information and referral. Work is done in partnership with healthcare organizations across South Dakota in planning and implementing programs and projects which enhance and improve rural health services.

State Health Laboratory

The State Health Laboratory, provides environmental health, forensic chemistry, and medical microbiology testing. The lab conducts approximately 150,000 tests each year. The environmental health section has four components: microbiology, radiochemical, and inorganic

and organic chemistry. Most of those tests are performed on water from wells, rivers, and lakes and recently West Nile Virus. The remaining tests are performed on sludge, sediment, soils, and foods. The forensic chemistry laboratory performs blood alcohol tests, urine drug screens, and solid drug analysis in support of law enforcement, public safety, and counseling services. The medical microbiology section has five sections: blood lead; general microbiology; mycobacteriology; serology; and virology. The lab uses state of the art equipment including and is certified by the Environmental Protection Agency. In 2004 the Department was approved by the Center for Disease Control (CDC) to be a Level Two chemical terrorism laboratory, meaning the lab will be able to analyze blood and urine specimens during and after a chemical attack based on protocols established by the CDC.

In 2004 South Dakota's Public Health Mobile Laboratory became operational. The lab is a fully self-contained unit on a 53 foot trailer. It is a true Bio-Safety Level 3 laboratory. The lab cost approximately \$500,000 and will be used in disaster response (manmade & natural), training for other labs in the state, water testing at the Sturgis Rally, flood response, and disease outbreaks (WNV, SARS, etc.).

West Nile Virus

The West Nile Virus (WNV) was first detected in the Western Hemisphere in 1999 in New York City. The virus spread west across the continent, reaching South Dakota in 2002. In 2003 North America experienced the largest ever recorded arboviral epidemic. The incidence of WNV has decreased across North America and in South Dakota since 2003. In 2007 South Dakota reported 208 cases of human WNV and 6 deaths. Through September 2012, 175 cases and 2 deaths have been reported.

WIC

The Women and Infant Children (WIC) Program is a special supplemental nutrition program. It is financed by the U.S. Department of Agriculture. The program's goal is to promote and maintain the health and well-being of nutritionally at-risk women, infants, and children. It provides:

- Nutrition education and counseling
- Infant feeding information and supplies
- Healthy foods
- Referral to health care professionals and social service agencies
- Immunizations if needed

WIC serves income-eligible women and teens who are: (1) pregnant or have been pregnant in the last six months, (2) breast-feeding up to twelve months after delivery, or (3) have had a baby in the last six months. The program is also available to children up to the age of five years. An individual must have an income that is less than \$20,665, and a family of three must have an income less than \$35,317. For FY13, the agency estimates that an average of 20,850 persons per month will receive WIC funds and services.

Tobacco Control

The Tobacco Control Office works to reduce the consumption of tobacco. The program strives to prevent young people from starting to use tobacco products, help current tobacco users quit, and reduce people's exposure to second-hand smoke. A toll-free number was established (1-800-SD-QUITS) to encourage tobacco users to quit. The phone line provides statewide access

to toll-free, telephone cessation counseling and also offers discounted nicotine replacement patches or prescription medicine to participants.

Initiated Measure #2, on the 2006 ballot, was passed to increase the tax on cigarettes and tobacco products and to dedicate the revenues. Initiated Measure #2 provides \$5 million annually to the Department of Health for tobacco prevention and control efforts.

The Department has a seven-member advisory committee to guide tobacco prevention efforts and prepares an Annual Report of its Tobacco Control Program. The program’s activities are conducted in accordance with the Centers for Disease Control’s “Best Practices for Comprehensive Tobacco Control Programs” and the “Guide to Community Preventive Services.”

Public Health Preparedness and Response

The purpose in the area of Public Health Preparedness and Response is to develop and maintain the relationships, infrastructure and expertise necessary to prepare for and respond to public health emergencies. The major areas of the program include: hospital preparedness; pandemic influenza community planning grants; SERV SD (Statewide Emergency Registry of Volunteers); South Dakota Health Alert Network; Strategic National Stockpile; and West Nile virus grants. In the area of hospital preparedness the department provides leadership and funding to enhance the infrastructure of hospitals and collaborating entities to plan for, respond to and recover from mass casualty events. Regional planning committees represented by hospitals, and other response partners develop regional emergency plans and protocols. The Strategic National Stockpile has large quantities of medicine and medical supplies to protect the American public if there is a public health emergency severe enough to cause local suppliers to run out. The stockpile is managed by the federal Centers for Disease Control and Prevention (CDC).

Correctional Health

Following the state’s termination of health service contracts for the Department of Corrections, the Interim Appropriations Committee, on May 21, 2001, approved the Health Department to provide health services to the inmate and juvenile populations. There is a three party memorandum of understanding (MOU) between the Department of Corrections and the Departments of Health and Human Services. As specified by the MOU, the Health Department shall make all personnel decisions for those state employees that deal with the physical health of inmates and juveniles. The budget in FY13 for Correctional Health is \$15.4 million and 81.0 FTEs.

The Department of Health Budget

	General Funds	Federal Funds	Other Funds	Total Funds
FY13				
Personal Services	\$ 3,698,500	\$13,136,100	\$ 10,066,585	\$26,901,185
Operating Expenditures	3,483,065	31,800,793	22,293,587	57,577,445
TOTAL	\$ 7,181,565	\$44,936,893	\$32,360,172	\$84,478,630
FTE				411.2

In approving the agency's recommended budget, the Legislature appropriated funds for the correctional health program as a separate program division because: (1) the delivery of health care services to the state's inmate and juvenile populations is not related to the general administration of the Health Department, and (2) the agency is not authorized by statute to provide these services. Correctional Health authority is listed as "other funds" in the Department of Health budget. The other funds source is the state general fund and is reflected in the Department of Correction budget.

Department of Human Services

The Legislature created the Department of Human Services in 1989, abolishing the Department of Vocational Rehabilitation in the process. The agency is created by SDCL Chapter 1-36A. The Department of Human Services works to promote the independence for all individuals, regardless of the disability or disorder which may afflict them.

The Department of Human Services was part of the Governor Dugaard reorganization filed in January 2011. The following divisions were transferred to the Department of Social Services in April 2011: Alcohol and Drug Abuse; Human Services Center; and Mental Health. Also, the following boards were transferred to the Department of Social Services: Board of Social Work Examiners; Board of Examiners of Psychologists; Board of Counselor Examiners; Board of Alcohol and Drug Professionals. Two advisory boards were also transferred to the Department of Social Services: Mental Health Planning and Coordination Advisory Board and Drug and Alcohol Advisory Council. The following divisions and institutions make up the Department of Human Services:

The **Secretary**, appointed by the Governor with the consent of the Senate, monitors the programs of the agency to ensure effective delivery of services. The secretary manages the administrative and financial services that serve the rest of the agency.

The **Division of Developmental Disabilities** supports individuals with developmental disabilities and their families by responding to individual needs and promoting inclusion, growth, choice, and productivity.

The **South Dakota Development Center** in Redfield provides instruction and support for individuals with developmental disabilities in order to advance their level of independence in the least restrictive environment.

The **Division of Rehabilitation Services** assists individuals with disabilities to obtain employment, independence, and inclusion in the community.

The **Division of Telecommunications Services for the Deaf** assists individuals who are deaf, hearing impaired, speech impaired, or have physical or mental impairments that affect a person's ability to utilize a phone.

The **Division of Service to the Blind and Visually Impaired** provides rehabilitation services to afflicted individuals so that they may gain employment and independent living.

Over the past sixty years the trend in the delivery of human services has been to de-institutionalize care. There is less of a stigma associated with mental or physical disabilities,

and there is less of a desire to warehouse people. Oftentimes, it is more affordable to provide services in several communities rather than to finance the expensive overhead associated with a large institution. Legal action has also played a roll. In June 1999, the U.S. Supreme Court ruled in the *Olmstead* case that it is a violation of the Americans with Disabilities Act for states to discriminate against people with disabilities by providing services in institutions when the individual could be served more appropriately in a community-based setting. States are required to provide community-based services for people with disabilities if: (1) treatment professionals determine that it is appropriate, (2) the affected individuals do not object to such placement, and (3) the state has the available resources to provide community-based services.

South Dakota Development Center

The Legislature established the South Dakota Developmental Center in 1899. The facility was located in Redfield and opened in February, 1902, with 45 individuals in a three story building made of native granite. All staff lived on the 90-acre campus. The institution initially had a farm that made the hospital self-sufficient.

The institution has been named four times since it was created. Each name change reflects the state's evolving attitude towards the developmentally disabled. Originally the Legislature named it the Northern Hospital for the Insane. In 1913, the Legislature later named it the State School and Home for the Feeble Minded. It became known as the Redfield State Hospital and School in 1951. In 1989 the Legislature gave the institution its current name. The Developmental Center presently serves approximately 140 persons.

The Developmental Center divides services into three program areas. Program One serves male individuals with challenging behaviors. Individuals have a wide variety of abilities ranging from those requiring intense staff involvement for most daily living needs to those who are capable of completing daily tasks independently. Program Two, also known as the Turtle Creek Youth Program, serves up to 40 male and female adolescents with challenging behaviors within five structured living areas and two semi-independent living areas. Education is provided through the Redfield Public School. The youth are prepared for productive lives in a community. Program Three serves male and female individuals with a variety of behavioral issues, as well as individuals who require a great deal of assistance in their daily living activities. The Development Center is certified to have a maximum capacity of 240 beds; however, current staffing ratios allow 160 beds to be served.

Community Support Providers fka: Adjustment Training Centers

The Division of Developmental Disabilities funds, certifies, and monitors the nineteen community support providers (CSPs) that serve individuals with developmental disabilities. These non-profit community agencies provide services to over 2,000 individuals in a variety of settings. Along with vocational opportunities in the CSP workshop, the centers also provide job coaches and pre-vocational training for individuals looking for jobs. Community Support Providers also provide residential options for individuals. Group homes and supervised apartments allow individuals to receive the appropriate care. Community-living training and supervision are also provided for those who are living on their own or are working toward that goal.

CSPs are located in Aberdeen, Brookings, Chamberlain, Hot Springs, Huron, Lemmon, Madison, Mitchell, Pierre, Rapid City, Sioux Falls (4 separate facilities), Spearfish, Sturgis, Vermillion, Watertown, Winner, and Yankton.

The Department of Human Services Budget

FY13	General Funds	Federal Funds	Other Funds	Total Funds
Personal Services	\$10,199,051	\$16,466,851	\$ 137,100	\$ 26,803,002
Operating Expenses	50,185,964	82,903,995	3,063,748	136,153,707
TOTAL	\$60,385,015	\$99,370,846	\$3,200,848	\$162,956,709
FTE				557.4

Department of Social Services

The modern Department of Social Services (DSS) was established in 1973. It aids people to maintain the basic necessities of life. This includes protecting people from physical and mental harm when they cannot protect themselves and helping people attain independence. The Legislature has delegated broad powers to the agency in SDCL title 28.

The Department of Social Services was part of the Governor Daugaard reorganization filed in January 2011. The following divisions were transferred from the Department of Human Services in April 2011: Alcohol and Drug Abuse; Human Services Center; and Mental Health. Also, the following boards were transferred from the Department of Human Services: Board of Social Work Examiners; Board of Examiners of Psychologists; Board of Counselor Examiners; Board of Alcohol and Drug Professionals. Two advisory boards were also transferred from the Department of Human Services: Mental Health Planning and Coordination Advisory Board and Drug and Alcohol Advisory Council. The department is composed of the following program divisions:

The **Administration Division** manages and coordinates all other offices, programs, and activities in the agency. It provides the services of legal, statistical analysis, budgetary management, provider reimbursement and audits, electronic benefits management, and technology services.

The **Economic Assistance Division** provides financial, medical, food, and energy assistance to eligible people to enable them to maintain a reasonable standard of living.

The **Medical & Adult Services Division** provides Medicaid (Title XIX of the Social Security Act) and other state medical programs to eligible persons. It also assists the elderly, as specified in the Older Americans Act and state law, to retain their independence and prevent early institutionalization. This is achieved primarily by providing services such as adult foster care, adult day care, legal, nutrition, personal care, respite care, and transportation. The division also administers Long Term Care Services and Victims Services.

The **Children's Services Division** provides child support enforcement, child protection services and child care services.

The **Division of Alcohol and Drug Abuse** provides services to treat and prevent substance abuse.

The **Human Services Center** in Yankton provides people who are mentally ill or chemically dependent with individualized treatment so that they may achieve their highest level of independence.

The **Division of Community Mental Health** promotes personal independence for individuals with severe mental illness or serious emotional disturbance.

In addition, the following Boards are a part of the Department of Social Services:

Board of Counselor Examiners

Board of Examiners of Psychologists

Board of Social Work Examiners

Certification Board for Alcohol & Drug Professionals

Medicaid

Medicaid, often referred to as Title XIX of the federal Social Security Act, provides medical care to the indigent. The program is a partnership between the federal government and the state. It is not a federally mandated program. No two state Medicaid programs are exactly alike. Medicaid is administered by the state and financed by the federal government and the state. South Dakota finances its share of Medicaid from the State General Fund. The federal government, through the Centers of Medicare and Medicaid Services (CMS), will pay a minimum of 50% of the program's costs and a maximum of 75%. While there are several match rates for various medical procedures and administrative functions, they can be aggregated into a constant rate. This is called the Federal Medical Assistance Percentage (FMAP). The FMAP rate is calculated annually using the state's per capita income. The federal share decreases as the state's economy becomes more prosperous and people earn more. The following table shows the recent contribution rates.

Federal Medical Assistance Percentage (FMAP) for Medicaid			
Fiscal Year	Federal %	State %	For every South Dakota \$1, The Feds match with:
2013	56.93	43.07	\$1.32
2012	59.66	40.34	\$1.47
2011	65.09	34.91	\$1.86
2010*	70.80	29.20	\$2.42
2009*	69.70	30.30	\$2.03
2008	60.75	39.25	\$1.54
2007	63.46	36.54	\$1.74
2006	65.31	34.69	\$1.88
2005	65.94	34.06	\$1.94
2004	65.67	34.33	\$1.91
2003-fiscal relief	68.88	31.12	\$2.21
2003-original	65.29	34.71	\$1.88
2002	64.45	34.55	\$1.89
2001	66.39	33.61	\$1.98
2000	68.41	31.59	\$2.17
1999	68.58	31.42	\$2.18

*Impacted by the ARRA (Federal Stimulus) package.

Medicaid is an entitlement; all individuals who meet eligibility requirements must be served. Medicaid also automatically covers certain persons eligible for certain categories, including TANF recipients, the disabled, low-income elderly, children placed outside their homes, pregnant women, and children. In FY12, an average of 115,731 people were enrolled in Medicaid per month.

Medicaid provides physician services, inpatient hospital care, outpatient hospital care, prescription drugs, optometry services, dental care, chiropractic care, and durable equipment such as wheelchairs. While Medicaid is not federally mandated, once a state participates in the program, certain services are required to be offered: inpatient and hospital services, outpatient services, rural health clinics, certain laboratory and X-ray tests, skilled nursing and home health

care, early and periodic screening, diagnosis, and treatment (EPSDT), family planning, physician services, and midwives.

The Children's Health Insurance Program (CHIP), Title XXI of the Social Security Act, was enacted as part of the Balanced Budget Act of 1997 to provide health insurance coverage for uninsured children. Federal law allows states to determine and design how they want to implement the eligibility, benefits, cost-sharing and administrative components of the program. Two major options are available to states for expanding health coverage for children: expand their existing Medicaid program or create a new state CHIP plan. States also may combine the two approaches—expanding Medicaid for some children while enrolling others in a non-Medicaid program. If states chose to expand Medicaid, the full scope of benefits must be provided, including dental care. However, if states decide to create their own programs, they may choose whether or not to include some benefits. The Department of Social Services, through administrative rule (ARSD chap. 67:46:14), has both expanded Medicaid to cover more children and created a non-Medicaid portion that covers children up to 200% of the Federal Poverty Level.

TANF

The Personal Work and Opportunity Reconciliation Act of 1996 eliminated the state-federal match system under the Aid to Families with Dependent Children (AFDC) program. In its place is a new block granted program called Temporary Assistance to Needy Families (TANF). The TANF program gives states flexibility to design and finance new or innovative programs. Under TANF, states receive a fixed amount of federal money each fiscal year. To receive the full federal allotment each year, states must spend their own dollars to meet a mandated maintenance of effort (MOE) requirement--80% of state dollars spent in FY1994, or 75% for states that meet mandated work participation rates. In addition, states must ensure that funds are spent on eligible families in ways that accomplish the outlining goals of TANF. Those goals include:

1. Provide assistance to needy families so that the children may be cared for in their homes or in the homes of relatives;
2. End the dependency of "needy parents" on government benefits by promoting job preparation, work, and marriage;
3. Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
4. Encourage the formation and maintenance of two-parent families

TANF places a sixty month, life-time limitation on financial assistance. In order to receive payments, persons must either be working or engaged in an activity that will lead to work. Since FY96, the average, monthly number of recipients has decreased from 16,461 to 3,266 in FY11. The monthly, average payment per case was approximately \$395 in FY11.

Human Services Center

The Human Services Center (HSC) in Yankton provides people who are mentally ill or chemically dependent with treatment so that they may achieve independence in a therapeutic environment. HSC is certified to have a maximum capacity of 320 beds; however, actual staffing ratios vary.

The Human Services Center started before South Dakota was a state. By 1878 neighboring states refused to take Dakota patients. The Territorial Legislature passed legislation authorizing a facility to be built in Yankton.

The 1950's brought increased understanding of mental illness. Relatives of patients were more willing to accept them, rather than wanting to hide them in Yankton. Medical work at Yankton became more varied and systematized. Changing attitudes toward the mentally ill contributed to the improving conditions at the hospital. The development of antipsychotic medications reduced the hospital's population. New facilities were built in the 1960s.

The 1980s saw further program developments at HSC. In 1989-1990 changes took place at HSC following reorganization of the state board which previously coordinated the Center's work. In 1988, voters abolished the Board of Charities and Corrections which was created under the South Dakota Constitution to handle the state's inmates and patients in need of various services. In place of the Board, two new cabinet-level departments were created which separated the responsibilities for inmates from those of patients. The Department of Human Services, one of the two newly-created departments, became the governing authority for the Human Services Center.

A 1991 study found it would be more costly to upgrade existing buildings than to construct new ones specifically designed for patient treatment. In 1992 the Legislature authorized the design and construction of a new psychiatric facility. The new facility, named the George S. Mickelson Center for the Neurosciences, was completed in the fall of 1996. The modern building that houses the Human Services Center, the third generation facility built for the institution, is a state-of-the-art treatment center providing inpatient psychiatric and chemical dependency treatment services.

Individuals are admitted to HSC by either voluntary application for admission or through an involuntary commitment process. SDCL Title 27A requires voluntary admissions to pay a fee or have authorization from the county of residence or some other governmental agency. Voluntary admissions must also be capable of giving either informed consent for their admission or substitute-informed consent must be given by an immediate family member or guardian. Individuals are encouraged to utilize community mental health centers if possible. Voluntary admissions are interviewed by an HSC medical professional who determines if it is appropriate to admit the individual.

Involuntary commitments are arranged through the local state's attorney or the chair of the county board of mental illness. SDCL chapter 27A-1 provides criteria used to determine whether someone may be committed to HSC and outlines the legal process involved. Community mental health centers must be contacted regarding all committed patients to determine if local services can be provided to prevent hospitalizations.

The Human Services Center provides inpatient psychiatric treatment for adults, over the age of 18, children, and the elderly. HSC is approved by the Centers for Medicare and Medicaid Services (CMS) to accept patients and funding from these two programs.

The Adult Program consists of adult acute services, intensive treatment unit, and psychiatric rehabilitation. Adult acute services provide for initial assessment of psychiatric patients. During the 15-day average length of stay, the program initiates and develops treatment and discharge plans. The program facilitates the patients' independent functioning in daily activities. Emphasis is on providing care, treatment, and rehabilitation services that will enable the patient to function

in the community. The acute program currently consists of four treatment units with a total bed capacity of 60. Patients admitted for psychiatric treatment are assigned to these units on a rotational basis.

Intensive treatment unit (ITU) is a 15-bed unit that is structurally divided into two areas. Opened in July 1998, the unit provides closer observation for patients who pose a high risk for harming themselves or others. One area is designated for the care of adolescents; the second area is for adults.

The psychiatric rehabilitation program provides services for adult patients who are coping with persistent mental illness and need to remain at the hospital for longer periods of time. The program's goal is to assist patients in developing the skills that will help them live in the least restrictive setting possible. Education, life skills training, and vocational experiences are provided to prepare the patient for community placement. Total bed capacity is 68 patients, and additional patients may receive training and education through the life skills program.

The Adolescent Psychiatric Program provides adolescents with inpatient psychiatric treatment. The program's goals are to develop individualized treatment and discharge plans, provide effective treatment, and support the patient in transition to home or another appropriate setting. Length of hospitalization is based on the needs of the individual patient. Three units serve approximately 47 patients.

The Geriatric Program provides inpatient diagnostic and therapeutic services for individuals who, in addition to psychiatric treatment needs, have needs that require nursing home care. A psychiatrist, registered nurse, social worker, and direct-care case manager develop a comprehensive individualized treatment plan for every patient on admission. The treatment plans place an emphasis on providing the patient every opportunity to function as independently as possible in activities of daily living. Care, treatment, and rehabilitation provided by direct-care staff are coordinated with occupational therapy, social services, and therapeutic recreational programming. Additional services are available on a referral basis from a registered dietician, occupational therapist, physical therapist, psychologist, speech/hearing pathologist, and audiologist. Total capacity is 69 beds.

HSC also provides inpatient chemical dependency treatment for adolescents and adults. The Steps Beyond Adolescent Chemical Dependency Program has the capacity of 20 beds. Patients' referrals must be pre-arranged with the Division of Alcohol and Drug Abuse. Patients served are 13 to 17 years of age and must have a dependency diagnosis. The treatment, based on the twelve-step program of Alcoholics and Narcotics Anonymous, lasts for 60 to 120 days in length. Gateway Adult Chemical Dependency also uses a twelve-step approach. It is designed to meet the specific needs of each patient. In addition, this program offers treatment for patients with a dual diagnosis of mental illness and chemical dependency. The program has a capacity of 32-beds.

Community Mental Health Centers

Over time more mental health services have been delivered in communities. Community mental health centers serve as the focal point for services purchased by the Division of Mental Health for adults and children with severe and persistent mental illnesses. Services and resources include medical, social, educational, vocational, and other support services necessary to meet basic human needs. There are eleven non-profit mental health centers with locations in

Aberdeen, Brookings, Huron, Lemmon, Mitchell, Pierre, Rapid City, Sioux Falls, Watertown, Winner, and Yankton. An estimated 17,000 patients are served each year.

The Department of Social Services Budget

	General Funds	Federal Funds	Other Funds	Total Funds
FY13				
Personal Services	\$ 47,191,251	\$ 38,103,135	\$3,002,521	\$ 88,296,907
Operating Expenditures	340,133,326	606,185,988	6,611,168	952,930,482
TOTAL	\$387,324,577	\$644,289,123	\$9,613,689	\$1,041,227,389
FTE				1,646.3

Chapter 13

JUDICIAL PROCESS

THE COURT SYSTEM

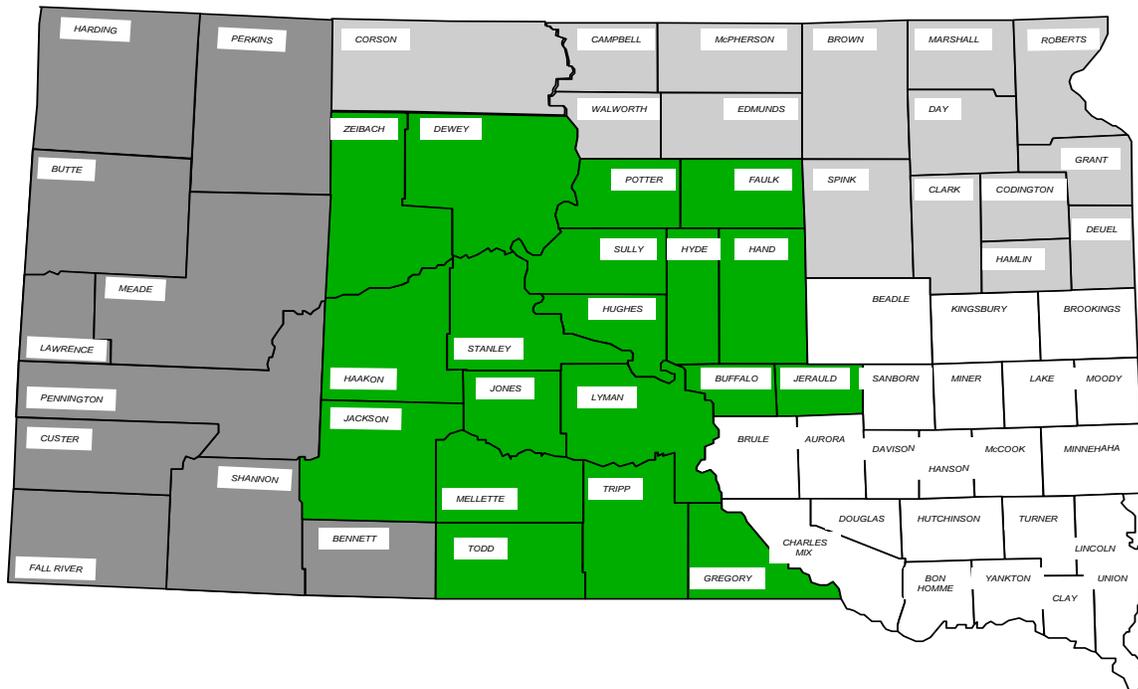
Two independent judicial systems coexist in South Dakota--the federal system consisting of the federal district court and the bankruptcy court and the state court system consisting of the Supreme Court, circuit courts, and magistrate courts. The following will provide an overview of the federal court system in South Dakota and a more detailed explanation of the state court system.

The Federal Court System

District Court

Under the federal court system, the general court of original civil and criminal jurisdiction is the United States District Court. Federal law divides the fifty states into eighty-nine districts, with South Dakota being one district with four divisions – southern, northern, central, and western divisions. The divisions are shown on the following map. A Chief U.S. District Judge and five additional U.S. District Judges preside in this district with an additional judge serving on senior status. District court judges are appointed by the President of the United States with the consent of the Senate and serve for life. Four U.S. magistrates, one in each division, also serve South Dakota. The magistrates' duties are defined in federal statutes with some additional duties assigned by the federal judges.

Four Divisions of the South Dakota Federal District Court



The district court has jurisdiction over two categories of cases--those that require federal consideration because of the subject matter and those that require federal consideration because of the parties involved. In the first instance, federal consideration is necessary for

cases "arising under" federal law. When a federal statute provides a cause of action and a remedy, the case clearly arises under federal law since the subject matter is federal. A suit under state law may also give rise to federal question jurisdiction if it substantially and directly involves a federal interest. The district court also has jurisdiction when the parties to the controversy are citizens of different states. Those suits are called diversity suits. Diversity of citizenship jurisdiction is permitted to protect citizens of one state from unfair discrimination by the courts of another state. Diversity suits in federal court must involve more than seventy-five thousand dollars.

Bankruptcy Court

A special legislatively created court, which exists as part of the federal district court, is the bankruptcy court. As its name states, this court has jurisdiction to hear all cases that arise under the federal bankruptcy code. South Dakota is served by one bankruptcy judge who is charged with the implementation of Congress' stated policy of providing relief to honest debtors, affording them with a meaningful opportunity to gain a "fresh start" as productive members of society and providing repayment to creditors in an orderly manner to the extent the debtor has property for payment. Bankruptcy judges are appointed by the Circuit Court of Appeals for a term of fourteen years.

The State Court System

The state court system is called the Unified Judicial System. Under the Constitution the Supreme Court is designated the highest court of the state and has direct supervisory and administrative authority over the circuit and magistrate courts. The Supreme Court is the final authority on the interpretation of South Dakota's Constitution and has appellate jurisdiction over all circuit court decisions. The circuit courts occupy the next level, consisting of seven judicial circuits employing thirty-nine judges. The remaining level of the court system consists of the magistrate courts.

Office of the State Court Administrator

Constitutionally, the Chief Justice is the administrative head of the Unified Judicial System. Under the supervision of the Chief Justice, the state court administrator is the nonjudicial officer who implements the rules and policies of the Supreme Court as they apply to the operation and administration of the courts and is the liaison between the judicial branch and the other branches of state and local government. Pursuant to Article V, section 11 of the South Dakota Constitution, the Chief Justice must submit an annual consolidated budget for the South Dakota Unified Judicial System to the Legislature and the total cost of the system shall be paid by the state. One of the primary responsibilities of the state court administrator is to assist the Chief Justice in the preparation and submission of this budget.

To ensure efficient and responsive operation, the Office of the State Court Administrator also provides centralized administrative assistance and support services to the entire Unified Judicial System through the following divisions:

- (1) Human Resources and Judicial Branch Education**
- (2) Trial Court Services**
- (3) Budget and Finance**

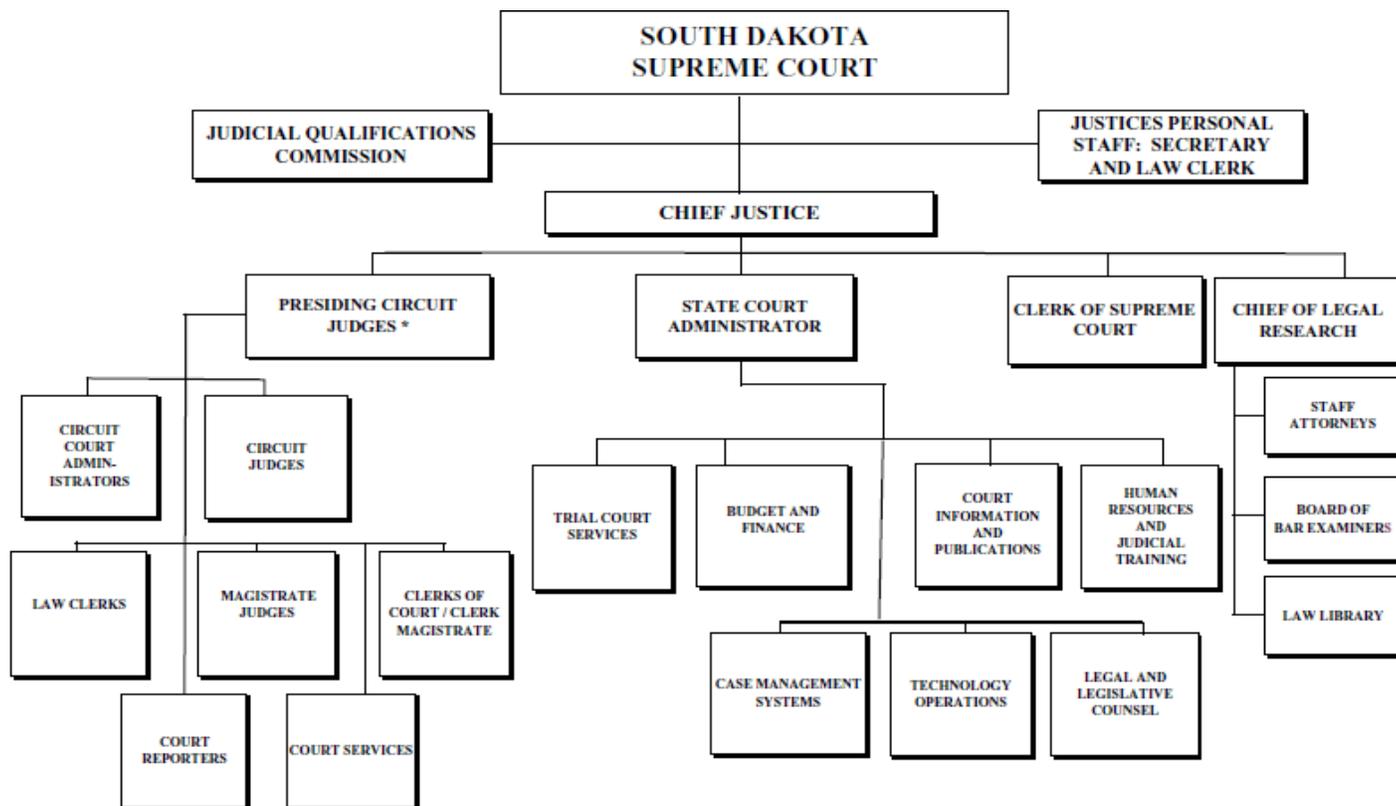
(4) Court Information and Publications

(5) Case Management

(6) Technology Operations

(7) Legal and Legislative Counsel

Unified Judicial System Administration Organization Chart

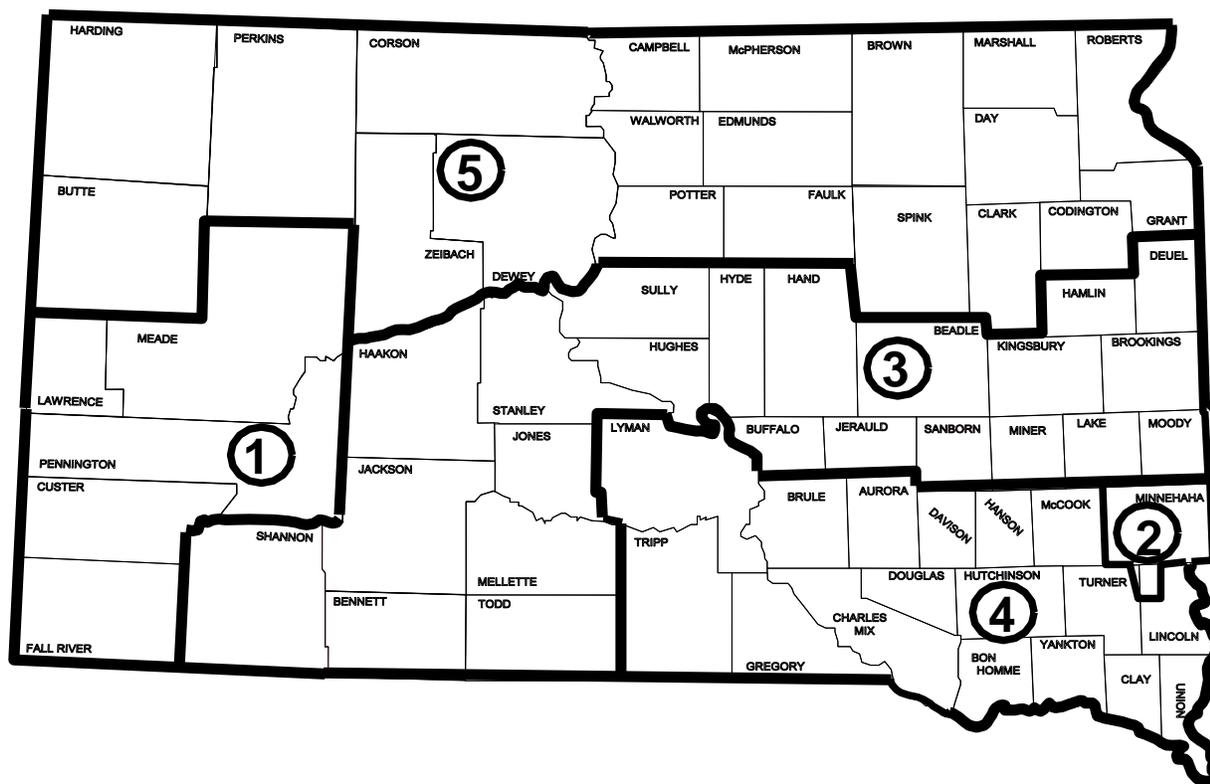


* One presiding judge for each circuit.

