

MINUTES

Interim Joint Committee on Appropriations



Representative David Anderson, Lead Co-Chair
Senator Larry Tidemann, Co-Chair

**Third Meeting, 2018 Interim
Wednesday, July 25, 2018**

**Appropriations 362 – State Capitol
Pierre, South Dakota**

The third meeting of the Interim Joint Committee on Appropriations for 2018 was called to order by Lead Co-Chair Representative David Anderson, at 8:30 a.m. in Appropriations 362 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representative David Anderson, Lead Co-Chair; Senator Larry Tidemann, Co-Chair; Representatives Dan Ahlers, Hugh Bartels, Lance Carson, Taffy Howard, Jean Hunhoff, Chris Karr (via phone), John Lake, and Sue Peterson (via phone); Senators Justin Cronin, Terri Haverly (via phone), Reynold Nesiba, Jeffrey Partridge (via phone), Deb Peters, Billie Sutton, and Jim White. Excused: Senator John Wiik.

Staff members present included Tamara Darnall, Chief Fiscal and Program Analyst; Jason Simmons, Principal Fiscal and Program Analyst; Jeff Mehlhaff, Senior Fiscal and Program Analyst; Ariel Hammerquist, Fiscal and Program Analyst; Amanda Doherty-Karber, Senior Fiscal and Program Analyst; Shane Mattheis, Senior Fiscal and Program Analyst; and Cindy Tryon, Senior Legislative Secretary.

NOTE: For 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 web cast live. The archived web cast is available at the LRC web site at sdlegislature.gov.

Approval of Minutes

A motion was made by Representative Bartels, seconded by Representative Ahlers, to approve the minutes of the June 12, 2018, Joint Committee on Appropriations meeting. The motion prevailed on a roll call vote with 16 voting AYE, 2 EXCUSED. Voting AYE: Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, Cronin, Haverly, Nesiba, Partridge, Peters, Sutton, White, Tidemann, and Anderson. EXCUSED: Peterson and Wiik.

Letters of Intent (LOI)

A Letter of Intent (LOI) sets forth a particular view held by the Joint Committee on Appropriations (JCA) in approving agency appropriations set during the 2018 legislative session.

a) Department of Revenue – Automated Lockbox Services Update

Mr. Jim Terwilliger, Deputy Commissioner and Economist, Bureau of Finance and Management, updated the committee on the LOI sent to the Department of Revenue (DOR) regarding an automated lockbox service. Currently, checks are processed at the remit center in Sioux Falls and then sent to First Premier Bank. All the paper tax returns are receipted at the remit center. Upon receipt of the LOI, the DOR put a Request for Information for a lockbox service on the DOR website. The department has discussed with First Premier Bank the possibility of some of the remit center services being turned over to First Premier Bank. The DOR will be finalizing this process over the next few months and the costs and options will then be reported to JCA.

The Department of Revenue is held to a different standard regarding confidentiality. For the DOR to use a lockbox service, the confidentiality sections of SDCL 10-1-28 would have to be amended by the Legislature.

b) Board of Regents – USD Law School – Performance Metrics and Business Plan

Mr. Eric Young, Assistant Dean, and Ms. Elizabeth Taggart, Director of Admissions, USD Law School, presented information regarding the draft USD Law School LOI ([Document #1](#)) ([Document #2](#)). Mr. Young said the bar exam results are a good measure for the success of the law school. There was a 70% pass rate for the ten USD law students taking the bar exam in February of 2018. Some of the students taking the exam did use a special class designed to assist in taking the test. Ms. Taggart said 100% of the students who took this special class passed the exam in February.

The class of 2020 has 57 students and the class of 2021 has 75 students. Of the entering class, 80% of the students are residents and 20% are non-residents. Ms. Taggart said she has been focusing recruitment on a more regional basis and less on a national basis and that is one reason there are more resident students. USD raised money to fund thirteen scholarships. Two of the thirteen scholarships went to out-of-state students. Mr. Young said the ability to offer the scholarships did have a significant impact on enrollment.

Senator Cronin asked what percentage of law school graduates remain in South Dakota. Mr. Young said about 60% of the students stay in South Dakota after graduation.

In response to questions regarding when students take the bar exam, Mr. Young explained the majority of students take the bar exam in July. Students who graduate in September usually take the exam in February. The measurable goals will be based on pass rates for those taking the test the first time.

