South Dakota 2019 Interim Committee Final Reports and Judicial Opinions

2019 Interim Committee Reports

Table of Contents

Ag Land Assessment Task Force 1

Code Commission 3

Electric Services in an Annexed Area 5

Fighting Methamphetamine Addiction Subgroup 19

Industrial Hemp Study Committee 21

Joint Committee on Appropriations 29

Offenses Regarding Controlled Substances Committee 33

Rules Review Committee 35

Special Education Interim Committee 37

State-Tribal Relations 39

SCR 2 – Mental Health Task Forces

TF 1 – Redefine Acute Mental Health Hospitalization 41

TF 2 – Reduce the Overall Use of Acute Mental Health Hospitalizations 43

TF 3 – Leverage Telehealth and Telemedicine 45

TF 4 – Redefine Nursing Home Criteria and Build Capacity 49

TF 5 – Increase Community Services and Caregiver Supports 51

Judicial Opinions 53

2019 Report of the Government Operations and Audit Committee as prepared by Legislative Audit 59

Ag Land Assessment Task Force
2019 Final Report

Study Assignment

Pursuant to § 10-6-33.35, this committee advises the Department of Revenue regarding the rules promulgated to administer the provisions concerning the assessment and taxation of agricultural lands and reviews the implementation of the provisions of law concerning the assessment and taxation of agricultural land. The committee may present draft legislation and policy recommendations to the Legislative Research Council Executive Board, including 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 will not provide a substantial property tax revenue increase or decrease for the school district, pursuant to the implementation of the productivity system;

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 as a fixed ratio of the total local effort for such levies; and

5. Consideration of 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 committee deems appropriate.

Summary of Interim

The committee held its first meeting on October 24 in Pierre. At the first meeting, the committee elected Senator Gary Cammack as Chair and Representative Lee Qualm as Vice-Chair. Mr. Russ Hanson, Department of Revenue, and Ms. Wendy Semmler, Department of Revenue, addressed the committee regarding the Department of Revenue's findings and analysis from studying the impact of changes to the methodology of rating soils for purposes of assessing agricultural land. They described the three methodologies that were used in the study, namely, 1) the "New Soil Table Model," 2) the "Most Probable Use Model," and 3) the "Actual Use Model," and compared the valuations produced by these models against the valuations produced under the current model. In order to implement any of these three models, GIS software would need to be purchased by the six counties that currently do not have this software. The "New Soil Table Model" would require updating data more than thirty years old. With respect to the Most Probable Use Model, taxpayers would be unlikely to understand the mechanics of this model and ongoing professional services would be required maintain this model. The Actual Use Model would be the most difficult to implement because most county offices would need additional staff and resources. Finally, all three models would produce undesirable tax shifts.

The committee held a second meeting on November 15th in Pierre. At this meeting, Ms. Wendy Semmler presented the valuation history of taxable property from 1997 through 2019 and provided an analysis of factors that caused ag land and non-ag land to change over this period of time, including changes in value attributable to growth and changes in value attributable to reappraisals. Mr. Semmler also presented data showing how values would be impacted under the productivity model if commodity prices remain stagnant over the next three years. Mr. Russ Hanson of the Department of Revenue presented a tentative outline for implementing the new web soil survey and new soil rating tables. Mr. Michael Houdyshell of the Department of Revenue explained how the current valuation model has improved the accuracy of valuations since being adopted. The committee unanimously voted to sponsor a bill that authorizes data for the ag land valuation database to be obtained from multiple sources and defines the data of the database. The committee also unanimously voted to sponsor a bill that requires adjustments to the assessed value of agricultural land if factors impact the land's productivity and requires those adjustments to be documented.

Listing of Legislation Adopted by the Committee

1. To authorize the Secretary of the Department of Revenue to contract with certain entities for purposes of maintaining a database to determine agricultural income value and to specify the mandatory and permissive data of the database; and
2. To require certain adjustments to the assessed value of agricultural land if factors impact the land's productivity and to require those adjustments to be documented.

Summary of Meeting Dates and Places

The committee met on October 24 and November 15 in Pierre.

Listing of Committee Members

Members of the committee are Senator Gary Cammack, Chair; Representative Lee Qualm, Vice-Chair; Senators Red Dawn Foster, Craig Kennedy, and John Lake; Representatives Kirk Chaffee, Oren Lesmeister, and Steven McCleerey; and Public Members Trevor Cramer, Jason Frerichs, Kyle Helseth, James Peterson, Ryan Wieman, and Michael Wiese.

Listing of Staff Members

Staff members for the committee are Michael Loesevitz, Senior Legislative Attorney; Amanda Marsh, Senior Research Analyst; Sakura Rohleder, Fiscal and Program Analyst; and Rachael Person, Senior Legislative Secretary.

Code Commission
2019 Final Report

Study Assignment

Established under § 2-16-3, 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 32 and 33, containing Title 58.

Publishing Contract

The contract for the publication of the Code is subject to annual renewal. Following a collaboration between the previous Code Counsel and the Senior Counsel for Thomson Reuters to update pricing and remove specific references to Word Perfect, the Code Commission in June renewed the contract with Thomson Reuters for another year.

Election of Chair and Vice-Chair

During the Commission's meeting in September, the members of the Commission elected Maggie Gillespie to be the Chair of the Commission and Tom Lee to be the Vice-Chair of the Commission.

Digitization of the Code

In 2016, the Code Commission authorized the South Dakota State Library to digitize the Code and other legislative materials, and to make it available on the State Library website. The State Library digitized materials up to 2003, which is the year when the publishing contract with Thomson Reuters began. The State Library returned to the Commission to seek authorization to digitize materials from 2003 to the present. The Commission authorized the State Library to digitize archived statutes up to the present, but asked the Code Counsel to seek permission from Thomson Reuters for the digitization and publication of any copywrighted materials owned by the publisher. Thomson Reuters declined to grant permission for the digitization and publication of any copywrighted materials on the State Library website.

Code Counsel Recommendations

The Commission met in October to consider recommendations by the Code Counsel for the general improvement of the Code. The Commission agreed to allow the Code Counsel not to codify statements of legislative findings or intent, and instead to leave those statements in the Session Laws. The Commission did not act upon other recommendations regarding potential conflicts in the law from initiated measures and the overall organization and structure of the Code. The Commission instead directed the Code Counsel to solicit feedback from members of the State Bar.

Summary of Meeting Dates and Places

The Code Commission met on June 19 at the State Bar annual meeting in Rapid City, September 10 at the State Capitol in Pierre, and October 16 at the State Capitol in Pierre.

Listing of Code Commission Members

The Code Commission members are Maggie Gillespie, chair, Tom Lee, vice-chair, Representative Steven Haugaard, Senator Art Rusch, and Doug Decker.

Listing of Staff Members

The staff members for the Code Commission are Wenzel J. Cummings, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

Electric Services in an Annexed Area
2019 Final Report

SOUTH DAKOTA LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

Study Assignment

The committee was created by Senate Bill 66 during the 2019 legislative session (*See* SDCL 49-34A-112 to 49-34A-115, inclusive) to study and evaluate:

(1) The option of a municipal electric utility to provide electric service in an annexed area and associated processes;
(2) Economic development practices of electric utilities as it relates to subdivision (1);
(3) The history of assigned service territories;
(4) The process by which electric utilities set rates.

Summary of Interim

At the first meeting on July 25, Alex Timperley, Legislative Attorney at the Legislative Research Council, reviewed statutory history and the laws of surrounding states. Chris Nelson, Public Utilities Commissioner, addressed the role of the Public Utilities Commission. Representatives of electric cooperatives, municipal electric utilities, and investor owned utilities presented on the provision of electric service in annexed areas.

At the second meeting on August 28, representatives of electric cooperatives, municipal electric utilities, and investor owned utilities provided written and verbal answers to questions that were raised at the first meeting. Information presented at the meeting included data on annexations that expanded service territory, electricity reliability data, utility taxes, economic development, and rate setting procedures.

At the third meeting on November 6, the task force reviewed draft legislation, heard public testimony, and discussed the merits of the drafts. The task force recommended two pieces of legislation. The piece of legislation titled "to require negotiation and allow petition to the Public Utilities Commission prior to an election to provide electric service in an annexed area" was amended at the meeting and was recommended with the caveat of continued discussion by the electric service utilities on points provided by the electric services in an annexed area committee. Points for continued discussion are attached.

Listing of Legislation Adopted by the Committee

1. An Act to require certain annexation information be provided to electric utilities.
2. An Act to require negotiation and allow petition to the Public Utilities Commission prior to an election to provide electric service in an annexed area.

Summary of Meeting Dates and Places

The committee met in Pierre on July 25, August 28, and November 6.

Listing of Committee Members

Members of the committee are Senator Alan Solano, Chair; Representative Thomas Brunner, Vice Chair; Senators Lee Schoenbeck, Susan Wismer, and Jordan Youngberg; and Representatives Shawn Bordeaux, Kirk Chaffee, Spencer Gosch, and Tim Reed.

Listing of Staff Members

Staff members for the committee are Alex Timperley, Legislative Attorney and Rachael Person, Senior Legislative Secretary.

Dissenting Reports

A minority report from Representative Thomas Brunner is attached. Senator Lee Schoenbeck will be providing a minority report at a later date.

Dear Senator Greenfield and Executive Board members,

Last week the interim committee on Electric Services in an Annexed Area held a hearing to consider nine proposed changes to current law governing the ability of a municipal electric system to take the territory of an adjoining utility following an annexation. At the outset, committee chairman Solano noted that committee members whose proposals did not move forward would be welcome to submit to the Executive Board a minority opinion on their draft proposal. I submitted two proposals for consideration and ultimately asked that one of those proposals (House Bill Draft 215) be tabled. House Bill Draft 214 was debated and in the end fell short of receiving support from the majority of the committee to move forward. I would like to provide some context regarding that proposal and the debate.

Electric cooperatives introduced SB 66 during the 2019 session to address a long-standing inequity in current law that allows government owned electric utilities the option of taking the territory of an adjoining utility. The 1975 law that established service territories for all electric utilities has served the citizens of South Dakota well but for this exception. Previous attempts to address the issue, which we acknowledge supporting, have not provided the answer we sought in SB 66, which would have frozen the service territories of all electric utilities, including municipal electric systems. As you know the conversations and ensuing lobbying efforts surrounding SB 66 escalated quickly and became a topic of growing discomfort among many legislators. Ultimately the municipalities and co-ops agreed to push the topic to a summer study to scale back the rhetoric and defuse a volatile situation. So if a proposed territory freeze caused such a backlash during session, why on earth would I bring it back during the summer study?

I assure you it wasn't just for sport. First, I would note that HB 214 was not SB 66. Yes it would have frozen territories, but it also included a glide path to the freeze that included compensating municipal utilities under the same formula co-ops have been under since 1975. While a territory freeze was seen by the municipalities and some legislators as a severe response to an isolated problem, it was very effective in highlighting an unfair advantage granted to municipal governments under current law. At last week's hearing the municipal electric group was swift to attack my proposal with promises of apocalyptic results and ironically provided solid justification for my proposal in the process. They told the committee that passing a freeze would end any negotiations, prevent any appeals and create uncertainty for municipal electric systems, which is exactly the statutory environment we have been living with for 44 years. The shoe that we've been wearing for decades wasn't such a good fit on the other foot.

The draft proposal that you will consider, SB 227, represents a reasonable compromise to a long-standing and complex problem and I urge your support. While it still leaves open the possibility of territory losses by electric cooperatives and investor owned utilities to government utilities, it at least provides a reasonable opportunity for an incumbent utility to prove that they are capable and well positioned to continue to serve territory that was granted to them under statute.

Tom Brunner
District 29

2020 South Dakota Legislature

House Bill Draft 182

Requested by: ***Representative*** *Reed*

An Act to require certain annexation information be provided to electric utilities.

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

Section 1. That § 9-4-1 be AMENDED:

9-4-1. Annexation of territory on petition by voters and landowners—Notice to electric utility.

The governing body of a municipality, upon receipt of a written petition describing the boundaries of any territory contiguous to that municipality sought to be annexed to that municipality, may by resolution include such territory or any part thereof within ~~such~~ the municipality if the petition is signed by not less than three-fourths of the registered voters and by the owners of not less than three-fourths of the value of the territory sought to be annexed to the municipality. In the case of an annexation in a municipality with a municipally-owned electric utility, the governing body of the municipality shall mail, by certified mail, a copy of the petition for annexation with a notice of time and place of the public hearing to all electric utilities providing electric service in the area considered for annexation.

For purposes of this section, the term, contiguous, includes territory separated from the municipality by reason of intervening ownership of land used as a golf course, railroad, or any land owned by the ~~State of South Dakota~~ state or ~~any subdivisions thereof~~ a political subdivision.

Section 2. That § 9-4-4.3 be AMENDED:

9-4-4.3. Notice of hearing on resolution to landowners ~~and~~, county auditor, and electric utility--Adoption.

Prior to adoption, the governing body of the municipality shall mail, by certified mail, copies of the resolution of intent with a notice of time and place of the public hearing ~~shall be forwarded by certified mail~~ to the affected landowners and the county auditor, who shall then forward the resolution of intent and notice of public hearing regarding the resolution of intent to the county commissioners. In the case of an annexation in a municipality with a municipally-owned electric utility, the governing body of the

municipality shall mail, by certified mail, copies of the resolution of intent with a notice of time and place of the public hearing to all electric utilities providing electric service in the area considered for annexation. The notice shall be postmarked not less than ten days and not more than twenty days before the date of the public hearing. The resolution of intent may be adopted, pursuant to chapter 9-19, with or without amendments after the public hearing. The governing body shall utilize and rely upon the records of the county director of equalization for the purposes of determining the affected landowners.

Section 3. That § 9-4-4.4 be AMENDED:

9-4-4.4. Hearing on resolution of annexation--Notice to landowners ~~and~~, county auditor, and electric utility--Adoption of resolution--Contents.

The governing body shall hold a public hearing to consider extension of its boundaries within sixty days of the adoption of the resolution of intent provided for in §§ 9-4-4.2 and 9-4-4.11. Prior to adoption of the resolution of annexation, the governing body of the municipality shall mail, by certified mail, a copy of the adopted resolution of intent and a notice of the time and place of the public hearing on the resolution of annexation ~~shall be forwarded by certified mail~~ to the affected landowners and the county auditor, who shall then forward the adopted resolution of intent and notice of public hearing regarding the resolution of annexation to the county commissioners. In the case of an annexation in a municipality with a municipally-owned electric utility, the governing body of the municipality shall mail, by certified mail, copies of the resolution of intent with a notice of time and place of the public hearing to all electric utilities providing electric service in the area considered for annexation. ~~The notice~~ All notices in this section shall be postmarked not less than ten days and not more than twenty days before the date of the public hearing. The governing body shall utilize and rely upon the records of the county director of equalization for the purposes of determining the affected landowners. The governing body may adopt an annexation resolution, containing the description and boundaries of the territory to be annexed, pursuant to chapter 9-19, within one hundred and twenty days of the public hearing. The governing body shall consider any objections to the resolution of annexation and the adopted resolution of intent~~,~~ and may adopt the resolution of annexation with or without amendments~~, and~~. The governing body may also add to the resolution of annexation any amendments to the resolution of intent. No amendment may be made affecting any property not described in the original resolution.

2020 South Dakota Legislature

Senate Bill Draft 227

Requested by: ***Senator*** *Solano*

An Act to require negotiation and allow petition to the Public Utilities Commission prior to an election to provide electric service in an annexed area.

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

Section 1. That a NEW SECTION be added:

49-34A-49.1. Good faith negotiation before election.

Before exercising an election to provide electric service in a newly annexed area, the municipally-owned electric utility shall provide notice to any affected electric utility and each party shall meet and negotiate in good faith the terms of an agreement and any transfers or acquisitions of existing service territories that may result from the annexation. Factors to be included in good faith negotiations include the elimination or avoidance of unnecessary duplication of facilities, providing adequate electric service to all areas and customers affected, the promotion of the efficient and economical use and development of the electric systems of the affected utilities, the impact on consumers of the respective utilities, and the public interest. The obligation to meet and negotiate in good faith does not compel any party to agree to a proposal or require the making of a concession, but each utility shall provide a statement of rationale for any position taken by the parties to the negotiation addressing the factors set forth in this section. Any agreement reached under this section that changes assigned service territories is subject to § 49-34A-50 and shall be filed and approved by the commission before becoming effective.

Section 2. That a NEW SECTION be added:

49-34A-49.2. Petition if unable to reach agreement--Commission hearing and decision.

If after good faith negotiations under § 49-34A-49.1 a municipal electric utility and the incumbent utility are unable to reach an agreement, either party within twenty-one days of impasse may petition for a hearing with the commission. If no party petitions for hearing within the required time, the election to provide electric service in a newly annexed area may proceed under the provisions of this chapter. If a petition is filed, the commission, after notice and opportunity for hearing, shall issue a binding decision within

sixty days of the filing of the petition. The commission may assess its costs associated with a petition to either or both parties, and may modify the purchase price for electric facilities up to ten percent of the purchase price established in § 49-34A-50.

Section 3. That a NEW SECTION be added:

49-34A-116. Electric utility meetings to review electric systems--notice and filing.

Annually, on or about the first Monday of May, any electric utility having an adjoining service area shall, in a public meeting, engage in a review of electric systems, including any existing facilities and planned facilities or improvements in service areas outside a municipality that owns and operates its own electric utility. The governing body of the municipality shall provide notice pursuant to § 1-25-1.1 for the meeting and shall record the meeting. Upon completion of the meeting, the governing body of the municipality shall file recordings and minutes with the commission.

Senate Bill Draft 227- Points for Continued Discussion

Section 1:

- Page 1, lines 10 to 14, "Factors to be included in good faith negotiations [. . .]":
    - Are the factors listed the appropriate factors for consideration?
    - Representatives from each type of utility have raised concerns with including "public interest" as a factor.
- Page 1, line 16, "statement of rationale": Should this be clarified or defined?
- Page 1, line 19, "and approved by the commission": removing "and approved by" and inserting "with".

Section 2:

- Page 1, line 25, "impasse": Who decides when an "impasse" has been reached?
- Page 1, line 28, "binding decision":
    - What is to be decided by the PUC? Can the PUC award territory to either utility or is take over assumed and the PUC is only setting the price? Could the PUC split territory between two utilities? Can the PUC require parties to go back and renegotiate?
    - What are the criteria upon which the PUC decision is to be based? Should the criteria match the criteria provided in section1? Is the PUC going to be limited to statutory criteria or can the PUC consider criteria beyond what is provided?
- Page 1, line 28 to page 2, line 1, "shall issue a binding decision within sixty days":
    - How much time should be provided for a decision to be made, considering the PUC's hearing process, the PUC's workload, and providing due process to the parties.
        - The PUC expressed concerns with the 60-day timeline.
    - Potential methods to expedite the process for a PUC decision.
    - Removing the intervention period by limiting the parties at the hearing to the utilities that are unable to negotiate an agreement.
- Page 2, line 2 to 3, "The commission [. . .] may modify the purchase price for the electric facilities up to ten percent of the purchase price established in § 49-34A-50":
    - Whether a specific percent should be provided in statute. Whether discretion should be provided to the PUC to consider whether the evidence supports greater modification or if parameters should be provided to give certainty to utilities in weighing risk.
    - If a specific percent is provided, what should that number be?
    - Potential to allow a higher percent if a utility is found to have filed an abusive petition.
    - Can the purchase price be modified in either direction?

Section 3:

- Clarification on whether the requirement to share information at the yearly meeting is reciprocal.
- Clarification that the review of electric systems does not require an electric utility to disclose information that involves critical infrastructure or competitive business matters.

Senate Bill Draft 227- Points for Continued Discussion

Additional points for discussion:

- Who can be charged for an appeal?
- Whether any of the issues raised can be decided in administrative rules. If so, what can be put into rules and what is the proper scope of rulemaking authority?
- Potential for unnecessary infrastructure build out by utilities to satisfy factors in actions in front of the PUC.
- Economic development impact. Additional costs, timing issues, and uncertainty created for cities, utilities, and land developers.
- Preservation of the 1975 Territorial Act and preservation of past PUC agreements.
- Concerns with growing government.
- The municipal electric group wants to make clear that they will not agree to anything that restricts their right to serve territory that becomes part of the municipal corporate limits through annexation.

SENATE BILL DISCUSSION DRAFT 227
Minority Report

To understand the problems with Senate Bill Discussion Draft 227, it's necessary to set aside some of the political rhetoric and look at the history and economic realties the Committee learned through the course of the summer.

History

In South Dakota electric services are provided by the investor-owned utilities (IOU), rural electric cooperatives (REC), and municipal utilities (Muni). In some cases, the IOUs and Munis have been providing electrical service in South Dakota since before statehood. After the Rural Electrification Act, the RECs became a valuable and necessary third leg of the electric service delivery system in South Dakota.

The three types of service providers were not limited in their territories for the first 90 years of our state's existence.

1965 – 1976
SDCL 49-34A-44

In the late 60's and early 70's, efforts were made to create defined service territories. Duplicative services were viewed as not in the state's best interests for providing as low cost as possible of electric power. Planning for the delivery of electrical services took, and continues to take, years, and certainty was determined to be critical.

The 1975 Legislative session passed the final bill that set up the process to arbitrate the territory boundaries. One of the principals that was part of the guiding conditions in creating the service territories was that "a reasonable opportunity for future growth" be afforded the utilities.

Munis: What they gave up and what they got.

As a result of the creation of service territories, Munis agreed to limit their service territories to their boundaries. Prior to that, Munis could serve any of the adjoining areas around their cities, and they gave all of those rights up.

The only right Munis retained, which was consistent with the standard established in SDCL 49-34A-44(5) was that they could grow with their cities. SDCL 49-34A-48.

Munis gave up valuable service territory, mostly to RECs, and only retained the right to grow within the cities that owned them.

Takings

Ever since 1975, the RECs have been on a mission to take from the Munis the sole right the Munis retained in the creation of service territories. The RECs have come to Legislature on several occasions and have brought litigation. The RECs lost the litigation, and the Circuit Judge's opinion made it clear that the rights all of the utilities got were not "property rights." The Court ruled that there is no "takings." Ironically, the party who's the victim of the "takings" are the Munis, but those facts have not deterred the fervor with which the RECs have attacked the Munis rights.

Payment for Property

During the past Legislative session, some legislators were given the impression that the REC's "takings" was about losing their facilities they had invested in the territory. In fact, SDCL 49-34A-50 sets out a process for RECs to be paid for their electric facilities by the Munis. In every instance since this process was enacted in 1975, according to the PUC, there has never been a contest filed. The parties have amicably resolved these payments.

Forced Annexation

The impression was given to the Legislature that the "takings" was by cities taking property in forced annexations. What the Committee now knows from its summer work is that, with the exception of possibly a house and a garage in Brookings, there have been no forced annexations that dealt with any of the electric service area issues.

Property Owner Rights

It's individual landowners that choose to pursue the annexation, and to receive access to the bundle of municipal services. It is the landowners whose rights the RECs are attacking. In some cases, these are valuable property rights that the RECs are attempting to take from landowners.

Economic Development

In Watertown, the RECs' rates for commercial users are 60% higher than the Munis'! A landowner that can have access to Muni electric has much more valuable property. To understand the magnitude, if a recent economic development project in Watertown for a

large manufacturer that sits on the edge of town was in the REC's territory, it would have had to pay almost a million dollars a year in an additional "tax" to the REC in higher rates.

Long-Term Development

The Committee learned that electric facility investment is made on a long-term basis. Substations have to be built, redundancy is critical, and higher voltage lines are needed and expensive. Anything that interferes with the certainty of long-term development is a detriment to the economy of the regions around municipal utilities in South Dakota. The current system provides certainty.

One of the consequences of the current system is that RECs don't have the substantial and necessary investment in the areas around communities like Watertown, Brookings, and Madison. It'd make no sense for them to invest there, and the cities have built out their redundant structures for decades to address the incremental growth that landowners seeks when they petition into the city.

ANY legislation that affects the certainty of investment in electric facilities is bad for the state of South Dakota.

SENATE BILL 227

Senate Bill 227 was presented as a concept, not as a piece of legislation ready to be introduced or implemented—for several obvious reasons. Groups that opposed Senate Bill 227 included the PUC, IOUs, and Munis. Only the RECs supported the Bill in its current form.

The Committee has received a list of flaws in the current Bill. The Committee is familiar with legislation. It's easy to have vague, generalized concepts that people agree to. The devil is always in the details. In this instance, no legislator on the summer study was able to construct a bill that could "fix" the "problem." The principal reason a bill couldn't be constructed to "fix" the "problem" is that—as we learned from the history cited above—there is no problem to fix. SB 227 is seen by the RECs as one more opportunity to try and erode the rights that they negotiated away—for valuable consideration—to the Munis 45 years ago.

Every legislator that's been around for any length of time has seen this kind of behavior from groups that come before it. Step, by step, by step, they seek to erode principals. Over time, people's word means almost nothing, and the only value that succeeds is to

continue to whine, complain, and beg the Legislature—until the kind of fundamentals that built our state are eroded, and legislators give in. SB 227 is the most recent version of that continued effort.

Specific Issues

The PUC's two-page list of flaws in the Discussion Draft SB 227 should be given fair consideration. When you read through the list, you'll see that in reality none of the significant or substantive decisions that need to be made, are being made in the Discussion Draft SB 227. I'd intended to set forth a similar list, but the PUC's list is pretty inclusive. The Bill doesn't have the standards necessary for any step in the process it purports to address.

The one bone in SB 227 is to require the PUC to decide within 60 days. By putting a 60-day provision in the draft, the author intended to address the very real problem with delay. There are two clear reasons why this Bill doesn't do that.

First, the most fundamental delay is in the ability to long-range plan. For 45 years, the systems have known what the rules are, and they've been able to make significant economic decisions based upon those rules. For example, it takes 18 months to get a substation, longer to have it installed. A substation costs millions of dollars. The decision to put the lines in the ground and create the redundancy for an economic development project is made years in advance of there actually being a shovel-ready project. Anything that creates uncertainty in that process, affects the ability to plan and construct. The current system has provided consistency that the parties have understood for decades. The parties have adjusted their infrastructure investment based upon knowing those rules. Territory boundaries are not just a game of etch-o-sketch, where changing the rules a little bit so one party can have more money makes any sense in the economic realities of the real world.

Secondly, the problem with the Bill is that the 60-day figure was put in to make it look attractive, when in reality, it can't happen. The RECs admit this in their objections. They would love to have the delay that this process imposes, because they would be able to use this as leverage to force businesses and communities to pay them additional money—to do what can be done right now in an orderly fashion.

Conclusion

This Bill is one of those Kumbaya moments. It's not really drafted to be able to do that which it says, but it would make people feel good. People feel good right up until they find out that the Bill has to die because of the harm it does.

Fighting Methamphetamine Addiction Subgroup
2019 Final Report

Study Assignment

The Fighting Methamphetamine Addiction Subgroup is a subgroup of the Offenses Regarding Controlled Substances Legislative study. The subgroup was called to study the adequacy and effectiveness of South Dakota's prevention, intervention, and law enforcement efforts relating to the issue of methamphetamine addiction. The subgroup was called to evaluate how the state allocates resources, the efforts of local governments, and the rehabilitation services in state prisons.

Summary of Interim

At the first meeting of the subgroup, Mike Leidholt, Secretary of the Department of Corrections, presented data and trends in methamphetamine related offenses. Representatives from the Rosebud Sioux Tribe, Steve DeNoyer, Sharon Swift, and Totes Waln, discussed how their tribe has been impacted by methamphetamine addiction and the possibility of tribes and the state working together. Carol Reiger, CEO of Keystone Treatment Center, presented on the impact of methamphetamine addiction on users and their families and on the treatment plans that are currently being provided. During public testimony Darcy Jensen, Executive Director of Prairie View Prevention Services, provided information on methamphetamine prevention efforts.

At the subgroup's November meeting, Mark Vargo, Pennington County States Attorney, discussed the effectiveness of current efforts and the ways that Pennington County is fighting methamphetamine addiction. Department of Social Services Secretary Laurie Gill and Director of the Division on Behavioral Health Services Tiffany Wolfgang presented on services provided by the Department of Social Services and the funding for those services. Kerri Wagner, President of PharmChem, presented on the use of the sweat patch system for continuous drug testing.

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

The subgroup met in Pierre on August 6 and November 7.

Listing of Committee Members

Members of the subgroup are Senator Troy Heinert, Chair; Representative Kevin Jensen, Vice Chair; Senator Ryan Maher; and Representatives Lana Greenfield, Taffy Howard, Doug Post, and Tamara St. John.

Listing of Staff Members

Staff members for the subgroup are Alex Timperley, Legislative Attorney; Jennifer Geuther, Fiscal and Program Analyst; and Kelly Thompson, Senior Legislative Secretary.

Industrial Hemp Study Committee
2019 Final Report

SOUTH DAKOTA LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

Study Assignment

The Industrial Hemp Study Committee shall study the regulation and cost of implementing an industrial hemp program. What are the economic impacts of the production and sale of industrial hemp? What are potential costs or challenges for law enforcement? Study requirements for registration, licenses and permits; as well as seed certification and access.

Summary of Interim

The first meeting of the Industrial Hemp Study met on July 11 in Pierre. The members of the study heard from Mr. Keith Rogers, Chief of Staff, Ms. Doris Hamilton, Hemp Program Manager, and Mr. Joe Bilby, General Counsel of Kentucky Department of Agriculture, regarding Kentucky's hemp program including program costs, licensure requirements and grower production. As of July 1 of this year, the Kentucky hemp program is totally self-sufficient and financed by the fees collected. The grower pays a $100 application fee and $400 per growing address, regardless of how many acres are grown at that address. Lt. Colonel Jeremy C. Slinker, Operations Division, Kentucky State Police, spoke about the importance of communication between the department of agriculture and law enforcement if a state legalizes the production and processing of industrial hemp. Mr. Steve Bevan, President and Executive Chairman, GenCanna, spoke about the growing industrial hemp industry in Kentucky and the opportunities to expand the industry in the future.

The second meeting of the Industrial Hemp Study met on August 19 in Pierre. The members of the study heard from Commissioner Doug Goehring, North Dakota Department of Agriculture, regarding North Dakota's hemp program, including program implementation, and costs. The NDDA program is about 99.8% funded by the growers involved in the hemp program. Mr. Andy Gray, Hemp Program Coordinator, Montana Department of Agriculture, spoke about Montana's hemp program including applications and licensing. There were 277 applications submitted this year and no applications were denied. About 40,000 acres were planted to hemp for fiber, grain industry, and CBD oil. South Dakota Department of Agriculture Secretary Kim Vanneman, Department of Public Safety Secretary Craig Price, and Department of Health Secretary Kim Malsam-Rysdon all expressed concern over hemp legalization and discussed possible cost implications for each department.