Supreme Court

The Supreme Court is comprised of the Chief Justice and four associate justices. The justices must be licensed to practice law in the state and must be voting residents of the district from which they are appointed at the time that they take office. The state contains five appointment districts that are designated on the following map. Whenever a vacancy occurs in the office of a Supreme Court justice, the vacancy is filled by an appointment of the Governor from a list of persons recommended by the Judicial Qualifications Commission. After the initial appointment, a justice is subject to approval or rejection on a nonpolitical ballot at the first general election following the expiration of three years from the date of the justice's appointment. Thereafter, the justice is subject to a retention election every eight years.

South Dakota Supreme Court Appointment Districts Effective July 1, 2001

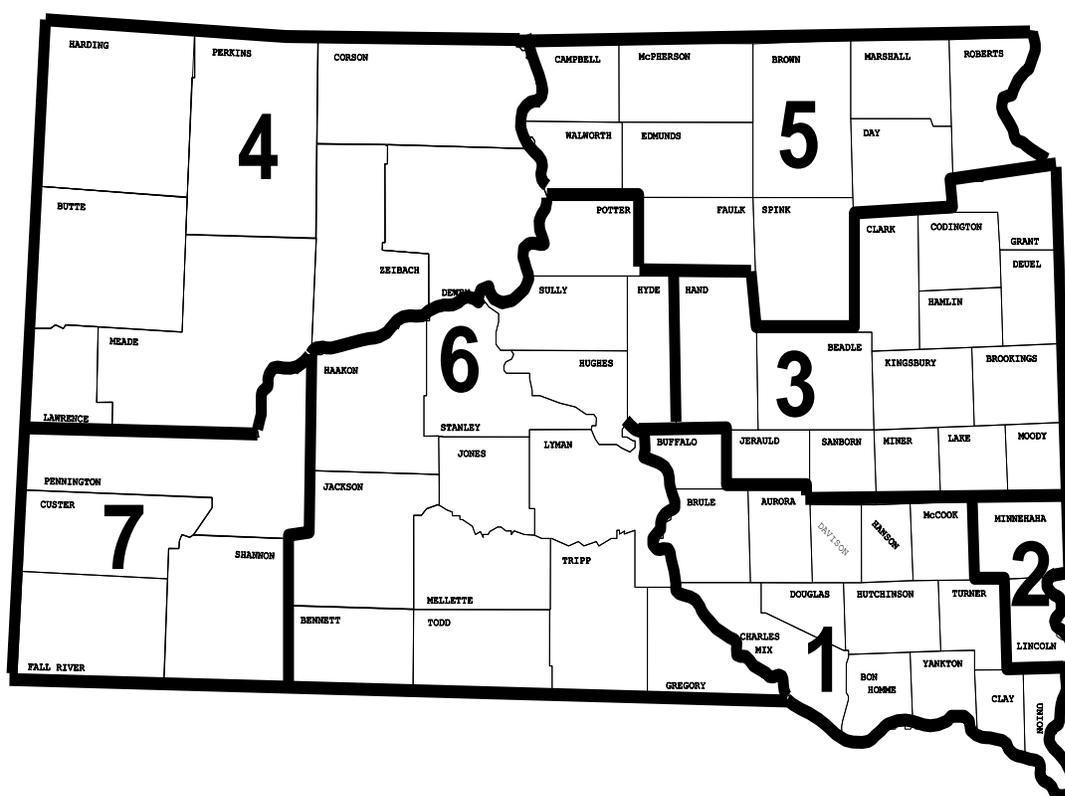


The Supreme Court has appellate jurisdiction over all circuit court decisions. This process of hearing appeals from decisions of lower courts constitutes the largest portion of the court's workload. The Supreme Court has original jurisdiction in cases involving interests of the state, and it may issue original or remedial writs. In addition to its appellate and original jurisdictional duties, the court has rule-making authority over judicial practice and procedure and administrative control over the Unified Judicial System. The court also determines the requirements for the admission of lawyers to the practice of law and is responsible for lawyer discipline. Under the Constitution, the Supreme Court has the exclusive authority to determine the number of judicial circuits and the number of judges in the state. At the Governor's request, the court may render advisory opinions on issues involving executive power.

Circuit Courts

The Supreme Court revised the boundaries of the judicial circuits as of July 1, 2000. The Supreme Court formed the Unified Judicial System Planning Council to assist the court in evaluating the court system and to make recommendations for improving the system. The first part of the planning council's recommendations was largely internal to the system, but the second part of the report analyzed demographic shifts in the state and included recommendations for adapting to those shifts by realigning circuit court boundaries. After taking public input, the Supreme Court announced the realignment of the circuit court boundaries. Under the reorganization, the number of circuits was reduced from eight to seven and the number of circuit judges increased in those circuits experiencing the most growth. Article V, section 3, of the South Dakota Constitution provides that the Supreme Court may determine the number of circuits and judges. The seven judicial circuits are shown on the following map.

Judicial Circuits and Counties



There are seven presiding judges and thirty-four circuit court judges in the seven circuits. The number of judges in each judicial circuit is as follows: first circuit, six judges; second circuit, ten judges; third circuit, six judges; fourth circuit, four judges; fifth circuit, four judges; sixth circuit, four judges; and seventh circuit, seven judges. The presiding judge is appointed by the Chief Justice of the Supreme Court and serves at the pleasure of the Chief Justice. The presiding judge supervises the circuit court proceedings and personnel. Circuit court judges must be licensed attorneys and voting residents of their respective circuit. They are elected from within their respective circuits for a term of eight years. If a circuit court position is vacant, the Governor appoints a replacement from a list of candidates recommended by the Judicial Qualifications Commission.

Circuit courts are trial courts of general jurisdiction; that is, they have jurisdiction in all cases and proceedings except those reserved for the Supreme Court. Circuit courts have exclusive jurisdiction in felony trials and arraignments and all civil actions except those areas of concurrent jurisdiction shared by magistrate courts. Specifically, the court has exclusive jurisdiction in the following cases: disputes of title or boundary of real property; divorces or annulments of marriage; probates, guardianships, conservatorships, and settlements of estates; juvenile proceedings; and civil disputes in which damages claimed are in excess of twelve thousand dollars. The court can also issue writs of habeas corpus, mandamus, prohibition, quo warranto, certiorari, and all other writs necessary to give effect to its judgments, decrees, and orders. In addition, the circuit courts have appellate jurisdiction over judgments, decrees, and orders of magistrate courts.

Magistrate Courts

Magistrate courts are presided over by either a clerk magistrate or a magistrate judge, each appointed by the presiding judge of the circuit. Clerk magistrates are required to be high school graduates or hold an equivalent degree, and they must attend a training institute provided every other year by the State Court Administrator's Office. They serve for an indefinite term. In most counties, the clerk of the circuit court also serves as a clerk magistrate. The clerk magistrate has the jurisdiction to perform marriages, issue warrants, conduct certain preliminary hearings, set bail, appoint counsel, accept pleas for Class 2 misdemeanors, conduct hearings for petty offenses, and render judgments for uncontested small claims cases involving damages of twelve thousand dollars or less.

Magistrate judges are licensed attorneys. They serve for a four-year term. In addition to the jurisdiction exercised by clerk magistrates, magistrate judges may also conduct preliminary hearings for all criminal prosecutions, act as a committing magistrate, decide temporary restraining orders, and conduct trials for criminal misdemeanors, civil actions involving damages of twelve thousand dollars or less, and contested small claims actions where claims do not exceed twelve thousand dollars.

Fines, Costs, and Fees

The Unified Judicial System collects millions of dollars every year in fines, bond forfeitures, fees, and costs. This money is paid into the city, county, or state general fund or transferred into the school district budget, depending on the type of fine, cost, or fee. A fine collected for the violation of a city ordinance results in 65 percent of the fine being paid into the city general fund and 35 percent being paid into the state general fund. Any costs that are levied in conjunction with a city fine are paid into the general fund of the city. If bond money is forfeited for a violation of a city ordinance, 65 percent of the money is paid into the city general fund and 35 percent is paid into the state general fund.

When the court collects a fine for the violation of a state law, the money is paid into the county treasury for transfer to the school district. The costs levied in conjunction with a state fine are paid into the county general fund. Bond money that is forfeited for a violation of a state law is paid into the county general fund.

The fees that are charged for the filing of a civil case are paid into the county general fund. Most counties maintain a county law library, and a fee of either two dollars or five dollars is charged to support the county law library when a civil case is filed. The Legislature established a forty dollar Unified Judicial System court automation surcharge that applies to most civil actions and proceedings. The Legislature also established a forty dollar surcharge designated as a

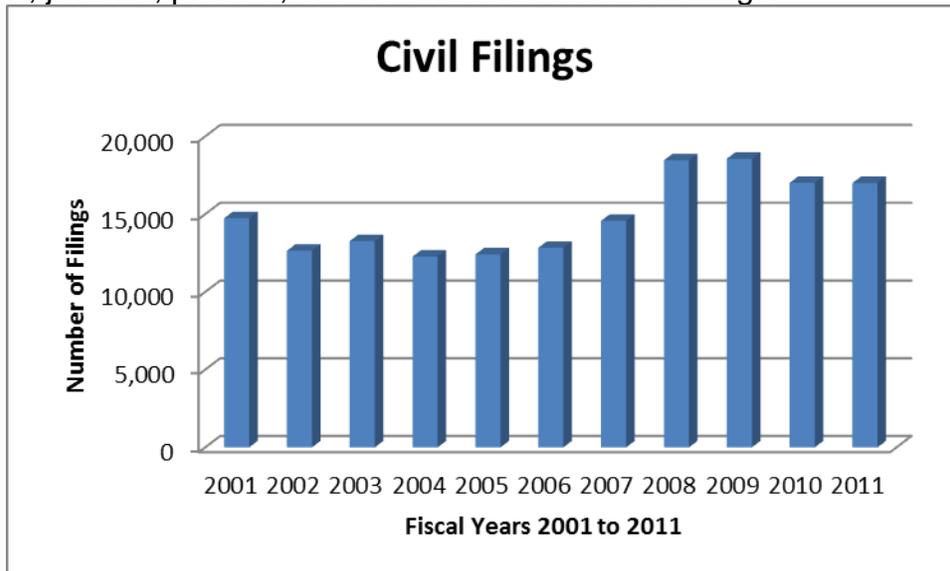
liquidated cost, which is assessed in all criminal cases. Thirty dollars of this cost is used for the training of law enforcement, corrections, and judicial personnel. Six dollars is paid into the state treasury to reimburse the county for the costs incurred by a county in providing court-appointed attorneys. Of the remainder, two dollars goes to the court appointed special advocates fund, one dollar goes to the abused and neglected child defense fund, and one dollar goes to the 911 telecommunicator training fund. Counties may also recoup some of the money spent on court-appointed attorneys since the attorney fees are assessed against an indigent defendant, and in those cases where the indigent defendant can reimburse the county, those costs are recovered from an indigent defendant and paid into the county treasury.

Caseload Data

The following data is provided to generally illustrate the caseload of the state court system.

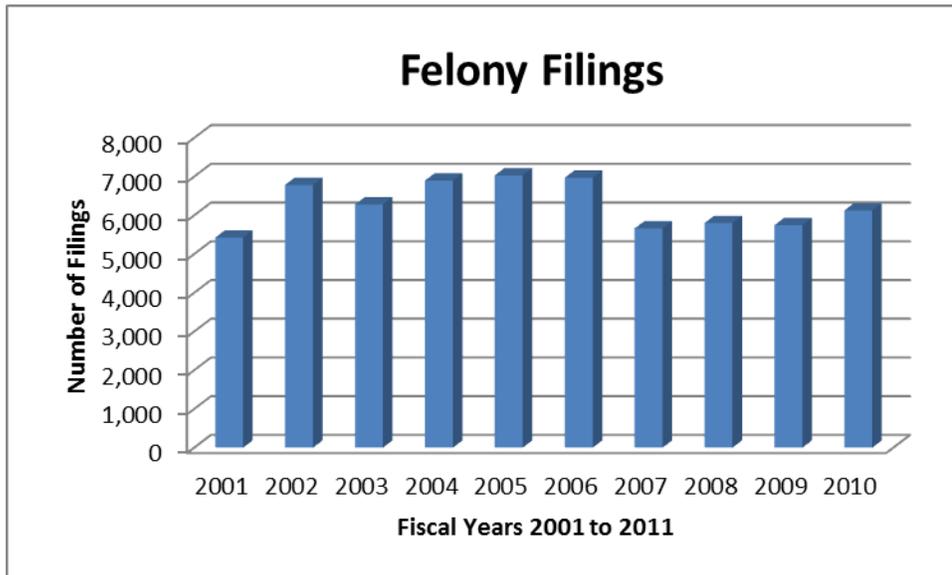
Civil Caseload

The following graph portrays a statewide perspective for all civil lawsuits filed during the last ten fiscal years. The last several fiscal years show a dramatic increase in civil lawsuit filings as compared with the preceding fiscal years. This caseload data does not include small claims, domestic, juvenile, probate, or other miscellaneous civil filings.

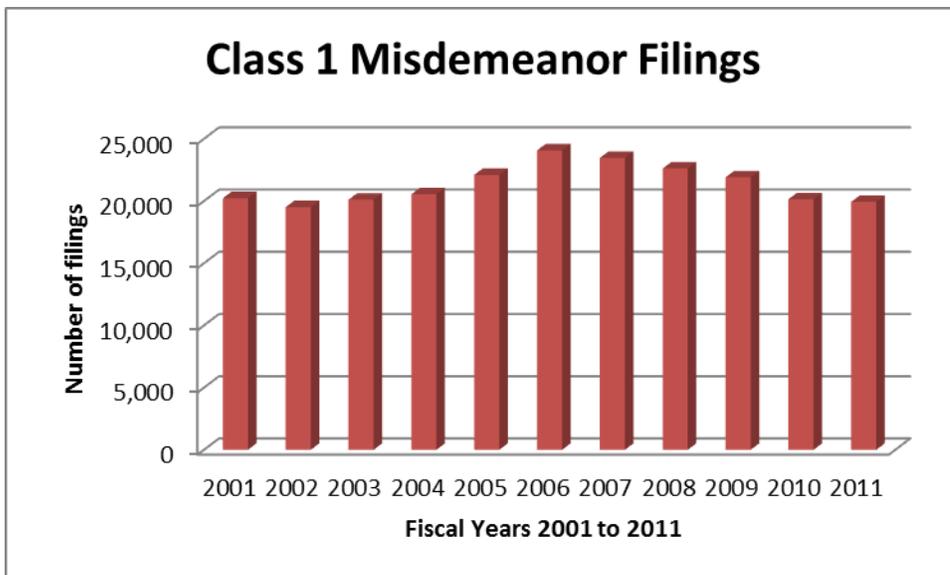


Criminal Caseload

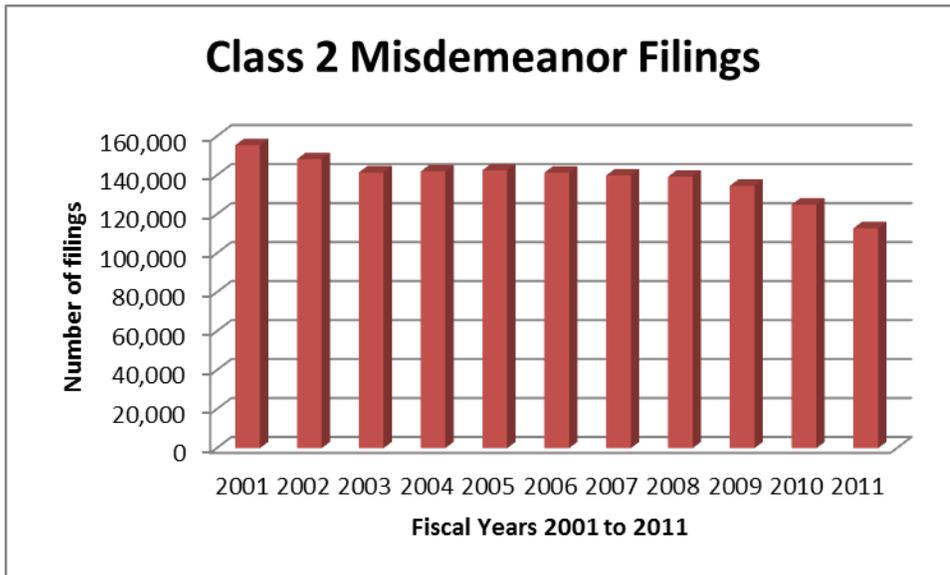
After several years of increased felony filings, felony filings dropped sharply in FY2007 and have remained about constant. The number of felony filings in recent fiscal years is comparable to the number of filings reported in the first fiscal years of this decade.



Filings of Class 1 misdemeanors also decreased in recent fiscal years. After a dramatic increase in Class 1 misdemeanor filings in FY 2006, the number of filings since that time has trended downward. Class 1 misdemeanors carry a maximum penalty of one year imprisonment in a county jail or a two thousand dollar fine, or both.



Class 2 misdemeanor filings have not fluctuated greatly since FY2001 but are generally decreasing. Class 2 misdemeanors carry a maximum penalty of thirty days imprisonment in a county jail or a five hundred dollar fine, or both. These numbers, as reported, also include petty and municipal offenses.



Sources

The caseload data for fiscal years 2001 through 2011 was provided by the annual reports of the South Dakota Unified Judicial System.

The Web site for the Unified Judicial System is www.sdjudicial.com.

A Web site to access the federal court decisions and the United States Code is www.law.cornell.edu.

Chapter 14 LOCAL GOVERNMENTS

Introduction

The term, local government, is broadly used to describe hundreds of general and special purpose government bodies that administer the thousands of governmental responsibilities below the state government level. Local governments are also referred to as political subdivisions that are created, defined, and regulated by state law.

Certain characteristics are shared by almost all local governments. They have a continuing organization; the authority to undertake public activities; the ability to enter into contracts; the right to sue and be sued; and the ability to collect fees or to levy taxes and determine a budget.

There are four major categories of local governments in South Dakota: counties; municipalities; townships; and school districts. Counties, municipalities, and townships are general purpose governments empowered by state law to conduct a variety of activities. A school district is a special purpose government that is empowered by state law to conduct only one activity, which is to provide for public education.

The following table presents the change in the number of local governments in South Dakota since 1957. The two areas where there has been significant change are school districts and special districts. The number of school districts has declined from 3,288 in 1957 to 152 in FY 2012. The number of special districts has increased from 69 in 1957 to an estimated 622 in 2012.

Number and Type of Local Governments in South Dakota

1957 - 2012

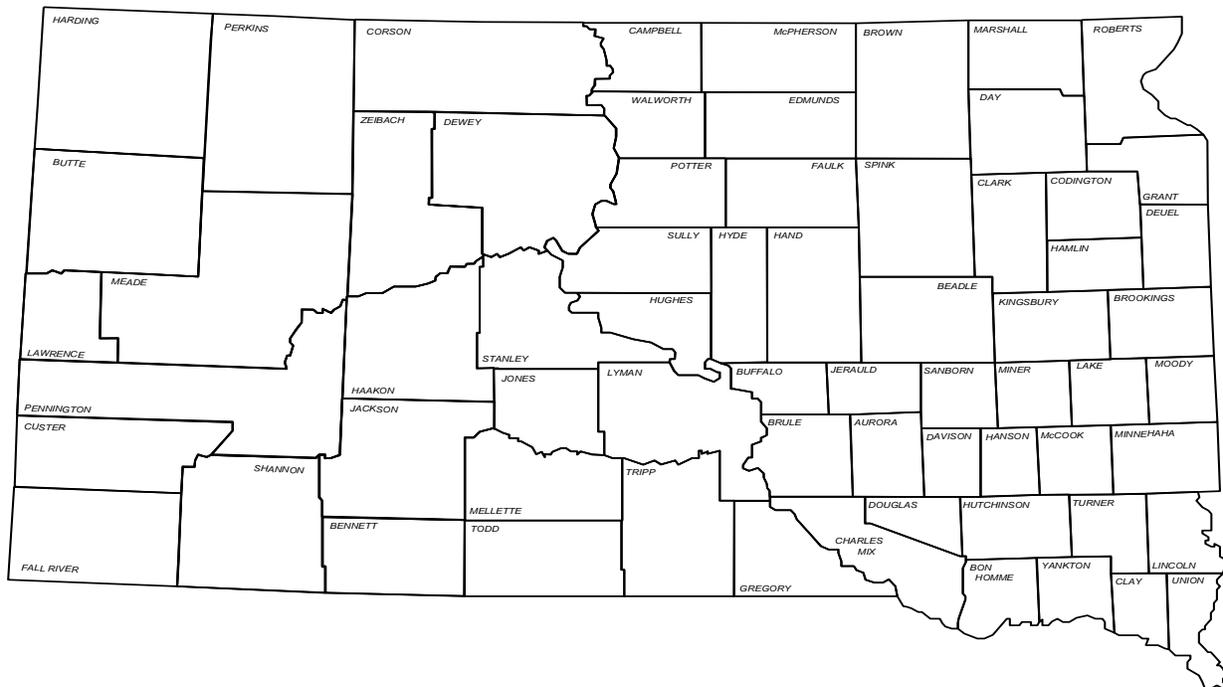
	1957	1977	1997	2008	2012
Counties	67	66	66	66	66
Municipalities	306	310	308	308	310
Townships	1,080	1,010	970	923	913
Special Districts	69	148	246	514	566
School Districts	3,288	194	176	168	152
Total	4,807	1,728	1,740	1,979	2,012

This chapter will examine the structure of the four major categories of local government and briefly describe other special purpose districts. The property tax reduction program and some emerging issues facing local government from a declining rural population and fiscal and legal changes made by the federal government will also be discussed.

County Government

South Dakota is divided into sixty-six counties. The counties range in population from 169,468 people in Minnehaha to 1,006 people in Jones. The current boundaries of most of South Dakota's counties were established in the latter part of the nineteenth century or early part of the twentieth century. At one time there were many more counties, but as transportation to the county seat became less difficult and as population shifted several counties were consolidated. The last county consolidation occurred in the late 1970s when Washabaugh was merged with Jackson.

South Dakota Counties



The process for consolidating, dissolving, or changing the boundary of a county requires that not less than fifteen percent of the voters of the county petition the county commission for an election. At the next general election succeeding the submission of the petition the voters respond to the question of county change. Fifteen percent of the voters of a portion of a county may petition the county commission for an election to decide if a county should be divided into two or more counties. After a division each new county must be at least twenty-four

congressional townships, which are thirty-six square miles each, and have an assessed valuation of not less than one hundred million dollars. There are several counties that could not be split from another county today because they have less than the two hundred million dollars in assessed valuation. A majority vote is required to approve any change in a county's boundaries.

The governing body for each county is the elected board of county commissioners. The board must consist of not less than three nor more than seven commissioners. Currently there are sixty-two counties with five commissioners and four counties with three commissioners. The county may be divided into commissioner districts or the commissioners may run at large. If the county is divided, the districts must be as close to equal in population as possible. Every ten years the county must use the latest federal census and examine the size of each district and determine if the districts need to be redrawn to maintain equal population. The number of county commissioners can only be changed at an election requested by petition signed by fifteen percent of the voters in the county.

The board of county commissioners is required by law to meet at least four times a year. At the first meeting each year a chair must be selected from among the commissioners. As the governing body of the county, the commission is responsible for the day-to-day operation of the county as well as any long-term planning.

The 1986 Legislature created an alternate form of county government. The electors of a county may now adopt a board of county commissioners-appointed manager form of county government. Fifteen percent of the voters of a county may petition for an election, or the county commission may by ordinance place the issue of the optional form of county government on the ballot. Under this form of government the county commission is the governing body. The county manager is the chief administrative officer of the county and is responsible for the proper administration of the affairs of county government. Hughes County has adopted this form of government.

The following counties have employed administrative assistants to oversee the operation of the county: Brookings, Brule, Butte, Dewey, Grant, Hyde, Lawrence, Meade, Minnehaha, Moody, and Pennington. Shannon and Todd Counties have adopted a home rule charter, which is explained in greater detail in the section following municipal government.

In addition to the county commissioners, the county has six other elected officials. They are the register of deeds, auditor, treasurer, sheriff, state's attorney, and coroner. Like the county commissioners, these officials are elected for four-year terms. Hughes County has consolidated the offices of auditor, treasurer, and register of deeds into one office and the first election for this consolidated office was in 1998. Brookings County and Perkins County have consolidated the offices of auditor and treasurer. The minimum salary of all elected county officials (except for the coroner) is established by the Legislature and varies according to the population of the county. Each of these elected county officials may employ deputies and clerks as long as they remain within the budget constraints established by the board of county commissioners.

Each elected official has certain duties that are set by state law:

1. The register of deeds must keep full and true records of all deeds, mortgages, chattel mortgages, bills of sale, conditional sale contracts, and all other instruments required by law to be filed in that office.

2. The county auditor is the clerk of the county commission and must keep an accurate record of the commission's official proceedings and must preserve all the documents, books, records, maps, and other papers required by law to be filed in the auditor's office. The auditor must make a monthly statement of the county's financial condition. The auditor is also responsible for the conduct of all elections within the county, including voter registration, hiring election personnel, canvassing the votes, and meeting all the legal notice requirements.
3. The county treasurer's major role is the collection of revenues. The treasurer is responsible for collecting all the taxes levied on real property for all the different units of government imposing the tax. The treasurer must also collect the annual motor vehicle license fee and the county wheel tax if imposed.
4. The county sheriff is required to keep and preserve the peace within the county. The sheriff must pursue and apprehend all felons and must execute all writs, warrants, and other legal process from any court or magistrate. The sheriff must also comply with all orders of the attorney general.
5. The state's attorney must give opinions and advice to the county commission and other civil officers on all matters in which the county is interested or which is related to the official duties of the commission or its officers. The state's attorney must also prosecute and defend, on behalf of the state or county, all actions or proceedings, civil or criminal, in which the state or county is interested or is a party.
6. The county coroner is responsible for viewing each dead body in the county and determining the circumstances surrounding the death.

County governments also employ directors of equalization, highway superintendents, and county nurses, all of who perform functions that are central to the purpose of county government. The director of equalization maintains an accurate financial assessment of all the property in the county. The county must construct and maintain a system of highways, and the county has responsibilities toward the health and welfare of those people in the county that do not have the financial ability to provide for themselves.

Municipal Government

Municipalities are divided into three different classes based on population. Municipalities with a population of five thousand or more are municipalities of the first class. Those with a population between five hundred and five thousand are municipalities of the second class, and those with a population of five hundred or less are municipalities of the third class. There are a total of 310 municipalities of all classes in South Dakota. Sixteen are municipalities of the first class, 99 are of the second class, and 195 are of the third class.

Municipalities can be governed by a mayor and common council or a board of commissioners, and either of these forms may be used with or without a city manager. Another option is the trustee form of government. The board of trustees of a municipality must consist of not less than three or more than five members. All the trustees are elected at large within the municipality. Each trustee is elected for a term of three years. At the first regular meeting of the board a chairman must be selected for a one-year term. The board of trustees is required by law to meet

at least once a year but may by ordinance establish other meetings. Currently, there are 159 municipalities using the trustee form of government.

The mayor and common council or aldermanic form of government is composed of a mayor elected at large and two aldermen elected from each ward of the municipality. The mayor's term of office must be established by municipal ordinance and must be at least two and no more than five years in length. Each alderman's term is five years. The common council is the governing body of the municipality and the mayor is the chief executive officer. The mayor presides at all common council meetings but may vote only to break a tie. The mayor may sign or veto any part or item of an ordinance or resolution appropriating money. Each year the common council must select a president and vice-president of the council. The president is the presiding officer of the council in the absence of the mayor and is the acting mayor during the absence or temporary disability of the mayor. There are 130 municipalities using the aldermanic form of government, one of which has a city manager.

Under the commission form of municipal government, if a city manager is not employed, the board of commissioners consists of a mayor and either two or four commissioners. The mayor and commissioners are elected at large. The term of office for the commissioners and mayor must be set by municipal ordinance and may not exceed five years. The mayor is the president of the board and may vote on all questions but does not have the power to veto any ordinance or resolution. There are eleven municipalities using the commission form of government, five of which have a city manager. An additional ten municipalities use home rule, two of which have city managers.

In municipalities with a mayor and four commissioners, the commissioners designate the areas of responsibility for each commissioner. There is a public safety commissioner, a public works commissioner, a utilities commissioner, and a finance and revenue commissioner. The mayor is the chief executive officer of the municipality and has general supervision over all departments and officers. The mayor has special charge of the supervision of all public buildings and all city parks, unless there is a park board, and over the lighting of the streets, alleys, and public buildings. In municipalities with a mayor and two commissioners, the mayor is the chief executive and has special charge of the police and fire departments, the public health department, and all matters relating to the public welfare of the municipality. All other areas of governing responsibility must be equally divided between the two commissioners.

A city manager may be employed in both the mayor and common council and the commission form of government. In both cases the city manager is the chief executive officer of the municipality and the common council or the commission is the governing body. The selection of the mayor and aldermen is the same when a city manager is employed. Under the commission form of government nine commissioners must be elected when a city manager is employed. The commission must select one of its members as mayor for a one-year term. In any city employing a city manager the mayor is the presiding officer of the council or commission. In the council form the mayor has the same powers and duties as an alderman at large. The mayor is the recognized head of the municipality for civil process and military and ceremonial purposes. The mayor may also take command of the police and govern the municipality during times of public danger or emergency.

The city manager is responsible for the proper administration of all affairs of the municipality placed in his or her charge. The manager may appoint and remove all municipal employees, except the auditor, attorney, library board of trustees and treasurer and their employees who are appointed and removed by the governing body. The city manager is responsible for preparing

and submitting an annual budget, enforcing all laws and ordinances, advising the governing body on the financial condition of the municipality and all other duties that the governing body may impose. The manager may be removed by a majority vote of the governing body. An election must be held before a municipality may change to a city manager form of government. Any change in the form of government must be done by election called by fifteen percent of the voters submitting petitions.

In 1990 the Legislature authorized municipalities to create the position of city administrator. The municipal governing body can determine what authority they want the administrator to possess. The administrator can also hold another appointed municipal office.

Home Rule

Home rule, which means essentially the freedom for local governments to do anything not prohibited by the state rather than only those things authorized by the state, is a concept that has been around for a long time but has not been used extensively in South Dakota. Local governments have traditionally been creatures of the state, able to do only the things that are specifically authorized by state law. However, the demand arose in the late Nineteenth Century in some areas for "home rule" or some form of increased freedom and flexibility for local governments. By 2000, forty-six states authorized home rule for municipalities and thirty-six states authorized home rule for counties by constitutional or statutory provisions. Generally, the county or municipal government and its voters must propose and approve a home rule charter before the provisions of home rule take effect for the individual local government unit. Even though most states allow city and county home rule in some form, only sixty-three of the nation's three thousand one hundred counties had adopted home rule by the mid-1980s. A larger number of municipalities use home rule, but as a percentage of all municipalities, those with home rule is still quite small. In South Dakota, only Shannon and Todd counties and the municipalities of Aberdeen, Beresford, Brookings, Elk Point, Faith, Fort Pierre, Pierre, Sioux Falls, Springfield, and Watertown have adopted home rule.

The voters approved home rule in South Dakota in 1962 as a constitutional amendment. The 1962 amendment authorized home rule for municipalities (but not counties) and specified the methods to be used in adopting a municipal home rule charter. Home rule municipalities could perform any function that the Legislature would otherwise have had to grant to non-home rule municipalities unless that power was denied by the constitution or by statute. Home rule municipalities were free to determine their own organizational and administrative structures and procedures so long as the governing body was chosen by popular election. South Dakota's home rule provisions were revised in 1972. The 1972 provision, which is still in force, rewrote the local government article of the South Dakota Constitution (Article IX). The most important home rule change made by the 1972 amendment was to allow counties or combinations of counties and municipalities to adopt home rule charters. The 1972 amendment also simplified the procedures for adopting home rule charters.

Under South Dakota's present home rule provision (Article IX, Section 2), any municipality, county, or combination may provide for the adoption or amendment of a home rule charter. Also, a charter may be initiated by a petition of at least ten percent of the voters. In either case, the question of adoption of the charter must be submitted to the voters of the affected municipality or county, with a majority vote needed to approve the charter.

Since the authorization of home rule in 1962, there has been relatively little activity in terms of local governments attempting to adopt home rule, although several municipalities have adopted home rule in the last few years. The issue came to a vote in the following counties and municipalities:

Rapid City	1965	Failed
Clay County	1974	Failed
Yankton	1975	Failed
Pennington County	1976	Failed
Shannon County	1982	Passed
Todd County	1982	Passed
Springfield	1984	Passed
Sioux Falls	1994	Passed
Beresford	1998	Passed
Elk Point	1998	Passed
Brookings	1999	Passed
Fort Pierre	1999	Passed
Faith	2001	Passed
Pierre	2001	Passed
Watertown	2001	Passed
Aberdeen	2004	Passed

Controversy has arisen over attempts by the Legislature to prohibit certain actions by home rule jurisdictions and whether such legislation is a part of the state's body of general law or an unconstitutional special act that singles out specific municipalities without general statewide application. The distinction between special and general legislation is not clear-cut. The state constitution clearly contemplates the ability of the Legislature to restrict the powers of home rule governments. On the other hand, the constitution also clearly establishes the policy that home rule exists to provide more freedom and flexibility to local governments, and the constitution states that home rule powers are to be "construed liberally." Both of these general policies are necessary for home rule to function, but the inherent conflict between the two will ensure occasional controversy in future home rule situations.

Township Government

Organized townships must have at least five residents and may not include more than one hundred forty-four square miles in area. A majority of the residents of an area may petition the county commission to form a civil township. Any township may be reorganized, divided, or merged if each resulting township contains at least five voters, pursuant to SDCL Chapter 8-1. The merger, division, or reorganization of a township is decided by a majority vote of its residents.

The governing body of a township is comprised of three supervisors. Each supervisor is elected for a three-year term. The most senior member of the board of supervisors is the chair. In March of each year the voters of the township hold an annual meeting to elect one supervisor, a clerk, and a treasurer. A town constable may be elected. The clerk and treasurer serve a one-year term and the constable serves a two-year term.

School Districts

A school district is defined as any territory governed by an elected school board and organized for the express purpose of operating not less than a thirteen-year school program. Presently there are 152 school districts. In recent years there have been numerous school consolidations, but only one split into two school districts, Lennox and Tea in 2004. In 2007, the Legislature required that certain small school districts be reorganized, which has led to a number of reorganizations. Boards consisting of five, seven, or nine members govern school districts. Each member's term of office is three years.

