

MINUTES

Appropriations



Representative Mike Derby, Lead Co-Chair
Senator Jean Hunhoff, Co-Chair

Hundred and Nineteenth Meeting, 2024 Interim
Tuesday, July 30, 2024

Room 362 – State Capitol
Pierre, South Dakota

The second meeting of the 2024 Special Committee on Appropriations (the "Committee") was called to order by Lead Co-Chair Representative Mike Derby at 9:00 AM in Room 362 of the State Capitol.

A quorum was determined with the following members answering the roll call: Senators Jim Bolin, Bryan Breitling, Red Dawn Foster (remote), Jack Kolbeck, Ryan Maher, Dean Wink, Larry Zikmund, and Jean Hunhoff; Representatives Linda Duba, Chris Karr, Chris Kassin, Lance Koth, Dennis Krull, John Mills, Ernie Otten, Tony Venhuizen, and Mike Derby. Excused: Senator John Wiik.

Staff members present included Jeff Mehlhaff, Chief Fiscal Analyst; Joslyn Jessop, Senior Fiscal Analyst; Mitch Honan, Fiscal Analyst; Joey Knofczynski, Senior Fiscal Analyst; and Bill McDonald, Fiscal Analyst.

***NOTE:** for the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at <https://sdlegislature.gov>.*

Senator Bolin moved, seconded by Senator Breitling, to approve the minutes of the May 21, 2024, Committee meeting. Motion prevailed on a voice vote.

FY2024 Year-End Report

Commissioner Jim Terwilliger, Bureau of Finance and Management (BFM), presented the bureau's FY2024 year-end summary, covering the state's surplus, revenue collections, reversions, and State Fiscal Recovery Fund spending ([Document #1](#)).

At the end of FY2024, the state had an \$80.7 million surplus, including \$24.3 million in higher revenues than expected and \$56.4 million in reversions from lower expenditures than expected. This unobligated funding is transferred to the state's reserves. Over the last few years, the year-end surplus has been coming down to a more normal level. The balance of the state's reserve funds totaled \$323 million to begin FY2025, the highest total over the last 11 fiscal years.

Senator Hunhoff asked Commissioner Terwilliger to address how much revenue has exceeded expectations over the last few years. **Derek Johnson, State Economist, BFM**, answered in FY2023, revenues came in \$17 million higher than expected. In FY2022, revenues came in \$72 million higher than expected. And in FY2021, revenues came in \$62 million higher than expected. Senator Bolin asked about the rainy day fund, specifically whether the fund may ever be used for ongoing expenses. Commissioner Terwilliger said BFM views those moneys as one-time. So, generally speaking, BFM would not propose to use rainy day fund moneys on ongoing expenses unless there is a temporary economic shortfall. Senator Bolin agreed with Commissioner Terwilliger's sentiment.

FY2024 revenues were \$2.54 billion. Around 57% of revenues were from the sales and use tax. While sales and use tax collections were \$21.1 million less than expected, other revenue sources came in higher, including the insurance

company tax, bank franchise tax, and unclaimed property receipts. As the state moves further from the peak of the pandemic, revenue predictions are nearing closer to actuals. Before adjusting for the rate change, sales and use tax revenues were down 2.6% over last year. After adjusting for the change in the sales tax rate, they were up 4.2%. Over the last 20 years, the average growth rate year-over-year is 5.3%.

Senator Hunhoff asked about whether there has been an increase in the number of banks coming to the state. Commissioner Terwilliger said he was not sure about the number of banks, but the amount of assets held in South Dakota grew, particularly as borrowing slowed down with Federal Reserve rate increases. Representative Derby asked about the one-time sales and use tax figure presented. Commissioner Terwilliger stated those collections were at a higher tax rate than the rest of the collections for the fiscal year, so they were separated out.

Other revenue sources, such as lottery receipts and contractor's excise tax collections, are increasing. Unclaimed property revenue has been variable, with high remittances in FY2024 of around \$175 million and claims totaling \$38 million. Unclaimed property usually comes in around November 1 each year, so there will be a better idea of what will be remitted for FY2025 then.

Bank franchise tax revenues increased by 40.3% from FY2023 to FY2024. Representative Venhuizen asked for clarification of why this was the case. Commissioner Terwilliger said this tax is income-based for financial institutions, and they can file extensions on when the state will receive remittances. FY2023 revenue numbers should have been a little higher, and FY2024 numbers should have been a little lower.

As to budgeted reversions, 97% were within six agencies. \$42.3 million of the \$56.4 million total in reversions came from the Department of Social Services (DSS). Within DSS, the agency had less than anticipated caseloads and utilization, along with some workforce shortages. Medicaid expansion budgeting was a factor here. Representative Karr asked about whether the Legislature saving some money for the end of enhanced FMAP affected reversions. Commissioner Terwilliger noted such additions were taken into account when making mid-year adjustments, so those extra moneys were transferred before being reverted.

