

# **South Dakota 2017 Interim Committee Reports & Judicial Opinions**



# **2017 Interim Committee Reports**

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# **Agricultural Land Assessment Implementation and Oversight Advisory Task Force 2017 Final Report**

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## **Study Assignment**

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

1. The proper percentage of annual earning capacity to be used to determine the agricultural income value for cropland and noncropland;
2. The proper capitalization rate that minimizes the shift in total taxable value between agricultural land and the other property classifications;
3. The changes, if any, that must be made to capital outlay levy or special education tax levy to ensure that the total amount of additional taxes that may be generated on agricultural land by a school district pursuant to the provisions will not provide a substantial property tax revenue increase or decrease for the school district, pursuant to the implementation of the productivity; and
4. The distribution of the local effort for the general fund of school districts between the classifications of real property for the general fund of school districts. The task force shall also consider the other taxes paid by agricultural property, the relationship of the total assessed value of agricultural property to the total assessed value of all real property, and other factors the task force deems appropriate.

## **Summary of Interim**

The interim Agricultural Land Assessment Implementation and Oversight Advisory Task Force held its first meeting on September 18 in Pierre. Ms. Tami Darnall, Chief Financial Officer, Department of Education reviewed the status of the current state aid to general education funding formula. The revised formula combines total teacher compensation and overhead costs to calculate total need.

Mr. Michael Houdyshell, Director, Division of Property and Special Taxes, Department of Revenue, addressed the task force regarding the 2018 assessment year, reporting that all but six counties in the state are at full productivity valuations for cropland and noncropland. All counties must be at full productivity for 2019 property taxes payable in 2020.

Mr. Fred Baatz, Principal Research Analyst, Legislative Research Council, gave an overview of the ballot questions and measures surrounding property assessment and taxation from 1980 through 2006 and legislation from 1989 to 2017. He noted that state laws covering the assessment of property have been amended 31 of the last 35 years. Changes have included freezing or limiting property taxes, creating and repealing property classifications, implementing tax relief programs, and devising new methods for assessing property.

Dr. Matthew Elliott, Economics Department, SDSU, reviewed the focus of the Soil Ratings Study. Dr. Elliott updated members on the elements being studied which included: current soil uses and agricultural district crop reported yields; methods for classifying the Highest and Best Use (HBU) of cropland; soil productivity ratings; applying Natural Resource Conversation Service (NRCS) climate data; GIS information; and undisturbed land assessment estimates.

The final meeting was held on October 30 in Pierre. The task force heard from Dr. Matthew Elliott, SDSU, regarding the capitalization rate and the landlord share used in the productivity model. Dr. Elliott recommended no change to the current productivity formula regarding the landlord share or the capitalization rate. The task force did not propose any legislation for the 2018 session.

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

None.

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

The committee met in Pierre on September 18 and October 30, 2017.

### **Listing of Committee Members**

Members of the committee were Representative Larry Rhoden, Chair; Senator Larry Tidemann, Vice-Chair; Senators Gary Cammack, Jason Frerichs, and Craig Kennedy; and Representatives Lee Qualm, Steven McCleery, and Ray Ring; Public members are Trevor Cramer, Kyle Helseth, Matt McCaulley, David Owen, Jim Peterson and Mike Wiese.

### **Listing of Staff Members**

Staff members for the committee were Amanda Jacobs, Senior Research Analyst; Fred Baatz, Principal Research Analyst; Lucas Martin, Fiscal Analyst; and Kelly Thompson, Senior Legislative Secretary.





# Code Commission 2017 Final Report

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## **Study Assignment**

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

## **Summary of Interim**

### Replacement Volumes

Annually, West Publishing, a Thomson Reuters Company, provides to the Code Commission a "Pocketpart Growth Report." This report identifies the page count as a percentage for each pocketpart for each volume relative to the page count for the main volume. It is the practice of the Code Commission to consider volumes for reprinting when the pocketpart growth relative to the main volume equals or exceeds 25% of the main volume. The Code Commission considers one to three volumes for replacement each year. After a discussion of the candidates for replacement, the Code Commission reached a consensus to reprint Volumes 14 and 29.

### Publishing Contract

The contract for the publication of the Code is subject to annual renewal. The Code Commission renewed the contract with West Publishing, a Thomson Reuters Company, for another year. The contract was amended to allow the publisher to discontinue the production of the CD-Rom product.

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

The annual codification of the previous year's session laws.

An Act to codify legislation enacted in 2017.

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

The Code Commission met on June 21, 2017, at the State Bar Association annual meeting in Rapid City.

## **Listing of Committee Members**

Members of the Code Commission are Michael DeMersseman, Chair; Margaret Gillespie, Vice-Chair; Representative Mike Stevens, Senator Arthur Rusch, and Tom Lee.

## **Listing of Staff Members**

Staff members for the Code Commission are Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.





# Government Accountability Task Force

## 2017 Final Report

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### Study Assignment

This Government Accountability Task Force was created by Senate Bill 171 during the 2017 legislative session to "examine the issues of campaign finance and to review current related statutory protections and recent legislative changes; and to propose potential legislation to the Ninety-third Legislature."

### Summary of Interim

The Government Accountability Task Force met on June 19. The task force had its first meeting to discuss the campaign finance limits and requirements. Shantel Krebs, Secretary of State, and Kea Warne, Deputy Secretary of State, reviewed the campaign contribution limits and reports and the legislation introduced from the consensus of the working group who studied campaign finances in 2016. The Secretary of State worked with legislators and other public officials in 2016 to improve and simplify the campaign finance requirements. SB 54, as introduced, was the product of the working group. Secretary Krebs and the task force members discussed the 2017 legislative session and the legislation concerning campaign finance. The revised campaign finance contribution limits are outlined in a table on the Secretary of State's web page and there is also a table on the campaign finance report deadlines. One change made last session by SB 54 was to amend the terminology by replacing the term "organization" with "entity" and allowing entities to make direct contributions to candidates and political parties in an effort to provide more transparency. The term, entity, includes corporations and labor unions. Members of the task force also discussed elements of Initiated Measure 22 (IM 22) that was passed in the 2016 election, especially the campaign limits contained in the measure. Various tables and documents from NCSL were also presented to the task force concerning a 50-state overview of campaign contribution limits for candidates, political parties, and political committees and a summary of certain Supreme Court Cases related to campaign finance. There was also a brief discussion concerning SB 151 which established a process to investigate violations of the campaign finance requirements filed with the Secretary of State and to address complaints.

The task force had its second meeting on August 29 to discuss campaign finance limits and reporting requirements. Wendy Underhill, Program Director, NCSL Elections and Redistricting, reviewed United States Supreme Court Cases, state public campaign finance comparisons, state campaign contribution limits, and campaign finance trends. Ms. Underhill used a number of tables and charts to highlight the information presented the task force. Kea Warne reviewed the campaign finance complaint process and campaign contribution reporting requirements. The task force agreed to conduct subcommittee hearings in Rapid City and Sioux Falls to receive public input and feedback concerning campaign finance limits and reporting requirements on September 11 and 12, respectively.

The task force held subcommittee meetings in Rapid City and Sioux Falls to provide the public an opportunity to give input on campaign finance. The task force received no public input at the Rapid City meeting. Several members of the public spoke at the Sioux Falls meeting concerning campaign finance limitations, which included using the campaign limits proposed in IM 22, limiting the aggregate amount of money that may be given by any donor, and prohibiting corporations and unions from directly giving money. There was also some discussion of the influence of out-of-state campaign contributions.

The task force conducted its third meeting on October 16. The task force heard responses from NCSL regarding requests from the members concerning campaign finance information and laws from other states. The primary

focus of this meeting was to review and discuss the eight legislative drafts. The drafts proposed form and style changes and cleanup provisions to SDCL chapter 12-27 and some drafts proposed changes to various policies and procedures concerning campaign finance limitations. The task force reviewed the draft legislation, heard public testimony, and discussed the merits of each draft. The task force approved the introduction of five bill drafts. One of the final drafts adopted by the task force was a combination of sections from three of the proposed legislative drafts which addressed various form and style changes and cleanup provisions.

### **Listing of Legislation Adopted by the Task Force**

1. An Act to revise certain provisions concerning campaign finance limits.
2. An Act to revise certain provisions concerning campaign finance requirements.
3. An Act to revise certain provisions concerning the content of the campaign finance disclosure reports and to declare an emergency.
4. An Act to revise certain provisions defining gifts from registered lobbyists to public officials.
5. An Act to establish provisions as to how campaign contribution limits apply to certain aggregate contributions.

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

The task force met in Pierre on June 19, August 29, and October 16, 2017. The task force held sub-committee meetings in Rapid City on September 11 and Sioux Falls on September 12.

### **Listing of Task Force Members**

Members of the task force were Senator Jordan Youngberg, Chair; Representative Julie Bartling, Vice Chair; Senators Brock Greenfield, Craig Kennedy, and Billie Sutton; Representatives Timothy Johns, Karen Soli, and Mike Stevens; Mr. Tony Vanhuizen, Ms. Kea Warne, and Mr. Rich Williams.

### **Listing of Staff Members**

Staff members for the task force were Fred Baatz, Principal Research Analyst; Wenzel Cummings, Legislative Attorney; Jason Simmons, Principal Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.



# Initiative and Referendum Task Force

## 2017 Final Report

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### Study Assignment

This task force was created by House Bill 1141 during the 2017 legislative session to "study and evaluate the voter constitutional amendment, initiative and referendum process, legislation proposed during the Ninety-second Legislative Session of the South Dakota Legislature relating to the voter constitutional amendment, initiative and referendum process, and other proposals as they relate to the voter constitutional amendment, initiative and referendum process in South Dakota."

### Summary of Interim

The Initiative and Referendum Task Force held its first two-day meeting on June 20-21 in Pierre. The first meeting was designated as an information-only meeting, allowing members of the task force to be informed about the process involved for placing ballot measures on the ballot. The task force received a presentation by Mr. Wenzel J. Cummings, Legislative Attorney with the LRC, on the history of the initiative and referendum process in South Dakota. Mr. Jason Hancock, director of the LRC, and Mr. David Ortbahn, Chief Research Analyst with the LRC, both provided the task force with a discussion of the LRC review and comment process with regard to ballot measures. Attorney General Marty Jackley presented to the task force on the process followed by the attorney general with regard to reviewing ballot measures and the statement provided by the attorney general's office. The task force received a presentation by Secretary of State Shantel Krebs on the ballot measure petition circulation process, including a discussion of the required contents of petitions. Finally, the task force received a presentation by Dr. Emily Wanless, chair, on a comparative analysis of South Dakota's ballot measure process with other states' processes. Between the two days of the first meeting, the task force received approximately four hours of public testimony, providing the perspective of the public regarding the ballot measure petition process. The task force submitted fourteen research requests to Mr. Cummings, available on the LRC website, regarding the ballot measure process, petition circulator provisions, and South Dakota Supreme Court case law related to the emergency clause of Article III, § 22, and the referendum limitations of Article III, § 1, of the South Dakota Constitution. The task force also submitted multiple bill draft requests to be considered at the following meeting.

On July 19, the task force held its second meeting to debate and take public testimony on multiple bill drafts that were requested by individual members of the task force and by the task force as a whole during its first meeting. Twelve bill drafts were considered, including drafts that address the required time frame during which the LRC must complete its review and comment for each initiated measure and initiated amendment to the Constitution, a draft that would require the LRC to provide substantive as well as style and form guidance on ballot measures, limitations on the number of ballot measures that may appear on a ballot during any particular election, and a draft that would clarify the required recitation regarding the effect of a vote on a ballot measure. Public testimony was received for each bill draft. Six new research requests, available on the LRC website, were submitted to Mr. Cummings.

The task force met for its third meeting on September 23 to take votes on the bill drafts debated and discussed during the second meeting along with new bill drafts that had been submitted following the second meeting. Approximately twenty bill drafts, available on the LRC website, were under consideration. No public testimony was taken on any bill draft that had been discussed during the second meeting, but public testimony was taken on new bill drafts to create a ballot question review commission requested after the second meeting. The task force voted to recommend nine of the twenty bill drafts on the agenda, but the chair determined to appoint a subcommittee to work through the points of contention regarding a citizens initiative review commission and hold one final meeting to vote on the bill draft submitted by the subcommittee. The subcommittee included Dr. Wanless, Representative Reed, Senator Otten, Ms. Linda Lea Viken, and Ms. Yvonne Taylor.

For approximately one month, the subcommittee of five members of the task force discussed via email the language of the bill drafts creating a citizens initiative review commission, specifically including the commission's size, appointments, and scope of authority regarding initiated measures and initiated constitutional amendments.

During the task force's final meeting, held via teleconference on October 6, 2017, the task force considered only one bill draft completed by the subcommittee creating a new citizens initiative review commission. During debate by the task force members, several provisions of the bill draft were removed out of concern that the cost of the commission's work would be prohibitive. The final draft as amended was approved by the full task force.

### **Listing of Legislation Adopted by the Task Force**

1. An Act to revise certain provisions regarding petition forms for initiated measures and initiated amendments to the Constitution.
2. An Act to require fiscal notes for certain initiated measures and initiated amendments to the Constitution.
3. An Act to revise certain requirements for a recitation regarding the effect of a vote on certain ballot measures.
4. An Act to provide for the resolution of conflicts by multiple initiated measures and amendments to the Constitution adopted at the same election.
5. An Act to revise certain provisions regarding the time period during which petition sponsors may submit ballot measures to the Legislative Research Council for review and comment.
6. An Act to revise the extent of comments required by the director of the Legislative Research Council regarding certain ballot measures and the period of time in which those comments are to be made.
7. An Act to require petition circulators for certain ballot measures to provide the full text of the ballot measure to petition signers.
8. An Act to revise certain provisions regarding the director of the Legislative Research Council issuing fiscal notes for certain ballot measures.
9. An Act to create a citizen initiative review commission to review initiated measures and initiated amendments to the Constitution and to prescribe the commission's powers and duties.
10. A joint resolution, Proposing and submitting to the electors at the next general election an amendment to Article XXIII, of the Constitution of the State of South Dakota, relating to amendments to the Constitution.

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

The committee met in Pierre on June 20-21, July 19, and August 23, 2017, and via teleconference on October 6, 2017.

### **Listing of Task Force Members**

Members of the task force were Dr. Emily Wanless, Chair; Senator Jim Bolin, Vice Chair; James Abbott, Pam Lynde, Will Mortenson, Senator Reynold Nesiba, Senator Ernie Otten, Representative Kent Peterson, Representative Tim Reed, Representative Karen Soli, Duane Sutton, Yvonne Taylor, Linda Lea Viken, Attorney General Marty Jackley (Ex-Officio), Secretary of State Shantel Krebs (Ex-Officio). (Representative Don Haggar was appointed to and served as Vice Chair of the task force until his resignation from the Legislature in June 2017. Representative Kent Peterson was appointed to the vacant position on the task force and Senator Jim Bolin was appointed to the vacant position of Vice Chair.)

### **Listing of Staff Members**

Staff members for the task force were Wenzel J. Cummings, Legislative Attorney; Fred Baatz, Principal Research Analyst; Jason Simmons, Principal Fiscal Analyst; and Cindy Tryon, Senior Legislative Secretary.

# Interim Joint Committee on Appropriations 2017 Final Report



## Study Assignment

The Interim Joint Committee on Appropriations (Interim JCA) was established by the 1974 Legislature in SDCL 4-8A-2. Members appointed to the Joint Committee on Appropriations during regular legislative sessions are to also serve on the Interim JCA. The Joint Committee on Appropriations consists of eighteen members; nine appointed by the president pro tempore and Senate minority leader, and nine appointed by the speaker of the House of Representatives, with advice from the House minority leader.

## Summary of Interim

During the 2017 Interim, the Interim JCA held three meetings and two legislative facility tours.

During the first meeting, held in Pierre on March 27 the Interim JCA:

- Received an update from the Department of Education (DOE) on the rules regarding the waiver process prepared by the School Finance Accountability Board. The waivers should be processed by the last Friday in November and the JCA can expect to be presented with the waivers by the 2018 Legislative Session.
- Approved the Letters of Intent. A Letter of Intent (LOI) supplements an appropriation approved by the Legislature and enacted into law. It outlines policy guidelines for state agencies and expresses particular views held by the JCA when it approved the appropriation. These guidelines do not have the direct force of statutory law and agencies are not required to follow them; however, they are used by the JCA as a means to conduct fiscal oversight of state agencies. The following Letters of Intent were adopted by the Interim JCA:
  - **Department of Labor and Regulation (DLR) – LEAN Audit.** The LOI stated how funding from the Legislative Priority Pilot Program Contingency Fund should be used for the purpose of conducting a LEAN Audit for one or more programs with DLR.
  - **Board of Regents (BOR) – Math @ Mines Program.** The 2017 Legislature approved \$250,000 in other fund spending authority for the School of Mines and Technology Math @ Mines program. The LOI clarified that the School of Mines and Technology should use privately collected donations, Math @ Mines program participation fees, or other non-campus funds for this program. The LOI also clarified that no funds be utilized for the Math @ Mines program that have been collected through existing higher education tuition or fees. (This LOI was rescinded on June 8, 2017. See details contained in the June 8 meeting summary.)
  - **Office of Attorney General (OAG) and Department of Human Services (DHS) – Social Security Administration Cooperative Disability Investigation (SSA-CDI).** The 2017 Legislature approved 1 FTE and \$444,655 in federal fund expenditure authority to DHS and 5 FTE and \$395,871 in other fund expenditure authority to OAG for a Social Security Administration Cooperative Disability Investigation Unit (SSA-CDI). The LOI specified that if federal funding for the SSA-CDI Unit is terminated, the SSA-CDI Unit should be eliminated and the other fund and federal fund expenditure authority and FTE for this program should be eliminated.
  - **Department of Social Services (DSS), Department of Corrections (DOC), and Department of Human Services (DHS) – Provider Groups Receiving Base Rate Increases.** The 2017 Legislature approved funds to provide a 0.3% base rate increase to community based provider groups. The LOI laid out the provider groups that will receive the base rate increase in the FY 2018 budget. The breakout of funding is \$802,257 in general fund expenditure authority, \$694,409 in federal fund expenditure authority, and \$19,385 in other fund expenditure authority.

The East River Tour was conducted on June 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup>. Tours are typically scheduled every two years and include visits to state-owned facilities or facilities conducting activities that receive state funding. The East River Tour included stops at the following sites:

- Human Services Center – Yankton
- Historic Mead Building formerly part of the HSC Campus – Yankton
- Regional Technical Education Center – Yankton
- Port Yankton – Yankton
- Dakota Metal – Beresford
- Good Earth State Park – Sioux Falls
- University Center – Sioux Falls
- South Dakota Investment Council – Sioux Falls
- South Dakota State Penitentiary – Sioux Falls
- Sequel Transition Academy – Sioux Falls

During the second meeting, held in Sioux Falls on June 8 the Interim JCA:

- Revisited the LOI regarding the Math @ Mines Program that was approved on March 27. The committee rescinded the LOI, thus removing the restriction that the School of Mines and Technology not use tuition and fee dollars and allowed the BOR to use uncommitted tuition reserve fund dollars for the Math @ Mines Program.
- Received updates on LEAN Management within the Bureau of Information and Telecommunications (BIT) and Department of Labor and Regulation (DLR).
- Heard about efforts to recruit, retain, and develop South Dakota's workforce from the Department of Labor and Regulation (DLR), the Governor's Office of Economic Development (GOED), and the Bureau of Human Resources (BHR).

During the third meeting, held in Aberdeen on July 27 the Interim JCA:

- Received a year-end report on the FY 2017 budget from the Bureau of Finance and Management (BFM). Revenues were \$7,164,960 lower than expected, along with \$15,566,622 in reversions from state agencies spending less than budgeted, totaling a \$7,943,412 cash surplus obligated to the Budget Reserve Fund.
- Received interim revenue estimates pursuant to SDCL 4-8A-16, which requires the BFM and LRC to prepare independent revenue projections by July 31st of each year.
  - The BFM projected general fund revenue for FY 2018 to be \$1,578,622,447, which is \$11,436,433 lower than the adopted revenue estimate.
  - The LRC projected general fund revenue for FY 2018 to be \$1,578,002,721, which is \$12,096,159 lower than the adopted revenue estimate.
  - Neither estimate projected a shortfall in excess of 2.5% and as such, did not warrant any further action by the Interim JCA.
- Received a report from the BFM regarding the proration of investment income pursuant to SDCL 4-5-30. The Interim JCA approved and certified the recommended interest proration designations as participating and non-participating as presented by the BFM.
- Several agencies provided information requested by the Interim JCA:
  - Board of Regents (BOR) – presented an efficiency report to the Committee.
  - Bureau of Administration (BOA) – reported on state facility maintenance and repair projects.
  - Bureau of Finance and Management (BFM) – provided information regarding cost allocation which is the cost for services incurred by the bureaus that is allocated to state agencies who use those services, and internal service funds.
  - Department of Transportation (DOT) – reported on the selection process for construction projects.
- Toured the South Dakota Development Center and Northern State University.



The West River Tour was conducted on October 23<sup>rd</sup>, 24<sup>th</sup>, and 25<sup>th</sup>. The West River Tour included stops at the following sites:

- State Veterans Home – Hot Springs
- Custer State Park – Custer
- Western SD Juvenile Services Center – Rapid City
- Behavior Management Systems – Rapid City
- SDSM&T – Rapid City
- Black Hills Business Development Center – Rapid City
- SDPB Black Hills Bureau building – Rapid City
- Sanford Underground Mine – Lead

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

None.

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

During the 2017 Interim, the Interim JCA held three meetings and two legislative facility tours. The March 27<sup>th</sup> meeting was held in Pierre; the June 8<sup>th</sup> meeting was held at the University Center in Sioux Falls; and the July 26<sup>th</sup> meeting was held at Northern State University in Aberdeen.

### **Listing of Committee Members**

Senator Larry Tidemann, Lead Co-Chair  
Representative David Anderson, Co-Chair  
Senator Justin Cronin  
Senator Terri Haverly  
Senator Reynold Nesiba  
Senator Jeffery Partridge  
Senator Deb Peters  
Senator Billie Sutton  
Senator Jim White  
Senator John Wiik  
Representative Dan Ahlers  
Representative Hugh Bartels  
Representative Lance Carson  
Representative Taffy Howard  
Representative Jean Hunhoff  
Representative Chris Karr  
Representative John Lake  
Representative Sue Peterson

### **Listing of Staff Members**

Annie Mehlhaff, Chief Fiscal Analyst  
Jason Simmons, Principal Fiscal Analyst  
Jeff Mehlhaff, Fiscal Analyst  
Lucas Martin, Fiscal Analyst  
Ariel Hammerquist, Fiscal Analyst  
Cindy Tryon, Senior Legislative Secretary



# Judicial Opinions 2017 Report



## Background and Introduction

Pursuant to [§ 2-9-1.1](#), the Legislative Research Council is required to prepare an annual report noting “opinions of state and federal courts issued in the preceding year” involving the interpretation of “legislative intent of various South Dakota statutes.” The report may include recommendations for “corrective action if it is determined that the opinion of the court may be adverse to what was intended by the Legislature or if the court’s opinion has identified an appropriate area for legislative action.” The Executive Board of the Legislative Research Council, pursuant to [subdivision 2-9-4\(8\)](#), shall “review and make recommendations for further legislative action regarding the opinions of state and federal courts” that interpret the intent of legislative acts.

## Summary of Cases

### ***State v. Bingham*,<sup>1</sup> re: §§ 22-22-1.2 and 22-22-1.4**

Under [§ 22-22-1.2](#), a court sentencing a person convicted of sexual contact with a child under the age of sixteen must apply the statutory mandatory minimum sentence of at least ten years. Under [§ 22-22-1.4](#), however, if a court finds “mitigating circumstances” that would “require a departure from the mandatory sentence,” the court may “impose a sentence other than that which is required” and provide a finding in-writing of those mitigating circumstances along with the factual basis upon which the court relied in its finding.

The question before the South Dakota Supreme Court in *Bingham* was whether a period of probation is allowed in lieu of the mandatory minimum sentence under [§ 22-22-1.2](#) if the court finds sufficient mitigating circumstances under [§ 22-22-1.4](#). The Court concluded that probation is not allowed as a minimum sentence under this statute.

The question caused confusion for the sentencing court, which did not know if probation would be allowable under the statutes at-issue. In the Supreme Court’s discussion, the Court found that the Legislature has been “inconsistent” by “grant[ing] express permission to suspend a mandatory minimum sentence *and* prohibit[ing] the same.”<sup>2</sup> Additionally, the Court noted that as of 2013 the Legislature now indicates probation actually may be a sentence<sup>3</sup> instead of an alternative to a sentence as the Court had previously held.<sup>4</sup>

**Recommendation:** To alleviate confusion in future cases, the Legislature may want to clarify in the Code whether probation is, in fact, a permissible “sentence” or an alternative to a sentence that may not be imposed unless expressly permitted.

### ***State v. Jensen*,<sup>5</sup> re: Juvenile Sentencing and Parole**

In 2012, the Supreme Court of the United States barred mandatory life sentences against juvenile homicide offenders in *Miller v. Alabama*.<sup>6</sup> Following the ruling in *Miller*, the South Dakota Legislature changed [§ 22-6-1](#) to remove mandatory life sentences for juvenile homicide offenders and [§ 23A-27-1](#) to allow juveniles to present “information in mitigation of punishment.” These changes prompted the South Dakota Supreme Court to conclude

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<sup>1</sup> [2017 S.D. 14](#).

<sup>2</sup> Emphasis in original.

<sup>3</sup> See, e.g., [§ 22-6-11](#).

<sup>4</sup> See [State v. Macy](#), 403 N.W.2d 743, 745 (S.D. 1987).

<sup>5</sup> [2017 S.D. 18](#).

<sup>6</sup> [132 S.Ct. 2455](#).

that sentencing courts should abide by *Miller*'s direction to "weigh and consider the [] mitigating qualities of youth" before sentencing a juvenile homicide offender.<sup>7</sup>

South Dakota does not require, however, that a sentencing court consider any specific "mitigating qualities of youth" as discussed in *Miller* when sentencing juvenile homicide offenders. Nor does South Dakota require a parole board to consider any mitigating youth factors.<sup>8</sup>

The question before the South Dakota Supreme Court in *Jensen* was whether South Dakota violates the Eighth Amendment of the U.S. Constitution by not requiring sentencing courts or parole boards to use the specific "youth" factors discussed in *Miller* for sentencing or for determining parole for juvenile homicide offenders. The Court determined that South Dakota does not violate the Eighth Amendment with its sentencing and parole scheme for juvenile homicide offenders.

In answering the question, the Court stated that "it is not this Court's role to judicially legislate the parole process," and that the "intersection of the parole process and imprisoned juvenile offenders in South Dakota is an issue best left to be examined by the Legislature."

**Recommendation:** The Court in *State v. Jensen* did not recommend any specific legislative resolution, but its opinion does identify an area that the Legislature may consider "appropriate for legislative action."

#### ***Larsen v Krebs, et al.; Smith v. Krebs et al., 2017 S.D. 39, re: § 12-6-3***

Under [§ 12-6-3](#), "no person may be a candidate for nomination or election to more than one public office . . ." with specific exceptions.

In these two combined cases, the Supreme Court faced the question of whether a person may be a candidate under [§ 12-6-3](#) for public office in two separate counties at the same time when the election in each county will take place on the same day. The Court held that a person may not.

During its analysis, the Court hinted without concluding that the entire text of [§ 12-6-3](#) is ambiguously worded such that it could prohibit a person from ever being a candidate in any other election for any other public office once that person has been a candidate for one public office since "the text of the statute makes no mention of the number of elections or a timeframe to which its prohibition applies." To avoid this "absurd result," the Court constructed that the term "election" refers to a "general election" in a way that provides the statute with a "durational boundary."

**Recommendation:** Although the Court arguably interpreted [§ 12-6-3](#) in-line with legislative intent, the Legislature may want to consider rewording the statute to ensure greater clarity.

#### ***Dept. of Game, Fish & Parks v. Troy Township,<sup>9</sup> re: de novo Review***

Under several sections of the South Dakota Codified Law, an aggrieved party to an administrative decision may appeal the administrative decision to a circuit court for the case to be "heard and determined *de novo*."<sup>10</sup> A *de novo* hearing is a "new hearing of a matter, conducted as if the original hearing had not taken place."<sup>11</sup>

The question before the South Dakota Supreme Court was whether a court is obligated to hear an appeal of an administrative decision *de novo* solely by virtue of the statutory authority to do so, or if the court may do so only in particular cases that arise out of quasi-judicial actions, as the Court has long held under the separation-of-powers doctrine. In its decision, the Court found that the separation-of-powers doctrine demands courts in South Dakota

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<sup>7</sup> See [State v. Springer, 2014 S.D. 80](#).

<sup>8</sup> See [§ 24-13-7](#).

<sup>9</sup> [2017 S.D. 50](#).

<sup>10</sup> See, e.g., [§ 8-5-10](#).

<sup>11</sup> See "Hearing," *Black's Law Dictionary* (10th ed. 2014).

may consider only those cases that are quasi-judicial under *de novo* review, despite whatever the statute may authorize to the contrary.