The third meeting of the Industrial Hemp Study met on October 7 in Pierre. The members of the study heard from Mr. Anthony Cortilet, Hemp Program Supervisor, Minnesota Department of Agriculture, spoke about Minnesota's hemp program. Hemp was legalized in Minnesota in 2015 and the first legal hemp crops were grown in 2016. In 2019, the department received about 600 applications and 300 of those applicants paid for a hemp license and put crops in 700 fields equaling 11,000 acres statewide. Minnesota is developing hemp processing and issued 34 processing licenses for CBD extraction, four processing licenses for fiber, and 12 licenses for processing for grain. Major Aaron Hummel, North Dakota Highway Patrol (NDHP), gave testimony that the NDHP has not had any issues arise relating to hemp legalization. NDHP has not added additional resources or staff because of the introduction of hemp cultivation and production. The committee heard from Glanbia Nutritionals, a company that produces a variety of plant-based ingredients, such as flax seed, chia seed, and other plant protein ingredients but would like to expand into hemp seed production in South Dakota. Purpl Scientific, spoke about their product called Purpl Pro, a handheld THC testing device. The device can instantaneously measure THC levels of a sample in the field instead of a lab.

The final committee meeting was held on December 2 in Pierre. The committee reviewed the draft legislation, and approved the introduction of the draft legislation to legalize the growth, production, and processing of industrial hemp.

Listing of Legislation Adopted by the Committee

1. An Act to legalize the growth, production, and processing of industrial hemp and derivative products in the state, and to declare an emergency.

Summary of Meeting Dates and Places

The committee met in Pierre on the following dates: July 11, August 19, October 7 and December 2, 2019.

Listing of Committee Members

Members of the committee are Representative Lee Qualm, Chair; Senator Rocky Blare, Vice Chair; Representatives Shawn Bordeaux, Bob Glanzer, Tim Goodwin, Randy Gross, Oren Lesmeister, and Nancy York; Senators Red Dawn Foster, Joshua Klumb, and Reynold Nesiba.

Listing of Staff Members

Staff members for the committee are Amanda Marsh, Senior Research Analyst, Mitchell Close, Fiscal & Program Analyst and Cindy Tryon, Senior Secretary.

2020 South Dakota Legislature

House Bill Draft 236

Introduced by:

An Act to legalize the growth, production, and processing of industrial hemp and derivative products in the state, and to declare an emergency.

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

Section 1. That SUBDIVISION 22-42-1 (7) be AMENDED:

22-42-1 (7).

(7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include industrial hemp as defined in § 38-35-1, fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant;

Section 2. That SUBDIVISION 34-20B-1 (12) be AMENDED:

34-20B-1 (12).

(12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include industrial hemp as defined in § 38-35-1, fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant or cannabidiol, a drug product approved by the United States Food and Drug Administration;

Section 3. That a NEW SECTION be added:

38-35-1. Industrial hemp--Definition.

For the purposes of this chapter, industrial hemp or hemp, is the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Section 4. That a NEW SECTION be added:

38-35-2. License required--Penalty.

No person may purchase or obtain industrial hemp material for planting, propagation, or producing unless the person has a license as provided by this chapter. The person is responsible for anyone working under the person's license for all sections of this chapter. Only a person licensed to grow or produce industrial hemp under this chapter may possess any part, stalk, leaf, bud, flower, or seed of an industrial hemp plant. Any person who possesses industrial hemp material who is not licensed under this chapter is guilty of a Class 4 felony.

Section 5. That a NEW SECTION be added:

38-35-3. Application process--Criminal history check.

Any person desiring to grow or produce industrial hemp shall apply to the Department of Agriculture for a license on a form prescribed by the department in rules promulgated pursuant to chapter 1-26.

The person applying for a license shall include the name and address of the applicant, and the legal description of the land area to be used to grow or produce industrial hemp. If the land area is to be used to grow hemp, the land area must be at least five contiguous acres. If the applicant is the lessee and is not the landowner of the land area, the name and address of the landowner shall be included on the application.

Except for employees of the South Dakota Department of Agriculture, the South Dakota Agricultural Experiment Station, or the South Dakota State University Extension Service involved in research and extension-related activities, the department shall require each applicant and landowner, if the applicant is the lessee of the land area, for initial licensure and each license renewal thereafter to submit to a statewide and nationwide criminal history record check through fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. However, the department may disclose information received under to this section with law enforcement. The department may use the records only in determining an applicant's eligibility for licensure.

Section 6. That a NEW SECTION be added:

38-35-4. Industrial hemp licensure program fund created.

There is hereby created within the state treasury the industrial hemp licensure program fund, into which all license fees, inspection fees, and other fees or revenue paid to the state from the operation of the industrial hemp program shall be deposited. All moneys in the fund created by this section shall be used for the purpose of administering the industrial hemp program. Interest earned on money in the fund shall be deposited into the fund. Expenditures from the fund shall be appropriated through the normal budget process.

Section 7. That a NEW SECTION be added:

38-35-5. License issuance, denial, revocation, suspension, and fee.

If the applicant has completed the application process to the satisfaction of the Department of Agriculture, the department shall issue the license. A license issued under this chapter is valid for fifteen months. An application for a license under this section shall be submitted to the department any time before the purchase of industrial hemp products, including hemp seed or viable propagation material. The department shall assess each licensee a fee not to exceed three hundred fifty dollars. The department shall deposit fees collected under this chapter in the industrial hemp licensure program fund.

The department may deny or suspend a license to any person who:

(1) Violates any provisions of this chapter;

(2) Violates any rules set forth by the United States Department of Agriculture regarding industrial hemp;

(3) Provides false or misleading information in connection with any application required by this chapter;

(4) Has been convicted of a felony relating to a controlled substance or marijuana under state or federal law within the previous ten years; or

(5) Has been convicted of a felony relating to a controlled substance or marijuana under state or federal law since the most recent criminal history background check.

Any person denied a license under this section or has a license suspended under this section may request a hearing before the secretary pursuant to chapter 1-26.

Section 8. That a NEW SECTION be added:

38-35-6. Documentation of seeds planted.

Within thirty days of planting, each licensee under this chapter shall file with the Department of Agriculture documentation indicating that the seeds planted were of a type

and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol.

Section 9. That a NEW SECTION be added:

38-35-7. Inspection, confiscation, and disposal by department.

The Department of Agriculture may enter on any land or areas where hemp is grown, stored, or produced for the purposes of inspections, sample collection, testing, or investigation for the purposes of enforcing this chapter. Any hemp found to be in violation of this chapter is subject to confiscation and disposal by the department. Any costs arising from the confiscation and disposal shall be the responsibility of the grower, producer, or owner of the hemp. The department is not liable for any destruction of hemp or hemp products carried out under this chapter. If a violation occurs, the grower shall be given, in writing, a copy of the results.

Section 10. That a NEW SECTION be added:

38-35-8. Rules promulgation.

The Department of Agriculture shall promulgate rules, pursuant to chapter 1-26, to:

(1) Establish inspection, testing, and transportation requirements in accordance with guidance from the United States Department of Agriculture;

(2) Establish criteria and procedure for denial or suspension of a license under this chapter;

(3) Make any modifications or additions to the industrial hemp licensure program in order to comply with any rules and regulations regarding hemp implemented by the United States Department of Agriculture; and

(4) Establish an inspection fee not to exceed two hundred fifty dollars, moneys from which shall be placed in the industrial hemp licensure program fund.

Section 11. That a NEW SECTION be added:

38-35-9. Testing of hemp.

If a test sample reveals a delta-9 tetrahydrocannabinol concentration of at least three-tenths of one percent but not more than five-tenths of one percent on a dry weight basis, the licensee's hemp crop may be retested by a laboratory approved by the Drug Enforcement Administration and if upon the retesting, the delta-9 tetrahydrocannabinol

concentration exceeds three-tenths of one percent, the entire crop shall be destroyed by a Drug Enforcement Administration registered reverse distributor, or a law enforcement officer authorized under the Controlled Substances Act (21 U.S.C. § 802(6)).

Section 12. That a NEW SECTION be added:

38-35-10. Program licensure.

The Department of Agriculture shall develop a state hemp production plan and submit the plan to the United States Department of Agriculture for approval of a program to license and grow industrial hemp in South Dakota within thirty days of the passage of this Act. The department shall set up a program to license growth or production of industrial hemp once approval is received by the United States Department of Agriculture.

Section 13. That a NEW SECTION be added:

38-35-11. Law enforcement stop and testing.

Any law enforcement officer may require any person transporting industrial hemp to stop any vehicle transporting the product for the purposes of inspection of appropriate licensure or paperwork under § 38-35-13. The law enforcement officer may collect a sample of the product for the purpose of testing for any concentration of tetrahydrocannabinol that exceeds three-tenths of one percent. The sample collected by law enforcement may not exceed eight ounces. It shall be a Class 2 misdemeanor to transport industrial hemp without appropriate licensure or paperwork from a federal or state authority.

Section 14. That a NEW SECTION be added:

38-35-12. Transportation of hemp.

An industrial hemp transportation permit is required to transport industrial hemp. The licensee shall apply for an industrial hemp transportation permit on a form provided by the Department of Agriculture. A permit issued under this section is valid for fifteen months. A request for an industrial hemp transportation permit shall be submitted to the department at least five business days prior to the transport. Any licensee transporting or delivering industrial hemp shall have a dated invoice, bill of lading, or manifest in their possession during the entire time the licensee is transporting or delivering industrial hemp unless the hemp is being transported ten miles or less from where the crop was originally grown. The invoice, bill of lading, or manifest shall include the following information:

(1) The licensee's name and address;

(2) The specific origin and destination of the industrial hemp being transported; and

(3) The quantity of industrial hemp being transported.

Section 15. That a NEW SECTION be added:

38-35-13. Licensee terms.

All applicants and licensees shall abide by the any rules set forth by the United States Department of Agriculture.

Section 16. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Interim Joint Committee on Appropriations

2019 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 2019 Interim, the Interim JCA held three meetings.

During the first meeting, held in Pierre on May 22, 2019, the Interim JCA:

- Heard a presentation from the University of South Dakota on the Board of Regents plan to replace the University Center in Sioux Falls with a new college under the University of South Dakota.
- Approved the following 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:
    - **Board of Regents (BOR) – University Center Operations.** The LOI requires the University of South Dakota and Black Hills State University to provide a written report by July 1, 2019, regarding the operations of the University Center administered by the University.
    - **Department of Social Services (DSS) – Statewide Resource Information System.** The LOI requires an annual report by November 1 of each year detailing certain items regarding the statewide resource information system.
    - **Board of Regents (BOR) – Research Parks.** The LOI requests a report be delivered by November 1 of each year outlining, at a minimum, the most recent activities of the research parks, capital investments and partners, list of tenants by occupied space and length of time at the research park, capital projects within the research park and at least one success story in the current year.
    - **Board of Regents (BOR) – Lean Implementation.** The LOI allows funding from the Legislative Priority Pilot Program Contingency Fund to be used for conducting a Lean audit of the Board of Regents Central Office with the objective of finding efficiencies between the universities and the central office.
    - **Department of Social Services (DSS) – Lean review.** The LOI allows funding from the Legislative Priority Pilot Program Contingency Fund to be used for conducting a Lean audit of one or more of the divisions of the Department of Social Services.
    - **Department of Labor and Regulation (DLR) – Family Education Program.** The LOI requests a report to be delivered by November 1 of each year outlining information regarding funding awards made, locations of classes/programs offered, and to develop a report on measurable outcomes for the program.
    - **Multiple – FY19 One-Time and FY20 Ongoing Provider Inflation.** The 2019 South Dakota Legislature, through the FY2020 General Appropriations Act (Senate Bill 191), approved a base funding increase for all providers. The legislature also approved one-time provider funding

enhancements for FY2019 through Senate Bill 180, including increases for all providers groups for the final three months of FY2019. The LOI requires these providers receive a base rate increase in conformity with calculations approved by the Committee for the last three months of FY2019 and in FY2020. (The base rate calculations and increases can be found on the LRC Budget website).

- **Department of Agriculture (DOA) – Billing Boards and Commissions for Services.** The LOI requests the DOA complete an analysis and bring forth a proposal to implement the process of billing the boards, commissions and councils housed under the DOA for accounting, legal and any other services rendered by DOA. The proposal should include any proposed changes to statute, administrative rule, and internal processes and procedures. The JCA requests a report be submitted no later than November 1, 2019, detailing the DOA's proposal.
- **Department of Social Services (DSS)/Department of Health (DOH) – Opioid Funding.** The LOI requests a combined annual report on federal opioid funding be provided to the committee no later than November 1 of each year in which the State receives funding for opioids. The report should include information on expenditures and programs receiving funding, planned outcomes and goals, and an update on the attainment of outcomes, goals, and metrics in the prior fiscal year.
- **Department of Social Services (DSS)/Department of Human Services (DHS) – Provider Innovation Grants.** The LOI requests the Department of Social Services and the Department of Human Services report to the committee in January 2020 and to the interim committee in the summer of 2020 information on the provider innovation grant program as outlined in the LOI.
- **Department of Health (DOH)/Department of Corrections (DOC) – Telemedicine with Correctional Health.** The LOI requires the departments provide a report by November 1, 2019, detailing how telemedicine is being used, a description of eCare being used by the State and the cost, areas where telemedicine could be implemented to reduce costs and an analysis of the potential cost savings, and report on the cost and frequency of hospital trips and how telemedicine could be used to reduce the frequency and cost of such trips.

- The following Letters of Intent were not adopted:
  - **Governor's Office of Economic Development (GOED) – Future Fund Report.**
  - **Governor's Office of Economic Development (GOED) – Report on Rural Broadband.**
  - **Legislative Research Council (LRC) – Zero-based Budgeting.**

During the second meeting, held in Pierre on July 22, 2019, the Interim JCA:

- Received a report from the Bureau of Finance and Management (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.
- Received a year-end report on the FY 2019 budget from the BFM. A total of $19,354,553 was obligated to the Budget Reserve Fund at the close of FY2019. This was due to revenues coming in $2,320,988 higher than expected, reversions of $17,319,221 from state agencies spending less than budgeted, and an operating transfer of $285,656 to Game, Fish, and Parks (GFP) due to a recalculation of the GFP portion of the state radio transfer as amended in SB180.
- 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 2020 to be $1,693,032,250, which is $8,212,390 lower than adopted revenue estimate.
  - The LRC projected general fund revenue for FY 2020 to be $1,702,705,555, which is $1,460,915 higher than 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.

- The Board of Regents response to the Letter of Intent regarding the university center operations was discussed and it was decided to modify the current letter of intent to accept an annual report on the university center operations rather than require a new budget unit be created.
- The Governor's Office of Economic Development provided information to the committee on the Reinvestment Payment Program.
- The Committee finalized dates for the interim state facility tours.

The East River Tour was conducted on August 19th, 20th, and 21st. 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:

- Mitchell Technical Institute – Mitchell
- Dakota State University – Madison
- Research Park at SDSU – Brookings
- Teen Challenge of the Dakotas – Brookings
- South Dakota State University ADRDL – Brookings
- Volga City Hall and Tour of Volga – Volga
- Prairie AquaTech Manufacturing Plant – Volga
- Agropur Cheese Plant – Lake Norden
- Joy Ranch – Watertown
- Lake Area Technical Institute – Watertown
- Terex Utilities - Watertown

During the third meeting, held in Brookings on August 20, 2019, the Interim JCA:

- Approved an amendment to the University Center Operations Letter of Intent to reflect the action during the July 22, 2019, meeting
- Approved a new Letter of Intent requiring annual financial reporting for the University Centers by November 1 of each year.
- Discussed sites for the West River Tour which will take place November 4, 5, and 6.

The West River Tour was conducted on November 4th, 5th, and 6th. The West River Tour included stops at the following sites:

- Spyglass Natural Gas Wells – Jump Off Field, Harding County
- Gilt Edge Mine - Lead
- Sanford Underground Lab – Lead
- Camp Rapid – Rapid City
- Crisis Care Center – Rapid City
- DCI Office – Rapid City
- Ascent Innovation – Rapid City
- Ellsworth Airforce Base - Ellsworth

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

During the 2019 Interim, the Interim JCA held three meetings. Two of the meetings were held in Pierre and one was held in Brookings. The JCA intends to hold additional meetings in December.

Listing of Committee Members

Senator John Wiik, Lead Co-Chair
Representative Chris Karr, Co-Chair
Senator Brock Greenfield
Senator Jack Kolbeck
Senator Justin Cronin (resigned August 2019)
Senator John Lake (appointed September 2019)
Senator Ryan Maher
Senator Reynold Nesiba
Senator Jeffery Partridge
Senator Margaret Sutton
Senator Jim White
Representative Hugh Bartels
Representative Randy Gross
Representative Taffy Howard
Representative Jean Hunhoff
Representative Lance Koth
Representative Sue Peterson
Representative Doug Post
Representative Michael Saba

Listing of Staff Members

Tamara Darnall, Chief Fiscal & Program Analyst
Jeff Mehlhaff, Senior Fiscal & Program Analyst
Amanda Doherty-Karber, Senior Fiscal & Program Analyst
Shane Mattheis, Senior Fiscal & Program Analyst
Jennifer Geuther, Fiscal & Program Analyst
Sakura Rohleder, Fiscal & Program Analyst
Mitchell Close, Fiscal & Program Analyst
Cindy Tryon, Senior Legislative Secretary

Offenses Regarding Controlled Substances
2019 Final Report

Study Assignment

The legislative study was established to study and evaluate alternatives to imprisonment for any person charged and convicted of controlled substance offenses in order to more adequately assist the person with substance abuse issues. The committee was also directed to evaluate possible funding alternatives as well as the financial ramifications of controlled substance offenses on the state, the counties of the state, law enforcement, substance abuse treatment facilities, and any other interested person that may be affected.

Background

In the past 10 years, the number of convictions for possession of a controlled substance in South Dakota has increased 125 percent. The highest number of convictions in a single year was 2,144 in Fiscal Year 2018. The majority of drug convictions involved methamphetamine. Additionally, ingestion of a controlled substance was created as a separate law with the passage of Senate Bill 70 by the 2013 Legislature. From 2014 to 2019, convictions for ingestion of a controlled substance in South Dakota increased 109 percent.

Summary of Interim

The committee began by gathering a wide array of information surrounding the abuse of, treatment of, and law enforcement response to controlled substances.

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System (UJS), provided statistics on drug-related convictions from 2009 to 2019. He provided context for this data by explaining the differences in charging practices among different statutes and across different counties. Data was also presented on the number of "other" controlled substance convictions in South Dakota for the past 10 years. Finally, Mr. Sattizahn discussed the successes of the Honest Opportunity Probation with Enforcement (HOPE) program.

Ms. Patricia Riepel, Drug Court Judge, spoke about her experience presiding over Drug Courts in South Dakota. She explained the need for Drug Court and the collaboration required of various partners, including judicial officers, law enforcement, and mental health professionals. She also provided details on how the program works from the perspective of the participant. It was noted the program has the capacity to take on more participants, but may be limited by what is available geographically.

Mr. Matthew Frame, Legislative Attorney, Legislative Research Council, provided information regarding simple possession and ingestion statutes in other states. He highlighted the trend in many states is to lower the penalties regarding low-level controlled substance offenses. He also discussed the schedules and penalty structures that states have adopted to address substance abuse offenses, as well as statistics comparing South Dakota's substance abuse challenges to those of other states. In response to committee requests, he provided information on various treatment programs for federal offenders. He clarified that the federal system generally has fewer services available, but has established several programs for federal prisoners including the Residential Drug Abuse Program (RDAP), the Non-Residential Drug Abuse Program (NRDAP), and the Drug Education Course (DEC).

Ms. Noreen Plumage, Director, Problem Solving Courts, reported on the current state of problem-solving courts statewide. She highlighted that staffing is a challenge for Problem Solving Courts.

Ms. Laurie Gill, Secretary, and Ms. Amy Iversen-Pollreisz, Deputy Secretary, Department of Social Services, reviewed the publicly funded substance use disorder treatment services available in the state. Publicly funded services offered through the Division of Behavioral Health include prevention services and substance use disorder treatment

services. About 11,000 youth and adults with substance use disorders receive treatment services through 34 contracted substance use disorder providers. Ms. Inversen-Pollreisz also highlighted that methamphetamine use in South Dakota was declared an emergency in March of 2017, and the number of intensive methamphetamine treatment providers in the state was increased in response to that situation. Ms. Iversen-Pollreisz provided additional data on the staffing needs for treatment facilities and the current ability of the Department of Social Services to provide treatment.

Mr. Kevin Thom, Sheriff, Pennington County, discussed the Care Campus Addiction Treatment facility that has been operating in Rapid City since 2018. Mr. Thom also provided information on Project Recovery, which offers medication-assisted treatment in Rapid City for various agencies and groups.

After much discussion and receiving public testimony, the committee adopted four recommendations. Committee members expressed hope that the changes proposed by these recommendations would help to meet the goals of SB70 and reduce the rates of incarceration through treatment and intensive supervision. The committee sees a need to examine this, as well as providing additional funding for corrections and substance abuse treatment, providing the needed personnel and resources to support those programs, and ensuring a successful transition for individuals returning to society after prison.

Listing of Recommendations Adopted by the Committee

- That the Legislature provide additional funding to the Unified Judicial System for court service officers;
- That the Legislature provide additional funding to the Department of Correction for additional parole officers;
- A bill to create an incentive program to provide diversion opportunities for certain substance abuse offenders; and
- A finding that a review and improvement of processes and procedures is needed regarding the preparation of individuals being released from prison for successful reentry into society.

Summary of Meeting Dates and Places

The committee met in Pierre on the following dates: August 10, September 23, October 22, November 1, and November 8, 2019.

Listing of Committee Members

Members of the committee were Representative Steven Haugaard, Chair; Senator Craig Kennedy, Vice-Chair; Senators Jeff Partridge and Jim Stalzer; Representatives Linda Duba and Dayle Hammock; Pennington County Commissioner Gary Drewes; Department of Social Services Secretary Laurie Gill; Deuel County Commissioner Gary Jaeger; Department of Corrections Secretary Mike Leidholt; Minnehaha County State's Attorney Aaron McGowan; Attorney General Jason Ravnsborg; Second Circuit Court Judge Patricia Riepel; State Court Administrator Greg Sattizahn; and Pennington County Sheriff Kevin Thom.

Listing of Staff Members

Staff members for the committee were David Ortbahn, Chief Research & Legal Analyst; Matthew Frame, Legislative Attorney; and Kelly Thompson, Senior Legislative Secretary.

Interim Rules Review Committee
2019 Final Report

Study Assignment

Created by § 1-26-1.1, the Interim Rules Review Committee oversees executive branch agencies in the exercise of their legislative authority to promulgate rules.

Summary of Interim

The committee reviewed rules promulgated by the following agencies:

- Abstracters' Board of Examiners (Department of Labor and Regulation)
- Appraiser Certification Program (Department of Labor and Regulation)
- Board of Finance (Office of the Secretary of State)
- Board of Medical and Osteopathic Examiners (Department of Health)
- Board of Minerals and Environment (Department of Environment and Natural Resources)
- Board of Water Management (Department of Environment and Natural Resources)
- Civil Service Commission (Bureau of Human Resources)
- Department of Agriculture
- Department of Environment and Natural Resources
- Department of Game, Fish and Parks
- Department of Health
- Department of Public Safety
- Department of Revenue
- Department of Social Services
- Department of Transportation
- Division of Developmental Disabilities (Department of Human Services)
- Division of Insurance (Department of Labor and Regulation)
- Division of Unemployment Insurance (Department of Labor and Regulation)
- South Dakota Animal Industry Board (Department of Agriculture)
- South Dakota Board of Barber Examiners (Department of Labor and Regulation)
- South Dakota Board of Education Standards (Department of Education)
- South Dakota Board of Minerals and Environment (Department of Environment and Natural Resources)
- South Dakota Board of Nursing Facility Administrators (Department of Health)
- South Dakota Board of Technical Education (Department of Education)
- South Dakota Commission on Gaming (Department of Revenue)
- South Dakota Cosmetology Commission (Department of Labor and Regulation)
- South Dakota Electrical Commission (Department of Labor and Regulation)
- South Dakota Lottery (Department of Revenue)
- South Dakota Retirement System
- South Dakota State Board of Dentistry (Department of Health)
- South Dakota State Brand Board (Department of Agriculture)
- South Dakota State Plumbing Commission (Department of Labor and Regulation)
- State Board of Elections (Office of the Secretary of State)

Rules Reverted to Prior Step

In accordance with § 1-26-4.7, the Committee reverted to a prior step in the rule promulgation process certain rules proposed by:

- Department of Game, Fish and Parks
- Department of Health
- Department of Revenue
- Department of Social Services
- South Dakota Electrical Commission (Department of Labor and Regulation)

Legislation Adopted by the Committee

The Committee is considering proposed legislation to rewrite the Administrative Procedures Act, codified in chapter 1-26, to clarify the process and to remove conflicts and contradictions in the statutory language.

Summary of Meeting Dates and Places

The Committee met at the State Capitol in Pierre on March 12, March 28, May 6, June 3, July 8, August 12, September 9, and November 4. The Committee may meet for one additional meeting via conference call to consider proposed legislation.

Listing of Code Commission Members

Members of the committee are Senator Alan Solano, Chair; Representative Jean Hunhoff, Vice-Chair; Representatives Jon Hansen and Ryan Cwach; and Senators Craig Kennedy and Lance Russell.

Listing of Staff Members

Staff members for the committee meetings were Wenzel J. Cummings, Code Counsel, and Kelly Thompson, Senior Legislative Secretary. Members of the research staff who performed the initial review for style, form, clarity, and legality were Principal Legislative Attorney Anita Thomas, Legislative Attorney Alex Timperley, Principal Research Analyst Clare Charlson, and Senior Research Analyst Amanda Marsh. Rhonda Purkapile, Bill Text Editor, and Kelly Thompson, Senior Legislative Secretary, updated the administrative rules database.

Special Education Interim Legislative Committee
2019 Final Report

Study Assignment

The purpose of the committee is:

(1) To examine the diagnostic tools and assessments used to identify students in South Dakota schools in need of special education or special education and related services;
(2) To examine the disability categories that are rising at the greatest rate and review eligibility requirements;
(3) To review the funding levels of the disability categories;
(4) To examine the common costs associated with extraordinary cost fund applications, including out-of-district placements; and
(5) To develop recommendations to address the increasing costs of services.

The committee was created through the passage of Senate Bill 3 from 2019.

Summary of Interim

At the first meeting, the committee began by hearing from Dr. Michelle Powers, who provided an overview of special education including its history, the processes and procedures involved, and the current issues that exist in the area of special education. She concluded her remarks by offering some recommendations that she feels would make a positive difference. Next, the group heard from Dr. Eric Kurtz, the Exectuive Director of the Center for Disabilities at USD's Sanford School of Medicine. Dr. Kurtz discussed autism spectrum disorders and how they are diagnosed and treated. Jane Heinemeyer, the Clinical Director of the USD Scottish Rite Children's Clinic, explained what dyslexia is and how it is diagnosed. Dr. Shelly Bayer, the Assistant Director for the Center for the Enhancement of Teaching and Learning at SDSU, spoke of the importance of providing teachers with the training they need to create positive learning environments for dyslexic students. Kristi Kafka, a school psychologist, spoke of the roadblocks that exist in rural areas when it comes to identifying and assisting dyslexic learners. Lastly, Linda Turner, the Director of Special Education at the SD Department of Education, provided information on the disability categories that exist in special education along with the eligibility requirements.

To start the second meeting, Chair Rasmussen asked the committee members to share their expertise and thoughts on the issue of special education. Dr. Wade Pogany provided an update on current federal legislation that would provide increased federal funding for special education. He encouraged members of the committee to offer support for the legislation, but noted that the increase does not appear to be a priority in Congress at the present time. Matt Flett, the Director of Finance at the SD Department of Education, explained how the state aid to special education funding formula works. He also described the extraordinary cost fund and how it is used. The committee then concluded by taking public testimony.

At the third meeting, Tim Neyhart, Executive Director of Disability Rights South Dakota, and Linda Turner both addressed issues surrounding out-of-district placements. In addition, Ms. Turner provided the committee with responses to previously asked questions and presented some financial information including the history of extraordinary cost funding, and the special education expenditures, the special education fund balance, and the special education tax levy for each of the school districts. Dr. Kari Oyen, Assistant Professor of School Psychology at USD, briefed the committee on the dyslexia training workshops that have recently been conducted in the state. Committee members then concluded their work by discussing possible recommendations and taking public testimony.

Listing of Legislation Adopted by the Committee

None.

Listing of Recommendations Discussed by the Committee

Committee members discussed the following recommendations, though no formal action was taken on them:

The information reviewed by the committee, and contained in this report, is a resource that can be used by the standing committees on education in both the House and the Senate for developing strategies and solutions for special education in South Dakota, and as a guide to evaluate proposed legislation brought before the committees. With the Executive Board's concurrence, a summary of the committee's work, including links to minutes, documents, and audio recordings, will be provided to education committee chairs, vice-chairs, and members.

More comprehensive and specific data than was provided to the Special Education Interim Legislative Committee should be requested and obtained from the Department of Education and local school districts regarding actual, historical costs of providing special education services in South Dakota, as well as evidence and analysis of stated increasing costs in order to develop recommendations to address "increasing costs of services".

Summary of Meeting Dates and Places

The committee met on July 11, and August 27, 2019, at the USD Community College for Sioux Falls in Sioux Falls, SD. The committee met on November 13, 2019, at the State Capitol in Pierre, SD.

Listing of Committee Members

Members of the committee are: Representatives Fred Deutsch, Sue Peterson, Nancy Rasmussen (Chair), and Ray Ring; and Senator Jim Bolin (Vice Chair); and Ms. Sara Carda, Ms. Jennifer Conway, Mr. Tom Culver, Ms. Lorrie Esmay, Dr. Michelle Greseth, Mr. John Hamilton, Mr. Dan Martin, Dr. Kari Oyen, and Mr. Neil Putnam.

Listing of Staff Members

Staff members for the committee are Clare Charlson, Principal Research Analyst; Sakura Rohleder, Fiscal and Program Analyst; and Rachael Person, Senior Legislative Secretary.

State-Tribal Relations
2019 Final Report

Study Assignment

The State-Tribal Relations Committee is an ongoing statutory committee created by SDCL sections 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

At the first meeting the committee elected Representative Shawn Bordeaux as Chair and Senator Jordan Youngberg as Vice-Chair. The committee heard an update from the Department of Tribal Relations. The committee heard from Richie Richards about the Thirtieth Anniversary of Native American Day. The Board of Regents presented on increasing enrollment in higher education. Various presenters discussed Native American Education. The committee plans to meet again in December.

Listing of Legislation Adopted by the Committee

Will be determined at a future meeting.

Summary of Meeting Dates and Places

The committee met in Pierre on November 12. The committee will hold a future meeting In December.