Representative Karr asked about what happens if an agency overspends. Commissioner Terwilliger said there are two options: call a special session to appropriate more funding or ask the Committee to move appropriation authority between departments.

The Department of Human Services reverted \$5.8 million, mainly from the Division of Long-Term Services and Support. The Department of Education reverted \$3.6 million, mostly from State Aid due to fall enrollment numbers coming in lower than projected.

With the State Fiscal Recovery Fund, \$809.0 million out of \$974.5 million appropriated has been obligated as of the end of July. Representative Duba asked about the regional services project listed. **Morgan Gruebele, Chief Budget Analyst, BFM**, said those moneys were for designating emergency medical services regions. Phase one will include a comprehensive analysis of the current state of services, with phase two involving the granting of moneys to make systematic improvements. Of the \$115.9 million appropriated to use the Capital Projects Fund, \$36.7 million has been obligated for three projects and administrative costs. Senator Kolbeck asked when the moneys have to be spent by and what would happen if we do not spend it all. Commissioner Terwilliger said the deadline is the end of 2026. Any moneys left over would likely be returned to the federal government. There is no longer an opportunity to add new projects to the list.

Proration of FY2024 Interest Earnings

Commissioner Terwilliger next presented on a memo covering the proration of investment income ([Document #2](#)). This process involves figuring out which funds should be considered participating, meaning they retain interest

earned on moneys within, or nonparticipating, meaning interest earned is put in the general fund. He asked the Committee to approve the designations include on page two of Document #2.

Representative Venhuizen asked why the Incarceration Construction Fund is listed as nonparticipating when the Legislature passed a law saying interest should stay in the fund. Commissioner Terwilliger said the recommendation is for FY2024 only. The new law will take effect in FY2025.

Senator Breitling moved, seconded by Representative Duba, to certify the recommendation of the Commissioner of BFM as to proration of funds as specified in Attachment 1 of page 2 of the document provided to the Committee. The motion passed 15-0-3. Excused: Representative Karr, Senator Wiik, and Representative Venhuizen.

Inflation Reduction Act Funding

Commissioner Terwilliger spoke about Inflation Reduction Act (IRA) funding opportunities. The IRA, which passed around two years ago, is separate from COVID-19 stimulus acts. None of South Dakota's congressional delegation voted for the act. The IRA, in part, was designed to address energy efficiency. In state government, there is currently one FTE dedicated to energy policy, which limits the opportunity to take on additional funding without growing state government.

The executive branch is not intending to apply to most of the available IRA programs. The exceptions were the Forestry Legacy Program and Community Forest Program. Representative Duba asked whether anyone looked at what cost would be required to support these programs, particularly rebate programs for consumers, or whether the executive branch just disagreed with the policy. Commissioner Terwilliger answered it was a combination of those points. Most other state energy offices are increasing in response to these programs. BFM does not think the administrative burden is a prudent thing to take on. Representative Duba asked again about what the benefit to South Dakotans would be. Commissioner Terwilliger noted there is a cost to using taxpayer dollars considering the state of the federal deficit.

Representative Koth asked about whether the state could, for short-term programs, contract out the administration of the programs. Commissioner Terwilliger said the executive branch leverages those opportunities in other areas, like reporting to the federal government. That could be an option here but with a caveat: there still have to be state-led resources involved. The entire program could not be turned over to a contractor here. Representative Koth added he believes these programs will only get more complicated, so the state will need to find ways to respond. As far as agencies are concerned, there is a question of how they ramp up and down and have the people in the right place to respond in a timely fashion and avoid missing out on opportunities. Representative Duba said Representative Koth's idea about contracting out is excellent and added there is a policy difference at play. There are programs designed to help individuals purchase energy-efficient appliances, heat pumps, etc. to reduce their energy footprint and cost. The benefit is to the individuals or companies building housing. Representative Duba said it is "extremely unfortunate" BFM decided South Dakotans did not need these rebates for changes they may be making to their houses due to repairing damage, remodeling, or new construction.

Representative Derby asked what the Committee's role is with these programs, and whether it is all in the Governor's purview. Commissioner Terwilliger said the application process begins at the agency level. Ultimately, the executive branch makes the final decision as it has more of the subject matter expertise. Senator Zikmund agreed with Representatives Koth and Duba, referencing the turning down of extra money for feeding children over the summer. He added the example of the city of Sioux Falls providing similar rebates. Senator Bolin said he disagrees, saying it takes courage to evaluate these programs and say no. He said the federal debt passed \$35 trillion, costing the country more to pay interest than support national defense. Representative Karr said the pandemic opened the vault, and it has stayed open. He added we keep seeing new programs, and it is good the

state is vetting these programs, as we are using taxpayer dollars to run them. Senator Hunhoff agreed with the executive branch, saying the state needs to focus on those in need and manage its resources wisely.