A “quasi-judicial” action, as the South Dakota Supreme Court quoted from a case by the Supreme Court of the United States, is an administrative action that “investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist” rather than “look[ing] to the future and chang[ing] existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power.”<sup>12</sup> In short, as the South Dakota Supreme Court said, a good criterion for determining what is judicial is “merely to compare the action in question with the ordinary business of courts: that which resembles what courts customarily do is judicial, and that which has no such resemblance is nonjudicial.”<sup>13</sup>

The separation-of-powers doctrine, wrote the Court, requires that, “regardless of statutory authority to the contrary, a court may not substitute its judgment for that of an administrative board on issues that are not quasi-judicial.” Neither, however, “should a court abdicate its judicial power to the legislative or executive branches of government,” meaning that if an administrative action is “quasi-judicial, then the separation-of-powers doctrine is not offended by a *de novo* hearing on appeal, and statutes prescribing such review must be followed.”

The Court therefore established a new procedure by which lower courts consider an appeal of an administrative action. The court must first determine whether the action is quasi-judicial. If it is, the court may apply *de novo* review. If the action is not quasi-judicial, the court may only apply a deferential standard that asks whether the administrative agency “acted unreasonably, arbitrarily, or . . . manifestly abused [their] decision.”

**Recommendation:** Because several statutes in the Code allow for an administrative action to be appealed to the circuit court for *de novo* review, the Legislature may want to consider amending those statutes to remove “*de novo* review” as effectively dead letter law. The Legislature may still authorize the appeal of an administrative action to the courts for judicial review, but the court will determine on its own whether the action is “quasi-judicial” and, therefore, whether it will receive *de novo* review.

#### ***Argus Leader Media v. Hogstad, et al.*,<sup>14</sup> re: Public Records Exception**

Under [§ 1-27-1](#), all “persons interested in the examination of the public records . . . are hereby fully empowered and authorized to examine such public record (sic).” Exceptions to this general rule are provided under [§ 1-27-1.5](#), which lists 27 types of records not subject to public examination, including “(20) Any document declared closed or confidential by court order, contract, or stipulation of the parties to any civil or criminal action or proceeding.”

The question before the Court was whether a municipality’s settlement agreement with a contractor was subject to public examination as a public record, or whether the settlement agreement was exempted from disclosure under [subdivision 1-27-1.5\(20\)](#) as a “contract.” The Court concluded that the settlement agreement at-issue did not fit within the “contract” exception and was therefore a public record subject to public examination.

Referencing a rule of grammatical construction known as the Last Antecedent Canon, which requires that any modifier that follows a series either modifies only the last in the series or all in the series, depending upon the context of the matter, the Court ultimately set aside this Canon in order to find that the phrase “of the parties to any civil or criminal action or proceeding” does modify the term “contract” in the series located within [subdivision 1-27-1.5\(20\)](#). The Court stated that “contextual canons” dictate statutory construction instead of “syntactic canons,” and that “the subject matter and dominant purpose of the Public Records Act require . . . a presumption of openness” along with a directive to “construe certain provisions . . . liberally in favor of open, public records.”

Because this case involved a settlement agreement reached between parties that had not commenced litigation, the Court said, the settlement agreement could not be considered a “contract . . . of the parties to any civil or

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<sup>12</sup> See [Prentis v. Coast Line Co.](#), 211 U.S. 210, 226 (1908).

<sup>13</sup> See [Francisco v. Bd. of Dirs. Of Bellevue Pub. Sch.](#), Dist. No. 405, 537 P.2d 789, 792 (Wash. 1975).

<sup>14</sup> [2017 S.D. 57](#).

criminal action or proceeding,” and was therefore not within the legislative intent behind the exception from public examination.

**Recommendation:** If the Legislature disagrees with the Court’s holding that the legislative intent behind [subdivision 1-27-1.5\(20\)](#) requires exclusion from public examination only those contracts entered into by parties to litigation, the Legislature may consider rewording the exception to state more clearly the types of contracts to which the exclusion applies.

### ***State v. Jones*,<sup>15</sup> re: Expectation of Privacy in Aggregate Activities**

Under the Fourth Amendment to the United States Constitution, the people have a right to “be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” Under the seminal case issued by the Supreme Court of the United States, *Katz v. U.S.*,<sup>16</sup> a search in violation of the Fourth Amendment occurs when law enforcement violates a person’s “reasonable expectation of privacy.”

In multiple decisions since its holding in *Katz*, the Supreme Court of the United States has had to consider whether the use of certain technology that has been developed since its *Katz* decision violates a person’s “reasonable expectation of privacy,” including the use of heat sensors,<sup>17</sup> beeper signals,<sup>18</sup> and GPS tracking devices.<sup>19</sup> Most recently, the Court, in concluding that the use of GPS tracking devices constitutes an unconstitutional search when the device is placed on automobiles by law enforcement, also suggested in dictum that “targeted, long-term surveillance” by electronic means without an accompanying trespass may also be unconstitutional. In the absence of clear direction from the Supreme Court of the United States, several courts since the *Jones* GPS tracking device decision have considered whether the use of long-term video surveillance constitutes a search, and have concluded in opposite directions.

The question before the South Dakota Supreme Court in *State v. Jones* was whether the use of long-term video surveillance mounted outside the property of the subject of surveillance constitutes a “search” for purposes of the Fourth Amendment, thereby requiring a warrant. The Court concluded that it does.

In reaching its conclusion, the Court determined that the subject of the video surveillance had a subjective expectation of privacy in his aggregate activity captured by the video equipment because of the “indiscriminate nature in which law enforcement can intrude upon citizens” using this technology. In the absence of the Legislature’s direction otherwise, the Court applied “existing Fourth Amendment doctrine,” while noting that the case “does not prevent the Legislature from ‘regulating law enforcement’s use of long-term surveillance.’”

**Recommendation:** The Court’s opinion in *State v. Jones* did not recommend any specific legislative resolution, but its opinion does identify an area that the Legislature may consider “appropriate for Legislative action.”

This report on judicial opinions was written by Wenzel J. Cummings, Legislative Attorney, on November 13, 2017, for the Legislative Research Council to supply background information on state and federal court opinions that “have sought to interpret the legislative intent of various South Dakota statutes” or have “identified an appropriate area for legislative action.” This report is not a policy statement made by the Legislative Research Council.

<sup>15</sup> [2017 S.D. 59](#).

<sup>16</sup> [389 U.S. 347, 360 \(1967\)](#).

<sup>17</sup> See [Kyllo v. U.S., 533 U.S. 27 \(2001\)](#).

<sup>18</sup> See [U.S. v. Knotts, 460 U.S. 276 \(1983\)](#).

<sup>19</sup> See [U.S. v. Jones, 565 U.S. 400, 412 \(2012\)](#).

# Judicial Opinions

## 2017 Report - Addendum



### Background and Introduction

Pursuant to [§ 2-9-1.1](#), the Legislative Research Council is required to prepare an annual report noting “opinions of state and federal courts issued in the preceding year” involving the interpretation of “legislative intent of various South Dakota statutes.” The report may include recommendations for “corrective action if it is determined that the opinion of the court may be adverse to what was intended by the Legislature or if the court’s opinion has identified an appropriate area for legislative action.” The Executive Board of the Legislative Research Council, pursuant to [subdivision 2-9-4\(8\)](#), shall “review and make recommendations for further legislative action regarding the opinions of state and federal courts” that interpret the intent of legislative acts.

### Summary of Cases

#### *Long, et al. v. State*,<sup>1</sup> re: Attorney’s Fees Under § 5-2-18

Under [§ 5-2-18](#), the State and political subdivisions “*may* provide relocation benefits and assistance to persons, businesses, and farm operations displaced as the result of the acquisition of land or rehabilitation or demolition of structures in connection with federally assisted projects to the same extent and for the same purposes as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [as amended] (“URA”) ... and *may* comply with all the acquisition policies contained in said federal act.”<sup>2</sup>

The question before the South Dakota Supreme Court was whether the language of § 5-2-18 provides for the recovery of attorney’s fees. The court determined that it does not.

With regard to the award of attorney’s fees, South Dakota follows the so-called “American Rule,” which dictates that each party will cover the party’s own attorney’s fees unless an exception to the rule applies. One such exception includes when a statute explicitly provides for the awarding of attorney’s fees to a prevailing party. To determine whether § 5-2-18 explicitly provides for an awarding of attorney’s fees, the Court looked to the term “*may*” as it is used within the statute. Finding the term “*may*” to be “*permissive*,” the Court determined that the statute does not mandate the award of attorney’s fees, nor does it mandate compliance with all provisions of the URA, which does require the award of attorney’s fees.

**Recommendation:** If the award of attorney’s fees under § 5-2-18 or compliance with the URA is intended to be permissive rather than mandatory, the Legislature need do nothing. If the Legislature intended, however, that the term “*may*” be understood as an assignment of a duty rather than merely as a grant of permission, the Legislature may want to consider changing the term “*may*” to “*shall*” to alleviate confusion.

This report on judicial opinions was written by Wenzel J. Cummings, Legislative Attorney, on November 27, 2017, for the Legislative Research Council to supply background information on state and federal court opinions that “have sought to interpret the legislative intent of various South Dakota statutes” or have “identified an appropriate area for legislative action.” This report is not a policy statement made by the Legislative Research Council.

<sup>1</sup> [2017 S.D. 78](#).

<sup>2</sup> Emphasis added.



# **Regulation of Access to and Use of Non-Meandered Waters on Public and Private Property Study 2017 Final Report**

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## **Study Assignment**

The study of the regulation of access to and use of non-meandered waters on public and private property. The scope of the study included:

- Supreme Court opinion-Duerre v. Hepler, 2017 S.D. 8.
- Private property protections.
- Public access to waters including non-meandering waters.
- Regulation and management of non-meandering waters.
- Definition of recreational use on non-meandered waters.
- Review past legislation on the subject.

## **Summary of Interim**

The Regulation of Access to and Use of Non-Meandered Waters on Public and Private Property Study Committee held its first meeting on April 27 in Pierre. Mr. Hunter Roberts, Policy Advisor, Governor's Office, gave a brief overview of the property tax guidelines.

Mr. Kelly Hepler, Secretary, South Dakota Department of Game, Fish and Parks, and Mr. Tony Leif, Director, Division of Wildlife, South Dakota Department of Game, Fish and Parks, presented the "Recreational Use of Water Over Private Land" PowerPoint presentation. The issue of non-meandered waters goes back to the survey of South Dakota by federally contracted surveyors who were given the instruction that lakes embracing an area of less than forty acres should not be meandered. Upon statehood, the title to the beds of all meandered lakes were vested with the state. However, the basins of all non-meandered lakes are owned in entirety in fee title, meaning they were privately owned. Northeast South Dakota experienced a wet cycle in the mid to late 1990s which caused the basins to flood and consume pastures, farmland, and farmsteads. In 2017, the Supreme Court in Duerre v. Hepler, stated that neither the public nor landowners have a superior right to use water and ice overlying private property and that the department cannot facilitate access to these waters. In response, the department restricted access to twenty-five non-meandered lakes.

Mr. Charlie McGuigan, Chief Deputy, Attorney General's Office, reviewed the case law concerning non-meandered waters. In the decision, Duerre v. Hepler, the trial court declared that the public could not use the waters and the state appealed that decision to the Supreme Court. The Supreme Court noted the Legislature did not necessarily intend the waters to be open to recreation and only the Legislature can decide if recreation is beneficial use of these non-meandered waters.

Mr. Steve Pirner, Secretary, Department of Environment and Natural Resources (DENR), presented an overview of water regulations by the department for non-meandered and meandered waters. In 2005, DENR formed the Non-Meandered Lakes Working Group, but the group was unable to come to a consensus.

The second meeting was held in Aberdeen on May 9 and 10. The committee took public testimony and toured affected areas in the northeast area of the state.

The third meeting was held on May 24 in Pierre. The committee was presented draft legislation from Mr. Matt McCaulley, Attorney, Sioux Falls, and Mr. Nathan Sanderson, Director of Policy and Operations, Governor's Office. The committee reviewed and received public testimony on the draft legislation.



During the final meeting on June 2 in Pierre, the committee reviewed and received public testimony on the draft legislation and voted to introduce the draft.

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

An Act to provide for public recreational use of certain waters overlying public and private property and to declare an emergency. This proposed legislation, HB 1001, was passed by the Legislature during the 2017 Special Session on June 12.

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

The committee met in Pierre on April 27, May 24, and June 2, 2017. The committee met in Aberdeen on May 9 and 10, 2017.

### **Listing of Committee Members**

Members of the committee were Representative Lee Qualm, Chair; Senator Brock Greenfield, Vice-Chair; Senators Gary Cammack, Jason Frerichs, Craig Kennedy, Joshua Klumb, and Jim White; and Representatives Hugh Bartels, Mary Duvall, Spencer Gosch, Spencer Hawley, Steven McCleerey, Herman Otten, Larry Rhoden, and Burt Tulson.

### **Listing of Staff Members**

Staff members for the committee were Amanda Jacobs, Senior Research Analyst, Jessica LaMie, Legislative Attorney, Lucas Martin, Fiscal Analyst, and Cindy Tryon, Senior Legislative Secretary.



# Rules Review Committee

## 2017 Final Report

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### Study Assignment

A review of proposed state agency rules.

### Summary of Interim

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

Bureau of Human Resources: Civil Service Commission; Department of Agriculture: Animal Industry Board, Division of Agricultural Services, and South Dakota State Fair; Department of Education: Board of Education, School Finance Accountability Board, and State Historical Society; Department of Environment and Natural Resources: Board of Minerals and Environment, Division of Environmental Services, and Water Management Board; Department of Game, Fish and Parks; Department of Health: Board of Dentistry, Board of Massage Therapy, Board of Medical and Osteopathic Examiners, Board of Nursing, Board of Optometry Examiners, and Division of Health Systems Development and Regulation; Department of Human Services: Division of Developmental Disabilities and Division of Rehabilitation Services; Department of Labor and Regulation: Appraiser Certification Program, Board of Barber Examiners, Division of Insurance, Division of Labor and Management, South Dakota Athletic Commission, South Dakota Cosmetology Commission, South Dakota Electrical Commission, and South Dakota Real Estate Commission; Department of Public Safety; Department of Revenue: Division of Business Tax, Division of Property and Special Taxes, South Dakota Commission on Gaming, and South Dakota Lottery Commission; Department of Social Services: Board of Social Work Examiners, Division of Child Care Services, Division of Child Protection, Division of Child Support, Division of Economic Assistance, and Division of Medical Services; Department of Transportation; Office of the Attorney General: Law Enforcement Officers Standards and Training Commission; and Office of the Secretary of State: Board of Elections.

### Actions of Note

The rules proposed by the Department of Education: South Dakota School Finance and Accountability Board were reverted to a prior step in the rules adoption process for further clarification of the appeals process for schools if the school's waiver was denied by the Accountability Board and not presented to the Joint Committee on Appropriations.

The committee subsequently approved the Department of Education: School Finance Accountability Board rules establishing an appeals process and the factors to be used to determine if a school district should be recommended for a waiver from their accountabilities in regard to teacher compensation as outlined in SDCL § 13-13-73.6.

Due to objections by massage therapists, the rules proposed by the Department of Health: Board of Massage Therapy, ARSD 20:76:02:02 and 20:76:04:01 to 20:76:04:10, inclusive, were reverted to a prior step in the rules promulgation process for further consideration of the fees and complaint procedure.

The Committee discussed a recurring problem agencies had with newspapers not publishing their notice of hearing in a timely manner. The Committee concluded that in the future, if the statutory deadlines were not met, the agency must pull their rules package and ensure notices are published as required by statute. Executive branch agencies were notified of this standard by a memo from the committee. The Committee also sent a letter to the South Dakota Newspaper Association regarding the importance of the timely publications to the State and the citizens of South Dakota.

The committee rejected the rules 20:85:01:04 (3) and 20:85:01:04 (4) proposed by the Department of Social Services: Board of Social Work Examiners because there was no statutory authority for the fees in the rules.

The rule 67:47:01:09.01 proposed by the Department of Social Services: Division of Child Care Services was reverted to a prior step pursuant to SDCL § 1-26-4.7 (2) and (3) because the rule needed to be significantly rewritten to accomplish the intent of the agency and address the recommendations or objections of the committee.

The statutes pertaining to ruminant livestock feed needed to be amended legislatively before the rules ARSD 12:53:01:14, 12:53:01:15 and 12:53:01:16 proposed by the Department of Agriculture: Division of Agricultural Services can be repealed; therefore the rules were reverted to a prior step according to SDCL § 1-26-4.7 (7).

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

No legislation is proposed.

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

The committee met via the Dakota Digital Network (DDN) in Pierre and at other DDN sites in the state, via teleconference, and in person on the following dates: March 8, 2017; March 28, 2017; May 1, 2017; June 5, 2017; July 17, 2017; August 22, 2017; September 25, 2017; and November 14, 2017.

### **Listing of Committee Members**

Members of the committee are Representative Jean Hunhoff, Chair; Senator Alan Solano, Vice-Chair; Representatives Julie Bartling and Steve Haugaard; and Senators Craig Kennedy and Lance Russell.

### **Listing of Staff Members**

Staff members for the committee meetings were Doug Decker, Code Counsel; Kris Schneider, Senior Legislative Secretary; and Kelly Thompson, Senior Legislative Secretary. Members of the research staff who performed the initial review for legality and style and form were Principal Research Analysts Fred Baatz, Clare Charlson, and Amanda Jacobs; and Legislative Attorneys Wenzel Cummings, Emily Kerr, and Jessica LaMie. Rhonda Purkapile, Bill Text Editor, and Paul Giovanetti, Senior Legislative Secretary, updated the administrative rules database.

# State-Tribal Relations 2017 Draft Final Report

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## Study Assignment

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

## Summary of Interim

The committee met twice, so far, during the interim.

At the first meeting, the committee elected Senator Troy Heinert as Chair and Representative Elizabeth May as Vice-Chair. The committee heard an update from the Department of Tribal Relations, an overview from the Department of Social Services on child protection cases, an update from the Office of Indian Education about feather-tying ceremonies, an update from the DCI and FBI on issues of methamphetamine on the Reservations, and public testimony from members of tribal law enforcement.

The second meeting was held in Vermillion where Marshall Damgaard, USD Professor, provided the committee an informational briefing on the GEAR UP map created by his students. The committee heard from members of the public regarding concerns about the GEAR UP program. The committee also heard from a former GEAR UP student about the positive impacts the program had on him. The committee wrapped up the meeting with a discussion about the ability to subpoena interested parties related to GEAR UP. The chair ruled a motion to subpoena out of order because the committee has not been given express subpoena authority in statute.

The committee has another meeting scheduled for December 14 during the Lakota Nation Invitational.

## Listing of Legislation Adopted by the Committee

Will be determined at a future meeting.

## Summary of Meeting Dates and Places

The committee met on May 31 in Pierre, October 23 in Vermillion, and will meet December 14 in Rapid City.

## Listing of Committee Members

Members of the committee are Senator Troy Heinert, Chair; Representative Elizabeth May, Vice-Chair; Senators Phil Jensen, Kevin Killer, Stace Nelson, Lance Russell; and Representatives Shawn Bordeaux, Oren Lesmeister, Steve Livermont, and Craig Tieszen.

## Listing of Staff Members

Staff members for the committee are Jessica LaMie, Legislative Attorney; Emily Kerr, Legislative Attorney; Lucas Martin, Fiscal Analyst; Ariel Hammerquist, Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.





# Workforce Housing Study Committee 2017 Final Report

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## Study Assignment

The Workforce Housing Study Committee was charged with the task of studying the need for workforce housing in South Dakota, especially in the rural areas and in smaller communities. The study was to include a review of programs offered by the South Dakota Housing Development Authority. The committee was asked to explore and recommend possible ways to address current and future workforce housing needs, and to include all municipalities, but give priority to second class and third class municipalities.

## Summary of Interim

The committee thoroughly examined the workforce housing issues that exist in the state from all angles. To begin, committee members heard from representatives of several communities including Aberdeen, Milbank, Redfield, and Deadwood. They heard from nonprofit organizations and other private and public entities working to address housing needs including Grow South Dakota and the Black Hills Habitat for Humanity. Mr. Brian Majerus and Ms. Denise Hanzlik, representing the South Dakota Multi-Housing Association, spoke of the challenges that exist in developing multi-unit housing that is affordable. Two of those challenges are the increasing construction costs and the budget cuts that are currently taking place in federal housing programs.

Mr. Mark Lauseng and Ms. Lorraine Polak with the South Dakota Housing Development Authority provided the committee with information regarding the housing programs currently available in the state. They provided information on loan programs, such as the one for first-time homebuyers; grant programs, including the new Grants for Grads program; and the Housing Tax Credit Program. They highlighted the Housing Opportunity Fund, which is attractive to developers due to its flexibility. Money from the fund may be used for homelessness or rehabilitation and usually involves a forgivable loan.

Mr. Bret Afdahl with the Division of Banking and Ms. Angela Bielke from First Premier Bank in Sioux Falls discussed the issues surrounding mortgage lending. Ms. Bielke noted that securing a mortgage loan in rural communities can be difficult in part due to a lack of investors and a lack of appraisers. From the Department of Revenue, Secretary Andy Gerlach explained the contractor's excise tax, and Mr. Michael Houdyshell explained tax increment financing and how it might be used for housing.

Developers Mr. Nick Tilson with the Thunder Valley Community Development Corporation in Porcupine and Ms. Joan Franken with the Costello Companies in Sioux Falls spoke of the recent successes their companies have had in creating affordable housing. The committee also heard from two county treasurers who talked about tax deeds and the processes that are followed when people default in paying their property taxes.

Mr. Chad Babcock from the Department of Environment and Natural Resources spoke on the disposal of debris from building demolitions. The committee learned that old, dilapidated buildings in some communities are standing in the way of the development of needed housing. Commissioner Scott Stern and Mr. Aaron Scheibe with the Governor's Office of Economic Development described the new Bulldoze, Build, and Beautify Program. It will provide grants to cities or counties to assist them in ridding of dilapidated buildings to make way for workforce housing.

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

1. An Act to provide additional funding for the housing opportunity fund by redistributing certain building South Dakota funds.
2. An Act to increase the amount of unobligated cash that may be transferred to the building South Dakota fund after the end of a fiscal year.
3. An Act to revise certain provisions relating to the contractor's excise tax revenues that are deposited into the building South Dakota fund.
4. An Act to establish a tax refund programs for certain workforce housing projects.
5. An Act to require that the unobligated cash balance of the building South Dakota fund be used in determining the allocation of unobligated general funds.
6. An Act to revise certain provisions regarding tax deed procurement.

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

The committee met in Pierre on the following dates: June 13, August 1, and October 26, 2017. The committee met via teleconference on November 9, 2017.

### **Listing of Committee Members**

Members of the committee were Representative David Lust, Chair; Senator Ryan Maher, Vice Chair; Senators Terri Haverly, Kevin Killer, and Jeff Monroe; and Representatives Roger D. Chase, Jason W. Kettwig, Sean McPherson, Sue Peterson, Kyle Schoenfish, Jamie Smith, Charles M. Turbiville, and Susan Wismer.

### **Listing of Staff Members**

Staff members for the committee were Clare Charlson, Principal Research Analyst; Emily Kerr, Legislative Attorney; Jeff Mehlhaff, Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.



**REPORT OF THE  
GOVERNMENT OPERATIONS AND AUDIT COMMITTEE  
2017**

**COMMITTEE MEMBERS**

**Senator Deb Peters, Chair  
Representative Jean Hunhoff, Vice Chair**

**Representative David Anderson  
Representative Wayne Steinhauer  
Representative Craig Tieszen  
Representative Susan Wismer**

**Senator Justin Cronin  
Senator Stace Nelson  
Senator Billie Sutton  
Senator Neal Tapio**



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## **Committee Responsibilities**

The Government Operations and Audit Committee was established by South Dakota Codified Law (SDCL) 2-6-2. The Committee is appointed at each regular session of the Legislature. The Committee consists of ten members, five members from 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 from the House appointed by the Speaker of the House, one of whom shall be a member of the Judiciary Committee.

The responsibilities of the Committee are:

- To inquire and review any phase of the operations and the fiscal affairs of any department, institution, board or agency of the state;
- To examine records and vouchers, summon witnesses, examine expenditures and the general management of departments, as deemed necessary;
- To review the Single Audit Report of the State of South Dakota and separately issued agency audit reports;
- To review the annual report of the South Dakota 911 Coordination Board and the Brand Board;
- To review the annual reports from each Department administering the funds received from the Building South Dakota Fund;
- To review compiled authorizations to derive a direct benefit from a contract, as collected by the Bureau of Human Resources;
- To review compiled authorizations to derive a direct benefit from a state authority, board, or commission contract, as collected by the Auditor General;
- To review the annual work plan and report of the State Board of Internal Control;
- Develop and implement a performance management review process to evaluate the efficiency and effectiveness of State agencies;
- Review the annual accountability report from the Technical Institutes;
- Review limitations on use relating to the University Centers off-campus sites in Pierre, Rapid City, and Sioux Falls and make recommendations to the Legislature regarding these limitations;

- To make a detailed report to the Senate and House of Representatives and submit a copy of its report to the Appropriations 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.

## **Committee Activity**

### **Performance Reports**

Senate Bill 120, 2017 session, assigned the Government Operations and Audit Committee the responsibility to develop and implement a performance management review process. The Committee established a schedule whereby each state agency presents their performance indicators to the Committee once every three years and the below agencies were selected and reviewed during the 2017 interim period. A subcommittee of members was formed to help provide an improved framework for the development of departmental performance measures. The subcommittee has suggested that Standing Committees of the Legislature play a more active role in examining the performance of various departments and to provide direction to the departments on their key performance objectives. The subcommittee has asked Legislative Research Council to coordinate with departments to provide performance management reports to the various Standing Committees of the Legislature. The Committee's performance management review process is a work-in-progress as the Committee provided feedback to each of the agencies on expectations and some agencies were asked to make changes and appear a second time in front of the Committee.

#### Bureau of Human Resources

The Commissioner of the Bureau of Human Resources presented information on six performance indicators in support of State government agencies:

1. Provide recruiting awareness and applicant and employee selection services
2. Maintain comprehensive compensation benchmarking and employee classification system
3. Design and maintain a competitive, cost-effective health plan and flexible benefits for employees
4. Provide performance management tools and facilitate annual evaluations
5. Assist agencies with employee engagement
6. Provide training and career development for employees

#### Department of Revenue

The Secretary of the Department of Revenue described their vision to create an open and collaborative environment that provides professional customer service, contributes to a

favorable economic climate, and is accountable to the citizens of South Dakota. The four strategic directions of the Department are:

1. Employees: Engaging and developing our team
2. Resources: Managing resources to maximize return on investment
3. Insights: Leveraging information through data analytics to support decision making
4. Partnerships: Developing and strengthening the department's relationships

#### Bureau of Information & Telecommunications

The Commissioner of the Bureau of Information & Telecommunications described the Bureau's vision, through highly motivated staff, to be a valued partner in providing technology solutions, services and support that directly contributes to the success of their clients. To accomplish this vision the Bureau has three goals:

1. Provide a reliable, secure and modern infrastructure
2. Deliver valued services at economical costs
3. Build and retain a highly skilled workforce

#### Department of Social Services

The Secretary of the Department of Social Services explained their mission to strengthen and support individuals and families by promoting cost effective and comprehensive services in connection with partners that foster independent and healthy families. The Department described five strategic plan outcomes:

1. Connections to work
2. Access to healthcare
3. Caring for people in the most cost effective manner
4. Permanency and safety for children
5. Program integrity

#### Department of Health

The Secretary of the Department of Health explained their mission to promote, protect and improve the health of every South Dakotan. The Department described five strategic goals:

1. Improve the quality, accessibility, and effective use of healthcare
2. Support life-long health for South Dakotans
3. Prepare for, respond to, and prevent public health threats
4. Develop and strengthen strategic partnerships to improve public health
5. Maximize the effectiveness and strengthen infrastructure of the Department of Health

### Department of Labor and Regulation

The Secretary of the Department of Labor and Regulation explained their mission to promote economic opportunity and financial security for individuals and businesses. The Department described three strategic goals:

1. Qualify, responsive and expert services – Indicator, entered employment, which identifies the number of workers connected to employers and positions through job services. Indicator - percent of unemployment insurance payments made in 14 days.
2. Fair and equitable employment solutions – Indicator, retained employment after six months, which identifies how people are fitting into the positions they connected them to with employers.
3. Safe and sound business practices – Indicator, total practitioners from Boards/Commissions and Regulation Divisions reflecting the number of individuals and businesses which must be reviewed to ensure proper compliance with established laws.

### Department of Human Services

The Secretary of the Department of Human Services explained their mission to enhance the quality of life of people with disabilities, in partnership with its stakeholders. The Department described three goals:

1. Provide individualized services to support people with disabilities to help them meet the goals they choose.
2. Raise awareness of the resources available to support people with disabilities through education and advocacy.
3. Retain a knowledgeable and prepared workforce with a high level of engagement to support the department's mission.

### Brand Board

The Director of the South Dakota Brand Board was present to provide the Committee the State Brand Board Annual Report and answer Committee questions. She reported that the Brand Board receives no General Fund appropriations and operates entirely on brand inspection fees, brand transfers, and renewal fees.