Listing of Committee Members

Members of the committee are Representative Shawn Bordeaux, Chair; Senator Jordan Youngberg, Vice Chair; Representatives Steven Haugaard, Steve Livermont, Peri Pourier, and Tamara St. John; and Senators Red Dawn Foster, Troy Heinert, Phil Jensen, and Lance Russell.

Listing of Staff Members

Staff members for the committee are Alex Timperley, Legislative Attorney, and Rachael Person, Senior Legislative Secretary.

Redefine Acute Mental Health Hospitalization Task Force
2019 Final Report

Study Assignment

2019 Senate Concurrent Resolution No. 2 directed the Executive Board of the Legislative Research Council to establish five task forces for the purpose of studying and making recommendations regarding the continuum of mental health services available in this state. Task force No. 1 was directed to redefine acute mental health hospitalizations in the areas of short, intermediate, and long-term placement, with an emphasis on keeping individuals needing placement in the community whenever possible.

Summary of Interim

The task force began with a detailed overview of mental health services currently available in the state. From representatives of the 11 Community Mental Health Centers, regional facilities, and the Human Services Center, the committee learned about the challenges of providing screenings, evaluations, outpatient services, and inpatient care, efficiently and cost effectively, to more than 17,000 individuals annually, in urban and rural areas -- individuals whose mental health needs could require the continuum of available services at any time during a 24 hour cycle and any day of the year.

The task force also learned that South Dakota's only public psychiatric hospital, the Human Services Center, admitted 1,377 individuals during FY 2019. Approximately 87 percent of those individuals were admitted under the involuntary commitment process. Twenty percent of the individuals receiving acute care were at the Human Services Center for fewer than five days and 10 percent of the individuals were readmitted within 30 days of their discharge.

Although the task force did not delve into the details of payment responsibility between the various governmental levels, it did recognize that existing responsibility for the costs incurred by individuals in crisis may inadvertently incentivize choices to transport a patient to the Center. Such choices have multiple repercussions. Among those is the fact that if the limited beds available at the Center are being utilized by individuals whose needs could be met elsewhere, the beds may not be available at the time they are needed to accommodate the care requirements of those individuals whose needs are so severe that they truly could not be addressed elsewhere. In addition, there are the attendant costs of utilizing law enforcement personnel to transport individuals across long distances and the social and emotional costs of separating individuals from their families and other supports.

Looking forward, the task force concluded that the regionalization of mental health services was a concept to be embraced. It also noted that the successful implementation of this concept would require not a mere redefinition or even a definition of terms, but rather a deliberate, strategic, and multi-faceted effort by the state.

Recommendations by the Task Force

In order to successfully regionalize the manner in which mental health services are provided to the residents of this state, the task force recommended that the Department of Social Services undertake an in-depth study and comprehensive review of existing and potential delivery models. The task force determined that the regionalization of services would necessitate an expansion of service delivery capacity at various locales throughout the state. The task force recommended that this could be initiated in short order by broadening the definition of an appropriate regional facility so that certain identified services could be provided at additional locations, and by encouraging the utilization of telepsychiatry, particularly in the conduct of examinations by qualified mental health professionals. Increasing the capacity of particular service providers, such as the community mental health centers, would involve more complex and detailed discussions regarding operational commitments, facility restructuring, staffing availability, and financial support.

The task force believed that these aspects of regionalization would become more clearly defined through the department's study. As the task force envisioned the study going forward, it recommended that the ensuing step involve the institution of several pilot projects to enable a better articulation and understanding of the unique needs and challenges that present themselves and would have to be addressed in different portions of the state.

The task force recognized that, at all levels of government in this state, there is a concerted effort to be particularly mindful of expenditures and to utilize tax dollars only in the most efficient and effective ways. The task force also recognized that a reconfiguration of the mental health delivery system into one with a regional focus might entail certain short-term investments in order to recoup long-term cost savings and other benefits.

Ultimately, the task force concluded that if the state rethinks and reconfigures the manner and location in which mental health services are delivered, the state will be able to provide quality care to its residents locally, or at the at the very least regionally, and in so doing, will ensure the best possible outcomes for those who require the services and for their families.

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

The task force met in Pierre on October 2, 2019, and October 29, 2019.

Listing of Task Force Members

Members of the task force were Representative Michael Diedrich, Chair; Senator Kris Langer, Vice-Chair; Senator Craig Kennedy; Representative Timothy Johns; Greg Barnier, Terrance Dosch, Amy Iversen-Pollreisz, Jeremy Johnson, Kari Johnston, Gary Marx, Amber Reints, and Katherine Sullivan.

Listing of Staff Members

Staff members for the committee are L. Anita Thomas, Principal Legislative Attorney and Kelly Thompson, Senior Legislative Secretary.

Reduce the Overall Use of Acute Mental Health Hospitalizations
2019 Final Report

Study Assignment

Created by Senate Concurrent Resolution 2, the Task Force was required to study, review, and identify how to reduce the overall use of acute mental health hospitalizations by developing and supporting existing alternatives where appropriate, create community-based short-stay alternatives, and develop day treatment options.

Summary of Interim

At the first meeting, the Task Force reviewed the 2018 Access to Mental Health Services Study, which led to the passage of SCR 2 during the 2019 Legislative Session and the formation of five task forces assigned to conduct a more in-depth study of different areas of mental health issues. The Task Force received presentations from various agencies in the state that provide crisis stabilization services including from Kris Graham, Southeast Behavioral Health in Sioux Falls; Dennis Pfrimmer, Capital Area Counseling in Pierre; Kari Johnston, Human Service Agency in Watertown; Barry Tice, Pennington County Health & Human Services in Rapid City; Teri Corrigan, Behavior Management Systems in Rapid City; and Jill Franken, Public Health in Sioux Falls. The Task Force identified areas of South Dakota Codified Law that should be considered under this study and agreed to focus on involuntary commitment under SDCL chapter 27A-10 as a significant driver of acute mental health hospitalizations. The Task Force received public testimony from Terry Dosch, South Dakota Council of Community Behavioral Health, and Dan Cross, Community Support Providers of South Dakota.

During its second meeting, the Task Force focused on reviewing chapter 27A-10 Emergency Commitment of Dangerously Ill Persons and identifying areas within the law that could be modified to reduce the reliance on inpatient hospitalizations. During the meeting, the Task Force reviewed each section of the chapter, beginning with 27A-10.1 through 27A-10-9.1. The primary focus of the discussion was the use of the term "Appropriate Regional Facility." Currently, only three inpatient psychiatric hospitals, located in Sioux Falls, Aberdeen, and Rapid City, are designated as Appropriate Regional Facilities. Expanding the definition to allow for other facilities, such as Crisis Stabilization Centers, to qualify could have a significant impact on the number of people admitted into a mental health hospital. The Task Force agreed to work on redefining this portion of the law as part of its study and assigned a subcommittee to propose appropriate language. The Task Force also received a presentation by Joan King and Jeff Capobianco with the National Council of Community Behavioral Health and Jim Castleberry with Pennington County. They discussed a study conducted for Pennington County to review access to mental health services and the needs in Western South Dakota. Recommendations from this study include a more robust Recovery Oriented System of Care that provides for crisis stabilization units to serve individuals who are going through an involuntary commitment process. The Task Force received public testimony from Dan Cross, Community Support Providers of South Dakota; Staci Ackerman, South Dakota Sheriffs Association; and Terry Dosch, South Dakota Council of Community Behavioral Health.

In its third meeting, the Task Force reviewed the proposed language relating to Appropriate Regional Facilities and agreed that a process to "apply" to become an Appropriate Regional Facility would allow for the most significant ability to expand this service. The Task Force then completed its review of chapter 27A-10, beginning with 27A-10-9.1 through 27A-10-24. Discussion surrounded the dual commitment process of an individual with both mental health and substance abuse issues, outpatient commitment procedures, and the use of the least restrictive environment for treatment. The Task Force received public testimony from Kris Graham, Southeast Behavioral Health, and Terry Dosch, South Dakota Council of Community Behavioral Health.

During its final meeting, the Task Force members recommended changes to the statutes governing the involuntary commitment of severely mentally ill persons, including: providing a process by which the Department of Social

Services may designate mental health facilities as "appropriate regional facilities" where individuals who are awaiting involuntary commitment hearings may be admitted; requiring follow-up examinations every twenty-four hours of individuals awaiting involuntary commitment hearings; providing for notification to the chair of a county board of mental illness whenever an individual is in violation of an outpatient commitment order; extending civil immunity to qualified mental health professionals at appropriate regional facilities; and allowing qualified mental health professionals at appropriate regional facilities to initiate a 24-hour hold of an individual who needs immediate intervention.

Listing of Legislation Adopted by the Task Force

- Requirements for mental health facilities to be designated as "appropriate regional facilities" by the Department of Social Services
- Requirement for follow-up mental health examinations every twenty-four hours of individuals awaiting involuntary commitment hearings
- Provide for notification of the chair of a county board of mental illness whenever and individual violates an outpatient commitment order
- Extending civil immunity to qualified mental health professionals at appropriate regional facilities
- Allowing qualified mental health professionals at appropriate regional facilities to initiate a 24-hour hold of an individual who needs immediate intervention

Task Force Recommendations

The Department of Social Services works with LRC staff to draft legislation allowing the competency restoration process to be conducted at HSC or other approved facilities.

Summary of Meeting Dates and Places

The Task Force met on July 9, August 22, September 30, and October 21. The Task Force met in Pierre for all meetings.

Listing of Task Force Members

Members of the Task Force are Senator Alan Solano, Chair; Representative Erin Healy, Vice-Chair; Senator Margaret Sutton; Representative Steven Haugaard; and Teri Corrigan, Jill Franken, Amy Iversen-Pollreisz, Jim Kinyon, Steve Lindquist, Dianna Marshall, Tom Stanage, and Barry Tice.

Listing of Staff Members

Staff members for the Task Force are Wenzel J. Cummings, Code Counsel, and Cindy Tryon, Senior Legislative Secretary

Leverage Telehealth and Telemedicine, Task Force 3
2019 Final Report

Study Assignment

The Task Force was charged with the task of studying, reviewing, and analyzing how to leverage telehealth and telemedicine to the full appropriate extent, with focus on the areas of acute assessment and crisis supports, along with mental health assessments and counseling.

The Task Force was the result of the adoption of Senate Concurrent Resolution 2 in 2019.

Summary of Interim

At the first meeting, the Task Force focused on existing telemental health access and structures. The group began by examining the statewide virtual capacity and where gaps in coverage exist. Next, the task force looked at the current availability of virtual mental health services and any available grant funding for those services. Tiffany Wolfgang from the SD Department of Social Services explained that the telehealth services eligible to be provided through the publicly funded behavioral health system include substance use services and mental health services. Rebecca Kiesow-Knudsen with Lutheran Social Services reported that her organization provides telehealth services through Microsoft Zoom, an audio and video conferencing application. Brian Erickson of Avera eCARE informed the members that his organization provides telehealth services to nearly 500 locations in 30 states. Through a grant from the Helmsley Charitable Trust, Avera eCARE was able to institute a pilot program in Brookings County to provide mobile crisis resources for emergency providers. A demonstration was provided to the Task Force. Lastly, Susan Kornder with the Northeastern Mental Health Center reported that community mental health centers currently use telehealth to support clinical services for telepsychiatry, substance use disorders, and mental health in 24 counties in the state.

Sydne Enlund, Policy Specialist at the National Conference of State Legislatures, kicked off the second meeting by presenting an in-depth summary on the use of telehealth for mental and behavioral health services in other states. J.R. LaPlante, Director of Tribal Relations at Avera Health, shared information on the development of the Pine Ridge Children's Telehealth Network. The group received some follow-up information including outcome data on the use of telehealth for mental health services from both Lutheran Social Services and Avera eCARE. Greg Dean with the SD Telecommunications Association and Julie Darrington with Vantage Point Solutions discussed the work that is being done to expand connectivity to the areas that are currently underserved or unserved, and the funding that is helping to pay for it. Mr. Scott Peters, an attorney from Sioux Falls, presented the group with some proposed statutory changes that he said would eliminate barriers to providing mobile crisis services remotely. Erin Srstka, a Grant Specialist from USD, provided information on the Area Health Education Centers supplemental grant that was received last year from the Health Resources and Services Administration. The grant will be used to implement telemental health for first responders. Ms. Jacque Larson from the SD Department of Education shared information on Project AWARE, a project funded through federal grants that provides for increased and improved access to mental health services for school-aged youth. Lastly, the Task Force focused on statewide shortages that exist among psychiatrists, counselors, and marriage and family therapists.

At the third meeting, Tiffany Wolfgang and Terry Dosch, Director of the SD Council of Mental Health Centers, Inc., discussed current staffing levels at the community mental health centers and the shortages that exist. Suzanne Starr with the Unified Judicial System provided an overview of the judicial system's video conferencing system and discussed how it is currently being used by the courts. The task force then worked as a group to define markers of success and what they would like to accomplish. The group divided into two groups, one focused on the continuum

of care and the other focused on the statutory changes that may be needed for further development in the area of telemental health.

The Task Force, at the fourth meeting, began formulating their final recommendations. They reviewed and discussed two bill drafts that were put together based on the recommendations from Scott Peters. They learned about possible funding options for the expansion of telehealth services in South Dakota. Senator Soholt told the members about a $4.3 million grant that Avera eCARE received from the Helmsley Charitable Trust to launch a national telehealth certification program. Lastly, the group requested that a bill be drafted to require the Department of Social Services to support all counties in developing and maintaining a statewide centralized resource information system.

The work of the Task Force concluded with the fifth meeting, which was conducted by video conference. The members finalized their recommendations, and reviewed and discussed the three bill drafts, which were adopted by the committee.

Listing of Legislation Adopted by the Committee

1. An Act to revise certain provisions regarding the use of telehealth technologies.
2. An Act to provide for the use of electronic communication in the involuntary commitment process and to declare an emergency.
3. An Act to require the Department of Social Services to fully support a statewide centralized resource information system.

Committee Recommendations

Access to the full spectrum of behavioral health services through telehealth can be supported statewide including: prevention, early intervention, crisis supports and outpatient services.

Recommendations are based on the following Task Force Conclusions:

That:

- Based on research, virtual behavioral health services are as effective as face-to-face.
- Access to behavioral health services statewide in South Dakota can be significantly improved by leveraging telehealth strategies.
- Most of South Dakota's current behavioral health access impediments, particularly in rural areas, can be solved with virtual strategies.
- Virtual strategies can be used to address gaps in prevention, early intervention, crisis supports, and outpatient services to improve outcomes in a cost-effective manner.
- Virtual strategies remove time and geographic barriers in accessing benchmark quality behavioral health care for all citizens.
- Leveraging statewide behavioral health access via telehealth would offer greater options for South Dakota citizens.
- Expansion of virtual behavioral health crisis teams must be a priority to support law enforcement and first-responders in accessing mental health expertise when responding to individuals in a mental health crisis in any location.
- Virtual access to Qualified Mental Health Professionals (QMHP's) is a priority to expand access to critical behavioral health services across the state.
- County 211 lines are key in creating a seamless mental health continuum and referral to local behavioral health services.
- Transforming the infrastructure of behavioral health access to include virtual in all settings will require public/private partnerships in planning, development, and funding.
- Within five years, almost all South Dakota citizens will have access to reliable broadband networks.

Recommendations

1. **Aggressively move forward in development of broadband access for all SD citizens that is reliable.**

2. **Provide virtual behavioral health delivery with:**
    a. Secure connectivity that is HIPAA compliant; and
    b. Common hardware/software platforms as much as possible, or efficient interface between systems for ease of use.

3. **Prioritize development of a statewide virtual behavioral health crisis response network in all settings, to include a person's home.**
    a. Direct the Department of Social Services to submit a report regarding progress toward meeting this priority to the members of this task force, the Joint Committee on Appropriations, and the Executive Board by the end of fiscal year 2020.

4. **Prioritize establishment of 211 in every county in South Dakota.**

5. **Ensure access to behavioral health crisis intervention and ongoing behavioral health services in all geographic areas and settings to include:**
    a. Health care, acute and ambulatory;
    b. Community-based behavioral health providers;
    c. All public, private and tribal K-12 schools;
    d. Senior centers and nursing homes; and
    e. Correctional facilities.

6. **Recognize that shortages exist among mental health professionals, especially in certain geographic areas.**
    a. Leverage virtual provider expertise in every aspect of service delivery.
    b. Establish statewide Qualified Mental Health Provider (QMHP's) infrastructure.
    c. Expand development of interdisciplinary teams.
    d. Keep moving forward with multi-state licensure for all behavioral health professionals.
    e. Create an environment for ease of licensure for workforce to enter South Dakota.

7. **Ensure that providers of telehealth pursue training and/or certification to provide quality virtual behavioral health services.**
    a. Promote training for providers on best practice use for telehealth services.
    b. Support professionals and paraprofessionals practicing at full scope of practice.
    c. Require that institutions of higher learning integrate telehealth service delivery into curriculum.
    d. Provide training for current professionals to become proficient with telehealth care delivery.

8. **Recognize that virtual behavioral health systems development will require creative funding solutions both for capital investment and ongoing reimbursement.**
    a. Ensure parity in reimbursement for all telehealth services, including crisis supports.
    b. Ensure a sustainable payment model through private and public funding sources.
    c. Develop business modeling that includes cost avoidance projections.

9. **Recognize need to create standardized metrics to identify and track success**
    a. Assure outcomes are the same regardless of person, place or delivery system

10. **Create an awareness campaign for the public on components of virtual behavioral health systems and how to access.**

Summary of Meeting Dates and Places

The committee met at the State Capitol in Pierre, SD on the following dates: July 17, August 27, September 24, and October 23, 2019. The committee met by video conference on November 6, 2019.

Listing of Committee Members

Members of the committee are: Senators Deb Soholt (Chair) and Jim Stalzer; Representatives Linda Duba, Herman Otten (Vice Chair) and Tamara St. John; and Public Members Brian Erickson, Amy Hartman, Rebecca Kiesow-Knudsen, Susan Kornder, Dr. Melita Rank, Kelly Serr, and Tiffany Wolfgang.

Listing of Staff Members

Staff members for the committee are: Clare Charlson, Principal Research Analyst; Rachael Person, Senior Legislative Secretary; and Kelly Thompson, Senior Legislative Secretary.

Redefine Nursing Home Criteria and Build Capacity Taskforce
2019 Final Report

Study Assignment

The redefine Nursing Home Criteria and Build Capacity Taskforce was charged with the task of redefining Human Service Center nursing home admission criteria and build mental health nursing home capacity for persons with organic brain damage.

Summary of Interim

At the first meeting on July 17, the taskforce heard from Amy Iversen-Pollreisz, Deputy Secretary Department of Social Services, and Jeremy Johnson, Director of Clinical Services at Human Services Center (HSC), on the long-term care unit at HSC including involuntary admission criteria, process, and cost of operation. The taskforce also heard from Anita Dunham, Systems Director of Case Management and Utilization at Rapid City Regional regarding challenges that community hospitals and nursing homes face when taking people with behavioral issues related to dementia or Alzheimer's. Lastly, Alicia Smith and other presenters from Vorys Health Care Advisors presented on other states' approaches for delivery of geropsychiatric care in community-based settings. The team presented the approaches used in the state of Virginia and Tennessee including Move Initiative and Palliative Care. Mark Deak from SD Health Care Organization provided public testimony concerning long-term care facilities' challenges with residents with behavioral issues.

The second meeting was held on October 1st and 2nd in Yankton. During the first day, Amy Iversen-Pollreisz, Deputy Secretary Department of Social Services, Jeremy Johnson, Director of Clinical Services, and Yvette Thomas, Director of Long-term Services and Supports from the Department of Human Services, provided information regarding the cost of the HSC geriatric unit and reimbursement rate for a community-based nursing home. Sakura Rohleder, fiscal and program analyst Legislative Research Council, presented information on other states' admission criteria for a state-owned or operated nursing home. Sarah Peterson, Wellness Director from Codington County, along with Lucy Lewno, chair of Yankton Mental Health Board, provided an overview of the commitment process and other information from the county government and the county mental health board perspective.

For the second day, Tom Stanage, CEO form Lewis and Clark Behavioral Health Services, and Lindsey McCarthy, CEO from Southern Plains Behavioral Health Services, explained the services offered to their residents through a crisis team and telehealth. Chris Qualm, administrator from the Department of Health, provided information regarding the facility surveys and common deficiencies found among facilities with behavioral health units. Lastly, Thomas Otten, Behavioral Health Service Line Administrator at Avera Health, explained the importance of HSC form a private nursing home perspective, and offered potential legislation. The taskforce discussed the mental health services continuum of care, workforce issues for the healthcare industry and challenges of workforce retention. Conner Fiscarelli from Custer Regional Health provided public testimony concerning the gap between resources available throughout the state and resources needed to be compliant with the regulations related to the community- based facilities.

The third meeting was held on October 30 in Pierre. Amy Iversen-Pollreisz, Deputy Secretary Department of Social Services, and Jeremy Johnson, Director of Clinical Services, provided information regarding the Human Services Center's number of residents who can be discharged but have no placements and the Medicaid eligibility determination process. Yvette Thomas, Director of Long-term Services and Supports from the Department of Human Services, provided follow up information regarding reimbursement rates for community-based nursing homes and the information updating process at Dakota at Home. Shawnie Rechtenbaugh, Secretary of Department of Human Services, provided information on the nursing home rates methodology review workgroup as well as innovation grants which were proposed by Governor Noem's administration during the 2019 Legislative Session.

Taskforce members considered and voted to endorse recommendations focusing on expediting the Medicaid eligibility determination process, reimbursement rates for community-based nursing homes, additional education opportunities specific to mental health issues in South Dakota, and an effort to place people closer to or back in their communities.

Listing of Legislation Adopted by the Committee

There is no legislation adopted by the taskforce.

Listing of Recommendation Adopted by the Committee

1. Department of Social Services to establish a process that allows preauthorization of Medicaid eligibility prior to admission to the long-term facilities
2. Increase availability and 24/7 access to Telehealth
3. To encourage Yankton Area Mental Wellness Conference to include a forum for a mental health issue in South Dakota for the 2020 conference
4. Department of Human Services to submit a request for information in providing a specialized unit to treat geriatric mental health patients that are discharged from the HSC geriatric unit, and submit the report to the members of this taskforce, Joint Committee on Appropriations, and Executive Board by the end of the Fiscal Year 2020
5. Human Services Center to sponsor one continuing medical education class related to mental health case studies during the calendar year 2020
6. Department of Human Services to create a workgroup to review the definition and criteria for add-on payment for community-based nursing home providers

Summary of Meeting Dates and Places

The taskforce met in Pierre on July 17. Members toured facilities in Yankton on October 1, and met after the tour as well as the following day. The last taskforce meeting was held on October 30 in Pierre.

Listing of Committee Members

Members of the taskforce are Representative Jean Hunhoff, Chair; Representative Rebecca Reimer, Vice Chair; Representative Chris Johnson, Senator Rocky Blare, Senator Susan Wismer, Anthony Erickson, Dr. Deepak Goyal, Amy Iversen-Pollreisz, Jeremy Johnson, Shawnie Rechtenbaugh, Phil Samuelson, and Laura Wilson.

Listing of Staff Members

Staff members for the taskforce are Sakura Rohleder, Fiscal and Program Analyst, Michael Loesevitz, Senior Legislative Attorney, Tamara Darnall, Chief Fiscal and Program Analyst, and Rachael Person, Senior Legislative Secretary.

Increase Community Services and Caregiver Supports
2019 Final Report

Study Assignment

The task force was established to increase the capacity for transitional housing and residential services in communities to keep individuals closer to home, and develop caregiver supports.

Summary of Interim

The task force held its first meeting on July 19 in Pierre. At the first meeting, Terry Dosch, Executive Director of the Council of Community Behavioral Health, presented on the various community-based residential services and supports provided to those with mental health issues and addictions. Amy Iversen-Pollreisz, Deputy Secretary, Department of Social Services, provided information on supported housing services provided by the Department, including the Transition Age Youth Program, Room and Board Services, and the Project for Assistance in Transition from Homelessness. During public testimony, Jennifer Stalley representing AARP of South Dakota, encouraged the task force to search for ways to provide additional support for caregivers.

During the August meeting, Barry Tice and Stacey Fielder discussed the New Start Program and the supported housing services the program provides in Pennington County. Roger Jacobs, U.S. Department of Housing and Urban Development (HUD), Field Office Director, discussed the types of assistance provided by HUD, including housing choice vouchers, public housing, project-based assistance, and tribal housing. Dr. Doug O'Neill and Craig Pahl, of the Brookings Empowerment Project, presented on the See-Do House pilot project, a short-term stay facility in Brookings and the important role of caregivers. Terry Dosch, Executive Director of the Council of Community Behavioral Health, addressed the task force regarding the questions brought up at the prior meeting regarding occupancy levels and waiting lists for housing provided by Community Mental Health Centers. Dennis Pfrimmer, President of Capital Area Counseling Services, presented on Transitional and Group Living. Amy Iversen-Pollreisz, Deputy Secretary, Department of Social Services, discussed peer support specialists and what it would take to establish a peer support specialist program in South Dakota.

At the task force's final meeting in November, Cindy Heiberger, President of South Dakota Association of County Commissioners, discussed the role of counties in providing services to those with mental health issues. Matt Krogman, Relators Association Representative, discussed property manager education and agreed to take steps to implement the task force's recommendation that a mental health awareness component be added to property manager education. Alex Timperley, Legislative Attorney at the Legislative Research Council, passed along information that was collected from Iowa, Minnesota, Montana, and Wyoming regarding how peer support services are provided in those states. Representatives from the Association of South Dakota Peer Supporters, Faith Goehring, Loran Harris, and John Ferrone, discussed the benefits of peer support and provided recommendations on how to implement peer support in South Dakota.

Task force findings:

- Short-term and transitional housing are important to the recovery of patients released from acute care, but long-term housing is critical to avoid recidivism.
- All levels of mental health care capacity are limited these limitations are exacerbated by a shortage of case managers.
- Helping recovering mental health care patients find housing and stay in their new home is intensive work.
- Solutions for housing are not one size fits all and are best developed at the local community level.
- Caregivers (non-medical professionals) providing assistance to loved ones need more information and support.

- There are capacity issues with assisted living facilities and skilled nursing homes that serve patients with long term acute mental health care needs.

Task force recommendations:

- Given the importance of long-term housing for those with mental health issues the task force recommends that information regarding housing those with mental illness should be sent to Public Housing Agencies in South Dakota and ask the Agencies to consider providing local preferences for those who have completed mental health treatment.
- The task force recommended that the Real Estate Commission add a mental health awareness component to property manager education and certification. Education for independent landlords (those not licensed by the Real Estate Commission) is also important and the Real Estate Commission should promote the inclusion of interested independent landlords in their training. Other community organizations should also be encouraged to handle education of independent landlords.
- The task force recommended that the Department of Human Services be encouraged to provide public services announcements regarding mental health and add information to their caregiver webpages specific to Mental Health Caregivers.
- The task force discussed how county funding for mental health care housing is limited. Some task force members suggested the need for additional sources of county funds.
- Recognizing the shortages in the mental health care work force and the need for more patient resources to avoid recidivism the task force recommended that a subcommittee of three task force members draft a concurrent resolution for the 2020 Legislative Session to instruct the Department of Social Services to study the possible implementation of a mental health care "peer specialist program" in South Dakota, including studying the cost, training, and certification needed to start and implement a program, and to report back to the Legislature by 2021 on the Department's findings.
- The task force discussed an idea for a potential future interim committee that would focus on children's mental health issues and needs.

Listing of Legislation Adopted by the Task Force

The task force recommended that a subcommittee of three task force members put together a concurrent resolution to ask the Department of Social Services to study the implementation of a peer specialist program in South Dakota.

Summary of Meeting Dates and Places

The task force met in Pierre on July 19, August 29, and November 4.

Listing of Task Force Members

Members of the task force are Representative Tim Reed, Chair; Senator Wayne Steinhauer, Vice Chair; Representative Tina Mulally, Representative Carl Perry, Senator Red Dawn Foster, Jesse Bailey, Colleen Casavan, Wendy Giebink, Amy Iversen-Pollreisz, Anne Kelly, Brandy Rhead, and Pam Vanmeeteren.

Listing of Staff Members

Staff members for the task force are Alex Timperley, Legislative Attorney and Cindy Tryon, Senior Legislative Secretary.

Judicial Opinions
2019 Report

Background and Introduction

Under section 2-9-1.1 of the South Dakota Codified Laws, 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, in accordance with 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

***Virginia House of Delegates v. Bethune-Hill*[1]: Standing of a Legislative Body**

Under Virginia law the authority to represent the Commonwealth's interests in civil litigation rests solely with the Attorney General.[2]

In *Bethune-Hill*, the Supreme Court of the United States considered whether the Virginia House of Delegates had standing to appeal the invalidation of a redistricting plan. The Court concluded the Virginia House of Delegates did not have standing to appeal on its own behalf because the body itself suffered no cognizable harm as only one body of a bicameral legislature. There was no standing on behalf of the Commonwealth because, by statute, the Attorney General has sole authority to represent the Commonwealth.

***SD Voice v. Noem*[3]: re: Out-of-state Contributions Ban**

SDCL 12-27-18.2 prohibits contributions to ballot question committees "by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution."

The Federal District Court considered whether the statute violates the First Amendment and whether it violates the so-called "dormant" Commerce Clause.[4] The Court concluded that the ban violated the First Amendment. Since the law bans all direct political speech from one segment of society the ban would be unconstitutional unless it was narrowly tailored to a compelling government interest. The Court determined that this law was not narrowly tailored to a compelling government interest.

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[1] 139 S.Ct. 1945 (2019).
[2] Va. Code Ann. § 2.2-507(A).
[3] 380 F.Supp.3d 939 (2019).
[4] The "dormant" Commerce Clause prohibits states from discriminating against or imposing excessive burdens on interstate commerce without congressional approval. *See* U.S. Const. Art. I, § 8, Cl. 3.

The court also concluded that the statute violates the dormant Commerce Clause because the law was intended to discriminate against out-of-state interests.

Dakota Rural Action v. Noem[5]: re: Riot Boosting

SDCL 22-10-1 defines a riot as "[a]ny use of force or violence or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons, acting together and without authority of law[.]" SDCL 22-10-6 and 22-10-6.1 impose a felony for any person who directs, advises, encourages or solicits persons participating in a riot to acts of force or violence. Additionally, in 2019, the Legislature passed Senate Bills 189 and 190 which imposed civil liability for riot boosting.[6]

In *Dakota Rural Action*, the Federal District Court considered whether to grant a preliminary injunction[7] to stop enforcement of these laws. The Court granted the preliminary injunction, concluding that the First Amendment challenges to the riot boosting laws were likely to prevail, with the possible exception of direction of another person participating in the riot to use force or violence. While the case was pending the challengers and the Governor reached a Stipulated Settlement Agreement that would stop enforcement of portions of these laws. Some parts of these laws will still be enforced.