VOCA Funding and Victim Services Grant Funding (SB 168)

Secretary Robert Perry, Department of Public Safety (DPS), presented on victims' services funding granted by the department ([Document #3](#), [Document #4](#)). DPS manages multiple victims' services programs, the largest of which was established by the Victims of Crime Act (VOCA). VOCA funding can be used on direct services to victims of violent crime, while other grants are limited to specific criteria like certain types of crime. VOCA funding from the federal government has been decreasing since 2022, and no increase is expected in the near future. Requests for funding consistently outpace available resources by a wide margin.

Senator Kolbeck asked about \$5 million in general funds appropriated to DPS a couple of years ago to supplement victims' services and whether DPS used the same rules and regulations that apply to VOCA to grant those moneys. **Jon Bierne, Director of the Division of Criminal Justice Services, DPS**, responded those moneys were not restricted in the same way as VOCA. The state moneys were awarded to subgrantees to cover anything adequately described for victims' services except construction. It was determined through conversations with subgrantees there was a significant funding gap in administrative needs, particularly people to help work in offices and shelters. Through that dialogue, DPS expanded the criteria beyond what VOCA allows. Senator Hunhoff asked DPS to confirm the federal VOCA guidelines were not followed when granting the \$5 million. Mr. Bierne confirmed that. Senator Hunhoff said there was a miscommunication about requests being denied because VOCA guidelines were being used for state moneys. Mr. Bierne said the initial discussion was to follow VOCA, but the real gaps were in areas not supported through VOCA grants.

Secretary Perry wrapped up this part of the discussion by adding the original plan for the \$5 million in general funds was expanded due to pushback from the subgrantees. Those entities were told this money was one-time only. Senator Kolbeck agreed the moneys were intended to be one-time only. He added at the time, testifiers said they would not be coming back for future appropriations.

Kelsey Roth, Finance Officer, Office of the Attorney General (ATG), presented on SB 168 (2024) and the newly created \$5 million grant program for victims' services ([Document #5](#)). These one-time moneys are for providing grants to organizations assisting children who have been abused or neglected and victims of domestic violence or sexual assault. Things started ramping up at the end of June when the application went up. The first application period ends on August 31, 2024. The office will review the applications in September, with awards being made in October.

With the help of DPS, the office sent notification to organizations qualifying for this program. The application is also available online. So far, 16 applications have been submitted requesting a little over \$4.1 million. Applications will be evaluated based on the demonstration of need, the intended goals and outcomes, and how the budget aligns with the need. Grants will be paid out on a reimbursement basis. To close out the grant, recipients are expected to complete a final progress report showing how the grant moneys impacted their programming.

Senator Hunhoff asked whether previous recipients of victims' services funding will be eligible to apply for this grant. **Charlie McGuigan, Director of the Division of Civil Litigation, ATG**, said the office plans to review the criteria in SB 168 for each applicant, but without firsthand knowledge, he cannot answer yes or no at the moment. Whether it is a new or existing organization, if they meet the criteria, they can apply and receive funding. Senator Kolbeck asked whether the office would be able to administer this program without adding new staff. Mr. McGuigan said right

now the office is handling it as is, and he anticipates it can continue to do so. If for some reason this program would grow, then the situation will be addressed through the budget process.

Dianna Miller, South Dakota Network Against Family Violence and Sexual Assault, said the network is glad the Legislature approved SB 168 and the \$5 million appropriation. Federal spending on victims' services keeps going "down, down, and down." The lack of funding is a continuous problem because violence is not decreasing. She said the Attorney General is not foreign to the victims' services arena, and the network knows their office will do a good job and will maintain accountability here. Anything funded using VOCA moneys cannot be supported with the \$5 million here. The bill is clear about covering emergency services with the understanding this is one-time funding. She thanked the Committee for this bill and for taking care of people who cannot take care of themselves.

Senator Maher asked about tracking where these victims come from and whether some victims are coming in from other states. Ms. Miller said the network is studying that question and looking into whether there is a way to receive reimbursement for serving victims coming from outside the state. If someone needs services, they are not turned away. The network may apply for a grant from the \$5 million to cover data collection of this nature.

Becky Rasmussen, Call to Freedom, said her organization serves those affected by human trafficking, which is considered "one of the most pressing human rights issues of our time." Human trafficking involves a trafficker using force, fraud, or coercion to control victims for engaging in sex acts or labor services. While it is common for trafficking to involve multiple perpetrators, many traffickers are individuals whom the victim trusted and loved. The majority of victims experience multiple forms of abuse. Human trafficking does not occur in silos; there will be a pattern of behavior, even if subtle at times. Call to Freedom specializes in addressing multiple intersections of abuse and helps victims recognize what has happened to them. The organization is one of the only nonprofits offering these kinds of services. She thanked the Committee for their support. Senator Zikmund added Call to Freedom is a great organization deserving of support.