School boards must meet at least once a month and must hold an annual meeting in July unless another time is officially selected. At the annual meeting the board must select a president and vice-president to serve a one-year term. The president of the school board presides at all board meetings, appoints all committees, and countersigns all school district checks and warrants. The school board has general charge, direction and management of schools in the district. The board may levy taxes, borrow money, employ personnel, and engage in all other activities necessary to operate the school district.

The school board generally employs a business manager to manage the financial affairs of the district. The business manager may have additional duties in the school system. The board employs a school superintendent to administer the school system and elementary and secondary principals. The superintendent and principals may be assigned teaching duties or other administrative responsibilities.

Special Purpose Districts

Special purpose districts are established to administer activities that are so broad they encompass many jurisdictions or are so localized that they would not be effectively administered by a general purpose government. Most special purpose districts serve only one purpose, such as sanitation, irrigation, conservation, fire protection, or water development.

Special purpose districts are normally created through local citizens' desire for a government service that is not being provided or for a project or objective that can only be achieved through mutual cooperation in the form of a governmental unit. A brief description of two types of special purpose governments will illustrate the type of activities that citizens can accomplish by joining together.

Irrigation districts are created to construct and maintain irrigation systems. This includes building and maintaining a water storage, pumping, and distribution system. The district is formed when a petition signed by at least twenty-five percent of the electors of a designated area is submitted to the state Board of Water and Natural Resources. Once the state is satisfied that the proposed district meets the requirements established by state law, an election is held in the proposed district. The directors of the irrigation district are elected in the same election as the district is created. The directors are elected from equal divisions of the district. If there are less than fifty electors in the district the directors are elected at large. The definition of an elector is unlike that found in other forms of government. In irrigation districts, an elector can be a person, unit of government or business that owns at least thirty-five acres of land within the district. To accomplish its purpose an irrigation district may issue bonds in its name and impose taxes to retire the bonds and for general administrative purposes.

A sanitary district's purpose is to safely operate a sanitary waste disposal system. To accomplish this, a district may construct and operate storm and sanitary sewers. The district may construct and operate sewage and solid waste disposal plants and systems. To fund its operation a district may borrow money, levy taxes and special assessments, and issue bonds. A district may also exercise the power of eminent domain to acquire property for the effective operation of its objectives. The area encompassed by a sanitary district is generally outside the boundaries of any incorporated municipality. The area must be populated and have at least thirty residents. A sanitary district is formed when at least twenty-five percent of the voters within a proposed district present a petition to the respective board of county commissioners. If the proposed district meets the requirements set by state law, an election is held within the proposed district. A board of at least three and not more than eleven trustees who are elected at large and serve three-year terms governs the district.

Special purpose districts have a variety of powers and duties depending on the legislation that authorized the creation of each district type, although most districts share similar structures. A petition and election by the voters or property owners in the proposed district is how most, but not all, special purpose districts are formed. Most districts have an elected board of directors, a small amount of taxation authority, and the powers to conduct operations, such as the ability to own property and enter into contracts, the power to sue, and the power of eminent domain. Most districts may be dissolved in the same manner as they were formed.

The following tables summarize the types and characteristics of special purpose districts in South Dakota. The number of districts formed is an estimate based on information from several sources. Some individual districts are no longer active, although most continue to function.

Special Purpose Districts in South Dakota - 2012

	SDCL Citation Number	Formed
Water Development District	46A-3A to 3E	7
Water Project District	46A-18	22
Irrigation District	46A-4 to 7	13
Water User/Conservancy District	46A-9	17
Watershed District	46A-14	25
Sanitary District	34A-5	61
Drainage Basin Utility District	46A-10B	1
Conservation District	38-8	69
Reg. Recycling & Waste Management District	34A-16	3
Predator Control District	40-37	NA
Ambulance District	34-11A	13
Rural Fire Protection District	34-31A	64
Public Hospital District	34-10	1
Regional Railroad Authority	49-17A	27
Consumer Power District	49-35 to 40	1
Road District	31-12A	297
Improvement District	7-25A	1

Source: Estimated number of districts formed based on records maintained by the S.D. Secretary of State and the Department of Environment and Natural Resources

Other entities in South Dakota that share some characteristics of special purpose districts:

	Chapters
Regional Emergency Medical Services Authority	34-11B
Cooperative Grazing Districts	40-23
Television Translator Districts	49-32A
Regional Airport Authorities	50-6A
Nonprofit Corporation	47-22 to 47-26

SPECIAL PURPOSE DISTRICTS – 2012 (Continued)

Description	S.D. Conservancy District	Water Development District	Water Project District	Irrigation District	Water User District
Citation	46A-1 and 2	46A-3A to 3E	46A-18	46A-4 to 7	46A-9
Enacted	1959	1984	1984	1917	1939
Number Formed	1	7	22	13	17
Purpose	Broad water dev. and mgmt, state water plan, financing prog.	Plan, coord water dev in region; tech, financial assist to local	Sponsor and implement local water projects.	Sponsor and irrigation project sponsors.	Sponsor, implement local water projects. implement
Formation	State Legislature and election.	State Legislature or petition BWNRRand election.	Petition BWNRRand election.	BWNRR no election.	Petition BWNRR, BWNRR approval
Boundary	contiguous; by pet.,	Entire state of Not contiguous irrigable land; election.	Fixed, adjusted South Dakota amend by petition amend by pet.,	elect if 25% object.	Not contiguous; by Legislature or BWNRR approval. Not adjust
Org. Structure	Board of Water and Natural Resources (BWNRR); 7 mem. appointed by Gov.	Rural and urban bd of directors with rural majority.	3-7 directors, annual election, staggered 3-yr terms.	3-7 directors, annual election, staggered 3-yr terms.	5-13 directors, annual election, staggered 3-yr terms.
Taxation & Revenue	Appropriations by Legislature for financing programs.	Tax to 0.3 mill; spec assess if local request.	Tax to 1 mill, spec assessments.	Spec. assessments, levy tax if election approval.	No tax or assessments, revenues from water sales only.
Debt and Finance	Revenue bonds to \$5 million, Water Facilities Constr. Fund.	No gen. obligation debt, only spec assess may be long-term.	G.O., rev, and spec. assess; bonds long-term debt if election.	Spec assess-ment, bonds if election.	Revenue bonds, mortgage property approved in to secure loans.
Other Powers & Duties	Sue, eminent domain, property, state water plan.	Sue, property, eminent domain, state water plan recommendations.	Sue; property; eminent domain; plan, develop,	Sue; property; eminent domain; build, operate sponsor projects.	Sue; property; eminent domain; build, operate system. works;
Dissolution	No provision.	Legislature or petition, election.	Petition and election.	Petition and election.	District resolu-tion and election.
Overseeing Agency	Legislature, Governor.	BWNRR.	BWNRR.	BWNRR.	BWNRR.

SPECIAL PURPOSE DISTRICTS – 2012 (Continued)

Descripti on	Watershe d District	Sanitary District	Drainage Basin Utility District	Conservatio n District	Regional Recycling & Waste Mgmt District
Citation	46A-14	34A-5	46A-10B	38-8	34A-16
Enacted	1957	1947	1989	1937	1993
Number Formed	25	61	1	69	3
Purpose	Sponsor, imple- ment watershed mgmt projects.	Sewage treatment facilities.	Flood control and runoff protection.	Soil, water cons; flood, erosion, pollution control.	Solid waste mgmt.
Formation	Petition to Conserv Dist, hearing, election.	Petition to county, election.	Jt. powers agree- ment of all towns, counties in dist.	Petition to St. Conserv Comm, approve, election.	City, county governments approve.
Boundary	Contiguous, amend by petition and election.	Contig.; amend by petition, cnty approve.	One or more drainage basins; contiguous.	Not contiguous; amend same as formation.	Not contiguous, amend by act of member govts.
Org. Structure	3-5 managers, annual election, staggered 3-year terms.	3-5 trustees, annual elect, staggered 3-yr terms.	A utility to be operated by gov. body named in jt. powers agrmnt.	5 at-large elected supervisors, staggered 4-yr. terms.	Provided in articles of incorp., staggered 4-yr terms.
Taxation & Revenue	Tax 1 mill first 2 years, other tax and spec assess by election.	Tax and spec assessments.	Utility fees based on land's runoff	Dist budget re- quest funded at potential.	Solid waste fees. county discretion.
Debt and Finance	G.O. or assess- ment bonds with election.	Borrow, issue bonds per municipal law.	Revenue bonds, no election.	Special revenue fund loans avail- able to dist, other loans.	Revenue bonds.
Other Powers & Duties	Sue, property, eminent domain, plan, construct projects.	Sue, property, eminent dom- ain; construct, operate syst; set rates; req- uire hookup.	Sue; hold prop- erty; plan, devel- op, operate projects; munic utility powers.	Sue; property; plan, develop, operate projects; assist landowners, other agencies.	Sue, property, designation auth- ity, operate SW facilities, eminent domain.
Dissolution	Petition and election.	Petition to district court.	Legislation, jt. powers, or land- owner petit. court.	Petition and election.	No provision.
Overseeing Agency	Conservation Dist, BWNR, Conserv- ation Comm.	County, circuit court.	Legislature, circuit court, BWNR.	State Conservation Commission.	Bd of Minerals and Environment.

SPECIAL PURPOSE DISTRICTS – 2012 (Continued)

Description	Ambulance District	Rural Fire Protection Dist	Public Hospital District	Regional Railroad Authority
Citation	34-11A	34-31A	34-10	49-17A
Enacted	1982	1971	1959	1978
Number Formed	13	64	1	27
Purpose	Provide ambulance service.	Provide rural fire protection.	Operate hospital facilities.	Acquire and operate railroad.
Formation	Petition to county, hearing, election.	Petition to county, hearing, election.	Petition to county, election, hearing.	County or municipal resolution.
Boundary	At least size of a township, may include towns.	No restriction, may include towns.	No restriction, annex contiguous territory.	Same as boundaries of member subdivisions.
Organizational Structure	At least 5 directors, annual election, staggered 2-year terms.	At least 5 directors, annual election, staggered 2-year terms.	7 trustees elected to staggered	Elected commissioners, number specified at formation, 1
Taxation & Revenue	Tax .6 mills, additional half mill for capital outlay fund.	Tax .6 mills maximum.	Tax levy 5 mills or sufficient to pay bonds issued for hospital facilities.	Tax levy 2.4 mills., may vary tax rate for certain zones of benefit.
Debt and Finance	Debt not to exceed 10 times max annual tax levy, capital outlay fund.	Debt not to exceed 20 times max annual tax levy.	Bonds up to 5% of district property values; needs voter approval.	Issue bonds.
Other Powers and Duties	Sue, property, organize ambulance service; contracts, powers to operate.	Sue, property, organize and run gen fire protection for dist, contracts and powers to operate.	Sue, hold property, operate hospital facility, contracts and powers to operate.	Sue, property, eminent domain, contracts, acquire and operate railroad, powers to operate.
Dissolution	No provision.	No provision.	Petition and election at least 5 yrs. after formation.	No provision.
Overseeing Agency	County.	County.	County.	Political subdivision that formed the authority.

SPECIAL PURPOSE DISTRICTS – 2012 (Continued)

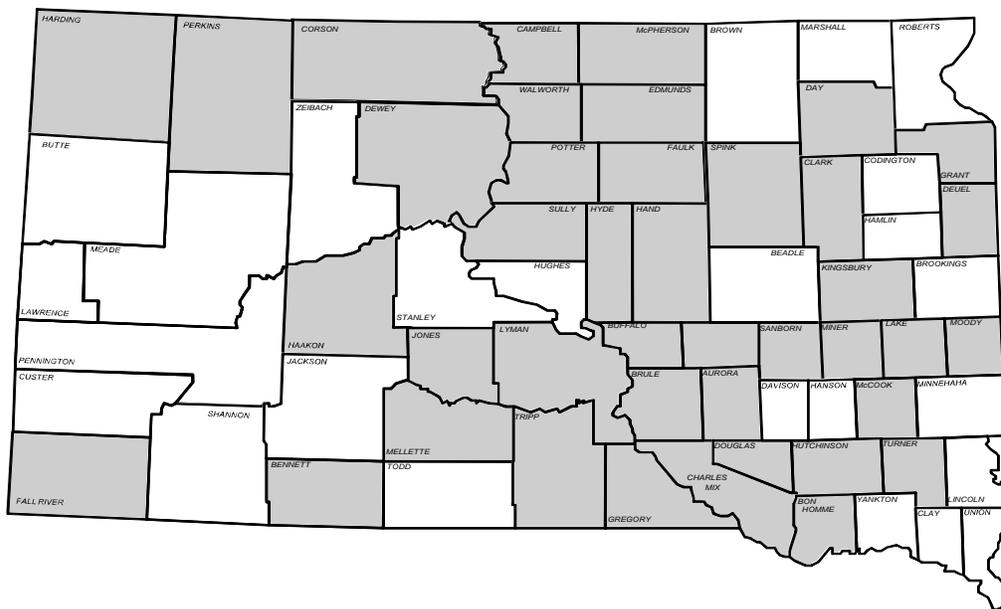
Description	Consumer Power District	Road District	Improvement District	Predator Control District
Citation	49-35 to 40	31-12A	7-25A	40-37
Enacted	1950	1977	1989	1974
Number Formed	1	297	1	NA
Purpose	Supplying electric energy.	Construct roads in populated areas outside municipal boundaries.	Provide basic and services.	Predator control infrastructure activities.
Formation	Petition, election.	Petition to county, election.	Petition to county agreed to by all property owners, hearing.	Owners of 51% of livestock in county petition Sec. of Agriculture.
Boundary	Not required to be contiguous, but cannot split voting precinct.	No restriction, may overlap municipal boundaries.	At least 640 acres.	County-wide, may be multiple counties.
Organizational Structure	5-21 directors, rural and municipal districts, staggered 6-year terms.	3 trustees, annual election, staggered 3-year terms.	5-7 supervisors, staggered 6-year terms.	Maximum of 9 directors elected at annual meeting, staggered 3-year terms.
Taxation and Revenue	No taxing power, revenues from energy sales.	Tax, special assessments, bonds, service fees.	Tax 10 mills for operating purposes, special assess, service fees.	Per head tax on livestock in district.
Debt and Finance	Revenue bonds, debt backed by revenues.	Borrow, issue bonds.	Bonds.	Additional levy with referendum.
Other Powers and Duties	Sue, property, sell electricity, acquire/operate facilities.	Sue, property, construct and maintain roads.	Sue; property; plan, develop, operate projects; provide infrastructure facilities.	Powers to operate.
Dissolution	Petition by voters or directors to circuit court, court decides.	Petition by voters to court or resolution by trustees, appeal to court.	Petition by owners of 75% of property to county, county action.	Not specified.
Overseeing Agency	Circuit court.	County, circuit court.	County.	Sec of Agriculture, county.

Emerging Issues

Two of the issues that impact most heavily on local governments are not new. The continuing rural-to-urban population migration and the reliance on the property tax have been major issues facing local governments for many years. In the period from 1930 to 1990, forty-five percent of South Dakota's counties lost population. Fifty counties, or seventy-six percent, had a net out migration in both the 1960-1970 and 1970-1980 time periods. In the 1980-1990 time period, fifty-two counties, or seventy-nine percent, lost population. During the 1959-1982 time period, the counties that had a large decline in the number of farms also had correspondingly large declines in population. This means that the people who leave the farm are not finding employment in their county. If a county had a population center (a municipality with a population of 2,500), however, the population losses were not as pronounced as in the counties without a population center.

Counties that Lost Population from 2000 to 2010

(Shaded counties)



The preceding map displays the counties that gained or lost population from 2000 to 2010. Forty-one counties lost population in this period. Thirty-two counties lost population during the previous census. There were twelve counties which gained population during the previous census, lost population during this census. Only six counties had a less than 2% change in population, nine counties increased by more than 10%, and nineteen counties decreased in population more than 10%. Lincoln County had an 85.8% increase in population and Campbell County had a 17.7% decrease in population.

This population shift poses problems for both the urban and rural counties. Inflation, demand for services, and regulatory compliance increase the cost of government. If a county is losing people and experiencing declines, there may be no growth in assessed valuation. If the valuation of property does not increase, the increasing cost of government must be spread across the existing valuation. If the property owner cannot pay more taxes, the local government must turn to alternative forms of generating revenue or must provide the required services with less money. Regardless of how small a county's population becomes there is a certain amount of government services that must be maintained. There are very few alternative revenue sources available to most local governments, except for the municipal sales tax and the county wheel tax. There are some services for which a local government may charge a fee, most notably garbage collection and providing water.

Another sizable form of revenue that is available to local governments is transfer payments from other governments. Included in this is federal aid for schools, health care, and highways. The state also provides revenue for the same purposes.

Property Tax Reduction Program

The 1995 Property Tax Reduction Program addressed the local property tax burden and state-aid-to-education with a two-staged approach. The program provided immediate relief for the 1996 property taxes through a twenty percent property tax credit program for ag property and owner-occupied homes. It also limited budget growth specifically funded by property taxes for all political subdivisions, except under certain circumstances.

About twenty percent of the funds used for the property tax reduction program were previously appropriated for personal property replacement dollars. Counties were permitted through the legislation to increase local property taxes to compensate for fifty percent of this lost revenue, reducing the actual property tax relief benefit. Political subdivisions, including school districts, may increase their property tax budget revenue by the amount of tax revenue generated from the increased value of new construction not previously taxed.

Property taxes may increase at the rate of inflation not to exceed three percent a year, beginning in 1997 as defined in SDCL 10-13-38. The local governing board has the option of exceeding the property tax reduction limits, if supported by a two-thirds vote of the governing body. The board's decision may be referred by a petition signed by five percent of the registered voters within twenty days of the publication of the decision.

A taxing district may increase tax revenue above the budget limitations, if there is a corresponding increase in property values resulting from improvements or changes in use of real property, annexation, minor boundary changes, to support the financing cost for new facilities that are subject to a referendum, or to pay a judgment. Otherwise, there is a limitation on the total property tax revenue that can be received by a governing body. There is no clause, however, preventing property values from increasing or decreasing from market pressures, or property values from being adjusted if they were under or over assessed. This would allow property taxes to increase on a specific piece of property but would require a corresponding decrease in other property taxes, except school taxes, on other pieces of property within that political subdivision.

Uniform tax rates will be applied in all school districts as listed in the table below. Again, these rates only apply to the levy for general fund purposes and it is required that the property value

either be assessed or adjusted to eighty-five percent of market value. School districts, however, may levy additional property taxes for special education, bond redemption, capital outlays, and retirement over and above the general fund cap limits.

<i>Property Classification</i>	<i>General Fund Levies of a School District (Tax Per \$1,000 of Value for 2013)</i>
Agriculture Property	\$ 2.322
Owner-Occupied Dwellings	\$ 4.029
All Other Non-Ag Property	\$ 8.628

Chapter 15 LOTTERY AND GAMING

Since South Dakota became a state in 1889, the state has evolved from a complete prohibition on gambling to video lottery terminals in almost every bar. Like most states that came into the Union in the late 1800s, South Dakota became a state with a constitution that expressly prohibited the Legislature from authorizing gambling. ⁽¹⁾ However, although South Dakota was inhabited by hardworking, conservative, and moral people, South Dakota was also a part of the Old West with a history of gunfights and rough living. It was, after all, in Deadwood, South Dakota, that one of the Old West's most famous figures, Wild Bill Hickock, was murdered while playing poker.

Horse and Dog Racing

For forty-four years after statehood, state law permitted no type of gambling, but in 1933 the first in-roads were made. In July and August of 1933, during a special legislative session, legislation was enacted "for the Purpose of Assisting in Raising Funds for the Promotion of Fairs, Agriculture, Live-stock and Racing Associations, and for the Relief of the Poor." ⁽²⁾

Without modifying the constitution, the 1933 Legislature authorized the placing of bets on horse races by defining the placing of bets as pari-mutuel contributions. This was permissible on the theory that horse racing was not a prohibited game of chance or lottery but a skilled analysis of the animals to determine in what particular order they were most likely to finish the race. A game of chance or lottery requires random selection of the winner. An experienced race enthusiast can use his or her knowledge of the animals to determine the outcome. The constitutionality of this distinction has not been successfully challenged.

In 1949 this was expanded to permit pari-mutuel contributions on dog races. Initially the revenue from horse racing went to the support of the poor. But with the enactment of more reliable sources of revenue for the support of the poor, the revenue from racing went to the operation and maintenance of the state fair. The state fair remained the major recipient of racing revenue until 1991. Then the revenue the state fair had been receiving was diverted to the racing industry because of the severe drop in attendance at racing meets.

Racing is conducted under a "certificate system." This requires each licensee to hold a certificate from the state, which entitles the licensee to conduct a race and to collect contributions from people, based on what position the horse or dog will hold at the finish of the race. Each licensee is permitted to deduct eighteen and one-quarter percent of the amount contributed on each race. The remainder is returned to the contributors in the form of prizes. Of the amount deducted by the licensee from dog races, five percent is deposited in the special racing fund, one-half percent is deposited in the South Dakota-bred racing fund, and one-half percent is deposited in the special racing revolving fund. The licensee keeps the remainder.

The first seventy-five thousand dollars of revenue in the special racing fund is transferred to the special racing revolving fund. After the first seventy-five thousand dollars is transferred, one-half of any remaining revenue in the special racing fund is transferred to the South Dakota-bred racing fund. The remaining revenue in the special racing fund is transferred to the special racing revolving fund.

The revenue in the South Dakota-bred racing fund is used to "encourage horse racing and the raising and breeding of horses in South Dakota and shall be used for the purpose of providing compensation to South Dakota-bred horses." (3) Horse racing is conducted on a very limited basis at two locations in South Dakota and in recent years generated only enough revenue to pay its expenses. The revenue in this fund is used to increase purses on races run by South Dakota-bred horses and the larger purses increase interest in horse racing.

The revenue in the special racing revolving fund is used "to increase purses or for operations, or upon request, funds may be granted to a political subdivision for unusual or unique law enforcement expenses incidental to having a race track or off-track site in that political subdivision." For the most part the revenue in the special racing revolving fund is returned to the licensees for their operational expenses.

The horse and dog racing industry has been in decline for many years. Horse racing has been conducted at only two locations in the state for the last several years. There are no longer any dog tracks providing live races. The only growth in this industry is in showing races on televisions through the use of satellite transmission. There are several locations across the state where individuals can watch dog and horse races conducted live in other states and bet on those races. In 1991 the Legislature authorized South Dakota's participation in multi-state wagering pools. This allows people at satellite locations to bet into the wagering pool at the location where the race is being conducted. The gross handle from live races for all of the racing locations has declined from \$38 million in 1978 to \$2 million in 1992. The gross handle of the live race sites has been greatly supplemented by the gross handle from simulcasting of horse and dog races since simulcasting began. (4)

From 1933 to 1991 horse and dog racing was regulated by the South Dakota Racing Commission. But with the decline in the racing industry and the corresponding decline in tax revenue the Legislature repealed the Racing Commission in 1991 and transferred the responsibility of regulating racing to the Commission on Gaming. The Gaming Commission Fund provides the revenue for the regulation of racing. The cost of regulating racing is borne by the city of Deadwood and the other governmental entities since they receive the money in the Gaming Commission Fund after the cost of administration.

Bingo, Raffles, and Other Public-Spirited Gaming

The next stage of gambling in South Dakota began in 1970 when the voters, with a fifty-nine percent majority, amended the constitution to permit games of chance. "Bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire departments, or such other public spirited organizations" may conduct the games of chance. (5) The Legislature then enacted sufficient statutory authority for bingo and lotteries to occur.

The constitution permits many types of organizations to conduct games of chance, and some do not use the money generated from games of chance for charitable purposes. The constitution permits organizations to conduct games of chance "when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, religious, or public spirited uses." Although "charitable" is one of the permitted uses of the money, "public spirited" is more correct when describing the legal use of the money. The Legislature has not made any further definitions of the phrase "public spirited," although it has broadened the list of organizations authorized to conduct games of chance to include political action committees and political committees on behalf of any candidate.

The types of games of chance that public-spirited organizations may play are bingo and lotteries. Bingo is played in the traditional form of the game with a caller selecting numbers or letters with the use of some mechanical or electronic device, and a player marking or covering the numbers or letters on a card. The first person to cover a predetermined set of letters or numbers is declared the winner. Both hard and disposable cards are permitted. No prize may be awarded at any one play of bingo that exceeds \$2,000.

The two predominate types of public-spirited lotteries conducted in this state are raffles and pull-tabs. Raffles are used by the largest number of organizations and are normally sold to generate revenue for a specific purpose. Raffles are not normally used for on-going revenue needs. Pull-tabs are mostly sold by organizations that have an alcoholic beverage license. A pull-tab is a lottery type ticket that can be pulled apart or broken open to reveal the game. The game is similar to the instant tickets sold by the South Dakota Lottery in which predetermined combinations of symbols pay a predetermined prize. The maximum prize that may be awarded in a public-spirited lottery must be stated before any chances to the lottery are sold. A lottery prize of a stated amount of dollars may be given to the person who sells the winning ticket if the winning ticket is chosen by chance.

The amount of activity in public-spirited gambling is very difficult to determine. Public-spirited organizations are required to provide thirty days' written notice of the time and place of their games of chance to the county or municipality where the activity will take place. There is no requirement to report their activity to the state or any other government. Some municipalities, notably Rapid City, have adopted ordinances that require public-spirited organizations to make reports to the municipality.

The only state regulation in this area is the licensing of manufacturers and distributors of bingo and lottery equipment and supplies. The Department of Revenue administers this program. The annual license fee for distributors is five thousand dollars, and the annual license fee for manufacturers is two thousand five hundred dollars. Public-spirited organizations are required to purchase their bingo and lottery supplies from a licensed distributor, and only licensed distributors and manufacturers may sell in this state. There is also a state tax of five percent imposed on the gross sales of bingo and lottery equipment and supplies. The distributor of the equipment and supplies pays this tax.

The Lottery

The next step in the state's gambling development occurred in 1986 when the Legislature adopted House Joint Resolution 1001. This measure proposed a constitutional amendment that would authorize the Legislature to create "a state lottery that is regulated, controlled, owned, and operated by the state of South Dakota." ⁽⁶⁾ This measure was placed on the 1986 general election ballot and was approved with a 59.7% majority. (Article III, section 25 of the S. D. Constitution).

In 1987 the Legislature enacted the enabling legislation for the lottery. This legislation created a lottery commission of seven people appointed by the Governor to oversee the operation of the lottery agency. This legislation also created the South Dakota Lottery, a quasi-independent executive agency to operate the lottery games.

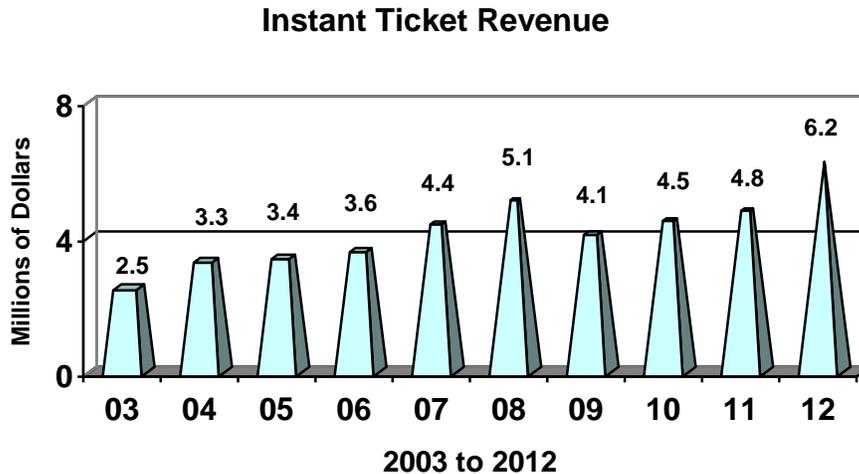
The South Dakota Lottery employs thirty people in three offices across the state. There are currently three categories of lottery products: instant tickets, video lottery, and lotto.

Instant Tickets

There were several competing interests in the process of enacting the lottery enabling legislation, and the competition resulted in the South Dakota Lottery having the authority to conduct only an instant ticket lottery game. The state general fund provided a \$1.5 million loan to the South Dakota Lottery to begin operations. The first instant ticket was sold on September 30, 1987.

Initially, a minimum of forty-five percent of instant ticket sales was devoted to prizes. To counter declining sales this was increased to a minimum of fifty percent and currently 60.1% is devoted to prizes. The lottery retailer pays small prizes. The large prizes must be presented to one of the three South Dakota Lottery offices for payment. There are 591 instant ticket retailers in the state who receive a five percent commission on the sale of instant tickets and one percent of the redemptions.

The net revenue from the sale of instant tickets is deposited in the state general fund. As with most instant ticket lotteries there were large ticket sales in the first and second years of operation and then declining sales. The following graph provides the annual instant ticket revenue to the state.



Video Lottery

The next stage in the lottery's growth occurred in 1989 when the Legislature authorized lottery games that utilized video terminals. The video lottery, as it is now known, was first introduced in 1988 by an interim legislative study committee. The video lottery legislation was defeated in 1988, but was enacted in 1989 when the Governor sponsored the legislation.

The video lottery became operational in October of 1989. The video lottery was discontinued on August 12, 1994, after the Supreme Court determined that it was not a lottery within the scope of meaning of the state constitution. (7) A special session of the sixty-ninth legislative assembly proposed a constitutional amendment that was approved on November 8, 1994, that rewrote Article III, section 25, of the constitution that authorized video lottery games. When video lottery became operational there were approximately two hundred terminals in place. By FY 2012, the number of terminals averaged 9,128 located across the state in 1,459 licensed establishments.

Video lottery terminals are not owned by the South Dakota Lottery but are owned by private citizens who are licensed by the state for that purpose. These 9,128 terminals in the state are owned by 140 operators. These terminals are located in licensed establishments that are required by law to possess an on-sale alcoholic beverage license.

Licensed establishments can own their own terminals but must also be licensed as an operator. Terminals can only be purchased from licensed distributors and manufacturers, and there are currently eight manufacturers and ten distributors licensed. Manufacturers and distributors are prohibited from being licensed as operators and cannot own, manage, or control a licensed establishment.

Video lottery terminals are required to pay back at least eighty percent in prizes, and the current credit win percentage is 90.79%. The minimum bet is five cents and the maximum bet is two dollars. The maximum prize is one thousand dollars. The terminals do not pay out in cash. The terminal issues a receipt that must be given to a person in the licensed establishment for actual payment. The licensed establishment must pay all prizes.

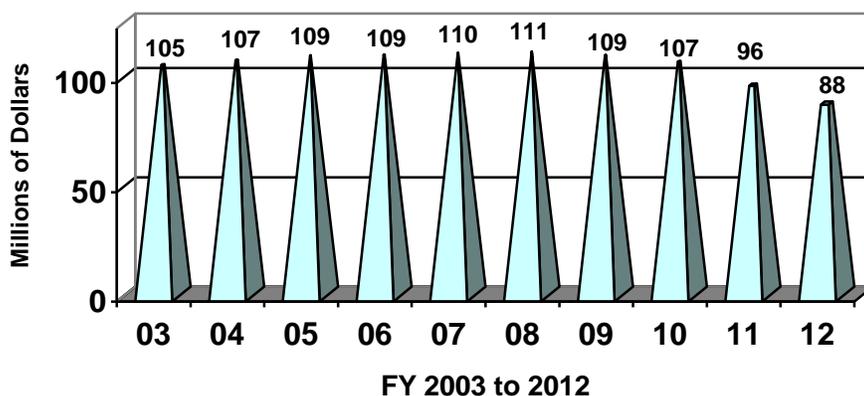
The tax revenue the state receives from video lottery is calculated as a percentage of the net terminal income, which is cash in the terminal minus the credits paid out in cash. The average net terminal income changes with the number of terminals and the amount of play. Average net terminal income has been decreasing as more terminals are put in place.

Up until 1993 the state's share of net terminal income was set by administrative rule by the South Dakota Lottery Commission. They had the authority to set the state's share from fifteen to thirty-five percent of net terminal income. Initially the South Dakota Lottery Commission set the state's share at 22.5% and beginning in 1993 the Legislature increased the state's share as shown in the following table.

Body Establishing the State's Share	Date the State's Share was Increased	State's Share of Net Income
Lottery Commission	October, 1989	22.5%
Lottery Commission	January, 1991	25%
Lottery Commission	January, 1992	35%
Legislature	July, 1993	36%
Legislature	July, 1994	37%
Legislature	July, 1995	50%

The state's share of net terminal income and manufacturer license fees deposited in the property tax reduction fund was \$87.5 million in FY 2012. The machine owner retains the remainder of net terminal income. Beginning in Fiscal Year 1997, the state's share of net terminal income, less the amount deposited in the lottery operating fund, is deposited in the state property tax reduction fund. The following graph provides the annual state revenue from the video lottery deposited in fund.

Video Lottery Revenue



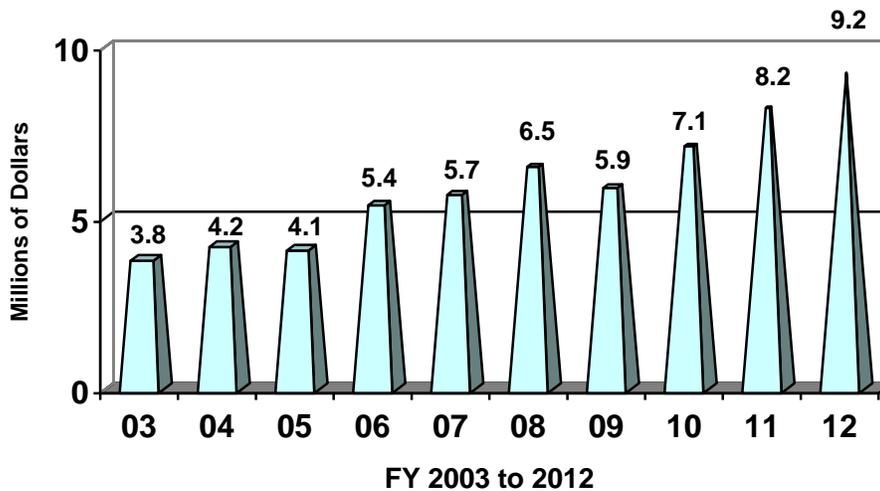
In addition to the state's share of net terminal income, the state receives revenue from license fees. Licenses are required for manufacturers, operators, distributors, establishments, and video terminals. Video lottery license fees are deposited in the video lottery operating fund that is used for the operation of the video lottery. In addition, one-half percent of the net terminal income that the state receives is also deposited in the video lottery operating fund and used for the cost of video lottery administration.

Lotto

The third stage in the evolution of the lottery was the introduction of the on-line lotto game. The legislation for this was enacted in 1990 and sales began in November of 1990. The lotto legislation was enacted with the general understanding that South Dakota's population was not large enough to support a lotto game and that the South Dakota Lottery would join with other states. The lottery is a member of the Multi-State Lottery Association, which consists of states selling POWERBALL, Mega Millions, Wild Card 2, and Hot Lotto, which are offered in South Dakota.