The agreement provides that:

- SDCL 20-9-54, in its present form, will not be enforced except for that portion of the statute which provides: In addition to any other liability or criminal penalty under law, a person is liable for riot boosting, jointly and severally with any other person, to the state or a political subdivision in an action for damages if the person: (3) Upon the direction, advice, encouragement, or solicitation of any other person, uses force or violence.
- SDCL 20-9-56, in its present form, may be enforced, except for the sentence which provides: defendant who solicits or compensates any other person to commit an unlawful act or to be arrested is subject to three times a sum that would compensate for the detriment caused.
- SDCL 22-10-6, in its present form, will not be enforced.
- SDCL 22-10-6.1, in its present form will not be enforced.

Recommendation: The Legislature should look at how the law is being enforced to determine if this is consistent with the Legislature's intent. Additionally, the Legislature should consider repealing any law that is unenforceable.

Olson v. Butte County Commission[8]: re: Appealing a Road Vacation

Under SDCL 31-3-34 a person aggrieved by a county board's decision to vacate a public highway may appeal the decision "within thirty days after the date on which the decision of the board has become effective [. . .]."

In *Olson*, the South Dakota Supreme Court considered when a board's decision to vacate a road is effective to determine the final date a person may appeal the board's decision. The Court found that SDCL 7-18A-8 provides

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[5] 2019 WL 4464388.
[6] SDCL 20-9-53 to 20-9-57. Under SDCL 20-9-54 "a person is liable for riot boosting [. . .] if the person (1) Participates in any riot and directs, advises, encourages, or solicits any other person participating in the riot to acts of force or violence; (2) Does not personally participate in any riot but directs, advises, encourages, or solicits other persons participating in the riot to acts of force or violence; or (3) Upon the direction, advice, encouragement, or solicitation of any other person, uses force or violence, or makes any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons, acting together and without authority of law."
[7] A preliminary injunction is a "temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case." *See Black's Law Dictionary* (11th ed. 2019).
[8] 2019 S.D. 13.

the effective date of all county commission resolutions, unless the Legislature has provided a different effective date, and the statute to vacate a road does not provide a different effective date. Under SDCL 7-18A-8, "every resolution or ordinance passed by a board shall take effect on the twentieth day after its completed publication [. . .]." Therefore, the Court concluded that the effective date is twenty days after publication, and a person has thirty days after that date to appeal a county board decision to vacate a road.

The Court determined that under this interpretation a person could appeal the board's decision after the land is vacated and the land comprising the road had been transferred back to the original owner.[9] The Court called on the Legislature to resolve this issue.

Recommendation: The Legislature may wish to eliminate the gap between when the vacated road may be transferred back to the original owner and when someone wishing to challenge the decision may appeal.

***Leighton v. Bennett*,[10]: re: Service of Notice of Death**

When a person involved in a lawsuit dies, SDCL 15-6-25(a)(1) gives the procedure to substitute a party in that person's place. A lawsuit will be dismissed unless a motion for substitution is made within 90 days after notice of death is served "as provided herein for service of the motion."[11] The statute also provides that a motion for substitution "shall be served on the parties as provided in § 15-6-5 and upon persons not parties in the manner provided in § 15-6-4 [. . .]."[12]

In *Leighton*, the South Dakota Supreme Court considered whether a notice of death must be served on both parties and interested nonparties to start the 90-day period. The Court concluded that there was no requirement to serve a nonparty to start the 90-day period. The Court determined that when the statute says notice of death must be served "as provided herein for the service of the motion" this merely refers to how service must be made and does not create a requirement that an interested nonparty must be served.

Recommendation: SDCL 15-6-25(a)(1) is unclear and subject to interpretation. The Legislature may wish to clarify the language "as provided herein for service of the motion."

***In re Matter of 2012, 2013, and 2014 Tax Refund and Abatement*[13]: re: Tax Refunds and Abatements**

Under SDCL 10-18-1 if a person claims that an "assessment or tax or any part of the assessment or tax is invalid [. . .] the assessment or tax may be abated, or the tax refunded if paid." The statute also provides that "[t]he board of county commissioners may abate or refund, in whole or in part, the invalid assessment or tax" only if it fits within one of the six subdivisions.[14]

In this case, the South Dakota Supreme Court considered four of the six subdivisions of the statute. Subdivision (1) applies when "an error has been made in any identifying entry or description of the real property [.]" Subdivision (3) applies when "the complainant or the property is exempt from the tax[.]" Subdivision (4) applies when "the complainant had no taxable interest in the property assessed against the complainant at the time fixed by law for

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[9] *See* SDCL 31-3-9 and 31-3-10.
[10] 2019 S.D. 19.
[11] SDCL 15-6-25(a)(1).
[12] SDCL 15-6-25(a)(1).
[13] 2019 S.D. 26.
[14] SDCL 10-18-1.

making the assessments[.]" Subdivision (5) applies when "taxes have been erroneously paid or error made in noting payment or issuing receipt for the taxes paid[.]"

The Court determined that subdivisions (1) and (5) apply only when the errors were clerical errors or mistakes. The Court further determined that subdivision (3) does not apply to property partially exempt from tax, but only to fully exempt property. Finally, the Court determined that subdivision (4) does not apply when a person only has a partial taxable interest in the property.

A dissenting opinion challenged the majority's interpretation of subdivision (3). The dissenting justice interpreted subdivision (3) to apply to property partially exempt from taxation, because the statute's earlier language says that an assessment or tax may be abated or refunded if "the assessment or tax *or any part of the assessment or tax* is invalid[.]."[15]

Recommendation: SDCL 10-18-1(3) should be clarified to make clear whether subdivision (3) applies to partially exempt property or only to fully exempt property.

Abata v. Pennington County Board of Commisioners[16] **re: Zoning Ordinance Amendment Notices**

SDCL 11-2-18 and 11-2-19 provide the notice requirements for hearings to enact zoning ordinances and that "[n]otice of the time and place of the *hearings* shall be given once at least ten days in advance[.]" Regarding ordinance amendments, SDCL 11-2-29 and 11-2-30 provide that notice "of the time and place of the *hearing*" must be given ten days in advance.[17] SDCL 11-2-28 provides that notice requirements are the same for both zoning ordinances and zoning ordinance amendments.

In *Abata*, the South Dakota Supreme Court considered whether a county board must provide new notice for each successive hearing on a zoning ordinance amendment. The Court concluded that the statutes do not require legal notice before each successive hearing. The Court considered the significance of the use of the plural "hearings" in regard to enacting zoning ordinances, but the singular use of "hearing" in regard to zoning ordinance amendments. The Court determined that when the statute uses the plural "hearings" in SDCL 11-2-18 and 11-2-19, notice should be provided before each of the three types of matters addressed in the statute, and not that notice be provided in successive hearings in the same matter.

Recommendation: The notice requirements for hearings on enactments and amendments of zoning ordinances are subject to interpretation and the Legislature may want to clarify the statutes.

State v. Sharpfish[18]**: re: A Prosecutor's Appellate Jurisdiction**

Under SDCL 23A-32-5 a prosecutor may appeal a suppression order or a dismissal of a complaint, but may not appeal under this statute "after a defendant has been put in jeopardy[.]" Alternatively, SDCL 23A-32-12 allows discretionary appeals of intermediate orders entered "before trial [. . .] when the court considers that the ends of justice will be served[.]"

In *Sharpfish* the South Dakota Supreme Court considered the meaning of "put in jeopardy" under SDCL 23A-32-5, and whether SDCL 23A-32-12 allows appeals from a magistrate court directly to the Court.

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[15] Emphasis added.
[16] 2019 S.D. 39.
[17] Emphasis added.
[18] 2019 S.D. 49.

On the issue of jeopardy, three justices interpreted the term "jeopardy" to mean the risk of conviction and punishment that a criminal defendant faces at trial, and distinguished the use of the term in SDCL 23A-32-5 from the concept of "double jeopardy", which subjects a defendant to being prosecuted or sentenced twice for substantially the same offense. A special concurrence disagreed and interpreted "put in jeopardy" to mean to put in risk of double jeopardy.

On the issue of appeals, one justice interpreted SDCL 23A-32-12 as allowing appeals from a magistrate court directly to the South Dakota Supreme Court. The special concurrence and dissent disagreed. The special concurrence argued that SDCL 16-6-10 gives circuit courts exclusive jurisdiction on all judgments and orders from magistrate courts, with the only exception being SDCL 23A-32-5.

Recommendation: SDCL 23A-32-5 is subject to interpretation and the Legislature should clarify the phrase "put in jeopardy." The Legislature should also clarify whether SDCL 23A-32-12 provides jurisdiction for an appeal from a magistrate court directly to the South Dakota Supreme Court.

Rhines v. South Dakota Department of Corrections[19]**: Department of Corrections Rulemaking**

SDCL 1-15-20 gives rulemaking authority to the Department of Corrections concerning: "(1) Public contact with inmates through telephone and mail services and visits; (2) Inmate release date calculations; (3) Standards for parole supervision and parolee conduct; (4) Federal and out-of-state inmates housed in state correctional facilities; and (5) Inmate accounts." Further providing that "[t]he department may prescribe departmental policies and procedures for the management of its institutions and agencies, including inmate disciplinary matters." SDCL 1-26-1(8)(g) excludes from the definition of "rule" in the Administrative Procedures Act (APA) inmate disciplinary matters as defined in SDCL 1-15-20.

In *Rhines*, the South Dakota Supreme Court considered whether Department of Corrections' policies related to the method and procedures for carrying out the execution of inmates are "administrative rules" subject to the requirements of the APA. The Court interpreted SDCL 1-15-20 as limiting the Department's rulemaking authority to the five enumerated areas. But the Court concluded that the policies are not rules subject to the APA because the Department's policy for the execution of an inmate fits within the "broad scope of regulating 'all matters relating to inmate behavior.'"

Recommendation: The Legislature should consider whether the Court's interpretation of the scope of the Department of Corrections rulemaking authority is consistent with the Legislature's intent regarding the execution of inmates.

[19] 2019 S.D. 59.

REPORT OF THE

GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

2019

COMMITTEE MEMBERS

Senator Ryan Maher, Chair
Representative Sue Peterson, Vice Chair

Representative Steven Haugaard
Representative Chris Karr
Representative Isaac Latterell
Representative Shawn Bordeaux

Senator Jack Kolbeck
Senator John Wiik
Senator Arthur Rusch
Senator Susan Wismer

TABLE OF CONTENTS

	Page
Committee Responsibilities	1
Committee Activity	2
Performance Reports	2
Project AWARE Grant Performance Review	9
Specific Matters Pertaining to Various State Agencies	9
Juvenile Corrections	17
Audit Reports	17
Appendix A – Performance Indicators of the Agencies Reviewed by GOAC	20
Governor's Office of Economic Development	20
Department of Transportation	24
Department of Tourism	36
Department of Game, Fish and Parks	51
Department of Agriculture	57
Department of Environment and Natural Resources	58
Department of Education	59

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 following annual reports:

    - South Dakota 911 Coordination Board
    - South Dakota State Brand Board
    - South Dakota High School Activities Association
    - Obligation Recovery Center
    - Accountability report from the Technical Institutes

- To review the annual reports from each Department administering the funds received from the Building South Dakota Program;

- Review the Department of Corrections' semi-annual report on abuse and neglect in private placement facilities;

- 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 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 process is a collaborative effort between the agencies and the Committee. When agencies appear every three years, it is an opportunity for the Committee to revise, add, delete, or accept as is existing agency performance measures. The agency has the mission or vision for the Department as well as the data to track progress and the Committee provides feedback for establishing key performance measures. Seven agencies appeared before the Committee and with feedback from the Committee developed the following performance measures.

Governor's Office of Economic Development

The Community Development Director of the Governor's Office of Economic Development (GOED) described their mission to expand job opportunities, retain and expand existing businesses, foster new businesses, facilitate business succession and recruit out-of-state businesses. To accomplish this mission the GOED identified seven performance metrics. The first three metrics are activity metrics and the last four metrics are outcome metrics:

1. Conduct 500 retention and expansion visits with South Dakota companies
2. Conduct 200 community visits
3. Conduct 36 retention and expansion, partner, or community visits in Indian Country
4. Facilitate 40 business projects
5. Facilitate $800 million in capital expenditures
6. Facilitate 1,200 jobs created or retained
7. South Dakota Gross Domestic Product at $53 billion

The Committee approved the performance metrics.

Department of Transportation

The Secretary of the Department of Transportation described the five key metrics used by the Department of Transportation to measure outcomes. In addition to the metrics presented by

the Department, the Committee desired a metric be developed to track the condition of the State-owned rail line. The Committee passed a motion to amend the first metric from "Pavement Condition" to "Infrastructure Condition". The new metric would track the condition of the State highways and the State-owned rail line. The Secretary agreed to include a metric on the condition of the State-owned line in the November 2019 final report. The five key metrics are:

1. Infrastructure condition
2. Bridge condition
3. Highway safety
4. Customer satisfaction
5. Workforce development

Department of Tourism

The Deputy Secretary of the Department of Tourism described the Department's goals:

1. Increase year-over-year tourism related economic impact by 2%
2. Increase year-over-year tourism related jobs by 1%
3. Increase year-over-year visitation by 1.5%
4. Increase year-over-year visitor spending by 2%
5. Increase year-over-year State and local tax revenue by 2%
6. Increase year-over-year tourism promotion tax revenue by 2%

In addition, the Committee asked the Department to develop a performance measure for tribal tourism. The Deputy Secretary explained the efforts that have been made to help the tribes, from speaking at tribal events, meeting with tribal leaders, and inclusion of tribal activities in the vacation guide published by the Department. She explained that at this time there is nothing tangible and consistent that can be developed into a performance measure. She stated they are currently working with George Washington University to develop a tribal tourism metric. She stated that the Department would continue to update the Committee on their tribal tourism efforts.

The Committee also requested a performance measure to track visitor satisfaction. The Deputy Secretary described a number of surveys that measure different aspects relating to visitor satisfaction. She explained that one of the surveys, completed by a company named DK Shifflet, has been done since 1982 and is the best survey to use as a performance measure to monitor visitor satisfaction. The Committee did not object to the use of the DK Shifflet survey as a measure of visitor satisfaction.

Department of Game, Fish and Parks

The Finance Officer for the Department of Game, Fish and Parks presented the performance measures that were originally agreed to with the Legislative Planning Committee three years

ago. The first goal is to provide outdoor recreational opportunities by optimizing the quantity and quality of sustainable hunting, fishing, camping, trapping and other outdoor recreational opportunities. The Department utilizes customer surveys to measure success and tracks the results over time to see what progress has been made. The four areas where surveys are used to track customer satisfaction are hunting, fishing, trapping, and camping. The second goal of the Department is to maintain a consistent funding mix for the Department using general funds, bond payment funds, federal funds, and other funds. The Committee approved the continued use of the Department's goals and metrics.

Department of Agriculture

A Policy Advisor for the Department of Agriculture described the mission of the Department, which is, to promote, protect, and preserve South Dakota agriculture for today and tomorrow. The Department has established the following four goals:

1. To continue to grow our outreach efforts to volunteer fire departments as we are able to given federal funding.
2. To attract quality year-round events at the State Fair Park and maintain event days within 5% on an annual basis.
3. To continue to write or review an average of 190 plans per year based on current funding levels and will grow our planning efforts (to manage natural resources) as additional funding is available.
4. To make initial contact with 100% of complainants (regarding allegations of a violation of pesticide law) within one business day.

The Committee approved the Department's goals and passed a motion for the Department to develop an additional measure relating to customer satisfaction. The Secretary of the Department of Agriculture appeared a second time and explained the additional resources that would be required to develop a customer satisfaction performance measure. She stated the Department currently did not have budget to complete this request. The Committee accepted her explanation and approved the Department's existing performance measures.

Department of Environment and Natural Resources

The Secretary of the Department of Environment and Natural Resources described the responsibility of the Department to take care of the land, air and water. He summarized the Department's anticipated outcomes and metrics to measure success:

1. Public health protected – No public health outbreaks caused by poor drinking water or poor air quality.
2. Air and water quality protected – 100% of the State meets the national air quality standards. The Department completes the biennial integrated Water Quality Report measuring the State's water quality to U.S. Environmental Protection Agency (EPA) standards.

3. Pollution prevention – 100% of the federal EPA 319 money is obligated each year to prevent nonpoint source water pollution in watershed projects and 100% of old abandoned underground tanks are pulled to prevent groundwater pollution.
4. Cleanup of mined lands and spills – 90% of reclamation liabilities are released for reclaimed mines and 90% of all cumulative spills are cleaned up and closed out with no further action needed.
5. Adequate and affordable publicly owned environmental infrastructure – 90% of State water project applications are funded using grants and low interest loans from State Water and Environment Fund and EPA State Revolving Fund financial assistance programs to provide environmental infrastructure upgrades and expansions.
6. Environmental and business friendly climates maintained – 100% of contested environmental permits are upheld by the appropriate permit issuing authority, State board, or court which confirms that the Department has drafted the permits to be technically correct and legally defensible.

The Committee approved the performance metrics.

Department of Education

The Secretary of the Department of Education (DOE) presented revised performance measures for the Department. The Committee did not approve the measures as presented based on the following information:

For the three years of 2016, 2017 and 2018, (the first three years that results were available related to the changes that were instituted in 2013) the DOE has met only 10% (6 of 60) of their performance measures. When the DOE presented their draft report of new performance measures in May, the Committee expressed concern with the low results and the low 5-year and 10-year proposed goals.

For example:

- The English Proficiency Rates for 3rd graders have been between 48% - 51%, with a 5-year goal of 54%. (2015-2019)
- The Math Proficiency Rates for 8th graders have been between 39% - 47%, with a 5-year goal of 52%. (2015-2019)
- College and Career Readiness Rates in the area of Math have decreased from 68% in 2013 to 54% in 2019, and the DOE proposed a 5-year goal of 55%, and a 10-year goal of 68%.
- In 2018, after consistently failing to meet their targets, the DOE re-set time frames and performance measurements from the 6-year targets to the 5-year and 10-year targets. To better illustrate – starting in 2015, the 2021 target for the Math Proficiency Rate for 8th graders was 69.62%; the new format became a 5-year and 10-year goal with much lower target goals (52% and 57% respectively).

During DOE's presentation to the Committee on October 30, 2019, the DOE did not adequately address the committees concerns regarding current and future student achievement. Because the DOE has failed to meet achievable past performance measures, and based information provided to the Committee in May and October, the committee has no reason to expect different results going forward, the Committee did not approve the new performance measures as presented.

From 2015 to budgeted 2020, the DOE budget has increased $200 million yet test results have shown no significant improvement. Because the Committee has an obligation, according to State law (SDCL 2-6-2), to taxpayers, students and parents to review and analyze financial and programmatic areas of the DOE and make recommendations for improvement, as well as develop and implement a performance management review process, the following motion was made by Senator Kolbeck, seconded by Representative Karr and passed by the Committee:

"I move that an informal Subcommittee of this Committee be appointed consisting of the Chair, Vice Chair, and one additional member of this Committee, to "review and analyze" the Department of Education. The Subcommittee, in conjunction with the Department of Legislative Audit (DLA) and a third-party research body selected by the work group, will oversee an independent review of the Department of Education, including: 1) financial sources and uses of all general, federal and other funds (as requested by the work group and conducted by DLA), 2) a thorough analysis of the Department of Education's adherence to the State Constitutional mandate, including content, purpose, goals and results. The conclusions and recommendations of the report will inform the House and Senate Education Committees, the Joint Appropriations Committees, and the Government Operations and Audit Committee on future recommended Education Department appropriations and relevant program authorizations by which funding should be spent more effectively to significantly improve student outcomes in South Dakota."

Chair Maher appointed Representative Peterson (chair), Representative Bordeaux, Representative Karr, and Senator Kolbeck to the Subcommittee.

<u>South Dakota State Brand Board</u>

The Director of the South Dakota State Brand Board was present to provide the Committee the State Brand Board Annual Report and answer Committee questions. She reported that the State 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

1,529,134 head of livestock were inspected in calendar year 2018, as compared to 1,826,424 inspected in calendar year 2017.

The Committee had additional questions about the turnaround time for approving brand applications. The Director stated they have changed the application form and are providing applicants more information on-line about the application process. The Committee will continue to review the operations of the State Brand Board.

The Building South Dakota Programs (BSD)

The Finance Director 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 seven grants during the fiscal year totaling $12,625.

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 seven grants during the fiscal year totaling $1.9 million. The projected number of jobs created was 185.

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 thirteen grants during the fiscal year totaling $31 million. The projected number of jobs created or retained was 995.

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 four JGP grants awarded during the fiscal year totaling $163,611. The projected number of jobs created was 74.

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 FY2019, 17 projects and

programs were funded, which will assist 248 individuals and families. In FY2019, $2.7 million was awarded by SDHDA.

South Dakota Board of Technical Education Accountability Report

The Executive Director of the Board of Technical Education (BOTE) and the four Presidents from the technical institutes presented to the Committee. The Director reported on the system's enrollment, retention rate, graduation rate, and student placement. The system's 2018-2019 enrollment report, unduplicated enrollment (full-time, part-time and dual-credit) at the four institutions increased by 2.6% (6,652 students to 6,825).

The Director explained that the retention rate measures the number of students who enroll in an institution one fall and return to the institution the following fall. The system is currently collecting data for the fall 2019 retention report. The system retention rate history from 2015 to 2018 was 77%, 77%, 78%, and 78%, respectively. The goal for 2019 is 78.5%. The Director stated the Build Dakota Scholarship Program has helped with the retention of students.

The Director stated the system produced 2,393 graduates during the 2017-2018 academic year, up from 2,334 graduates in 2016-2017. The system's placement rate was 98% (2090). The 2018 rate is an increase from the 97.2% placement rate in 2017. Among those graduates who identified themselves as "employed" (1,683), 83.2% (1,401) are employed in South Dakota.

The Director thanked the Legislature for the additional instructor salary support funding and maintenance and repair funding. He explained that the additional funding has helped attract and retain qualified instructors. The Committee approved the annual accountability report.

South Dakota 911 Coordination Board

Counsel for the Department of Public Safety presented the 9-1-1 Coordination Board report, which is submitted each year. There are 32 Public Safety Answering Points (PSAPs), including four tribal PSAPs.

In 2019, the PSAPs answered 332,721 9-1-1 calls. The PSAPs reported their total calls answered (both 9-1-1 and non-emergency calls combined) were 1.4 million. The Next Generation 9-1-1 System, an internet-based system, is a major priority for the Board. In addition, the Board is working on meeting their data accuracy goal of 98% for the geographic information system electronic database. Counsel reported on the financial activity in the 9-1-1 Coordination Fund for fiscal year 2019 and explained how surcharge revenue is distributed.

Counsel informed the Committee of 9-1-1 service outages occurring in the fall of 2018. The Board approved litigation and filed a civil lawsuit against vendors that were involved since 2014 in South Dakota's Next Generation 9-1-1 System. The lawsuit alleges the vendors failed to provide satisfactory service. In June 2019, a new vendor was selected to work on the Next Generation 9-1-1 System.

Project AWARE Grant Performance Review

The Committee selected the Project AWARE Grant during the 2018 interim period for review in the 2019 interim. The grant is a five-year, $8.7 million grant that started in September 2018 prior to Legislative approval of federal spending authority for the grant. The Department of Education (DOE) requested retroactive spending authority during the 2019 Legislative session. The federal grant is from Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. The Committee's objective is to learn about the goals of the program and track program performance over the period of the grant.

The Director of the Division of Accreditation, Certification and Data Management for the South Dakota Department of Education presented the following goals for Project Aware:

- Increase and improve access to mental health services for school-aged youth across South Dakota through partnerships with school districts, educational cooperatives, and community mental health centers
- Equip educational professionals with the tools necessary to recognize and respond to behavioral health issues among their students through multi-tiered systems of support
- Conduct outreach and engagement with school aged-youth and their families to promote positive mental health and increase awareness of mental health issues
- Help youth develop skills that promote resilience, destigmatize mental health, and increase self and peer awareness of mental health issues

The Director stated the Department is also partnering with the Department of Social Services Division of Behavioral Health. She advised that they have been up and running for about six months and explained the timeline for the grant through the fifth year.

The Committee expressed concerns about data collection, privacy and whether specific parental consent is obtained for student participation in the program. Jackie Larson of the DOE stated that specific parental consent is obtained, however, when copies of the consent forms were requested by the Committee, at least one school did not have them designed yet. No written policies or procedures are in place to ensure that students without parental consent were not included in the screening, and information regarding inception dates of consent form use, and related exceptions or gaps, requested by the Committee, was not provided by the DOE. The Committee plans to monitor and follow this grant through its whole process. Committee members plan to continue monitoring the performance of the grant.

Specific Matters Pertaining to Various State Agencies

<u>University of South Dakota Free Speech Policy</u>

The President of the University of South Dakota (USD) described the investigation conducted by USD relating to the Hawaiian Day incident at the USD Law School. General Counsel for USD explained the investigation he conducted including a timeline of events and applicable USD

policy. The Committee was concerned about how USD would handle similar situations in the future. The President explained the related discussions on campus, emphasizing the importance of being clear on advice issued and allowing the student body to come up with solutions. The Committee asked if there was any pending legal action relating to this incident and USD Counsel advised there was not.

Board of Regents

The Executive Director of the Board of Regents along with five Presidents and one Vice President of the six South Dakota universities reported on the implementation of House Bill 1087, 2019 session, regarding free speech and intellectual diversity on university campuses. The Director stated the Board of Regents along with the six University officials have gone to work to establish guidelines and policies to implement House Bill 1087. He emphasized that this is a process and they are in the midst of the process. Each of the six University officials explained activities that have occurred on their respective campuses, as well as future events planned for intellectual diversity and free speech training. The Committee heard public testimony from an official with the American Council of Trustees and Alumni. The Committee asked to what extent the Universities have worked with various free speech and intellectual diversity organizations. In addition, the Committee identified information they expected to see in the annual report, required by House Bill 1087. The Committee plans to continue to monitor the implementation of House Bill 1087.

New Operational Plan for the University Center Sioux Falls

The President of USD and the Executive Director of the University Center Sioux Falls (UCSF) explained the new memorandum of understanding between USD and UCSF. The Director described the gap between technical schools and universities, and they hope to provide a connection like a community college would. To reflect this change, the name has also been changed to the Community College for Sioux Falls (CCSF). The President testified CCSF will now be a branch of USD. The Committee was dissatisfied with the lack of information shared with the Legislature prior to these changes being made. The Committee expressed concern about whether the CCSF would be self-supporting under the new model and plans to continue to review this topic in the future.

Department of Social Services Medicaid Management Information System

The Deputy Secretary of the Department of Social Services (DSS) provided background information on the Medicaid Management Information System (MMIS), which is used to process all healthcare claims in the Medicaid program. She stated the mainframe legacy system is being modernized in phases and includes the following modules:

- Provider Enrollment and Credentialing
- Prior Authorization
- Claims Adjudication (health care and pharmacy claims)

- Data Analytics/Data Warehouse

The Committee was concerned about prior upgrade failures and how it can be avoided going forward. The Committee plans to monitor progress in the future.

Department of Education discussed Subrecipient Monitoring Procedures

The Committee wanted follow-up information on how the South Dakota Department of Education (SDDOE) is progressing on their monitoring procedures for subawards to local education agencies (LEAs). The Director of the Division of Finance and Management with the SDDOE provided information on the SDDOE's fiscal monitoring policies. The Committee asked numerous questions and were updated on the changes that have been made to strength the oversight process. The Director described the pre-award risk assessment process that now takes place prior to awarding the grant, the ongoing risk assessments completed, monitoring activities, technical assistance provided to LEAs, and enforcement actions. The Committee plans to continue monitoring the Department's work in this area.

South Dakota School for the Deaf

On two occasions the Committee reviewed recent developments relating to the South Dakota School for the Deaf (SDSD). The Committee requested and received information about the programs offered by the school and the status of the SDSD property in Sioux Falls. The Superintendent of the SDSD explained the language development programs offered to children from birth up to their twenty second birthday. She explained the decision made, 13 years ago, to go to a total outreach model and discontinue on-campus classes in Sioux Falls. The decision was made because the SDSD campus in Sioux Falls had less than a dozen students on campus and they served about 400 students statewide. Audiological services remain on-campus. The SDSD now serves 589 children around the State.

Counsel for the Board of Regents explained the events that led up to the sale of the SDSD campus property. The SDSD campus was conveyed to the Sioux Falls Ministry Center, and the State now has ownership of the TCF Building in Sioux Falls. The Committee heard public testimony regarding concerns about the new location and for educational services that better meet the needs of deaf and hard of hearing children. No further action was taken by the Committee.

Department of Game, Fish and Parks

Second Century Habitat Fund

The Deputy Secretary of the South Dakota Department of Game, Fish and Parks provided information about the make-up of the Second Century Habitat Fund and habitat programs offered through the fund. The Deputy Secretary explained the fund is a nonprofit corporation qualifying as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The former name of the organization was the South Dakota Habitat Conservation Foundation, Inc. He explained the purposes of the Second Century Habitat Fund are:

1. To solicit and receive contributions to conserve and improve the quality and quantity of habitat suitable for wildlife and to improve water quality and other natural resources in South Dakota.
2. To solicit and receive contributions which will enhance habitat conservation efforts through research, educational programs and public awareness programs.
3. To serve as a resource to both private landowners and conservation organizations focused on improving habitat through habitat programs.

The Deputy Secretary stated Senate Bill 176, 2019 Session, appropriated $1,000,000 to the fund and the fund has a balance of $2,400,000. Section 1 of Senate Bill 176 states, "There is hereby appropriated from the general fund the sum of one million dollars ($1,000,000), or so much thereof as may be necessary, to the Bureau of Finance and Management to provide a grant to the second century habitat fund held with the South Dakota Community Foundation and administered by the executive board of the second century habitat fund for the protection and enhancement of wildlife habitat across the state." The Committee was concerned about this money going to a 501(c)(3) nonprofit corporation and who would provide oversight of this nonprofit corporation. The Deputy Secretary suggested a member of the Legislature be added to the Board for more transparency. The Committee plans to continue following the activity of this fund.

Proposed changes to licenses, park and camping fees

The Director of the Division of Parks and Recreation explained the primary reason for the fee increases was because of the repair projects attributable to the 2019 spring flooding events. He explained the consecutive wet springs have impacted early season park use and damaged infrastructure. As of July 1, 2019, flooding conditions made 10% of system wide campsites unavailable for reservation. 2019 revenues are down $1,900,000 from 2018. Parking lots, camp sites, roads, boat ramps, electrical pedestals and comfort stations were inundated with water, and in some cases covered with as much as five feet of water. In addition, several dams and one major bridge were impacted. Rehabilitation and replacement efforts for these items are estimated at over $10,000,000. The Committee requested a list of the necessary repair projects and plans to continue to monitor this situation.