Representative Derby asked whether Call to Freedom is able to participate in the SB 168 program. Ms. Rasmussen said that was her hope. It will be up to the Attorney General. Nonetheless, the organization has received VOCA funding over the last seven years and has applied already for a grant from the \$5 million.

Rachel Schartz, Call to Freedom, added human trafficking is intertwined with other devastating crimes like sexual abuse, domestic violence, and child abuse and neglect. The organization has served over 1,300 people since 2016. As Call to Freedom continues to conduct outreach and awareness, more victims are identified and seeking services. The organization is on pace to serve more people than ever in 2024. According to a 2019 study, each human trafficking victim who is not served cost the average taxpayer \$5.3 million. By providing specialized ongoing support, Call to Freedom provides a "deeply needed public service" along with healing and hope to those in need. She added the organization is thankful for the Committee's support.

Jennifer Stalley, Children's Home Society of South Dakota, said her organization has been working in this area for over 100 years. In the last year or two, the organization expanded its domestic violence shelter in Sioux Falls from 40 beds to 96 beds. There is also a child advocacy center in Sioux Falls assisting with forensic interviewing and services for sexually abused children. To reaffirm what the previous speakers said, the need for victims' services is not going away. DPS is doing well with the federal moneys they have, but there are not enough to go around. She said the Committee will probably keep seeing her and others because the need is still not being met. Senator Hunhoff thanked everyone for coming in and speaking on this topic. She said they are talking to a group with limited

resources being stretched out. She added the parties involved need to come back as collaborating partners and present an overall view for the Legislature as to where funding is needed and where that funding will come from.

Medicaid Expansion Update

Heather Petermann, Medicaid Director, Department of Social Services (DSS) presented a one-year update on Medicaid expansion ([Document #6](#)). She said thanks to the Committee and the work of colleagues and partners, there are over 24,000 people on Medicaid thanks to expansion.

Enrollment in the Medicaid expansion group has been steadily growing, although the rate of growth has dropped. The average application processing time has stayed well under the 45 days required by federal regulations. Representative Duba asked whether DSS is tracking the number of people on Medicaid who become eligible to be in the expansion population. Ms. Petermann said people have to be enrolled based on the category criteria. Senator Hunhoff asked whether someone on traditional Medicaid can be eligible for the expansion group or if the groups are mutually exclusive. Ms. Petermann said that is correct. People eligible for traditional Medicaid can potentially move into the expansion group if their incomes go up and vice versa.

Total Medicaid enrollment was 138,194 in June 2024, with 24,241 being part of the expansion group. The expansion group includes those aged 19 through 64 meeting income eligibility who otherwise do not qualify for any other Medicaid group. Of the group, 30% are parents, 54% are female, and 47% also receive SNAP benefits. Also, around 82% have had at least one medical service encounter. Nonetheless, the Medicaid expansion group uses medical services less than the most comparable traditional Medicaid group, specifically those in the low-income family category. Representative Duba asked about how the state can improve the use of preventative care here. Ms. Petermann answered DSS is working with provider partners to find ways to promote those services and help people maintain their health. In the past, DSS has sent reminders to families for checkups. Representative Duba asked how Minnesota promoted usage when Ms. Petermann worked there. Ms. Petermann said each state has a different Medicaid structure, so DSS is looking for a state-specific solution. Senator Hunhoff added there was an idea floating around that the expansion group would have a heavy need for services, but this is not necessarily showing in the data right now.

The expansion group does appear to have a higher incidence of medical conditions than the low-income family category under traditional Medicaid, particularly mental health and substance abuse disorders. Also, 15% of the Medicaid expansion group have multiple chronic conditions. It is unclear whether the acuity of these conditions will fall over time. The cost per expansion group member per month is about \$845.80, whereas the cost per low-income family category per month is \$797.53. These numbers can frequently change. Senator Hunhoff asked whether there is a median amount available to account for people not using medical services as much. Ms. Petermann spoke to having many different ways of looking at the information, including how many people have used certain services and the cost of the services. This calculation is just one way to provide comparative information.

Representative Mills asked for the current projection for what Medicaid expansion population should stabilize out at. Ms. Petermann said such a number is still a guess right now. DSS is anticipating 40,000 people for the upcoming year, with the expectation there will continue to be growth. There is a range, based on other states' experiences, on how quickly the uptake might be, so DSS is doing its best to anticipate. Representative Mills added it would take around 1,300 more people per month to reach 40,000, and the rate of increase is not that high now. He asked why DSS is expecting the enrollment rate to increase next year. Ms. Petermann said, in part, because DSS has to guess. There needs to be some room for economic downturns. Representative Duba asked whether more people are expected to enroll through referrals from providers. Ms. Petermann said she wished she knew where and why people sign up for Medicaid expansion, but such information is hard to acquire. Some referrals do come through providers when there are care needs. There is no definite answer to that question. At this time, DSS does not track where a referral to Medicaid comes from. Senator Bolin asked about the 40,000 number, which he said he thinks is

high, and how DSS justifies that number. Ms. Petermann answered the DSS finance team is working on the projections. She said there is no reason to move away from the 40,000 at this point. Representative Venhuizen said it would be worth revisiting the Committee's analysis of what the plateau in the Medicaid expansion population might be. He said an earlier chart provided by DSS projected the higher application rate would keep up through June 2024, but if that were true, the state's Medicaid population should have been around 38,000 in June. It appears growth slowed sooner than that. He mentioned it would be good to revisit the chart and plot it against reality.