Senator Tidemann urged support of this LOI, as South Dakota must have a law school that is credible. With this LOI in place, the bar exam passage rates can be compared now and far into the future.

A motion was made by Senator White, seconded by Senator Nesiba, to approve the Letter of Intent regarding the USD Law School. The motion prevailed on a roll call vote with 16 voting AYE, 1 voting NAY, and 1 EXCUSED. Voting AYE: Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, Peterson, Cronin, Haverly, Nesiba, Peters, Sutton, White, Tidemann, and Anderson. Voting NAY: Partridge. EXCUSED: Wiik.

c) Board of Regents – General Fund Allocation by FTE Student Update

Dr. Monte Kramer, Vice President of Finance and Administration, Board of Regents (BOR), presented information in response to the JCA's request for an explanation on the rationale for how general funds are distributed among the state universities ([Document #3](#)). The Board can only realign funds if the Legislature approves the realignment. The universities' funding is based on what is accumulated; the more students a university has enrolled, the more funding that university has available.

Dr. Kramer gave a historical perspective looking at state funding per full-time equivalent (FTE) in 1985 and comparing enrollments in 1985 to current enrollments.

Dr. Kramer explained the current funding model, which was set in 2010. No funds have been realigned in the system since 2010. Campuses with growth live on new tuition dollars and campuses with enrollment losses keep state funding to mitigate impact of tuition losses. State funds are static unless there is a direct appropriation. This model was preferred by all university presidents in 2010, but there are several new presidents now and it may be time to consider a new funding model. Senator Tidemann said the dynamics at the universities have changed and the funding model may not be keeping stride.

Dr. Kramer said if the funding of the universities was based on student FTE, the decisions by the BOR and Legislature would be wiped out. The benefits of economies of scale are real and impact the cost structure of the schools. Slide 29 of document #3 lists the funding each university had to educate a student in FY17.

Dr. Kramer said the BOR wants to make sure every school is funded adequately in order to accomplish its mission. Several performance models have been proposed and now may be the time to take another look at those models. The BOR will also be looking at other states' performance models.

Board of Regents Update

a) Performance Measures

Dr. Paul Turman, Vice President for Academic Affairs, BOR, presented the BOR 2020 strategic plan which includes graphics illustrating the BOR's progress on the goals set in 2014 ([Document #4](#)). There is additional information on the Board of Regents' website at sdbor.edu. The [dashboards](#) page on the BOR webpage includes information from enrollment numbers to student successes.

The remedial programs at the universities are being reviewed. The number of students needing remediation has increased over the past two years. When asked how the number of remediation students in South Dakota compares to other states, Dr. Turman said most states have community colleges and the number of remediation students in South Dakota universities is low compared to those colleges.

Dr. Turman said the tuition increases in South Dakota have been modest compared to other states' higher education institutions. The BOR continues to advocate for needs-based scholarships.

Dr. Kramer presented the financial metrics as found on pages 3-4 of document #4. Metric 1 shows the unrestricted cash balances. Those balances are expected to be at least 10% of the operating cost for each institution. These are dollars the institution can redirect if needed; there has to be enough flexibility in the budget to address unexpected events.

Metric 2 shows the amount of state support and the tuition and fees support for South Dakota and the surrounding states. In response to a question, Dr. Kramer said it would take about \$18 million to raise the state support amount by \$1,000 per FTE, and \$30 million to have the state support equal to the tuition and fee support.

Metric 3 is regarding the maintenance and repair funding and related indicators. The BOR will continue to ask the state for assistance in the maintenance and repair funding.

Metric 4 illustrates the FY16 annual expenditures per degree awarded. The BOR wants to be able to produce graduates at a cheaper rate; be more efficient. The institutions know retention is a big part in increasing efficiency, as the more students in the door and out through graduation keeps the costs down.

b) Facility Utilization Summary

Dr. Monte Kramer, Vice President of Finance and Administration, (BOR), presented the Campus Facility Utilization Report Highlights ([Document #5](#)). Dr. Kramer explained the campus housing graph does not accurately depict the rate of occupancy at Northern State University (NSU), as it includes the beds that have been added but does not consider the beds that were removed. NSU will have two new facilities and two facilities will be removed which will result in 43 fewer beds than when the projects were started.

Dr. Kramer said the BOR continues to look for additional ways to be more efficient and may need to streamline the structure. The most recent streamlined project is a shared transcript center. The BOR will continue to look for those types of opportunities.