<u>Department of Human Services</u>

Additional funding to South Dakota Nursing Homes

The President of the South Dakota Association of Healthcare Organizations testified on the impact of the additional funding to nursing homes. He stated the increase resulted in an additional $8 per day for a Medicaid recipient. In a 50-bed facility, with 60% of its residence Medicaid eligible, this resulted in an additional $88,000 annually. This did not cover a $1 per

hour pay raise for its employees. Although there are still funding challenges ahead, he thanked the Legislature for the additional funding. The Executive Director of the South Dakota Health Care Association also testified about the impacts of the additional funding and thanked the Legislature for the increase in funding. No further action was taken by the Committee.

Rate setting methodology for Community Support Providers

The Director of Developmental Disabilities with the Department of Human Services, Darryl Millner, provided an update on the workgroup established to develop a rate methodology for Community Support Providers (CSPs). He indicated that the CSPs were presented with, and were in agreement with, his proposal to present a new plan in the next 12-24 months. Committee members communicated to Mr. Millner that his information was contrary to reports that have been received from CSPs across the State and that the Committee did not believe the rate-setting methodology process intended by Senate Bill 147, 2017 Session, was being properly implemented. Committee members asked to be notified of the next work group meetings and will attend those meetings to ensure the outcomes of the workgroup comply with SB 147.

Department of Agriculture discussed the pesticide regulatory program

The Director of the Agricultural Services Division of the South Dakota Department of Agriculture (SDDA) provided background information about the pesticide regulatory program, including enforcement practices. She described the cooperative agreement in place between the SDDA and the U.S. Environmental Protection Agency (EPA), whereby the SDDA is the primary enforcement agency for both State and federal pesticide and application laws. She explained the four main components of the pesticide regulatory program: 1) product registration, 2) applicator licensing, 3) inspections, and 4) investigations. The Committee was particularly concerned about "drift" complaints. The Director stated that drift complaints were higher in 2017 and have since dropped. She advised the decline was due to education, training, and timelier investigations of complaints. The Committee heard public testimony expressing concerns about the SDDA and encouraging the SDDA to perform inspections, in the field, during key application times. No further action was taken by the Committee.

Conflicts of Interest

Bureau of Human Resources

The Committee reviewed the 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 seven approved

authorizations (waivers) for the July 1, 2018 through June 30, 2019 reporting period. The Committee plans to review approved waivers annually.

Auditor General

The Auditor General provided information on the changes implemented in 2017 with the passage of House Bill 1170. This legislation defined what constitutes a conflict, narrowing it down to an interest in a contract or direct benefit from a contract. The Auditor General reviewed the report on compiled authorizations to derive a direct benefit from a contract and advised that there were 37 State board members who had submitted waivers. He did not see any concerns when viewing from an auditor's perspective. The Committee plans to review approved waivers annually.

Obligation Recovery Center

House Bill 1228 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 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 Legislature passed House Bill 1039 during the 2019 Legislative Session allowing the vocational technical schools the ability to refer debt to the Center beginning July 1, 2019. Memorandums of understanding were signed with all the technical schools effective July 1, 2019. The BOA contracted with two 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 FY2019, the Center collected $3.4 million for State agencies and established payment plans for $10.3 million (total financial impact of collection activities of $13.7 million). Of the $3.4 million remitted to State agencies, $677,577 was deposited into the general fund with the remaining monies distributed to various agency funds. The Committee accepted the report and will continue to review the activity of the Center on an annual basis.

State Board of Internal Control

The Commissioner of the Bureau of Finance and Management (BFM) and the State Internal Control Officer presented the annual report of the State Board of Internal Control (SBIC) and provided the Committee an update on the activity of the SBIC. They presented highlights from the reporting period, which included:

- Five subrecipient audits reviewed
- Added language to subrecipient monitoring guide
- Drafted and adopted Statewide internal control framework
- Implemented framework at the Bureau of Finance and Management and the Department of Revenue

- Completed first agency reporting

The SBIC plans to start working with the Department of Education (DOE) in the fall of 2019 and hopes to adopt a DOE internal control framework by the end of the second quarter of fiscal year 2020. The Committee had additional questions about the timeframe for completing internal control frameworks for the remaining agencies. The Commissioner explained that with the experience gained so far, future agency frameworks should go more quickly. The Committee will monitor the State Board of Internal Control's activity on an annual basis.

Board of Regents

University Centers

In accordance with South Dakota Codified Law 13-51-1.4, the Committee reviewed annual accountability reports for each of the University Centers. The President of University of South Dakota presented the operating statement for the Community College for Sioux Falls, along with enrollment data for fiscal years 2013 through 2019. The President of South Dakota State University also testified and stated that the new operating agreement for the Community College for Sioux Falls has drastic changes to distribution of operating costs and teaching responsibilities, making it a more efficient model.

The Vice President of Finance and Administration at Black Hills State University – Rapid City presented the operating statement for the Rapid City campus, along with enrollment data for fiscal years 2013 through 2019. She stated the Black Hills State University – Rapid City has a history of being self-supported and they expect that to continue. The Committee plans to continue monitoring the financial condition of the University Centers.

Department of Legislative Audit presented the GOAC Blue Book for fiscal year 2019

A State Government Audit Manager with the Department of Legislative Audit, presented the 2019 GOAC Other Fund Information by Agency book (GOAC Blue Book). The GOAC Blue Book is broken out by State agency and the Board of Regents and provides four years of cash basis information on each of the fund's revenue, expenses and cash balances. While the GOAC Blue Book does not identify funds available for appropriation, the information is useful for identifying funds that warrant a closer review. The Committee selected the Law Enforcement Officers Training Fund to review in more detail at their October 30, 2019 meeting.

Office of the Attorney General and the Law Enforcement Officers Training Fund

The Attorney General, Deputy Attorney General and the Finance Director reported on the sources and uses of funds in the Law Enforcement Officers Training Fund and the 911 Telecommunicator Training Fund. The Finance Director provided historical information on the fees collected by these two funds. The Committee questioned the negative cash balance in the 911 Telecommunicator Training Fund and asked about the plan to bring the fund back into a

positive cash position. The Deputy Attorney General stated the fees charged in South Dakota are less than the fees charged in surrounding states and there may be room for a fee increase. The Committee plans to monitor this fund in the future.

Department of Education

Presented the annual report of the Workforce Education Fund

The Director of the Division of Career and Technical Education with the Department of Education (DOE) reviewed the Workforce Education Fund (WEF) Annual Report and provided an overview of the WEF. The 2018 Legislature passed Senate Bill 81, which limited the fund to providing grants for new and existing secondary career and technical education programs. She discussed the Secondary Career and Technical Education grants or Workforce Education Grants, their requirements and provided a list of grants awarded, with eight being awarded in 2019. She stated, to date, they have awarded approximately $4.5 million in grants. The Committee will continue to monitor the outcomes of these grants in the future.

Department of Environment and Natural Resources discussed abandoned wells in Harding County

The Administrator of the Minerals and Mining program of the South Dakota Department of Environment and Natural Resources (DENR) presented background information regarding the 40 abandoned wells and the jump off field in Harding County. He stated 36 wells are relatively shallow (less than 2,000 feet deep) and 4 wells are deep (more than 5,000 feet deep). He reported that the 40 wells were properly constructed by the developer. Due to the construction methods, the field poses no short term or long term threat to locally utilized ground water resources. He stated the field was productive in terms of gas production and could be brought back on-line. He reported the main concern for the wells is the potential for gas leaks and the cost estimate for plugging these orphaned wells is $887,700. The developer abandoned 40 wells, leaving 24 well sites on private surface. He stated DENR is doing everything within its statutory authority to either: 1) continue efforts to close the field, or 2) facilitate a new operator returning the jump off field to production. In conclusion, he stated the Board of Minerals and Environment requested the Office of Attorney General file a civil lawsuit against the developer and its principals in Texas for $15.5 million, which was filed in Hughes County Circuit Court on May 14, 2019. The Committee heard public testimony from a landowner in Harding County with 21 wells on his property. He was concerned about his livestock's exposure to the wells. The Committee plans to monitor this situation in the future.

Department of Labor and Regulation discussed the Bring Your A Game Program

The Secretary of the Department of Labor and Regulation explained the mission and goals for the "Bring Your A Game Program". She stated the program will be new in fiscal year 2020, having received a $215,000 appropriation. The mission of the program is to increase individual and family self-sufficiency. This includes meaningful employment, retention of employment

and family and workplace success and balance. They are focusing on three areas and will offer courses in each area: 1) basic computer literacy, 2) financial literacy, and 3) soft skills. She explained that soft skills are such things as proper attendance, respect for others, attitude, accountability, and acceptance of responsibilities. She identified the following goals for the first year:

- Serve 500 participants across the State with 50% of them either entering the workforce or improving their employment position
- Seventy five percent will retain their jobs
- Earnings will equal or exceed $4,600/quarter, factoring some positions are part time
- Offer 200 classes, in all three areas, in 20 communities across the State
- Survey participants after completing the program

The Committee had numerous questions about how the program would be announced in communities, where the program will be offered, and the costs associated with the program. The Committee plans to monitor the outcomes of the program in the future.

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 2019 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, 2018 through June 30, 2019. Fifteen cases were reported to the Committee during the period.

The Committee reviewed information released by the South Dakota News Watch Organization alleging a pattern of improper treatment of residents of the intensive youth treatment facility at the Aurora Plains Academy in Plankinton. The Committee asked both the Department of Social Services, the agency responsible for licensing the facility, and the Department of Corrections to explain how the process works at this facility. The Committee expressed concerns that residents no longer had an independent advocate to report to. The Secretary of the Department of Social Services testified, that at the request of the Governor, she would be looking at the process to see if and where improvements could be made. The Committee asked the Secretary to report back on the results of her review.

Audit Reports

<u>South Dakota Single Audit Report for FY18</u>

The Committee reviewed the South Dakota Single Audit Report and other separately issued audit reports for the fiscal year ended June 30, 2018.

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 six State organizations, containing twenty recommendations for corrective action. Six recommendations related to compliance and/or internal control findings relating to federal laws and regulations; and, fourteen 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 2018 and 2017 and the implementation of fiscal year 2017 audit recommendations:

	Recommendations		
State Agency	Fiscal Year 2018	Fiscal Year 2017	Fiscal Year 2017 Implemented
Department of Revenue	9	12	6
Soybean Research & Promotion Council	2	1	0
South Dakota Corn Utilization Council	2	1	0
Ellsworth Development Authority	1	1	0
Department of Environment and Natural Resources	0	1	1
Department of Social Services	2	1	1
Department of Education	0	1	1
Department of Game, Fish and Parks	0	3	3
Department of Health	4	0	N/A

N/A This agency did not have any FY2017 audit recommendations.

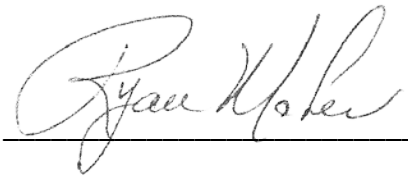
The Committee had additional questions regarding the Department of Health audit findings for the National Bioterrorism Hospital Preparedness Program. The Secretary for the Department of Health appeared before the Committee and explained the corrective action plans the Department is implementing. The Committee plans to follow-up on the Department of Health's corrective action plans.

The Committee had additional questions regarding the Department of Social Services audit finding for the Medicaid Program. The Finance Officer for the Department of Social Services appeared before the Committee and explained the corrective action plans the Department is implementing. The Committee was satisfied with the corrective action plan.

The Committee had additional questions regarding the Department of Revenue audit findings relating to inadequate controls over business tax revenue reconciliations, motor fuel tax revenue reconciliations and motor vehicle titles and registrations revenue reconciliations. The Secretary for the Department of Revenue appeared before the Committee and provided information about how the finding occurred and what has been done in the implementation of the corrective action plans. The Committee was satisfied with the corrective action plans.

South Dakota High School Activities Association

The Executive Director provided background information on the South Dakota High School Activities Association (SDHSAA), stating they were the sanctioning body for sports in South Dakota with 179 member schools. He provided additional information about where to find SDHSAA's financial information on their website. The Finance Director with SDHSAA reviewed the FY18 audit report with the Committee. He discussed the current year written audit finding, which was a material weakness in financial statement reporting. The finding has been corrected. The Committee plans to revisit this topic in the future.



Senator Ryan Maher, Chair
Government Operations and Audit Committee

GOAC MEETING | AUG 22, 2019

South Dakota Governor's Office of Economic Development

GOED PERFORMANCE METRICS - 2019

Updated July 22, 2019

GOED PERFORMANCE METRICS - 2019

Performance Metric	2019 Performance	Assessment	Comments
Conduct 500 R&E visits with SD companies			
Conduct 200 community visits			
Conduct 36 R&E, partner, or community visits in Indian Country			
Facilitate 40 business projects			
Facilitate $800 M in capital expenditures			
Facilitate 1,200 jobs created or retained			
South Dakota Gross Domestic Product at $53.0 Billion			

THANK YOU

South Dakota Governor's Office of Economic Development

SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

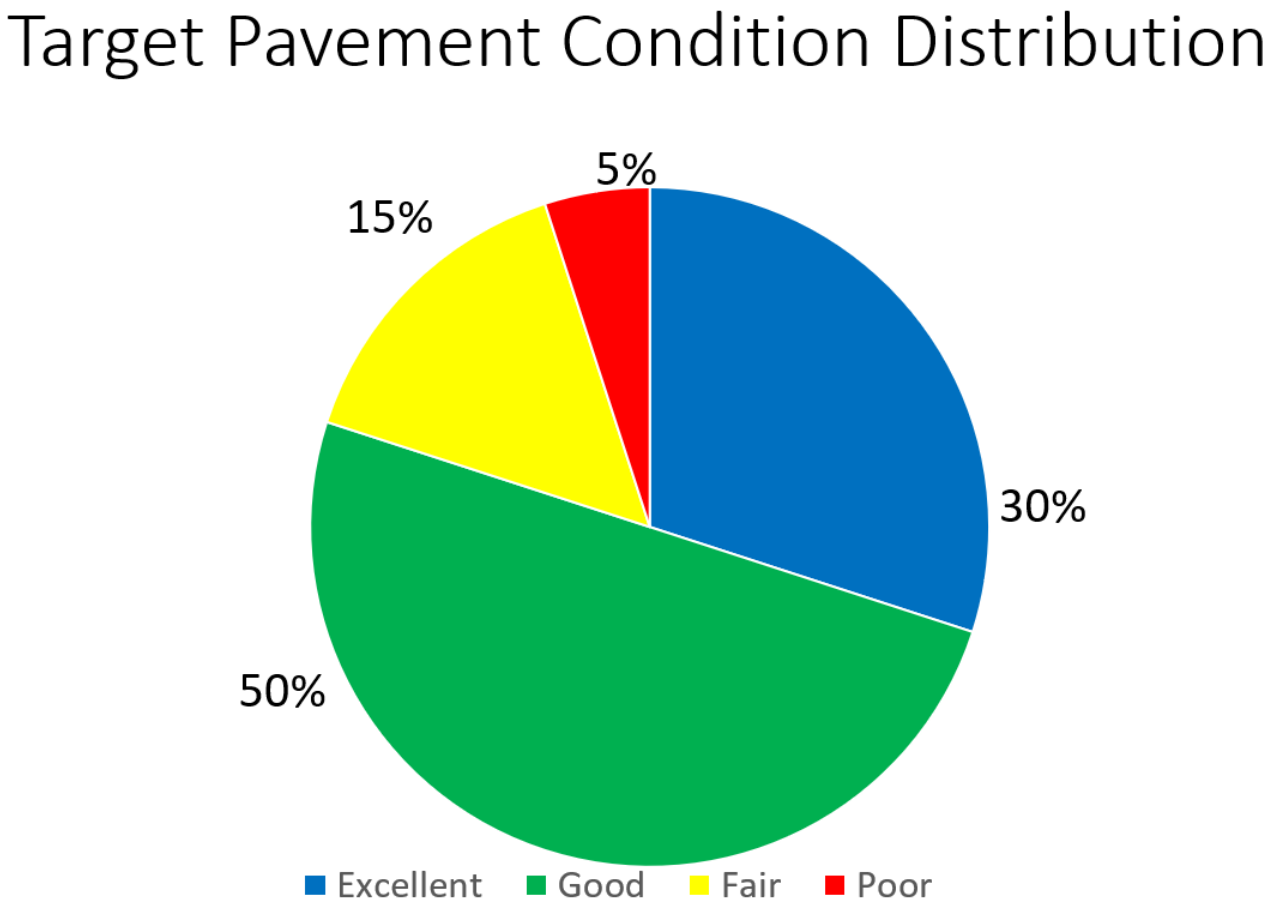
PERFORMANCE MEASURE
2018 ANNUAL REPORT

Per SDCL 2-6-38

PAVEMENT CONDITION

Leading up to and during the 2015 Legislative Session, the Department worked with the Legislature's summer study committee and the House and Senate Transportation Committees to establish long term targets for pavement conditions on South Dakota's state highway system. One of the primary purposes of identifying target goals was to determine the annual investment necessary to maintain pavements at the targeted conditions.

While not officially adopted, there was general acceptance of the Department's proposed Target Pavement Condition shown in the chart below. Higher targets could have been suggested, but achievement of a higher level could result in the removal or improvement of pavements before the end of their useful service life. In order to maximize the return on investments of funds spent on our pavements, it is necessary to allow a portion of the state highway miles to naturally deteriorate to a condition rating below the good classification. In doing so, the Department can strive towards maximizing the useful service life of the pavement by using many different treatment options prior to the need for replacement or major rehabilitation.



Protecting and maintaining the overall condition of our state highway system is one of the most important functions of the Department. The Department has over 8,800 roadway miles under its jurisdiction. The replacement value of these pavements is estimated at approximately $15 billion.

To manage these pavements, the Department utilizes a sophisticated and objective, data-driven system to assist in maintaining our pavements in the most efficient manner possible. By looking at the current and future condition levels, the Department can annually review its investment plan and make recommended modifications to the Statewide Transportation Improvement Program (STIP), which is reviewed and approved by the South Dakota Transportation Commission. With over 8,800 roadway miles on the state system, future pavement conditions require a long-term investment plan and a significant financial commitment. If, for example, the Department were to manage pavements on a reconstruction basis only and invest only in pavements, it would take a minimum of 37 years to reconstruct the state highway system (this would not include reconstruction of bridges). Since the design life of a pavement varies depending on type, the investment strategy of only reconstructing pavements would result in a poorly maintained highway system. In addition, limited highway funds would be inefficiently used. Instead, the Department attempts to use the right treatment at the right time to maximize use of our highway funds and get the most benefit from the investments spent on our facilities.

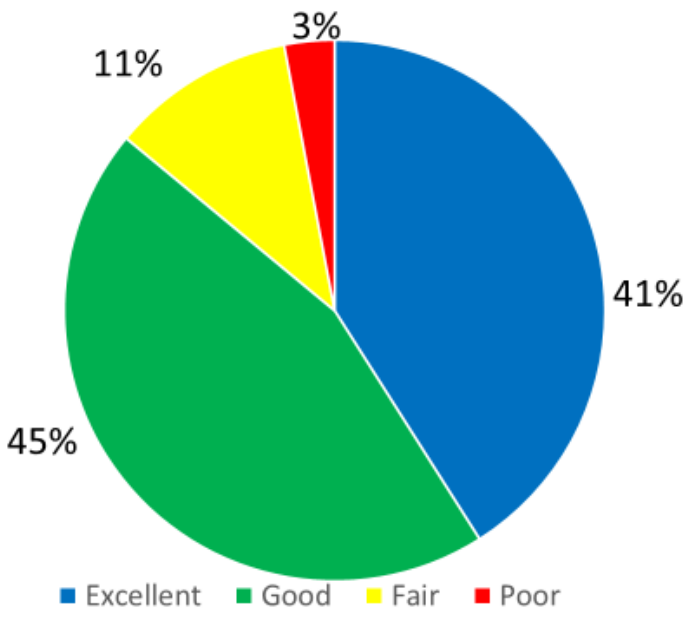
One tool used to collect objective pavement data annually is the pavement condition monitoring vehicle, "spider van". The van travels at near highway speed and collects thousands of data points for each linear inch of pavement. These pavement surveys are performed for nearly every mile of state highway and are done on an annual basis. This data, along with historical information of the roadway layers and projected performance curves, is used to create a projected condition for each segment. The current and projected conditions can then be reported and tracked. This data shows the percentage of the state system that would be in any particular condition range in various years, thereby allowing the Department to optimize its investment plan to achieve the highest rate of return targets.

Like any asset, pavements are most economically maintained when they are in relatively good condition. As the overall condition of the system degrades, investment opportunities become limited and much more costly. By maintaining the system in relatively good condition, a wide variety of cost effective treatments are available.

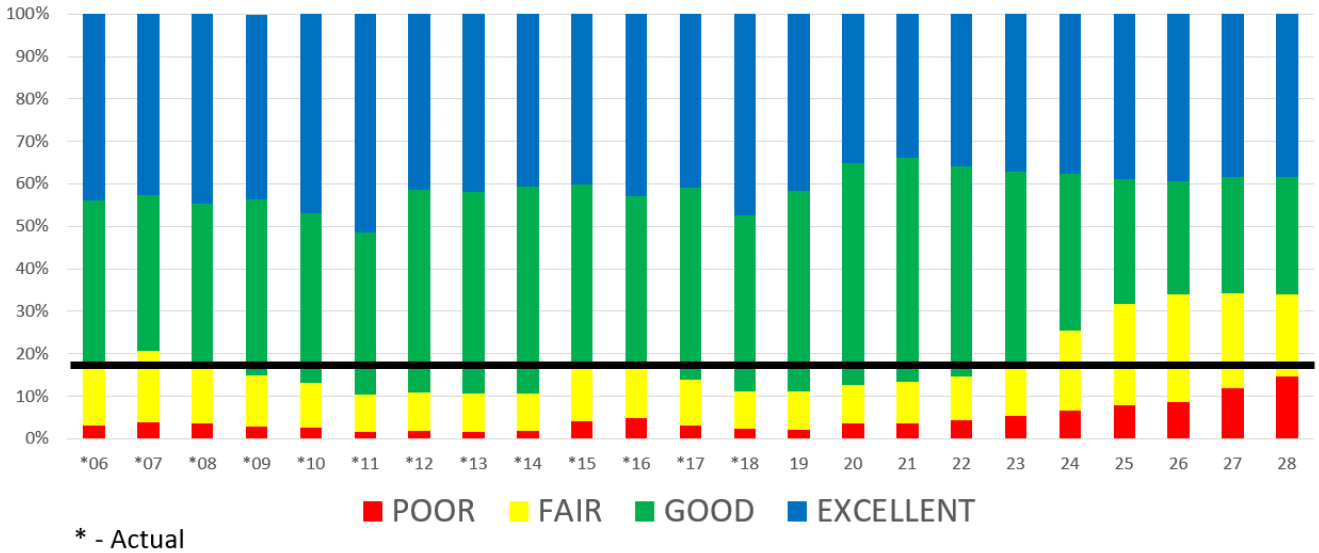
At the time of the passage of Senate Bill 1, with uncertainty as to the future of federal highway funding, it was understood the additional state funding alone would not be sufficient to maintain pavements at target levels for the long term. However, due to the combination of existing conditions exceeding target levels plus the additional funding to be realized from the federal aid program and additional state funds into the state highway fund, it is anticipated the decline of our pavement conditions will significantly slow as these funds are directed to pavements.

The current condition of our state highway system pavements slightly exceeds the target levels as discussed above. The following graphs, which are from reports generated using the Department's pavement management system and associated data, reflect the historic and forecasted pavement conditions.

2018 Pavement Condition Distribution



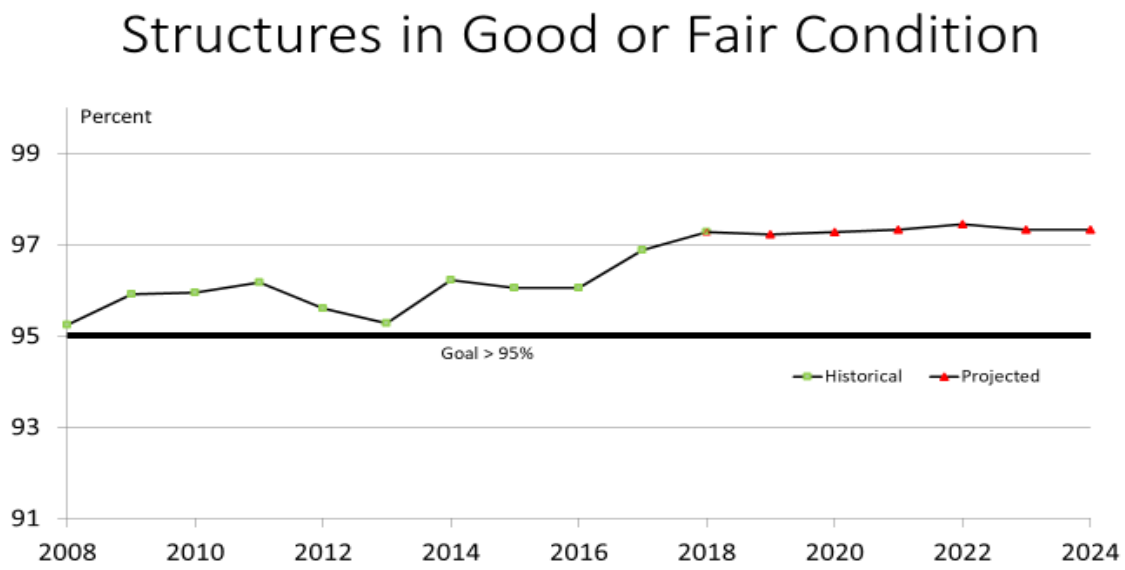
Historical & Projected Future Pavement Condition Based on Current Investment



* - Actual

BRIDGE CONDITION

The Department has historically maintained the philosophy that preservation of SD bridges is a high priority, investing in preservation activities as well as new construction when required to ensure a sound network of structures. Currently, structures on the National Bridge Inventory (NBI) are categorized in good, fair or poor condition. The Department has set a goal to maintain 95% of the state-owned structures on the NBI in good or fair condition. The graph below shows the historical condition of SD structures, as well as the projected condition based on the current and anticipated level of investment for structures.

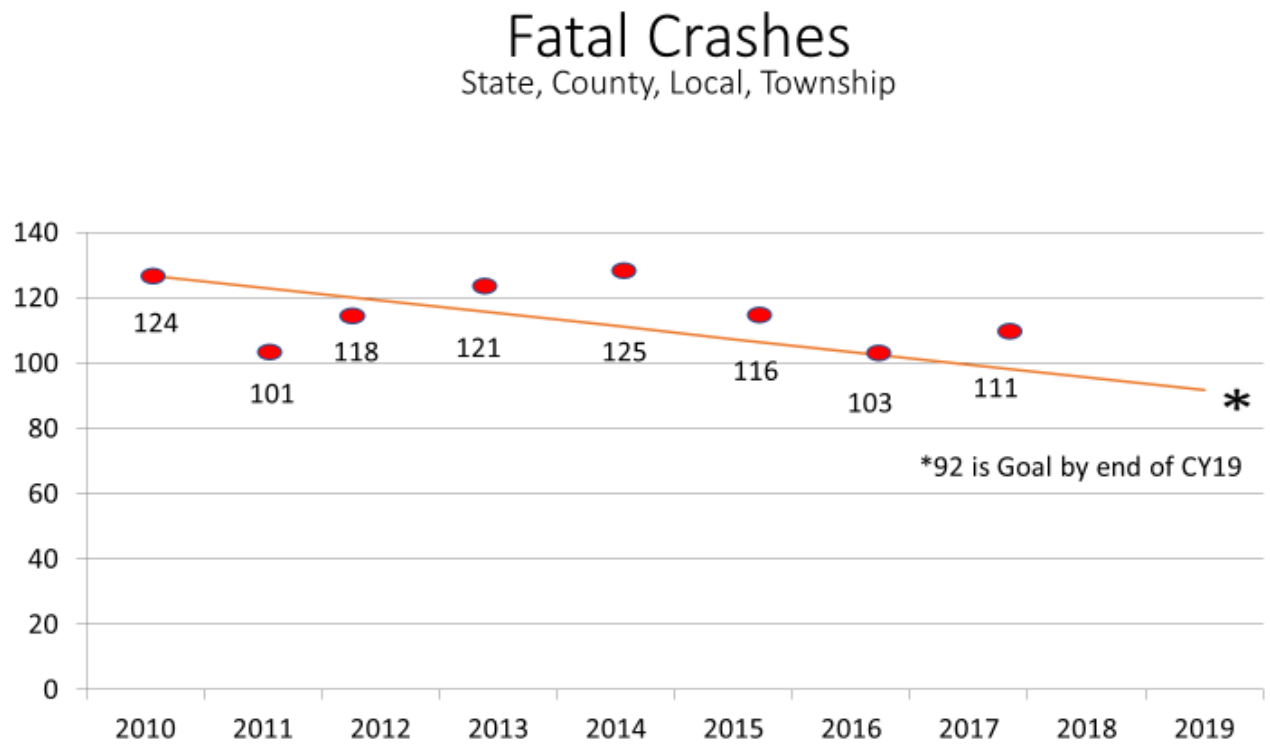


The SDDOT bridge inventory includes nearly 1,800 structures. The AASHTOWare Bridge Management software is used to help manage South Dakota's structures, by continually updating condition information and analyzing alternatives for each structure to meet our goal.