There are 579 lotto retailers located across the state. The profits from lotto are distributed as follows: first \$1.4 million to the general fund and the remainder to the capital construction fund. The capital construction funds proceeds are divided as follows: 71.8% to the water and environment fund; 25.6% to ethanol fuel fund; and 2.6% to the state highway fund. ⁽⁹⁾ The following graph illustrates the annual state revenue from lotto.

Lotto Revenue



Deadwood

Another stage in the growth in gambling in South Dakota began in 1986 when a group of Deadwood residents formed an organization known as "Deadwood You Bet." This organization's purpose was to gather support for limited gambling within the city limits of Deadwood with the revenue from gambling used for the historic restoration and preservation of Deadwood.

They approached the Legislature in 1987 with House Joint Resolution 1002, which proposed placing a measure on the 1988 general election ballot to amend the constitution to permit limited gambling in Deadwood. The House of Representatives rejected this proposal. The members of "Deadwood You Bet" then spent several months collecting signatures to use the initiative process to place the constitutional amendment on the 1988 ballot. The voters approved the constitutional change with a 64.3% majority.

In 1989 the Legislature enacted the enabling legislation for limited gambling in Deadwood. The measure was then submitted to the residents of Deadwood for their approval and, as required by the amended constitution, more than 60% approved the measure. The enabling legislation created the five-member South Dakota Commission on Gaming whose responsibility it is to oversee the regulation of gambling within Deadwood. The commission employs an executive secretary who oversees the daily operation of the administrative agency created to regulate gambling in Deadwood. There are eighteen full-time employees of the Commission of Gaming.

The constitution requires that gambling in Deadwood be limited. Gambling is limited in Deadwood in four ways. First, no person may place a bet that exceeds one thousand dollars. ⁽¹⁰⁾ This applies to the first bet and to any subsequent bet. Second, the types of games are limited. The constitution permits "limited card games and slot machines." ⁽¹¹⁾ The Legislature has defined "card games" to mean poker and blackjack. ⁽¹²⁾ The Commission on Gaming is required to define the rules of blackjack and poker, and in that process they have defined several different varieties of poker games.

Third, the specific geographical area where gambling is permitted is limited. The constitution limits gambling to "within the city limits of Deadwood." (13) The Legislature has defined the city limits of Deadwood to be the city boundary as it existed on January 1, 1989. Fourth, the number of gaming devices is limited. No establishment can have more than thirty card games or slot machines. The establishments in Deadwood can also have video lottery terminals and they are not counted in the gaming device limit for Deadwood.

The Commission on Gaming issues a variety of licenses. The types of licenses include those for gaming establishments, gaming employees, key employees, operators, gaming devices, and slot machine manufacturers.

The tax revenue from limited gambling in Deadwood consists of an eight percent gaming tax on the adjusted gross proceeds and various fees, including a \$2000 annual per machine fee. The revenue is divided among the Commission on Gaming, the city of Deadwood, the state, Lawrence County, and other local municipalities and school districts. All of the revenue received by the Commission on Gaming, including the gaming tax and all fees, is deposited in the Gaming Commission Fund and then distributed. In addition to the eight percent gaming tax imposed by SDCL 42-7B-28, there is an additional one percent tax imposed by SDCL 42-7B-28.1 on the adjusted gross proceeds which is transferred to the state general fund.

The Gaming Commission uses the Commission Fund to pay the expenses of regulating gambling in Deadwood as well as horse and dog racing. All revenue in the Commission Fund after the cost of administration and the tax revenue dedicated to the state and Lawrence County is distributed to the city of Deadwood. The bulk of the tax and fee revenue from gambling in Deadwood goes to the city of Deadwood.

Deadwood Gaming Revenue Summary

The expenses of the Gaming Commission are paid from the revenue deposited in the Gaming Commission Fund. The Gaming Commission set as a goal that they would spend no more than fifteen percent of the money in the Gaming Commission Fund on administration. The city of Deadwood receives the remainder of the revenue in the Gaming Commission Fund on a quarterly basis. The city must deposit this money in its historic restoration and preservation fund. Beginning in FY 2007, the Gaming Commission has annually granted thirty thousand dollars from the Gaming Commission Fund to the Department of Human Services to fund gaming addiction treatment and counseling programs in the state pursuant to SDCL 42-7B-48.3

The following table shows the revenue from the different fees and taxes imposed in Deadwood.

Fiscal Year	SDCL	2010	2011	2012
Application Fees	42-7B-21	\$111,601	\$86,155	\$105,915
License Fees	42-7B-22	\$99,550	\$107,740	\$128,455
Device Fees	42-7B-23	\$7,468,000	\$6,972,000	\$7,334,000
City Slots	42-7B-44	\$244,551	\$252,182	\$266,818
Gaming Tax	42-7B-28	\$9,005,756	\$8,995,691	\$9,181,798

The following table shows the revenue from the different fees and taxes imposed in Deadwood.

Fiscal Year	SDCL	2010	2011	2012
City of Deadwood	42-7B-48	\$7,283,114	\$7,072,291	\$7,243,716
Lawrence County	42-7B-48	808,472	806,006	805,097
School Districts in County	42-7B-48.1	\$373,767	\$349,484	\$380,369
Municipalities in County	42-7B-48.1	\$373,767	\$349,484	\$380,369
State General Fund	42-7B-48.1	\$2,616,372	\$2,446,390	\$2,662,581
State General Fund	42-7B-28.1	\$826,343	\$1,007,508	\$1,006,371
State Tourism Fund	42-7B-48	\$3,233,887	\$3,224,026	\$3,220,388
Historical Preservation Fund	42-7B-48	\$100,000	\$100,000	\$100,000
DHS Treatment Grant	42-7B-48.3	\$30,000	\$30,000	\$5,645

Indian Gaming

During the same period that limited gambling was being promoted, Congress was completing work on the Indian Gaming Regulatory Act of 1988. This federal legislation authorizes and regulates gambling on Indian reservations.

Federal law allows Indian Tribes the opportunity to compact with a state for casino games authorized by the state in which the reservation is located. Seven of the South Dakota's Tribes have current gaming compacts with the state; one other Tribe is operating under a compact which has expired but is the subject of federal litigation. The Tribal casinos are located in Flandreau, Ft. Thompson, and Lower Brule and near Mobridge, Oelrichs, Pickstown, Sisseton, Watertown, and north of Valentine, Nebraska (but within South Dakota).

The level of gaming allowed by the state determines the level of Indian gaming. If the state were to deauthorize any form of gaming currently allowed, that deauthorization would not affect the level of Indian gaming allowed. The proceeds from Indian gaming go to the tribes that operate the casinos.

End Notes

1. Prior to the amendments to permit gambling, Article III, Section 25, read: "The Legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever."
2. House Bill 10 of the 1933 Special Session. During the 1930s the sale and taxation of alcohol was legalized, the sales and use tax was enacted, the motor fuel tax was enacted, and the short-lived personal and corporate income tax was enacted.
3. SDCL 42-7-71.
4. Gross handle is the industry terminology for the total amount bet.
5. Article III, Section 25 of the S.D. Constitution.
6. *Ibid.*
7. For further information, see Issue Memo 94-28.
8. The members of the Multi-State Lottery Association include Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North

Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, District of Columbia, and U.S. Virgin Islands.

9. SDCL 5-27-1, 5-27-4, 5-27-5, 5-27-6, 42-7A-24.
10. SDCL 42-7B-14. The 1993 Legislature enacted legislation to increase the bet limit to \$100. This was referred to the voters and was defeated in a special election. An initiated measure was filed for the 2000 election to increase the bet limit to \$100 which was approved by the voters on November 7, 2000. During the 2012 Session, the Legislature increased the bet limit to \$1,000.
11. Article III, Section 25 of the S.D. Constitution.
12. SDCL 42-7B-15.
13. Article III, Section 25 of the S.D. Constitution.

Chapter 16 NATURAL RESOURCES

Department of Environment and Natural Resources

Regulation, protection and development of South Dakota's natural resources are the responsibility of the Department of Environment and Natural Resources. The department, which was created in 1979 by combining the Departments of Natural Resource Development and Environmental Protection, provides three primary functions: environmental protection and regulation, administration and regulation of water rights and the use of water, and promotion of water resource development projects, such as irrigation systems and rural and municipal water systems. With the emergence of the environmental movement in the 1970s and 1980s, the department found itself at the center of numerous controversies and political issues. Since the 1980s, low-level radioactive waste disposal, surface mining, solid waste disposal, groundwater protection, water development, and large-scale livestock feeding operations have received a great deal of public attention.

The department, which was reorganized in 1995, consists of two divisions. The Division of Environmental Services deals with environmental protection issues such as air quality, solid waste and recycling, hazardous waste, low-level radioactive waste, water pollution control, mining exploration and permitting, safe drinking water, hazardous materials and petroleum spills, leaking underground storage tanks, water and sewage treatment plants, feedlot regulation, and asbestos control. The Water Rights Program is located within the Division of Environmental Services and deals with appropriation and allocation of water, wells and well drilling regulation, dam safety, groundwater monitoring, high and low water marks, water use data, drainage technical assistance, and surface water measurement. The Division of Financial and Technical Assistance handles water project development and funding and other financial and technical assistance, as well as the department's personnel, fiscal, administrative, and public relations tasks. The division also deals with computer systems and geographic information systems. The Geological Survey Program, which is also located under the Division of Financial and Technical Assistance, is located on the USD campus in Vermillion and provides scientific and technical data and research on geological and hydrological conditions, and deals with mapping, land use characterization, spill and contaminant assessment, and administration of groundwater. The department also serves as staff for the Board of Minerals and Environment, the Board of Water and Natural Resources, the Water Management Board, the Board of Operator Certification, and the State Emergency Response Commission.

Additional information on the Department of Environment and Natural Resources can be found at the department's Internet site at <http://denr.sd.gov> and at the Internet site of the South Dakota Geological Survey at <http://www.sdgs.usd.edu/>.

Water Rights

The Water Rights Program, under the direction of the Chief Engineer, is responsible for managing the appropriation and use of the state's water resources. The Water Management Board oversees development, conservation, and allocation of the waters of the state. The board has statutory authority and rule-making authority in numerous areas, including water rights, water appropriation, well construction standards, well driller/pump installer licensing, safety of

dams, fences crossing navigable streams, ordinary high and low water marks on lakes, and weather modification.

The Water Rights Program also monitors over 1,600 observation wells to track fluctuations in ground water levels and cooperates with the US Geological Survey in maintaining 52 stream gauging stations to monitor stream flows. This ground and surface water data coupled with water use data obtained from the annual irrigation water use questionnaire enables the program to manage water usage in South Dakota. Management of the state's water resources is especially critical for those water sources that are fully appropriated as well as during drought periods.

The Water Rights Program also oversees safety of dams, well driller and well pump installer licensing, well construction/plugging standards, control/plugging of flowing wells, ordinary high and low water marks and outlet elevations on public lakes, flood control permits, chemigation, stream fencing, and weather modification. The Water Rights Program investigates flooding problems along the state's rivers and lakes and serves as the point of contact for Missouri River issues involving operation of the mainstem reservoirs by the US Army Corps Engineers.

Air Quality

The Air Quality Program attempts to maintain air quality levels in South Dakota that protect human health, safety and welfare and that meet the National Ambient Air Quality Standards established through the Federal Clean Air Act. The department achieves these goals by monitoring ambient air quality throughout the state, administering a permitting system for businesses and facilities that emit air pollution, and ensuring compliance with state laws and rules.

To determine air quality, the program conducts ambient air monitoring at potentially high air pollution areas across the state. Once an air quality problem is identified, it is addressed by the rulemaking process, permitting process, or outside of the regulatory process. Many problems are identified from citizen complaints. Air pollution problems from industrial sources can typically be addressed through the facility's permit. The most typical air quality problems and complaints are associated with open burning and fugitive dust.

Open burning is used in South Dakota for several purposes. Open burning is used to eliminate noxious weeds or crop damaging pests/insects, reduce vegetative cover in ditches, improve forest health and reduce the potential for wildfires, conserve landfill space by burning trees, bushes and leaves, and to dispose of household waste because of lack of waste disposal collection systems in rural areas. State rules prohibit the open burning of certain types of materials (tires, railroad ties, and treated wood), but general authority to impose burn bans is given to counties through law.

South Dakota is located in the high plains and is subject to periods of drought and high winds, which are the main ingredients for fugitive dust problems. Fugitive dust is identified as dust from mining activity, gravel roads, construction activity, street sanding operations, and wind erosion from agricultural fields. Fugitive dust has been a problem in Rapid City, leading to the development of a Natural Events Action Plan (NEAP) for Rapid City. The Air Quality Program has developed a State Implementation Plan for the recently passed Regional Haze Rules. These rules are designed to protect visibility in South Dakota's two Class I areas (Wind Cave and Badlands National Parks). A Smoke Management Program will also be developed in

coordination with the Regional Haze rules to address prescribed burning in the Black Hills that impacts visibility in the Class I areas.

The Air Quality program also addresses questions concerning radon and has a Small Business Assistance program to help new businesses comply with air quality regulations. Asbestos certifications and notifications are addressed in the Waste Management Program. Each fall and spring, the program holds Smoke School Certifications (Visual Emission Evaluation Certification), and a class is held with the course in alternate years.

Water Pollution Control and Groundwater Protection

Water pollution and groundwater protection issues have received increasing attention in South Dakota and across the nation. Groundwater protection refers to a variety of topics, including contamination of aquifers through leaking waste disposal sites, percolation of agricultural fertilizers and pesticides through the soil and into groundwater supplies, runoff from feedlot operations, wellhead protection, improper disposal of hazardous substances at landfills, improper disposal of industrial wastes, leaking underground and above-ground storage tanks, and other petroleum spills.

In South Dakota, contamination from agricultural activities is a potential problem for both surface water and groundwater. Also, petroleum spills caused concern after several spills in Sioux Falls. The 1988 Legislature passed two bills addressing petroleum and regulated substance leaks and spills, and the 1989 Centennial Environmental Protection Act included major legislation on groundwater. More recently, large-scale livestock feeding operations have raised water quality concerns and have been the subject of legislative activity and public controversy.

Statutory Overview

South Dakota's basic water pollution control statute, SDCL 34A-2, was enacted in 1973 and allows the Department of Environment and Natural Resources (DENR) to order a stop to pollution of state waters and to order the responsible party to take corrective action. These orders may be backed up with court action. The statute also authorizes the state to adopt water quality standards in accordance with the Federal Water Pollution Control Act. In addition, Chapter 34A-2 addresses wastewater treatment practices and regulates underground and above-ground storage tanks.

Other chapters affecting water quality and groundwater protection include Water Supply and Treatment System Operators (34A-3), Safe Drinking Water (34A-3A), Solid Waste Disposal (34A-6), Petroleum Inspection and Release Compensation (34A-13), Regulated Substance Discharges (34A-12), and Hazardous Waste Management (34A-11). Statutes dealing with agricultural pesticides and fertilizers are found in Title 38 of the Code.

Petroleum Inspection and Release Compensation and Storage Tanks

Chapter 34A-13 establishes the Petroleum Release Compensation Fund to reimburse owners and operators of petroleum facilities for some of the costs of cleaning up petroleum spills or contamination from abandoned underground storage tanks. The fund is maintained through the proceeds of a tank inspection fee of \$20 per thousand gallons of petroleum product sold in the state. The distribution and use of the proceeds from the tank inspection fee have been frequently debated and adjusted by the Legislature. The 2000 Legislature created an

abandoned tank removal program (SDCL 34A-13-49 to 34A-13-54) to provide for the removal of certain abandoned underground storage tanks and cleanup of the site if the owner meets certain conditions.

Groundwater Protection

The 1989 Centennial Environmental Protection Act (HB 1291) directed DENR to undertake groundwater resources programs, including identification of groundwater quality and quantity, identification of strategies to reduce groundwater contamination, and prioritization of the state's groundwater protection efforts. The Centennial Act also directed the department to develop procedures to prevent pollution of public water supply systems and to develop a voluntary wellhead protection program. DENR's Groundwater Quality Program regulates underground storage tanks, above-ground storage tanks, spills assessment and cleanup, federal superfund issues, groundwater discharge permits, underground injection control, animal waste management, wellhead protection, and source water protection.

Large-Scale Livestock Feeding Operations

Large-scale livestock feeding operations have raised concerns since the mid-1990s about water quality, as well as other issues, such as odor control, air quality, and social and economic impacts on South Dakota family farmers. The issue of regulating concentrated animal feeding operations (CAFO's) received much attention in the 1997 and 1998 Legislative Sessions with the 1998 Legislature enacting SB 239 and 240 to deal with liability issues and potential cleanup costs for concentrated animal feeding operations. In early 1997 the Department of Environment and Natural Resources issued a "General Water Pollution Control Permit for Concentrated Swine Feeding Operations" to provide standards for large-scale hog feeding operations. Under the general permit, producers must submit plans for their manure management systems, which must meet DENR design requirements. Federal regulations governing CAFOs were issued in 2003, and South Dakota's rules were revised to conform to the federal regulations. However, the federal regulations are currently in litigation, so South Dakota's state general permit will remain in effect until the federal regulations are resolved.

The department also provides information and technical assistance to producers. The department has developed tools to assist producers in understanding the permitting process, selecting a good location for a new operation, and to answer common questions about the general permit. The department also maintains a list of consultants who have indicated they provide engineering or geotechnical services related to the design of manure management systems. The department is developing a list of nutrient management planners that can assist producers with preparing initial nutrient management plans and annual nutrient management plans. The Department has administrative rules in place dealing with livestock feedlots, which are found in ARSD Chapters 74:52:01, 74:52:02, 74:52:10, and 74:57:01. Additional discussion of large-scale hog feeding issues is found in the Agriculture chapter of this document.

Recent Air and Water Quality Issues

Hyperion is a Dallas-based oil company that is considering plans for building an oil refinery and power plant near Elk Point. Hyperion officials have indicated that an area in Union County is one of several potential locations they are considering and have started submitting applications for environmental permits for that site. The proposal has been controversial, and during the spring

of 2008, numerous hearings and a local referendum were held on the proposed project in which people in the local area supported the proposal. There is also opposition to the construction of an oil refinery in the area, however. The Board of Minerals and Environment granted an air permit for the project 2009, but Hyperion requested adjustments to the permit in 2010. Opponents are concerned about the project's environmental and health impacts, while supporters cite the project's economic development potential. The air permit has been appealed to the South Dakota Supreme Court, and the project's future is still uncertain.

The Trans Canada Pipeline would ship tar sands oil from Canada south through the upper Midwest and through eastern South Dakota. This proposed project also met with local and regional opposition, as well as, local and regional support, and was the subject of controversy during 2007-2008, with legislation proposed to halt or regulate the project. SB 190, to provide for regulatory oversight of oil pipelines was passed. The project was approved by the Public Utilities Commission in the spring of 2008, and preliminary work on the project began in August. Trans Canada began operation of the first phase of the project in June of 2010, transporting oil through the Dakotas and upper Midwest to market hubs in the Midwest.

Expansion of the Big Stone Power Plant near Big Stone city has been a controversial issue in recent years until the cancelation of the proposed project in November 2009. Opponents were concerned about both the use of water and degradation of air quality from the plant, which is a coal-fired power facility. There was also opposition to continued reliance on coal for power production. The issue was complicated by the fact that the facility is located near the Minnesota border and needed to use electrical transmission lines running through western Minnesota and requiring approval from the State of Minnesota. Both water right and air quality permits were needed from the State of South Dakota. There was considerable opposition in Minnesota to the proposed facility. The Water Management Board approved water right permits for the plant, and in 2008, DENR and the Board of Minerals and Environment held hearings on the proposed air quality permit. In January 2009, EPA objected to one of the air quality permits. In April of 2009, DENR and the Board of Minerals and Environment held another round of contested case hearings and the board approved the permit, to which EPA did not object. In June of 2009, Otter Trail Power withdrew its sponsorship of the project, and the project was canceled in November of 2009.

Waste Management

DENR is responsible for the regulation of waste management activities in South Dakota in accordance with federal law and regulation. Waste management includes regulation of solid waste, hazardous waste, toxic waste, low-level radioactive waste, certain other wastes from mining operations, and other sources. Solid waste as defined in SDCL 34A-6-1.3 refers to trash, garbage, and other discarded materials. In South Dakota, solid waste issues have arisen in three major areas: efforts by municipalities and counties to comply with more stringent federal requirements governing landfills and other solid waste facilities; proposals to establish large-scale solid waste disposal facilities that would accept out-of-state solid waste; and efforts to promote recycling and reduction of solid waste.

During the late 1980s and early '90s, fears of a national "garbage crisis" arose as urban areas faced difficulty in finding disposal sites for their huge volume of solid waste. South Dakota and other rural states, because of sparse population, favorable geological conditions, and willingness of some communities to host disposal sites, attracted attention as potential disposal sites for solid waste from urban areas.

Large-Scale Solid Waste Facility Proposals

In 1988, South Dakota Disposal Systems, Inc. (SDDS) of Denver, Colorado, applied for a permit to establish a large-scale disposal facility near Edgemont, known as the Lonetree Facility, to accept primarily out-of-state solid waste that would be shipped by rail. In 1990, the voters approved an initiated measure that required legislative approval of large-scale solid waste facilities such as the Lonetree project, and in 1991 the Legislature passed SB169 approving Lonetree. In 1992, however, SB 169 was referred to the voters, who rejected it by a 70% vote. Construction of the facility was scheduled to begin in the summer of 1990, but the 1990 and 1992 ballot issues, along with numerous court challenges, forced SDDS to halt construction.

The apparent end of the Lonetree project reduced public attention on large-scale solid waste facilities, although there have been other proposals from time to time for large-scale facilities to be located on Indian reservations, for regional facilities to accept medical waste, or for other types of large-scale waste disposal facilities.

South Dakota Landfill Operations

In addition to the problem of large-scale disposal sites, South Dakota communities since the mid-1990s have faced new federal regulations that have significantly changed the way all communities handle solid waste. The new federal regulations prohibited open burning and required that all landfills and dumps cover their waste with soil at the end of each day. The new regulations also included more stringent groundwater monitoring requirements for certain solid waste facilities and numerous other requirements. The expense involved with implementing the new regulations forced nearly 300 small-town dumps in South Dakota to close, which in turn forced larger landfills to expand their capacity to accommodate waste from smaller communities. By 1996, only fifteen solid waste landfills remained open in South Dakota. All are regional solid waste disposal facilities. Most small towns have closed their existing landfills and transport their waste to larger facilities. As of 2010, these fifteen permitted municipal solid waste landfills are the only permitted landfills serving the state (excluding tribal facilities).

Solid Waste Legislation

The 1988 SDDS permit application, together with public concern about national solid waste trends, led to the passage of the 1989 Centennial Environmental Protection Act (HB 1291), which included a major revision of South Dakota's solid waste laws and regulatory powers. The solid waste features of the Centennial Bill, were codified in SDCL 34A-6, and included a requirement that the Board of Minerals and Environment adopt a statewide solid waste management plan; sections addressing liability questions involved with large-scale solid waste facilities; more stringent solid waste permitting requirements; tonnage fees for large-scale facilities; additional groundwater monitoring requirements and financial assurance and post-closure requirements to prevent environmental damage; increased penalties for violation of solid waste laws; creation of the Solid Waste Management Program to provide grants for solid waste planning and management purposes; and authority to promulgate additional solid waste rules.

The Legislature conducted an interim study of solid waste issues in 1989, and during the 1990 Legislative Session, a number of solid waste bills were introduced. In November 1990, the voters approved a solid waste initiated measure (codified as SDCL 34A-6-53 through 34A-6-56) which requires legislative approval for any large-scale solid waste permit or permit renewal application before the facility may be sited, constructed, or operated. Since the mid-1990s, there has been little legislative activity in the area of solid waste.

Recycling Legislation

Concerns about landfill capacity and safety, particularly in the 1980s and 1990s, sparked nationwide interest in recycling and reduction of waste to save resources and reduce dependence on landfills. To date, recycling has had mixed results, with markets for recycled materials sometimes lagging behind the public's ability to collect and provide materials for recycling. Recycling markets have fluctuated significantly and have generated a good deal of investment and activity in some areas, while others have been discouraging.

Major recycling legislation for South Dakota was proposed during the 1990, 1991 and 1992 legislative sessions; and HB 1001 (1992) provided the framework for a comprehensive recycling program. HB 1001 required local governments to prepare solid waste evaluations and plans and to implement a local source reduction program. HB 1001 also expanded an existing state agency recycling program and required extensive purchasing of recycled materials in procuring supplies for state use. In addition, the bill provided for a stronger solid waste public education and information program and set stronger penalties for illegal dumping. These programs are funded through two fees established by the bill: a one dollar per ton solid waste disposal fee and a fee of twenty-five cents per tire on vehicles to be paid at vehicle registration time.

The solid waste and recycling portion of HB 1001 included phased-in bans from landfills of various items during the 1990s, including waste tires, used motor oil, vehicle batteries, yard waste, appliances, office paper and paper products, cardboard, and glass, plastic and steel containers. The 1998 Legislature in HB 1174 continued the landfill bans on yard waste, batteries, motor oil, tires, and appliances, but removed the other bans envisioned by the 1992 Act. Legislation was also passed in 1996 and 1998 dealing with solid waste grants and the management of waste tires.

Another solid waste measure enacted by the 1992 Legislature was SB 124, which defined classes and degrees of criminal activity in the illegal disposal of infectious waste, a category of solid waste. The solid waste system put in effect in the early 1990's remains essentially in place nearly twenty years later.

Low-Level Radioactive Waste Disposal

In 1980, Congress passed the Low-Level Radioactive Waste Policy Act placing the responsibility for the disposal of low-level radioactive waste with the individual states and authorizing the states to operate regional low-level waste disposal sites using negotiated compacts between the states.

Low-level radioactive waste requires less shielding than high-level waste, does not require cooling, and the half-life of the material is measured in days, weeks, or decades, rather than in hundreds or thousands of years. Commercial power reactors, hospitals, research institutions, private industry and the federal government produce low-level waste in the form of contaminated paper towels, plastic gloves, filters, clothing, machinery parts, medical treatment materials, animal carcasses, liquids, and sludges.

After intense debate and controversy, South Dakota initially met the federal requirements by enacting a low-level radioactive waste disposal compact with the state of Arizona during the 1986 Legislative Session. Later, South Dakota and Arizona joined California and North Dakota in the Southwestern Low-Level Radioactive Waste Compact, which is still in effect. The disposal facility is to be located in California.

The framework envisioned by the 1980 federal law has not gone as planned. Opposition to siting new low-level radioactive waste facilities exists nearly everywhere in the nation, and it is extremely difficult for new facilities to complete the contentious siting and licensing process. Development of the California facility that would serve South Dakota has been halted by federal litigation and by the California Legislature. This is the case for proposed facilities in other parts of the country as well. South Dakota's low-level waste has been going to facilities in South Carolina and Utah, but there is much opposition in those states to accepting out-of-state radioactive waste, and the South Carolina facility was closed to out-of-compact states beginning in 2009.

Although the low-level radioactive waste disposal issue has received little public attention in recent years, the issue is not resolved and the search for a long-term solution continues.

Water Development

Water development has a long and sometimes frustrating history in South Dakota. The term "water development" refers to two broad types of activity regarding water resources projects. Many people associate water development with large-scale federal projects, such as the Missouri River dams and reservoirs or proposed irrigation development under the Pick-Sloan Missouri River Basin Program. Water development, however, also refers to smaller-scale local and regional projects, such as water and wastewater systems, rural water systems, lake restoration, flood control and watershed management. DENR, in addition to its environmental protection and water rights functions, is responsible for both levels of water development in South Dakota. Water development has been a frequent subject of legislation in this state.

Water Development Funding

The Water and Environment Fund is the basic mechanism for state funding of water projects (SDCL 46A-1-60). Money enters the fund through a variety of sources such as fees, state online lottery revenues, loan repayments, interest on money in the fund, legislative appropriations, and deposits of federal funds. Expenditures from the fund require legislative approval, which usually takes the form of an annual "omnibus" water development bill that specifies the amounts that may be spent on particular water projects or programs in the upcoming year.

The 1993 Legislature addressed the perennial issue of finding a reliable source of water development funding by enacting HB 1353, which established the Capital Construction Fund and dedicated portions of the fund for water development purposes. Money enters the fund from state lottery revenues and from the Petroleum Release Compensation Tank Inspection fee. The 1993 bill established the first ongoing funding mechanism for water development in South Dakota other than seeking legislative appropriations each year. The sources and uses of money in the Capital Construction Fund have been changed frequently by the Legislature; but since 2003, 71.8% of the monthly revenues have been placed in the Water and Environment Fund (SDCL 5-27-6).

From the Water and Environment Fund, DENR operates a variety of programs for local water and environmental projects. The Board of Water and Natural Resources decides which individual projects will receive funding under these programs and in what amount, although the Legislature specifies the overall amount for each program. Funding programs include the Consolidated Water Facilities Construction Program, the Clean Water State Revolving Fund Program, the Drinking Water State Revolving Fund Program, the Small Community Planning

Grant Program, and grants and loans under the Solid Waste Management Program. Financing for larger projects from the fund is authorized by the Legislature in the omnibus bill on an individual project basis.

The federal government has been a major funding source for large and small-scale water projects, but federal funds have grown scarce in recent years. The state and project sponsors, however, are still seeking federal funding in Congress for several large-scale South Dakota water projects. Two such large-scale projects are the Mni Wconi Rural Water System in western South Dakota and the Lewis and Clark Rural Water System in southeastern South Dakota.

State Water Plan

The State Water Plan consists of two main components: the State Water Resources Management System (SWRMS) and the State Water Facilities Plan. The SWRMS list includes large-scale projects that need congressional authorization and funding; projects need legislative approval to be added to SWRMS. The Facilities Plan includes smaller, local projects that are seeking state funding. The Board of Water and Natural Resources adds projects to the Facilities Plan, with recommendations by the regional Water Development Districts. In most cases, inclusion on the Facilities Plan is a prerequisite for receiving money from the Water and Environment Fund.

Water Development Districts/Special Purpose Water Districts

Special purpose water districts are official local government units that sponsor and coordinate local and regional water development and water management projects. In 1984 a special session of the Legislature abolished the state's conservancy subdistricts and replaced them with water development districts. Current water development districts include East Dakota, James River, Central Plains, South Central, Vermillion Basin, West River and West Dakota. Water development districts have taxing authority and serve as regional entities to coordinate and promote water resource management and development (SDCL 46A-3A through 46A-3E).

Local projects are sponsored by several types of smaller districts. These include irrigation districts (SDCL 46A-4 through 46A-7); water project districts (SDCL 46A-18), which sponsor a variety of local projects; watershed districts (SDCL 46A-14), which operate in conjunction with federal watershed management programs; water user districts (SDCL 46A-9), which are used mainly for rural water systems; sanitary districts (SDCL 34A-5) for sewage treatment systems; and drainage districts (SDCL 46A-10 and 46A-11) to carry out drainage projects on rural lands. These districts vary considerably in taxing and revenue capabilities and formation procedures, but they are all intended to promote local initiative and control in the development and operation of individual water projects.

Pick-Sloan Missouri Basin Program

The history of water development in South Dakota is based on the Pick-Sloan Missouri Basin Program, which grew out of the federal 1944 Food Control Act, and resulted in the construction of four massive Missouri River dams and reservoirs in South Dakota (and two more in North Dakota and Montana) and the loss of over 500,000 acres of land in this state to the reservoirs. The Pick-Sloan Program was intended to provide flood control for urban areas in Missouri, Nebraska and Iowa; irrigation in the upstream states, including nearly one million acres originally slated for South Dakota; commercial navigation below Sioux City; production of low-cost hydroelectric power for both upstream and downstream areas; and water for wildlife, recreational, municipal, domestic and industrial uses.

In the six decades following passage of the 1944 Act, the results have been much different than projected. Flood control downstream has been effective in most years, preventing billions of dollars in flood damages. The navigation channel was constructed and is in operation, but commercial tonnage has fallen short of expectations. Production of hydropower has exceeded expectations, but South Dakota receives only a small percentage of Missouri River hydropower, even though four of the six dams are located here. The most disappointing aspect of Pick-Sloan, however, has been the failure to develop any significant amount of Missouri River irrigation in South Dakota, even though South Dakota lands were lost to provide benefits to the downstream states.

The 1988 Legislature endorsed efforts to obtain appropriate Pick-Sloan benefits for South Dakota and created the Missouri River Cost Recovery Authority to investigate possible alternative benefits for the state from the Pick-Sloan Program (SDCL 46A-15). Federal budget deficits and other problems, however, present substantial obstacles to an equitable settlement; and Pick-Sloan remains an essentially unfulfilled promise in South Dakota. South Dakota since the late 1980s has continued to pursue an equitable resolution to problems related to Pick-Sloan and the use of the Missouri River, although the issues are not settled and continue to evolve. Disputes between the upstream and downstream states continue as the conflicting interests of the navigation industry, environmental groups, and other economic activities up and down the river attempt to influence how the river is managed and used.

Trends in Water Development

Water development, in South Dakota and in the nation as a whole, has undergone a substantial shift in emphasis in recent decades. Federal budget problems, environmental opposition to large water projects, increasing urbanization in this country and problems in the agricultural economy have combined to curtail large-scale, federal water development in the West. Since the 1980s, water development in South Dakota shifted increasingly to smaller projects initiated and funded at the local and state levels. The emphasis has been on local infrastructure development and local cost sharing, and these trends are likely to continue.

Mining in South Dakota

The first significant mineral exploration in South Dakota began well over a century ago resulting in the Black Hills gold rush of 1876. Since then, South Dakota has been an important source of nonfuel mineral production, particularly gold. Table 1 compares the state's gold and silver activity in 1985, 2000, and 2008.

Table 1 – GOLD AND SILVER PRODUCTION IN SOUTH DAKOTA

Mineral	1985		2000		2008	
	Quantity	Value (000s)	Quantity	Value (000s)	Quantity	Value (000s)
Gold (kilograms)	11,076	\$113,119	8,243	\$73,900	1,720	\$52,897
Silver (metric tons)	2.0	388	2.5	395	6.4	\$1,789
TOTAL	NA	\$113,507	NA	\$74,295	NA	\$54,686

Source: "The Mineral Industry of South Dakota," Bureau of Mines, U.S. Department of Interior, 1985; Mineral Industry Surveys U.S. Geological Survey, 2000; U. S. Geological Survey Minerals Yearbook-2004; SD DENR, "2008 Mineral Summary".

In gold production South Dakota ranked fifth in the nation in 2000 and ninth in 2004, but with the closure of Homestake Mine, gold production in South Dakota has decreased. Oil production, which began in South Dakota in the 1950s, continues in Harding and Fall River counties, and recent increases in oil prices, as well as intensive oil production in North Dakota, have led to renewed interest in oil production in western South Dakota. In 2010, South Dakota produced more than 1.6 million barrels of oil. Fall River County was the site of uranium mining from 1952 to the early 1970s, with renewed interest in recent years as noted below. Unlike Montana and North Dakota, South Dakota has had no significant coal mining activity recently.

South Dakota's gold production and South Dakota's mining industry have changed significantly as Homestake Mining Company discontinued its underground operations in December of 2001 after 125 years. As gold production continued to decline, Portland cement overtook gold as South Dakota's leading nonfuel mineral by value.