Update on FY2025 Revenue Projections

Jeff Mehlhaff, Deputy Director and Chief Fiscal Analyst, Legislative Research Council, presented a FY2025 revenue update for the Committee ([Document #7](#)). Starting with inflation, the rate has come down to around 3.0% year over year, which may end up being the new floor. Such news is good and bad for the economy. With higher inflation, the cost of goods is higher, leading to more sales and use tax revenue. Wage inflation has been strong over the last few years, which is also reflected in higher sales and use tax collections. What specifically causes sales and use tax growth is complex, but it is generally made up of several components, such as inflation, organic growth, stimulus, and tax reduction. LRC predicts 3% sales and use tax growth in FY2025, along with 2.9% growth in contractor's excise tax and lottery revenues. However, unclaimed property revenue is expected to drop by 47.3%. Overall, growth is expected to be 1.3% over actual FY2024 revenues.

Representative Duba asked whether economists are still predicting a recession. Mr. Mehlhaff says economists always predict some probability of a recession, and that was part of the discussion last year, but we have not seen one yet. Senator Hunhoff asked how supply chain issues are factored into this analysis. Mr. Mehlhaff said supply chain issues were the primary cause of the inflation spike around the pandemic. While those issues are easing, they have not gone away, and it is one of the reasons the inflation rate has not fallen further. Another issue is the workforce, as unemployment remains at historic lows. Representative Venhuizen asked about FY2026 projections. Mr. Mehlhaff said the current forecast for FY2026 is 1.8% revenue growth compared to FY2025. The rate of increase is lower than normal, mainly driven by lower investment income. Sales and use tax revenue is expected to increase 5.7% in FY2026.

Representative Karr asked what "boogeyman" the Committee should be aware of after this presentation. Mr. Mehlhaff said he talks about being a glass-half-full kind of guy, looking at revenues from an optimistic perspective. But in terms of a boogeyman, the Congressional Budget Office, the fiscal counterpart at the federal level, says federal spending is not on a sustainable path.

Derek Johnson presented BFM's interim revenue estimate ([Document #8](#)). Along with a presentation, BFM also provided the committee with a revenue forecast booklet ([Document #9](#)). For FY2024, the state ended the year up \$8.9 million in ongoing receipts and added \$15.4 million in one-time receipts totaling \$24.3 million revenue surplus. The revenues adopted by the Legislature for FY2025 are about \$6.2 million more than the actual revenues collected in FY2024. The biggest difference is unclaimed property revenues: the FY2025 adopted revenue number is \$72.6 million less than actual FY2024 revenues for this category.

BFM's forecast suggests FY2025 revenues will be \$109.2 million higher than the current total adopted by the Legislature. There are three general fund revenue sources BFM revised up significantly: the insurance company tax, the bank franchise tax, and investment income and interest. Sales and use tax revenues were revised down \$7.7 million. BFM expects slowing sales and use tax revenue growth in FY2025, as it did in FY2024. Revenues from the lottery and the construction excise tax are also expected to be slightly lower than the adopted numbers, about \$1.5 million less each. The new estimates are not indicative of declines in revenues, just slower growth. Representative Venhuizen asked why the bank franchise tax revenue estimate is 42.7% higher than the Legislature's adopted number. Mr. Johnson said there are a couple reasons for this. Firstly, there is a traditional bank franchise tax and a bank card tax. The bank card tax revenues are less stable, primarily due to varying times when remittances may

come in. The state may receive this tax revenue later than expected, leading to large jumps in collections from year to year. Investment income is revised up more than \$21 million, which is close to a final number. Over \$600 million is in the incarceration construction fund, which earned interest revenue for the general fund previously, but now any interest earned will remain in the fund.

Prison Construction Update

Secretary Kellie Wasko, Department of Corrections (DOC), and Brittini Skipper, Director of Finance and Administration, DOC, presented on prison construction updates for both the new men's correctional facility and the new women's correctional facility in the state ([Document #10](#)). Included in the presentation is a site plan showing where the buildings making up the new men's facility will be located relative to one another. Currently, DOC is in the construction document phase, which includes creating and finalizing the documents necessary to begin construction of the facility. A guaranteed maximum price will be set when 50% of this phase is completed, likely sometime in early November. DOC has also started soil and geothermal testing on site.