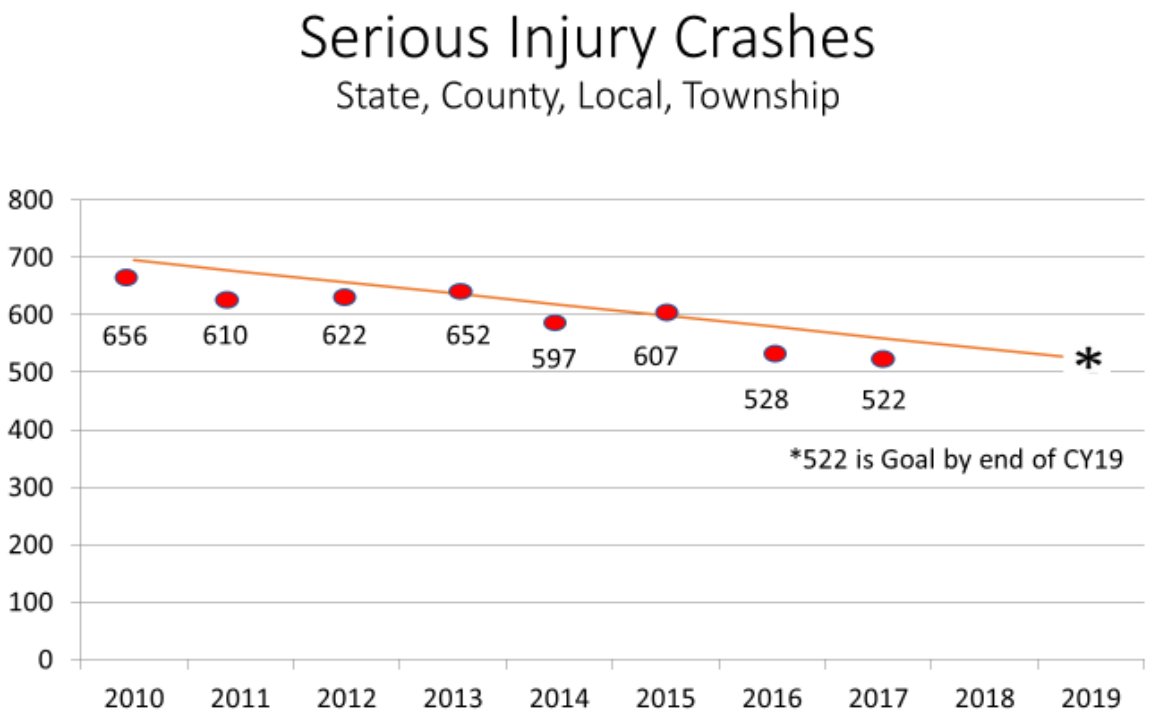
HIGHWAY SAFETY

Working with our partners at the Department of Public Safety, Highway Patrol and Office of Highway Safety, in 2014 the Department established a goal of reducing fatal and incapacitating injury crash rates by 15% by 2020 on all traveled public roads, including State, County, Township and City streets. Since 93% of accidents involve some driver behavioral elements, there is not a direct correlation between these performance measures and the Department's efforts at maintaining our roads and bridges in a safe condition. However, the safety of travelers is important enough that it warrants tracking to ensure the partnership effort required to impact the measure is working effectively.

The most common fatal crash in South Dakota is a single vehicle, single occupant crash resulting from the vehicle leaving the roadway and rolling. The two biggest contributors to these fatalities are alcohol and seatbelt use. As of November 14, there had been 89 fatal crashes in South Dakota resulting in 107 fatalities (down 2% from 2017). Of the fatalities, 44 occupants involved were unbelted, in 7 of the fatalities seatbelt use was unknown. Only 28 fatalities involved belted occupants. Twenty-eight of the fatalities were not applicable, such as motorcycles or pedestrians. Alcohol was involved in 43 (up 7.5% from 2017) of the fatalities.



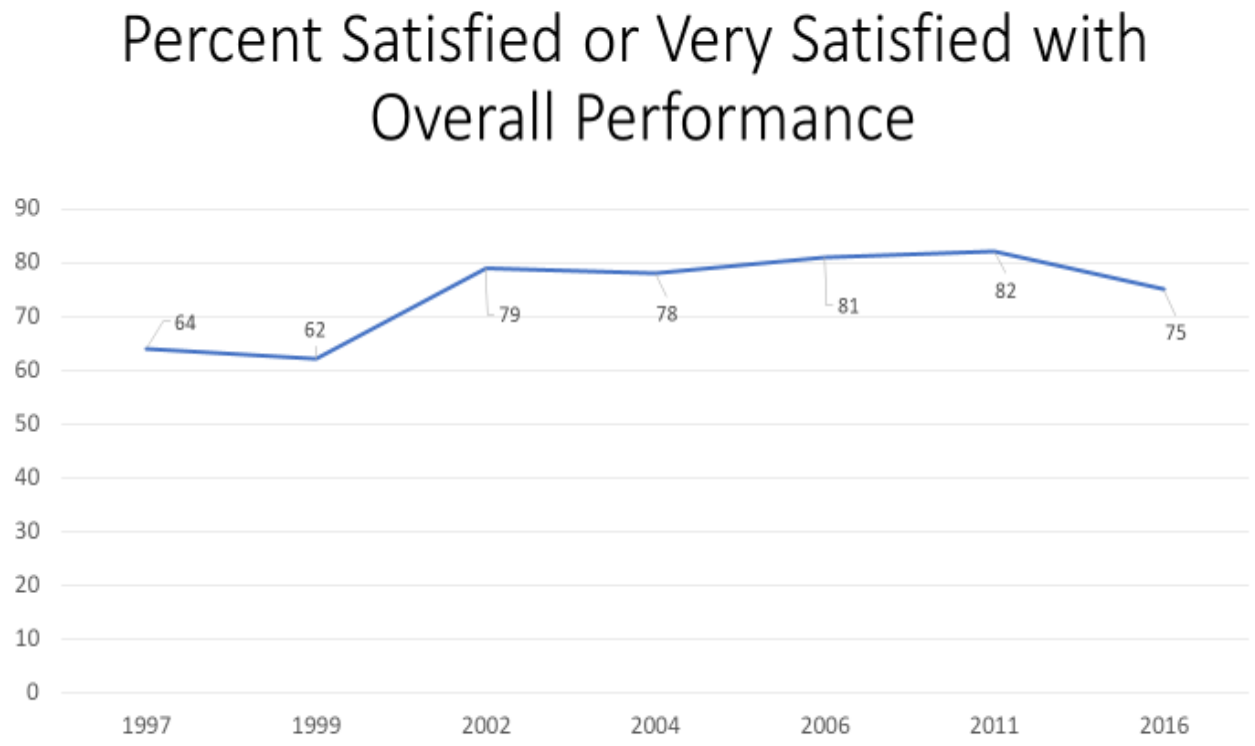
Highway fatal crashes increased to 111 in 2017, up 8 crashes or 7.8% from 2016. South Dakota's highway fatality rate per 100 million vehicle miles traveled has been trending downward over the long term. In 2017 it was 1.15, down from 1.53 in 2007.



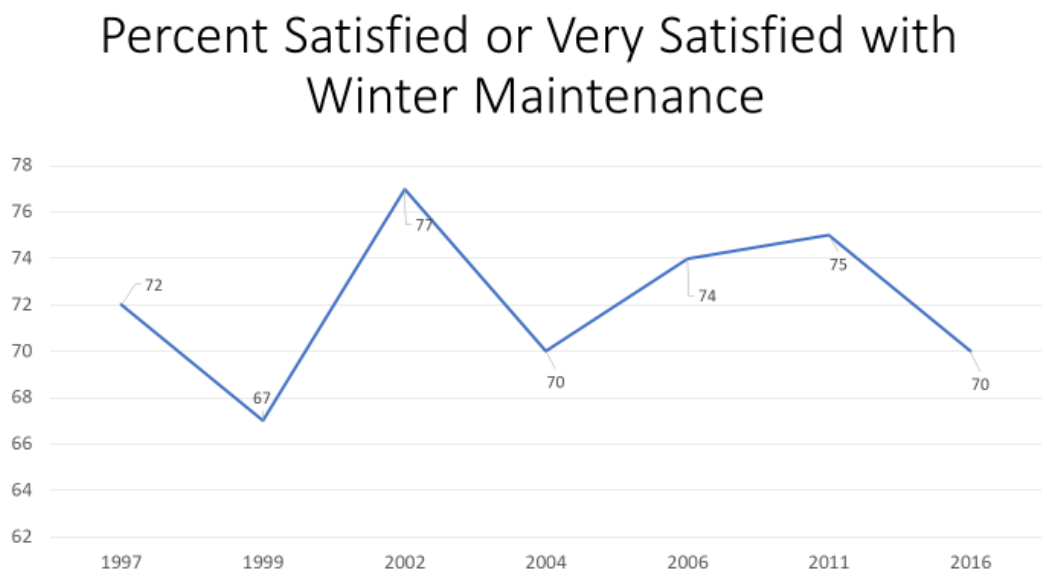
All data regarding highway crashes is derived from data compiled by the Department of Public Safety's Office of Highway Safety (https://dps.sd.gov/safety-enforcement/highway-safety).

CUSTOMER SATISFACTION

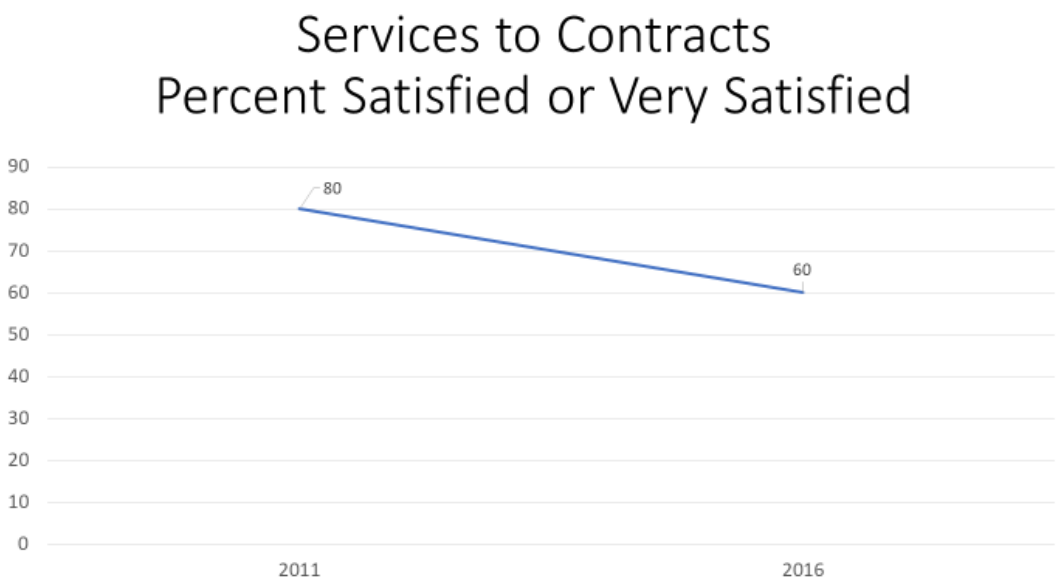
The Department periodically conducts comprehensive Customer Satisfaction surveys. The surveys measure public satisfaction with a large variety of the services the Department provides for the traveling public. The results from these surveys help measure the Department's performance as perceived by its customers and users of the state highway system. In addition, results from the survey also assist with determining customer priorities, influencing the Department's investment strategies to help meet the highest priorities for the traveling public. Results from the most recent survey are expected in January of 2019.

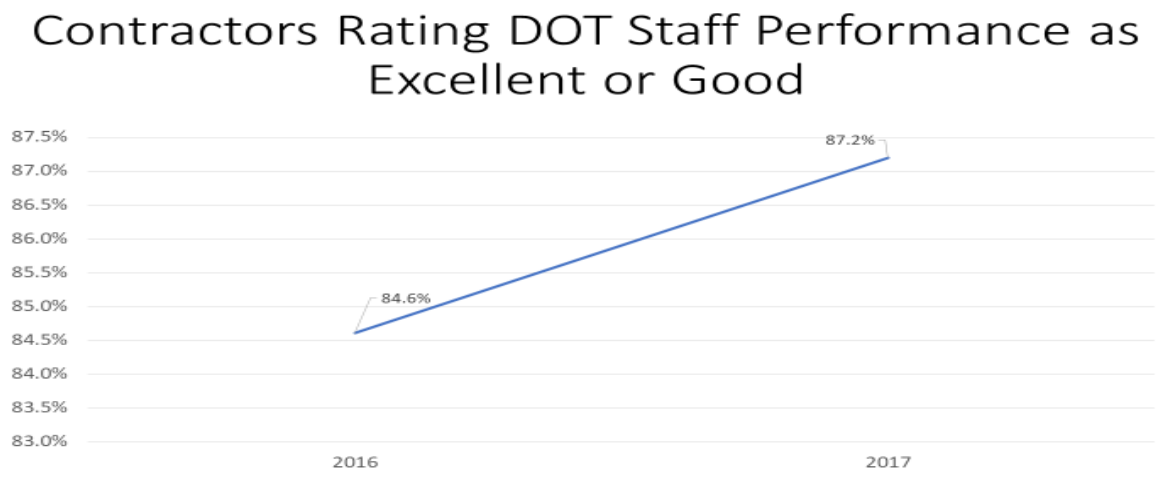


One of the most important services provided by the Department for travelers is winter maintenance activities (i.e. snowplowing). Outside of highway construction/maintenance costs, this is one of the areas of highest investment of state highway funds. As can be seen from historic results from past customer satisfaction surveys, the public's satisfaction with winter maintenance activities varies significantly from year to year. It is difficult to correlate these results with any factor, as the Department's winter maintenance activities have not changed significantly in recent years in terms of hours of operation or numbers of available snowplow operators and equipment.



One new addition to the last two customer satisfaction surveys was the gathering of specific information from contractors to help gauge the working relationship between the Department and its highway construction partners in the contracting industry. The results obtained from the most recent survey were disappointing and unexpected. Over the last few years, the Department has worked closely with the Associated General Contractors (AGC) and its members on attempting to improve the existing working relationship and find ways to strengthen the partnership effort to most effectively and efficiently complete highway construction projects in a safe and cost-effective manner while ensuring a high quality finished product. Because of the recent survey results, the Department will need to explore with AGC to identify additional opportunities to improve this score in the future.





The full results from the Department's most recent Customer Satisfaction Survey can be accessed at link: http://sddot.com/resources/reports/Default.aspx

WORKFORCE DEVELOPMENT

Recruiting and retaining a high-quality workforce is essential to the Department's success and ability to achieve any of the established strategic goals. With the highly technical nature of our work, it's imperative that we recruit and retain high quality employees. Although recruitment of high quality employees is important, for many job classifications it takes a significant amount of time to train a new employee before they can begin making a significant contribution to the Department's overall performance. Therefore, retaining those new employees through the initial employment period is critical in developing a high-quality workforce.

The Department recently established a new goal of retaining more than 85% of all new hires for the first 18 months. Studies have shown that 98% of new employees make the decision to stay with the organization within the first year. Further data indicates that 43% of new employees leave within the first 18 months, but with a formal onboarding program this number can be reduced to 18%. New employee onboarding is described as "a comprehensive approach to bringing on new hires that goes beyond simple orientation. Onboarding plans are intended to make new employees familiar with the overall goals of a company and support them as they embark on early projects all to achieve the perception of success (and productivity) quickly. The ultimate payoff is to reduce turnover and encourage workers to stay with an organization for a longer tenure."

Due to the importance of this issue, the Department has in place several ongoing programs to help new employees be successful and comfortable in the Department, hopefully increasing the likelihood of them remaining long term employees. These programs include:

- New employee orientation
- New employee "onboarding" program
- DOT NET -training program
- Formal mentoring program for selected employees

Data gathered shows that in FY2018, 86.21% of our new hires were still employed with the Department after 18 months.

In addition to employee engagement, recruitment, retention and workforce development, the Department encourages a culture of safety while employees are performing their job duties. Simply recruiting and retaining a high-quality workforce is not enough if those employees are off the job due to work related injuries. One of the measures we track for monitoring our safety performance is lost time injury rate. Lost time is any time away from work regardless of length of time. The rate is based on injuries per 100 employees and has been relatively flat for the last three years. This calculation method is a standard way of measuring and allows us to benchmark with other states. From FY13 – FY18 our rate fell from 5.73 to 3.70. Our overall goal is 3.61 by December 2020.

Data supplied by the Bureau of Human Resources and Operations Support Office.

The Department tracks and monitors numerous other performance indicators. More information can be found by viewing the following link:

http://www.sddot.com/resources/reports/SDDOTStrategicPlan2018-2019wresults.pdf

PERFORMANCE INDICATORS

Follow-up from 5.23.19

DEPARTMENT OF TOURISM

GOAL #1

- Increase year-over-year tourism-related economic impact by 2%.

GOAL #2

- Increase year-over-year tourism related jobs by 1%.

GOAL #3

- Increase year-over-year visitation by 1.5%.

GOAL #4

- Increase year-over-year visitor spending by 2%.

GOAL #5

- Increase year-over-year state and local tax revenue by 2%.

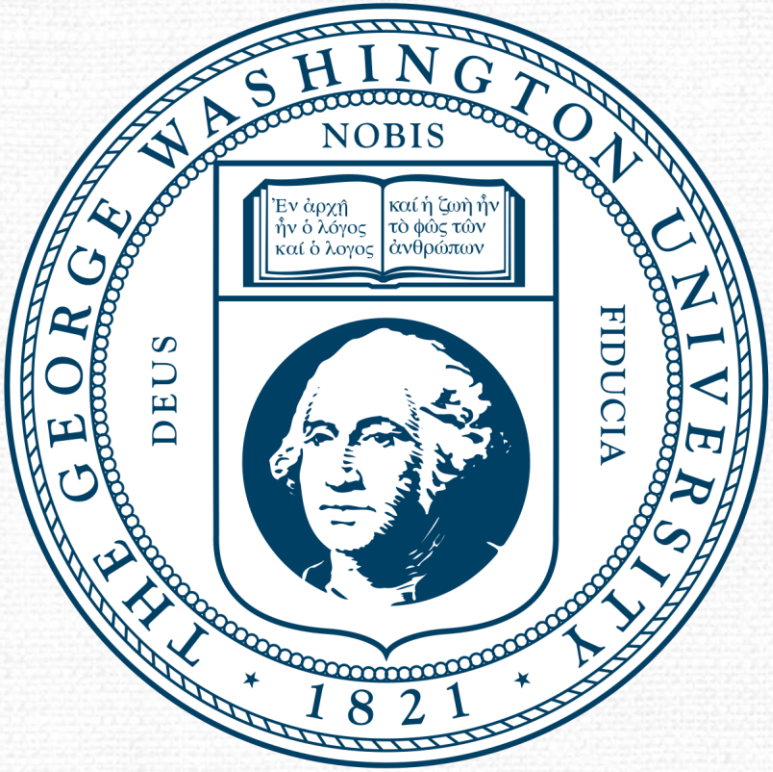
GOAL #6

- Increase year-over-year tourism promotion tax revenue by 2%.

ADDITIONAL MEASURES

TRIBAL TOURISM

- International Institute of Tourism Studies at George Washington University.



TRIBAL TOURISM

- Great Plains Tribal Leaders Summit
- AIANTA
- Tribal tourism product offerings

TRIBAL TOURISM

- Vacation Guide presence
- Native South Dakota
- Native Guide to Tribal Lands
- Content on TravelSouthDakota.com
- Industry FAM tour

VISITOR SATISFACTION

Average (10=Excellent, 1=Poor)

2016-2018	8.38	8.40	8.46	8.51	8.42
2015-2017	8.35	8.42	8.49	8.42	8.42
2014-2016	8.31	8.44	8.50	8.36	8.36
2013-2015	8.30	8.47	8.51	8.38	8.45
2012-2014	8.29	8.35	8.37	8.43	8.39

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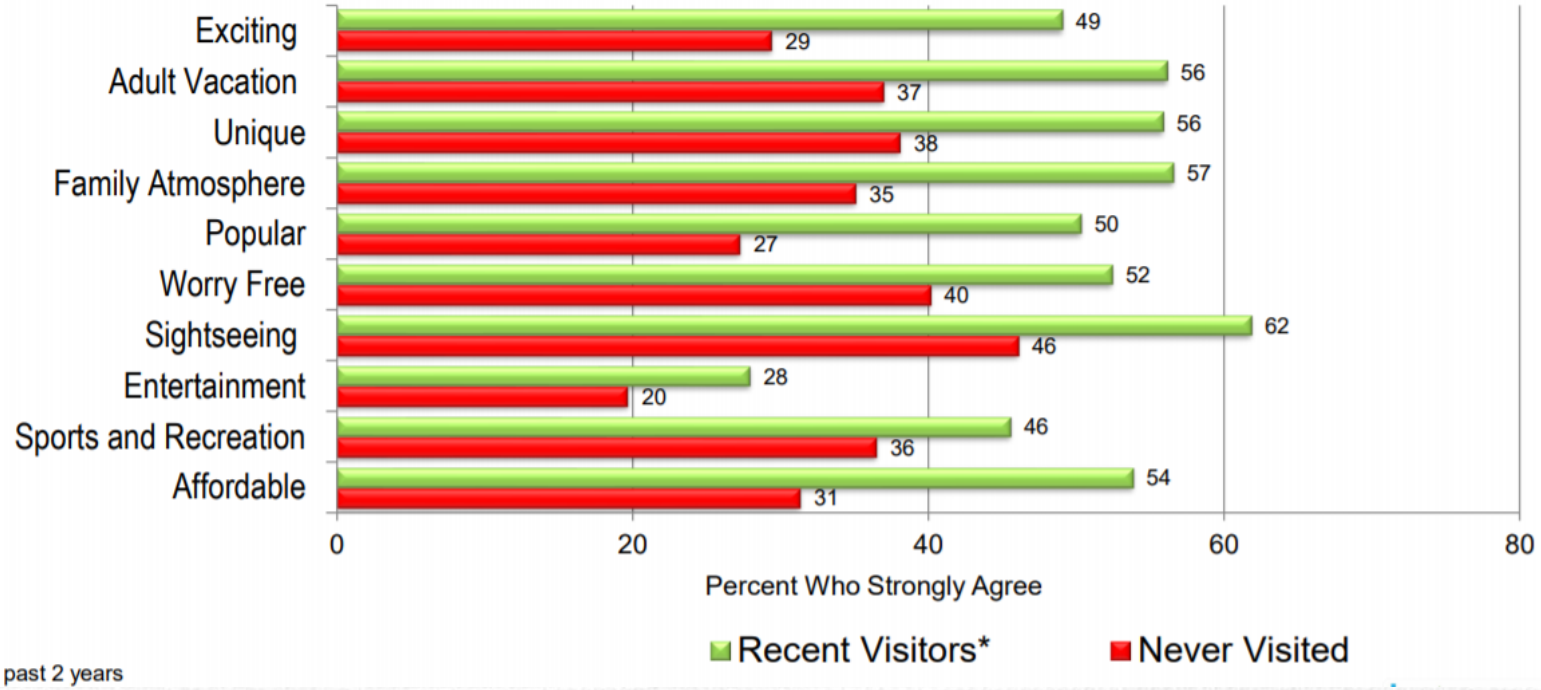
PRODUCT VS. IMAGE



* Visited in the past 2 years

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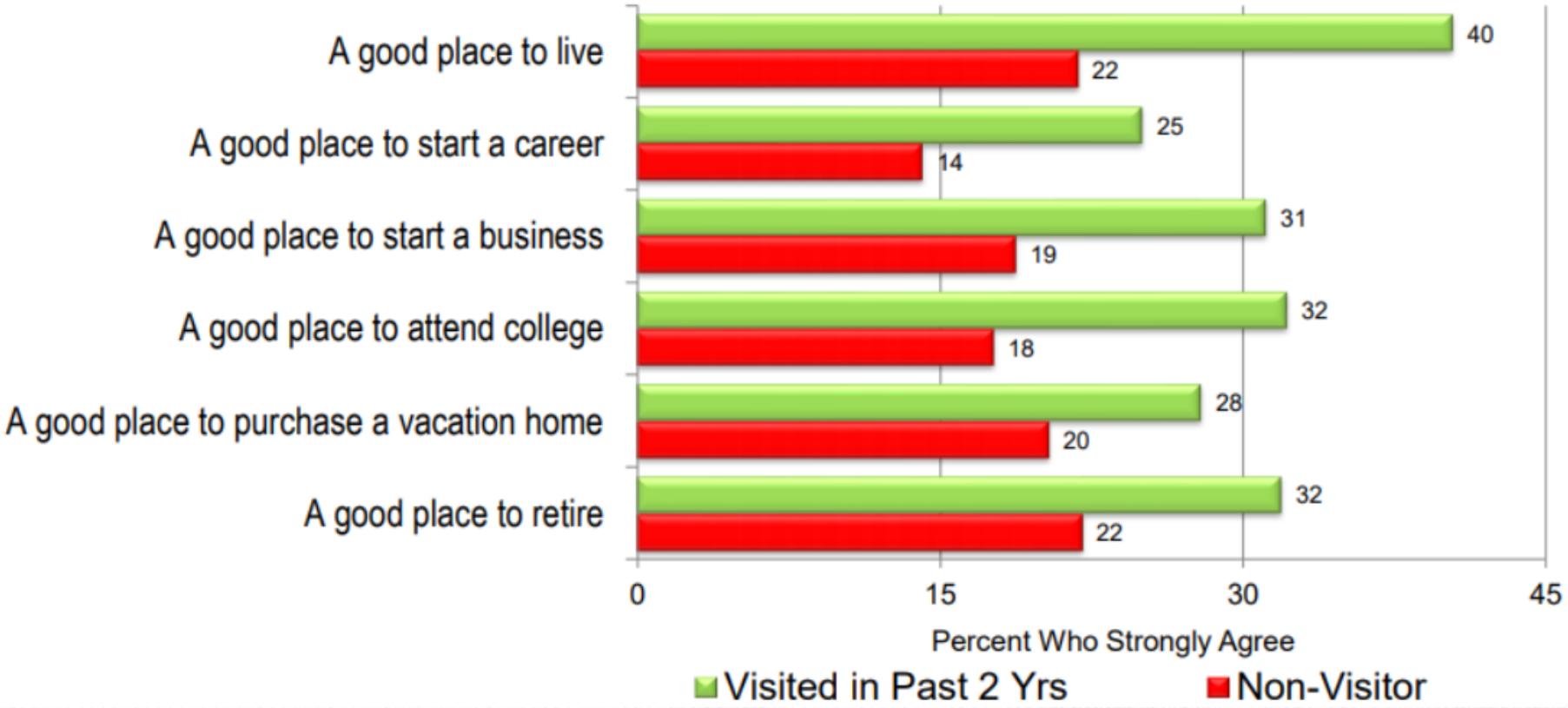
HALO EFFECT



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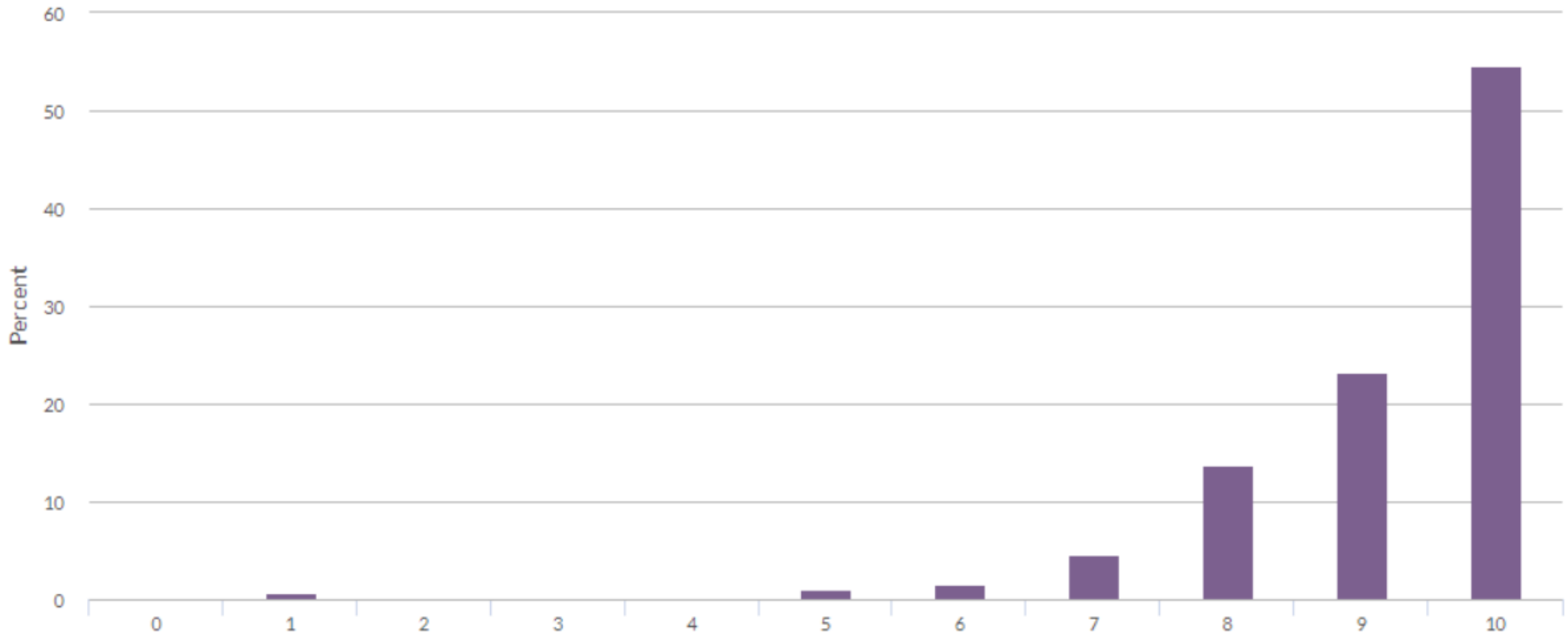
VACATION GUIDE

Value	Percent	Responses
Too much information.	1.7%	308
Not enough information.	7.4%	1,325
Just the right amount of information.	90.9%	16,347
		Totals: 17,980

VACATION GUIDE

7. On a scale of 1-10 with 1 being not at all satisfied and 10 being very satisfied, how satisfied are you with the vacation guide overall?



VACATION GUIDE

"Oh yes [the vacation guide] arrived and we started on our journey to South Dakota on June 24th and arrived in Rapid City on Monday June 26th to start our 8 day bike adventure through the Badlands & Black Hills, Needles Highway, Spearfish Canyon, Rushmore & Crazy Horse and Sturgis.

Then spent another two days in Hot Springs. We used our guide a lot!! It was truly an amazing trip & we will be back!!!

Absolutely love it out there!! I was sad to leave and come back to Ohio but for now this is where life is."

Thank you,
Linda M.

THANK YOU

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

Legislative Planning Committee
Performance Management Review
Updated :: November 13, 2018

Goal :: Provide Outdoor Recreational Opportunities
Optimize the quantity and quality of sustainable hunting, fishing, camping, trapping and other outdoor recreational opportunities.