There was heightened interest during the 1980s and 1990s in new methods for producing gold; and in the 1980s, mining caused major controversy in South Dakota. Extensive mining rules were drafted in 1987, and initiatives dealing with surface mining were submitted to the voters in the 1988, 1990, and 1992 elections. The Legislature also considered major mining legislation in nearly every legislative session between 1987 and 1993. There has been less legislative activity in recent years dealing with mining, although mining controversy continues to occur from time to time.

With recent increases in uranium prices, there is a growing interest from companies wanting to conduct uranium in situ leach mining in South Dakota. To prepare for the possibility of uranium in situ leach mining operations moving into South Dakota, the 2006 Legislature passed a bill authorizing the Board of Minerals and Environment to promulgate rules for the construction, operation, monitoring, and closure of uranium and other in situ leach mines. The Board of Minerals and Environment promulgated rules for construction, operation, monitoring, and closure of uranium and other in situ mines in 2007. The board also approved a uranium exploration permit for Powertech (USA) Inc. in January 2007 following a contested case hearing. This was the first uranium exploration application issued in more than 25 years. By the end of 2007, Powertech had drilled approximately 70 uranium exploration holes under its exploration permit. Through 2009, Powertech had submitted several permit applications related to uranium mining and planned to submit a large-scale mine permit application in 2012. Powertech also submitted a federal licensing application in 2009 and expects a final EIS for the project to be completed in 2013.

Statutory Overview

Mineral, oil, and gas exploration in South Dakota is governed by SDCL 45-6C. Following exploration, mining operations are governed by SDCL 45-6B (Mined Land Reclamation). Oil and gas development activities are regulated by SDCL 45-9, and sand, gravel, and construction aggregate mining must be licensed in accordance with the provisions of SDCL 45-6. Chapter 45-5A addresses compensation to surface owners for damages from mining and from oil and gas development. Regulation of mining activity in South Dakota is the responsibility of the South Dakota Board of Minerals and Environment and the Department of Environment and Natural Resources (DENR). In addition to its jurisdiction over mineral exploration and development, the Board regulates hazardous waste management, solid waste disposal, and air pollution control.

Mining Operations and Reclamation

South Dakota's Mined Land Reclamation Act (SDCL 45-6B) governs mining operations for minerals other than oil, gas, sand, gravel, or rock used in construction. Chapter 45-6B provides for the issuance of a life-of-the-mine permit to authorize mining on a specified parcel of land. No mining permit may be granted until the applicant files a reclamation plan and a surety determined by the Board as sufficient to guarantee the costs of reclamation of affected lands. This surety is intended to ensure that reclamation is performed after mining is completed. The reclamation plan describes the types of reclamation proposed for reclaiming mined land. A reclamation plan must also include soil and vegetative surveys of the affected land, a preliminary wildlife survey, and baseline water quality data. The Legislature has determined that no permit may be granted for mining on unsuitable land as defined in SDCL 45-6B-33.

Surface Mining

Surface Mining and Heap Leach Technology

Surface mining involves excavation of land on the surface, rather than underground mining, and has raised numerous environmental issues. During the 1980s, surface mining projects and proposals for mining in the Black Hills stirred much controversy and legislative interest.

Heap leach mining, which involves spraying a cyanide solution over heaps of crushed ore that have been mined from an open pit, enabled several new surface mining operations to be established in the 1980s and 1990s. Open pit mining and cyanide heap leaching are much cheaper than conventional milling operations and can be used for both freshly mined ore and the reprocessing of old tailings left by earlier mining operations. Heap leach processing in South Dakota began in 1982 when Wharf Resources, Inc. began heap leaching at its Annie Creek Mine in Lawrence County. Other surface mining operations were also established in the Black Hills, as summarized in Table 2, although many of these operations have been discontinued or scaled back.

The prospect of extensive heap leaching in the Black Hills caused environmental concerns. Some persons feared that accidental releases and system leaks would lead to cyanide or heavy metal contamination of ground and surface waters and that the potential surface disturbance caused by open pit/heap leach operations could harm wildlife, tourism, recreation, and other beneficial uses of the affected lands. Others maintained that further mining activity is important to the economic health of the Black Hills and that under existing statutory controls, environmental dangers are minimized and are outweighed by the benefits of increased mining activity.

Surface Mining Issues and Legislation

Surface mining generated intense public interest and controversy during the late 1980s and early 1990s. Two mining initiatives were on the statewide ballot for 1988. One would have increased the tax on metallic minerals in South Dakota. The other would have required the restoration of surface mining sites to their approximate natural contours. These two initiatives generated considerable debate in the fall of 1988 but were both defeated by the voters.

A 1990 initiated measure, which would have limited the number of affected acres from large-scale gold or silver mining in the Black Hills, was also defeated. A 1992 initiated measure, which was passed by the voters, limited the expansion of individual mining operations to specified numbers of acres, based on reclamation performed.

Table 2 -- LARGE-SCALE SURFACE MINING IN THE BLACK HILLS, 2011

OPERATOR	Permitted Affected Acres	Surface Mining Disturbed Acres	Tonnage Mined	Gold Produced Ounces	Silver Produced Ounces
Brohm	564	202	0	0	0
Homestake (surface)	175	108	0	0	0
Bald Mountain	122	0	0	0	0
LAC Minerals (Richmond Hill)	439	202	0	0	0
Wharf	1,128	984	3,383,000	67,147	192,941
TOTAL (surface)	2,428	1,496	3,383,000	67,147	192,941

Source: "Summary of the Mining Industry in South Dakota," Department of Environment and Natural Resources, 2012.

Mining was a primary component of the 1989 Centennial Environmental Protection Act (HB 1291). The Act required that a "Cumulative Environmental Evaluation" (CEE) be conducted if the amount of permitted land to be affected by large-scale mining in the Black Hills reached 2,553 acres. Another 1989 bill clarified procedures for determining whether lands are "special, exceptional, critical or unique" and thus unsuitable for mining. In 1992, HB 1001 approved the CEE recommendations as state policy; adopted additional requirements for postclosure, critical lands and resources, and operator reports; and established a 6,000 acre limit on the number of permitted affected acres ascribable to large-scale gold or silver surface mining in the Black Hills.

After the controversy and legislative activity during the late '80s and early '90s, mining issues have received less public attention in recent years, although mining issues continue to arise from time to time. A major concern in 1998 involved the ongoing financial and environmental difficulties of Dakota/Brohm Mining Corporation, a surface mining operation in the Black Hills. The U.S. Forest Service, after an appeal by environmental groups, withdrew its approval of Brohm's Anchor Hill project citing deficiencies in the project's Environmental Impact Statement. After more than a year of legal wrangling, operation and maintenance of the site was transferred to the federal EPA and Bureau of Reclamation. The site was listed as a Superfund site making it eligible for federal funding of cleanup operations.

Other incidents involved releases from Homestake facilities in 1997 and 1998 and acid drainage problems at Richmond Hill mine in the 1990s. These problems have been addressed, and reclamation efforts continue at several surface mining locations.

Gold production has decreased in recent years, but the value has increased due to higher gold prices. Wharf Resources was the only company to report gold production in South Dakota in 2011, with 67,147 ounces produced, a slight decrease from the 73,325 ounces reported in 2010. In November of 2011, the Board of Minerals and Environment approved a proposed expansion of Wharf Resources' operations, which will extend the total life of the mine from 2012 to 2020.

EPA continued acid water treatment at the Gilt Edge Brohm Superfund Site in 2011. A total of 125.4 million gallons were treated and discharged in 2011, and water treatment is continuing.

EPA and the state continue to prepare plans to reclaim the rest of the site, including the mine pits and heap leach pad. EPA also completed repair on storm water diversion ditches to prevent storm water from creating additional acid drainage.

Reclamation activities at the Richmond Hill Mine, an open pit heap leach gold mine that developed an acid mine drainage problem during operations in the early 1990's, continue. Most of the reclamation was completed by the mine operator, LAC Minerals (USA), LLC, in the mid-1990's. The pit impoundment, backfilled with acid-generating rock and covered with a low permeability capping system, continues to perform as designed. Monitoring data shows the capping systems are effective in reducing water infiltration into the spent ore. Ground and surface water quality around the mine site is closely monitored, and monitoring continues to show stable or improving water quality in the reclaimed areas.

The mining industry in South Dakota has been significantly altered by Homestake Mining Company's decision to cease mining operations in December, 2001. The company is providing for reclamation as appropriate. Reasons for the shut down of Homestake were cited as low gold prices, high production costs, and decreasing underground ore grades. Homestake was founded in 1876.

Homestake Underground Lab

In 2007, the National Science Foundation selected the Homestake underground mine as the site for a deep underground science and engineering laboratory. The Homestake mine was chosen from four finalists in Colorado, Washington, Minnesota, as well as Homestake. Crews reentered the mine in July of 2007 to begin refurbishing the mine infrastructure and installing the equipment needed to pump out water that has been filling the mine since it was closed. Several milestones were reached in 2009, including a formal dedication of the Sanford Underground Laboratory and the development of an interim lab at the 4,850 level of the mine. In 2012, the laboratory's Davis Campus was opened nearly one mile underground.

Chapter 17

STATE-TRIBAL RELATIONS

Introduction

South Dakota's Native American people constitute one of the most important and enriching components of our state's citizenry. Unfortunately, because of the remote areas in which South Dakota's reservations are located, too few non-Indian-South Dakotans have much opportunity to interact with Indians, learn about their culture and way of life, and visit the areas where they reside. This chapter is designed to provide answers to some of the most frequently asked questions that concern legislators and other South Dakotans. Although the responses are brief and hopefully objective, some of these questions involve issues about which there is considerable disagreement. However, the material should serve as a useful introduction to a complicated and engrossing topic.

How Significant are Indian People in the Population of South Dakota?

At present (2012) about 72,000 South Dakotans are Native Americans. That, as the following table indicates, makes South Dakota the third most populous American Indian state in the nation:

Estimated American Indian Population as a Percentage of Total Population--2010

1.	Alaska	14.8%	6.	North Dakota	5.4%
2.	New Mexico	9.4%	7.	Arizona	4.6%
3.	South Dakota	8.8%	8.	Wyoming	2.4%
4.	Oklahoma	8.6%	9.	Washington	1.5%
5.	Montana	6.3%	10.	Idaho	1.4%

Source: U.S. Bureau of Census

Since the national average is 1.0 percent, South Dakota is ninefold more Indians than the nation as a whole. Moreover, the state's Indian communities are not only growing faster than its white population, but South Dakota's Indian population is the second fastest growing of the top ten Indian states. In fact, by 2025, the Native American population in South Dakota is projected at 10.3% which will nearly equal Alaska's projected 10.7% and New Mexico's projected 10.5%.

Legally Speaking, Who is an Indian?

Of course anyone who has descended from any of the indigenous peoples of the western hemisphere may be considered an Indian or Native American. However, most of the significant legal differences between Indians and non-Indians arise from tribal membership or tribal membership coupled with residency on a reservation. Basically, the tribe determines who constitutes its membership for all tribal and many legal purposes. Generally, descent from a specific Indian race is the primary criteria. Some tribes require that a member have a certain percentage of Indian ancestry, possibly an eighth or a sixteenth. However, most tribes will enroll the child of any tribal member regardless of the race of the second parent. A few tribes

will grant tribal membership to non-Indians who marry a tribal member or who are adopted by a tribal member. Commonly, an Indian of a different ethnic background who moves to another reservation will be accepted for membership in that tribe.

Who are the Indian People of South Dakota?

At the time that American explorers reached the High Plains in the early nineteenth century, the heart of the Missouri River Basin was dominated by a powerful confederacy of indigenous peoples who referred to themselves as Dakota, Nakota, and Lakota. These people spoke similar dialects of what linguists call the Siouan language group, and they were closely related to each other both culturally and politically as well as to their allies, the Assiniboine and Hidatsa to their north. The Dakota were centered on the Minnesota River and also controlled the area around Big Stone Lake and the Big Sioux River. The Nakota, or Yankton, lived in the James River Valley and the Coteau du Missouri. The more numerous Lakota dominated all of what is now western South Dakota, southwestern North Dakota, eastern Wyoming, and northwestern Nebraska. They possessed an advanced nomadic culture utilizing the horse to pursue the bison which served as their commissary and to raid their traditional enemies, the Pawnee along the Platte, the Crow on the Yellowstone, and the Ojibwas or Chippewa of the eastern woodlands.

Ironically, the American settlers referred to them as Sioux, which means snakes, a name given them by their enemies, the Ojibwas. Although many Dakota-Nakota-Lakota people commonly accept the designation of Sioux, others consider Sioux a term of abuse and prefer a name from their own language. Sometimes the Americans referred to the entire confederacy as Dakota because the Dakota band in Minnesota was the first to come into contact with the white settlers. As a result, the name Dakota came to be associated more with the territory inhabited by the Nakota and Lakota than the area belonging to the Dakota.

Today, most of the Indian people of South Dakota, although commonly called Sioux, would think of themselves as Lakota. The five large reservations of western South Dakota are the home of Lakota tribes. The Yankton Reservation is Nakota, Sisseton-Wahpeton and Flandreau are Dakota, and Crow Creek is mixed. There are also smaller reservations in Montana, North Dakota, Minnesota, and Nebraska that are home to Dakota, Nakota, and Lakota people.

What is the Significance of Indian Tribes?

The federal government currently recognizes more than five hundred Indian tribes. Tribes enjoy broad powers of self-government and generally provide the types of governmental services to their members that local units of government provide to other state citizens. Because tribal resources are often limited, tribal governments usually receive federal funding for many of their programs; and the federal government, through the Bureau of Indian Affairs, may take an active role in overseeing the administration of any federally-funded programs.

Is There a Difference Between a Tribe and a Reservation?

Many tribes occupy a specific reservation and this is the case in South Dakota where nine tribes and nine reservations exist, including Standing Rock, which is shared with North Dakota:

1. Cheyenne River Sioux Tribe, Eagle Butte
2. Crow Creek Sioux Tribe, Fort Thompson
3. Flandreau Santee Sioux Tribe, Flandreau
4. Lower Brule Sioux Tribe, Lower Brule

5. Oglala Sioux Tribe, Pine Ridge
6. Rosebud Sioux Tribe, Rosebud
7. Sisseton-Wahpeton Sioux Tribe, Agency Village
8. Standing Rock Sioux Tribe, Fort Yates, ND
9. Yankton Sioux Tribe, Marty

Nationally, however, about two hundred tribes do not have reservations. This is frequently the case in the East and in Oklahoma. In a few instances, two tribes may share a reservation, as do the Arapaho and Shoshone in the Wind River Reservation in Wyoming.

However, nationally, about half of all Indian people do not reside on a reservation. In South Dakota, Rapid City has a large Lakota community of about 7,000, and Pierre, Sioux Falls, and Aberdeen are also important urban centers. Many who live off the reservations are tribal members; many are not. Most who live on reservations are tribal members; a few are not.

How are the Tribes Governed?

While on the reservation, tribal members of each tribe are subject to the tribal government. Although the exact form of the tribal government is determined by the tribe and can vary considerably from reservation to reservation, the most common form involves an executive, usually designated as the tribal chairman, and a tribal council which exercises legislative authority. The elections are generally nonpartisan and seats on the tribal council are often strongly contested. Terms of office vary, and the elections are often not held on the same dates as national and state elections. Lack of party structure can contribute to the volatility of reservation politics. Most reservations also provide for a judicial function embodied in a tribal court.

What does Tribal Sovereignty Mean?

Tribal sovereignty is the most complex and important issue in state-tribal relations. It has been and continues to be heavily litigated. Originally, the nations colonizing America recognized the Indian nations as inherently sovereign and despite broad cultural differences concluded many treaties with the tribes. Under Article VI of the U.S. Constitution, these treaties along with the Constitution itself and the federal statutes constitute the supreme law of the land. Moreover, Congress, under Article I, section 8, of the Constitution, reserves to itself the sole right to regulate relations with Indian tribes. To the extent that the federal government has authority over some aspect of tribal governance, by treaty or otherwise, such authority may be exercised or delegated. States generally lack any authority over tribal members on reservations unless there has been a delegation of federal authority or the state and the tribe have entered into a valid state-tribal compact. Congress has traditionally been reluctant to delegate any authority over the tribes to the states although there are important exceptions such as Public Law 280 (1953) which devolved limited civil and criminal jurisdiction over Indians to certain states. Until recently, most tribes were also reluctant to enter into compacts with the states; but, at present, more and more tribes are doing so, especially in the areas of taxation, gaming, and law enforcement. All other powers are retained by the tribe and constitute its tribal sovereignty.

Why is Criminal Jurisdiction Such a Persistent Issue?

Generally speaking, the tribes exercise primary jurisdiction over tribal members who commit misdemeanors on the reservation. The federal government exercises primary jurisdiction over tribal members who commit felonies on the reservation, and the state exercises primary

jurisdiction over non-Indians who commit crimes on the reservation. That said, a myriad of exceptions ensue. The race of the perpetrator or victim may play a role. The reservation may contract for law enforcement services with local governments or there may be cross-deputation of state, local, and tribal peace officers. If the criminal violation involves a violation of the victim's civil rights, the Federal Bureau of Investigation may assume jurisdiction, and if the reservation is open (i.e., has no external boundaries), an important factor may be whether the crime occurred on trust land. Criminal jurisdiction is also seen as an important aspect of tribal sovereignty and can therefore assume political as well as criminal and judicial implications.

Do Indians Pay Taxes?

Indians who live and work off the reservation are subject to most of the same tax liability as other American citizens. Although there are special circumstances, it may be generally stated that Indians do not pay federal or state income taxes from wages earned on a reservation or from income derived from tribal or other trust lands, that they do not pay state sales taxes if the exchange occurs on the reservation, and that they do not pay property taxes on tribal or other trust land. Profits from tribal casinos are not taxable. The tribes may levy tribal taxes on tribal members. This is in essence what happens when the state and the tribe enter into a compact to collect and distribute sales taxes on the reservation. Although the merchant collects a uniform sales tax from all customers, Indian and non-Indian, the compact specifies what percentage of the tax revenue is to be considered tribal sales tax levied on Indians and what percentage is to be considered state sales tax levied on non-Indians. Tribes may impose taxes on non-Indians engaged in business on the reservation. The problem of double taxation of non-Indians living or working on the reservations is one of the areas that produce many disputes and much litigation.

What is the Role of the Bureau of Indian Affairs?

Originally the Indian tribes were under the supervision of the War Department, and the secretary appointed Indian agents to represent the federal government in its relations with individual tribes. The Bureau of Indian Affairs (BIA) evolved as the primary federal agency responsible for federal-tribal relations after the authority was moved to the Department of the Interior at the end of the Indian wars. Today, the BIA continues to supervise federal programs affecting Native Americans both on and off the reservations. Employees of the BIA are often Indian themselves and bring considerable personal experience to their positions. Although the BIA is represented on most reservations by a superintendent, the superintendent serves primarily as a resource or contact person for the tribe and does not exercise the type of authority associated with the nineteenth-century Indian agent. The regional office of the BIA is located in Aberdeen, South Dakota, and is responsible for reservations in South Dakota and several other states.

Why do so Many Non-Indians Live on Reservations?

There is no prohibition against non-Indians living on reservations. A few reside there to operate commercial businesses such as stores and motels. Others are employed by the tribes or the Bureau of Indian Affairs as teachers, tribal judges, lawyers, technicians, and social workers. But many others are there because of the Dawes Allotment Act enacted by Congress in 1887. Under the provisions of the Dawes Act, many reservations were allotted, i.e., individual parcels of tribal lands were deeded over to individual tribal members in the expectation that this would encourage those individuals to engage in farming and ranching. Any tribal lands that remained after allotment were opened to homesteading or purchase. Many non-Indians then acquired farms and ranches on, or partially on, reservations and have continued to operate these enterprises. Others lease grazing land from the tribes. Since these properties are subject to

some tribal regulation and since the non-Indian owners typically cannot vote in tribal elections, friction sometimes develops between non-Indian residents and the tribes.

Indians and Gaming and the Impetus for Indian Casinos

Historically, many tribes have a long tradition of charitable bingo, and such activities have played an important social role in reservation life. However, with the nationwide expansion of casinos and lotteries in the 1970s and 1980s, Congress decided to address the question of professional gambling on the reservations by passing the Indian Gaming Regulatory Act (IGRA) in 1988. In its simplest terms, the IGRA provides that, if a state permits any form of gaming within that state, whether statewide or in specific communities, the state must also allow Indian tribes to operate the same types of games. The terms of the agreement are negotiable, and the state may permit the tribes to engage in forms of gaming that are not permitted off-reservation. Many states, including California, Connecticut, Minnesota, and Wisconsin, have granted liberal compacts to their tribes viewing Indian gaming as an important opportunity for economic development. However, all states except Utah currently authorize some form of gaming, and almost all tribes have an opportunity to engage in the gaming business.

The primary impetus for Indian gaming in South Dakota began in 1988 with the approval of a constitutional amendment providing for slot machines, blackjack, and poker in Deadwood. As provided by the Indian Gaming Regulatory Act, Governor George S. Mickelson entered into negotiations with the tribes and quickly concluded compacts with several tribes in eastern South Dakota. Similar agreements were offered to all the tribes, but protracted negotiations with some of the West River tribes delayed their entry into the gaming business. Currently, all nine tribes have established casinos on their reservations. The results have varied widely; but, generally speaking, the East River tribes, which have been operating longer and have better access to population centers and the interstate highway system, have been more profitable than the West River tribal casinos. The casinos are regulated by the federal government, and the state has no regulatory role to play unless a role is negotiated in the gaming compact.

The Role of the State-Tribal Relations Committee of the SD Legislature

The State-Tribal Relations Committee was created by legislative enactment in 1993 to serve as a forum for the discussion of issues of mutual concern to the state and the tribes and to foster state-tribal cooperation. It grew out of a sense of frustration on the part of both Indian and non-Indian South Dakotans over the failure of the federal government to address many of the most pressing problems of the reservation. Composed of five members of the House appointed by the Speaker and five members of the Senate appointed by the President Pro Tem, the committee is staffed by the Legislative Research Council and meets during the legislative interim to study areas of concern such as jurisdiction, taxation, gaming, economic development, and community relations. The committee has drafted little legislation but serves as the principal legislative institution for developing and expressing an awareness of state-tribal concerns.

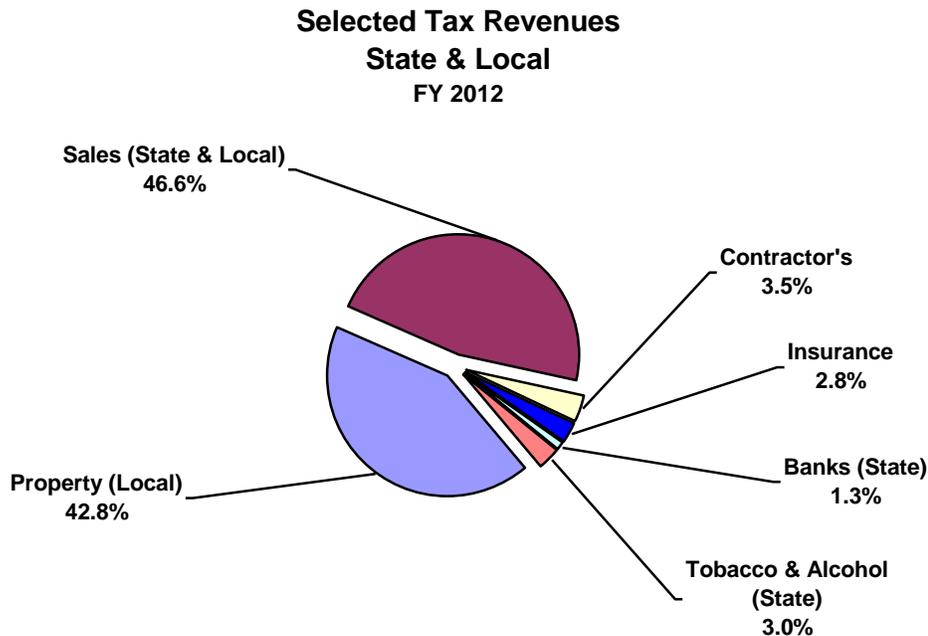
Chapter 18 TAXATION

Introduction

The South Dakota tax system is comprised of a mix of many of the same types of taxes and fees found in other states except for the presence of the contractors' excise tax and the absence of any personal or corporate income taxes, except the tax on banks and financial corporations. Although there are many nuances and exceptions in the South Dakota tax system, South Dakota's tax system is probably no more or less complicated than the tax system found in other states. Like many other states, the burden and makeup of the tax system is often discussed and debated.

This chapter highlights the taxes imposed by the state. South Dakota code citations are provided if further information on a particular tax is required. It is difficult to list each exemption or distinction in the South Dakota tax system without repeating a good portion of Title 10. Essentially each tax is imposed in one or two sections and the balance of the chapter or chapters is for the administration of the tax and its exemptions.

The state and local tax revenue base is primarily the sales and use tax and property tax. A wide variety of taxes and fees are used to provide the balance of the revenue. In addition to the property and sales tax, the state taxes banks, contractors, alcohol, cigarettes and motor fuel, to name only a few. The following chart shows some of the major taxes that comprise the state and local government revenue. This chart illustrates the relationship between the taxes and the differences in revenues generated by each.



The Department of Revenue collects over 30 different state taxes which could be subdivided into four categories:

- Sales, use, and contractors’ excise taxes;
- Motor fuel taxes;
- Motor vehicle taxes; and
- Special taxes.

These taxes are distributed to the states general fund, local units of government, property tax reduction fund, tourism promotion fund, state highway fund, and other special funds. The total amount of taxes collected by the Department of Revenue annually exceeds a billion dollars since FY 2001.

Property Tax

Real property, for the purposes of ad valorem taxation, includes the land and any structures which are permanently affixed to the land. Real property does not include items which pertain to the use of such structures. Property taxes are levied on all real property and in certain instances property taxes are levied on personal property. Property taxes are the primary source of funding for many local governments; however, most municipalities receive more revenue from sales and use taxes and fees from the operation of utilities.

Application	All real property, except property owned and used by certain tax exempt entities
Rate	Variable by location
Exempt Entities	Government, religious entities, public charities, benevolent organizations, nonprofit health care facilities, educational institutions
Source	SDCL chapters 10-4 to 10-38, inclusive, except those chapters that levy a gross receipts tax in lieu of property taxes and SDCL chapter 10-12A concerning tax collection agreements with Indian Tribes

Local governments administer the property tax system with assistance and oversight from the Department of Revenue. The county is responsible for assessment and collection of property taxes on behalf of itself and the other local governments. However, like many issues, there are exceptions. The Department of Revenue does determine the assessed value of centrally assessed property, including: air line, electrical, railroad, pipeline, and certain telecommunication companies.

Statute requires all real property to be assessed at eighty-five percent of its market value. Agricultural land is assessed based on its productivity value. The Department of Revenue provides each county with a factor to adjust its assessment to eighty-five percent of its market value to establish the taxable value of all real property. This procedure was implemented to establish a more equitable means to distribute state-aid-to-education and more fairly distribute the tax burden for taxing districts that cover more than one county.

Below are two tables outlining the total property taxes that were levied on each classification of property and taxes levied by each type of local unit of government.

Total Property Taxes		
	Payable 2012	Share
Agricultural Property	252,715,223	24.50%
Owner-Occupied Property	414,066,249	40.14%
Other Property	321,656,276	31.18%
Utilities	24,275,738	2.35%
Special Assessments	18,819,754	1.83%
Total	1,003,160,542	100%

Taxes Levied by Local Units of Government – 2012		
	Amount Taxed	Percent of Total
County & Special Purpose Districts	268,440,562	26.76%
Municipalities	133,749,586	13.33%
Schools	560,022,922	55.83%
Townships	16,462,026	1.64%
Special Assessments	24,485,447	2.44%
Total	1,003,160,542	100.0%

There are two means of limiting local tax requests. The first is that each political subdivision has a maximum levy that may be assessed for special and general purposes which is set in statute. In 1995, the Legislature enacted a second means through property tax budget limitations. This limitation requires that the amount of money from property taxes requested from one year to the next may not inflate any faster than the rate of inflation or three percent, whichever, is less. Since its inception, the index factor has ranged from zero to 3%. Local governments are also allowed to receive the additional property tax dollars resulting from growth as part of their property tax request.

The 1995 Property Tax Reduction Program addressed the local property tax burden and state-aid-to-education. It also limited budget growth specifically funded by property taxes for all political subdivisions, except under certain circumstances.

The property tax relief program has centered on the education formula and property tax budget controls. The program provides the greatest relief to farmers, ranchers, and homeowners. Homeowners must, however, apply to have their homes classified as owner-occupied single-family dwellings in order to receive property tax relief.

About 20 percent of the funds used for the property tax reduction program were previously appropriated for personal property replacement dollars. Counties were permitted through the legislation to increase local property taxes to compensate for 50 percent of this lost revenue, reducing the actual property tax relief benefit. County property tax revenue were also frozen or limited at the previous year's tax level, whether it was reflective of its usual budget request or higher or lower than normal.

Taxpayers have realized long-term tax benefits from the controls on property tax growth. Property taxes may increase at the rate of inflation not to exceed three percent a year as defined in SDCL 10-13-38. The local governing board has the option of exceeding the property tax reduction limits, if supported by a two-thirds vote of the governing body. A petition signed by five percent of the registered voters within twenty days of the publication of the decision may refer the board's decision.

A taxing district may increase tax revenue above the budget limitations if there is a corresponding increase in property values resulting from improvements or changes in use of real property, annexation, minor boundary changes, to support the financing cost for new facilities that are subject to a referendum, or to pay a judgment. Otherwise, there is a limitation in the total property tax revenue that can be received by a governing body. There is no clause, however, preventing property values from increasing or decreasing from market pressures, or property values from being adjusted if the property was under or over assessed. This may require property taxes to increase on a specific piece of property but also requires a corresponding decrease in other property taxes on other pieces of property within that political subdivision.

The primary focus of the property tax reduction program is to alleviate the area where the greatest property tax burden lies, in the school districts. The program places ceilings on the school district property tax levies for general fund purposes, thereby providing property tax relief and certain controls.

Uniform tax rates for the general fund levy of school districts are applied to all property classifications as listed in the following table. School districts may levy additional property taxes for special education, bond redemption, capital outlays, and retirement over and above the general fund levy cap limits. The general fund levies for FY2012 and FY2013 for nonagricultural and owner-occupied property show no change in one year and an increased levy in the following year. This occurred when state funding for schools was decreased to address state budget shortages and certain school funding was shifted to property tax payers. Also, the market and assessed valuation was relatively flat for nonagricultural and owner-occupied property during this time frame.

General Fund Levies for School Districts

Class of Property	2008	2009	2010	2011	2012	2013
Nonagricultural	\$9.11	\$8.78	\$8.656	\$8.491	\$8.491	\$8.628
Owner-Occupied	\$4.26	\$4.10	\$4.042	\$3.965	\$3.965	\$4.029
Nonagricultural Acreage	\$4.03	\$3.61	\$3.573	N/A	N/A	N/A
Agricultural	\$3.03	\$2.61	\$2.573	\$2.554	\$2.322	\$2.332

There are also three programs that provide property tax relief for elderly and disabled persons and a program for disabled veterans. One program allows assessments to be frozen if the homeowner is income qualified, has owned a home for at least three years, been a resident for at least five years, and the home is assessed at less than \$150,000 as adjusted by the index factor (SDCL chapter 10-6A). Another program allows municipalities to reduce taxes for elderly and disabled persons, however, this program is not being offered by any municipalities at this time (SDCL chapter 10-6B). Property tax refunds are also available if the homeowner is income qualified, has owned a home for at least three years, and has been a resident for at least five years (SDCL chapter 10-18A). A partial property tax exemption is available for dwellings owned by certain disabled veterans or surviving spouses (SDCL chapter 10-4).

During the late 1990's, the Legislature enacted certain rules that required the directors of equalization to throw out certain sales during the property assessment process based on the purchase price of the property in comparison to its current assessed value and, if classified as agricultural land, its agricultural income value (NA-Z property classification). These rules slowed the growth in assessment values, especially for certain counties, neighborhoods, and property classifications. This caused a disparity in property valuations from one county to the next which impacts the state-aid-to-education formula. During the 2008 Legislative Session, the Legislature enacted legislation phasing out these rules. The Legislature also enacted legislation that changed the procedure for assessing agricultural land to a methodology that is used by many other states which is based on its productivity value.

Currently, the directors of equalization are required to assess all real property so that the median level of assessment represents at least eighty-five percent of the market value as determined by the Department of Revenue. The 2008 Legislature passed legislation requiring agricultural land to be assessed based on its agricultural income value measured by its productivity for cropland and noncropland and not other factors that may influence its market value. The Department of Revenue and South Dakota State University have developed a model and the Legislature has adopted procedures for implementing this methodology, which was first used for the 2010 property assessed valuations with the property taxes payable in 2011.

The administration of property taxes involves many aspects ranging from keeping the real property lists current (i.e. ownership, new construction, rehabilitation, structure removal, etc.), conversion of land from one classification to another, payment and distribution of property taxes, collection of delinquent property taxes, sale of real property for assessments, tax deeds and scavenger laws, refunds, procedures for centrally assessing property and distributing the assessed value, etc. The portion of Title 10 dedicated to the administration of property tax system is quite extensive.

Telecommunications Companies

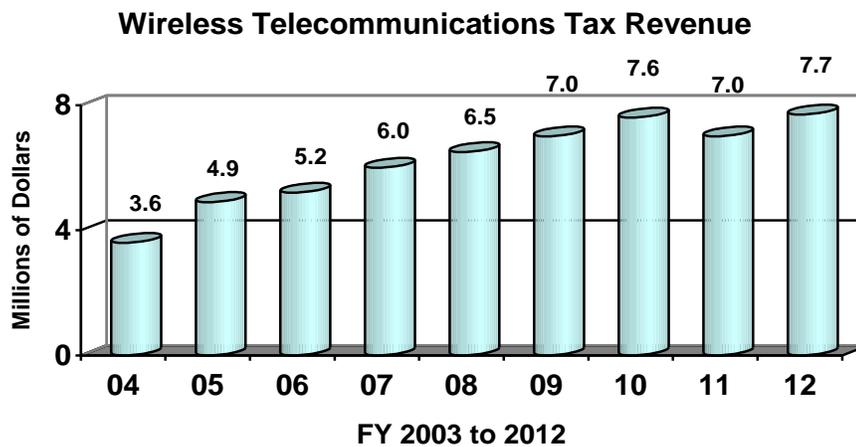
Telecommunications companies are divided into three classes for the purposes of taxation: companies that do not provide local exchange telephone services (large companies); companies that do provide local exchange telephone services (small companies); and wireless telecommunication services that provide two-way communication. Large telecommunications companies are centrally assessed by the Department of Revenue. Small telecommunication companies and wireless companies are taxed based on gross receipts. The revenue from each classification of telecommunication companies is distributed differently. The following tables outline the basic elements of each telecommunications tax.