The annual report contained information on the number of livestock inspected during the calendar year, the fees collected, the number of holds, missing or stolen livestock, recovered strays, livestock investigations, and brand registration activity. The Director reported that 1,662,495 head of livestock were inspected in calendar year 2016, as compared to 1,581,415 inspected in calendar year 2015.

The Committee had additional questions about the cost of investigation services provided by the Division of Criminal Investigation (DCI). The Director and a DCI Supervisor appeared before the Committee a second time to answer these questions. The Committee will continue to review the operations of the Brand Board.

#### The Building South Dakota Funds (BSD)

The Commissioner of the Governor's Office of Economic Development (GOED), provided an overview of the programs under the GOED. The Finance Director of the GOED explained the two primary purposes of the Economic Development Partnership Program (EDPP): 1) to help local economic development programs with training needs, and 2) to help local economic development programs recapitalize local revolving loan funds. The EDPP awarded eighteen grants during the fiscal year totaling \$1,049,145. The projected number of jobs created was 117.

The Finance Director provided an overview of the Local Infrastructure Improvement Program (LIIP). The program provides grants to assist in funding the construction and reconstruction of infrastructure for the purpose of serving economic development projects. The LIIP awarded ten grants during the fiscal year totaling \$2.6 million. The projected number of jobs created was 562.

The Finance Director provided an overview of the Reinvestment Payment Program (RPP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. This program allows for project owners to receive a reinvestment payment, not to exceed the sales and use tax paid on project costs, for new or expanded facilities with project costs in excess of \$20 million, or for equipment upgrades with project costs in excess of \$2 million. The RPP awarded seven grants during the fiscal year totaling \$13.3 million. The projected number of jobs created was 280.5.

The Finance Director provided an overview of the South Dakota Jobs Grant Program (JGP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. There were two JGP grants awarded during the fiscal year totaling \$129,801. The projected number of jobs created was 24.

The Executive Director of the South Dakota Housing Development Authority (SDHDA) was present to address the Committee regarding the South Dakota Housing Opportunity Fund (HOF). The SDHDA distributes HOF funds geographically throughout the State with 30% of the funds targeted for cities with a population of 50,000 or more and 70% of the funds targeted for the rest of the State. As a result of the applications received in FY2017, 13 new homes will be built, 105 homes and seven rental units will be rehabbed and 39 future homeowners will be provided with down payment assistance. To date, the SDHDA Board of Commissioners has awarded \$10.2 million that will benefit 1,606 families.

## **Specific Matters Pertaining to Various State Agencies**

### Legislative Research Council discussed the statutory authority of the Committee

Legal Counsel from Legislative Research Council (LRC) described the Committee's investigative authority as granted to the Committee by the Legislature. LRC referred the Committee to South Dakota Codified Laws 2-6-2 and 2-6-4. LRC explained the Committee can summons any department, institution, board, or agency of the State for the purpose of enacting, amending, or repealing legislation. The investigatory authority of the Committee is limited to the determination of public policy. LRC cautioned the Committee, in the process of exercising their authority, that investigations relate to public policy and not criminal or civil matters. A question was raised about the authority of the Committee to summons local government board members and individuals from private entities. LRC believed the Committee could invite these individuals to testify, however, a summons to appear would most likely be challenged in court. The Attorney General agreed with LRC's legal opinion on this question and believed the statutes have limitations beyond departments, institutions, boards, or agencies of the State.

### Unified Judicial System, Department of Corrections and the Department of Social Services discussed the implementation of the Juvenile Justice Public Safety Improvement Act

The Committee learned about efforts being made to implement the Juvenile Justice Public Safety Improvement Act (JJPSIA). The State Court Administrator explained the reforms are in their early stages and progress is being made. The reforms seek to prevent youth involved with the system from future involvement, improve the outcomes of youth by expanding access to community-based programs that have been proven to work, target residential placement towards youth who are not a risk to public safety, and ensure the quality and sustainability of the JJPSIA reforms.

The Committee expressed concerns about additional burdens being placed on the communities and the availability of services in the communities. The Department of Social Services explained they are still in the process of ramping up community based services, such as functional family therapy, moral reconnection therapy, and aggression replacement training. The purpose of these services is to keep youth in their communities and prevent costly out-of-home placement. The Committee encouraged the agencies to better promote the programs available in the communities. The Committee plans to continue to monitor the implementation of the JJPSIA in the future.

### Department of Social Services and the Department of Corrections discussed the methamphetamine treatment programs

The Deputy Secretaries for the two agencies described two different methamphetamine treatment programs in the State. The first being a community-based substance use disorder program available to individuals with a methamphetamine addiction. This program is available

in Sioux Falls and Rapid City. They are considering adding an additional program in the central area of the State. The Intensive Meth program had a budget of \$830,487 in fiscal year (FY) 2016 and served 121 adults with a 69% completion rate (compared to a 43% completion rate at the national level). In addition, the Department of Social Services has developed a Meth Awareness Campaign “Meth Changes Everything” and a social media component to reach more individuals.

The second program discussed was the intensive methamphetamine treatment program in the Women’s Prison. The Department of Correction’s FY16 budget for this program and other related services was \$787,000. Ninety adult women were served in this program in FY16. The Committee asked a number of questions relating to the future plans for the program and may revisit this topic in the future.

#### The Department of Public Safety and the Office of the Attorney General discussed the Interstate Drug Trafficking Task Force

The Committee asked the Secretary of the Department of Public Safety to explain what the additional resources provided by the Appropriations Committee were being used for. The Secretary explained they have changed their strategy in fighting drug trafficking and are in the early stages of the initiative. This new strategy includes the development of the Fusion Center as a central hub for information and intelligence sharing. In addition, they have hired four additional Highway Patrol troopers to work with the DCI to specifically go after drug trafficking organizations. The Committee may revisit this topic in the future.

#### Department of Social Services discussed the current financial position of federal block grants and how potential federal government changes may impact South Dakota

The Deputy Secretary explained to the Committee the majority of federal funds in the Department’s budget are Medicaid. Medicaid is an entitlement program where federal funds are available as long as the individual meets program eligibility. Most of the remaining federal funds are block grants. Block grants are a fixed amount of federal funding. Amounts allocated to states are typically established on historical expenditures in a base year. The Deputy Secretary provided additional information on the seven largest block grants received by the Department:

- Temporary Assistance to Needy Families (TANF) – is used to fund a variety of programs including: TANF benefits to families, child welfare and specialized services for pregnant women and their children. The annual grant amount is \$21.3 million and the State has a \$8.5 million maintenance of effort requirement. This grant amount and the maintenance of effort requirement have not changed since 1996.
- Children’s Health Insurance Program (CHIP) – is used to provide insurance to uninsured children. The annual grant amount is \$23.6 million and a State general fund match (8.54% in FFY2017) is required. The Affordable Care Act provided a temporary additional 23% increase in federal dollars until September 30, 2019.



- Child Care and Development Block Grant (CCDBG) – provides assistance to families with child care costs. The State received \$13.5 million in FY16 and had a \$5 million match requirement and an \$802 thousand maintenance of effort requirement. There are an average of 2,132 families using the program with payments being made directly to the child care provider.
- Low Income Home Energy Assistance (LIHEAP) – provides family assistance with heating expenses. The State received \$17.3 million in FY16 with no match or maintenance of effort required. The payments are made directly to the heating providers.
- Community Mental Health and Substance Abuse Treatment Grants – provides funding for community based mental health and substance abuse treatment services. The State received \$7.1 million in FY16 for the grant and had a maintenance of effort of about \$23 million. In FY16, 19,825 mental health and 12,297 substance abuse patients were served.
- Community Services Block Grant – assist with gaining employment, one-time assistance with utility connections, rent, deposits, transportation, etc. and is provided to Community Action Agencies. The State received \$3 million in FY16 with no matching requirement or maintenance of effort.
- Social Services Block Grant – supports home services for the elderly and for child welfare. The State received \$4.2 million and transferred \$2.1 million from TANF, for a total of \$6.3 million. There are no matching or maintenance of effort requirements.

The Deputy Secretary stated there were no significant changes anticipated in the near future, however, the Department will closely monitor the activity at the federal level and keep the Legislature informed of any changes.

#### Department of Social Services discussed the Administrator position at the Human Services Center

The Secretary of the Department of Social Services (DSS) informed the Committee that the current Administrator of the Human Services Center has resigned effective August 31, 2017. An interim Administrator has been hired and will start on August 14, 2017. The Secretary stated there is an ongoing national search for the position. The DSS has had initial interviews with candidates and is planning to bring them in for in-person interviews. The Committee asked a number of questions about the position, the qualifications required for candidates applying for the position, and the adequacy of the salary for this position. The DSS is hopeful that the position will be filled in the near future.

#### Overtime pay at the Human Services Center in Yankton

The Administrator of the Human Services Center (HSC) in Yankton appeared before the Committee to provide information on employee vacancies and the overtime compensation being paid at the HSC. The Administrator provided an overview of the makeup of the Center and the various programs at the HSC. The Administrator reported that at full capacity there are 556 full-time-equivalent employees (FTE) at the HSC and they currently have 39.5 vacancies.

The Administrator reported that in the first eight months of FY17 the HSC has paid \$1.1 million in overtime pay, which is consistent with FY16. The Administrator reported they are recruiting sooner and offering sign-on bonuses to make them more competitive with the private sector. The Committee plans to continue to monitor employee vacancies and overtime pay at the HSC.

#### Overtime pay at the South Dakota Developmental Center in Redfield

The Director of the South Dakota Developmental Center (SDDC) in Redfield appeared before the Committee to provide information on employee vacancies and the overtime compensation being paid at the SDDC. The Director provided an overview of the makeup of the Center and the various programs at the SDDC. The Director reported there are currently 347.6 FTE with 184.5 direct support professionals. In FY16, direct support professionals were required to work four overtime hours every week and currently direct support professionals are required to work four overtime hours every two weeks. The Director reported in FY16 there was an average of 30 vacancies for direct support professionals and currently there are 10 vacancies. The Director reported that in the first eight months of FY17 the SDDC has paid \$541 thousand in overtime pay. In FY16 the SDDC paid \$1.1 million in overtime pay. The Director reported the increase in incentive pay, for the late shifts, has helped reduce the vacancies. The Committee plans to continue to monitor employee vacancies and overtime pay at the SDDC.

#### Bureau of Information and Telecommunications and the Department of Public Safety discuss infrastructure upgrades to the Public Safety Radio System

The Deputy Commissioner of the Bureau of Information and Telecommunications (BIT) informed the Committee of a notification from Motorola (the supplier of most of the State radios) that a network upgrade is planned for 2023 and any radios not equipped with the flash update would not be compatible with the new system. The Strategic Projects Director with Motorola Solutions estimated that new radios compatible with the new system could cost between \$2,000 and \$4,000 per radio. An Engineering Manager with BIT stated there are approximately 16 thousand Motorola radios in use and about 5,000 have already been upgraded. He stated the cost to the infrastructure for the State would be about \$11.8 million and would need to be completed by 2023. The Committee desired to see a plan going forward for the necessary upgrades and that BIT communicates with the Appropriations Committee.

#### Bureau of Information and Telecommunications discussed the State's Cyber Security Platform

In executive session, the Deputy Commissioner of the Bureau of Information and Telecommunications (BIT) informed the Committee of the activities of the Bureau to protect the State's IT infrastructure from outside cyber-attacks. The Committee plans to continue monitoring the Bureau's efforts to combat cyber-attacks.

### Department of Human Services – Division of Rehabilitation Services discuss Federal Communication Commission Direct Video Calling

The Director of the Division of Rehabilitation Services described Telecommunication Relay Services (TRS) that allow persons with hearing or speech disabilities to place and receive telephone calls. He explained that a 1989 State Law requires the State to provide a telephone service for people who are deaf or hard of hearing or have speech impediments at no cost to the user. The Director discussed the trends in South Dakota. Traditional TRS and captioned telephone minutes are decreasing. Other technology, such as texting or facetime, has become more popular. The Committee asked why the State was not using Direct Video Calling offered through the Federal Communications Commission. The Director stated he would look into this program. The Committee plans to follow-up on this topic in the future.

### Department of Game, Fish and Parks discuss the discontinued access to non-meandering waters in South Dakota

The Secretary of the Department of Game, Fish and Parks (GF&P) updated the Committee on the outcome of the Duerre vs. Hepler Supreme Court decision delivered on March 15, 2017. The decision reaffirmed that it is up to the South Dakota Legislature to determine the use of non-meandering water. He explained that nobody has superior rights to the water and that the GF&P cannot facilitate access to waters that overlie private land. In response to this decision, GF&P has blocked access to boat launches on 25 bodies of water, and are no longer surveying or restocking these waters. The Committee had numerous questions on the significance of this issue, the risks to public safety, and the views of those involved. The Secretary emphasized the importance of the issue and suggested a Special Session to deal with the issue.

At the Executive Board's April 18, 2017 meeting a Committee of 15 Legislators was appointed to study the regulation of access to and use of non-meandered waters on public and private property. The Committee met four times, heard public testimony, and drafted legislation. A Special Session of the Legislature was held on June 12, 2017 and the "Open Waters Compromise" law was passed and signed by the Governor.

### Bureau of Human Resources

#### *Conflicts of Interest*

The Committee reviewed the second annual compilation of conflict of interest authorizations called for in House Bill (HB) 1064, passed during the 2015 Legislative Session. Under HB 1064 a governing body may authorize an officer or employee of a State agency to benefit from a contract if the contract is fair, reasonable, and not contrary to the public interest; these authorizations are required to be filed with the Commissioner of the Bureau of Human Resources (BHR) and presented to the Committee annually. The Committee reviewed 14 approved authorizations (waivers) for the July 1, 2016 through June 30, 2017 reporting period. The Committee expressed concern that all departments are not aware of the conflict of interest

requirements and that further amendments to the conflict of interest provisions may be needed in the future. The Committee plans to review approved and denied waivers annually.

#### *Length of time between employment application and job offer*

The Commissioner discussed the stages of the hiring process. The hiring timeline can take anywhere from 10 days to 40 days. She explained variables that impact the timeline including Civil Service job requirements, veterans or disability preferences, and background checks. She also provided a comparison to National averages (the State's average is below the National average). The Committee was concerned that the State was losing potential employees to private businesses because the hiring process was taking too long. The Commissioner explained that BHR has groups looking at options for speeding up the process. The Committee plans to revisit this topic in the future.

#### Obligation Recovery Center

House Bill 1208 was passed during the 2015 Legislative Session and created the Obligation Recovery Center (Center) within the Bureau of Administration (BOA). The Center began operations on July 15, 2016. As required by law, the Commissioner of the BOA provided the Committee the annual report of the activities of the Obligation Recovery Center. The Commissioner thanked the Legislative members of the advisory group for their efforts in getting the Center up and running. The Center has entered into a memorandum of understanding with each agency that uses the Center to collect debt to ensure agency specific requirements are considered. The BOA contracted with three debt collection agencies with one year contracts, with four additional one year optional extension periods. The debt collection agencies began collecting debt on March 13, 2017. During FY2017, the Center collected \$3.3 million for State agencies and established payment plans for \$7.7 million (total financial impact of collection activities of \$11 million). Of the \$3.3 million remitted to State agencies, \$618,267 was deposited into the general fund with the remaining monies distributed to various agency funds. The Committee expressed concerns with the penalties placed upon individuals owing money to the State and used as an example the loss of an individual's driver's license. The Committee asked the Commissioner to strengthen procedures to ensure an individual's driver's license is reactivated as quickly as possible after the individual has established a payment plan or has paid the outstanding debt.

#### State Board of Internal Control

The Commissioner of the Bureau of Finance and Management (BFM) provided the Committee an update on the activity of the State Board of Internal Control (SBIC). She explained that the process of establishing and maintaining an effective system of internal controls will take years. The SBIC requires that state agencies comply with all applicable laws, regulations, and internal

control policies regarding conflicts of interest. State agencies are required to develop plans to inform and make accessible the conflict of interest laws to ensure their employees are in compliance. She described the improvements that have been made by the SBIC. The SBIC has established internal control officers in each state agency, grant agreements with subrecipients are now available to the public, and the Auditor General submits to the SBIC a copy of any non-profit audit reports sent to a state agency identifying audit findings pertaining to federal award programs. The state agency responsible for those subrecipients has come before the SBIC with a management decision on how to address each issue. In addition, the SBIC has established the Federal Grant Compliance Workgroup. One objective of the workgroup is to create tools to assist state agencies with federal grant compliance. These tools include:

- A contractor or subrecipient relationship determination checklist to help agencies determine the type of relationship that exists.
- A pre-award risk assessment tool that measures risk attributes of a subrecipient before the state agency enters into a grant agreement with the subrecipient. This tool will also help the agency determine the proper type of monitoring required of a particular subrecipient.
- A subrecipient monitoring guide to help agencies develop sufficient monitoring plans.
- A subrecipient agreement template that incorporates key provisions to help ensure compliance with federal regulations and help provide uniformity with all agencies and subrecipients.

The Commissioner stated the SBIC will continue to develop tools to reduce the State of South Dakota's exposure to risk as well as strengthen the internal control environment within the State. The Committee will monitor the State Board of Internal Control's activity on an annual basis.

#### Department of Transportation

##### *Operations of the State owned rail line*

The Secretary of the Department of Transportation (DOT) appeared before the Committee and answered numerous Committee questions about the operation of State owned rail lines. The Secretary explained the management and oversight of State owned rail lines are performed by the South Dakota Rail Board. The State owns 406 miles of active rail lines and 124 miles of inactive lines. The State has six different leases on the active lines and they are generally with regional rail authorities. The lease rates are generally set at 1% of gross freight revenue between State and regional rail lines and the regional rail lines generally charge the operators 1.5%, retaining the .5%. The revenue generated has been used to maintain the rail lines and replace bridges. The Committee questioned the process implemented by the DOT to ensure the proper payment amounts are calculated and submitted to the State. The Secretary explained operators send in supporting documentation and the DOT reviews the documentation. He added the DOT is continuing to develop procedures in this area. The Committee was also concerned about how the DOT ensures ongoing contract compliance and

plans to continue to monitor the Department's efforts in this area. The Committee heard public testimony from a former owner of the Dakota Southern Railway Company (DSRC) about operational concerns with the current owner of the DSRC. DSRC leases State owned rail lines. The Committee plans to invite the DOT, the Chair of the State Railroad Board, and at the discretion of the DOT, the owner of the DSRC to a future Committee meeting. The Committee is considering asking the Department of Legislative Audit to review revenue figures reported by operators of State owned rail lines.

### Department of Revenue

#### *The application of tourism tax*

The Secretary of the Department of Revenue (DOR) was invited to a Committee meeting to explain the application of tourism tax. He stated tourism tax is collected on tourism related businesses from June to September and is used to fund tourism related activities. Hotels collect the tax year-round. The Secretary discussed Falls Park as being a tourist attraction, but that the Sioux Falls Farmer's Market located at Falls Park was a unique situation. He stated the DOR reevaluated the situation and clarified that the Sioux Falls Farmer's Market, along with other Farmer's Markets, do not need to remit tourism tax. The Committee was satisfied with his explanations.

#### *Audit Division*

The Secretary of the DOR and the Audit Division Director presented information on the audit selection process of the DOR Audit Division. The Secretary explained they typically audit the top 100 businesses annually and perform audits in all business types or industries. The Director explained that high risk businesses are factored in to their selection process. Businesses are considered high risk if they have had past compliance issues with assessments over \$10,000, poor internal controls, high staff turnover, and other types of issues. The Secretary stated there were approximately 2,500 audits conducted in FY17 with about 1,000 businesses being in South Dakota. The Committee expressed concerns from business owners that they are afraid to call with questions because it could be used against them in an audit. The Secretary stated that the audit selection process does not include auditors reviewing the questions asked of the Business Tax Division, but that analytical procedures drive the selection process. The Committee asked to be provided the results of a survey being conducted by the South Dakota Retailers Association relating to audits conducted by the Department of Revenue.

### Board of Regents

#### *Operational policies of acceptance and admissions of undocumented students*

The Executive Director of the Board of Regents (BOR) explained the admissions process for undergraduate and graduate students at South Dakota Universities. Applicants not fulfilling the resident requirements are charged the non-resident tuition rates. Male students are required

to certify on the admissions application that they have applied with the Military Selective Service registration requirement. The Committee was concerned about undocumented students and whether or not any universities were considered sanctuary colleges. The Executive Director indicated there were no sanctuary campuses in South Dakota. In addition, the Committee wanted assurance the universities were complying with SDCL 13-53-1.1 which requires all male students to file with the institution a statement of registration compliance.

### *University Centers*

In accordance with House Bill 1005, 2017 Session, the Committee reviewed annual accountability reports for each of the University Centers. The Director of Finance for the Board of Regents presented operating statements for each of the University Centers, along with enrollment data for fiscal years 2013 through 2018. Also included in the reports was 2018 budget information. Each University Center is structured differently financially and the operating statements and footnotes attempt to show the differences. The Director explained some of the challenges facing each of the University Centers. They are moving away from the model used for the last three years. The Committee will continue to review the University Centers in the future.

The Committee toured the University Center Sioux Falls on June 6, 2017. The Committee learned about the various programs being offered as well as future development plans at the University Center Sioux Falls.

### *Board of Regents Federal Grant Control Process*

The Executive Director explained State institutions receive significant federal grant dollars and it is very important that they have proper procedures in place. The System Vice President of Academic Affairs gave an overview of specific grants that the Committee was interested in reviewing. The Associate Vice President of Research at the South Dakota State University reviewed the life cycle of a federal program and stated they follow the Uniform Guidance in the administration of each federal program. The Committee was concerned about who was responsible for federal compliance and contract compliance. The Associate Director of Grants and Contracts at SDSU stated the principal investigator is responsible and that her office is responsible for post-award management at SDSU.

### Department of Labor and Regulation Insurance Tax Credit Scholarship Program

The Director of the Department of Labor Division of Insurance provided background information on the insurance tax credit scholarship program. The Director explained in tax year 2016, insurance companies donated a total of \$325,000 resulting in a tax credit of \$260,000. Former Senator Phyllis Heineman shared stories of families who benefited from scholarships provided by the program. She explained four insurance companies donated and 295 scholarships were awarded during the 2016-2017 school year. Most of the scholarship

amounts were from \$500 to \$1,300, and did not exceed tuition fees. No student that applied and was eligible was turned down. Former Senator Heineman thanked the Legislature for making this scholarship program possible.

#### School District enrollment used in the calculation of State Aid

The Tri-Valley School Superintendent answered various Committee questions regarding concerns over the fall enrollment process. The topic came to the attention of the Committee after a letter was sent by the Tri-Valley School Superintendent to parents of homeschool students, requesting their children attend school on the day fall enrollment is taken. The last Friday in September is the date used for determining enrollment for the purpose of computing State Aid to the school district. The Superintendent explained that his goal was to provide each homeschool student that attended school on the last Friday in September, a new laptop and a license for Edgenuity software. He believed this was a win-win offer in that the homeschool student would receive valuable tools to improve their learning opportunities while also increasing school revenue. He explained that he should have communicated earlier to the parents so they had more time to make a decision. The Committee expressed concerns that school districts may be gaming the State Aid formula to increase their share of State funding and may propose future legislation to discourage this type of behavior. The Committee plans to review other school district fall enrollment counts.

#### **Juvenile Corrections**

The Committee is charged with the responsibility to review any findings of abuse or neglect of juveniles in a juvenile correctional facility.

Since the Star Academy was closed on April 8, 2016, there were no Juvenile Corrections Monitor reports to the Committee during the 2017 interim. Senate Bill 82, 2017 Session, required the Department of Corrections to compile a confidential report of all allegations of abuse and neglect of individuals under the jurisdiction of the Department of Corrections within private contracted facilities. The Director of Juvenile Services presented the report for the time period from July 1, 2016 through June 30, 2017. Eight cases were reported to the Committee during the above time period. The Committee requested future reports provide more information on trends by facility.

#### **Audit Reports and Special Review Report**

##### South Dakota Single Audit Report for FY16

The Committee reviewed the South Dakota Single Audit Report and other separately issued audit reports for the fiscal year ended June 30, 2016.

Financial and compliance audits involve testing financial transactions of the state to determine that money is properly accounted for and expended in accordance with state and federal laws



and regulations. All audits conducted of state agencies were consolidated and reported in the Single Audit Report. The Single Audit Report includes the Comprehensive Annual Financial Report for the State of South Dakota prepared by the Bureau of Finance and Management, a schedule showing the federal awards administered by the state and related expenditures, and audit findings and recommendations issued by the Department of Legislative Audit.

The Single Audit Report was issued in accordance with auditing standards generally accepted in the United States of America, Government Auditing Standards issued by Comptroller General of the United States, U.S. Office of Management and Budget (OMB) Uniform Guidance, and South Dakota Codified Laws. A copy of this report may be obtained from the Department of Legislative Audit.

The Committee reviewed financial reporting, internal control and compliance deficiencies written on ten state organizations, containing twenty-three recommendations for corrective action. Sixteen recommendations related to violations of federal laws and regulations; and, seven recommendations related to inadequate internal control procedures over receipts, revenue collections, expenditures, and financial reporting.

The following represents the state agencies with audit findings and recommendations from fiscal years 2016 and 2015 and the implementation of fiscal year 2015 audit recommendations:

State Agency	Recommendations		
	Fiscal Year <u>2016</u>	Fiscal Year <u>2015</u>	FY2015 Imple- mented
Bureau of Finance and Management	0	2	2
Department of Revenue	2	4	4
Soybean Research & Promotion Council	2	2	1
South Dakota Corn Utilization Council	2	2	0
Ellsworth Development Authority	1	0	N/A
Secretary of State	0	3	3
Department of Transportation	2	3	3
Department of Social Services	3	2	2
Department of Education	3	3	3
Department of Human Services	1	0	N/A
Department of Game, Fish and Parks	6	0	N/A
Housing Development Authority	1	0	N/A

N/A This agency did not have any FY2015 audit recommendations.

The Committee had additional questions regarding the Department of Game, Fish and Parks (GF&P) audit findings for the Fish and Wildlife federal program. The Finance Officer for the GF&P appeared before the Committee and explained the corrective action plans the

Department is implementing. The Committee plans to follow-up on the Department's corrective action plans.

#### South Dakota High School Activities Association

The Committee reviewed the FY16 audit report of the South Dakota High School Activities Association (SDHSAA). The Committee had questions regarding the SDHSAA's desire to create a separate foundation. The Committee expressed concern for the purpose of a foundation and the creation of a different Board to oversee the activity of the new foundation. Committee members did not believe schools should be putting money into a foundation. The Executive Director of the SDHSAA explained the SDHSAA Board is forming a committee to research this topic further and make recommendations to the SDHSAA Board. The Committee plans to revisit this topic in the future.

The Committee also heard about the SDHSAA's process for the selection of tournament locations throughout the State. A Site Selection Committee works three years into the future and makes recommendations to the SDHSAA Board for their final approval.

#### Mid Central Educational Cooperative Special Review Report and the Mid Central Educational Cooperative Single Audit Report for FY15

The Department of Legislative Audit (DLA) provided an overview of work conducted related to funds that were passed through the State of South Dakota Department of Education (SDDOE) and expended by Mid Central Educational Cooperative (MCEC) and the American Indian Institute for Innovation. The work performed resulting in the Special Review Report builds upon audits of the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) done as part of the State of South Dakota Single Audits for fiscal years 2014 and 2015 and a Single Audit DLA conducted of MCEC for fiscal year 2015. DLA reported their review did not involve determining whether crimes were committed as that is the responsibility of law enforcement agencies. Additionally, their review did not involve evaluating whether State and federal programs administered by MCEC were effective in achieving expected results and outcomes. The objective of DLA's review was to determine whether funds received by MCEC had been adequately accounted for and that expenditures of those funds were properly supported by documentation. The DLA discussed each finding contained in the MCEC Special Review Report.

The first finding reported that the MCEC Governing Board and Director did not provide adequate oversight of related parties and conflicts of interest.

The second finding reported that there were unauthorized withdrawals from MCEC's checking account from January 2007 through September 2015.

The third finding reported MCEC did not have adequate internal controls in place to properly identify subaward agreements and monitor subrecipient compliance with federal regulations.

The fourth finding reported MCEC did not comply with the matching requirements of the GEAR UP grant.

The fifth finding identified unsupported salaries and wages were charged to the GEAR UP grant.

The sixth finding identified Teacher Quality grant subaward agreements were not approved by the MCEC's Governing Board and Teacher Quality expenditures were not adequately supported.

The seventh finding identified inadequate supporting documentation for contractual services and payroll charges to the Wakan Gli grant. In addition, there was no evidence that MCEC entered into contracts or agreements with the partners or contractor identified in the Wakan Gli grant application.

The eighth finding identified information reported to the U.S. Department of Education in MCEC's indirect cost rate agreement was inaccurate.

The DLA explained that the findings included in the Special Review of MCEC were also included in the MCEC Single Audit Report for FY15, as well as two additional findings relating to financial reporting.