- **Hunting Metric:** Maintain a composite satisfaction score from surveyed hunters indicating hunters, on average, are satisfied (4.5 or higher) with their hunting experience in the past year.
    - **2017 Mean = 4.96 (7 year average is 5.01)**
- **Fishing Metric:** Maintain a satisfaction score from surveyed anglers indicating, on average, they are satisfied (4.5 or higher) with their fishing experience in the past year.
    - **2017 Mean = 4.95 (6 year average is 5.17)**
- **Trapping Metric:** Maintain a satisfaction score from surveyed trappers indicating, on average, they are satisfied (4.5 or higher) with their furbearer trapping/hunting experience in the past year.
    - **2017 Mean = 5.05 (7 year average is 4.95)**
- **Camping Metric:** Maintain an A rating from 80 percent of campers who visit the state park system annually and develop a rating system for day users of the state park system.
    - **2018 Update :: 92% of campers who provided online feedback, supplied an A rating for their state park experience.**

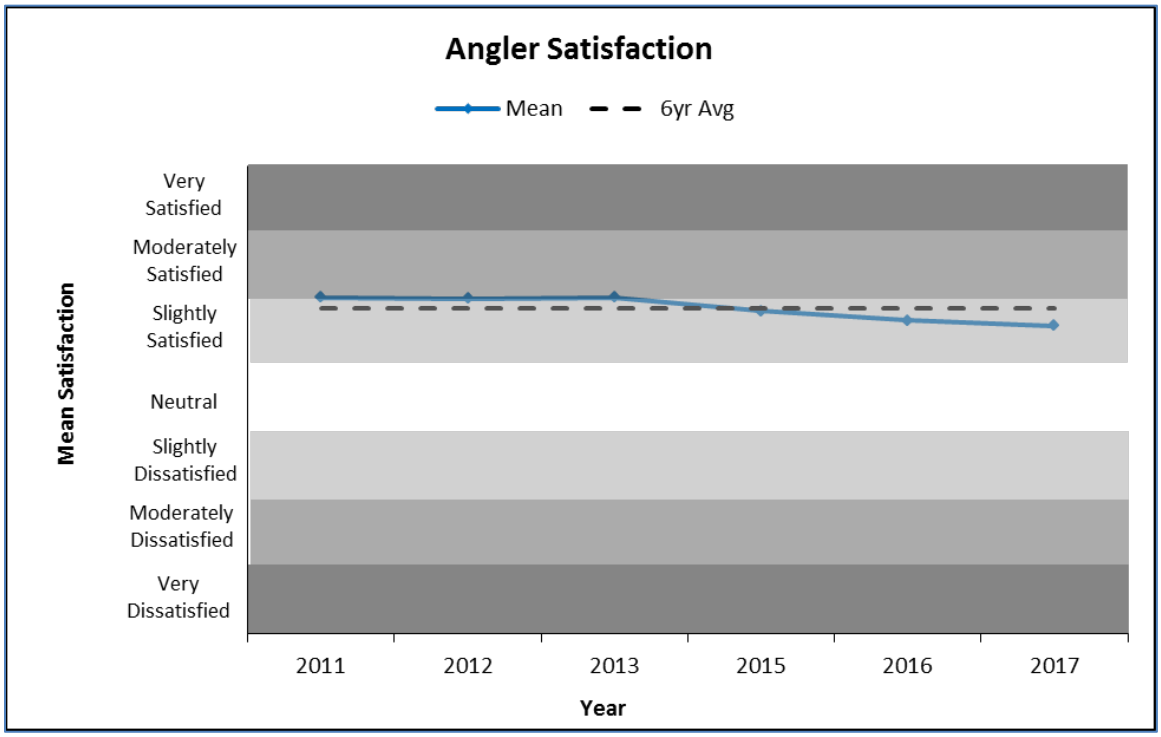
Goal :: Inspire Confidence
Instill trust from the people we serve through transparency and accountability.

- **User Support Metric:** Sustain a funding mix for the Department that consistently maintains a balance of user fees, federal funds, and state general funds that support program operations at a goal of 4 percent general funds and 96 percent from user fees and federal funds.

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

ANGLER SATISFACTION

Satisfaction Scale 1=Very Dissatisfied; 2=Moderately Dissatisfied; 3=Slightly Dissatisfied; 4=Neutral; 5=Slightly Satisfied; 6=Moderately Satisfied; 7=Very Satisfied

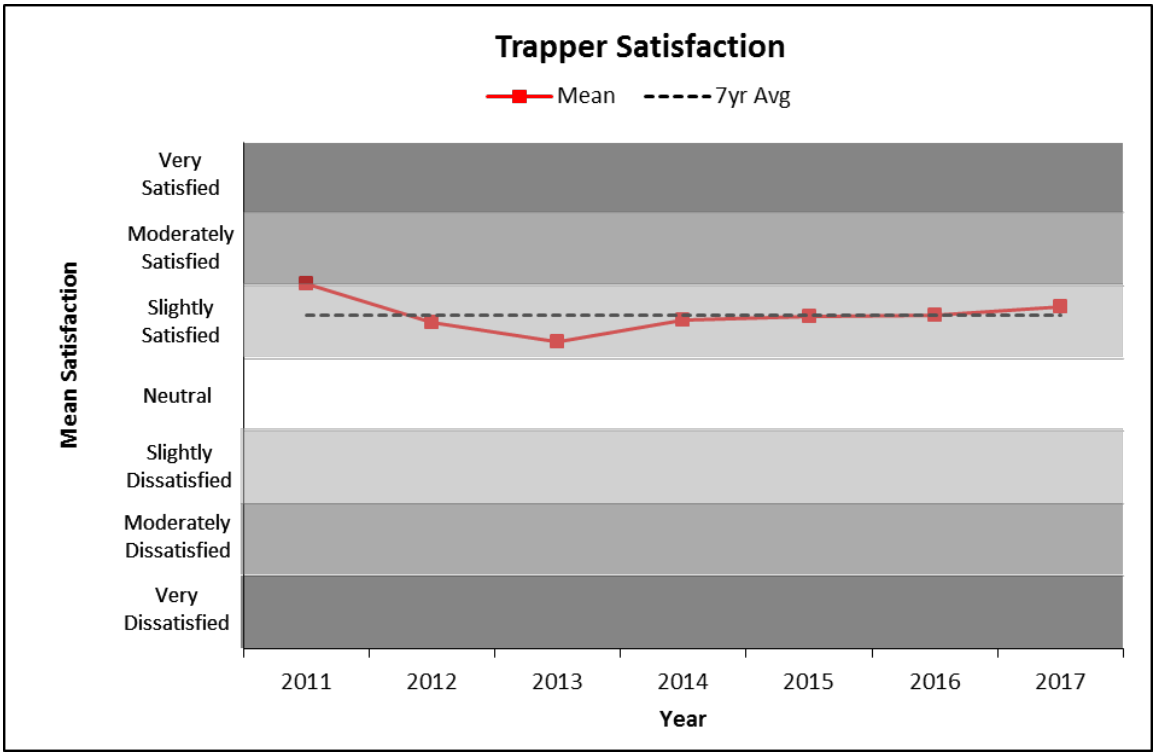


Year	Mean
2011	5.31
2012	5.30
2013	5.31
2015	5.14
2016	5.02
2017	4.95
6-year Average	**5.17**

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

TRAPPER SATISFACTION

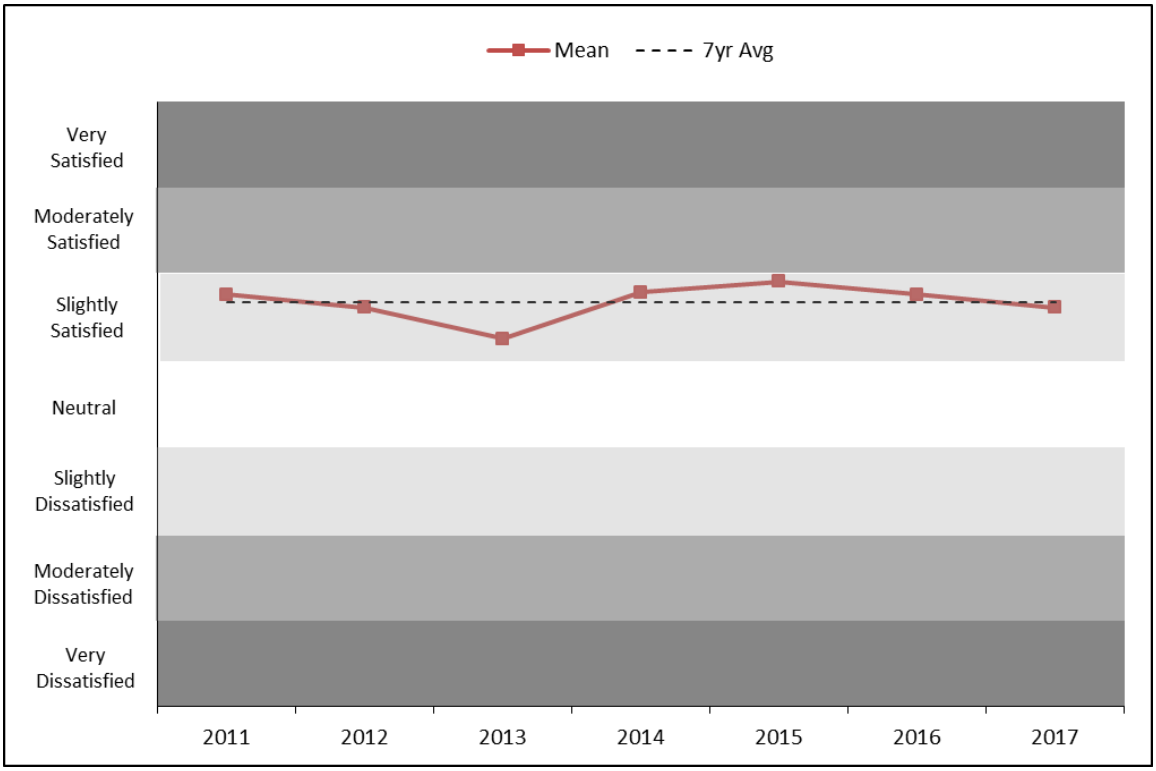
Satisfaction Scale 1=Very Dissatisfied; 2=Moderately Dissatisfied; 3=Slightly Dissatisfied; 4=Neutral; 5=Slightly Satisfied; 6=Moderately Satisfied; 7=Very Satisfied



Year	Mean
2011	5.32
2012	4.87
2013	4.63
2014	4.89
2015	4.93
2016	4.95
2017	5.05
7-year Average	**4.95**

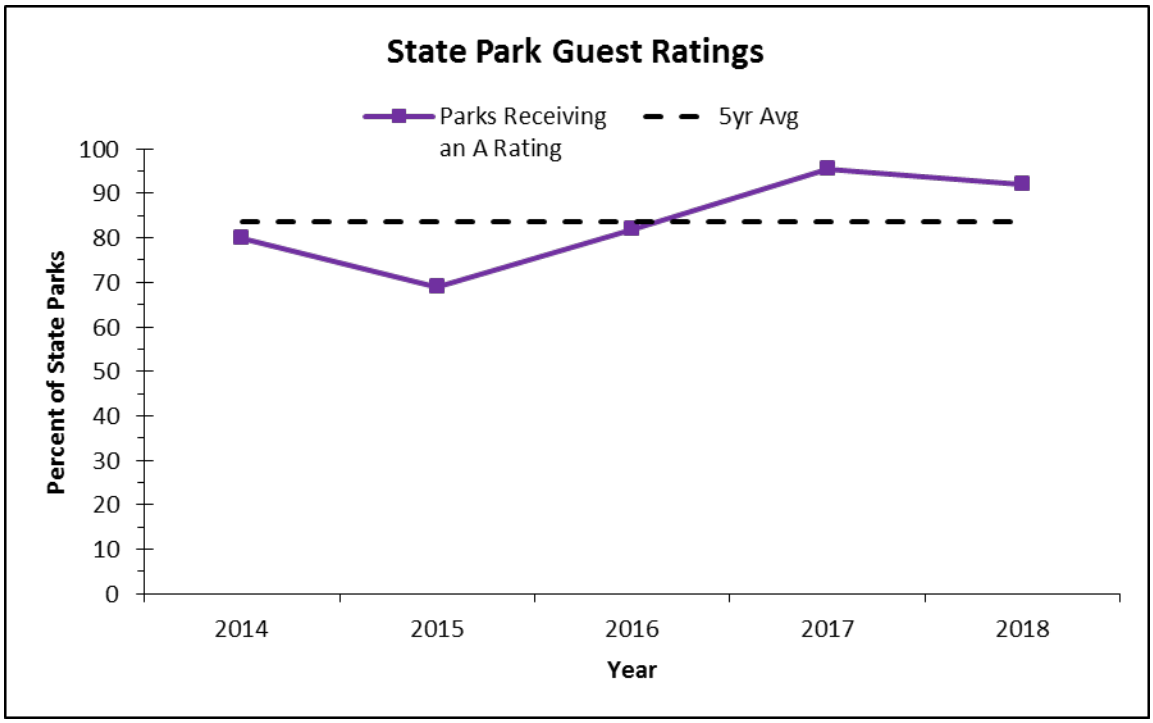
HUNTER SATISFACTION

Satisfaction Scale 1=Very Dissatisfied; 2=Moderately Dissatisfied; 3=Slightly Dissatisfied; 4=Neutral; 5=Slightly Satisfied; 6=Moderately Satisfied; 7=Very Satisfied



Year	Mean
2011	5.09
2012	4.96
2013	4.65
2014	5.11
2015	5.22
2016	5.09
2017	4.96
7-year Average	**5.01**

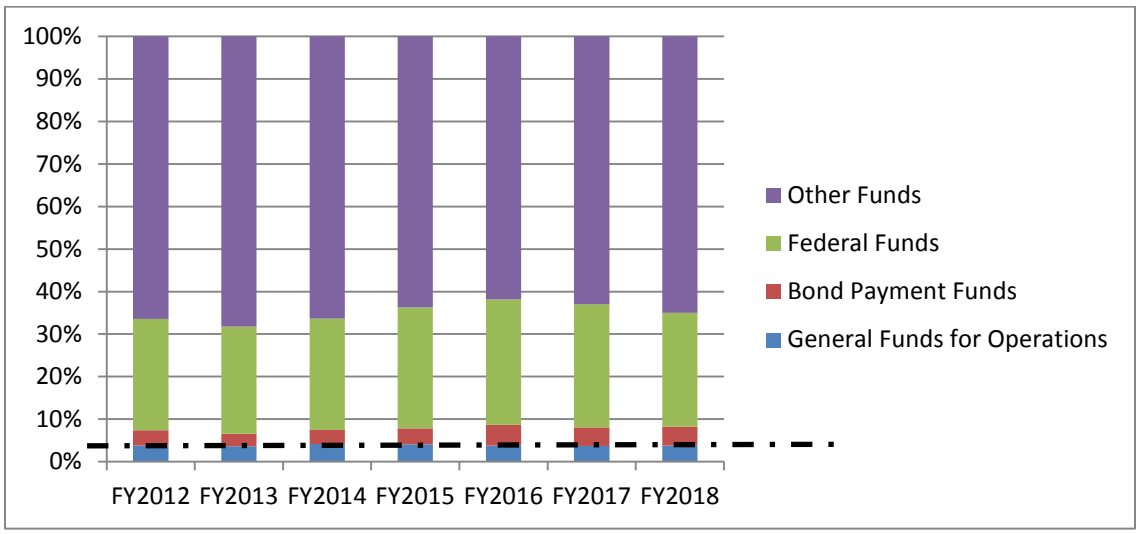
GUEST RATINGS OF STATE PARKS

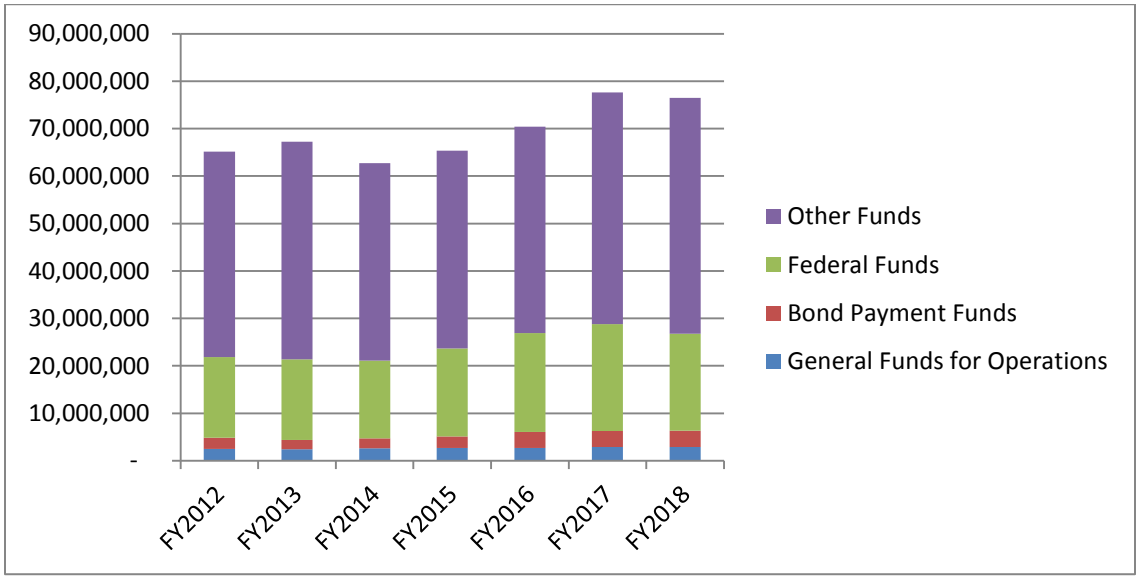


Year	Percent
2014	80
2015	69
2016	82
2017	96
2018	92
5-Year Average	84

SD Game, Fish & Parks
Historical Fund Mix

Game, Fish & Parks Fund Mix	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
General Funds for Operations	2,469,914	2,449,030	2,598,715	2,678,218	2,693,869	2,897,210	2,929,635
Bond Payment Funds	2,372,723	1,950,769	2,111,918	2,447,468	3,404,699	3,398,875	3,388,263
Federal Funds	17,036,562	16,956,468	16,416,388	18,568,978	20,794,340	22,468,780	20,477,051
Other Funds	43,296,144	45,899,256	41,610,072	41,683,139	43,544,110	48,851,637	49,702,525
Total Funds	**65,175,343**	**67,255,523**	**62,737,093**	**65,377,803**	**70,437,018**	**77,616,502**	**76,497,474**
Operational General Funds %	**3.8%**	**3.6%**	**4.1%**	**4.1%**	**3.8%**	**3.7%**	**3.8%**





SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

PROPOSED 2019 GOAC METRICS

The mission of the South Dakota Department of Agriculture is to promote, protect, and preserve South Dakota agriculture for today and tomorrow.

1. The SDDA **protects** forests, farm land, and homes from fire by providing assistance to volunteer fire departments (VFDs) across the state to allow them to better fight fires in their communities. The SDDA will continue to report on the number of VFDs receiving assistance from the SDDA using funds from the U.S. Forest Service.

   Goal: The SDDA's goal is to continue to grow our outreach efforts to VFDs as we are able to given federal funding.

2. The SDDA **promotes** agriculture in the state by maintaining the State Fair Park year round in Huron. The SDDA will continue to report the number of event days at the State Fair Park.

   Goal: The SDDA's goal is to continue to attract quality year-round events at the State Fair Park and maintain event days within 5% on an annual basis.

3. The SDDA **promotes** resource conservation and forestry in the state by providing planning assistance to South Dakota communities, producers, and other partners to manage natural resources. The SDDA will report the number of plans completed annually.

   Goal: The SDDA's goal is to continue to write or review an average of 190 plans per year based on current funding levels and will grow our planning efforts as additional funding is available.

4. The SDDA **protects** agriculture in the state by responding quickly and efficiently to allegations of a violation of pesticide law. The SDDA will report on the percentage of allegations where we made initial contact with the complainant within one business day of receipt of the allegation.

   Goal: The SDDA's goal is to make initial contact with 100% of complainants within one business day.

DENR's Executive Performance Summary - *"Outcomes & Metrics to Measure Success"*

Outcomes	Background Statement	How to Measure Success Goals yellow highlighted	Dashboard for FY17-18 Performance yellow highlighted
1. Public Health Protected 	DENR regulates two substances that have direct impacts on public health because everyone takes them into their body every day – the water we drink and the air we breathe.	No public health outbreaks caused by poor drinking water or poor air quality. 	2017 Public Health Outbreaks Number due to drinking water 0 Number due to air quality 0 2018 Public Health Outbreaks Number due to drinking water 0 Number due to air quality 0
2. Air and Water Quality Protected 	DENR establishes air and surface water quality standards that must meet federal criteria and be approved by EPA, and then operates air and water quality monitoring networks to collect samples that verify whether the standards are being met or not.	100% of the state meets national air quality standards and DENR completes the biennial Integrated Water Quality Report which uses EPA methodology to compare all water quality data collected in the state against water quality standards and filed every two years with EPA.	2017 Air and Water Quality Metrics Air quality in attainment 100% 2016 Integrated Report filed 08/25/2016 *Lake acreage supporting uses 19% *Stream miles supporting uses 21% 2018 Air and Water Quality Metrics Air quality in attainment 100% 2016 Integrated Report filed 03/30/2018 *Lake acreage supporting uses 16% *Stream miles supporting uses 27% *due to ever more stringent standards
3. Pollution Prevention 	It is better to be proactive and prevent pollution than to have to be reactive and clean it up or seek other remedies. 	100% of the federal EPA 319 money is obligated each year to prevent nonpoint source water pollution in watershed projects and 100% of old abandoned underground tanks are pulled to prevent groundwater pollution.	2017 Pollution Prevention Metrics EPA 319 money obligated $1,864,000 EPA 319 money obligated 100% Abandoned tanks reported 62 Abandoned tanks pulled 100% 2018 Pollution Prevention Metrics EPA 319 money obligated $1,861,000 EPA 319 money obligated 100% Abandoned tanks reported 37 Abandoned tanks pulled 100%
4. Cleanup of Mined Lands and Spills 	Lands disturbed by mining activities and spills can pose public health hazards and be sources of pollution to the air, land, and water. 	90% of reclamation liabilities are released for reclaimed mines and 90% of all cumulative spills are cleaned up and closed out with no further action needed	2017 Cleanup Metrics Mine sites reclaimed 88 Reclamation liability released 75% Spills reported 211 Cumulative spills closed out 96% 2018 Cleanup Metrics Mine sites reclaimed 61 Reclamation liability released 98% Spills reported 240 Cumulative spills closed out 97%
5. Adequate and Affordable Publicly Owned Environmental Infrastructure 	Adequate and affordable publicly owned environmental infrastructure – drinking water, wastewater, and waste disposal systems – is critical to protecting public health and the environment plus it lays a solid foundation for future economic growth. But many systems in South Dakota have small customer bases and cannot pay for upgrades even with household water and sewer rates in the $45 to $50 per month range for community water systems and $100 to $120 per month range for rural or regional systems, so they need financial assistance.	90% of State Water Plan project applications are funded using grants and low interest loans from state Water and Environment Fund and EPA State Revolving Fund financial assistance programs to provide environmental infrastructure upgrades and expansions. 	2017 Infrastructure Awards State Consolidated $10,100,000 State Water Resource $550,000 State Solid Waste $2,740,000 EPA Revolving Loans $104,900,000 Small Community Plan $160,000 Water Quality Grants $1,030,000 Total dollars awarded $119,480,000 Project applications funded 44/100% 2018 Infrastructure Awards State Consolidated $8,163,700 State Water Resource $10,000 State Solid Waste $2,741,500 EPA Revolving Loans $51,7550,700 Small Community Plan $156,000 Drinking Water Grants $1,100,000 Water Quality Grants $650,000 Total dollars awarded $64,576,900 Project applications funded 44/100%
6. Environmental and Business Friendly Climates Maintained 	To operate in South Dakota and be a good neighbor, businesses need to know the rules; environmental permits are the roadmaps to state requirements for protecting public health and the environment. 	100% of contested environmental permits are upheld by the appropriate permit issuing authority, state board, or court which confirms that DENR has drafted the permits to be technically correct and legally defensible 	2017 Permits Issued by DENR Air Quality permits 79 Feedlot permits 20 Ground Water Discharge permits 4 Mine permits 3 Oil and Gas Board Orders 1 Surface Water Discharge permits 157 Underground Injection Control permits 1 Waste Management permits 26 Water Right permits 88 Total 379 Contested permits 7 or 2% Contested permits upheld 100% 2018 Permits Issued by DENR Air Quality permits 95 Feedlot permits 24 Ground Water Discharge permits 6 Mine permits 1 Oil and Gas Board Orders 5 Surface Water Discharge permits 45 Underground Injection Control permits 2 Waste Management permits 27 Water Right permits 115 Total 320 Contested permits 9 or 3% Contested permits upheld 100%

south dakota
DEPARTMENT OF EDUCATION
Learning. Leadership. Service.

South Dakota Department of Education
Annual Report of Performance Measurements
October 30, 2019

INTRODUCTION

A host of factors impact student success – from high standards to teacher's expectations for students to parent involvement in a child's education. Only some of these measures can be controlled by schools. The Performance Measurements outlined in this report tell a part of that story.

Since 1984 when the South Dakota Legislature, the Governor's Office, the Department of Education, and the school districts first began the work to assess the quality of South Dakota's K-12 schools, the state has gone through a great deal of change. What was once a state mandate to develop common academic standards and an assessment for English language arts and math, is now a federal requirement that includes science. Furthermore, our economy is more diversified and now includes more jobs and economic activity from the healthcare, financial, energy, and information technology sectors of the economy as well as agriculture.

Since the 1890s student diversity has long been a given in South Dakota, but the demographics have changed from indigenous with Norwegian, German, and Swedish immigrants to now include more African and Latin American immigrants. South Dakota's 149 public school districts and accredited non-public schools all strive to meet the same academic standards while retaining the authority to choose curriculum that is best for their students and teachers. The purpose of having statewide academic standards and a statewide assessment is two-fold. The first is so that districts and schools can see where their strengths and weaknesses are compared to the standards and implement improvements. The second is so that the public can see what result their tax dollars achieved against a consistent benchmark.

The bulk of the data in the following charts comes from the South Dakota Report Card, which is published annually and is available online at sdschools.sd.gov. While done to meet requirements of the federal Every Student Succeeds Act, the state's accountability system was designed with input from South Dakota educators. The Report Card provides a more comprehensive reading of school quality than only the South Dakota State Assessment scores provide. Information from public schools (non-public and Bureau of Indian Education schools are not included in the Report Card) show not only the South Dakota State Assessment's annual results in ELA, math, and science proficiency and growth but also reflect other aspects of school quality such as readiness for college or careers, teacher qualifications, and school safety.

How well a student learns cannot be precisely measured. But a great deal of evidence indicates that students learn best when they have well-led and highly qualified teachers with high expectations for their students. Therefore, the Department of Education will continue to ensure high academic standards are a vital component of the state's education system. The department also can work to insure that accreditation and certification drive high standards for schools, educators, and students.

The department is completing a strategic planning review and will pursue four strategic directions. First, we will *champion excellence* in K-12 education. Second, we will *maximize and build relationships* with tribal schools, non-public schools, and higher education, among others. Next, we will *cultivate a professional culture* that develops our people to serve South Dakota's changing needs. Lastly the department will work *to achieve effectiveness* with the resources provided to us. As the plan becomes more defined, additional indicators that are informed by the new strategy may be proposed. One theme will become clear, that the Department of Education will do more to promote excellence and opportunity for South Dakota's common good.