Centrally Assessed – Large Telecommunications Companies	
Application	Companies that do not provide local exchange telephone services
Taxation	Centrally assessed by the Department of Revenue and taxes are levied on this property in the same manner as other real property taxes are levied
Rate	Variable by location
Distribution	<ul style="list-style-type: none"> • Revenue from property located within city limits is distributed to all taxing entities • Revenue from property located outside city limits is to distributed to the county only
Source	SDCL chapter 10-33

Gross Receipts – Small Telecommunications Companies	
Application	Companies that do provide local exchange telephone services
Taxation	Based on gross receipts
Rate	Rate is 4%
Distribution	Revenue is distributed to schools districts
Source	SDCL chapter 10-33

Gross Receipts – Wireless Telecommunications Companies	
Application	Companies that provide wireless services and other certain forms of two-way communication
Taxation	Based on gross receipts
Rate	Rate is 4%
Distribution	Sixty percent is deposited in the Property Tax Reduction Fund Forty percent is distributed to the counties
Source	SDCL chapter 10-33A

The following graph shows the state's portion of the revenue from the gross receipts tax on wireless telecommunications companies. The state's revenue is deposited in the Property Tax Reduction Fund. The balance of the revenue received from this tax is distributed to the counties.



Rural Electric Companies

Any rural electric company that transmits electricity principally for distribution within rural areas pays a gross receipts tax in lieu of taxes on real property as outlined in the following table.

Application	Companies that transmit electricity principally within rural areas
Taxation	Based on gross receipts
Rate	Rate is 2%
Distribution	Revenue is distributed to school districts
Source	SDCL chapter 10-36

Mineral Severance Tax

The mineral severance tax is a tax imposed on the privilege of severing precious metals, namely gold and silver. There are two taxes levied on the severance of precious metals. The first tax is a tax of four dollars per ounce of gold severed in this state plus a tax of one to four dollars if the average price of gold is five hundred dollars or more. The second tax, taxes the net profits from the sale of precious metals at a rate of ten percent plus eight percent of certain royalties.

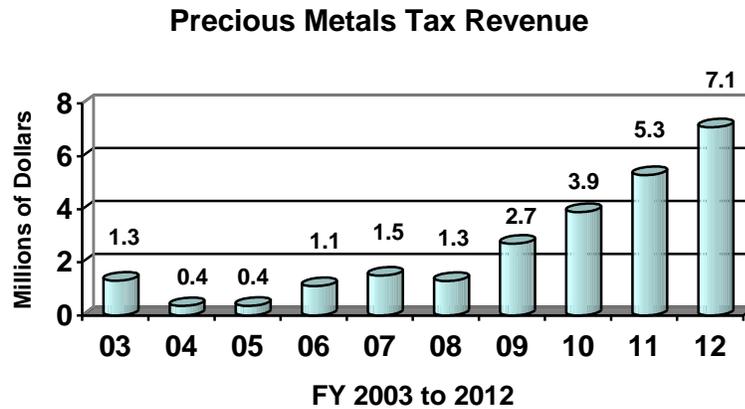
There are significant differences between this income tax and the income tax on banks and financial corporations. The precious metals tax uses only income generated in South Dakota and allows only expenses incurred in South Dakota as deductions. The income tax on banks and financial corporations uses a formula that starts with a company's nationwide taxable income as defined by the Internal Revenue Code and then uses a three-factor formula to arrive at South Dakota's share of the total.

Application	Companies that sever precious metals
Taxation	Tax on amount of gold severed and net profits from the sale of precious metals severed
Rate	<ul style="list-style-type: none"> • Four dollars per ounce of gold severed, plus one to four dollars if the average price of gold is five hundred dollars or more • Ten percent of the net profits from the sale of precious metals severed, plus eight percent of certain royalties
Distribution	<ul style="list-style-type: none"> • General fund for companies that were operating before 1981 • Eighty percent in general fund and twenty percent in county trust fund for companies beginning operation after 1981, subject to a one million dollar cap
Source	SDCL chapter 10-39

The Department of Revenue administers the precious metals severance tax. The tax must be reported and remitted quarterly and the balance of any tax due from the previous calendar year must be paid by June of each year. Each person severing precious metals is given an exemption from the tax on the first twenty ounces of precious metals severed each year. This is intended to exempt the hobby miner from the tax. The owner of a royalty interest, an overriding royalty, or profits, or working interest in a mine must pay a tax equal to eight percent of the value received for the right to sever precious metals. This provision does not apply to royalty interests

owned by the federal government, the state government, or a local government. This tax is collected by the person who severs the precious metals and pays the royalty payment to the royalty owner.

The following graph illustrates the dramatic swings in revenue generated by the mineral severance tax, which is related to price and production.



The precious metals severance tax has undergone changes over the course of history. The tax was based on gross proceeds from its creation in 1935 until it was repealed in 1970. In 1975 the tax was reenacted at four percent of the net profits. In 1980 the rate was made variable. In 1981 the tax was completely changed into a six percent tax on gross yield. In 1984 the tax was changed to four percent on gross yield and eight percent on net profit. In 1994, the tax was changed to the current methodology.

One hundred percent of the tax revenue collected from businesses that were doing business in this state prior to January 1, 1981, is deposited in the state general fund. The tax revenue collected from businesses that have begun business in the state since January 1, 1981, is divided between the state and the county where the precious metals are severed. The state general fund receives eighty percent, and the county of severance receives twenty percent. The county's share must be deposited in a trust fund to be used to offset social, economic, or physical impacts and to diversify the county's economic base.

Energy Minerals Severance Tax

The energy minerals severance tax is a tax imposed on the privilege of severing energy minerals in this state. The tax is imposed on the owners or operators of the energy minerals. The severed minerals are taxed at the rate of four and one-half percent of their taxable value. In addition, there is a conservation tax of two and four-tenths mills of the taxable value of any energy minerals severed and saved. The conservation tax is to compensate the state for the cost of administering the environmental protection laws related to energy mineral severance and the revenue from this tax is deposited in the environment and natural resources fee fund.

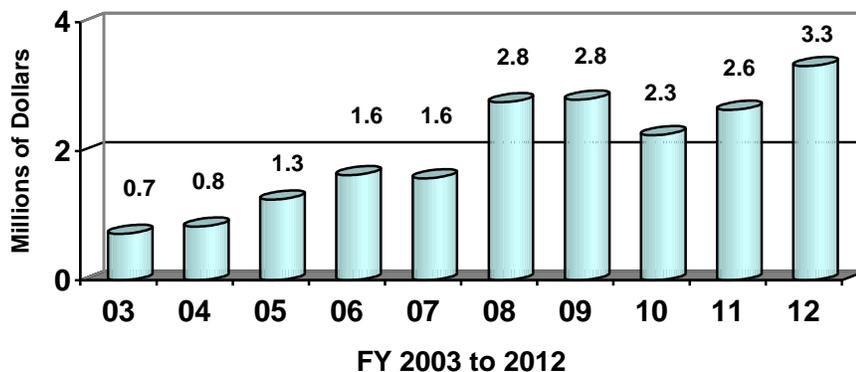
Application	Companies that sever energy minerals
Taxation	Taxable value which is the sale price or market value
Rate	Rate is 4.5% plus a 0.24% administration fee
Distribution	<ul style="list-style-type: none"> • One-half to the county • One-half to the state general fund
Source	SDCL chapters 10-39A & 10-39B

The severance of all mineral fuels is taxed, including coal, lignite, petroleum, oil, natural gas, uranium, and thorium and any combination of minerals used in the production of energy. The taxable value of energy minerals that are sold is the sale price less any rental or royalty payment belonging to the United States, this state, or any of its political subdivisions. The taxable value of energy minerals that have been severed and saved but not sold is the market value less any rental or royalty payment belonging to the United States, this state, or any of its political subdivisions. If an energy mineral has a posted field price at the point of production the taxable value is the posted field price. The taxable value of severed and saved uranium-bearing material is the sale price per pound of the content of triuranium octa-oxide contained in the uranium ore or processed yellow-cake concentrate.

The Department of Revenue administers the energy minerals severance tax. The tax is imposed when an energy mineral is sold, transported from the state, or consumed, whichever occurs first. The tax must be reported and remitted on a quarterly basis. The tax revenue is distributed into three areas. One-half of the revenue is returned to the county where the energy mineral was severed. One-half of the revenue goes to the state general fund.

The following graph shows the state's portion of the revenue from the energy mineral severance tax.

Energy Mineral Tax Revenue



The majority of the severance of energy minerals in South Dakota has occurred in Harding County. Oil and gas are the two types of energy minerals most frequently severed. Highway construction and repair is the predominant use of the energy mineral severance tax revenue kept by the counties.

Bank Franchise Tax

The bank and financial corporation tax is an income tax on the privilege of transacting business as a bank or financial corporation. The tax is measured on the bank or financial corporation's portion of net income that is assignable to South Dakota.

Application	Banks and financial corporations, does not include federal credit unions
Taxation	Tax on the net income
Rate	(See table below)
Exemptions	Federal credit unions
Distribution	<ul style="list-style-type: none"> • Twenty-six and two-thirds percent to the general fund • Seventy-three and one-third percent to the counties Except revenue from certain credit card operations is apportioned as follows: <ul style="list-style-type: none"> • Ninety-five percent to the general fund • Five percent to the counties
Source	SDCL chapter 10-43

The rate of taxation was changed in 2000. Net income is taxed according to the following table, and there is a minimum tax of two hundred dollars per bank location:

Net Income	Tax Rate
\$ - 400,000,000	6%
400,000,001 - 425,000,000	5%
425,000,001 - 450,000,000	4%
450,000,001 - 475,000,000	3%
475,000,001 - 500,000,000	2%
500,000,001 - 600,000,000	1%
600,000,000 - 1,200,000,000	1/2%
1,200,000,000 +	1/4%

A bank or financial institution is defined to include all state and national banks and savings and loans, all state mutual savings banks and trust companies, any person licensed under the installment repayment small loan and consumer law, any person licensed under the motor vehicle retail installment sales law, any person in the business of buying loans, notes, or other evidences of debt, and any person in the business of making installment repayment or open-end loans of more than five hundred dollars. Each branch of a bank or financial corporation is a separate taxable entity.

Net income is the taxable income defined by the Internal Revenue Code for federal income tax purposes. The state does require that certain adjustments be made to taxable income. The items that must be subtracted from the federal taxable income include interest and dividends on United States obligations, dividends paid from financial institutions taxed under this tax, taxes imposed in the tax year by the Internal Revenue Code, and certain depreciation and interest expenses. The tax is levied only on the net income that is properly apportioned to South Dakota.

Net Income Apportionment Formula

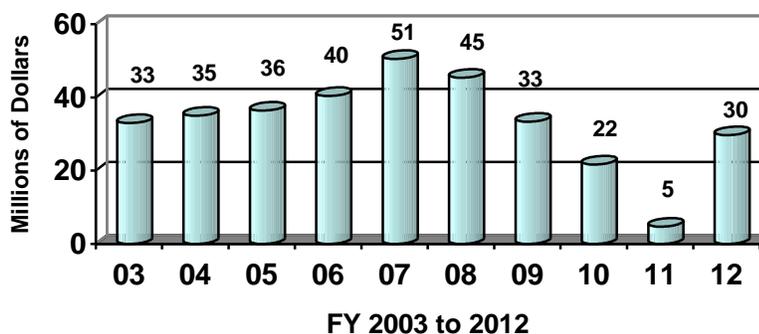
$$\text{corporation's total net income} \times \frac{(x)+(y)+(z)}{3} = \text{corporation's S. D. net income}$$

- x = the value of the corporation's property in South Dakota divided by the value of the corporation's total property.
- y = the corporation's payroll paid in South Dakota divided by the corporation's total payroll.
- z = the corporation's receipts received in South Dakota divided by the total receipts received nationwide by the corporation.

The tax is administered by the Department of Revenue and is reported on a yearly basis. Every quarter each bank or financial corporation must make an estimate of its yearly tax and remit it to the state. The tax revenue is shared between the state and the counties where the banks and financial corporations are located. Twenty-six and two-thirds percent of the revenue from most banks and financial corporations goes to the state and seventy-three and one-third percent to the counties. Ninety-five percent of the tax revenue from credit card operations goes to the state and five percent goes to the counties. Each county's share is based on the tax paid by the banks and financial corporations located in the county. The counties distribute this money to each subdivision within the county pursuant to the personal property tax replacement formula.

The following graph presents the bank franchise tax revenue deposited in the state general fund for the last ten fiscal years. The economy has had a dramatic impact on this tax revenue source since FY 2007.

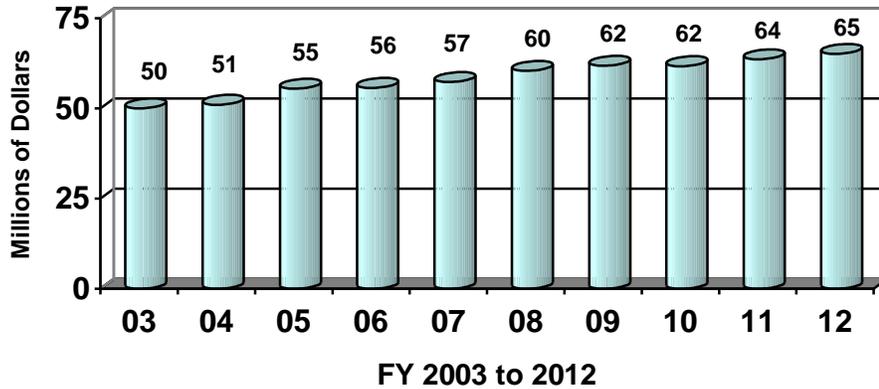
Bank Franchise Tax Revenue



Insurance Company Tax

The insurance company tax is a tax on any company transacting business in this state under the insurance laws of this state, as an insurer, indemnitor, or surety. The tax rate on any company and any unlicensed insurer is two and one-half percent of gross premiums and one and one-fourth percent of consideration for annuity contracts. In addition to these rates, there is an additional tax on every company doing fire insurance business in this state of one-half percent on the gross premium receipts on all fire insurance business done in the state.

Insurance Premiums Tax Revenue



Farm mutual insurers and fraternal benefit societies are exempt from the insurance company tax. A tax credit is given to every company subject to the tax that has its principal office or a regional home office located in South Dakota. These companies are entitled to a credit of fifty percent of the tax and an amount equal to the property taxes paid on their principal or regional home office during the year preceding the tax year. The credits and deductions cannot reduce the amount of tax to less than thirty percent of the amount of tax otherwise payable without the application of the credit. A regional home office must perform for an area covering two or more states the selling, underwriting, issuing, and servicing of insurance, including actuarial, medical, and legal services and the approval or rejection of applications for insurance, the maintenance of records, advertising, public relations, and supervision and training of sales and service forces.

The Department of Revenue administers this tax which is payable at the time an insurance company files its annual report. If an annual report is not required then the tax is due on March first of each year. If an insurance company paid more than five thousand dollars in insurance company taxes in the previous year then the company must pay its taxes on a quarterly basis. All of the tax revenue, except for the fire insurance tax, is deposited in the state general fund.

Application	Insurance companies
Taxation	Tax on the premiums
Rate	<ul style="list-style-type: none"> • Two and one-half percent of gross premiums • One and one-fourth percent of the consideration for annuity contracts • Plus one-half percent of gross premiums on fire insurance • Fourteen dollars for each policy covering worker's compensation business

Exemption	<ul style="list-style-type: none"> • Farm mutual insurers • Fraternal benefit societies
Distribution	<ul style="list-style-type: none"> • General fund • Except premium on fire insurance (first \$30,000 for training, 50% remaining goes to certified county fire departments and historically 50% is deposited in the general fund) • Worker's compensation fee dedicated to the Department of Labor
Source	SDCL chapter 10-44

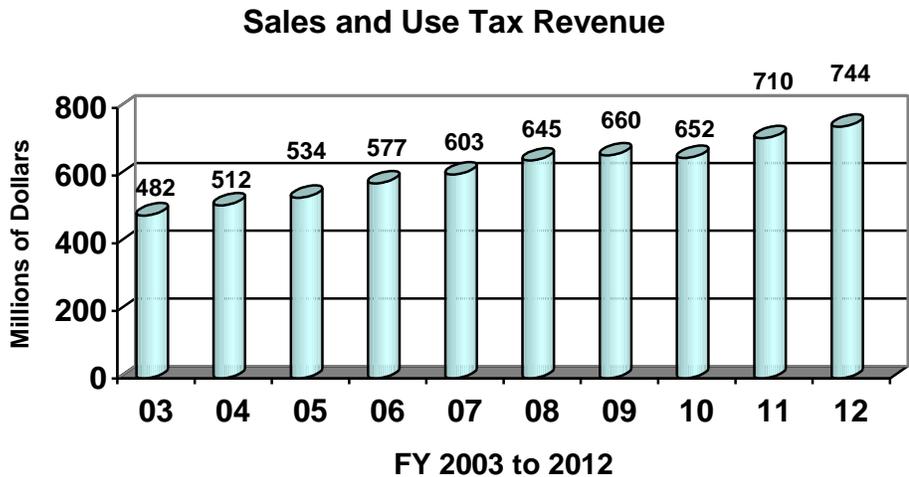
Each year the secretary of the Department of Revenue is required to calculate the amount of tax revenue collected on fire insurance premiums and allocates a portion of that to the local fire departments through the Department of Public Safety. To qualify for fire insurance tax revenue a fire department must have been in existence for at least one year, be certified by the Department of Public Safety, have fifteen or more members, and have at least one fire truck with a pumper housed in a heated building. One-half of the fire insurance money is distributed to counties based on each county's share of the total state assessed valuation. The second half of the money is distributed based on each county's share of the total state population. The counties must then distribute the money to each fire department based on each fire department's service area's share of the total assessed valuation and population of all the fire department service areas in the county. The fire departments can use the money only for paying operating expenses, pension, contributions and the cost of capital improvements. The money may be accumulated from year to year.

Retail Sales and Service Tax and Special Amusement Excise Tax

The retail sales and service tax is based on the gross receipts of the retailer or service provider received from the sale of tangible personal property or from providing a service. The term, gross receipts, is defined as the total amount received in money, credits, property, or other consideration of a sale at retail or the provision of a service. A service is any activity engaged in for a fee, retainer, commission, or other monetary charge and includes activities such as are provided by an accountant, carpet cleaner, or hair stylist. If a purchase includes tangible personal property that is traded-in, the tax applies only to the trade difference. The incidence of the tax is on the retailer or service provider who is ultimately responsible for paying the tax, although the retailer or service provider may add and separately state the tax on the price of the product or service.

Application	Sales and services not specifically exempted
Rate	Rate is 4% on all goods and services
Exempt Entities	Government, nonprofit hospitals, nonprofit charitable hospitals, relief agencies, nonprofit charitable relief agencies, religious and private schools, religious education institutions, nonprofit accredited/private educational institutions
Distribution	General fund, except for the tax imposed on endoparasiticides and ectoparasiticides shall be deposited in the veterinary student tuition and animal disease research and diagnostic laboratory fund
Source	SDCL chapters 10-45, 10-46, 10-46E, and 10-58

The following graph provides the sales and use tax revenue for the last ten fiscal years. Tax collections steadily increased until FY 2010.



After the implementation of Streamlined Sales Tax Project on January 1, 2004, and January 1, 2006, there has been only one sales tax rate for the state and a separate tax on coin-operated washers and dryers. After January 1, 2004, there has been only one uniform state sales tax rate for each municipality. There is also a seasonal gross receipts tax of one and one-half percent on certain visitor-intensive businesses from June 1 through September 30, which is dedicated to the Tourism Promotion Fund.

The special amusement device tax is on the gross receipts from the operation of mechanical and electronic amusement devices, and includes a twelve dollar annual registration fee. This fee is in lieu of all municipal sales or use taxes and all other permits, licenses, permit fees, or license fees imposed by any local government on mechanical and electronic amusement devices. The revenue from this fee is collected by the state and is distributed to the municipality where the machine was located when registered.

The separate tax on coin-operated washers and dryers is an annual license fee. The fee is twenty dollars in municipalities with a population of one thousand or more and sixteen dollars in municipalities with a population of less than one thousand. This fee is in lieu of a sales or use tax.

Sales of all tangible personal property and all services are taxable unless they are specifically exempted. Items that are exempt include sales to the United States, this, or any other state, any public or municipal corporation, any Indian tribe, and any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor. In addition, health, educational, social, and most agricultural services are exempt. Most products used in agriculture are exempt and any item that is consumed in a manufacturing process and becomes an integral part of the finished product is exempt. Also exempt are motor fuel, motor vehicles, and construction services, which are subject to other taxes. There are over 100 exemptions of goods and services exempted from sales and use tax. In some instances, the exemptions are enumerated by division no., major group no., group no., or industry no. pursuant to the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President.

The Department of Revenue administers the retail sales and service tax, special amusement device tax, and use tax. Each retailer and service provider must apply and receive a license before conducting business. The tax must be reported and remitted on a monthly basis unless the secretary allows the retailer to file a return and pay taxes on a different basis. Most of the penalties associated with this tax are Class 1 misdemeanors, which are punishable by one year in the county jail or a two thousand dollar fine, or both. A subsequent violation of most sales tax laws is a Class 6 felony, which is punishable by two years in the penitentiary or a four thousand dollar fine, or both.

There is program for disabled persons or income eligible elderly persons who may apply for a refund of sales and use taxes. The Legislature appropriates approximately five hundred thousand dollars a year for this program and the companion program for providing a property tax refund.

Use Tax

The use tax is a tax on tangible personal property and services used, stored, or consumed in this state. The tax is at the same rate imposed on the tangible personal property or service by the retail sales and service tax. This tax is designed to protect in-state retailers and service providers from people purchasing items and services out-of-state and not having to pay an equivalent sales tax. Unlike the retail sales and service tax, the use tax is imposed on the person using, storing, or otherwise consuming the tangible personal property or service. Any item that is taxed in South Dakota but not taxed in the state where it was purchased, for example, clothes purchased in Minnesota, are subject to the use tax when used or consumed in South Dakota.

The use tax is based on the purchase price of any product or service used or consumed in this state. Any tangible personal property that is seven or less years old which was not originally purchased for use in this state but used, stored, or consumed in this state is taxed on its fair market value. If a person has proof that a sales or use tax was paid to another state a credit is given for such tax. If the tax rate was not as high as South Dakota's the person must pay the difference.

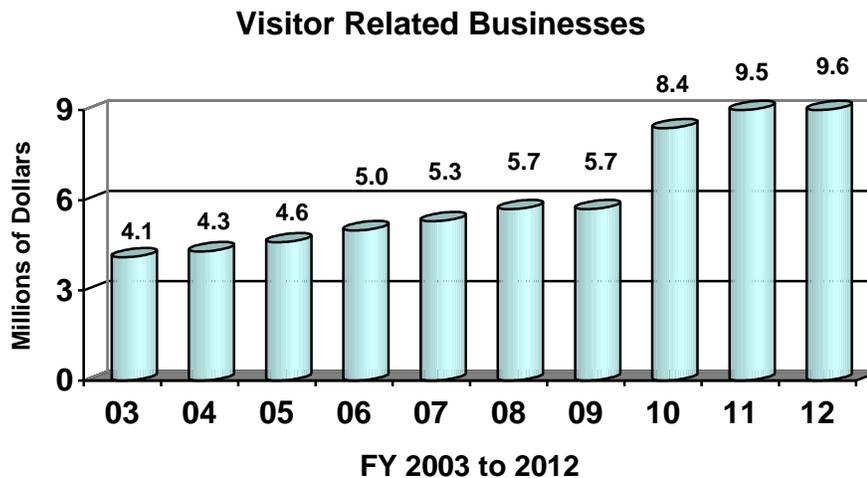
The use tax is very difficult to collect from the average consumer who, for example, happens to purchase food or a pair of shoes in a state that does not tax those items. A person is also liable for the use tax on every item purchased through a catalog, the internet, or other electronic means. Revenue is collected from companies that are periodically audited. Retailers and other businesses pay this tax on products that they purchase tax unpaid and use in the course of their business

Gross Receipts Tax on Visitor Related Business

A seasonal gross receipts tax is levied on certain visitor-intensive businesses for the purpose of funding tourism promotion. The tax only applies to certain business during June, July, August, and September. The seasonal tax applies to lodging establishments, campgrounds, visitor attractions, recreational services and equipment rental, spectator events, and visitor intensive businesses. A visitor intensive business is one of several shops listed in statute that does fifty percent or more of its business during June, July, August, or September.

Application	Sales and services related to tourism
Rate	Rate is 1.5% (until July 1, 2013) during the months of June, July, August, & September. (The rate is 1% on and after July 1, 2013.)
Exempt Entities	<ul style="list-style-type: none"> • Nonprofit organizations that own lodging or camping facilities and rented by members • Nonprofit shooting ranges
Distribution	Tourism promotion fund
Source	SDCL chapter 10-45D

The revenue shown in the chart below reflects the tax increase passed in the 2009 legislative session and first imposed during fiscal year 2010.



Contractor's Excise Tax

The realty improvement contractor's excise tax is a tax imposed on contractors who perform realty improvement contracts. A realty improvement is any activity which improves the value of real estate, including road construction and maintenance, housing construction or improvement, and all types of building or construction activity that improves the value of real estate or the buildings or structures located on the real estate.

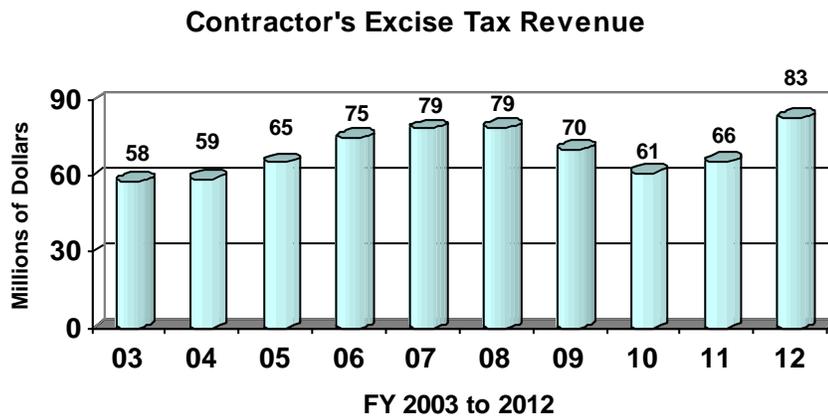
Application	Tax upon the gross receipts of all prime contractors engaged in realty improvement contracts
Rate	Rate is 2%
Exempt Entities	None
Source	SDCL chapters 10-46A and 10-46B

There are two different taxes based on the type of property being improved. Contracts to improve utility property are taxed separately from all other realty improvement contracts. All contracts are taxed at two percent of the gross receipts received directly or indirectly in money, credits, property, or other money's worth in consideration of the performance of a realty improvement contract. Gross receipts include materials furnished to the contractor by the owner or lessee of the realty improvement. The incidence of the tax, except on utility contracts, falls on the prime contractor. The prime contractor must provide the subcontractors with a certificate

showing the prime contractor's tax license number to be exempt from the tax. Any subcontractor that does not receive or does not keep the certificate is liable for the tax on the contract.

Realty improvement contracts for utility companies are taxed at two percent of the gross receipts. The tax is imposed on both prime contractors and subcontractors. The tax applies to railroad, telephone, telegraph, electric, heating, water, gas, rural electric, and rural water company contracts and municipal utility contracts. The Department of Revenue administers both taxes. The tax must be reported and remitted on a monthly basis unless the secretary allows the contractor to file a return and pay taxes on a different basis. A contractor may list the tax as a separate item on all contracts and bills, both for public and private entities.

The graph on the contractor's excise tax revenue provides an overview of the revenue generated by the contractor's excise tax. The construction industry is very susceptible to changes in the economy and the revenue from the tax can fluctuate by several percentage points in any given year although the trend has generally been upward, except for FY 2009 and 2010.



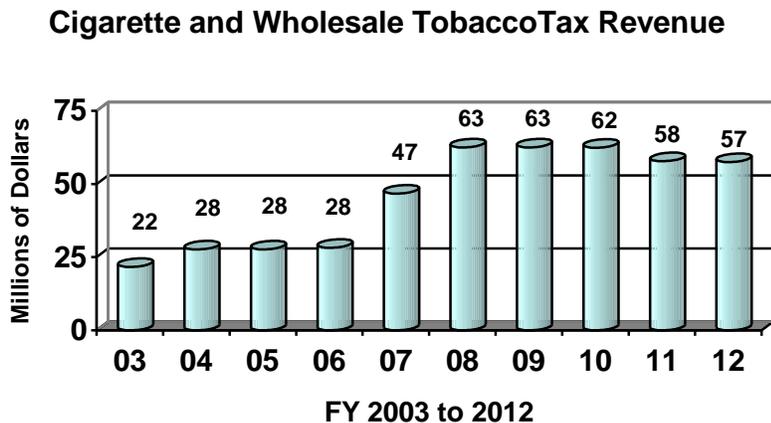
Cigarette & Tobacco Tax

The cigarette tax is imposed on all cigarettes held in this state for sale by any person. The tax rate on cigarettes is one dollar and fifty-three cents per pack of twenty cigarettes. The tax rate was increased by twenty cents per pack on March 18, 2003. The tax rate was increased by one dollar on January 1, 2007. In addition, the tax on the wholesale purchase price of all other tobacco products was increased from 10% to 35% on January 1, 2007.

Application	Cigarettes and other tobacco products
Rate	\$1.53 per pack of cigarettes 35% of the wholesale purchase price for other tobacco products
Distribution	<ul style="list-style-type: none"> • General Fund – First \$30 million of revenue from this tax • Tobacco Prevention and Reduction Trust Fund • Property tax reduction fund • Education Enhancement Tobacco Tax Fund • Health Care Tobacco Tax Fund
Source	SDCL chapter 10-50

Each person selling cigarettes, except a retailer, must be licensed. The license fee is one hundred fifty dollars annually. Affixing stamps or the impression of an imprint evidences the payment of the cigarette tax. The stamps are sold to licensed distributors at a discount of one percent of their face value.

The following graph shows the cigarette and wholesale tobacco tax revenue for the last ten years. The graph illustrates the increase in tax revenue due to an initiated measure approved by the voters in 2006 that increased the cigarette tax one dollar per pack and wholesale tax by another twenty-five percent as of January 1, 2007.



Municipal Sales and Use Tax

Each municipality beginning on January 1, 2004, may impose a sales and use tax that will mirror the tax the state imposes on goods and services with the same exemptions. Previously, the state exempted certain good and services from municipal sales and use tax and only permitted the taxation of food up to a maximum of one percent by a municipality. There were exceptions, however, two municipalities taxed food at two percent and several municipalities did not tax food at all. The restrictions on how municipalities may spend the second penny of sales tax revenue have been lifted. More than two-thirds of the municipalities impose a municipal sales and use tax.

Application	Sales and use tax on goods and services taxed pursuant to chapters 10-45 and 10-46
Rate	Rate is 0 to 2 % of gross receipts
Exempt Entities	Same entities as permitted for the state sales and use tax
Distribution	General fund of the municipality
Source	SDCL chapter 10-52

Municipal Gross Receipts Tax

The municipal gross receipts tax provided in chapter 10-52A replaces the tax formerly known as the bed, board, and booze tax. Each municipality beginning on July 1, 2002, may impose a

gross receipts tax on any combination of the following lodging and camping; alcoholic beverages; prepared foods; or ticket sales for certain events. There are, however, certain restrictions on how the revenue from this tax may be expended by the each municipality. The revenue may only be used for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities and the promotion and advertising of the city, its facilities, attractions, and activities.

Application	Gross receipts tax on: <ul style="list-style-type: none"> • Lodging and camping • Alcoholic beverages • Prepared food for immediate consumption • Ticket sales for certain events
Rate	Rate is 1% of certain gross receipts
Distribution	Revenue may only be used for purposes describe above
Source	SDCL chapter 10-52A

Alcoholic Beverage Taxes

The alcoholic beverage taxes are occupational taxes levied on manufacturers and wholesalers of alcoholic beverages. The tax applies to all alcoholic beverages purchased, received, or imported from a distiller, manufacturer, or foreign wholesaler for sale to a retail dealer. The rate of taxation varies with the type of alcoholic beverage.

Application	Alcoholic beverages
Rate	<ul style="list-style-type: none"> • Occupational tax (see information below) • Rate is 2% of the wholesale price, except beer
Exemptions	<ul style="list-style-type: none"> • Alcohol sold to dispenser licensees • Sacramental wine • Alcoholic and malt beverages sold by distillers and manufacturers for transportation in interstate commerce
Distribution	<ul style="list-style-type: none"> • Occupational tax – Twenty-five percent to municipalities – seventy-five percent to the state general fund • Wholesale tax revenue deposited in the state general fund
Source	SDCL chapter 35-5

Alcoholic Beverage Tax Rates

- \$8.50 p/barrel -- malt beverages
- \$.93 p/gallon -- light wine and diluted beverages containing between 3.2 and 14% alcohol by weight
- \$1.45 p/gallon -- wine and diluted beverages containing between 14 and 20% alcohol by weight
- \$2.07 p/gallon -- wine and diluted beverages containing between 20 and 24% alcohol by weight and all sparkling wines
- \$3.93 p/gallon -- all other alcoholic beverages

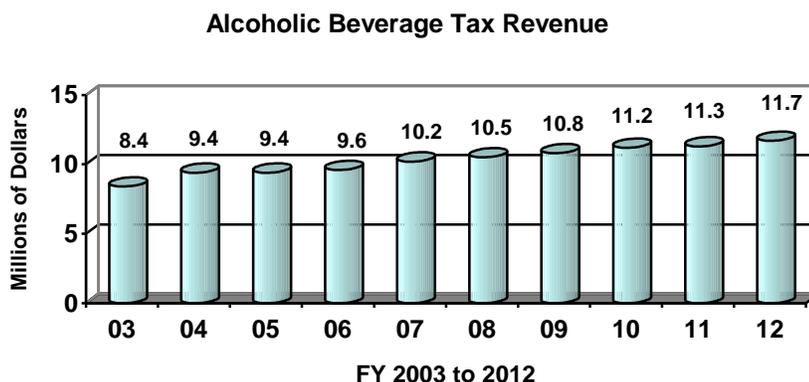
There is an additional tax of two percent on the wholesale price of all alcoholic beverages except beer. This extra tax is imposed on the purchase of alcoholic beverages, except beer, by a wholesaler from a distiller, manufacturer, or supplier.

The Department of Revenue administers all of the alcoholic beverage taxes. The revenue from the two percent wholesale tax is deposited in the state general fund. The tax revenue from all the remaining types of alcoholic beverages is deposited in the alcohol beverage fund. Twenty-five percent of the revenue in the alcohol beverage fund is distributed to the state's municipalities. Each municipality's share is determined by the ratio the population each municipality has to the total population of all municipalities sharing in the revenue from the tax. The remainder of the revenue in the alcohol beverage fund is deposited in the state general fund.

The state and local governments heavily regulate alcoholic beverages and the licenses to sell alcoholic beverages. The fees for the different licenses vary greatly. The fee for the on-sale license, which is typically a bar or lounge, is based on the size of the municipality. In municipalities of the first class the fee is not less than one dollar for each person living within the municipality. In second class municipalities the fee may not exceed twelve hundred dollars and in third class municipalities the fee may not exceed nine hundred dollars. There are licenses for distillers, wholesalers, and on-sale dealers at publicly operated airports, among others.