The Committee had numerous questions about the reports over the course of the interim period. In addition, the Committee questioned various employees and former employees of the SDDOE, past MCEC Governing Board Chairs, past GEAR UP Advisory Board members, the independent public accounting firm's partner in-charge of the MCEC audits prior to FY15, and the Attorney General. The Attorney General provided an update on the pending criminal charges filed against three former MCEC employees. At this time, the courts have not set trial dates. Based upon the Committee's review of the DLA reports and answers provided from additional Committee questions, the Committee drafted legislation for consideration during the 2018 Session.

This report was adopted by the Committee at its October 30, 2017 meeting. Representative Steinhauer moved, seconded by Representative Hunhoff, the adoption of the 2017 Government Operations and Audit Committee Report as amended. The motion prevailed on a roll call vote with 5 voting AYE, 3 voting NAY, and 2 EXCUSED. Those voting AYE: Cronin, Hunhoff, Anderson, Steinhauer, and Peters. Those voting NAY: Tapio, Sutton, and Wismer. Those EXCUSED: Nelson and Tieszen.

## Appendix A



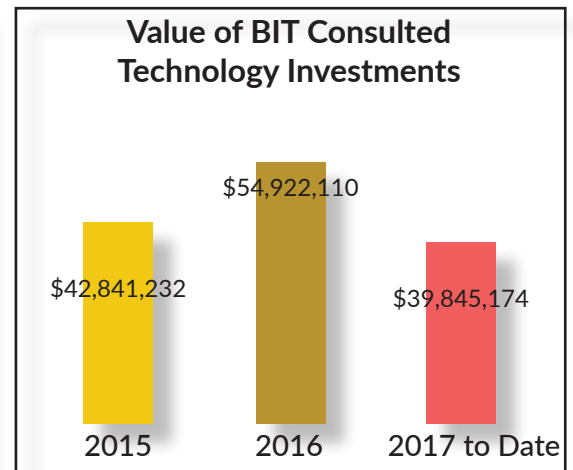
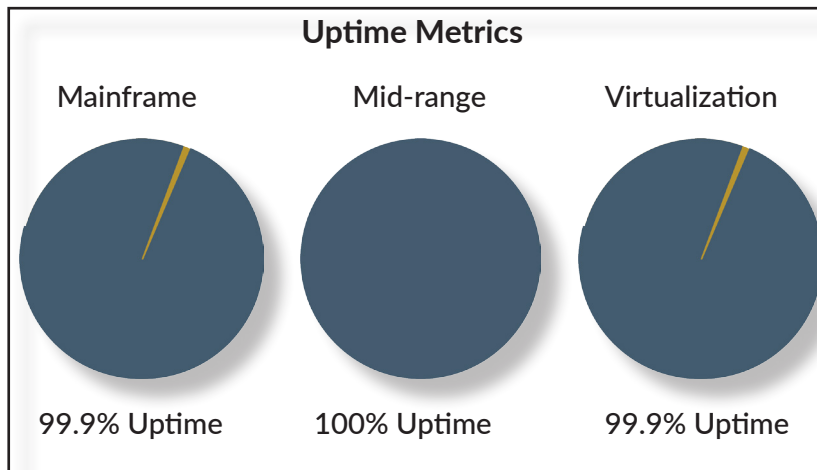
October 5, 2017

**To:** Government Operations and Audit Committee  
**From:** David Zolnowsky, Commissioner  
**Subject:** Summary Report for Performance Indicators

**Performance Indicators for BIT support our mission, vision, and department goals. These goals are:**

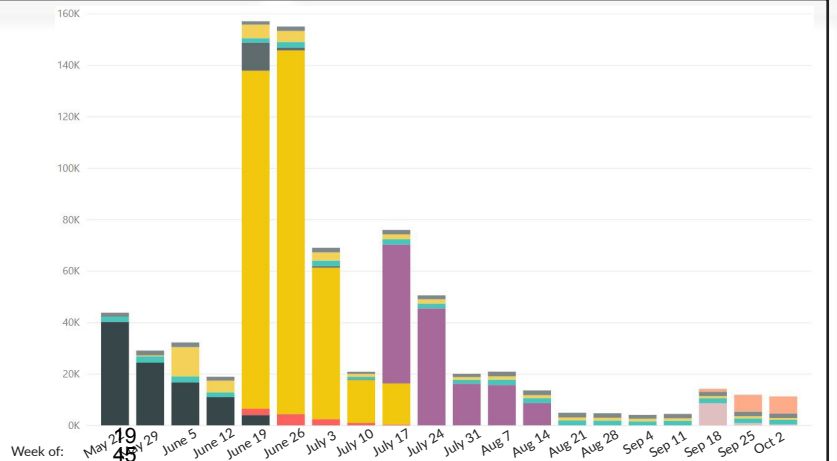
- 1 Provide a Reliable, Secure and Modern Infrastructure.**  
Provide a well-designed and architected secure computing and communications environment to ensure optimal service delivery to business. Architecture and process will be optimized to support agile and reliable computing and communication services.
- 2 Deliver Valuable Services at Economical Costs.**  
Develop innovative and cost-effective solutions through collaboration, cooperation and in partnership with our clients. The solution sets include developing customized business solutions, efficient project management services and productive relationships with clients.
- 3 Build and Retain a Highly Skilled Workforce.**  
Improve the effectiveness, productivity and satisfaction of employees in order to attract (and retain) a highly-qualified workforce to foster individual innovation and professional growth. Appropriate training and tools will be provided to enhance and improve career skills in the workforce.

### 1 Provide a Reliable, Secure and Modern Infrastructure



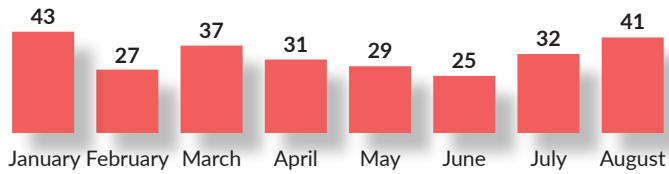
### Top Critical Risks by Week

- May 2017 Windows 7 & 2008 update
- June 2017 Windows 10 Version 1607 update
- June 2017 Windows 7 & 2008 update
- June 2017 Windows 8.1 & Windows update
- July 2017 Windows 7 & 2008 update
- September 2017 Windows 8.1 & Windows update
- Microsoft .NET Framework Unsupported
- Microsoft Windows SMBv1
- Microsoft XML Parser
- Security Updates for Microsoft Skype for Business

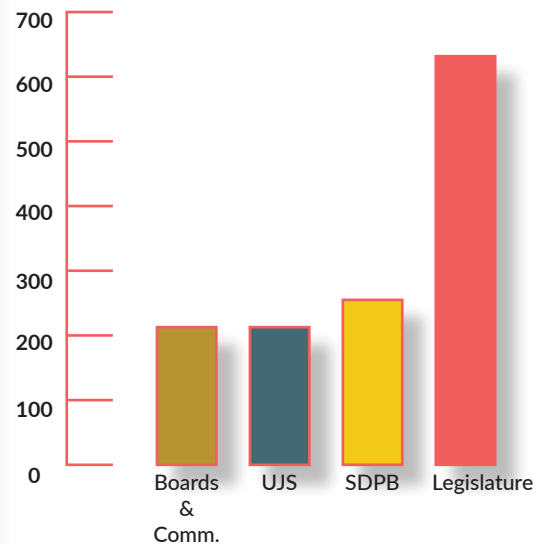


## 2 Deliver Valuable Services at Economical Costs.

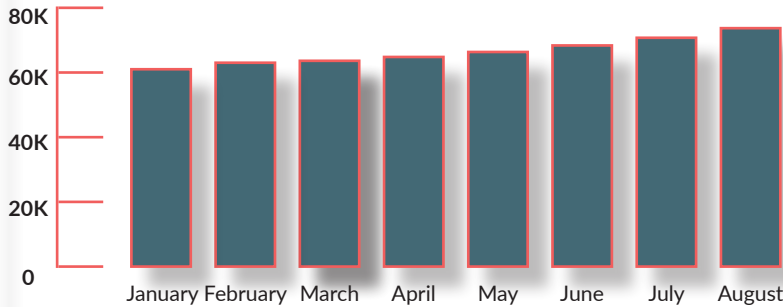
**Development Projects Completed in 2017**



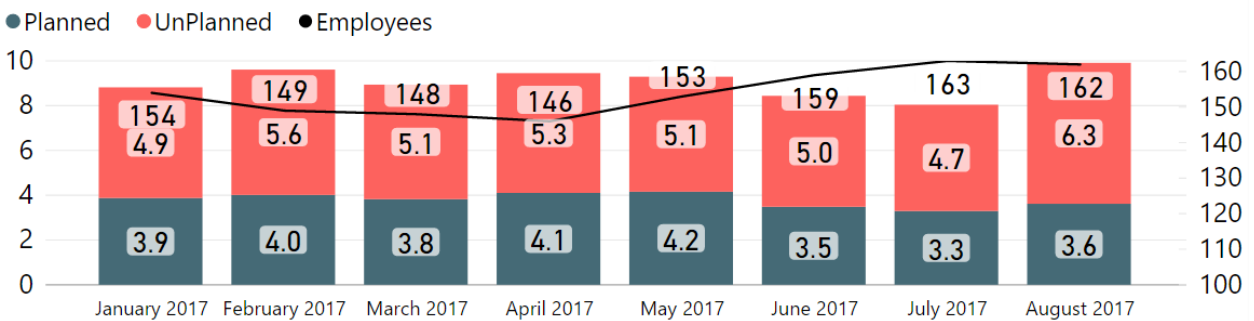
**Hours of SD.NET Usage in 2017**



**SDPB Social Media Followers**

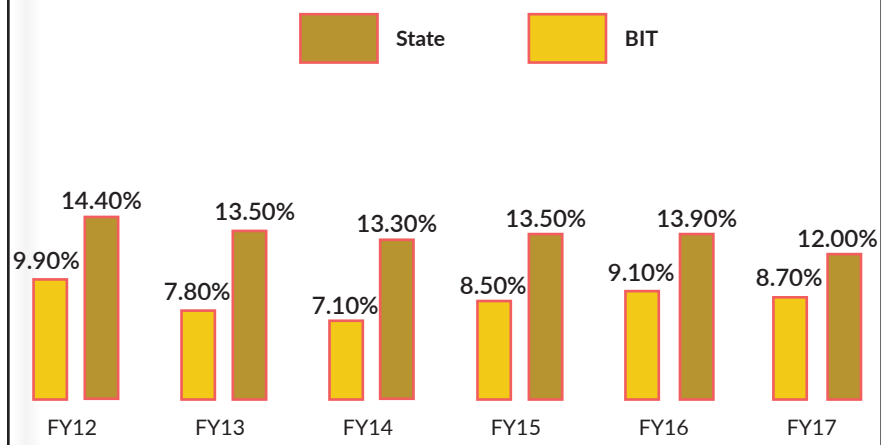


**Development Average Work Items in Progress Per Employee**



## 3 Build and Retain a Highly Skilled Workforce.

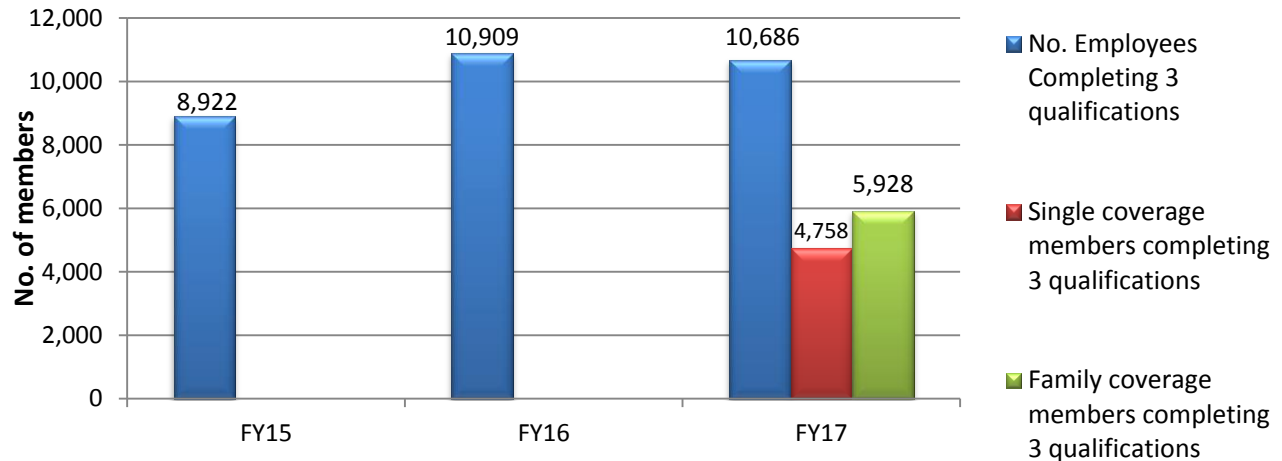
**Staff Turnover Rates**



## FY18 Performance Indicators Bureau of Human Resources

**Goal No. 1:** Increase percentage of employees and covered spouses completing all three wellness qualifications by 3% or 320 members by March 31, 2018.

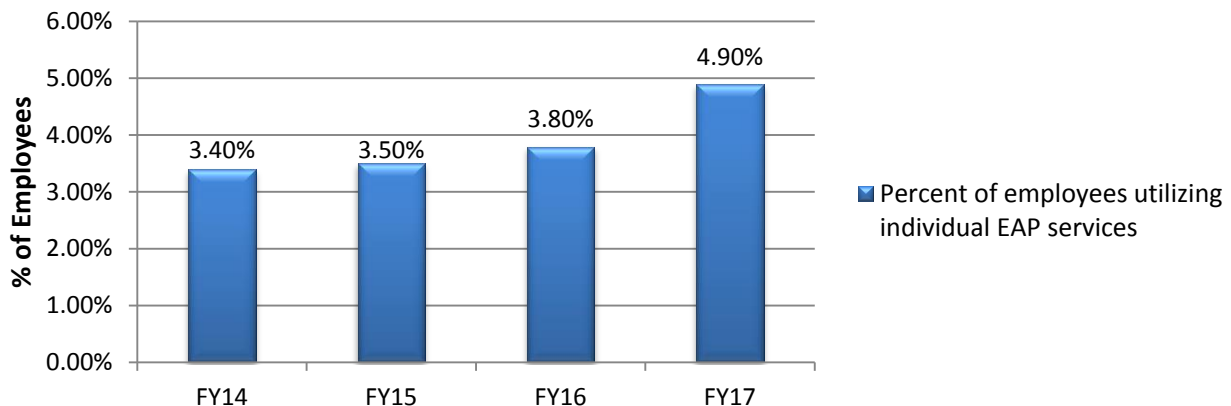
The wellness qualifications include taking an on-site health screening, participating in an online health assessment, and earning 100 wellness points. Studies show health screenings and health assessments help employees better understand their health risks and seek preventive care, which could result in cost savings to the health plan.



**Goal No. 2:** Increase individual-case utilization of the Employee Assistance Program (EAP) from 4.9% to 5.8% or 113 individual cases by FY19.

EAP provides a wide range of services, including personal counseling, financial planning and counseling, legal services, discount shopping, and education on dealing with aging parents and children, to state employees and immediate family members at no cost to the user.

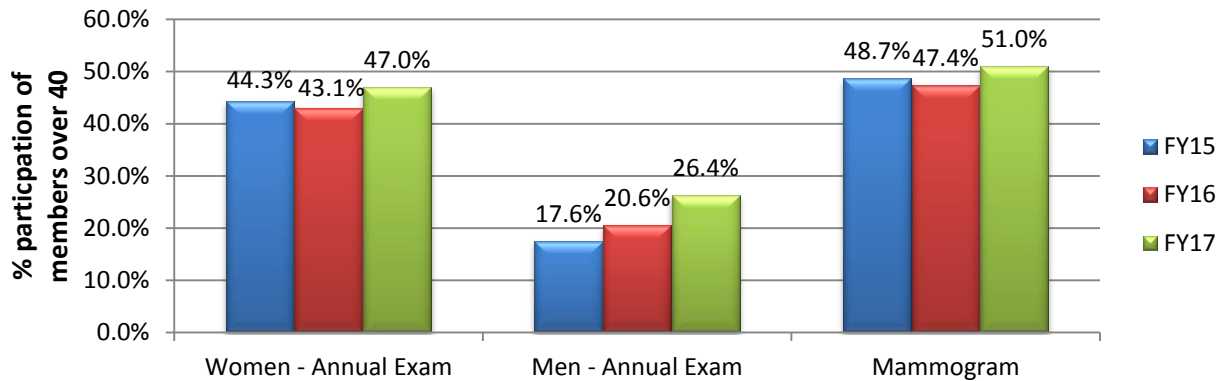
The State pays a fixed cost per employee for EAP, and utilization is shown to reduce absenteeism and health-care costs. A recent employee survey showed that 40% of respondents were not aware of EAP services, and only 12% of the survey participants had used EAP.



## FY18 Performance Indicators Bureau of Human Resources

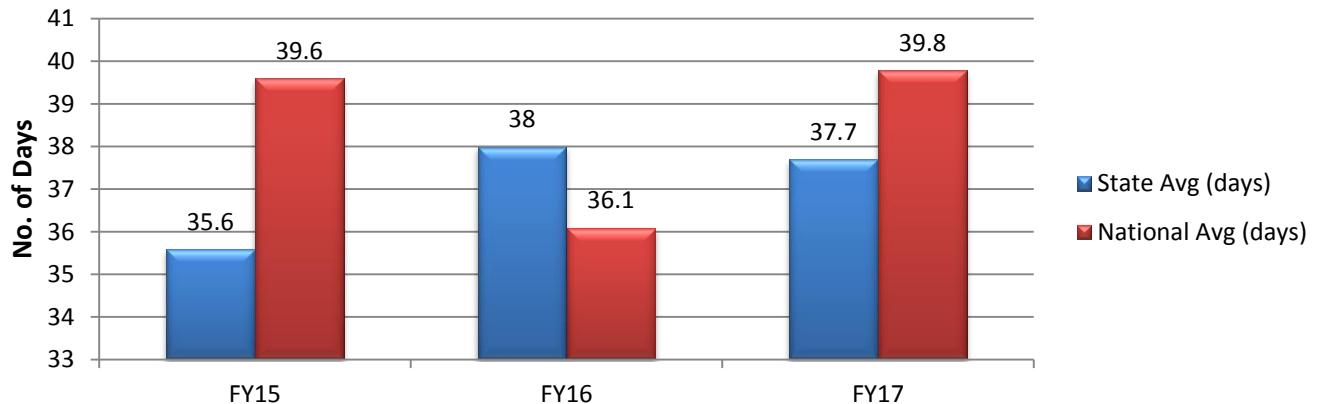
**Goal No. 3:** Increase usage of the following preventive care services available at no cost to the member by June 2019.

- Increase preventive care office visits for women over 40 by 5% (or about 318 women) to 52%.
- Increase preventive care office visits for men over 40 by 4% (or about 224 men) to 30.4%.
- Increase utilization of mammograms for women over 40 by 3% (or about 191 women) to 54%.



**Goal No. 4:** Ensure average time to fill positions for State agencies is less than the national average for FY18.

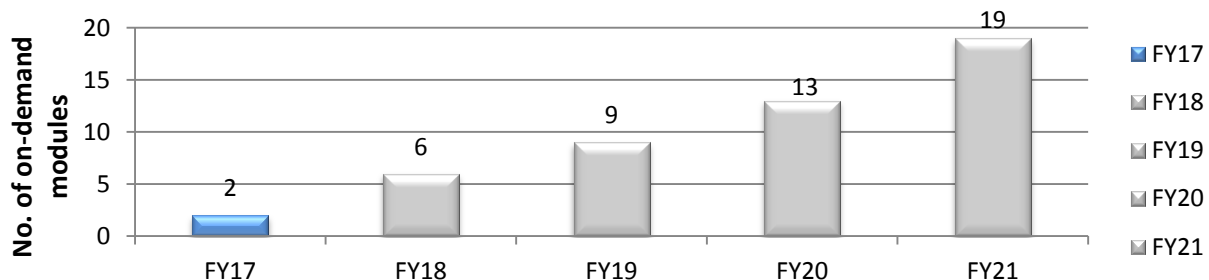
The current average for State agencies to fill a vacant position was 37.7 days in FY17, and the national average\* was 39.8 days.



\*The national average does not include weekend days, and the State average does.

**Goal No. 5:** Implement four on-demand, 24/7 e-learning modules in FY18 and increase by 50 percent annually each of the next four years.

BHR is implementing e-learning because it creates flexibility to participate at the time and location convenient to the employee. Because this is a new initiative, current usage data is not available. BHR will have the ability to track usage and completion for the courses to be added in FY18.



# South Dakota Department of Health Dashboards



## Vision

Healthy People – Healthy Communities – Healthy South Dakota

## Mission

To promote, protect and improve the health of every South Dakotan

## Guiding Principles

Serve with integrity and respect ○ Eliminate health disparities ○ Demonstrate leadership and accountability ○ Focus on prevention and outcomes ○ Leverage partnerships ○ Promote innovation

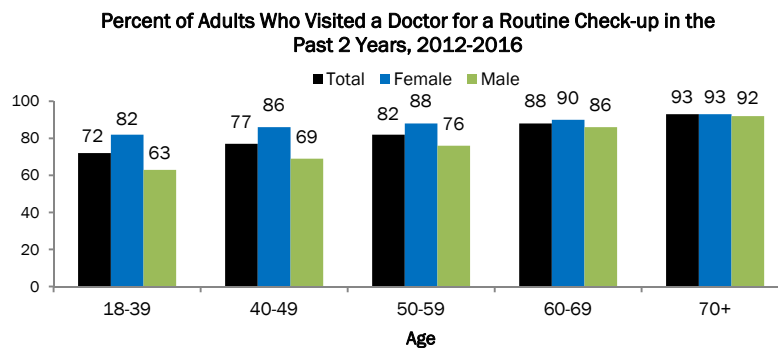
## Strategic Goals

- ❖ Improve the quality, accessibility, and effective use of healthcare
- ❖ Support life-long health for South Dakotans
- ❖ Prepare for, respond to, and prevent public health threats
- ❖ Develop and strengthen strategic partnerships to improve public health
- ❖ Maximize the effectiveness and strengthen infrastructure of the Department of Health

## Access to Preventive Care

Increase the percent of South Dakota adults who have visited a doctor for a routine check-up within the past 2 years from 80.1% in 2014 to 90% by 2020

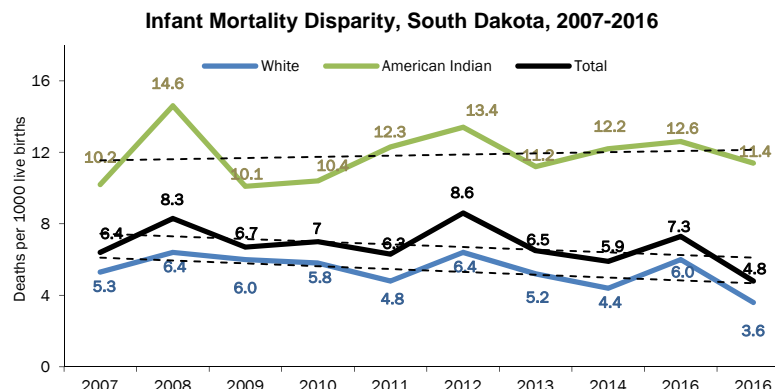
South Dakota Percent	South Dakota 2020 Target	U.S. Percent
79.8% (2016)	90%	83.5% (2015)



## Infant Mortality

Reduce the 5-year infant mortality rate from 6.9 per 1,000 births in 2010-2014 to 6.0 by 2020

South Dakota Rate	South Dakota 2020 Target	U.S. Rate
4.8 (2016)	6.0	5.8 (2014)



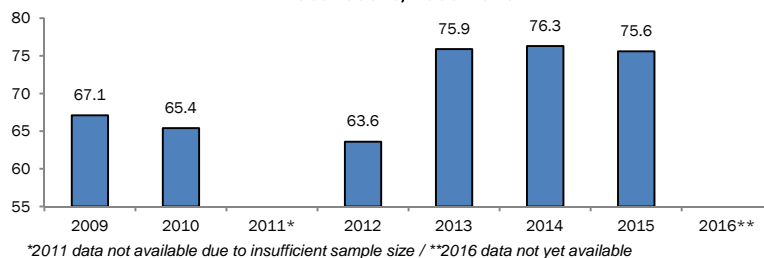


## Childhood Immunizations

Increase the percent of children aged 19-35 months who receive recommended vaccinations from 76.3% in 2014 to 80% by 2020

South Dakota Percent	South Dakota 2020 Target	U.S. Percent
75.6% (2015)	80.0	72.2% (2015)

Percent of children aged 19-35 months who receive recommended vaccinations, 2009-2015

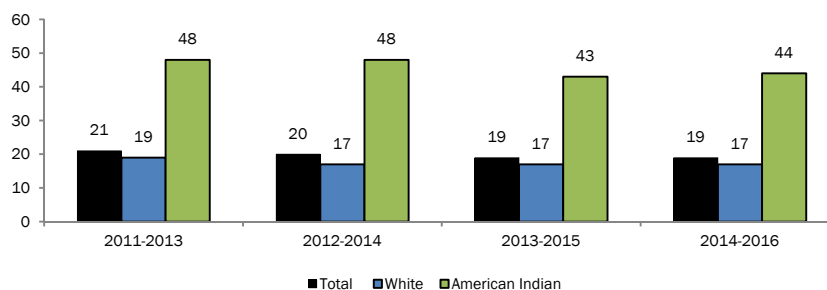


## Smoking

Reduce the percentage of adults that currently smoke from 18.6% in 2014 to 14.5% by 2020

South Dakota Percent	South Dakota 2020 Target	U.S. Percent
18.1 (2016)	14.5	17.5 (2015)

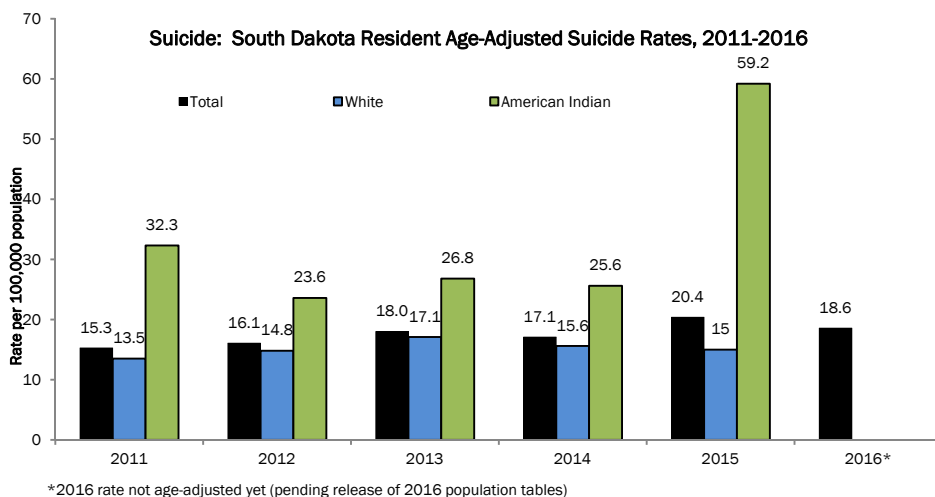
Adult Smoking Prevalence, 2011-2016



## Suicide

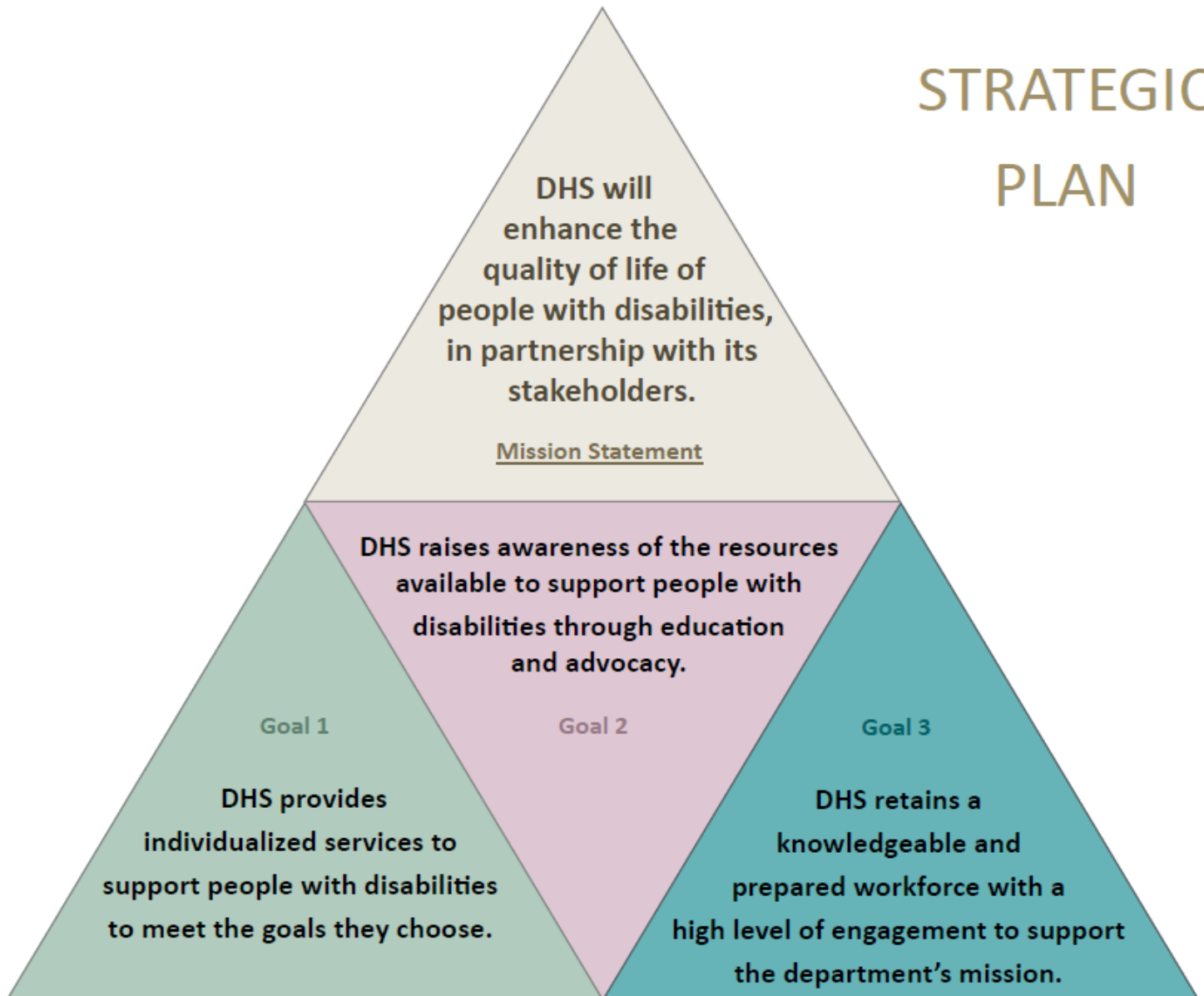
Reduce the suicide age-adjusted death rate for South Dakota from 17.1 per 100,000 in 2014 to 12.6 per 100,000 by 2020

South Dakota Rate	South Dakota 2020 Target	U.S. Rate
20.4 (2015)	12.6	13.0 (2014)



# South Dakota Department of Human Services

## STRATEGIC PLAN



[dhs.sd.gov](http://dhs.sd.gov)

# 1

The South Dakota Department of Human Services provides individualized services to support people with disabilities to meet the goals they choose.