Senator Bolin asked whether DOC has a plan B or plan C if the department loses in court with respect to its site placement. Secretary Wasko said there is no developed plan B if the ruling does not come through for DOC, but the department has considered a couple of alternatives. Representative Karr asked about why the facility needs to be at the highest possible security level. Ms. Skipper said a level V security facility can house any type of offender, including those requiring maximum security. Secretary Wasko said the building will be a multi-custody facility designed to take on maximum security offenders from the Jameson Annex. The goal is to build a facility allowing DOC to reduce the populations in other facilities. To accommodate everyone DOC is housing now, the current facilities are not safe, not constructed with modern-day corrections in mind, and not staffed according to national standards. Representative Karr asked whether DOC can predict how many people will be housed in each facility once construction on the new men's facility is complete. Secretary Wasko said the need for the new facility will be at least 1,200 beds based on medium custody population projections. There are differences between predicting the total population and population by security classification. Bed planning requires knowing classifications, which is more difficult to estimate.

Representative Venhuizen asked whether DOC has an ongoing budget adjustment in mind for when the new men's facility comes online. Ms. Skipper said DOC has looked into such a question. Staff from the State Penitentiary will transition over to the new facility. The ballpark figure at this point is around 130 FTE and an additional \$15 million in operating expenses, including the savings in maintenance and repair. The estimate is just preliminary, so the numbers will have to be inflated when the time comes to appropriate. Senator Foster asked whether DOC has worked with the judicial branch or prosecutors as to prison population projections. Secretary Wasko said DOC does not meet with anyone outside the department when formulating population projections or any other state correctional policies. Representative Duba asked whether it is the responsibility of the Legislature, Unified Judicial System, and the Attorney General to decide on whom to incarcerate. Secretary Wasko agreed. DOC has looked at more progressive policies in other states to increase pre-incarceration diversion efforts. Every time the Legislature passes a bill on sentencing, the Legislature can expect DOC to share what the effect was on ongoing operations.

Representative Koth asked about the current staff shortage at DOC. Ms. Skipper said there are currently 78 open security positions at DOC, but that number is the best it has been in a while. Representative Koth added his sources in corrections say safety is an issue and asked whether DOC would be able to operate more efficiently with the new facility in place and not need more staff. Secretary Wasko replied the new facility will be staffed at a ratio matching national standards. There are fewer than 30 vacancies at the State Penitentiary right now. DOC has done some "incredible" recruiting recently, so legislators should hear less from DOC employees. There are also improved efficiencies at the new facility. It will improve on issues seen at the State Penitentiary currently, including controlled

movement and proper staffing when offenders are not in their cells. There will be more staff needed at the new facility, but the State Penitentiary has never had enough staff to adequately cover the population inside.

Representative Mills asked what Jameson Annex would be used for after the new facility is built. Secretary Wasko said the goal is to use the unit for those offenders with specific medical needs, like those who are seriously mentally ill or aging. DOC will see whether that plan holds true based on bedspace needs across the system. Representative Mills also asked whether DOC is coming up with an overall budget for construction projects similar to the one done by the DLR Group. Secretary Wasko said the DLR Group cost estimation is "null and void" because it is outdated. DOC prioritized some of those recommendations, with the most prominent solutions being the construction of new facilities.

For the new men's facility, DOC is negotiating contracts for utilities like water, electricity, and natural gas. Nothing has been signed yet; terms are still being negotiated. DOC does have some contracts for design and engineering in place. So far, \$569.1 million has been dedicated to this project. \$62 million of that has been appropriated and is available to spend on designing, commissioning, buying land, and setting up utilities.

The new women's facility has site work in progress. Vertical construction bids were opened on June 6. The bids came in \$2.8 million less than projected during last session. The savings will be used primarily for owner's contingency. Senator Hunhoff asked for clarification about what the contingency is for. Ms. Skipper said it is for change orders covering anything DOC wants to have altered in the construction plans. DOC is only guaranteed what is in the construction documents. Representative Duba asked what the expected completion date is. Ms. Skipper said it should be done in early 2026.

Steven Haugaard, Self, spoke to the new men's facility and the process for its completion. He said it seemed there were more questions being raised than answers. To him, it sounds like the design, size, and location of the facility are being finalized without any legislative approval of those issues. The purpose of the prison is security and safety, but according to Mr. Haugaard, the state has little in the way of correctional policy, so the building could control policy moving forward.

Kyah Broders, Self, also talked about the new men's facility, asking where South Dakota should draw the line in terms of adding money for these projects. She said South Dakota has the highest per capita incarceration rate in the country. Governor Noem already "boldly stated" \$80 million in surplus would go toward prison construction without legislative approval. She added the state is falling short in other areas like childcare, education, and mental health and rehabilitative services. The 2025 session will provide an opportunity to finalize the details for the project, but she said other locations cannot be discounted.