The licenses for bars and liquor stores are issued by municipalities in conjunction with the Department of Revenue or by counties when located outside the municipal corporate limits. The number of on-sale licenses permitted in a municipality or county is limited by state law and is based on a municipality's or county's population. The number of new malt beverage licenses is not regulated by state law and is not dependent on the population of the municipality or county. Municipalities and counties can have three on-sale licenses for the first one thousand in population and one for each fifteen hundred additional people and any fraction thereof. However, a county's population does not include anybody living within an incorporated municipality. The municipality or county issuing the license retains the fees for on-sale and off-sale liquor licenses. Municipalities and counties may, by ordinance, issue additional on-sale licenses for full-service restaurants.

The total revenue received by the state from all alcoholic beverage taxes (occupational tax and wholesale tax) is presented in the following graph.



Motor Vehicle Fuel Tax

The motor fuel tax is a tax on all motor fuel sold or used in this state. The rates for motor fuel, special fuel, ethanol blends, and liquid petroleum gas were temporarily increased by three cents from May 1, 1997, to October 1, 1998. The additional revenue from this temporary tax increase was used to reimburse state and local governments for expenses incurred by the 1997 blizzards. A four cent increase was imposed on all fuels, except fuels used for aviation beginning April 1, 1999.

The motor fuel tax is collected by the motor fuel dealer on all the motor fuel sold or used. The dealer is responsible for the tax and must pay the tax on any fuel that is not accounted for. Each person engaged in the business as a motor fuel dealer must be licensed. The motor fuel tax must be reported and remitted monthly.

Each motor fuel dealer is allowed to deduct two and one-fourth percent tax required to be paid on each gallon of fuel to this state. This deduction is to compensate the motor fuel dealer for losses in handling the fuel, for expenses incurred in preparing monthly reports, for accounting for and collecting the motor fuel tax, for the premium paid for the motor fuel dealer's bond, and for compensation for acting as an agent of the state in collecting the tax. One-third of this deduction is retained by the supplier or out-of-state supplier to help off-set the administrative expense of timely reporting and remitting of tax and the remaining two-thirds is distributed to the wholesale distributor, retail dealer, or end user who withdraws fuel from the terminal at the rack to help off-set the cost of fuel lost due to shrinkage caused by evaporation or temperature change.

Any liquid petroleum vendor who properly remits tax under this chapter may retain an amount equal to the percentage of tax remitted as follows:

- (1) Two percent of the first twenty-five thousand gallons taxed each month;
- (2) One percent on the gallons taxed in excess of twenty-five thousand each month; and
- (3) The maximum amount retained each month shall be five hundred dollars.

The motor fuel dealer may also deduct the tax for all motor fuel in excess of one hundred gallons lost or destroyed by fire, flood, tornado, windstorm, explosion, or theft.

Prior to July 1, 2011, certain motor fuel consumers may have received a refund of fuel taxes imposed on motor fuel purchased and used by certain recreational vehicles and vehicle and equipment used for nonhighway agricultural or commercial purposes.

Application	Fuel
Rate	<ul style="list-style-type: none">• Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline) - \$.22 per gallon;• Special fuel (except jet fuel) - \$.22 per gallon;• Aviation gasoline - \$.06 per gallon;• Jet fuel - \$.04 per gallon;• Liquid petroleum gas - \$.20 per gallon;• Compressed natural gas - \$.10 per gallon;• Ethyl alcohol and methyl alcohol - \$.08 per gallon.
Exempt Entities	<ul style="list-style-type: none">• Federal government

	<ul style="list-style-type: none"> • Special fuel that has been dyed • Undyed special fuel used in a railroad locomotive, if the supplier is the railroad company • Motor fuel or undyed special fuel removed from a terminal and is directly used by an electrical power company
Distribution	<ul style="list-style-type: none"> • Motor fuel taxation refund fund • Motor fuel tax administration account • Snowmobile trails' fund • Natural resources conservation fund • Parks and recreation fund • State highway fund
Source	SDCL chapter 10-47B

Two percent of the motor fuel tax revenue is used to cover the expenses incurred in administering the motor fuel and special fuel tax laws. All of the motor fuel tax collected on aircraft fuel is transferred to the state aeronautics fund. This revenue is transferred to individual airports based on the amount of aircraft fuel sold at each airport. The revenue not distributed to airports is distributed by the aeronautics commission for airport construction and improvement. All remaining motor fuel tax revenue is deposited in the state highway fund.

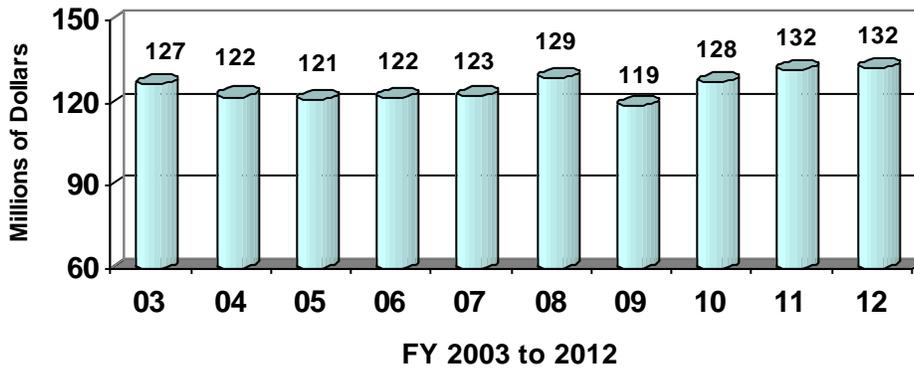
In addition to the motor fuel tax exemption for ethanol blends, the state has created an ethyl alcohol producer payment program. Each person producing ethyl alcohol from cereal grain is eligible for a producer payment of twenty cents per gallon of ethyl alcohol if it was producing qualifying ethyl alcohol before December 31, 2006, pursuant to § 10-47B-162.

A portion of the motor fuel tax revenues are distributed to several designated recipients, which may be in lieu of a refund program that used to be in place. The distributions are as follows:

- Transfer to the snowmobile trails fund an amount equal to the result of multiplying the number of licensed snowmobiles times one hundred twenty-five gallons times the motor fuel tax rate.
- Transfer to the parks and recreation fund an amount equal to the number of licensed motorized boats times one hundred forty gallons times the motor fuel tax rate.
- Transfer to the value added agricultural subfund the amount of one hundred thirty-five thousand dollars.
- Transfer to the Department of Agricultural the amount of seventy-five thousand dollars to be used as a grant to the Northern Crops Institute.
- Transfer to the coordinated natural resources conservation fund the amount of five hundred thousand dollars.
- Transfer to the counties and townships the amount of seven hundred thousand dollars to be used roads and highways.

The motor and special fuel tax collected in the last ten fiscal years is displayed in the following graph. The graph illustrates that motor fuel revenues have not increased over the last 10 years. However, the costs of construction have dramatically increased over that same period of time.

Motor & Special Fuel Tax Revenue



Special fuel is compressed natural gas used to propel a motor vehicle, all other combustible gases and liquids except fuels subject to the motor fuel tax, and natural gas that is not compressed natural gas. All special fuel sold or used in this state is taxed at twenty-two cents per gallon, except jet fuel which is taxed at four cents per gallon. Liquefied petroleum gases are taxed at twenty cents per gallon.

There are uses of special fuel, which are exempt from the tax. All special fuel purchased for nonhighway use is exempt if the purchaser does not own a special fuel powered vehicle. All special fuel used for nonhighway commercial or agricultural purposes purchased by a licensed bulk fuel purchaser is exempt. All special fuel used by the state, counties, municipalities, townships, or Indian tribes for use in their vehicles and used for highway or street construction, reconstruction, or maintenance is exempt from the tax.

Motor Vehicle Excise Tax

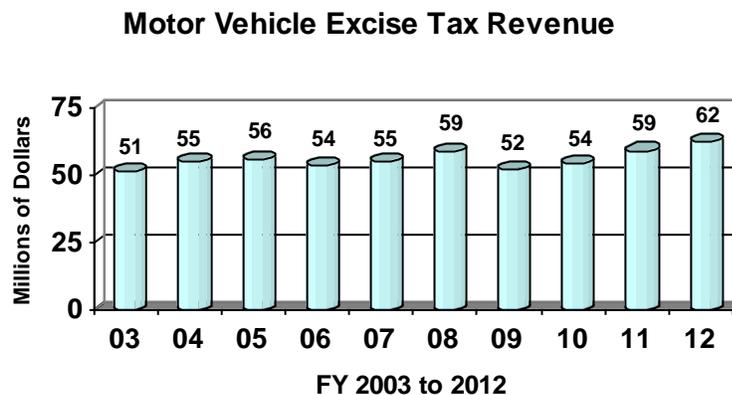
The motor vehicle excise tax is a tax of three percent on the purchase price of any motor vehicle purchased or acquired for use on the streets and highways of this state. The purchase price of a new or used motor vehicle sold by a licensed motor vehicle dealer is the total consideration whether received in money or otherwise. If a motor vehicle is taken in trade the value of the trade-in is deducted from the value of the motor vehicle sold to arrive at a taxable value.

Application	Tax on purchase price of motor vehicle less any trade-in value
Rate	Rate is 3% of the purchase price less any trade-in value
Exemptions	<ul style="list-style-type: none"> Any vehicle that is eleven or more years old and worth less than \$2,200 Acquired by inheritance Additional exemptions are listed in SDCL 32-5B-2
Distribution	State highway fund
Source	SDCL chapter 32-5B – Motor vehicles SDCL chapter 32-3A – Boats SDCL chapter 32-5 – Snowmobiles SDCL chapter 32-5 – Mobile homes

The purchase price of a used vehicle sold by a person other than a licensed motor vehicle dealer is the retail value as stated in a nationally recognized dealers' guide approved by the Department of Revenue. The value of a trade-in is deducted from the value of the vehicle sold. The purchase price for a used or new vehicle acquired for no or nominal consideration is the manufacturers' suggested dealer list price for new vehicles or the retail value listed in a recognized dealers' guide for used vehicles.

Certain motor vehicle transfers are exempt from the tax. Any motor vehicle that is eleven or more years old and worth less than two thousand two hundred dollars before trade-in is exempt. Any motor vehicle acquired by inheritance or transferred from a subsidiary corporation to its parent corporation for no or nominal consideration is exempt. Also, any motor vehicle transferred without consideration between spouses, parent and child, or between siblings or any motor vehicle transferred between licensed motor vehicle dealers is exempt from the tax.

The tax is paid to the county treasurer in the county of the new owner's residence. The county transfers the money to the state and it is deposited in the state highway fund. The tax on motor vehicles used in interstate commerce is prorated according to the number of miles driven in South Dakota as compared to the total number of miles driven. The following graph reflects a relatively flat source of revenue which was influenced by the downturn in the economy in FY 2009 and 2010.



Constitutional Limitations

Article XI of the South Dakota Constitution grants certain authority to impose taxes; it also exempts certain entities and facilities from certain taxation and limits the imposition of others. Article III, section 25 of the South Dakota Constitution permits gambling which certain taxes and fees are assessed against. Lottery and gaming are described in another chapter within this reference book. These constitutional provisions establish certain parameters for the South Dakota tax structure, which include:

- Revenue from taxes on motor vehicles and fuel shall be used for highways and bridges;
- Property tax exemptions;
- Taxation of banks;
- No tax on any inheritance; and

- The requirements for imposing and increasing taxes:
 - The right of initiative; or
 - Two-thirds supermajority of the Legislature to impose a new tax or increase the rate of an existing tax.

Conclusion

This chapter highlights the general application, rate schedules, exemptions, exceptions, and distribution of the major taxes imposed by the state of South Dakota and its political subdivisions. There are numerous nuances and exceptions enacted into the law, such as the various systems used to distribute the revenue. This may be viewed as special legislation, changes necessary to make the tax work, or compromises needed to enact legislation. In addition, several distinctions and exemptions are provided and granted in the constitution. The discussion and debate of taxes have been around for decades in South Dakota and centuries for the rest of the world.

Chapter 19 TECHNOLOGY GUIDE

Computer Use Policy

State computer equipment is limited to use for official state business only. Computer games, unlicensed software, political use and personal use of the equipment or the Internet are not permitted on state computers. The state E-mail system cannot be used for a personal or political purpose. A political purpose is any activity undertaken by a candidate for an office in support of election to the office. Political activity includes aid or assistance to any candidate, political party, political committee or organization. Political activity does not include activities undertaken in the performance of a duty of a legislator's office.

The computer assigned to a legislator, the software installed on the computer and any upgrades to the software are the property of the state of South Dakota. **All messages or records composed, sent, or received are and remain the property of the State of South Dakota.** These are public records and as such may be viewed or accessed at any time. Messages or records may not contain content that may be reasonably considered offensive or disruptive outside of a legislative context.

The LRC is responsible for providing reasonable maintenance and support of the computer, associated hardware provided by the LRC, and the software installed on the computer to access legislative information systems. The LRC is not responsible for installing, maintaining, or supporting any nonlegislative software. The LRC may remove any nonlegislative software in order to properly install, reinstall, or operate legislative software.

A legislator may not install software on the computer unless a copy of the license agreement for that software is filed with the LRC. A legislator may not replace or attach hardware to the computer without advance notice to and approval of the LRC Director. The legislator is responsible for the cost of repairing, state-owned equipment or authorized software damaged as a result of negligence or abuse, or of installing unauthorized equipment or software.

The legislator shall notify the LRC as soon as possible after any damage to or loss of the computer. **The legislator assumes responsibility for any damage resulting from the use of the computer and the loss of the computer.** However the legislator is not responsible for any damage or loss resulting from complying with the requirements of the LRC.

All repairs must be arranged by the LRC. If you have questions or problems with the notebook computer, please contact Jesse Hiatt or L. Lou Adamson at (605) 773-3251.

The Legislative Website

<http://legis.state.sd.us>

Session Information

- Select “Current Legislative Session”
- Select “Bills” for Text Search, Bill List, Quick Find, and other options (Sample page below).
- When typing bill number anywhere on the site only use the number for HB’s and SB’s, for all others use the prefix and the number with no space.
- Select “Chamber or Committees” for Calendars, Journals, Minutes, Agendas, Readers, and Membership (Sample page below).
- Select “Members” for contact information, bills sponsored, and committees (Sample page below).

Statutes

- Select “Codified Laws” on the main menu
- Use “Quick Find” to load a statute when you know the number.
- Use “Text Search” to search the statutes (Instructions on page).
- Use “Title List” to browse the statutes.

Administrative Rules

- Select “Administrative Rules” on the main menu
- Use “Quick Find” to load a rule when you know the number.
- Use “Text Search” to search the rules (Instructions on page).
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Bill Number

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House Bill 1105

Representatives [Hennies](#), [Bartling](#), [Bradford](#), [Davis](#), [Elliott](#), [Humhoff](#), [Kroger](#), [LaRue](#), [McLaughlin](#), [Murschel](#), and [Solum](#) and Senators [Ham-Burr](#), [Abdallah](#), [Bogue](#), [de Hueck](#), [Duenwald](#), [Duniphan](#), [Earley](#), [Greenfield](#), [Knudson](#), [Nachtigal](#), [Reedy](#), [Sutton \(Dan\)](#), and [Vitter](#)

Bill Title

An Act to permit certain temporary on-sale licenses to be issued by municipalities and counties.

Dates link to Journals, Minutes, and Agendas

Subject Index: [Alcoholic Beverages](#) , [Counties](#) , [Municipal Government](#)

Audio Available

Date	Action	
01/20/2004	First read in House and referred to House Local Government H.J. 113	
01/22/2004	Scheduled for committee hearing on this date	
01/22/2004	Local Government Hoghoused Passed Amendment (1105fa)	
01/22/2004	House Local Government Amendment (1105fb)	
01/22/2004	Local Government Do Pass Amended Passed, YEAS 10, NAYS 3 H.J. 146	
01/26/2004	House of Representatives Deferred to another day Passed H.J. 224	
01/27/2004	House of Representatives Do Pass Amended Passed, YEAS 45, NAYS 24 H.J. 241	
01/28/2004	First read in Senate and referred to Senate Local Government S.J. 221	
02/02/2004	Scheduled for committee hearing on this date	
02/04/2004	Scheduled for committee hearing on this date	
02/04/2004	Local Government Deferred to 36th legislative day Passed, YEAS 4, NAYS 1 S.J. 312	

Actions taken on the Bill

Links to Amendments

Links to Roll Call Votes

Just the text of bill with no formatting

Bill Text Versions		
Date	HTML Version	Acrobat Version
01/20/2004	As Introduced	As Introduced
01/22/2004	House Local Government	House Local Government

Date the Bill was Engrossed

Looks exactly like the printed bills

Senate and Senate Committees

Committee or chamber members

Dates for document of selected type

Committee/Body Documents

House and House Committees

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- Left Sidebar (Senate):** Labeled "Senate" with a logo. It lists committees: Agriculture & Natural Resources, Joint Appropriations, Appropriations, Commerce, Education, and Government Operations & Audit.
- Center Column:** A calendar listing dates and times:
 - 03/15 10:00 AM
 - 02/27 02:00 PM
 - 02/27 09:00 AM
 - 02/26 03:00 PM
 - 02/26 10:00 AM
 - 02/25 02:00 PM
 - 02/25 10:00 AM
 - 02/24 02:00 PM
 - 02/23 02:00 PM
- Right Sidebar (House):** Labeled "House" with a logo. It lists committees: Agriculture & Natural Resources, Appropriations, Joint Appropriations, Commerce, Education, and Government Operations & Audit.

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Legislator Information

List of Committees

Bill Hearing Dates and Times

Senate Members

[Abdallah, Gene G](#)

[Albers, Kenneth D](#)

[Apa, Jerry](#)

[Bogue, Eric H](#)

[Brown, Arnold M](#)

[de Hueck, Patricia](#)

[Dempster, Tom](#)

[Dennert, H. Paul](#)

[Diedrich, Larry](#)

[Duenwald, Jay](#)

[Duniphan, J.P.](#)

[Duxbury, Robert N](#)

[Earley, William F](#)

[Greenfield, Donal](#)

[Detail](#) [Committees](#) [Bills Sponsored](#) [Hearings](#)

Gene G Abdallah

Primary Sponsor

Bill	Title
HB 1086	allow smoking in certain rooms when used for meetings for the recovery and treatment of alcoholism, drug abuse, or gambling addiction.
HB 1203	revise certain provisions regarding threats upon law enforcement officers and their families.
HB 1275	require chemical tests of drivers involved in accidents resulting in serious bodily injury.
HC 1024	Honoring the 2004 O'Gorman Knights Gymnastics Team and the students and staff involved in the program.
HCR 1003	Acknowledging the Highway Patrol and Capitol Security for all their efforts to ensure safety in the State Capitol Building during the 2004 Legislative Session.

Co Sponsor

Bill	Title
HB 1088	provide for the certification of canine teams by the law enforcement officers standards commission.

House Members

[Adelstein, Stanford M](#)

[Bartling, Julie](#)

[Begalka, Tim](#)

[Bradford, Jim](#)

[Buckingham, Mike](#)

[Burg, Quinten L](#)

[Christensen, Daryl J](#)

[Craddock, Rebekah](#)

[Cutler, Joni M](#)

[Davis, Justin J](#)

[Deadrick, Thomas J](#)

[DeBater, Jack D](#)

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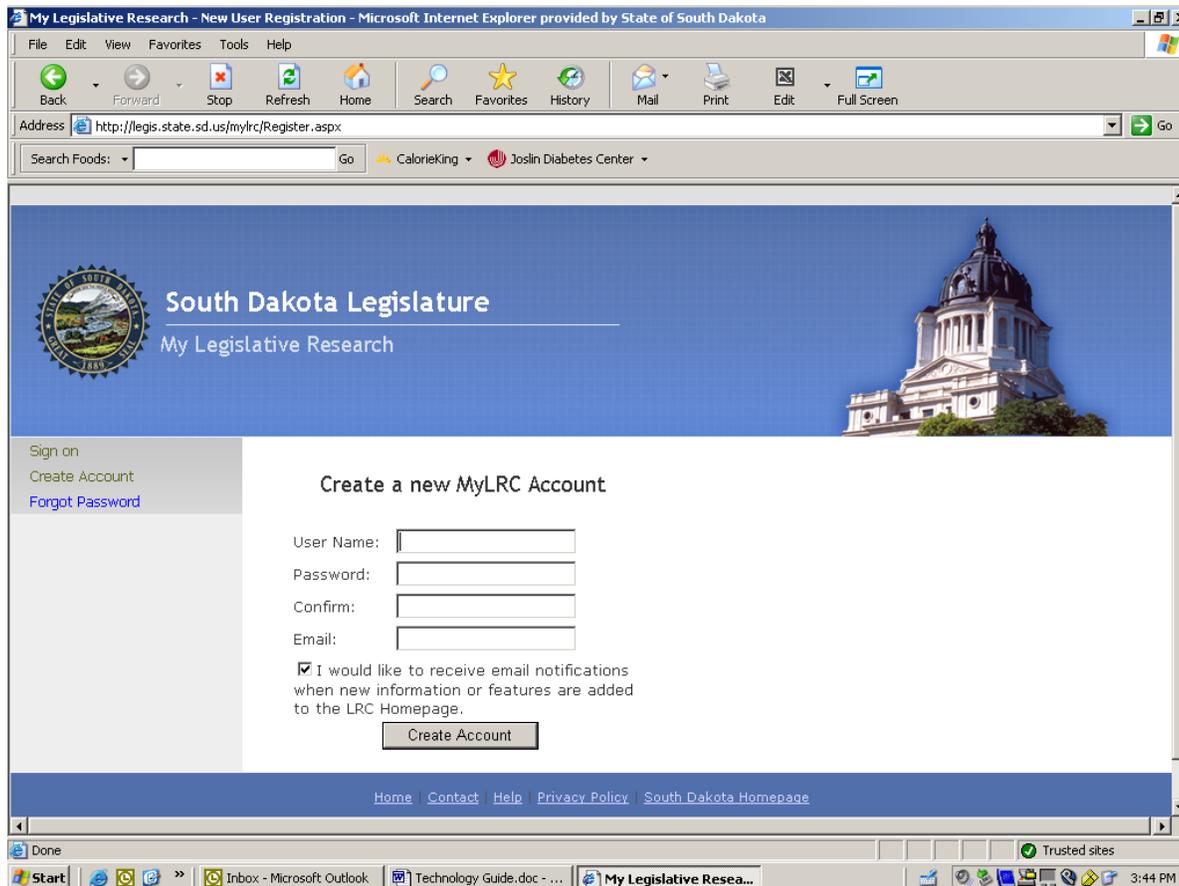
<http://legis.state.sd.us/mylrc/index.aspx>



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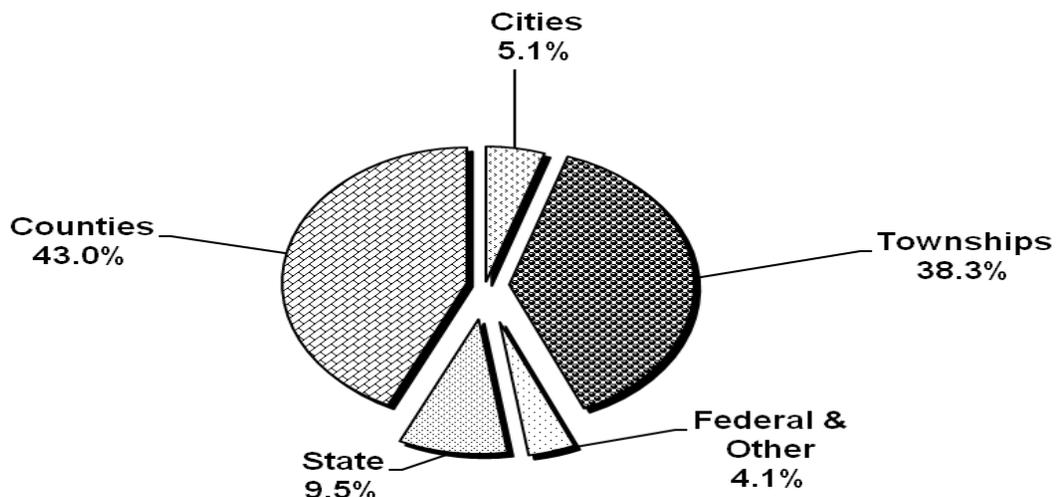
Chapter 20 TRANSPORTATION

The Highway System

Since the first trails were established across the Dakota Territory, a system of highways, streets and roads totaling 82,460 miles has been built across the state. The quality of these roads ranges from primitive dirt roads and gravel roads to bituminous and concrete streets and highways with over 59% of the total miles being gravel roads. The state, the federal government, counties, municipalities, and townships each have a responsibility for certain portions of the state's total highway system. Township and county roads account for approximately 81% of the total miles (66,648 miles) with state highways, federal highways, and municipal streets and roads making up the balance. Illustration 1 shows the percentage breakdown of the state's highway system by the form of government responsible for maintenance.

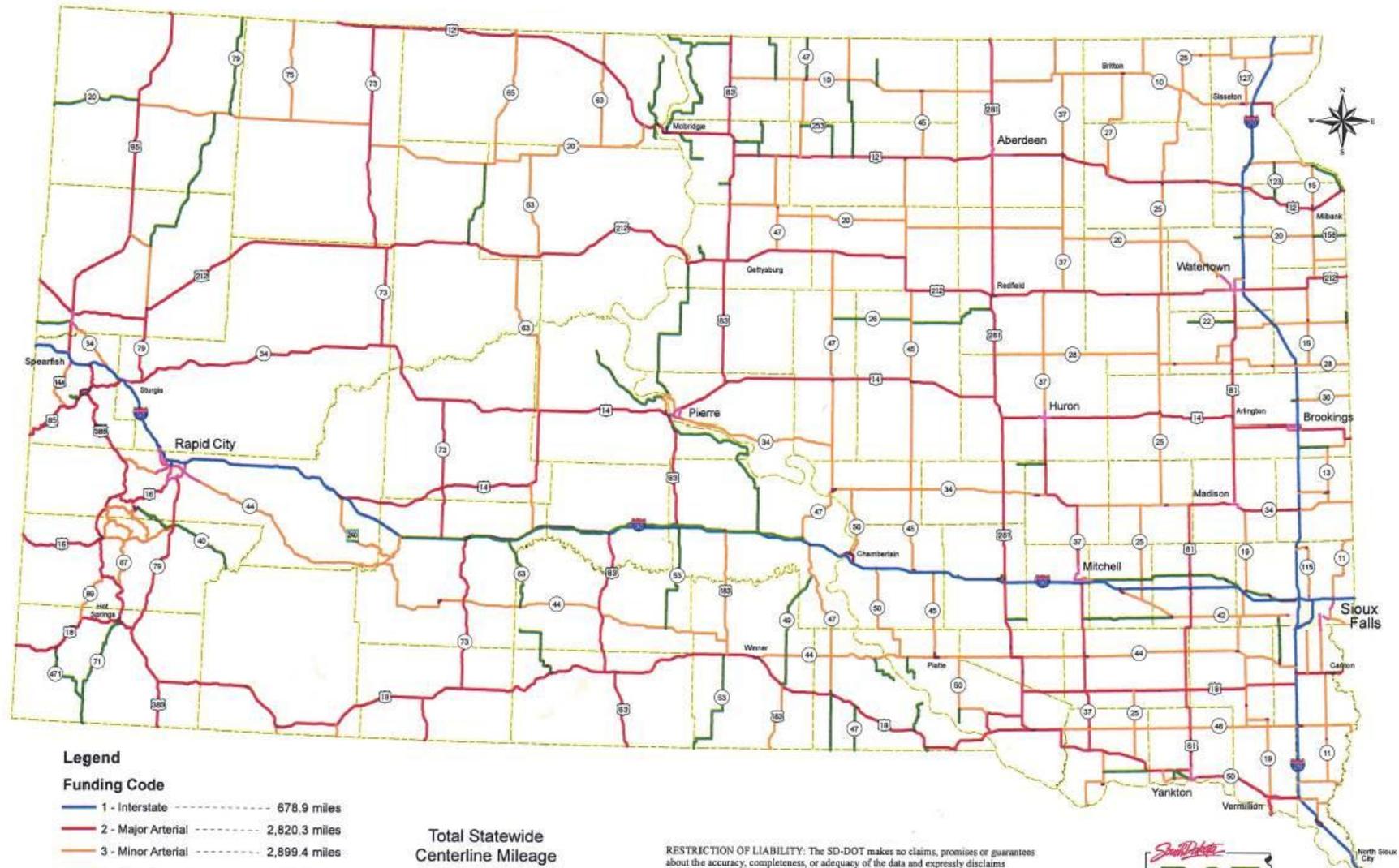
ILLUSTRATION 1

DISTRIBUTION OF HIGHWAY SYSTEM MILES BY RESPONSIBLE FORM OF GOVERNMENT



The state trunk highway system, which is maintained by the Department of Transportation, consists of 7,830 miles. The state trunk highway system is provided in statute (Chapter 31-4). Although only 9.5% of total mileage, the state trunk highway system carries over 67% of all vehicle miles traveled and 80% of the heavy truck traffic. The state trunk highway system for funding and planning purposes is divided into the following subsystems: the Interstate system; the state primary highway system, which is further divided into major arterial and minor arterial; and the state secondary system. The various state highway systems are displayed in the State Highway Systems Map.

South Dakota State Highway Systems Map



Legend

Funding Code

	1 - Interstate	-----	678.9 miles
	2 - Major Arterial	-----	2,820.3 miles
	3 - Minor Arterial	-----	2,899.4 miles
	4 - State Secondary	-----	1,115.2 miles
	6 - Urban	-----	156.0 miles
	7 - Municipal	-----	159.8 miles

Total Statewide
Centerline Mileage
7829.6 miles

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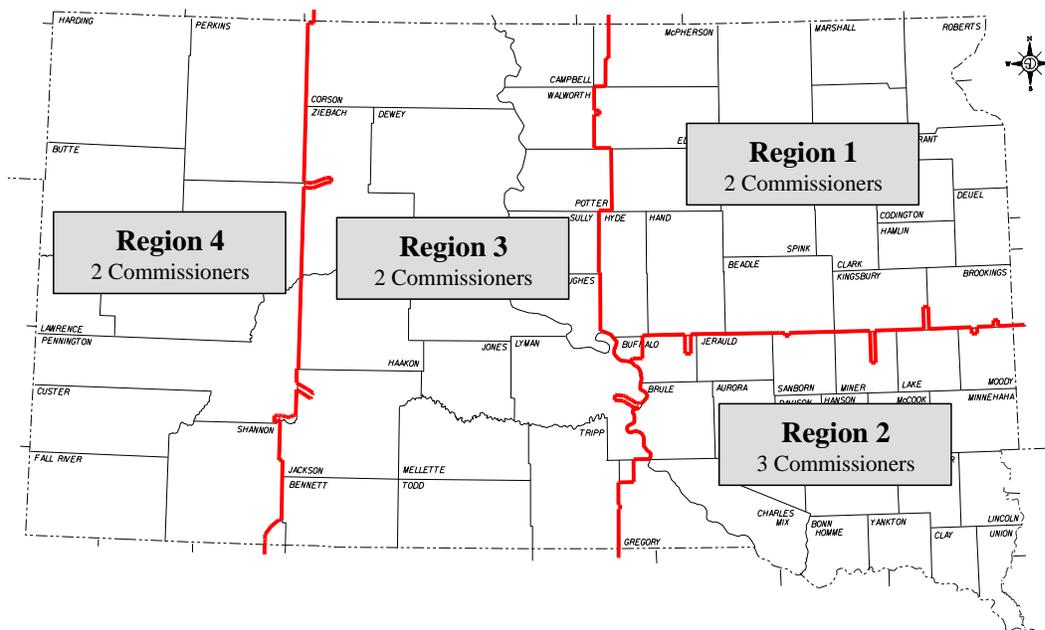
The Transportation Commission and Department of Transportation

A Transportation Commission made up of nine members is charged with the responsibility of constructing, maintaining, and reconstructing highways on the state highway system. The commission meets the fourth Thursday of each month to let bids for highway construction or repair and to give policy direction to the Department of Transportation. The commission is also charged with administrative rule-making authority for various transportation-related functions including authority to set certain speed limits, to issue oversize vehicle permits, and to issue permits for logo and directional signs along the state highway system.

The current commission is the result of an Executive Order adopted in 1987. The commission consists of members who are appointed by the Governor to four-year terms and serve at the pleasure of the Governor. The 1987 Executive Order removed the Secretary of Transportation from the commission and increased the number of commissioners in Region 3 from one to two. The Secretary of Transportation had been made a voting member of the commission in 1983 by Executive Order. Prior to 1983 the commission was made up of eleven members with the Secretary of Transportation serving as a nonvoting member.

Under the current commission, the state is divided into four transportation regions. The number of commissioners from each region varies. Region 1 (the Aberdeen region) is represented by two commissioners; Region 2 (the Mitchell region) is represented by three commissioners; Region 3 (the Pierre region) is represented by two commissioners; and Region 4 (the Rapid City region) is represented by two commissioners. The transportation region boundaries as created by the 1983 Executive Order are shown below.

South Dakota Transportation Regions



Highway Construction Program

Each year the commission, with the assistance of the Department of Transportation, adopts a highway construction program for the next year. This program is called the Statewide Transportation Improvement Program (STIP). The program is based on highway needs and the availability of funding. The commission proposes a construction plan each June then holds a series of public hearings to receive public comment on the plan and its proposed changes. The construction program for 2013 was adopted by the commission in August 2012. The program calls for the expenditure of available funds in federal fiscal year 2013 of approximately \$48 million on the interstate highway system; \$69 million on major arterial highways; \$57 million on minor arterial highways; \$10 million on the state secondary system; \$37 million on state highway urban projects, \$12 million on state highway municipal projects, \$17 million on state bridge projects, \$50 million on local highways and bridges; and \$35 million on special projects. The total dollar value of projects planned for letting in federal fiscal year 2013 is \$335 million.

The construction program for 2013 will require \$51 million of state generated funds to match the estimated \$273 million of federal funds available for highway construction. It will also require \$2.5 million of local generated funds. The program also provides for \$2.5 million of 100% state funds for the construction of the following: economic development (\$1.5 million); game, fish and parks' access roads (\$0.5 million); and county pavement marking projects (\$0.5 million).

Highway Financing

One of the most important factors determining the amount of highway construction or repair that can take place, not only at the state level but also at the local government level, is the amount of money that is available.

In South Dakota this money primarily comes from the following sources: motor fuel taxes, the vehicle excise tax, annual vehicle registration fees, and federal highway funds. All of these revenues come from the users of the highways and are dedicated to highway use. In fact, Article XI, Section 8 of the South Dakota Constitution requires that all taxes or fees imposed with respect to the operation of a motor vehicle must be used exclusively for the maintenance, construction, and supervision of highways.

The **motor fuel tax** is the primary source of revenue for state highways. South Dakota first established this tax in 1922 at the rate of one cent per gallon. On April 1, 1988, the motor fuel tax became eighteen cents per gallon for gasoline and diesel fuel; sixteen cents for LP gas; and sixteen cents for ethanol blends. This was an increase of five cents over the previous rates. A special session of the 1997 Legislature temporarily increased the motor fuel tax by an additional three cents to raise revenue to repair road and bridge damage caused by blizzards and flooding. This increase was in effect from May 1, 1997, until October 1, 1998.