Assessing & Increasing  
Self Direction  
Opportunities

- Right Sizing SDDC-120
- Conflict Free Case Management
- Stakeholder Input

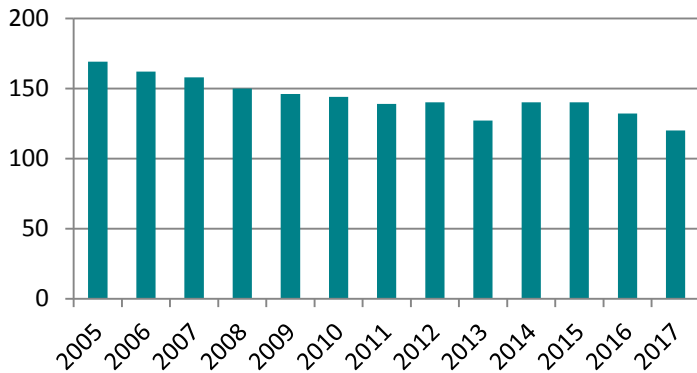
Communicate  
Performance Indicators to  
Public & Stakeholders

- Shares Review Results
- Satisfaction Surveys
- DHS Website

Becoming a Person  
Centered Organization  
(PCT)

- Development of:
- Leaders-27
  - Coaches-57
  - Trainers-5
  - Certified Providers-105

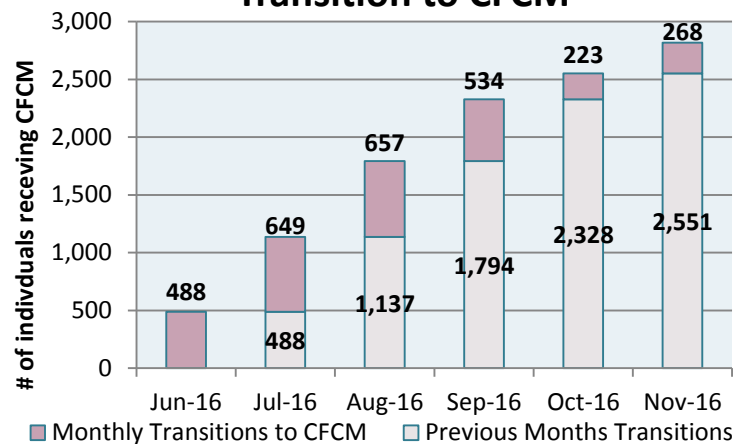
## SDDC Population Trends



One way to measure our success is the right sizing initiative at the South Dakota Developmental Center in Redfield to continue to find options for the least restrictive environment for the individuals we serve.

**\*Current Census-120**

## Transition to CFCM



The chart above shows the implementation of conflict free case management (CFCM) to meet new regulations from the Centers for Medicare and Medicaid Services (CMS). New conflict free case managers serve as the front line for information and assistance – helping individuals and families navigate the system while truly advocating for the person's needs and their preferences.



## THE BEST, THE BOTTOM, AND FACTS ABOUT THE TOP 10 PERFORMING STATES

### THE BEST PERFORMING STATES



- 1 Arizona
- 2 Vermont
- 3 New Hampshire
- 4 Michigan
- 5 Hawaii
- 6 California
- 7 Dist. of Columbia
- 8 Missouri
- 9 South Dakota
- 10 Maryland

State's Support for People with Developmental Disabilities Ranked **36** Top Ten Nationally

2

The South Dakota Department of Human Services raises awareness of the resources available to support people with disabilities through education and advocacy.

Partnerships

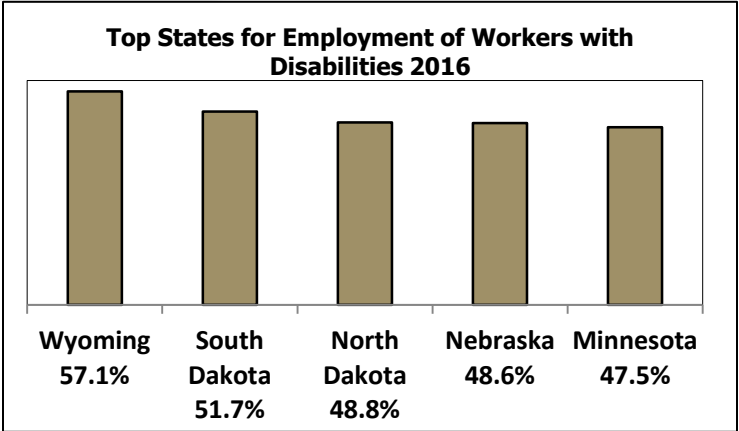
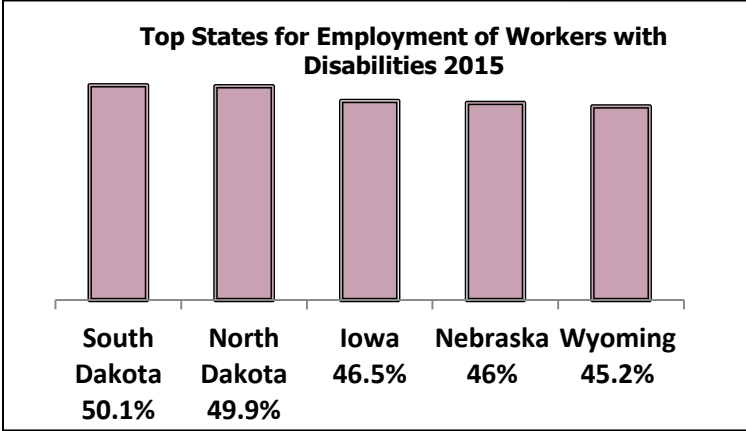
Boards & Councils  
Business/Employers  
SD Retailers  
Society of HR Managers

Employer Resources

Governor's Awards  
Business Resources  
Disability Employment Awareness  
State as Model Employer

Outreach Campaign

Ability for Hire  
Social Media  
No Wrong Door  
Web Resources



\*South Dakota is consistently one of the top states in the nation for employment of workers with disabilities.

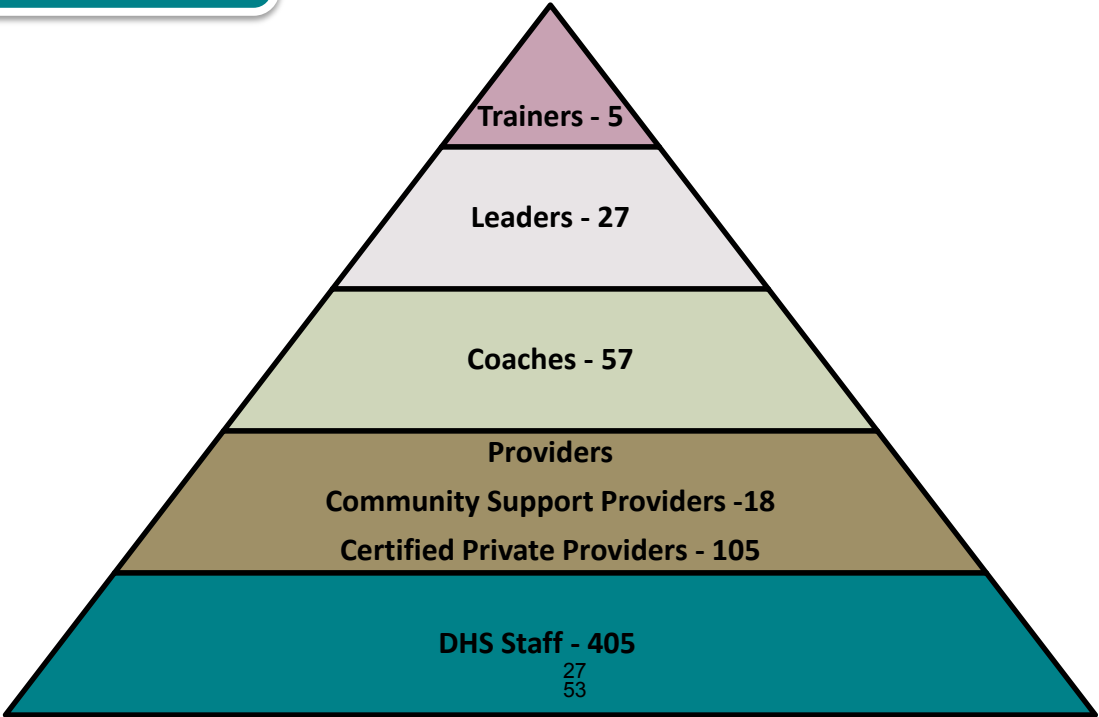
3

The South Dakota Department of Human Services retains knowledgeable and prepared workforce with a high level of engagement to support the department's mission.

Further Develop Positive & Encouraging Work Environment Through PCT

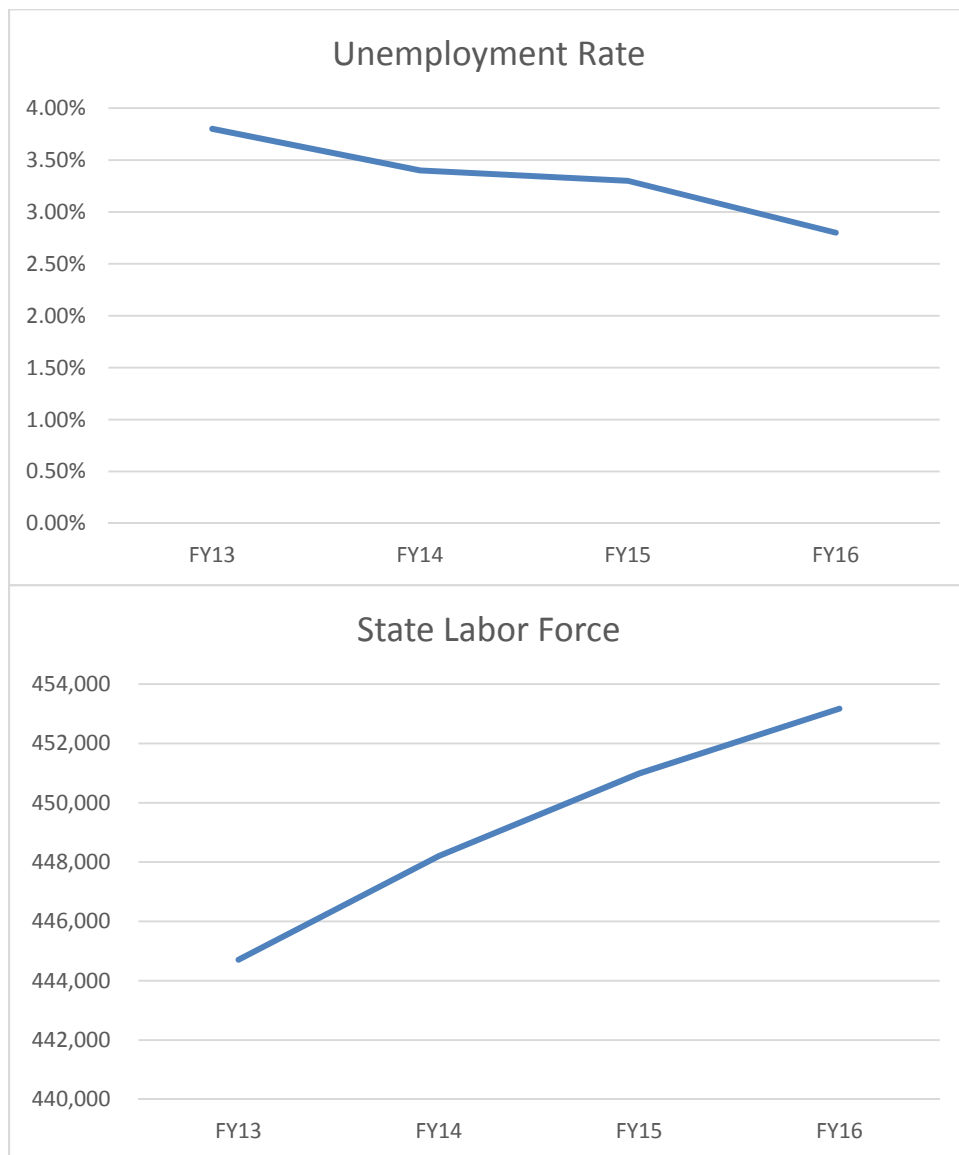
Professional Development

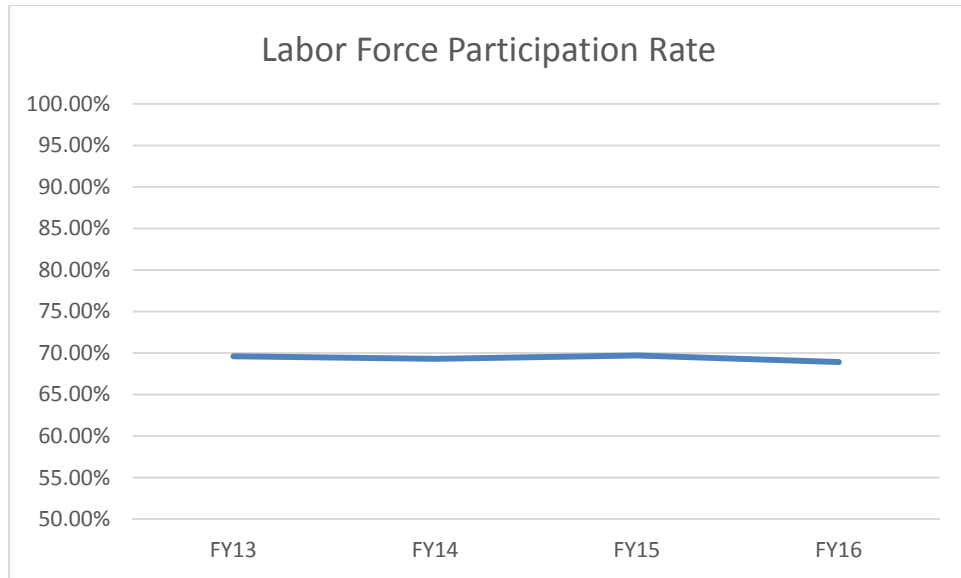
Connect Staff with Community & Stakeholders



## Labor Force Indicators

These indicators illustrate the employer and labor needs of South Dakota:





## Mission Statement

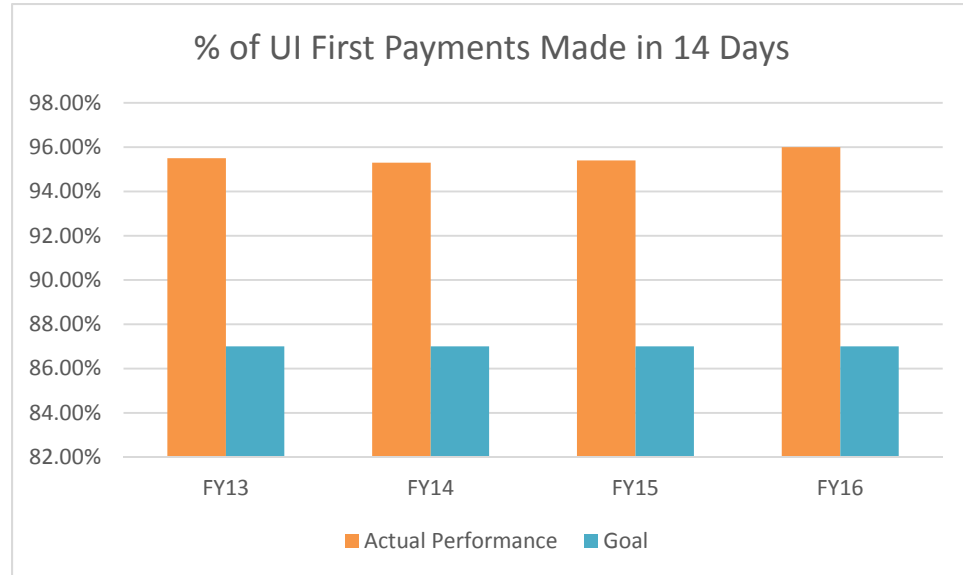
The mission of the Department of Labor and Regulation is to promote economic opportunity and financial security for individuals and businesses through quality, responsive and expert services; fair and equitable employment solutions; and safe and sound business practices.

## Quality, Responsive and Expert Services

- **Entered Employment** indicates the number of workers we connect to employers and positions through our job services. \*Goals and rates changed between SFY2015 and SFY2016 due to changes in performance measure formulas under the Workforce Innovations and Opportunities Act (WIOA) of 2014.

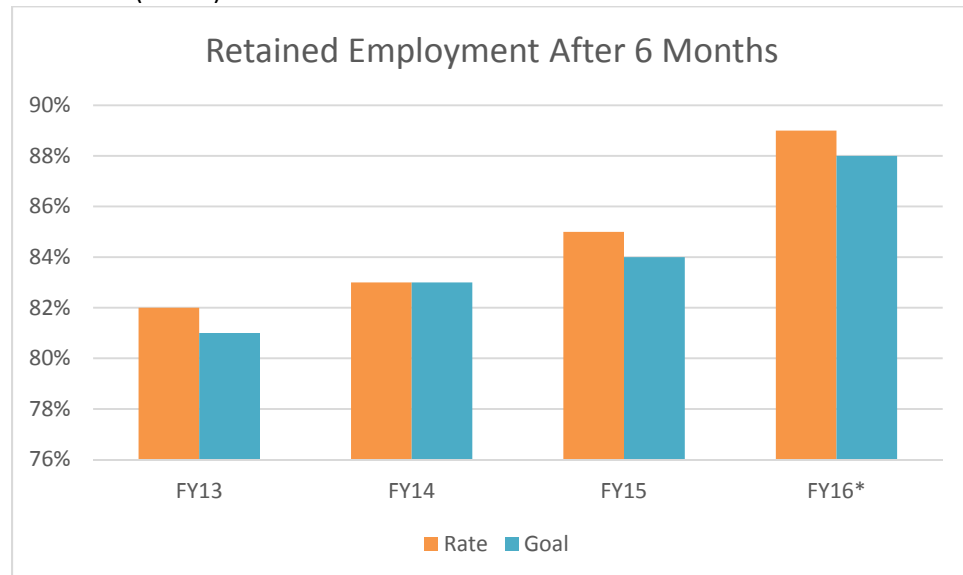


- **% of UI First Payments Made in 14 days** indicates the timeliness in providing unemployment benefits to unemployed individuals seeking assistance.



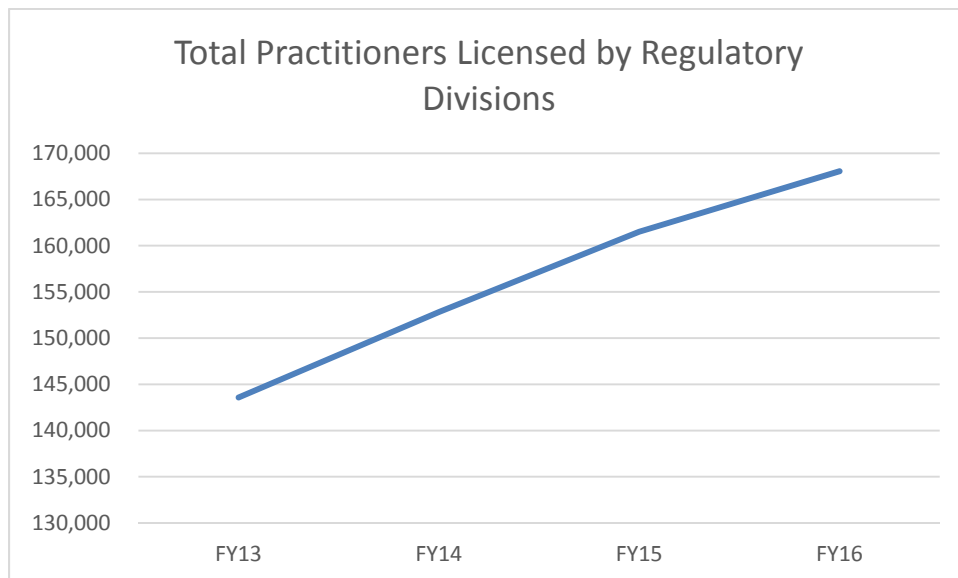
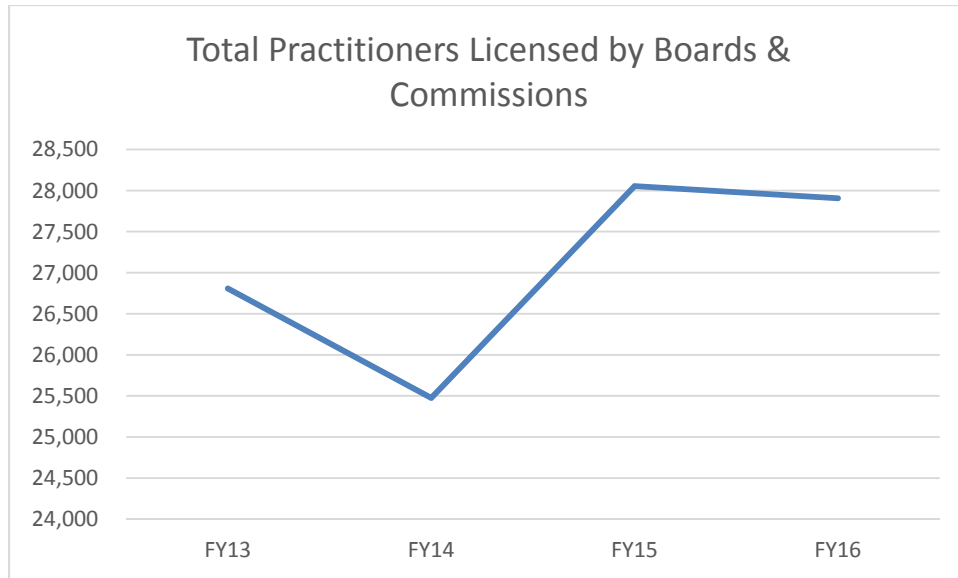
#### Fair and Equitable Employment Solutions

- **Retained Employment after 6 Months** indicates how people are fitting into the positions we connected them to with employers. \*Goals and rates changed between SFY2015 and SFY2016 due to changes in performance measure formulas under the Workforce Innovations and Opportunities Act (WIOA) of 2014.



#### Safe and Sound Business Practices

- **Total Practitioners** from Boards/Commissions and Regulation Divisions reflects the number of individuals and businesses which we must review and ensure proper compliance with established laws.







445 East Capitol Avenue  
Pierre, South Dakota 57501  
Phone: 605-773-3311  
Fax: 605-773-6053

July 18, 2017

TO: Government Operations and Audit Committee  
FROM: Andy Gerlach, Secretary  
DATE: 07/18/2017  
SUBJECT: Summary Report for Strategic Plan

The Department of Revenue's Strategic Plan, hereafter referred to as Revenue 2020, centers around a vision, values, and strategic directions aimed at managing and measuring performance to provide quality service to the State of South Dakota. In this report the Committee will find a summary of this Strategic Plan paired with key performance indicators for the four strategic directions.