State Veterans Cemetery Fundraising

Mr. Terry Paulsen, Paralyzed Veterans of America, presented the South Dakota Veterans Council's annual report ([Document #6](#)) as required in Senate Bill 91 which was enacted in 2018 ([Document #7](#)). The endowment fund has been opened with the South Dakota Community Foundation, with a goal of \$3 million. As of this report, the group has raised \$148,216. The interest and dividends from the \$3 million fund will be used for maintenance and upkeep of the State Veterans Cemetery, which will be located in Minnehaha County. The oversight of the cemetery falls under the Department of Veterans Affairs.

Representative Sue Peterson thanked Mr. Paulsen for his hard work and congratulated him on the national recognition he has received for this project.

South Dakota v. Wayfair Implications on General Fund Revenues

Mr. Tony Venhuizen, Chief of Staff, Governor's Office, gave an update on the US Supreme Court decision in *South Dakota v. Wayfair* and presented a memo prepared by BFM regarding that decision ([Document #8](#)). Mr. Venhuizen said the implementation timeline for requiring remote sellers to collect and remit the South Dakota state sales tax cannot be finalized until the lawsuit is fully resolved. One of the first issues that will have to be addressed is SDCL 10-64-9, also known as the Partridge Amendment, that specifies the tax collected from remote sellers shall be used to reduce the rate of certain taxes. The ambiguous language used in this piece of legislation could lead to further litigation and should be resolved before the state begins collecting the sales tax from remote sellers.

According to Mr. Venhuizen, the first question is when the state will be able to enforce the law requiring remote sellers collect and remit the state sales tax. Another question is addressing the section that says the additional net revenue will be used to reduce the rate of certain taxes. There must be a determination as to what is considered "additional" net revenue. There must also be clarification as to how the rate will be reduced, as it is not feasible to reduce dollar for dollar. The statute also says the rate shall be reduced but does not say by whom it will be reduced or if the rate reduction occurs automatically or by legislative action.

Senator Partridge said the goal of his 2016 legislation regarding the remote sellers' sales tax collection and remittance was the "new revenue" be calculated on the tax remitted by new remote businesses who refused to collect and remit the tax voluntarily. The Senator intended that once \$20 million had been collected and the tax rate was reduced, the tax would not be reduced again until another \$20 million on top of the original \$20 million is collected. The legislation was also intended to have the decision for the change in the tax rate be decided by the Legislature, not the Department of Revenue making the change automatically.

Mr. Venhuizen said another concern regarding the sales tax is Congress removing the ability to charge for internet access, which means the states will no longer be able to collect tax on those charges. This change will go into effect July 1, 2020, and the estimated loss of net revenue for FY2021 is \$12 – \$15 million for the state and \$7 - \$10 million for the municipalities/tribes.

Mr. Wenzel Cummings, Senior Legislative Attorney, LRC, presented the committee with two memorandums dated June 21, 2018, and June 25, 2018, he wrote to the South Dakota Legislature clarifying the *South Dakota v. Wayfair* decision ([Document #9](#)). Mr. Cummings agreed the language of the Partridge Amendment is ambiguous, and the LRC staff will be happy to work on writing the new language. The LRC is certain the language in the amendment should be interpreted as the 4.5% tax rate remains in place until the Legislature amends it; the reduction in the tax is not automatic.

Certify the Proration of FY2018 Interest Earnings

Ms. Liza Clark, Commissioner, Bureau of Finance and Management, presented the proration of the FY17 interest report for approval ([Document #10](#)). The BFM is required by statute to have the proration of interest earnings certified by the JCA on an annual basis.

A motion was made by Representative Carson, seconded by Senator Peters, to approve and certify the recommended interest proration designations as participating and nonparticipating as presented by the Bureau of Finance and Management. The motion prevailed on a roll call vote with 15 voting AYE and 3 EXCUSED. Voting AYE: Representatives Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, and Anderson; Senators Cronin, Nesiba, Partridge, Peters, Sutton, White, and Tidemann. EXCUSED: Representative Peterson, and Senators Haverly, and Wiik.