The 1999 Legislature increased motor fuel taxes by four cents to the current rate of twenty-two cents per gallon for gasoline and diesel fuel. The increase went into effect on April 1, 1999, and was implemented primarily to raise additional revenues to match increased federal funds available for highway construction.

In 2009, the method of taxing ethanol blends was changed. Instead of taxing ethanol blends at a rate two cents less a gallon than gasoline, a tax at the rate of eight cents per gallon was placed

on the ethyl alcohol that is mixed with the gasoline to produce an ethanol blend. This change provided for a more equitable means of taxing various levels of ethanol blends.

After the motor fuel tax has been collected, the revenue is distributed as follows: a portion (about \$1.6 million) goes to the Parks and Recreation Fund based on the number of motorized boats licensed in the state; a small portion (about \$408,000) goes to the Snowmobile Trails Fund based on the number of snowmobiles registered in the state; a portion (about \$2.7 million) goes to cover the administrative expenses for collecting the tax; a portion (\$500,000), which represents the amount of motor fuel collected from the motor fuel used for nonhighway purposes, goes to the Coordinated Natural Resources Conservation Fund; a portion (\$135,000) goes to the Value Added Agriculture Subfund; a portion (\$75,000) goes to the Department of Agriculture to be used for a grant to the Northern Crops Institute; a portion (\$700,000) goes to counties and townships for local roads and bridges; and the remainder of the revenue (about \$126.4 million) goes to the State Highway Fund. Prior to 1986, counties received one-eighth of gas tax revenues but that was given up when the counties were given a much larger portion of vehicle license fees.

There have been attempts in recent legislative sessions to increase the motor fuel tax rate to get additional revenues to be used on state highways. Each of those attempts has failed.

Each additional one-cent increase in the gas tax would result in an estimated \$5.8 million available for distribution to the State Highway Fund.

Annual vehicle license fees collected by county treasurers represent the second largest local source of highway revenues. These fees were first established in 1913 at the rate of six dollars for each automobile. Today, after numerous changes over the years, we have a system of licensing commercial motor vehicles and noncommercial motor vehicles weighing more than 6,000 pounds on a graduated fee scale based on a vehicle's maximum gross weight. Noncommercial vehicles weighing less than 6,000 pounds are licensed on a graduated fee scale based on the vehicle's actual weight. The law also provides that commercial vehicles over ten years of age are charged a license fee 10% less than normal and similarly aged noncommercial vehicles are charged a license fee 30% less than normal.

The distribution of annual vehicle registration revenues is established in statute and provides that 22.5% of the license fees collected (about \$15.4 million statewide) be retained at the county level for county highway purposes; 0.25% (about \$170,700 statewide) be retained at the county level and credited to the county treasurer fund to cover expenses for supplies used to collect vehicle license fees; 14% (about \$9.6 million statewide) be distributed to the townships of the county on the basis of the number of maintained township roads within each township; and 5% (about \$3.4 million statewide) be distributed to incorporated municipalities in the county on the basis of street mileage.

The remaining 58.25% is sent to the state where 1.75% (about \$1.2 million) is credited to the State Motor Vehicle Fund to cover the administrative costs of collecting the fees, 2.5% (about \$1.7 million) is credited to the State License Plate Special Revenue Fund to be used to manufacture license plates, and the remaining 54% (about \$36.9 million) goes into the Local Government Highway and Bridge Fund.

Prior to 1986 there was no Local Government Highway and Bridge Fund and the money that now goes to that fund previously went to the State Highway Fund. The new fund was created in 1986 to divert more money to local governments for use on their highway systems. As part of

the change in 1986 counties gave up their portion of the state gas tax. In addition to 54% of the license fees, this fund also receives reversions from the State Motor Vehicle Fund and the State License Plate Special Revenue Fund which aren't appropriated for administration. As a result, in FY 2011 counties received about \$37.3 million from the fund. Municipalities and townships that didn't previously get a portion of the gas tax got approximately \$9.0 million and \$2.1 million, respectively, from the fund in fiscal year 2011.

Monies in the Local Government Highway and Bridge Fund are divided each January, May, July, and October among counties, municipalities, and townships according to percentages established in statute (SDCL 32-11-35) and based on a highway needs study conducted by the State Department of Transportation. Under these percentages counties receive about 77.1% of the fund with municipalities and townships receiving about 18.6% and 4.3% respectively.

ILLUSTRATION 2

ANNUAL VEHICLE LICENSE FEES DISTRIBUTION

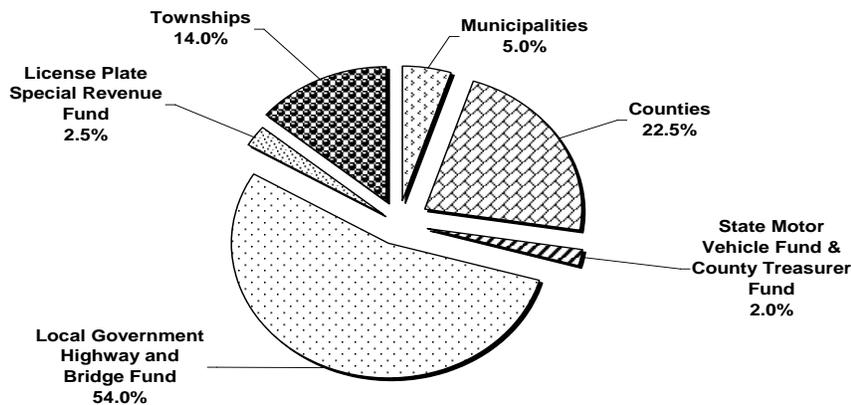
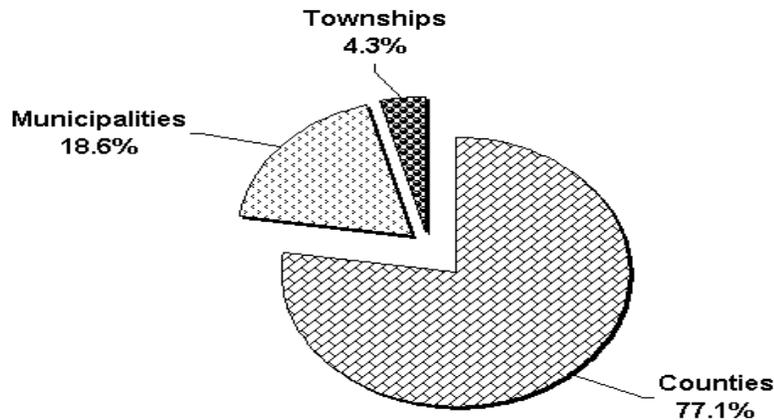


ILLUSTRATION 3

LOCAL GOVERNMENT HIGHWAY AND BRIDGE FUND DISTRIBUTION



Annual motor vehicle license fees were increased on July 1, 2011. The last time these fees were increased was in 1999. These fees are also scheduled to increase on July 1, 2013, as the second stage of the increase approved by the Legislature in 2011 is implemented. When the 2013 increase is fully implemented, it is estimated that annual collections will be about \$31 million more a year than were collected prior to 2011. Despite these increases, motor vehicle license fees will still be generally lower than those of surrounding states.

Since 1985, counties have had the authority to adopt a county wheel tax to raise additional highway revenues. Under the county wheel tax law adopted in 1985, a county could impose a tax of up to two dollars per wheel on each motor vehicle licensed in the county. The total tax could not exceed eight dollars per motor vehicle. The county commissioners have the authority to establish the means of distributing the revenue from the tax among the county and municipalities and townships located within the county.

In 1994, the county wheel tax law was amended to allow counties to impose a tax of up to four dollars per wheel. The total vehicle tax was increased to a maximum of sixteen dollars. The legislation initially provided that all revenue from the tax in excess of two dollars per wheel must be used to replace property taxes the county imposes for highway purposes. That requirement was repealed by the Legislature in 2004.

A county with a large number of vehicle registrations would fare better under a county wheel tax than under an increase in vehicle license fees at the state level, while a county with a small number of vehicles but a large number of local roads to maintain would fare better with an increase in vehicle license fees at the state level.

As of September 2012, forty-six counties have implemented a county wheel tax. The tax imposed varies from two to four dollars per wheel. Each year revenue from county wheel taxes totals about \$10.1 million statewide. Each year about 90% of the revenues from this tax have been retained by the counties and about 5% has been distributed to townships and about 5% has been distributed to municipalities.

The 3% excise tax on motor vehicles represents the second largest source of state-generated revenues. Approximately \$66.7 million was collected in FY 2011. All of the revenues from this tax go to the State Highway Fund. Basically, this tax is levied on the purchase price of a new or used vehicle at the time the vehicle's title is issued or transferred. On a new vehicle transaction involving a trade-in the tax is paid on the difference in value. On a used car transaction, the tax is paid on the actual purchase price which must be proven by a bill of sale. If a bill of sale is not submitted, the tax is assessed on the average retail value of the vehicle.

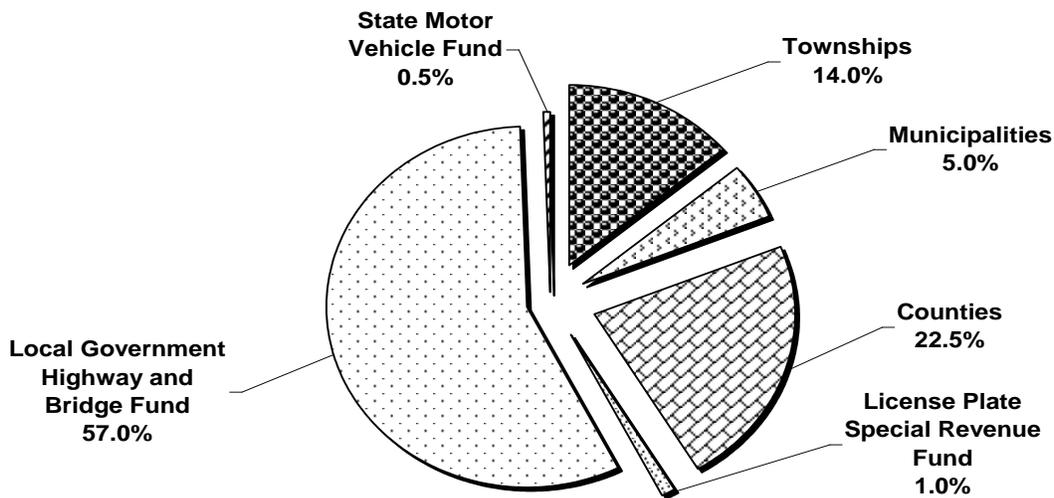
Prior to 1985, this tax was only charged on new vehicles or previously unregistered vehicles based on the manufacturer's sticker price on a new vehicle or book value on used vehicles. The change in 1985 to include used cars previously registered in the state was intended to increase revenues from this tax. The increase was necessary to make up the revenue lost when annual vehicle license fees were transferred from the State Highway Fund to the Local Government Highway and Bridge Fund. Annual revenues from the 3% excise tax have increased over threefold since 1985.

Prorate fees are the annual registration fees and 3% vehicle excise tax that interstate motor carriers, both South Dakota based and those based in other states, pay to the state for their use of highways. The fees are paid directly to the Division of Motor Vehicles instead of being paid to county treasurers. Through an agreement with other states and Canadian provinces called the International Registration Plan (IRP) each state or province has agreed to collect these annual registration fees from the motor carriers based in that state. The registration fees paid by a carrier are then distributed, based on the percentage of miles actually traveled in each state, to the respective states.

Prorate fees are distributed with 100% of the 3% excise tax collected going to the State Highway Fund and the annual registration fees collected going to local governments. Just under \$1.5 million in excise tax is collected each year for the State Highway Fund from prorated vehicles. The annual registration fees (about \$16.3 million) are distributed with 57% (about \$9.3 million) going to the Local Government Highway and Bridge Fund and 41.5% (about \$6.8 million) to the counties. Prior to 1999, the portion now going to the Local Government Highway and Bridge Fund went to the State Highway Fund. The 41.5% share distributed amongst the counties is done so by a formula based pro rata on truck registrations, population, and total road mileage. Each county then distributes 54% of its portion to the county general fund (about \$3.7 million statewide), 34% of its portion among townships on the basis of township road mileage (about \$2.3 million statewide), and 12% of its portion to incorporated municipalities on the basis of street mileage (about \$800,000 statewide). Also, one percent of the registration fees collected go to the State License Plate Special Revenue Fund (about \$163,000) and one-half percent of such fees goes to the State Motor Vehicle Fund (about \$82,000).

ILLUSTRATION 4

PRORATE DISTRIBUTION



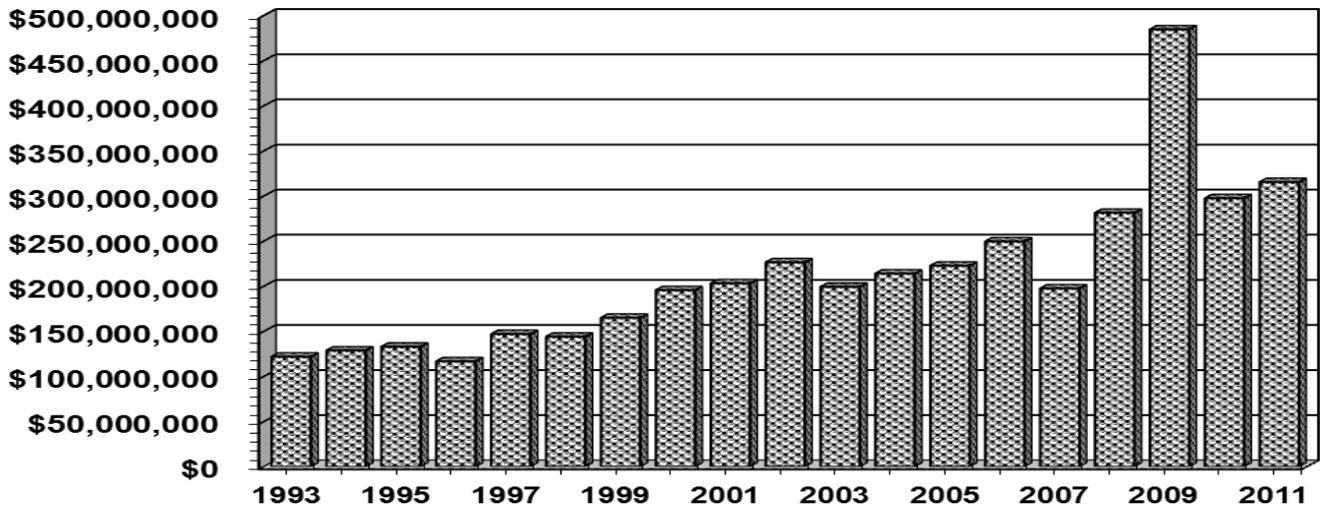
Federal funds make up the most significant single source of revenue for highway uses in the state. In 2011 the state received \$315.4 million federal dollars for highway purposes. Of this total \$290.9 million went to state highways and the remainder went to local governments. The federal highway money is not directly appropriated to the state but is used to reimburse the state and local governments for actual construction or reconstruction cost. On the interstate highway system, the federal government reimburses the state for 91% of the cost of construction or reconstruction. On the state primary or secondary highway system, the state is reimbursed for 82% of the cost of construction or reconstruction.

Illustration 5 shows federal funds received for highway purposes since 1993. Federal funds increased significantly in 2009 due to the receipt of federal stimulus dollars. In 2009 the federal stimulus dollars for highway purposes was \$183.0 million. This was over and beyond the state's normal allocation of federal highway dollars. These stimulus dollars were also not subject to any state match.

Historically, South Dakota has received about \$2.00 in federal funds for highway purposes for every \$1.00 paid into the federal Highway Trust Fund. A new federal transportation funding bill went into effect on October 1, 2012, and will provide federal funding for highways through September of 2014. The amount of federal funds expected each year under the new federal transportation funding bill compared to what the state received in 2011 is about five percent less per year.

ILLUSTRATION 5

FEDERAL HIGHWAY FUNDS RECEIVED FOR STATE AND LOCAL HIGHWAYS



Railroads

The rail system in South Dakota has undergone significant changes since 1979. For the first half century of statehood, railroads were the most important means of transportation in South Dakota. Over 4,400 miles of railroad track were constructed during that period. Railroads played an important role in the economic development of the state. Many of the state's cities and towns were founded as railroad communities. The railroads served as the major arteries of commerce that linked those communities with the outside world, but as the years went by, there became more links to the outside world. The development of automobiles, large trucks, airplanes, better highways, and airports created stiff competition for railroads. As commerce was diverted to these other forms of transportation many railroad lines could no longer make a profit. Consequently, once profitable railroad companies were faced with bankruptcy and abandonment of rail lines.

South Dakota's railroad system began to get smaller. Since 1980, 1,670 miles of rail line have been abandoned in the state. The bankruptcy of the Milwaukee Road in 1980 resulted in the state being faced with loss of over 50% of its total operating rail mileage. The state of South Dakota was forced to become directly involved in railroads because of the potential loss of rail service vital to the state's economy. In the 1980 session, the Legislature reviewed the rail situation, declared that certain rail service was necessary for the well-being of the state, and authorized the purchase of up to 1,254 miles of rail facilities at not more than 25 million dollars. A temporary one-cent increase in the state sales tax was approved to be used to purchase the railroad lines.

The Legislature in 1980 created the South Dakota Rail Board to provide public input to the Department of Transportation about the management of state-owned railroad property. The South Dakota Railroad Authority, a public financing mechanism, was also created at that time to

issue bonds to acquire and improve the railroad facilities. In October of 1980, the Railroad Authority approved a purchase agreement for 760.5 miles of Milwaukee property, including real property totaling approximately 13,830 acres, for the sum of \$18,750,000. The Railroad Authority later approved the purchase of additional line segments in 1980 and 1981.

The Core System

The core system was the portion of the state rail system identified as being an essential part of the state's transportation system. The state purchased core system consisted of lines from Aberdeen south through Mitchell and on to Sioux City, Iowa, and from Sioux Falls to Mitchell via Canton. The core system is comprised of 368 miles of track.

An agreement was reached with the Burlington Northern to operate the state purchased core system without a subsidy. The state, as partner to the operating agreement, provided rehabilitation assistance in order to bring the system up to standards supporting 25 mph speeds on all portions of the core system except the Mitchell to Chamberlain line. The entire core system has operated since November 1981.

In 1986 the state signed a new agreement with Burlington Northern to extend their operation of the rail system another 15 years. The Mitchell to Chamberlain line was, however, dropped from the agreement due to the high cost of rail replacement on that line to bring it up to 25 mph conditions. That agreement allowed either party to cancel the agreement at the end of five years or at the end of ten years. The agreement also gave the Burlington Northern the option to purchase the core system at anytime during the period of the agreement at a price that would ensure the state recoups all the money it has placed into the system. The agreement provided for the state to share in Burlington Northern's gross freight revenues earned on the core system when those revenues exceed a threshold amount.

That agreement was subsequently amended on August 7, 1991. The amendment extended the 1986 agreement to the year 2020. The amendment also provides for an investment of \$12.7 million in track purchase and rehabilitation. The state committed \$8 million over the next eight years from the payments the state receives under the core system rental agreement. The state also agreed to help the Burlington Northern acquire and rehabilitate 22 miles between Ortonville and Appleton, Minnesota. This segment was considered strategic in terms of the access it affords South Dakota shippers to Burlington Northern mainlines via the former South Dakota Mainline.

In April 2005, the Burlington Northern and Santa Fe Railroad exercised its option to purchase the core system from the state. The purchase price for the core system was \$41,640,000. After consideration for rental payments and infrastructure improvements made by the Burlington Northern and Santa Fe, \$40,337,245 was eventually deposited in the Railroad Trust Fund. During the 2006 Legislature, 38 million dollars was appropriated from the Railroad Trust Fund to the Property Tax Reduction Fund. After this appropriation 19.6 million dollars remained in the Railroad Trust Fund. The Railroad Trust Fund is used to make loans and grants to regional rail authorities.

The Mainline

A special session of the Legislature in September of 1981 authorized the Railroad Authority to issue bonds or notes to finance the purchase of the Milwaukee Mainline from Ortonville,

Minnesota, to Terry, Montana (called the Mainline), and to take steps necessary to permit continued service on the line by private enterprise. The Railroad Authority approved the Purchase Agreement for this Mainline in April of 1982. The state entered into an agreement with Burlington Northern Railroad to have the Burlington Northern make the bond payments for the privilege to operate on the line and to eventually purchase the line.

In 1991, ownership of the Mainline was transferred from the South Dakota Railroad Authority to the Burlington Northern. This transfer occurred after the Burlington Northern, in 1991, prepaid its remaining obligation on the \$30.8 million in bonds used to finance the purchase of the Mainline. In 1990, the Burlington Northern prepaid \$30 million in notes issued by the South Dakota Railroad Authority to the Federal Railroad Administration for rehabilitation of the line. Under the terms of the transfer, the Burlington Northern committed to provide service over the Mainline for at least ten more years at the existing level of service.

Other Rail Purchases

In 2001 and 2002, the state acquired approximately 76 miles of railroad track running northeast from Aberdeen to Genesee Junction in southeast North Dakota. In 2001, the Legislature authorized the Railroad Authority to accept the track from Aberdeen to the North Dakota/South Dakota border as a gift from the Burlington Northern and Santa Fe Railroad Company. In 2002, the Legislature authorized the Railroad Authority to purchase the remaining portion of the line to Genesee Junction for \$400,000. This line has been rehabilitated and trains are operated on this line by the Dakota Missouri Valley and Western Railroad. This addition to the state rail system provides rail service to communities in Brown and Marshall Counties and allows South Dakota products to access additional markets to the north and west via the Canadian Pacific and Soo Line.

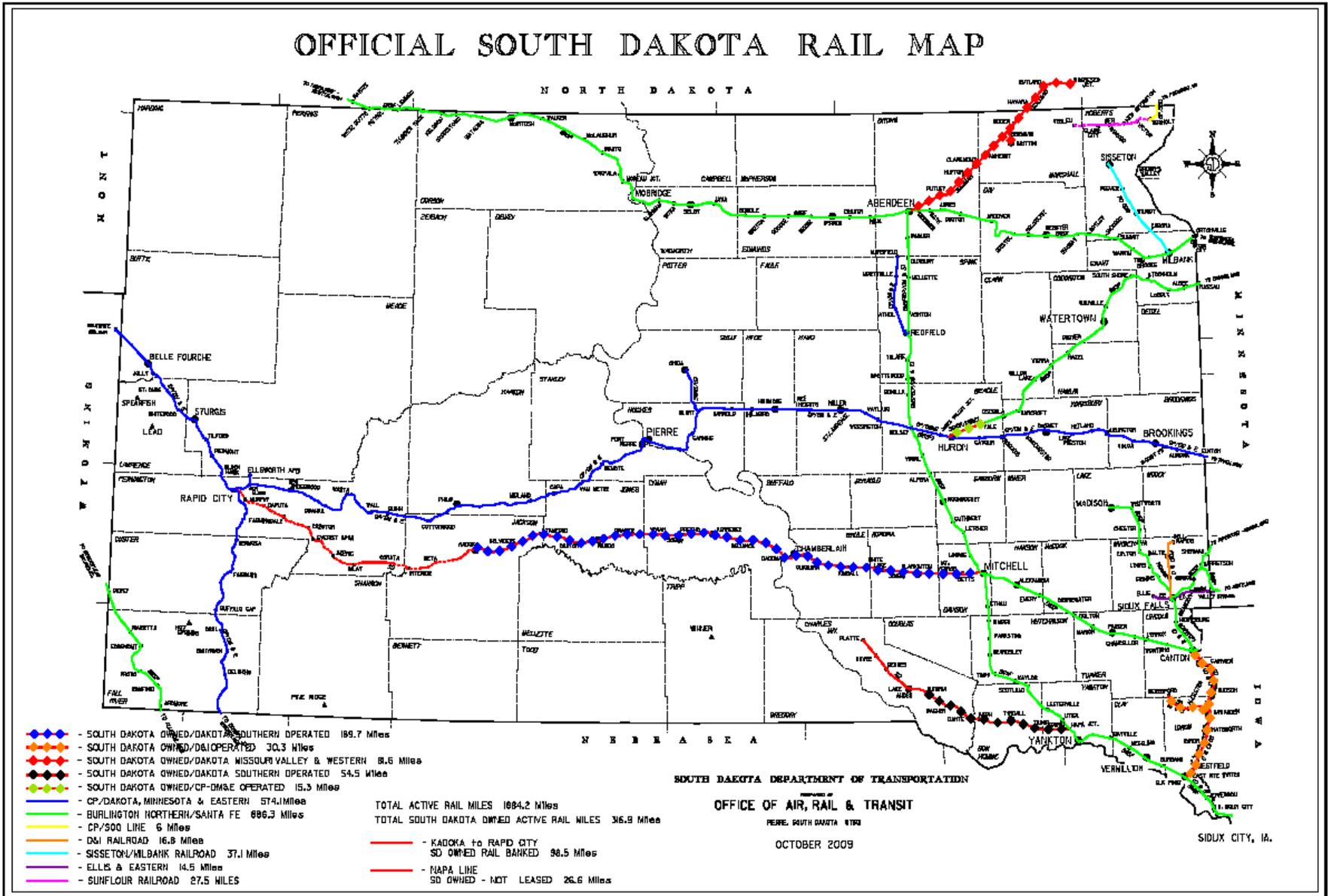
Local Option Lines

Local option lines are those lines purchased by the state which serve a local purpose and which are operated locally.

There are four state-owned local option lines currently in operation. The D&I Railroad operates on two local option lines between Canton and Elk Point and between Beresford and Hawarden, Iowa. The Dakota Missouri Valley & Western operates the state-owned line from Aberdeen to Genesee Junction in southeast North Dakota. On a very limited basis, the Dakota Southern Railway operates between Mitchell and Kennebec and between Napa Jct. and Ravinia.

There are two state-owned local option lines currently in nonoperating status. The Ravinia to Platte line had operation restored intermittently between 1985 and 1989 but has not operated since. The Kadoka to Rapid City line has not had rail operations since its abandonment in 1980. The state has pursued salvaging these nonoperating lines, however, questions whether the state could maintain ownership of the railroad right-of-way, if the track was salvaged, have delayed any awarding of a bid to salvage.

OFFICIAL SOUTH DAKOTA RAIL MAP



Aviation Services

The Department of Transportation along with the Aeronautics Commission is responsible for the promoting of aviation and aviation safety within the state. The seven-member aeronautics commission is appointed by the Governor to direct the department towards meeting its aviation objectives. At least four members of the commission must have at least one year of experience in civil or military aeronautics.

One of the aviation functions of the department is to register aircraft. Approximately 1,317 aircraft are registered. Aircraft are registered on an annual basis. Approximately \$45,000 is collected from aircraft registration fees and another \$666,000 is collected from aircraft original registration taxes annually.

Another aviation function of the department is to provide engineering guidance for the development of plans and specifications for airport construction and reconstruction projects. For FY 2012, an estimated \$31.5 million is being planned for airport improvements. Of these planned expenditures, \$28.4 million will be from federal funds, \$2.5 million will be from state funds, and \$630,000 will be from local funds. The primary source of state funds for this program is tax on aviation fuel. The aviation fuel tax brings in about \$700,000 a year. Of this amount, a portion is used by the state for the state match for construction and reconstruction. The remainder is distributed back to the airport at which the fuel was sold to be used as local matching dollars for airport improvements.

Some other aviation functions of the department are as follows: an airport lighting systems and non-directional beacon program to provide funds to general aviation airports to purchase such equipment; an annual inspection program to inspect all airports to ensure safe operating conditions; an aeronautical hazard application program which administers the state law that ensures safe airspace for the flying public by requiring permits of anyone proposing to build a large building or tower; and an airport safety and replacement equipment program which maintains a small inventory of replacement supplies (windsocks, beacon bulbs, etc.) that are available for purchase by owners or operators of public use airports.

Highway Safety

Since the mid 1970s South Dakota's motor vehicle traffic fatality rate has dropped. There does not appear to be a single reason why there are fewer fatalities; however, the national 55 mph speed limit law initiated in 1974 and the increased efforts to control drinking and driving since 1981 have probably had the most impact. Other factors include safe improvements in highway design, safer vehicles, and increased traffic enforcement efforts.

The fatality rate in South Dakota for 2011 was 1.23 (the number of traffic fatalities per 100 million vehicle miles traveled). The fatality rate for 2010 was higher at 1.58. In comparison with our surrounding states, Montana and Wyoming were at 1.8, North Dakota at 1.6, Iowa at 1.2, Nebraska at 0.9, and Minnesota at 0.7. South Dakota's rate was above the national average of 1.1.

ILLUSTRATION 6
SD YEARLY COMPARISON
OF MOTOR VEHICLE TRAFFIC FATALITIES

Year	Fatalities	Death Rate*
1972	294	5.83
1973	286	5.57
1974	229	4.47
1975	198	3.82
1976	224	4.07
1977	211	3.67
1978	194	3.33
1979	211	3.76
1980	228	3.69
1981	177	2.86
1982	148	2.33
1983	175	2.77
1984	143	2.24
1985	130	2.07
1986	134	2.15
1987	134	2.09
1988	147	2.22
1989	152	2.27
1990	153	2.19
1991	143	2.10
1992	161	2.24
1993	140	1.89
1994	154	2.02
1995	158	2.06
1996	175	2.24
1997	148	1.88
1998	165	2.05
1999	150	1.84
2000	173	2.08
2001	171	2.04
2002	180	2.12
2003	203	2.43
2004	197	2.38
2005	186	2.29
2006	191	2.25
2007	146	1.72
2008	121	1.43
2009	131	1.50
2010	140	1.58
2011	111	1.23

*Number of deaths per 100 million vehicle miles traveled.
Source: Department of Public Safety: Accident Records

Drinking and Driving

Since 1981 there has been an increased effort to reduce the amount of drinking and driving. These efforts are definitely a factor in why there are fewer traffic fatalities. In 2011 the 37 alcohol-involved deaths was the lowest number of alcohol-related deaths for any one-year period since the state started keeping records in the 1970s. The highest number of alcohol-related deaths was 138 in 1973.

ILLUSTRATION 7

ALCOHOL INVOLVED ACCIDENTS AS PERCENT OF ALL ACCIDENTS 2002 - 2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Total Accidents	7.3 (1265)	7.0 (1261)	6.7 (1153)	6.8 (1113)	7.0 (1099)	5.9 (959)	6.1 (977)	6.0 (1022)	5.7 (999)	5.7 (992)
Fatal Accidents	47.8 (76)	45.1 (78)	36.7 (61)	39.2 (62)	39.0 (67)	42.3 (55)	41.3 (45)	45.5 (51)	35.5 (44)	29.7 (30)
Injury Accidents	13.5 (635)	13.2 (630)	13.3 (607)	12.7 (552)	13.4 (563)	11.5 (467)	11.4 (467)	11.6 (474)	10.8 (448)	11.5 (457)
PDO Accidents	4.4 (554)	4.2 (553)	3.9 (485)	4.2 (489)	4.1 (469)	3.6 (437)	4.0 (465)	3.9 (497)	3.8 (507)	3.8 (505)
Fatalities	50.6 (91)	46.3 (94)	39.6 (78)	39.8 (74)	37.7 (72)	42.5 (62)	39.7 (48)	46.6 (61)	35.0 (49)	33.3 (37)
Injuries	14.2 (991)	14.4 (1000)	14.3 (936)	13.2 (818)	14.2 (854)	11.5 (666)	11.5 (659)	12.1 (692)	11.1 (646)	11.8 (633)

Source: Department of Public Safety: Accident Records

ILLUSTRATION 8

ACCIDENT AND ARREST ACTIVITY 1980 - 2011

	FATAL ACCIDENTS		FATAL & INJURY ACCIDENTS		
	ALCOHOL RELATED	NONALCOHOL RELATED	ALCOHOL RELATED	NONALCOHOL RELATED	DWI ARRESTS
1980	105	83	1391	3567	4151
1981	100	62	1366	3410	5068
1982	77	52	1007	3314	6842
1983	72	75	1007	3315	9840
1984	71	61	965	3464	9972
1985	56	53	866	3472	9363
1986	64	54	833	3390	9398
1987	52	55	783	3497	10230
1988	64	63	872	3710	8780
1989	70	64	843	3896	7698
1990	71	68	949	4010	7499
1991	57	73	941	4119	8291
1992	65	76	829	4424	8378
1993	47	71	783	4860	8821
1994	63	78	868	4984	9574
1995	60	80	795	4888	8054
1996	54	88	776	5019	9712
1997	50	78	706	4900	8757
1998	60	89	722	4539	8630
1999	58	78	692	4476	9383
2000	65	85	713	4689	9430
2001	65	89	628	4414	8956
2002	76	83	711	4150	8272
2003	78	95	708	4246	9011
2004	61	105	668	4079	9049
2005	62	96	614	3890	10174
2006	67	105	630	3738	11282
2007	55	75	522	3679	11756
2008	45	64	512	3704	11029
2009	51	61	525	3688	10147
2010	44	80	492	3787	9246
2011	30	71	487	3587	8744

Source: Department of Public Safety: Accident Records.

ILLUSTRATION 9

Important Events Affecting Highway Safety

- March 1, 1974 - Speed limit lowered to 55 miles per hour.
- July 1, 1976 - Right turn on red is allowed unless prohibited by a sign reading "No right turn on red."
- July 1, 1977 - Helmet law repealed for motorcycle drivers and passengers age 18 and over.
- April 1, 1979 - Motor Vehicle Safety Inspection repealed.
- March 1, 1982 - Driving While Intoxicated Enforcement campaign began.
- July 1, 1984 - Child safety restraints became a law for children under age 5.
- April 15, 1987 - Speed limit on rural interstate raised to 65 miles per hour.
- April 1, 1988 - Drinking age raised to 21.
- April 1, 1992 - Commercial driver license required for commercial vehicle operators.
- January 1, 1995 - Safety belt law became effective for front seat occupants.
- April 1, 1996 - Speed limit raised to 75 miles per hour on rural interstate and 65 on most U.S. and State Highways.
- January 1, 1999 - Graduated Driver License law implemented.
- July 1, 2001 - Safety belt primary law for all occupants age 17 and under.
- July 1, 2002 - BAC level changed from .10 to .08.
- July 1, 2006 - Arresting law enforcement officers authorized to require an operator of a motor vehicle to submit to a blood test if arrested for driving while under the influence.

Transportation Related Internet Sites

➤ **www.sdot.com**

Information regarding DOT divisions, Transportation Commission, construction projects, travel information, railroads, aeronautics, and highway maps.

➤ **www.state.sd.us/drr2/motorvehicle/**

Information regarding vehicle registration, motor fuel tax, and motor vehicle excise tax.

➤ **www.dps.sd.gov/**

Information regarding driver licensing, highway patrol, highway safety, and accident records.

➤ **www.nhtsa.gov/**

Information regarding federal highway safety programs.

➤ **www.fhwa.dot.gov/**

Information regarding federal highway funding and motor carrier enforcement.