Representative Venhuizen clarified the Governor saying the \$80 million surplus should go into the incarceration construction fund does not mean it will happen. Only the Legislature can decide how the money will be used. DOC is authorized to buy land and perform design work, but the department is not authorized to build the facility yet. Senator Wink asked for clarification on what DOC believes its authority to be as to the new men's facility. Secretary Wasko said she agrees with the Committee on this issue. She added DOC has the authority to do utility work through SB 49. DOC will come back and request authority for construction once it has a guaranteed maximum price. Representative Duba asked about DOC's role in shaping criminal justice policy in the state. Secretary Wasko said DOC is responsible for incarceration and parole and nothing beforehand. DOC does use best practices to shape the

policies for the department. The department is also collecting more real-time data every year to ask questions and help make decisions.

Representative Karr asked about how DOC is doing geothermal work right now on site without a final design. Secretary Wasko said DOC is only performing surveying right now, specifically test drilling. DOC knows the expected layout of the facility already, so there is an opportunity to test whether geothermal would be an option.

Governor's House Program

Brittini Skipper talked about the Governor's House program from the perspective of DOC (*see Document #10*). The department provides the location and offender labor for the project. The job site is located within the secure perimeter at Mike Durfee State Prison in Springfield, where 150 offenders currently work on the project. Only medium custody or lower offenders may participate. The South Dakota Housing Development Authority (SDHDA) conducts interviews and selects the offenders to hire. The starting wage is \$1.50 per hour but an increase of \$0.20 per hour can be earned after six months. An offender workforce is not perfect, as security will always come first. Minimum staffing can cause modified operations. Some changes have been made to allow for longer workdays, including serving lunch and performing out count on the work site.

Representative Derby asked for clarification as to whether DOC would like to keep helping with this program. Secretary Wasko said DOC would like to do so. There has been implementation of new security practices across the system. The greatest impact on the Governor's House program was improved tool control. The SDHDA has been great to work with. Senator Zikmund wanted to know if there is any data available on how many inmates are employed after they leave the penitentiary. Secretary Wasko says DOC does track this, and the information would be presented to Government Operations and Audit. One of the DOC's goals is making sure parolees are employed. DOC does not have details on where these people work or whom they work for, just the fact they are gainfully employed.

Senator Hunhoff mentioned during the Committee's tour of Mike Durfee State Prison, it looked like there were many unfinished homes. She asked what has changed since then to ensure the program is running efficiently. Ms. Skipper says SDHDA can answer that question. Senator Hunhoff then asked where DOC's accountability for this program is. Secretary Wasko said there are distinct, minimum requirements for being a part of the program and being around those tools. And Mike Durfee State Prison has a 9% vacancy rate right now. DOC's job is to make sure the offenders made available for the program are safe. Senator Hunhoff said she heard those who do not show up for work are eliminated from the program and asked if it was true. Secretary Wasko said such a statement is broad. There are instances where inmates are fired for not showing up. It may not be every time though. Firings are generally based on behavior. DOC is teaching them the soft skills necessary to hold a job. Representative Duba asked for confirmation as to the policy on absences. Secretary Wasko said she would bring back data on how long offenders in the program have been working there.

Representative Karr added there is a policy discussion to be had here about how many people are incarcerated in South Dakota. He said, "We can't just incarcerate our way out of this," noting the state needs functional programs allowing offenders to effectively return to society. Senator Bolin mentioned during his sixteen years in the Legislature, each time someone brings a bill to increase the length of sentences for those convicted to portray themselves as tough on crime. He said if those people really believe that, then they need to be ready to pay the bill.

Chas Olson, Executive Director, SDHDA, presented on SDHDA's role in the Governor's House Program ([*Document #11*](#)). The program started in 1996 as a transitional housing program for the elderly. The program was moved to Mike Durfee State Prison in 1997 and expanded to include all South Dakotans meeting certain income guidelines. The same year, SDHDA took over the program. The program is designed to teach offenders valuable skills they can use upon release, build affordable houses, provide an economic development tool, and support local businesses.

Offenders work directly under SDHDA employees, and SDHDA pays DOC for the offenders' work. Only those offenders deemed eligible by DOC may be hired.

Those making 70% of the state median income for a family of two, currently \$66,570, are eligible for the program. Eligible buyers includes housing authorities, nonprofits, economic development corporations, and chambers of commerce. These entities turn around and sell the housing to low-income households. The houses can be placed anywhere in the state. As of June 30, 2024, the SDHDA has sold 3,328 houses through this program. Houses have been sold in every county.

While the three-year return rate for all offenders was 43% in 2020, for those in the Governor's House Program, the rate was 25%. The more hours an offender works in the program, the less likely they are to return to prison.

Michael Harsma, Director of Single Family Development, SDHDA, spoke to the program efficiencies added recently. For example, DOC has recently started serving lunch and doing the mid-day counting on site, allowing for reduced lunch breaks and less movement of offenders around the prison. Also, a tool control software system was purchased to reduce time-consuming tool checks during each workday and improve overall control. Further, a tool control supervisor was hired to manage the tool inventory and tool check process.