The values the Department believes are critical to success are professionalism, dependability, accountability, and public service. The vision 'to create an open and collaborative environment that provides professional customer service, contributes to a favorable economic climate, and is accountable to the citizens of South Dakota' is the epicenter of the Revenue 2020. The four strategic directions of Revenue 2020 are:

Employees: Engaging and Developing Our Team

- Promote team building
- Establish a defined training and development plan
- Broaden communication efforts
- Develop a workforce management plan

Resources: Managing Resources to Maximize Return on Investment

- Increase Lottery instant ticket sales by 10%
- Increase voluntary compliance
- Expand internal control efforts
- Review initiatives and activities for return on investment
- Expand audit efforts
- Increase electronic transactions

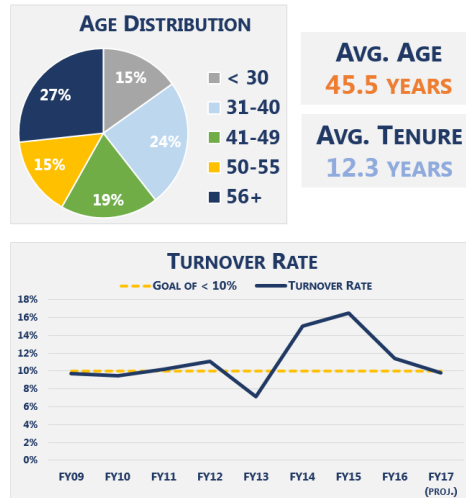
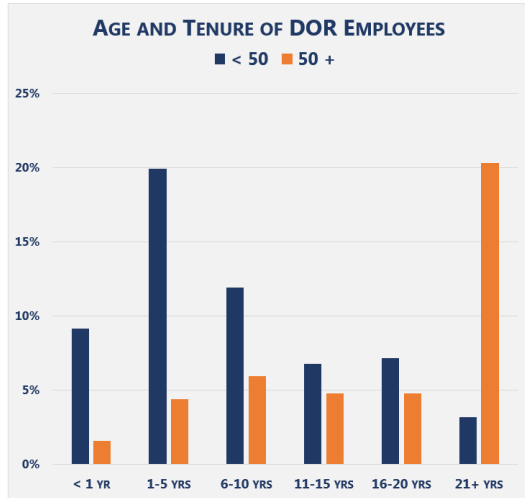
Insights: Leveraging Information Through Data Analytics to Support Decision Making

- Establish standards for inventory and use of Department Data
- Develop dashboards to:
  - Identify tax gaps and increase revenue
  - Effectively manage strategic plan goals
  - Support staffing patterns and needs

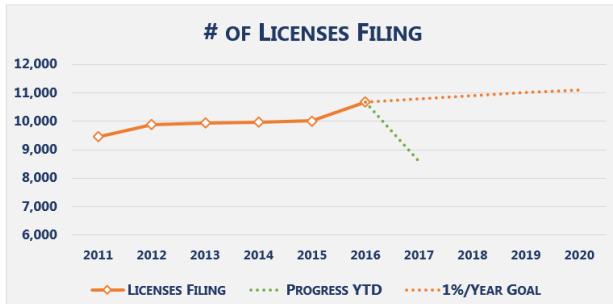
Partnerships: Developing and Strengthening the Department's Relationships

- Improve customer satisfaction by using market research data to implement customer-centric technology solutions
- Provide customized education opportunities
- Establish business advisory group to gather feedback

## 1. OUR WORKFORCE

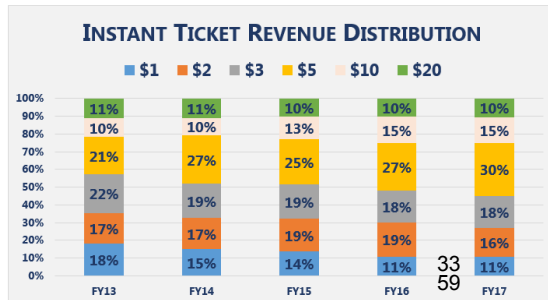
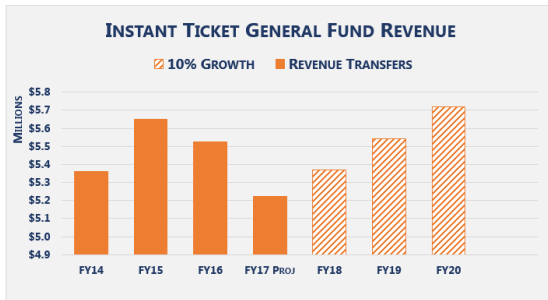
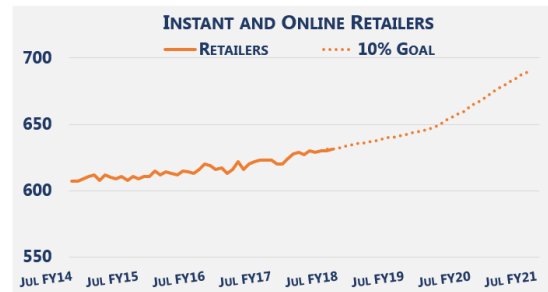
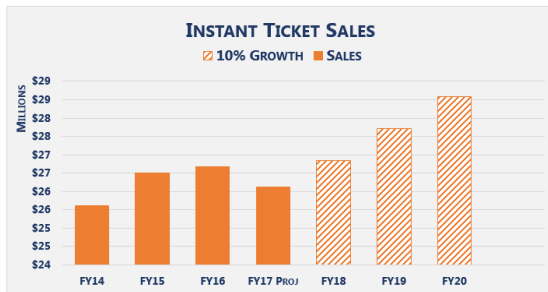


## 2. INCREASE VOLUNTARY COMPLIANCE

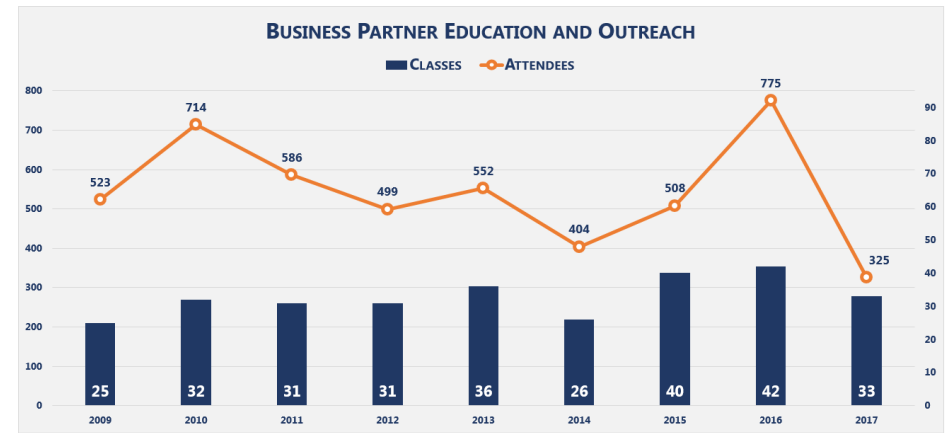


	LICENSES CURRENTLY ACTIVE	REPORTED TAX (JUL 2014 – PRESENT)
REMOTE SELLERS FROM SB106	104	\$1,468,794
NON-NEXUS FILERS	9,439	\$450,423,160
STREAMLINE SALES TAX	2,288	\$20,098,044

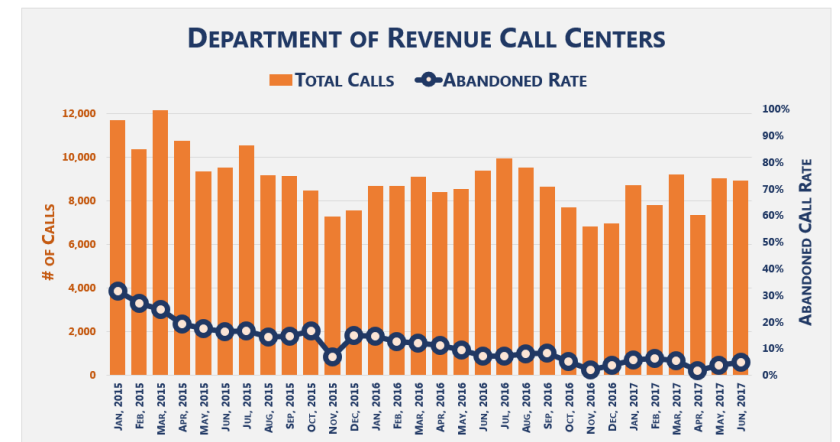
## 3. LOTTERY: INSTANT TICKETS AND ONLINE



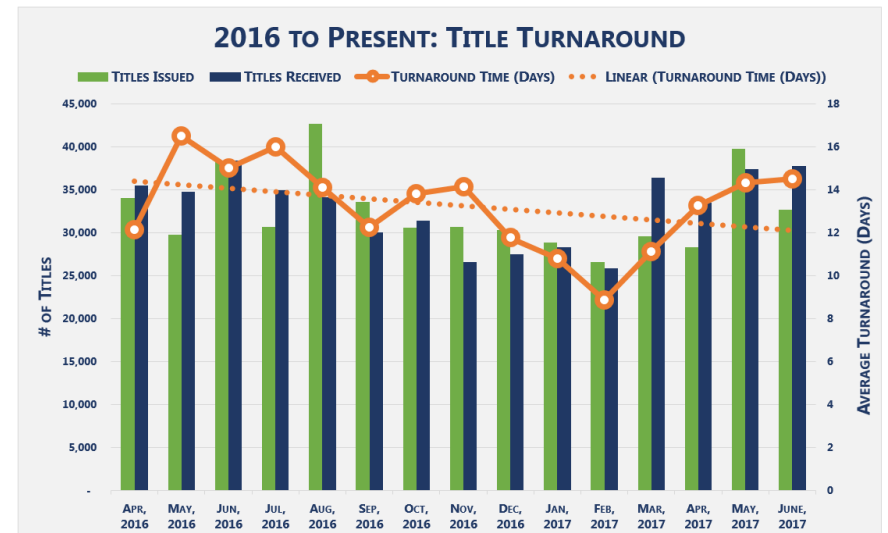
## 4. BUSINESS PARTNER OUTREACH



## 5. ENSURING CUSTOMER SERVICE



## 6. TITLE TURNAROUND EFFICIENCY





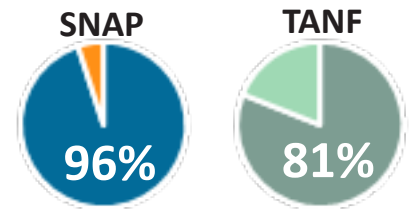
### Mission:

Strengthening and supporting individuals and families by promoting cost effective and comprehensive services in connection with our partners that foster independent and healthy families.

### Strategic Plan Outcomes:

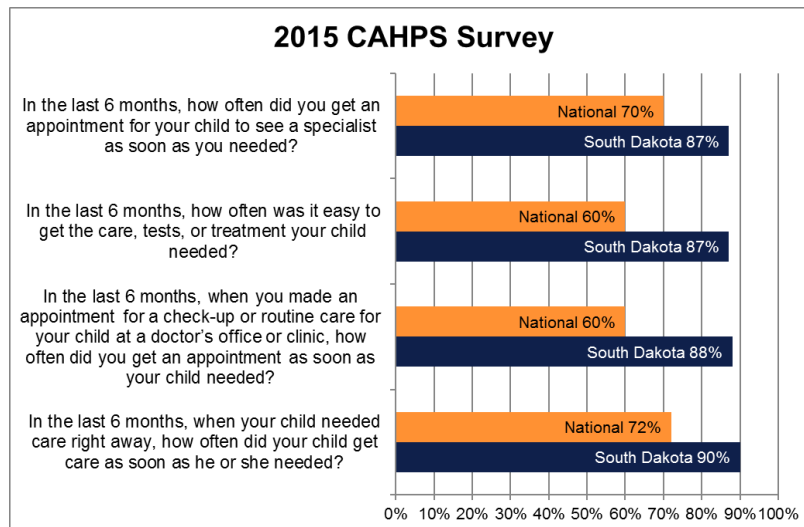
#### Connections to Work

- For participants that must meet work requirements for Supplemental Nutrition Assistance (SNAP) and Temporary Assistance for Needy Families (TANF) - Percentage employed 30 days after starting job- majority full time:
- Child Care Subsidy – Supporting over 2100 families so they can work or attend school. 57% of families are at or below 100% FPL
  - Results: 96% of families reported ability to maintain full time employment.



#### Access to Healthcare

- Survey by Centers for Medicare and Medicaid Services indicates SD exceeds national average across four key measures of access.



#### Caring for People in the Most Cost Effective Manner

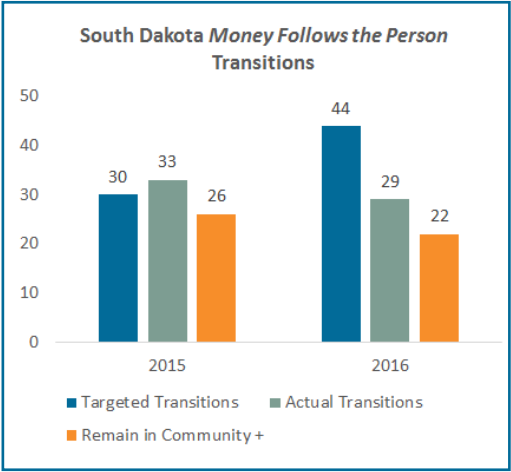
- Health Homes program implemented in July 2013. Over 6,000 participants each month with high cost chronic or behavioral health conditions. Goal to improve care coordination, increase primary care and reduce emergency department usage. Improved health outcomes and net cost avoidance of \$4 - 5.6 million. 25% reduction in ED visits and 20% reduction in inpatient admissions. 6% increase in primary care.

Outcomes Measure	Prior to Health Home	After Health Home
ED Visits per 1,000	499	375
Inpatient Admissions per 1,000	325 34 60	264

### Strategic Plan Goals:



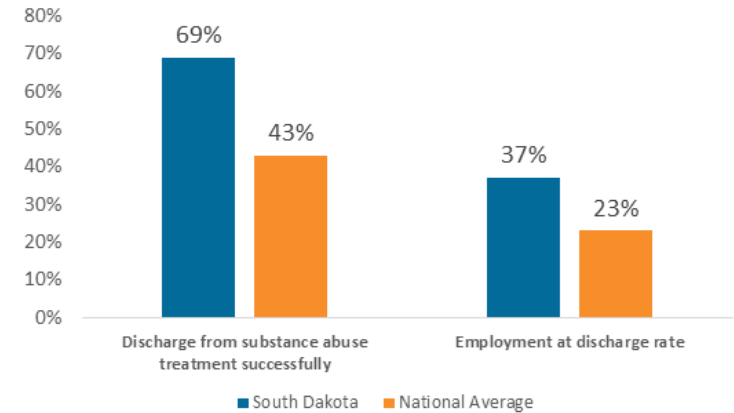
- Money Follows the Person implemented in 2014. Provides funding and supports to transition individuals from nursing home or other institutional settings back to their homes/communities.
  - o Results: Transitioned 29 individuals with 18 partial transitions completed.
- Geriatric Psychiatric Treatment- Clinicians from the Human Services Center provided psychiatric review and consultation services diverting 21 individuals from admission to HSC keeping them in community nursing home placement.
- Community Based Mental Health Services – Providing counseling, psychiatric treatment and wrap around services to over 7,000 recipients to prevent inpatient admissions and improving community involvement.
  - o Results: 6.2% increase in employment outcomes, 9.4% reduction in ER visits and 14% reduction in inpatient admissions.



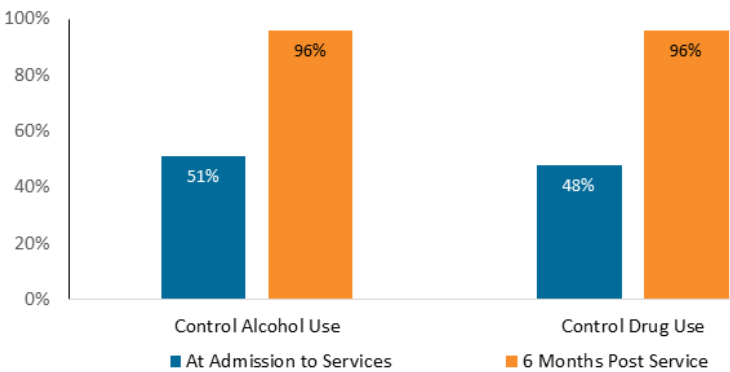
Outcomes Measure	Prior to CARE and IMPACT	After CARE and IMPACT
Clients reporting employment	19.7%	25.9%
Clients who visited an ER for a psychiatric or emotional problem	12.3%	2.9%
% of Clients who spent night in hospital	20.1%	6%

- Community Based Substance Use Treatment Services – Providing counseling, inpatient treatment and halfway house services and Cognitive Behavioral Intervention for justice involved populations.

Successful discharge from treatment – 26% higher than the national average, employment 14% higher than national average



Justice involved population 96% report ability to control drugs or alcohol at discharge compared to national averages of 51% (alcohol) and 48% (drugs). 85% reported employment at discharge.



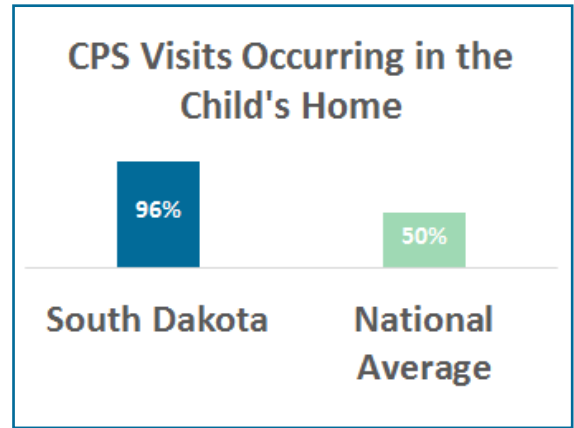
- Correctional Behavioral Health Services – Mental Health and Substance Use treatment services to individuals in custody of the Department of Corrections.
  - o Results: 3,987 psychiatric contacts and 1,357 entered substance use treatment.

### Permanency and Safety for Children

- Child Protection Services goal is to reunify families whenever possible.
  - o Results: 77% of children return home within 12 months of removal.
  - o When that is not possible, we work to establish guardianship or adoption to divert from foster care placement.
    - 96% of caseworker visits happen where the child resides – exceeding the national average by 46%.

### Program Integrity – National Awards

- Nationally recognized for program quality:
  - o Medicaid – only state in the nation to receive continuous exemption since 2010 from recovery audit contractor requirements. Collected \$8.7 million in third party liability, estate recovery, and fraud collections. Less than 5% of collections are fraud related. Additional \$425,315 in cost avoidance through fraud prevention and detection efforts.
  - o Supplemental Nutrition Program ranked #1 in the nation in 2015 and over 30 years of continuous financial program awards.
  - o Child Support – Over \$115 million in collections in 2016 for over 60,000 cases. Child Support collects \$11 for every \$1 of administrative costs exceeding the national average by 51%. As a result, ranked #2 in the nation in 2016 earning \$2 million in incentive payments. Ranked in the top 3 nationally for the last 15 years.
  - o Child Care – 96% payment accuracy compared to national average of 94%.



# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Government Accountability Task Force - 1

834Z0134

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning campaign finance  
2 limits.

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

4 Section 1. That § 12-27-7 be amended to read:

5 12-27-7. ~~If a contributor is a person or an entity, no candidate for statewide office or the~~  
6 ~~candidate's campaign committee may accept any contribution that in the aggregate exceeds four~~  
7 ~~thousand dollars during any calendar year. A candidate campaign committee may only accept~~  
8 ~~contributions from any candidate campaign committee, political action committee, entity,~~  
9 ~~person, or political party. The limitation on any contribution from a person in this section does~~  
10 ~~not apply to any contribution by the candidate or the candidate's immediate family~~ A statewide  
11 candidate or the candidate's campaign committee may accept contributions during any calendar  
12 year as follows:

13 (1) Not to exceed four thousand dollars from a person, unless the person is the candidate  
14 or a member of the candidate's immediate family, in which case contributions may  
15 be made without limit;

16 (2) Not to exceed four thousand dollars from an entity;



1       (3)   Without limit from a political action committee;

2       (4)   Without limit from a political party; and

3       (5)   Without limit from a candidate campaign committee.

4       Any contribution from a ballot question committee is prohibited. A violation of this section  
5 is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1  
6 misdemeanor.

7       Section 2. That § 12-27-8 be amended to read:

8       12-27-8. ~~If the contributor is a person or entity, no candidate for legislative or county office~~  
9 ~~or the candidate's campaign committee may accept any contribution that in the aggregate~~  
10 ~~exceeds one thousand dollars during any calendar year. A candidate campaign committee may~~  
11 ~~only accept contributions from any candidate campaign committee, person, entity, political~~  
12 ~~action committee, or political party.~~

13     ~~—The limitation on any contribution from a person in this section does not apply to any~~  
14 ~~contribution by the candidate or the candidate's immediate family~~ A legislative or county  
15 candidate or the candidate's campaign committee may accept contributions during any calendar  
16 year as follows:

17       (1)   Not to exceed one thousand dollars from a person, unless the person is the candidate  
18             or a member of the candidate's immediate family, in which case contributions may  
19             be made without limit;

20       (2)   Not to exceed one thousand dollars from an entity;

21       (3)   Without limit from a political action committee;

22       (4)   Without limit from a political party; and

23       (5)   Without limit from a candidate campaign committee.

24       Any contribution from a ballot question committee is prohibited. A violation of this section

is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Section 3. That § 12-27-9 be amended to read:

~~12-27-9. If the contributor is a person or an entity, no political action committee may accept any contribution that in the aggregate exceeds ten thousand dollars during any calendar year. If the contributor is a ballot question committee, no political action committee may accept any contribution that in the aggregate exceeds ten thousand dollars during any calendar year. A political action committee may also accept unlimited contributions from any candidate campaign committee, political action committee, or political party~~ A political action committee may accept contributions during any calendar year as follows:

- (1) Not to exceed ten thousand dollars from a person;
- (2) Not to exceed ten thousand dollars from an entity;
- (3) Without limit from a political action committee;
- (4) Without limit from a political party;
- (5) Without limit from a candidate campaign committee; and
- (6) Not to exceed ten thousand dollars from a ballot question committee.

A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Section 4. That § 12-27-10 be amended to read:

~~12-27-10. If the contributor is a person or an entity, no political party may accept any contribution that in the aggregate exceeds ten thousand dollars during any calendar year. A political party may accept unlimited contributions from any candidate campaign committee, political action committee, or political party~~ A political party may accept contributions during any calendar year as follows:



- 1       (1)   Not to exceed ten thousand dollars from a person;
- 2       (2)   Not to exceed ten thousand dollars from an entity;
- 3       (3)   Without limit from a political action committee;
- 4       (4)   Without limit from a political party; and
- 5       (5)   Without limit from a candidate campaign committee.

6       Any contribution from a ballot question committee is prohibited. A violation of this section  
7 is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1  
8 misdemeanor.

9       Section 5. That § 12-27-18 be amended to read:

10       12-27-18. An entity may make ~~a contribution to a ballot question committee organized~~  
11 ~~solely for the purpose of influencing an election on a ballot question and may make independent~~  
12 communication expenditures regarding the placement of a ballot question on the ballot or the  
13 adoption or defeat of a ballot question. Any entity making expenditures, equal to or exceeding  
14 fifty percent of the entity's annual gross income, for the adoption or defeat of a ballot measure  
15 is a ballot question committee. An entity may create a political action committee. A violation  
16 of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class  
17 1 misdemeanor.

18       Section 6. That § 12-27-18.1 be amended to read:

19       12-27-18.1. A ballot question committee may accept unlimited contributions from a ~~person,~~  
20 ~~entity, or political committee;~~

- 21       (1)   Person;
- 22       (2)   Entity that complies with § 12-27-19;
- 23       (3)   Political action committee;
- 24       (4)   Political party;

- 1      (5)    Candidate campaign committee; and
- 2      (6)    Ballot question committee.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Government Accountability Task Force - 2

852Z0209

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning campaign finance  
2 requirements.

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

4 Section 1. That subdivision (2) of § 12-27-1 be amended to read:

5 (2) "Ballot question committee," a person or entity that raises, collects, or disburses  
6 contributions;

7 (a) As a proponent for the placement of any ballot question on the ballot;

8 (b) As an opponent to the placement of any ballot question on the ballot; or

9 (c) For the adoption or defeat of any ballot question.

10 A ballot question committee is not a person or political committee that makes a  
11 contribution to a ballot question committee. A ballot question committee is not an  
12 entity that makes a contribution to a ballot question committee from treasury funds;

13 Section 2. That subdivision (21) of § 12-27-1 be amended to read:

14 (21) "Treasurer," the treasurer is:

15 ~~\_\_\_\_\_~~ (a) ~~The~~ the person who is designated as and has agreed to serve as the person  
16 responsible for each required filing that a committee is required to make under



1                   this title;~~and~~

2       ~~———— (b) The person who may be responsible for any monetary penalty assessed in~~  
3                   ~~accordance with this chapter;~~

4       Section 3. That § 12-27-2 be amended to read:

5       12-27-2. A political committee shall have and continually maintain a chair and a treasurer.  
6       One person may serve as chair, candidate, treasurer, or any combination thereof. A treasurer  
7       may be responsible for any monetary penalty assessed pursuant to this chapter. No political  
8       committee may receive or make contributions or pay expenses while the office of treasurer is  
9       vacant. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a  
10      calendar year is a Class 1 misdemeanor.

11      Section 4. That § 12-27-3 be amended to read:

12      12-27-3. A statement of organization shall be filed as follows:

13      (1)   The treasurer for a political action committee shall file a statement of organization  
14              with the secretary of state not later than fifteen days after the date upon which the  
15              committee made contributions, received contributions, or paid expenses in excess of  
16              five hundred dollars. However, if such activity falls within thirty days of any  
17              statewide election, the statement of organization shall be filed within forty-eight  
18              hours:

19      ~~———— Notwithstanding the provisions above, a;~~

20      (2)   A candidate shall file a statement of organization for a candidate campaign  
21              committee with the secretary of state not later than fifteen days after becoming a  
22              candidate pursuant to this chapter. ~~The statement of organization may be filed~~  
23              ~~electronically pursuant to § 12-27-41.; and~~

24      (3)   If the treasurer for a ballot question committee does not file a statement of

organization pursuant to chapter 2-1, the treasurer shall file a statement of organization with the secretary of state not later than fifteen days after the date which the committee made contributions, received contributions, or paid expenses in excess of five hundred dollars. However, if such activity falls within thirty days of any statewide election, the statement of organization shall be filed within forty-eight hours.

Any statement of organization may be filed electronically pursuant to § 12-27-41. A political committee that regularly files a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service is not required to file a statement of organization. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Section 5. That § 12-27-14 be amended to read:

12-27-14. The sale of any property by a political committee shall be reported in the campaign finance disclosure statement. A violation of this section is a Class 1 misdemeanor.

Section 6. That § 12-27-21.1 be amended to read:

12-27-21.1. Each statement referred to § 12-27-22 shall be signed and submitted by the treasurer of the political committee. The statement shall be received by the secretary of state and submitted by 5:00 p.m. central time on the following dates:

(1) Pre-primary report: fifteen days prior to the primary election, for the reporting period commencing with the last report submitted up through and including twenty days prior to the election date;

(2) Pre-general report: fifteen days prior to the general election, for the reporting period commencing with the last report submitted up through and including twenty days

1 prior to the election date;

2 (3) Amendments: submitted pursuant to § 12-27-27;

3 (4) Supplemental report: submitted pursuant to § 12-27-28;

4 (5) Year-end report: by the last Friday in January each year, for the reporting period  
5 commencing with the last report submitted up through and including December  
6 thirty-first of each year; and

7 (6) Termination report: at any time as stated in § 12-27-25;

8 ~~—(7)—.~~

9 Pre-primary, pre-general, amendments, supplemental, year-end, and termination reports shall  
10 cover the contributions and expenditures since the last report submitted; ~~and~~

11 ~~—(8)—.~~ All required filings under this chapter shall be submitted using the forms as  
12 provided by the secretary of state.

13 A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar  
14 year is a Class 1 misdemeanor.

15 Section 7. That § 12-27-23 be repealed.

16 ~~—12-27-23. If the treasurer for a ballot question committee does not file a statement of~~  
17 ~~organization pursuant to chapter 2-1, the treasurer shall file a statement of organization with the~~  
18 ~~secretary of state not later than fifteen days after the date which the committee made~~  
19 ~~contributions, received contributions, or paid expenses in excess of five hundred dollars.~~  
20 ~~However, if such activity falls within thirty days of any statewide election, the statement of~~  
21 ~~organization shall be filed within forty-eight hours. A ballot question committee that regularly~~  
22 ~~files a campaign finance disclosure statement with another state or the Federal Election~~  
23 ~~Commission or a report of contributions and expenditures with the Internal Revenue Service is~~  
24 ~~not required to file a statement of organization. A violation of this section is a Class 2~~

1 ~~misdemeanor.~~

2 Section 8. That § 12-27-24 be amended to read:

3 12-27-24. A campaign finance disclosure report shall include the following information:

4 (1) The political committee name, mailing address, telephone number, and, if applicable,  
5 e-mail address;

6 (2) Name, mailing address, telephone number, and, if applicable, an e-mail address, if  
7 any of the political committee's treasurer;

8 (3) The type of campaign report (pre-primary, pre-general, year-end, amendment,  
9 supplement, or termination);

10 (4) For any ballot question committee, the ballot question name and whether the  
11 committee supports or opposes the ballot question;

12 (5) The balance of cash and cash equivalents on hand at the beginning of the reporting  
13 period;

14 (6) The total amount of all contributions received during the reporting period;

15 (7) The total amount of any donated good or service received during the reporting  
16 period;

17 (8) The total of refunds, rebates, interest, or other income not previously identified  
18 during the reporting period;

19 (9) The total of expenditures made during the reporting period;

20 (10) The cash balance on hand as of the close of the reporting period;

21 (11) All contributions of one hundred dollars or less shall either be aggregated and  
22 reported as a lump sum or the contributions shall be listed individually. ~~The~~  
23 ~~individual contributions of one hundred dollars or less shall be noted on the~~  
24 ~~committee's books and a running total of each individual's contributions shall be~~

1           **maintained;**

2           (12) The name, mailing address, city, and state of each person making a contribution of  
3           more than one hundred dollars in the aggregate during any calendar year and the  
4           amount of the contribution. Any contribution from any political committee shall be  
5           itemized. Any contribution from a federal political committee or political committee  
6           organized outside this state shall also include the name and website address of the  
7           filing office where campaign finance disclosure reports are regularly filed for the  
8           committee. If any information required by the section is unknown to the political  
9           committee, the political committee may not deposit the contribution;

10          (13) Any donated good or service contribution shall contain the same information as for  
11          any monetary contribution, and shall also include a description of the donated good  
12          or service contribution;

13          (14) ~~Upon the request of the treasurer, any person making a donated good or service~~  
14          ~~contribution shall provide all necessary information to the treasurer, including the~~  
15          ~~value of the contribution;~~

16          ~~—(15)—~~Any monetary or donated good or service contribution made by a political committee  
17          to any political committee or nonprofit charitable entity shall be itemized;

18          (16)(15) A categorical description and amount of any refunds, rebates, interest, sale of  
19          property, or other receipts not previously identified during the reporting  
20          period;

21          (17)(16) A categorical description and amount of any funds or donations by any entity  
22          to its political committee for establishing and administering the political  
23          committee and for any solicitation costs of the political committee;

24          (18)(17) Each loan received shall be reported in the same manner as a contribution;



1       ~~(19)~~(18)       Each loan repayment shall be reported in the same manner as an expenditure;

2       ~~(20)~~(19)       Any expenditure made during the reporting period shall be categorized as  
3                       disbursements and itemized by expense categories. A miscellaneous expense  
4                       category is prohibited. Any contribution made by the political committee that  
5                       is not in exchange for any item of value or service shall be itemized;

6       ~~(21)~~(20)       The amount of any independent communication expenditure from a political  
7                       committee made during the reporting period, and lists the name of the  
8                       candidate, public office holder, or ballot question related to the independent  
9                       communication expenditure and a description of the independent  
10                      communication expenditure;

11       ~~(22)~~(21)       ~~The~~ A ballot question committee shall provide the information contained in  
12                       any statement provided pursuant to § 12-27-19; and

13       ~~(23)~~(22)       A certification that the contents of the statement are true and correct signed by  
14                       the treasurer of the political committee.

15       Section 9. That § 12-27-29 be amended to read:

16       12-27-29. The treasurer of a political committee shall maintain and preserve detailed and  
17       accurate records of the following:

18       (1)       Each contribution ~~and donated good or service contribution~~ received by the political  
19                       committee. Any contribution of one hundred dollars or less shall be noted on the  
20                       political committee's books and a running total of each contributor shall be  
21                       maintained;

22       (2)       Each donated good or service contribution received by the political committee. Upon  
23                       request of the treasurer, any person making a donated good or service contribution  
24                       shall provide all necessary information to the treasurer, including the value of the

1           contribution:

2           (3)    In the case of a ballot question committee, the information required by § 12-27-19  
3           for any entity contribution;

4           ~~(3)~~(4) Each loan received or made by the political committee;

5           ~~(4)~~(5) Each refund, rebate, interest, or other income received by the political committee;

6           ~~(5)~~(6) All receipts, invoices, bills, canceled checks, or other proofs of payment, with an  
7           explanation of each, for each expenditure;

8           ~~(6)~~(7) The name and address of any financial institution where an account or depository for  
9           the political committee is maintained including the account number.