ITEMS TO NOTE

PROFICIENCY ON STATE ASSESSMENT

- English Language Arts – 3rd grade:
  - Proficiency rate of All Students increased slightly over the last five years (48.81% to 49.71%)
  - Proficiency rate of Native American subgroup increased 2.29 percentage points over the last five years (17.81% to 20.10%)

- Mathematics – 8th grade:
  - Proficiency rate of All Students increased 5.51 percentage points over the last five years (39.25% to 44.76%)
  - Proficiency rate of Native American subgroup increased just over 1 percentage point (11.56% to 12.58%)

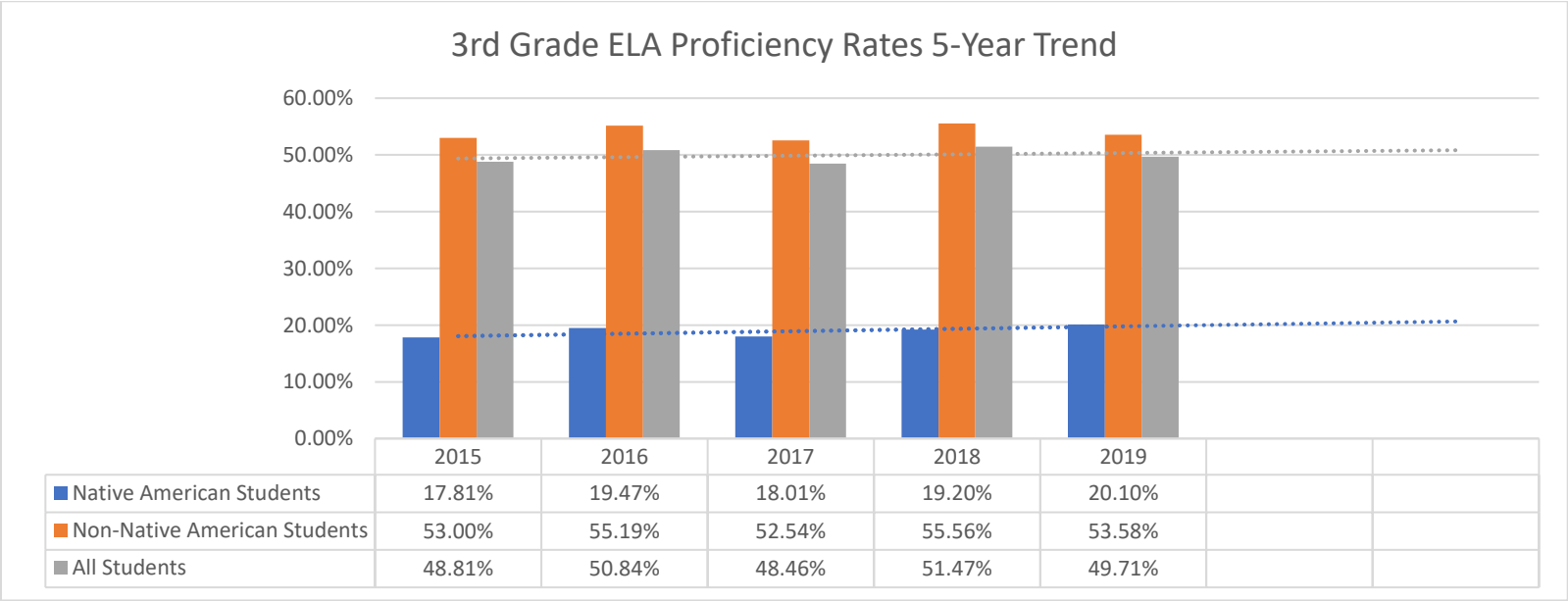
COLLEGE AND CAREER READINESS RATES

- Measure was originally just students who took the ACT and met the bar
- Over the years, additional students added to the measure, since it's imperative that all students have some sort of postsecondary training
- Measure now includes students who met the ACT bar, the bar for the South Dakota State Assessment, or the Accuplacer bar

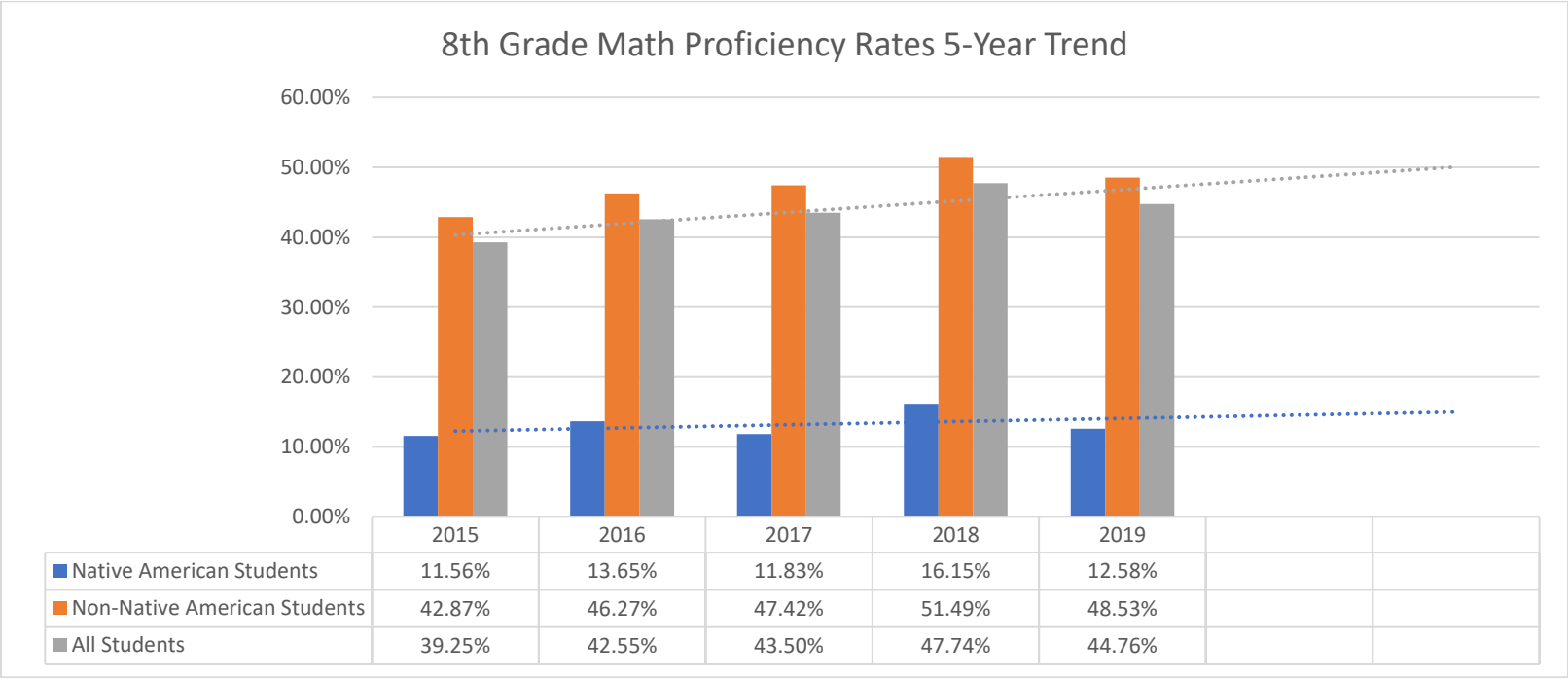
ENGLISH LEARNERS (students whose native language is not English)

- New indicator under Every Student Succeeds Act (not one of previously approved Performance Measurements)
- South Dakota's population of English Learner students has increased approximately 9% since 2013
- With two years of data, English Learners considered "on track" to attain language mastery increased 12 percentage points (33% in SY 2017-18 to 45% in SY 2018-19)

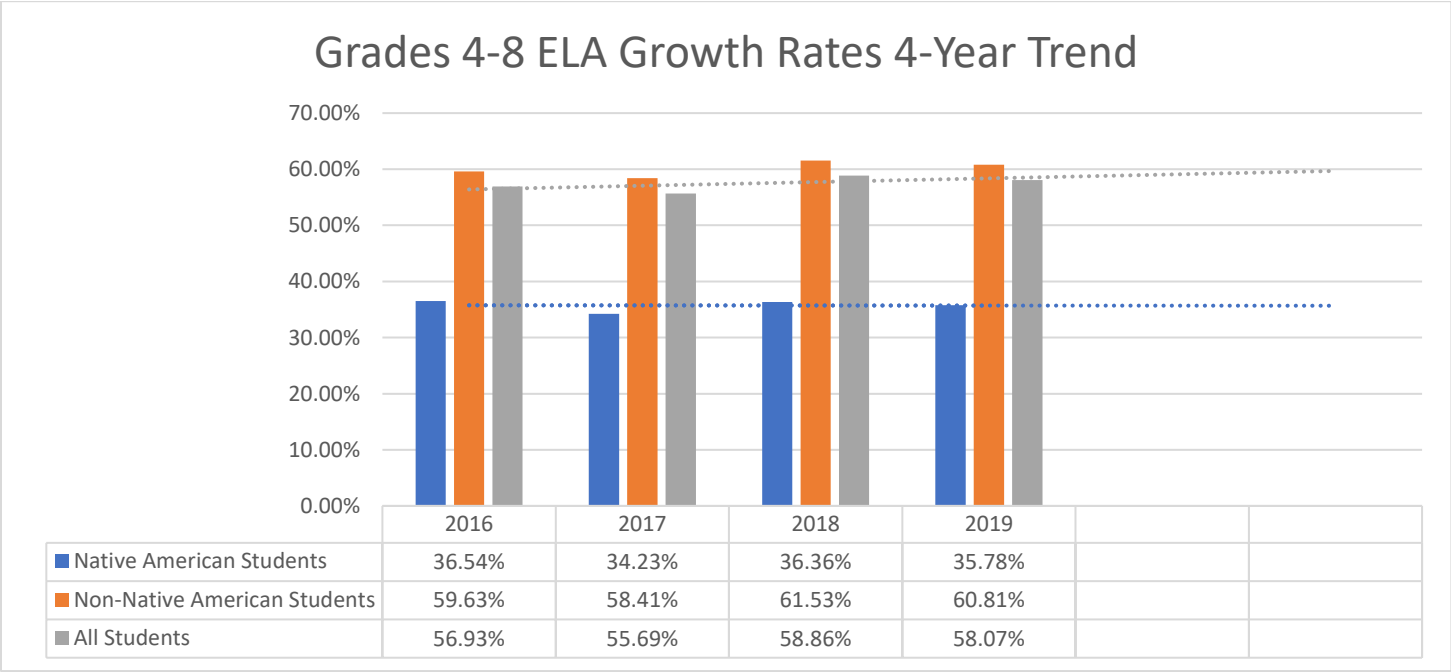
English Language Arts Proficiency Rates (students scoring at levels 3 & 4 on state assessment)													
		2015		2016		2017		2018		2019		Five and Ten Year Goals	
Grade 3		Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	2022-23	2027-28
	Native American Students	1196	17.81%	1284	19.47%	1244	18.01%	1151	19.20%	1204	20.10%	54.44%	66.38%
	Non-Native American Students	8839	53.00%	9253	55.19%	9284	52.54	9098	55.56%	9188	53.58%	60.97%	66.38%
	All Students	10035	48.81%	10537	50.84%	10528	48.46%	10249	51.47%	10392	49.71%	54.44%	66.38%



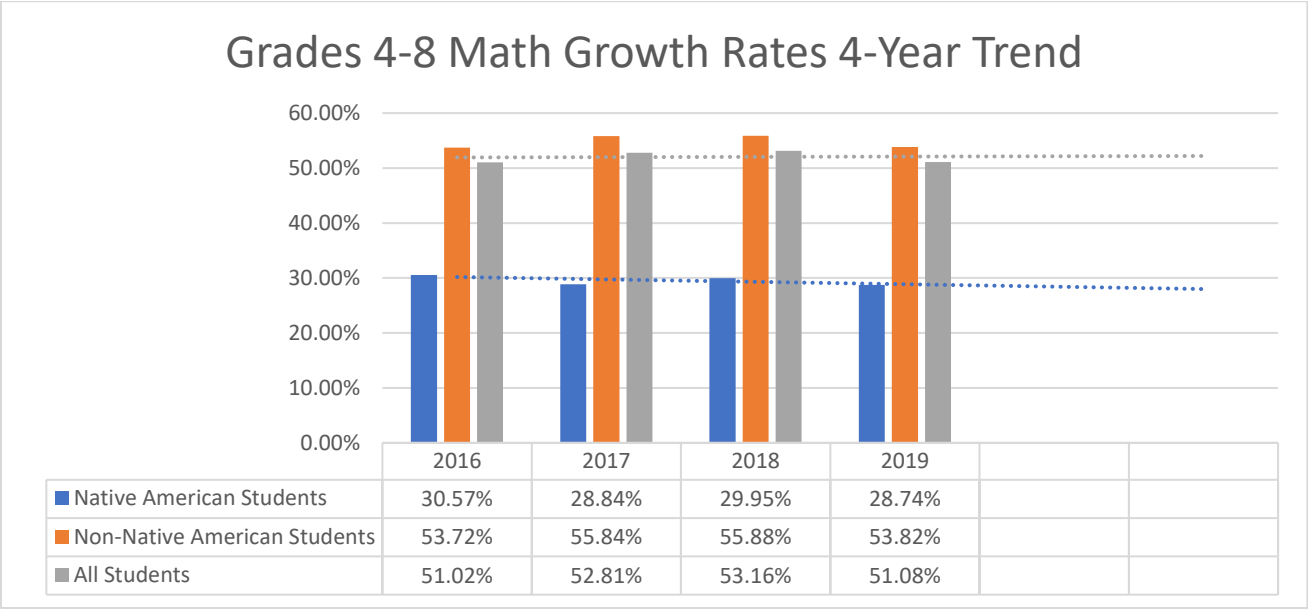
Math Proficiency Rates (students scoring at levels 3 & 4 on state assessment)													
		2015		2016		2017		2018		2019		Five and Ten Year Goals	
Grade 8		Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	Number of Students Tested	Proficiency Rate	2022-23	2027-28
	Native American Students	1047	11.56%	1055	13.65%	1040	11.83%	1028	16.15%	1065	12.58%	44.74%	57.14%
	Non-Native American Students	8011	42.87%	8198	46.27%	8412	47.42%	8660	51.49%	9104	48.53%	54.33%	57.14%
	All Students	9058	39.25%	9253	42.55%	9452	43.50%	9688	47.74%	10169	44.76%	52.45%	57.14%



Elementary and Middle School English Language Arts Growth Rates											
		2016		2017		2018		2019		Five and Ten Year Goals	
% of Students Meeting Growth in English Language Arts		Number of Students Included	Rate	Number of Students Included	Rate	Number of Students Included	Rate	Number of Students Included	Rate	2022-23	2027-28
	Native American Students	5414	36.54%	5452	34.23%	5154	36.36%	5537	35.78%	55.83%	63.68%
	Non-Native American Students	41640	59.63%	43032	58.41%	43837	61.53%	45089	60.81%	62.59%	63.68%
	All Students	47154	56.93%	48484	55.69%	49011	58.86%	50626	58.07%	61.27%	63.68%

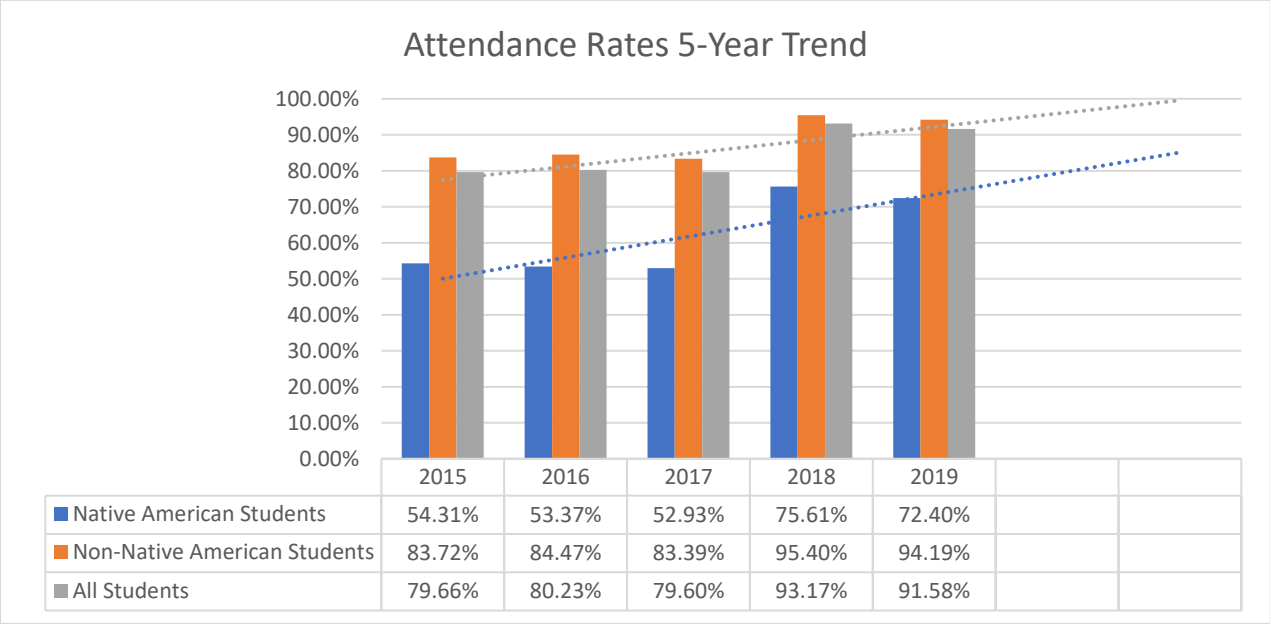


Elementary and Middle School Math Growth Rates											
		2016		2017		2018		2019		Five and Ten Year Goals	
% of Students Meeting Growth in Math		Number of Students Included	Rate	Number of Students Included	Rate	Number of Students Included	Rate	Number of Students Included	Rate	2022-23	2027-28
	Native American Students	5499	30.57%	5454	28.84%	5156	29.95%	5528	28.74%	51.24%	62.03%
	Non-Native American Students	41746	53.72%	43107	55.84%	43962	55.88%	45150	53.82%	58.96%	62.03%
	All Students	47245	51.02%	48561	52.81%	49118	53.16%	50678	51.08%	57.59%	62.03%

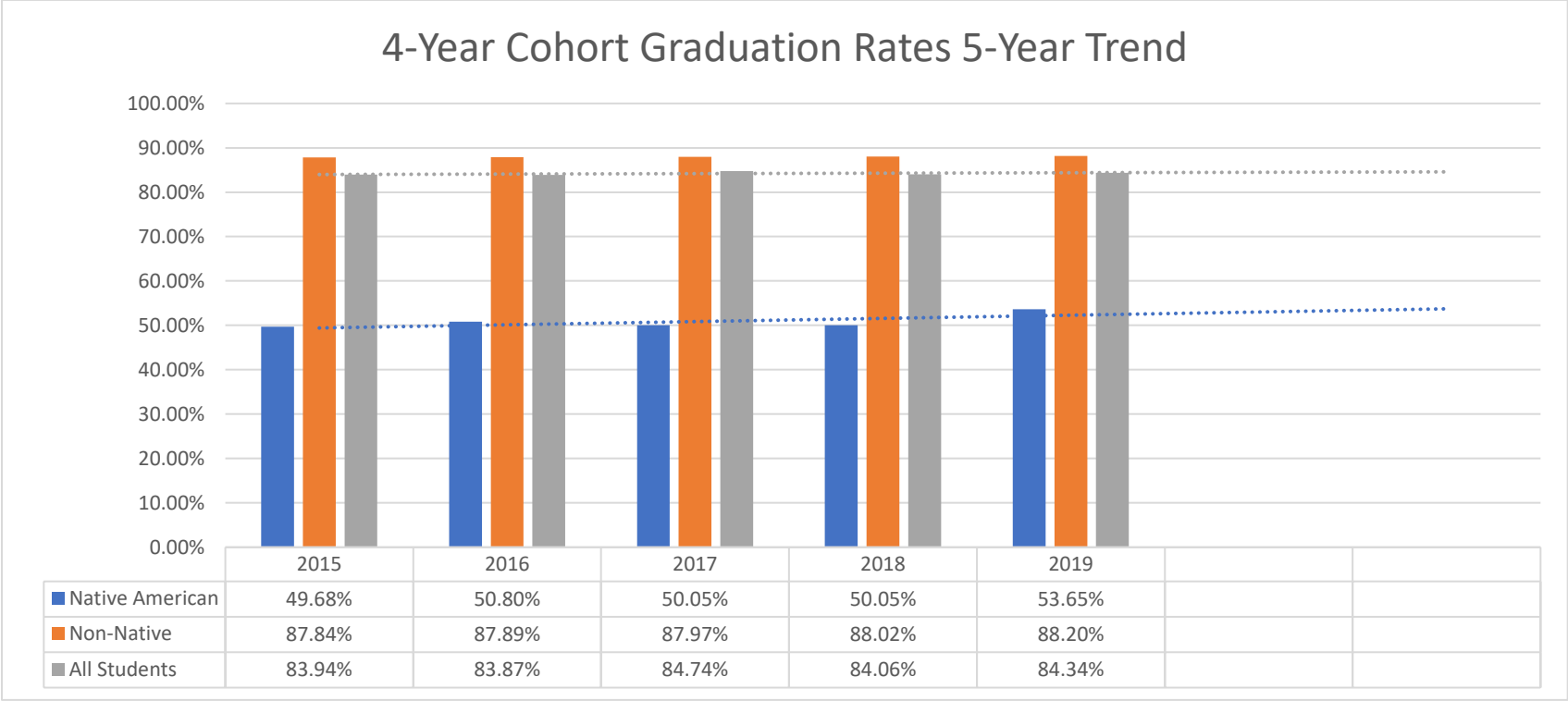


Elementary and Middle School Attendance Rates													
		2015		2016		2017		2018*		2019		Five and Ten Year Goals	
% of Students Meeting Attendance Benchmark		Number of Students Included	Rate (94%)	Number of Students Included	Rate (94%)	Number of Students Included	Rate (94%)	Number of Students Included	Rate (90%)	Number of Students Included	Rate (90%)	2022-23	2027-28
	Native American Students	13818	54.31%	3786	53.37%	13721	52.93%	10626	75.61%	11782	72.40%	83.72%	90.29%
	Non-Native American Students	86206	83.72%	87408	84.47%	88797	83.39%	83946	95.40%	86621	94.19%	97.16%	98.93%
	All Students	100024	79.66%	10159	80.23%	10159	79.60%	94572	93.17%	98403	91.58%	95.79%	98.42%

*Benchmark changed from 94% to 90% in order to align with federal reporting requirements.

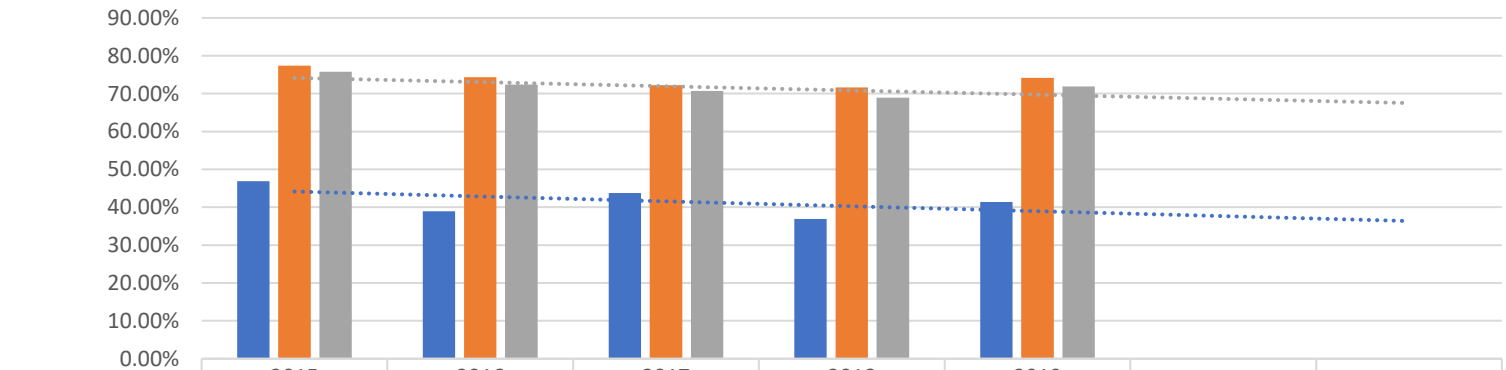


4-Year Cohort Graduation Rates												
	2015		2016		2017		2018		2019		Five and Ten Year Goals	
	Number of Students in Cohort	Graduation Rate	Number of Students in Cohort	Graduation Rate	Number of Students in Cohort	Graduation Rate	Number of Students in Cohort	Graduation Rate	Number of Students in Cohort	Graduation Rate	2022-23	2027-28
Native American Students	950	49.68%	941	50.80%	1039	50.05%	995	50.05%	1040	53.65%	92.31%	96.30%
Non-Native American Students	8348	87.84%	9145	87.89%	8286	87.97%	8526	88.02%	8273	88.20%	92.31%	96.30%
All Students	9298	83.94%	9086	83.87%	9325	83.74%	9521	84.06%	9313	84.34%	92.31%	96.30%

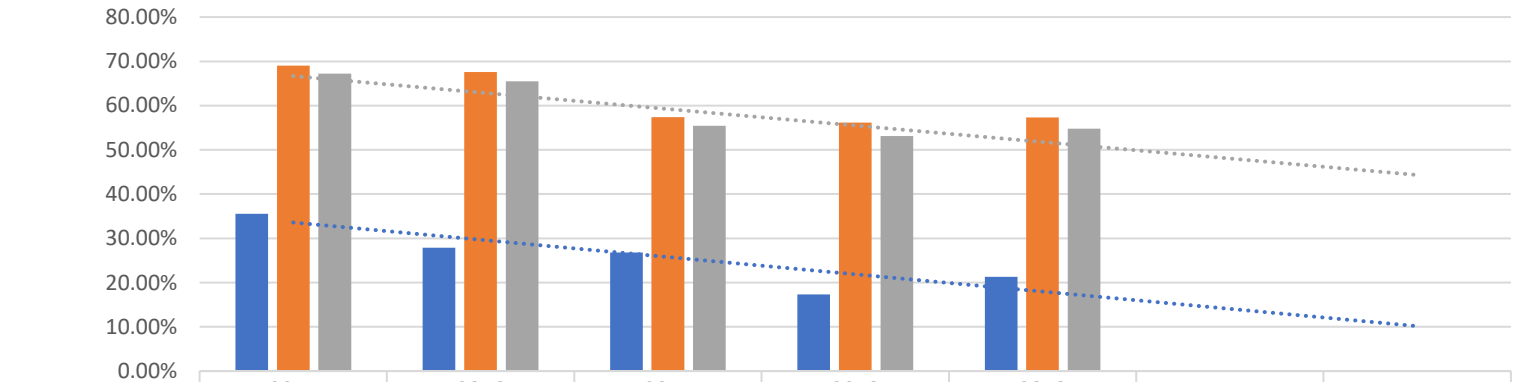


College and Career Readiness Rates of Prior Year's Graduating Class													
		2015*		2016*		2017*		2018		2019		Five and Ten Year Goals	
		Number of Students Tested	Rate	Number of Students Tested	Rate	Number of Students Tested	Rate	Number of Students Tested	Rate	Number of Students Tested	Rate	2022-23	2027-28
English Assessment Ready	Native American Students	318	46.86%	334	38.92%	494	43.72%	617	36.95%	578	41.35%	70.97%	78.57%
	Non-Native American Students	5546	77.41%	5771	74.32%	7151	72.21%	7455	71.63%	7635	74.22%	75.09%	78.57%
	All Students	5864	75.75%	6105	72.38%	7645	70.73%	8072	68.98%	8213	71.91%	70.97%	78.57%
Math Assessment Ready	Native American Students	318	35.53%	312	27.88%	492	26.83%	617	17.34%	578	21.28%	55.56%	67.97%
	Non-Native American Students	5546	69.02%	5652	67.59%	7140	57.40%	7434	56.12%	7622	57.29%	62.04%	67.97%
	All Students	5864	67.21%	5964	65.51%	7632	55.44%	8051	53.15%	8200	54.76%	55.56%	67.97%

*Rates are based on cut scores for ACT in 2015. In 2016 Accuplacer was added to measure, and in 2017, state assessments were added.



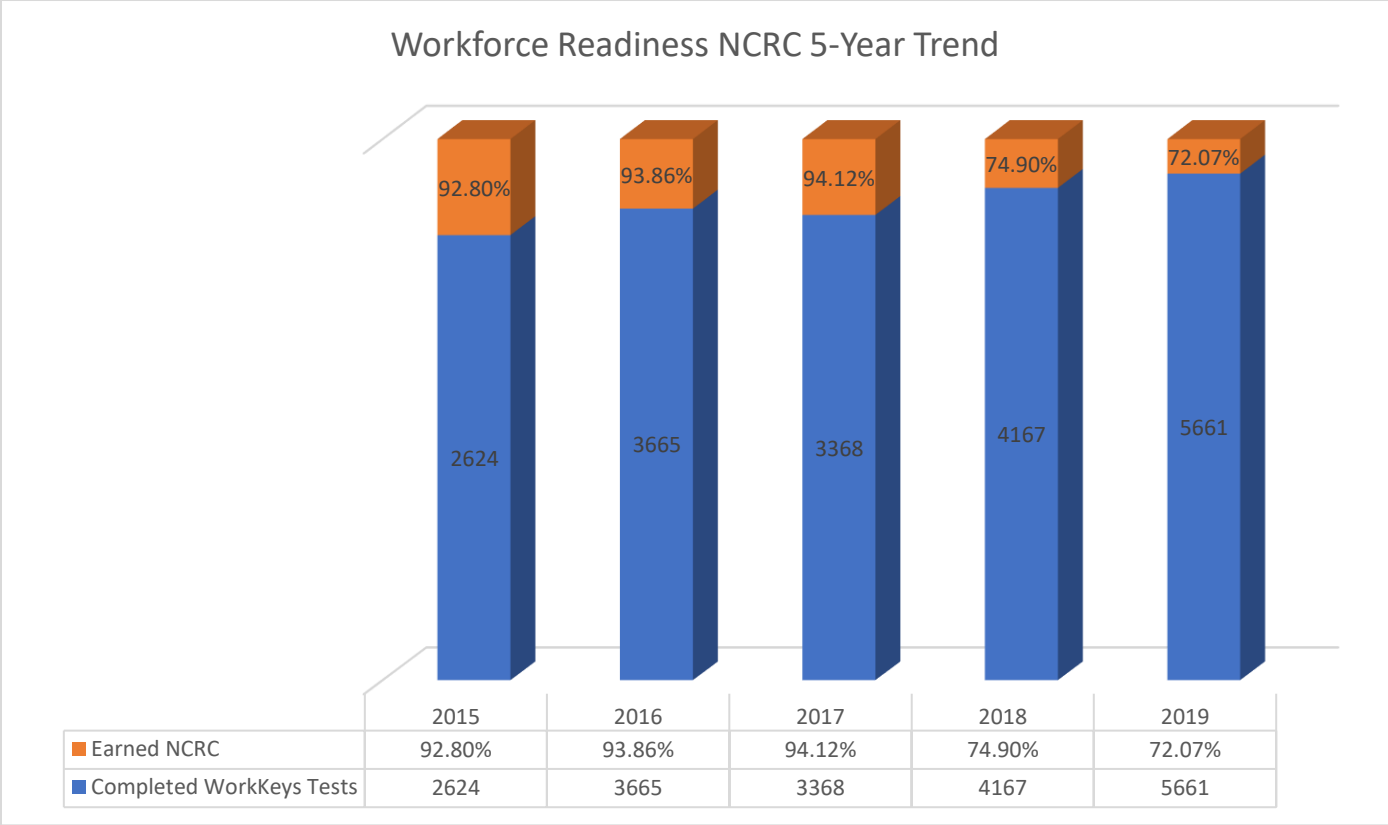
	2015	2016	2017	2018	2019		
Native American	46.86%	38.92%	43.72%	36.95%	41.35%		
Non-Native	77.41%	74.32%	72.21%	71.63%	74.22%		
All Students	75.75%	72.38%	70.73%	68.98%	71.91%		



	2015	2016	2017	2018	2019		
Native American	35.53%	27.88%	26.83%	17.34%	21.28%		
Non-Native	69.02%	67.59%	57.40%	56.12%	57.29%		
All Students	67.21%	65.51%	55.44%	53.15%	54.76%		

Workforce Readiness (National Career Readiness Certificate)							
						Five and Ten Year Goals	
	2015	2016	2017	2018*	2019	2022-23	2027-28
# Students Completing WorkKeys Tests	2624	3665	3368	4167	5661	N/A	N/A
% Students Earning NCRC Certificate	92.80%	93.86%	94.12%	74.90%	72.07%	96.68%	98.75%

*Benchmark for 2015-2017 was earning Bronze Certificate; benchmark was changed to Silver Certificate in 2018.



Impact of Federal Dollars (FY 19)				
Program	**Total state allocation**	**Flow-through to schools, subrecipients**	**Students served**	**Weblink for required reporting**
Individuals with Disabilities Education Act, Part B (ages 3-21)	$38,882,294	$34,214,932	21,625	https://doe.sd.gov/sped/SPP.aspx click on "LEA Public Reporting"
Individuals with Disabilities Education Act, Part C (birth to age 3)	$2,301,533	$0	2,310 (cumulative for year)	https://doe.sd.gov/Birthto3/ click on "Public Reporting" then see most recent Annual Performance Report
Title I, Part A	$48,572,559	$46,956,126	46,334 (schoolwide and targeted)	https://sdschools.sd.gov
Child and Adult Nutrition Services – School Meal Programs	$37,630,000	$37,630,000	4.5 million breakfasts 16.3 million lunches	https://doe.sd.gov/cans/index.aspx click on "Documents" then Participating Agencies. List includes agencies that participate in meal programs, not just schools.

- IDEA Part B is Sections 611 ($37,414,658) and 619 ($1,467,636) for grant year starting 07/01/2018. 611 is school-age children; 619 is ages 3-5.
- IDEA Part C is grant year starting 07/01/2018 and serves birth to age 3. DOE pays direct service providers and service coordinators, which is not an allocated formula but based on services provided.
- Title I Part A is grant year starting 07/01/2018 and the flow-through includes Title I Flow Through and School Improvement Flow Through.
- Child and Adult Nutrition is grant year starting 10/01/2018 and the allocation is $37,630,000. Since this is an entitlement program, DOE only reimburses for actual meals. This amount is for just the National School Lunch Program ($29,700,000) and School Breakfast ($7,930,000). Allocation is not just to public schools, but also to private and Bureau of Indian Affairs schools. It does not include administrative, since this is not part of the actual grant award.