Mr. Olson also talked about the DakotaPlex program. The focus of the program is serving cities with 5,000 or fewer people by building multi-family rentals. These units may be purchased, owned, and managed by a community, nonprofit, or developer. They can only be offered as an affordable rental for others rather than be owner occupied. There are no income restrictions with the program. Rather, the purchaser is limited in what they can charge for rent. Any rental in the program must remain affordable for ten years. Senator Foster asked why there is no option for owner occupation with these rentals. Mr. Harsma said when the program was rolled out, the requirements were written to match similar programs, which also banned owner occupation.

Fiscal Analysis of IM 28 on Prohibiting Taxes on Anything Sold for Human Consumption

Jeff Mehlhaff presented on LRC's fiscal analysis of Initiated Measure 28 ([Document #12](#), [Document #13](#)). The key language in the initiated measure is "anything sold for human consumption." This phrase can be broken down further into "anything sold" and "for human consumption." Human consumption can be interpreted in several ways, including limited to food products only or more broadly anything purchased that can be used up, which can also be referred to as nondurable, consumable goods. Representative Venhuizen asked whether it is fair to say the "drafting of this was not very well thought out." Mr. Mehlhaff mentioned LRC recommended different language after the first draft of the measure, and LRC's language was not adopted. Representative Duba asked why LRC's recommendations were not accepted. Mr. Mehlhaff read from the LRC's letter to the measure's sponsors.

Based on a review of how much in nondurable, consumable goods stores tend to sell on a regular basis, the impact of IM 28 could be anywhere from \$133.6 million to \$646.2 million. Those amounts represent 9.3% to 46% of annual state sales tax revenues, respectively. If all nondurable, consumable goods could no longer be taxed, all tobacco tax revenues would be lost. Representative Venhuizen noted if the people vote for this, significant budget cuts, "7% budget cuts," may be necessary. He added it is "just incredible to me a person could be so irresponsible" as to include this on the ballot this year with no plan to pay for it. Representative Krull asked whether the Legislature could define the terms used in the measure. Mr. Mehlhaff said the Legislature could change anything about the measure before it takes effect July 1 the following year.

Representative Derby noted Governor Noem introduced this tax cut, which was projected to be a \$108 million cut at that time, but now it may around \$133.6 million. He asked what changed to make this cut more onerous now. Mr. Mehlhaff said as the sales tax base grows, more is spent on food. It costs more to repeal a tax on those products. Representative Derby asked what is different from two years ago to not be able to incorporate a \$133.6 million cut.

Representative Venhuizen responded two years ago the Governor built her tax cut proposal into her budget, and revenues came in higher than expected. That situation is not expected next year. And a tax cut has already been incorporated into the state budget.

Letters of Intent

A. Construction Project Reports - BHRA

Stacy Watters, State Engineer, Bureau of Human Resources and Administration, spoke to a previously passed letter of intent regarding construction project reports. That letter of intent requires the agencies listed to submit a standardized report within 60 days of construction project completion. To date, one project has been completed, the Dakota Events CompleX, and the report was submitted by the Department of the Agriculture and Natural Resources.

Representative Mills spoke to the new proposed letter of intent adding four construction projects to the list of those requiring a report ([Document #14](#)). It includes projects where the finished buildings will be owned or maintained by the state rather than a third party.

Representative Mills moved, seconded by Representative Venhuizen, to approve the letter of intent. The motion passed 15-0-3. Excused: Senator Foster, Senator Wiik, and Senator Zikmund.

B. Teacher Literacy Training - DOE

Representative Duba spoke to a letter of intent regarding teacher literacy training ([Document #15](#)). The Legislature previously approved an appropriation of \$6 million to the Department of Education (DOE) to provide professional development to teachers in literacy education. DOE contracted with a third-party vendor, which generated a lot of discussion. DOE is conducting listening sessions with teachers who have completed the online training and providing the feedback to the Board of Regents (BOR). The goal is to have BOR take over this training starting July 1, 2025. Representative Duba noted she began having conversations in April with Nathan Lukkes, Executive Director of BOR, about having BOR assume responsibility for the training.

Representative Derby asked what would be accomplished by this letter that would not happen organically. Representative Duba said the goal is to ensure the funding for the training stays within the state. The costs could be reduced by paying BOR instead of an outside vendor. Representative Duba said the letter was shared with BFM, DOE, and BOR, and there was no concern from them about the language as it is written.

Representative Duba moved, seconded by Senator Bolin, to approve the letter of intent. The motion passed 16-0-2. Excused: Senator Foster and Senator Wiik.

Representative Venhuizen moved, seconded by Representative Otten, the Special Committee on Appropriations be adjourned. Motion prevailed on a voice vote.

The Committee adjourned at 5:00 PM.