10          The treasurer shall maintain and preserve the records for a period of seven years or three  
11   years past the date of filing the termination statement for the election for which the contribution  
12   or expenditure was made, whichever is earlier. A violation of this section is a Class 2  
13   misdemeanor. Any subsequent offense within a calendar year is a Class 1 misdemeanor.

14          Section 10. That § 12-27-35 be amended to read:

15          12-27-35. The attorney general shall investigate and prosecute any violation of the  
16   provisions of this chapter relating to a legislative office, statewide office, or political committee  
17   and prosecute any violation thereof. In lieu of bringing a criminal action, the attorney general  
18   may elect to file a civil action. In a civil action, in addition to other relief, the court may impose  
19   a civil penalty in an amount not to exceed ten thousand dollars for each violation. Any civil  
20   penalty recovered shall be paid to the state general fund. A civil action brought by the attorney  
21   general shall be commenced in Hughes County or in the county where the person resides. ~~Any~~  
22   ~~violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year~~  
23   ~~is a Class 1 misdemeanor.~~

24          Section 11. That § 12-27-38 be amended to read:

1        12-27-38. If any candidate is proved in a contest of an election ~~or is proved~~ to have violated  
2        any provision of this chapter punishable by a felony, the candidate may not be certified for  
3        election or the candidate shall forfeit his or her office. The office shall be declared vacant and  
4        shall be filled in the manner provided by law for filling vacancies occasioned by death or  
5        resignation.

6        Section 12. That § 12-27-48 be amended to read:

7        12-27-48. Any person who knowingly makes a false allegation pursuant to § 12-27-47, 23-3-  
8        72, or 23-3-73 is guilty of a Class 2 misdemeanor.

# State of South Dakota

Draft Print: 11/7/2017

## NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2018

### Appendix Government Accountability Task Force - 3

825Z0206

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the content of the  
2 campaign finance disclosure reports and to declare an emergency.

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

4 Section 1. That § 12-27-24 be amended to read:

5 12-27-24. A campaign finance disclosure report shall include the following information:

- 6 (1) The political committee name, mailing address, telephone number, and, if applicable,  
7 e-mail address;
- 8 (2) Name, mailing address, telephone number, and, if applicable, an e-mail address, if  
9 any of the political committee's treasurer;
- 10 (3) The type of campaign report (pre-primary, pre-general, year-end, amendment,  
11 supplement, or termination);
- 12 (4) For any ballot question committee, the ballot question name and whether the  
13 committee supports or opposes the ballot question;
- 14 (5) The balance of cash and cash equivalents on hand at the beginning of the reporting  
15 period;
- 16 (6) The total amount of all contributions received during the reporting period;



- 1       (7)    The total amount of any donated good or service received during the reporting  
2            period;
- 3       (8)    The total of refunds, rebates, interest, or other income not previously identified  
4            during the reporting period;
- 5       (9)    The total of expenditures made during the reporting period;
- 6       (10)   The cash balance on hand as of the close of the reporting period;
- 7       (11)   All contributions of one hundred dollars or less shall either be aggregated and  
8            reported as a lump sum or the contributions shall be listed individually. The  
9            individual contributions of one hundred dollars or less shall be noted on the  
10          committee's books and a running total of each individual's contributions shall be  
11          maintained;
- 12      (12)   The name, mailing address, city, and state of each person making a contribution of  
13            more than one hundred dollars in the aggregate during any calendar year and the  
14            amount of the contribution. Any contribution from ~~any~~ an entity after July 1, 2017,  
15            or political committee shall be itemized. Any contribution from a federal political  
16            committee or political committee organized outside this state shall also include the  
17            name and website address of the filing office where campaign finance disclosure  
18            reports are regularly filed for the committee. If any information required by the  
19            section is unknown to the political committee, the political committee may not  
20            deposit the contribution;
- 21      (13)   Any donated good or service contribution shall contain the same information as for  
22            any monetary contribution, and shall also include a description of the donated good  
23            or service contribution;
- 24      (14)   Upon the request of the treasurer, any person making a donated good or service

1 contribution shall provide all necessary information to the treasurer, including the  
2 value of the contribution;

3 (15) Any monetary or donated good or service contribution made by a political committee  
4 to any political committee or nonprofit charitable entity shall be itemized;

5 (16) A categorical description and amount of any refunds, rebates, interest, sale of  
6 property, or other receipts not previously identified during the reporting period;

7 (17) A categorical description and amount of any funds or donations by any entity to its  
8 political committee for establishing and administering the political committee and  
9 for any solicitation costs of the political committee;

10 (18) Each loan received shall be reported in the same manner as a contribution;

11 (19) Each loan repayment shall be reported in the same manner as an expenditure;

12 (20) Any expenditure made during the reporting period shall be categorized as  
13 disbursements and itemized by expense categories. A miscellaneous expense  
14 category is prohibited. Any contribution made by the political committee that is not  
15 in exchange for any item of value or service shall be itemized;

16 (21) The amount of any independent communication expenditure from a political  
17 committee made during the reporting period, and lists the name of the candidate,  
18 public office holder, or ballot question related to the independent communication  
19 expenditure and a description of the independent communication expenditure;

20 (22) The information contained in any statement provided pursuant to § 12-27-19; and

21 (23) A certification that the contents of the statement are true and correct signed by the  
22 treasurer of the political committee.

23 Section 2. Whereas, this Act is necessary for the support of the state government and its  
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in

- 1 full force and effect from and after its passage and approval.

# State of South Dakota

Draft Print: 11/7/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

**Appendix**  
**Government Accountability Task Force - 4**  
*(The Executive Board determined this legislation  
does not fit within the scope of the task force.)*

465Z0191

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions defining gifts from registered  
2 lobbyists to public officials.

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

4 Section 1. That § 2-12-18 be amended to read:

5 2-12-18. For purposes of §§ 2-12-15 to 2-12-19, inclusive, the term, gift, means anything  
6 of value, including any object, money, property, or service, that is given without compensation  
7 or remuneration. The term does not include:

8 (1) Anything of value for which the recipient paid an equal or greater value;

9 (2) Any contribution to a political committee that is regulated by the Federal Elections  
10 Commission or under chapter 12-27;

11 (3) ~~Any service or event to assist a public official in the performance of official duties;~~  
12 ~~including any cost to educate or inform the public official on matters of public policy;~~  
13 ~~any advice, information, consultation, or communication regarding actual or~~  
14 ~~proposed legislation; any service to constituents or to promote the economic~~  
15 ~~development of the state~~ educational material to inform public officials on a matter  
16 of public policy;





- 1       (4)   Any food, entertainment, or beverage provided for immediate consumption;
- 2       (5)   Anything of value exchanged between immediate family members;
- 3       (6)   The cost of admission to any state-owned facility or state-sponsored industry or  
4           event, if provided by the sponsoring state agency, political subdivision, or publicly  
5           funded institution;
- 6       (7)   Anything of value received due to membership in a group, the majority of whose  
7           membership is not comprised of public officials, if the object or other thing of value  
8           is also given to other members of that group or to other members who also serve as  
9           officers or directors of that group; or
- 10      (8)   Any scholarship, prize, or financial support awarded or supported by a principal for  
11           a program related to education, and widely available and generally awarded to  
12           qualifying members of the public, the majority of whom are not comprised of public  
13           officials or the immediate family of public officials.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Draft Print: 11/7/2017

Appendix  
Government Accountability Task Force - 5

537Z0211

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to establish provisions as to how campaign contribution  
2 limits apply to certain aggregate contributions.

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

4 Section 1. That chapter 12-27 be amended by adding a NEW SECTION to read:

5 For the purpose of the contribution limits established by §§ 12-27-7, 12-27-8, 12-27-9, and  
6 12-27-10, all committees established, financed, maintained, or controlled by the same  
7 corporation, labor organization, person, or group of persons, including any parent, subsidiary,  
8 branch, division, department, or local unit thereof, are affiliated and share a single contribution  
9 limit both with respect to contributions made and contributions received.

10 Section 2. This Act is effective on January 1, 2019.





# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

**Appendix**  
**Initiative and Referendum Task Force - 1**

274Z0077

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding petition forms for  
2 initiated measures and initiated amendments to the Constitution.

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

4 Section 1. That § 12-1-9 be amended to read:

5 12-1-9. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26,  
6 concerning:

- 7 (1) Forms for voter registration and voter file maintenance;
- 8 (2) Forms and color of ballots;
- 9 (3) Forms for notices;
- 10 (4) The uniformity of election procedures;
- 11 (5) The operation of the State Board of Elections;
- 12 (6) The procedure to accept a petition and verify petition signatures;
- 13 (7) Petition forms, including petition size and petition font size;
- 14 (8) Envelopes for absentee voting;
- 15 (9) Instructions to voters and absentee voters; and
- 16 (10) Recounts.



1 Section 2. That § 2-1-1.1 be amended to read:

2 2-1-1.1. The petition as it is to be circulated for an initiated ~~constitutional~~ amendment to the  
3 Constitution shall be filed with the secretary of state prior to circulation for signatures and shall:

4 (1) Contain the full text of the initiated ~~constitutional~~ amendment;

5 (2) Contain the date of the general election at which the initiated ~~constitutional~~  
6 amendment is to be submitted;

7 (3) Contain the title and explanation as prepared by the attorney general;

8 (4) Be accompanied by a notarized affidavit form signed by each person who is a petition  
9 sponsor that includes the name and address of each petition sponsor; and

10 (5) Be accompanied by a statement of organization as provided in § 12-27-6.

11 The petition circulator shall provide to each person who signs the petition a form containing  
12 the title and explanation of the initiated ~~constitutional~~ amendment to the Constitution as  
13 prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-31; the name, phone  
14 number, and email address of each petition sponsor; and a statement whether the petition  
15 circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the  
16 circulator is being paid. The form shall be approved by the secretary of state prior to circulation.

17 For any initiated ~~constitutional~~ amendment petition, no signature may be obtained more than  
18 twenty-four months preceding the general election that was designated at the time of filing of  
19 the full text. The initiated ~~constitutional~~ amendment petition shall be filed with the secretary of  
20 state at least one year before the next general election. A notarized affidavit form, signed by at  
21 least two-thirds of the petition sponsors, stating that the documents filed constitute the entire  
22 petition and to the best of the knowledge of the sponsors contains a sufficient number of  
23 signatures shall also be filed with the secretary of state. The form of the petition, including  
24 petition size and petition font size, and the affidavit shall be prescribed by the State Board of

1 Elections.

2 Section 3. That § 2-1-1.2 be amended to read:

3 2-1-1.2. The petition as it is to be circulated for an initiated measure shall be filed with the  
4 secretary of state prior to circulation for signatures and shall:

5 (1) Contain the full text of the initiated measure;

6 (2) Contain the date of the general election at which the initiated measure is to be  
7 submitted;

8 (3) Contain the title and explanation as prepared by the attorney general;

9 (4) Be accompanied by a notarized affidavit form signed by each person who is a petition  
10 sponsor that includes the name and address of each petition sponsor; and

11 (5) Be accompanied by a statement of organization as provided in § 12-27-6.

12 The petition circulator shall provide to each person who signs the petition a form containing  
13 the title and explanation of the initiated measure as prepared by the attorney general; any fiscal  
14 note prepared pursuant to § 2-9-31; the name, phone number, and email address of each petition  
15 sponsor; and a statement whether the petition circulator is a volunteer or paid petition circulator  
16 and, if a paid circulator, the amount the circulator is being paid. The form shall be approved by  
17 the secretary of state prior to circulation.

18 For any initiated measure petition, no signature may be obtained more than twenty-four  
19 months preceding the general election that was designated at the time of filing of the full text.

20 The initiated measure petition shall be filed with the secretary of state at least one year before  
21 the next general election. A notarized affidavit form, signed by at least two-thirds of the petition  
22 sponsors, stating that the documents filed constitute the entire petition and to the best of the  
23 knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the  
24 secretary of state. The form of the petition, including petition size and petition font size, and the

1 affidavit shall be prescribed by the State Board of Elections.

2 Section 4. That § 2-1-3 be amended to read:

3 2-1-3. Any law which the Legislature may have enacted, except one which may be necessary  
4 for the immediate preservation of the public peace, health, or safety, or support of the state  
5 government and its existing public institutions, shall, upon the filing of a petition as hereinafter  
6 provided, be submitted to a vote of the electors of the state at the next general election. Such  
7 petition shall be signed by not less than five percent of the qualified electors of the state. The  
8 form of the petition, including petition size and petition font size, shall be prescribed by the  
9 State Board of Elections.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 2

823Z0082

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to require fiscal notes for certain initiated measures and  
2 initiated amendments to the Constitution.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 For any initiated measure or initiated amendment to the Constitution submitted to the  
6 director of the Legislative Research Council pursuant to § 12-13-25 prior to July 1, 2017, and  
7 certified by the secretary of state pursuant to § 2-1-17 for placement on the ballot during the  
8 general election of 2018, the secretary of state shall request a determination from the director  
9 under § 2-9-30. If the director of the Legislative Research Council makes a determination  
10 pursuant to § 2-9-30 that the initiated measure or initiated amendment to the Constitution has  
11 no impact, the director shall notify the sponsor and the secretary of state that the measure or  
12 amendment has no impact. If the director of the Legislative Research Council makes a  
13 determination pursuant to § 2-9-30 that the measure or amendment has an impact, the director  
14 shall prepare a fiscal note pursuant to § 2-9-31. The secretary of state shall include the fiscal  
15 note, if any, on the ballot pursuant to § 12-13-25.1.





# State of South Dakota

Draft Print: 8/24/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 3

562Z0083

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for a recitation regarding the  
2 effect of a vote on certain ballot measures.

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

4 Section 1. That § 12-13-1 be amended to read:

5 12-13-1. The secretary of state, at least twelve weeks prior to the general election, shall  
6 deliver to each county auditor a certified copy of each initiated measure, referred law, or  
7 proposed amendment to the Constitution to be voted on at the election, together with a  
8 statement, title, explanation, and recitation of the effect of a "Yes" or "No" vote as written  
9 pursuant to § 12-13-9 or 12-13-25.1 to be published preceding the text of the ~~initiative~~ initiated  
10 measure, referendum referred law, or proposed amendment. The attorney general shall prepare  
11 each statement, title, explanation, and recitation.

12 Section 2. That § 12-13-9 be amended to read:

13 12-13-9. Before the third Tuesday in May, the attorney general shall deliver to the secretary  
14 of state an attorney general's statement for each amendment to the Constitution proposed by the  
15 Legislature, and any referred law from an odd year. The attorney general's statement for each  
16 referred law from an even year shall be delivered to the secretary of state before the second



1 Tuesday in July. The attorney general's statement shall be written by the attorney general and  
2 shall consist of a title, an explanation, and a ~~clear and simple recitation of the effect of a "Yes"~~  
3 ~~or "No" vote~~ as provided in this section. The title shall be a concise statement of the subject of  
4 the proposed amendment to the Constitution or referred law. The explanation shall be an  
5 objective, clear, and simple summary to educate the voters of the purpose and effect of the  
6 proposed amendment to the Constitution or ~~the~~ referred law. The recitation for each proposed  
7 amendment to the Constitution shall state "Vote 'Yes' to adopt the amendment" and "Vote 'No'  
8 to leave the Constitution as it is". The recitation for each referred law shall state "Vote 'Yes' to  
9 reject the Act of the Legislature" and "Vote 'No' to allow the Act of the Legislature to become  
10 law". The attorney general shall include a description of the legal consequences of the proposed  
11 amendment to the Constitution or ~~the~~ referred law, including the likely exposure of the state to  
12 liability if the proposed amendment to the Constitution or ~~the~~ referred law is adopted. The  
13 explanation may not exceed two hundred words in length. On the printed ballots, the title shall  
14 be followed by the explanation and the explanation shall be followed, if applicable, by any cost  
15 estimate prepared pursuant to § 2-9-34 or fiscal note prepared pursuant to § 2-9-32 and then  
16 followed by the recitation.

17 Section 3. That § 12-13-23 be amended to read:

18 12-13-23. The secretary of state shall distribute public information on any ~~constitutional~~  
19 amendment to the Constitution, initiated measure, or referred ~~measure~~ law submitted to the  
20 electors for approval. The secretary of state shall compile the public information by printing a  
21 statement in support of the ~~constitutional~~ amendment to the Constitution, initiated measure, or  
22 referred ~~measure~~ law written by its proponents, if any can be identified, and a statement against  
23 the ~~constitutional~~ amendment to the Constitution, initiated measure, or referred ~~measure~~ law  
24 written by its opponents, if any can be identified. The secretary of state is not responsible for

1 the contents, objectivity, or accuracy of the statements written by the proponents and opponents.  
2 The pamphlet shall also include the attorney general's title, explanation, and a ~~clear and simple~~  
3 recitation of the effect of a "Yes" or "No" vote as written pursuant to § 12-13-9 or 12-13-25.1;  
4 number of pages and sections in the proposed or referred language; and, if applicable, a prison  
5 or jail population cost estimate and fiscal note.

6 Section 4. That § 12-13-25.1 be amended to read:

7 12-13-25.1. Following receipt of the written comments of the director of the Legislative  
8 Research Council, the sponsors shall submit a copy of the proposed ~~initiative~~ initiated measure  
9 or initiated amendment to the Constitution in final form; to the attorney general. The attorney  
10 general shall prepare an attorney general's statement that consists of a title and explanation. The  
11 title shall be a concise statement of the subject of the proposed ~~initiative~~ initiated measure or  
12 initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple  
13 summary to educate the voters of the purpose and effect of the proposed ~~initiative~~ initiated  
14 measure or initiated amendment to the Constitution. The attorney general shall include a  
15 description of the legal consequences of the proposed ~~initiative~~ initiated measure or initiated  
16 amendment to the Constitution, including the likely exposure of the state to liability if the  
17 proposed ~~initiative~~ initiated measure or initiated amendment to the Constitution is adopted. The  
18 explanation may not exceed two hundred words in length. The attorney general shall file the title  
19 and explanation with the secretary of state and shall provide a copy to the sponsors within sixty  
20 days of receipt of the proposed ~~initiative~~ initiated measure or initiated amendment to the  
21 Constitution.

22 If the petition is filed as set forth in §§ 2-1-1.1 and 2-1-1.2, the attorney general shall deliver  
23 to the secretary of state before the third Tuesday in May a ~~simple~~ recitation of a "Yes" or "No"  
24 ~~vote~~ as provided in this section. The recitation for an initiated amendment to the Constitution

1 shall state "Vote 'Yes' to adopt the amendment" and "Vote 'No' to leave the Constitution as it  
2 is". The recitation for an initiated measure shall state "Vote 'Yes' to adopt the initiated measure"  
3 and "Vote 'No' to leave South Dakota law as it is". On the printed ballots, the title shall be  
4 followed by the explanation and the explanation shall be followed, if applicable, by any cost  
5 estimate prepared pursuant to § 2-9-34 or fiscal note prepared pursuant to § 2-9-31, and then  
6 followed by the recitation.

7 Section 5. The provisions of this Act are effective on July 1, 2019.

# State of South Dakota

Draft Print: 8/3/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

**Appendix**  
**Initiative and Referendum Task Force - 4**

346Z0084

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to provide for the resolution of conflicts by multiple  
2 initiated measures and amendments to the Constitution adopted at the same election.

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

4 Section 1. That chapter 2-14 be amended by adding a NEW SECTION to read:

5 If two or more initiated measures or amendments to the Constitution are approved by the  
6 voters at the same election, each initiated measure or amendment shall be given effect, unless  
7 the initiated measures or amendments conflict or a contrary intent plainly appears. For purposes  
8 of any conflict or the determination of intent under this section, the initiated measure or  
9 amendment receiving the greatest number of affirmative votes at the election shall be given  
10 effect.



# State of South Dakota

Draft Print: 8/23/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 5

634Z0096

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise the time period during which certain petition  
2 sponsors may submit certain ballot measures to the Legislative Research Council for review  
3 and comment.

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

5 Section 1. That § 12-13-25 be amended to read:

6 12-13-25. The sponsors of each initiative or initiated amendment to the Constitution shall  
7 submit a copy of the initiative or initiated amendment to the Constitution to the director of the  
8 Legislative Research Council for review and comment not more than six months before it may  
9 be circulated for signatures under § 2-1-1.1 or 2-1-1.2. The director shall review each submitted  
10 initiative or initiated amendment to the Constitution to determine if the requirements of § 12-13-  
11 24 are satisfied and if the initiative or initiated amendment to the Constitution may have any  
12 impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions.  
13 Within fifteen days of receipt of an initiative or initiated amendment to the Constitution, the  
14 director shall provide written comments on the initiative or initiated amendment to the  
15 Constitution to the sponsors of the initiative or initiated amendment, the attorney general, and  
16 the secretary of state for the purpose of assisting the sponsors in complying with § 12-13-24.



- 1 The sponsors may, but are not required to, amend the initiative or initiated amendment to the
- 2 Constitution to comply with the director's comments.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 6

661Z0097

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise the extent of comments required by the director  
2 of the Legislative Research Council regarding certain ballot measures and the period of time  
3 in which those comments are to be made.

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

5 Section 1. That § 12-13-25 be amended to read:

6 12-13-25. The sponsors of each ~~initiative~~ initiated measure or initiated amendment to the  
7 Constitution shall submit a copy of the ~~initiative~~ initiated measure or initiated amendment to the  
8 Constitution to the director of the Legislative Research Council for review and comment before  
9 it may be circulated for signatures. The director shall review each submitted ~~initiative~~ initiated  
10 measure or initiated amendment to the Constitution to determine if the requirements of § 12-13-  
11 24 are satisfied and if the ~~initiative~~ initiated measure or initiated amendment to the Constitution  
12 may have any impact on revenues, expenditures, or fiscal liability of the state or its agencies and  
13 subdivisions. ~~Within~~ Unless as otherwise provided under section 2 of this Act, not more than  
14 fifteen days of work days following receipt of an ~~initiative~~ initiated measure or initiated  
15 amendment to the Constitution, the director shall provide written comments on the ~~initiative~~  
16 initiated measure or initiated amendment to the Constitution to the sponsors of the ~~initiative~~





1 initiated measure or initiated amendment, the attorney general, and the secretary of state for the  
2 purpose of assisting the sponsors in complying with § 12-13-24. The director's written  
3 comments under this section shall include assistance regarding the substantive content of the  
4 initiated measure or initiated amendment in order to minimize any conflict with existing law and  
5 to ensure the measure's or amendment's effective administration. The sponsors may, but are not  
6 required to, amend the ~~initiative~~ initiated measure or initiated amendment to the Constitution  
7 to comply with the director's comments.

8 Section 2. That the code be amended by adding a NEW SECTION to read:

9 If the director of the Legislative Research Council receives any initiated measure or initiated  
10 amendment to the Constitution from the first day of December to the day of adjournment sine  
11 die of the following legislative session, inclusive, the director shall provide written comments  
12 as required pursuant to § 12-13-25 not more than fifteen work days following adjournment sine  
13 die of the legislative session.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 7

616Z0099

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to require petition circulators for certain ballot measures  
2 to provide the full text of the ballot measure to petition signers.

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

4 Section 1. That § 2-1-1.1 be amended to read:

5 2-1-1.1. The petition as it is to be circulated for an initiated ~~constitutional~~ amendment to the  
6 Constitution shall be filed with the secretary of state prior to circulation for signatures and shall:

7 (1) ~~Contain the full text of the initiated constitutional amendment;~~

8 ~~—(2)~~ (2) Contain the date of the general election at which the initiated ~~constitutional~~  
9 amendment is to be submitted;

10 ~~(3)~~(2) Contain the title and explanation as prepared by the attorney general;

11 ~~(4)~~(3) Be accompanied by a notarized affidavit form signed by each person who is a petition  
12 sponsor that includes the name and address of each petition sponsor; and

13 ~~(5)~~(4) Be accompanied by a statement of organization as provided in § 12-27-6.

14 The petition circulator shall provide to each person who signs the petition a form containing  
15 the title and explanation of the initiated ~~constitutional~~ amendment to the Constitution as  
16 prepared by the attorney general; the full text of the initiated amendment to the Constitution;



any fiscal note prepared pursuant to § 2-9-31; the name, phone number, and email address of each petition sponsor; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid. The form shall be approved by the secretary of state prior to circulation.

For any initiated ~~constitutional~~ amendment petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. The initiated ~~constitutional~~ amendment petition shall be filed with the secretary of state at least one year before the next general election. A notarized affidavit form, signed by at least two-thirds of the petition sponsors, stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition and affidavit shall be prescribed by the State Board of Elections.

Section 2. That § 2-1-1.2 be amended to read:

2-1-1.2. The petition as it is to be circulated for an initiated measure shall be filed with the secretary of state prior to circulation for signatures and shall:

(1) ~~Contain the full text of the initiated measure;~~

~~—(2)—~~ Contain the date of the general election at which the initiated measure is to be submitted;

~~(3)~~(2) Contain the title and explanation as prepared by the attorney general;

~~(4)~~(3) Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and

~~(5)~~(4) Be accompanied by a statement of organization as provided in § 12-27-6.

The petition circulator shall provide to each person who signs the petition a form containing the title and explanation of the initiated measure as prepared by the attorney general; the full text

1 of the initiated measure; any fiscal note prepared pursuant to § 2-9-31; the name, phone number,  
2 and email address of each petition sponsor; and a statement whether the petition circulator is a  
3 volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being  
4 paid. The form shall be approved by the secretary of state prior to circulation.

5 For any initiated measure petition, no signature may be obtained more than twenty-four  
6 months preceding the general election that was designated at the time of filing of the full text.

7 The initiated measure petition shall be filed with the secretary of state at least one year before  
8 the next general election. A notarized affidavit form, signed by at least two-thirds of the petition  
9 sponsors, stating that the documents filed constitute the entire petition and to the best of the  
10 knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the  
11 secretary of state. The form of the petition and affidavit shall be prescribed by the State Board  
12 of Elections.

# State of South Dakota

Draft Print: 8/23/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 8

922Z0100

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the director of the  
2 Legislative Research Council issuing fiscal notes for certain ballot measures.

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

4 Section 1. That § 12-13-25.1 be amended to read:

5 12-13-25.1. Following receipt of the written comments of the director of the Legislative  
6 Research Council, the sponsors shall submit a copy of the proposed ~~initiative~~ initiated measure  
7 or initiated amendment to the Constitution in final form; to the attorney general and the director  
8 of the Legislative Research Council. The attorney general shall prepare an attorney general's  
9 statement that consists of a title and explanation. The title shall be a concise statement of the  
10 subject of the proposed ~~initiative~~ initiated measure or initiated amendment to the Constitution.  
11 The explanation shall be an objective, clear, and simple summary to educate the voters of the  
12 purpose and effect of the proposed ~~initiative~~ initiated measure or initiated amendment to the  
13 Constitution. The attorney general shall include a description of the legal consequences of the  
14 proposed ~~initiative~~ initiated measure or initiated amendment to the Constitution, including the  
15 likely exposure of the state to liability if the proposed ~~initiative~~ initiated measure or initiated  
16 amendment to the Constitution is adopted. The explanation may not exceed two hundred words



1 in length. The attorney general shall file the title and explanation with the secretary of state and  
2 shall provide a copy to the sponsors within sixty days of receipt of the proposed ~~initiative~~  
3 initiated measure or initiated amendment to the Constitution.

4 If the petition is filed as set forth in §§ 2-1-1.1 ~~and or~~ 2-1-1.2, the attorney general shall  
5 deliver to the secretary of state before the third Tuesday in May a simple recitation of a "Yes"  
6 or "No" vote. On the printed ballots, the title shall be followed by the explanation and the  
7 explanation shall be followed, if applicable, by any ~~cost estimate prepared pursuant to § 2-9-34~~  
8 ~~or~~ fiscal note prepared pursuant to § 2-9-31 § 2-9-30, and then followed by the recitation.

9 Section 2. That § 2-9-30 be amended to read:

10 2-9-30. If the director of the Legislative Research Council determines in the review and  
11 comment under § 12-13-25 that ~~any~~ an initiated measure or initiated amendment to the  
12 Constitution may have an impact on revenues, expenditures, or fiscal liability of the state or its  
13 agencies and subdivisions, the ~~sponsor of the initiated measure or initiated amendment to the~~  
14 ~~Constitution shall request a fiscal note from the director of the Legislative Research Council.~~  
15 ~~No petition for any initiated measure or initiated amendment to the Constitution may be filed~~  
16 ~~with the secretary of state pursuant § 2-1-1.1 or 2-1-1.2 before the director of the Legislative~~  
17 ~~Research Council files a fiscal note, if any, pursuant to § 2-9-31~~ director shall notify the petition  
18 sponsor. If the director of the Legislative Research Council determines that an initiated measure  
19 or initiated amendment to the Constitution in final form under § 12-13-25.1 may have an impact  
20 on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions, the  
21 director shall prepare a fiscal note. The fiscal note shall include an estimate of the impact on  
22 revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions, by the  
23 provisions of the proposed initiated measure or initiated amendment to the Constitution. The  
24 fiscal note may not exceed fifty words. The director shall file the fiscal note with the secretary

1 of state and shall provide a copy to the sponsors not more than sixty days following receipt of  
2 the initiated measure or initiated amendment in final form pursuant to § 12-13-25.1.