FY2018 Year-End Report

Ms. Liza Clark, Commissioner, Bureau of Finance and Management, and Mr. Jim Terwilliger, Deputy Commissioner and Economist, Bureau of Finance and Management, presented the FY2018 Year End Summary ([Document #11](#)). Mr. Terwilliger reported \$16,898,828 is the cash surplus for FY2018 and that amount is obligated to the budget reserve fund. Total general fund revenue for FY2018 is \$1,615,926,166. Sales and use tax receipts comprise 61% of those revenues. Page 5 of document #11 compares FY2017 general fund receipts with FY2018 general fund receipts. There was a 2.9% increase in the total receipts from FY2017 to FY2018.

Ms. Clark explained the FY2018 agency reversions totaling \$10,735,434 or 0.7% of the agency general fund budget. This information is on page 6 of document #11. The Department of Social Services (DSS) has the highest amount of reverted funds, however, when considering the total amount of the DSS budget, the budget estimate was very close. When asked about the amount reverted by the Unified Judicial System, Ms. Clark said a large part of that is due to staff turnover.

Update of FY2019 Revenue Projection

Mr. Jim Terwilliger, Deputy Commissioner, Bureau of Finance and Management, presented BFM's FY2019 Revenue Projections ([Document #12](#)). The BFM interim estimate is about \$300,000 higher than the revenue projection adopted in February, or an increase of 0.02%.

Mr. Jeff Mehlhaff, Senior Fiscal and Program Analyst, LRC, presented LRC's FY2019 Revenue Projections ([Document #13](#)) and included supplemental information regarding the projections ([Document #14](#)). The LRC interim estimate is about \$100,000 higher than the projection adopted in February, or an increase of 0.01%.

Representative Anderson commented it is interesting how close the two interim estimates are considering they were determined using two different methodologies.

Program Evaluation Update

Ms. Ariel Hammerquist, Fiscal and Program Analyst and Mr. Jason Simmons, Principal Fiscal and Program Analyst, LRC, presented information on the program evaluation projects currently underway, South Dakota Drug Courts and Dakota at Home.

Ms. Hammerquist presented the *Scope of Work: Drug Courts* ([Document #15](#)). Mr. Simmons presented the *Scope of Work: Dakota at Home* ([Document #16](#)). The scope of work lists the questions for consideration, the hypothesis regarding each question, and the objective related to each of the questions when conducting the program evaluations.

Senator Peters asked what the ultimate goal is for these evaluations. Representative Bartels explained the Executive Board wants the evaluations to look at the success of the program, what services are available and where the services are available. As for the Dakota at Home program, the evaluation should examine why people select one service over another, and make sure people are finding the right service.

Representative Anderson said these are both subjects where efficiencies in resources and cost were anticipated. This evaluation will provide the data to verify these efficiencies.

Lean Study Update

Ms. Tamara Darnall, Chief Fiscal and Program Analyst, discussed the July 24, 2018, memorandum to the JCA members from Mr. Jason Hancock, Director, regarding the Lean consulting and training projects ([Document #17](#)). The Executive Board has authorized the LRC to transfer up to \$204,255 from the Legislative Priority Contingency Fund if the Legislature's regular appropriation is insufficient to pay the cost. A contract has been signed with QPIC to conduct the Lean study with the Bureau of Administration ([Document #18](#)) and a contract has been signed with ReEngine to conduct the Lean study with the Department of Corrections ([Document #19](#)).

In response to questions about the businesses that were granted the contracts, Representative Ahlers said the LRC does have a working history with both companies, as QPIC conducted the Lean study for the Department of Labor and Regulation and ReEngine conducted the Lean study for the Bureau of Information and Telecommunications.

Committee Discussion

Senator Cronin asked LRC Director Jason Hancock about the Legislature's reversion to the general fund. The reversion for FY2018 was about \$600,000 and was about \$460,000 for FY2017. Director Hancock explained most of the reverted dollars were because the legislators used only a portion of the budgeted amount for travel.

Representative Hunhoff said the JCA should review the use of the members' time when conducting subcommittee meetings. Representative Hunhoff suggested the committee members meet the night before the Governor's Budget Address to discuss who would like to serve on which subcommittees.

Representative Bartels asked that the Social Services 100% FMAP be available for the JCA at the October meeting.

Future Meeting Dates

The Joint Committee on Appropriations will meet in October in Pierre.

Adjourn

A motion was made by Representative Carson, seconded by Senator White, that the Joint Committee on Appropriations be adjourned. The motion prevailed unanimously on a voice vote.

The Committee adjourned at 2:15 p.m.