3 Section 3. That § 2-9-33 be amended to read:

4 2-9-33. A prison or jail population cost estimate shall be attached to any bill or amendment,  
5 except misdemeanor penalties, that may impact the state prison or county jail population. ~~A~~  
6 ~~prison or jail population cost estimate shall be attached to any measure proposed by ballot~~  
7 ~~initiative, except Class 2 misdemeanor penalties, that may impact the state prison or county jail~~  
8 ~~population.~~ A prison or jail population cost estimate shall be prepared for a bill or amendment  
9 with a Class 1 misdemeanor penalty only upon a request authorized by the rules of the  
10 Legislature. The requirement for a cost estimate includes each bill; or amendment; ~~or ballot~~  
11 ~~initiative~~ that meets the penalty requirements of this section and that increases the period of  
12 imprisonment authorized for an existing crime, that adds a new crime for which imprisonment  
13 is authorized, that imposes a minimum or mandatory minimum term of imprisonment, or that  
14 modifies any law governing release of a prisoner from imprisonment or supervision.

15 The sponsor of the legislation; or amendment; ~~or ballot initiative~~ shall request and allow  
16 sufficient time to prepare a cost estimate from the Legislative Research Council. The cost  
17 estimate shall be completed for a bill or amendment before the bill or amendment is considered  
18 by any standing committee of the Legislature. ~~Any ballot initiative shall have a cost estimate~~  
19 ~~attached to the Attorney General's statement required pursuant to § 12-13-9 or 12-13-25.1.~~

20 Section 4. That § 2-1-1.1 be amended to read:

21 2-1-1.1. The petition as it is to be circulated for an initiated ~~constitutional~~ amendment to the  
22 Constitution shall be filed with the secretary of state prior to circulation for signatures and shall:

- 23 (1) Contain the full text of the initiated ~~constitutional~~ amendment;
- 24 (2) Contain the date of the general election at which the initiated ~~constitutional~~

1 amendment is to be submitted;

2 (3) Contain the title and explanation as prepared by the attorney general;

3 (4) Be accompanied by a notarized affidavit form signed by each person who is a petition  
4 sponsor that includes the name and address of each petition sponsor; and

5 (5) Be accompanied by a statement of organization as provided in § 12-27-6.

6 The petition circulator shall provide to each person who signs the petition a form containing  
7 the title and explanation of the initiated ~~constitutional~~ amendment to the Constitution as  
8 prepared by the attorney general; any fiscal note prepared pursuant to ~~§ 2-9-31~~ § 2-9-30; the  
9 name, phone number, and email address of each petition sponsor; and a statement whether the  
10 petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount  
11 the circulator is being paid. The form shall be approved by the secretary of state prior to  
12 circulation.

13 For any initiated ~~constitutional~~ amendment petition, no signature may be obtained more than  
14 twenty-four months preceding the general election that was designated at the time of filing of  
15 the full text. The initiated ~~constitutional~~ amendment petition shall be filed with the secretary of  
16 state at least one year before the next general election. A notarized affidavit form, signed by at  
17 least two-thirds of the petition sponsors, stating that the documents filed constitute the entire  
18 petition and to the best of the knowledge of the sponsors contains a sufficient number of  
19 signatures shall also be filed with the secretary of state. The form of the petition and affidavit  
20 shall be prescribed by the State Board of Elections.

21 Section 5. That § 2-1-1.2 be amended to read:

22 2-1-1.2. The petition as it is to be circulated for an initiated measure shall be filed with the  
23 secretary of state prior to circulation for signatures and shall:

24 (1) Contain the full text of the initiated measure;



- 1       (2)    Contain the date of the general election at which the initiated measure is to be
- 2           submitted;
- 3       (3)    Contain the title and explanation as prepared by the attorney general;
- 4       (4)    Be accompanied by a notarized affidavit form signed by each person who is a petition
- 5           sponsor that includes the name and address of each petition sponsor; and
- 6       (5)    Be accompanied by a statement of organization as provided in § 12-27-6.

7       The petition circulator shall provide to each person who signs the petition a form containing

8   the title and explanation of the initiated measure as prepared by the attorney general; any fiscal

9   note prepared pursuant to ~~§ 2-9-31~~ § 2-9-30; the name, phone number, and email address of

10   each petition sponsor; and a statement whether the petition circulator is a volunteer or paid

11   petition circulator and, if a paid circulator, the amount the circulator is being paid. The form

12   shall be approved by the secretary of state prior to circulation.

13       For any initiated measure petition, no signature may be obtained more than twenty-four

14   months preceding the general election that was designated at the time of filing of the full text.

15   The initiated measure petition shall be filed with the secretary of state at least one year before

16   the next general election. A notarized affidavit form, signed by at least two-thirds of the petition

17   sponsors, stating that the documents filed constitute the entire petition and to the best of the

18   knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the

19   secretary of state. The form of the petition and affidavit shall be prescribed by the State Board

20   of Elections.

21       Section 6. That § 12-13-23 be amended to read:

22       12-13-23. The secretary of state shall distribute public information on any constitutional

23   amendment, initiated measure, or referred ~~measure~~ law submitted to the electors for approval.

24   The secretary of state shall compile the public information by printing a statement in support

1 of the constitutional amendment, initiated measure, or referred measure law written by its  
2 proponents, if any can be identified, and a statement against the constitutional amendment,  
3 initiated measure, or referred measure law written by its opponents, if any can be identified. The  
4 secretary of state is not responsible for the contents, objectivity, or accuracy of the statements  
5 written by the proponents and opponents. The pamphlet shall also include the attorney general's  
6 title, explanation, and a clear and simple recitation of the effect of a "Yes" or "No" vote; number  
7 of pages and sections in the proposed or referred language; and, if applicable, a ~~prison or jail~~  
8 ~~population cost estimate and fiscal note.~~

9 Section 7. That § 2-9-31 be repealed.

10 ~~—2-9-31. The director of the Legislative Research Council shall prepare any fiscal note~~  
11 ~~requested pursuant to § 2-9-30. The fiscal note shall include an estimate of the impact on~~  
12 ~~revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions by the~~  
13 ~~provisions of the initiated measure or initiated amendment to the Constitution. The fiscal note~~  
14 ~~may not exceed fifty words. The director shall file the fiscal note with the sponsor and the~~  
15 ~~secretary of state within sixty days of the receipt of the sponsor's request.~~

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 9

742Z0108

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to create a citizen initiative review commission to review  
2 initiated measures and initiated amendments to the Constitution and to prescribe the  
3 commission's powers and duties.

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

5 Section 1. That chapter 12-1 be amended by adding a NEW SECTION to read:

6 The Citizen Initiative Review Commission shall be composed of eleven members appointed  
7 by the State Board of Elections. At least two members but no more than four members of the  
8 commission shall be current or former members of the Legislature. No current or former  
9 member of the Legislature is qualified for appointment to the commission unless the member  
10 has served at least two full terms in the Legislature. The members appointed to the commission  
11 shall choose the chair of the commission who may not also be a current member of the  
12 Legislature. Each appointment to the commission shall be for a period of four years except for  
13 five of the initial members, who shall be appointed for two years. Not more than six of the  
14 members may be from the same political party. No member of the commission may be affiliated  
15 with any ballot measure to be considered by the commission under this Act. Any vacancy on the  
16 commission shall be filled in the same manner as the original appointment. All members of the



1 commission shall file with the secretary of state an oath in the form prescribed by § 3-1-5.

2 Section 2. That chapter 12-1 be amended by adding a NEW SECTION to read:

3 The Office of the Secretary of State shall serve as the secretariat of the commission and shall  
4 assist the commission as may be requested by the commission.

5 Section 3. That chapter 12-1 be amended by adding a NEW SECTION to read:

6 The commission shall conduct at least one hearing to be held in Pierre for any initiated  
7 measure and initiated amendment to the Constitution that is certified for placement on the next  
8 general election ballot pursuant to § 2-1-17. During each hearing under this section the  
9 commission shall take testimony from the petition sponsor regarding the purpose of the initiated  
10 measure or initiated amendment and shall take public testimony. The commission may request  
11 testimony from the director of the Legislative Research Council regarding any questions from  
12 the members of the commission about the review and comment issued pursuant to § 12-13-25.  
13 After any hearing conducted under this section, the commission shall provide an objective  
14 written summary not to exceed three hundred words for each initiated measure or initiated  
15 amendment to the Constitution for purposes of being published on the website maintained by  
16 the Office of the Secretary of State.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Initiative and Referendum Task Force - 10

166Z0110

SENATE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election  
2 an amendment to Article XXIII, of the Constitution of the State of South Dakota, relating  
3 to amendments to the Constitution.

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 XXIII, section 3 of the Constitution of the State of South Dakota, as set forth in section  
8 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the  
9 state for approval.

10 Section 2. That Article XXIII, section 3 of the Constitution of the State of South Dakota, be  
11 amended to read as follows:

12 § 3. Any constitutional amendment or revision ~~must~~ shall be submitted to the voters and  
13 shall become a part of the Constitution only when approved by a majority of the votes cast  
14 ~~thereon~~ on the amendment or revision. No more than two amendments may be submitted by the  
15 Legislature to the voters at an election. No more than two amendments by initiative may be  
16 submitted to the voters at an election. The Legislature may provide for the withdrawal by its



- 1 sponsors of an initiated amendment at any time prior to its submission to the voters.



# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 1

857Z0173

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to provide additional funding for the housing opportunity  
2 fund by redistributing certain building South Dakota funds.

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

4 Section 1. That § 1-16G-48 be amended to read:

5 1-16G-48. The commissioner of the Bureau of Finance and Management shall authorize and  
6 disburse money from the building South Dakota fund for the following purposes:

7 (1) Twenty-five percent of the fund shall be transferred to the local infrastructure  
8 improvement grant fund created in § 1-16G-50;

9 (2) Five percent of the fund shall be transferred to the economic development partnership  
10 fund created in § 1-16G-51;

11 (3) Thirty percent of the fund shall be transferred to the workforce education fund  
12 created in § 13-13-88; and

13 (4) ~~Thirty-five~~ Forty percent of the fund shall be transferred to the South Dakota housing  
14 opportunity fund created in § 11-13-2. Disbursement of funds to the South Dakota  
15 Housing Development Authority shall be made after South Dakota housing  
16 opportunity funds have been obligated by the oversight commission created pursuant





1 to § 11-13-8; and

2 ~~—(5)—~~ Five percent of the fund shall be transferred to the revolving economic development  
3 and initiative fund created in § 1-16G-3 for the purpose of making grants to projects  
4 that have a total project cost of less than twenty million dollars.

5 The commissioner of the Bureau of Finance and Management, at the request of the  
6 commissioner of the Governor's Office of Economic Development and the approval of the  
7 special committee created in § 4-8A-2 or the Senate and House standing committees on  
8 appropriations meeting in joint session, shall transfer building South Dakota fund money among  
9 the local infrastructure improvement grant fund, the economic development partnership fund,  
10 and the revolving economic development and initiative fund, provided the money is unobligated  
11 at the time of the request and subsequent transfer.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 2

758Z0174

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to increase the amount of unobligated cash that may be  
2 transferred to the building South Dakota fund after the end of a fiscal year.

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

4 Section 1. That § 4-7-43 be amended to read:

5 4-7-43. Notwithstanding the provisions of §§ 4-7-32 and 4-7-39, on July first of each fiscal  
6 year or at such time that the prior fiscal year general fund ending unobligated cash balance is  
7 determined, the commissioner of the Bureau of Finance and Management shall transfer all prior  
8 year unobligated cash as follows:

9 (1) If the combined cash balance is less than ten percent of the general fund  
10 appropriations from the general appropriations act for the prior year, an amount of  
11 unobligated cash shall be transferred to the budget reserve fund, so that the combined  
12 cash balance equals ten percent of the general appropriations from the general  
13 appropriations act for the prior year;

14 (2) If the combined cash balance is equal to or greater than ten percent of the general  
15 fund appropriations from the general appropriations act for the prior year, or there is  
16 additional unobligated cash after the provisions in subdivision (1) are satisfied, an



1 amount of unobligated cash shall be transferred to the building South Dakota fund,  
2 so that the collective BSDF cash balance does not exceed one and one-half percent  
3 of the general fund appropriations in the general appropriations act for the previous  
4 fiscal year; and  
5 (3) If the collective BSDF cash balance exceeds one percent and one-half of the general  
6 fund appropriations in the general appropriations act for the previous year, or if there  
7 is additional unobligated cash remaining after the transfers in subdivisions (1) and  
8 (2), the remaining unobligated cash shall be transferred to the budget reserve fund  
9 and general revenue replacement fund pursuant to the provisions of §§ 4-7-32 and 4-  
10 7-39.

# State of South Dakota

Draft Print: 11/9/2017

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 3

569Z0172

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the contractor's  
2 excise tax revenues that are deposited into the building South Dakota fund.

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

4 Section 1. That § 1-16G-47 be amended to read:

5 1-16G-47. There is hereby created the building South Dakota fund for the purpose of  
6 building and reinvesting in South Dakota's economy and to create high quality jobs. The  
7 Department of Revenue shall deposit two percent of all the contractor's excise tax imposed and  
8 paid pursuant to the provisions of chapter 10-46A or 10-46B into the building South Dakota  
9 fund. Any money in the building South Dakota fund is continuously appropriated to the Bureau  
10 of Finance and Management. The state may accept and expend for the purposes of this chapter  
11 any funds obtained from appropriations or any other source. Interest earned on money in the  
12 fund shall be deposited into the fund.

13 ~~If the Board of Economic Development approves a new or expanded facility with project~~  
14 ~~costs exceeding twenty million dollars to receive a reinvestment payment pursuant to the~~  
15 ~~provisions of §§ 1-16G-56 to 1-16G-68, inclusive, the Department of Revenue shall deposit all~~  
16 ~~of the contractor's excise tax imposed and paid pursuant to the provisions of chapter 10-46A or~~



- 1 ~~10-46B on the project costs into the building South Dakota fund.~~

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 4

965Z0262

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to establish a tax refund program for certain workforce  
2 housing projects.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Allowable costs," expenditures that are incurred for construction of a workforce  
7 housing project to the extent that the expenditures are directly attributable to the  
8 improvement of the property or its structures including expenditures for property  
9 acquisition, site preparation work, surveying, construction materials, construction  
10 labor, architectural services, engineering services, and building inspection fees;
- 11 (2) "Construction date," the first date excavation or construction begins for a workforce  
12 housing project;
- 13 (3) "Department," the Department of Revenue;
- 14 (4) "Person," any individual, firm, copartnership, joint venture, association, cooperative,  
15 limited liability company, limited liability partnership, corporation, estate, trust,  
16 business trust, receiver, or any group or combination acting as a unit;



1 (5) "Project," the construction of workforce housing at a single site;

2 (6) "Secretary," the secretary of the Department of Revenue;

3 (7) "Workforce housing," an owner-occupied housing unit that costs no more than one  
4 hundred fifty thousand dollars for property acquisition and to construct or a rental  
5 housing unit that costs no more than one hundred thousand dollars per unit for  
6 property acquisition and to construct.

7 Section 2. That the code be amended by adding a NEW SECTION to read:

8 As provided in this Act, any person holding a permit issued pursuant to section 4 of this Act  
9 may apply for and obtain a refund or credit of the sales or use tax imposed and paid by the  
10 person under the provisions of chapter 10-45 or 10-46 or the contractors' excise tax imposed and  
11 paid under the provisions of chapter 10-46A or 10-46B for any allowable cost.

12 Section 3. That the code be amended by adding a NEW SECTION to read:

13 The refund of taxes pursuant to section 2 of this Act pertains only to project costs incurred  
14 and paid after July 1, 2018, up to and including twenty-four months from the construction date.

15 Section 4. That the code be amended by adding a NEW SECTION to read:

16 Any person desiring to claim a refund pursuant to this Act shall apply for a permit from the  
17 secretary prior to or within ninety days after the construction date. The application for a permit  
18 shall be submitted on a form prescribed by the secretary. A separate application shall be made  
19 and submitted for each project. Upon approval of the application, the secretary shall issue a  
20 permit entitling the applicant to submit refund claims as provided in sections 5 and 6 of this Act.  
21 No permit or refund claim is assignable or transferable except as collateral or security pursuant  
22 to chapter 57A-9. However, the secretary may permit the assignment or transfer of a permit and  
23 refund claim if the initial permit holder entity reorganizes into a new entity, if the new entity and  
24 the initial entity share common ownership, and the reorganization was completed solely for a

1 legitimate business purpose. The new entity shall file with the department an amended  
2 application for permit.

3 Section 5. That the code be amended by adding a NEW SECTION to read:

4 Any claim for refund of an allowable cost shall be submitted on forms prescribed by the  
5 secretary and shall be supported by any documentation the secretary may require. The secretary  
6 may deny any claim if the claimant has failed to provide information or documentation  
7 requested or considered necessary by the secretary to determine the validity of the claim.

8 Section 6. That the code be amended by adding a NEW SECTION to read:

9 Any person issued a permit pursuant to section 4 of this Act shall submit a claim for refund  
10 to the department no more frequently than on or before the last day of each month and no less  
11 frequently than on or before the last day of each month following each calendar quarter. The  
12 secretary shall determine and pay the amount of the tax refund within ninety days of receipt of  
13 the claim for refund. However, no refund claim may be paid until on or after the construction  
14 date. Ninety-five percent of the amount of refund shall be paid to the claimant as provided in  
15 §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the department. No interest  
16 may be paid on the refund amount. The secretary may pay the refund by electronic funds  
17 transfer.

18 Section 7. That the code be amended by adding a NEW SECTION to read:

19 No claim for refund pursuant to this Act may be considered by the department if the claim  
20 for refund is received twelve months after the twenty-four month time period established in  
21 section 3 of this Act. Any claim received after that deadline is also barred from any future  
22 refund eligibility.

23 Section 8. That the code be amended by adding a NEW SECTION to read:

24 No document or record in support of any claim for refund may be considered by the



1 department if the document or record in support of any claim for refund is received twelve  
2 months after the twenty-four month time period established in section 3 of this Act. Any  
3 document or record received after that deadline is also barred from any future consideration.

4 However, if the department requests any additional document or record from the project  
5 owner after a review of the claim for refund, and the request is made after the applicable time  
6 period as provided in this section has expired, the project owner has sixty days to provide the  
7 requested document or record. No document or record received after this sixty-day period may  
8 be considered by the department. Any document or record received after that period is also  
9 barred from any future consideration.

10 Section 9. That the code be amended by adding a NEW SECTION to read:

11 The amounts withheld by the department as provided in section 6 of this Act shall be  
12 retained until the project has been completed and the claimant has met all the conditions of this  
13 Act, at which time all sums retained shall be paid to the claimant.

14 Section 10. That the code be amended by adding a NEW SECTION to read:

15 If any claim has been fraudulently presented or supported as to any item in the claim, if the  
16 construction costs of a project exceed the allowable limit for a workforce housing project as  
17 provided in this Act, or if the claimant fails to meet all the conditions of this Act, the claim may  
18 be rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt  
19 to the state and a lien in favor of the state upon all property and rights to property whether real  
20 or personal belonging to the claimant and may be recovered in an action of debt.

21 Section 11. That the code be amended by adding a NEW SECTION to read:

22 Any person aggrieved by the denial in whole or in part of a refund claimed under this Act  
23 may, within thirty days after service of the notice of the denial by the secretary, demand and be  
24 entitled to a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant

1 to chapter 1-26.

2 Section 12. That the code be amended by adding a NEW SECTION to read:

3 Any amount refunded pursuant to this Act for a project that is not completed within the time  
4 frames prescribed in this Act, including any extensions granted by the secretary, shall be  
5 returned to the state without interest. Any refunded amounts not returned pursuant to this section  
6 and all sums previously refunded to the claimant constitute a debt to the state and a lien in favor  
7 of the state upon all property and rights to property whether real or personal belonging to the  
8 claimant and may be recovered in an action of debt.

9 Section 13. That the code be amended by adding a NEW SECTION to read:

10 Any person aggrieved by a decision of the secretary under this Act may, within thirty days  
11 of receipt of written notice of the secretary's decision, make written application to the secretary  
12 for a hearing to be conducted pursuant to chapter 1-26. Any hearing shall be conducted and any  
13 appeal shall be taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of the  
14 hearing examiner's proposed decision, findings of fact, and conclusions of law shall be served  
15 on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,  
16 accepts the final decision of the hearing examiner, no appeal from a final decision of the  
17 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by  
18 the secretary is paid or a bond filed to insure payment of the amount.

19 However, if the final decision of the secretary, pursuant to chapter 1-26D, rejects or modifies  
20 the decision of the hearing examiner regarding the amount due, an appeal may be taken without  
21 payment of the amount ordered to be paid and without filing of a bond. If the secretary's  
22 decision is affirmed by the circuit court, no appeal may be taken unless any amount ordered to  
23 be paid by the secretary is paid or a bond is filed to insure payment of the amount.

24 Section 14. That the code be amended by adding a NEW SECTION to read:

1       The secretary shall promulgate rules, pursuant to chapter 1-26, establishing the procedures  
2       for filing refund claims and the requirements necessary to qualify for a refund.

3       Section 15. That the code be amended by adding a NEW SECTION to read:

4       If the project is located on land that is included within the agreement area of a tax collection  
5       agreement entered into by the state and an Indian tribe pursuant to chapter 10-12A, the  
6       department is only obligated to pay a percentage of the refund as required by this Act equal to  
7       the percentage of funds that the department retains pursuant to the terms of the tax collection  
8       agreement.

9       Section 16. That the code be amended by adding a NEW SECTION to read:

10       The name of any person or entity that receives a refund or credit of sales, use, or contractor's  
11       excise tax pursuant to this Act and the amount of any refund or credit granted to that person is  
12       public information and shall be available and open to public inspection as provided in § 1-27-1.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 5

983Z0266

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to require that the unobligated cash balance of the building  
2 South Dakota fund be used in determining the allocation of unobligated general funds.

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

4 Section 1. That § 4-7-42 be amended to read:

5 4-7-42. Terms used in §§ 4-7-43 and 4-7-44 mean:

6 (1) "Collective BSDF unobligated cash balance," the total unobligated cash balance of  
7 the:

8 (a) Building South Dakota fund;

9 (b) Local infrastructure improvement grant fund;

10 (c) Economic development partnership fund;

11 (d) Workforce education fund;

12 (e) South Dakota housing opportunity fund; and

13 (f) Funds disbursed pursuant to the provisions of subdivision 1-16G-48(5);

14 (2) "Combined cash balance," the total cash balance of the:

15 (a) Budget reserve fund at the end of the prior fiscal year including any

16 outstanding balance on repayments due to the budget reserve fund pursuant to



1 a legislative act; and

2 (b) General revenue replacement fund at the end of the prior fiscal year.

3 Section 2. That § 4-7-43 be amended to read:

4 4-7-43. Notwithstanding the provisions of §§ 4-7-32 and 4-7-39, on July first of each fiscal  
5 year or at such time that the prior fiscal year general fund ending unobligated cash balance is  
6 determined, the commissioner of the Bureau of Finance and Management shall transfer all prior  
7 year unobligated cash as follows:

8 (1) If the combined cash balance is less than ten percent of the general fund  
9 appropriations from the general appropriations act for the prior year, an amount of  
10 unobligated cash shall be transferred to the budget reserve fund, so that the combined  
11 cash balance equals ten percent of the general appropriations from the general  
12 appropriations act for the prior year;

13 (2) If the combined cash balance is equal to or greater than ten percent of the general  
14 fund appropriations from the general appropriations act for the prior year, or there is  
15 additional unobligated cash after the provisions in subdivision (1) are satisfied, an  
16 amount of unobligated cash shall be transferred to the building South Dakota fund,  
17 so that the collective BSDF unobligated cash balance does not exceed one percent of  
18 the general fund appropriations in the general appropriations act for the previous  
19 fiscal year; and

20 (3) If the collective BSDF unobligated cash balance exceeds one percent of the general  
21 fund appropriations in the general appropriations act for the previous year, or if there  
22 is additional unobligated cash remaining after the transfers in subdivisions (1) and  
23 (2), the remaining unobligated cash shall be transferred to the budget reserve fund  
24 and general revenue replacement fund pursuant to the provisions of §§ 4-7-32 and 4-

1           7-39.

2           Section 3. That § 4-7-44 be amended to read:

3           4-7-44. If the collective BSDF unobligated cash balance is less than one half percent of the  
4   general fund appropriations in the general appropriations act for the previous fiscal year, the  
5   commissioner shall transfer an amount of money from the general revenue replacement fund to  
6   the building South Dakota fund so that the total of the amount deposited pursuant to this section  
7   and § 4-7-43 does not exceed one half percent of the general fund appropriations in the general  
8   appropriations act for the previous fiscal year. However, the combined cash balance may not be  
9   reduced to less than ten percent of the general fund appropriations from the general  
10   appropriations act for the prior year by any transfer made to the building South Dakota fund  
11   pursuant to this section.

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

Appendix  
Workforce Housing Study Committee - 6

774Z0247

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding tax deed procurement.

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

3 Section 1. That § 10-25-1 be amended to read:

4 10-25-1. In the case of any real property sold for taxes and not yet redeemed, the owner or  
5 holder of the tax certificate may conduct, or cause to be conducted, proceedings to procure a tax  
6 deed on the real property, as provided by §§ 10-25-2 to 10-25-12, inclusive. The proceedings  
7 shall be initiated no sooner than ~~three~~ two years from the date of the tax sale or at any time  
8 thereafter within ~~six~~ three years from the date of the tax sale subject to the provisions of §§ 10-  
9 25-16 to 10-25-19, inclusive. The time period applies equally to the county or any other  
10 purchaser of the tax certificate. Any assignee of a tax certificate shall take the certificate subject  
11 to the time period of the first owner of the tax certificate.

12 Section 2. That § 10-25-16 be amended to read:

13 10-25-16. If proceedings to procure a tax deed are not commenced within ~~six~~ three years  
14 after the date of the tax sale certificate on which the proceedings are based, the tax sale  
15 certificate, the lien for taxes, the lien of any taxes paid by the holder of the tax sale certificate  
16 as subsequent taxes, and all rights thereunder cease and are forever barred. The county treasurer



1 shall cancel the certificate on the treasurer's record and shall note on the sale records and the tax  
2 books of the treasurer's office that the tax sale certificate and the lien of subsequent tax receipts  
3 held by the owner of the tax sale certificate are barred and of no validity.

4 Section 3. That § 10-25-17 be amended to read:

5 10-25-17. The provisions of § 10-25-16 do not apply to tax sale certificates that are held by  
6 the county. If any such certificate is assigned by the county, and if the certificate is dated more  
7 than ~~four~~ two years preceding the date of its assignment, the purchaser of the certificate has one  
8 year from the date of its assignment within which to commence proceedings to procure a tax  
9 deed.

10 Section 4. That § 10-25-18 be amended to read:

11 10-25-18. The commencement of proceedings to procure a tax deed within the periods  
12 limited in §§ 10-25-16 and 10-25-17 does not extend the lien of the holder of the tax sale  
13 certificates more than six months beyond the expiration of the periods of limitations. If any such  
14 proceedings, commenced within the time limited by §§ 10-25-16 and 10-25-17, are not  
15 completed, and the right of the party instituting the proceedings to receive a tax deed under the  
16 provisions of §§ 10-25-1 to 10-25-12, inclusive, is not fully completed and established, within  
17 six months after the expiration of ~~six~~ three years from the date of the tax sale certificate upon  
18 which the proceedings are based; allowing, however, to purchasers of tax sale certificates  
19 assigned by the county the additional period of one year from the date of the assignment within  
20 which to commence such proceedings and six months after the expiration of the period of one  
21 year within which to complete the proceedings; then all rights under the proceedings cease and  
22 are forever barred and the county treasurer shall cancel the tax sale certificate in the manner  
23 provided in § 10-25-16. Thereupon, the lien of the holder of the tax sale certificate is  
24 extinguished and all further proceedings on the tax sale certificate are barred.



1       Section 5. That § 10-21-14 be amended to read:

2       10-21-14. The county treasurer shall make duplicate receipts for tax payments. One receipt  
3       may be delivered to the person paying the taxes and the other shall, within one week, be filed  
4       with the auditor. The auditor's copy of the receipt shall specify the property on which the tax  
5       was assessed, the amount of taxes collected for state purposes including the levy for state  
6       highways, the amount of each separate and distinct fund the tax is allocated to, and the years for  
7       which any of the real property described has been sold for taxes and not redeemed, unless the  
8       certificates for such tax sales are more than ~~six~~ three years old.

9       Any county auditor who fails to enter upon any tax receipt the amount of taxes for state  
10      purposes, or any county treasurer who fails to specify on the duplicate tax receipt the  
11      information required by this section, is guilty of a Class 2 misdemeanor.