

MINUTES

Interim Joint Committee on Appropriations



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

Fourth Meeting, 2018 Interim
Tuesday, September 11, 2018

Room 414 – State Capitol
Pierre, South Dakota

The fourth meeting of the Interim Joint Committee on Appropriations for 2018 was called to order by Lead Co-Chair Representative David Anderson, at 2:30 p.m. in Room 414 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; Senators Justin Cronin, Terri Haverly, Reynold Nesiba, Jeffrey Partridge, Deb Peters, Billie Sutton (via phone), Jim White, and Senator John Wiik.

Staff members present included Tamara Darnall, Chief Fiscal and Program Analyst; Jeff Mehlhaff, 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 Ahlers, seconded by Representative Bartels, to approve the minutes of the July 25, 2018, Interim Joint Committee on Appropriations meeting. The motion prevailed on a roll call vote with 18 voting AYE. Voting AYE: Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, Peterson, Cronin, Haverly, Nesiba, Partridge, Peters, Sutton, White, Wiik, Tidemann, and Anderson.

Proposed Legislation for Special Session

Draft Legislation – Inauguration 1 – Commencement of Office

Mr. Tony Venhuizen, Chief of Staff, Governor's Office, presented draft legislation, Inauguration 1 – Commencement of Office ([Document #1](#)). Mr. Venhuizen explained the issue addressed in this legislation involves the date of the Governor's Inauguration and when elected officials can be sworn into office. Current statute says elected officials can be sworn in after the first Monday of January. This law can create problems if the first day of the new year is a Tuesday, as the Inauguration would be the following Saturday and the first Monday would then come after the Inauguration. This language has not been an issue since the 1907 Inauguration, and the Governor-elect at the time did wait until the following Monday to be sworn into office.

The draft legislation adds to the current law allowing elected state officials to be sworn into office on the Saturday preceding the second Tuesday of January.

Senator Cronin asked if the Inauguration has always been held on a Saturday. Mr. Venhuizen explained that prior to 1907 the Governor was sworn into office on the first day of the Legislative Session.

A motion was made by Senator Tidemann, seconded by Senator Wiik, to recommend the full legislature consider the Inauguration – Commencement of Office legislation at the Special Session on September 12, 2018. The motion prevailed on a roll call vote with 18 voting AYE. Voting AYE: Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, Peterson, Cronin, Haverly, Nesiba, Partridge, Peters, Sutton, White, Wiik, Tidemann, and Anderson.

Draft Legislation for Revenue

Mr. Andy Gerlach, Secretary, Department of Revenue, and Mr. Michael Houdyshell, Chief Legal Counsel, Department of Revenue, gave a PowerPoint presentation, *2018 Special Session Brief – JCA* regarding Revenue 1 and Revenue 2 draft legislation ([Document #2](#)). The PowerPoint gives the history leading up to the two pieces of draft legislation regarding the remote sales tax and the need for a Special Session.

Revenue 1 – Lift Injunction

Draft legislation Revenue 1 removes the injunction against all remote sellers except the defendants in *South Dakota v. Wayfair* (Wayfair, Overstock, and Newegg), allowing South Dakota to begin collecting sales tax on internet sales on November 1, 2018 ([Document #3](#)).

Proponent Testimony

Senator Deb Peters, District 09, Hartford, testified as a proponent for draft legislation Revenue 1. Senator Peters said U.S. Supreme Court Justice Kennedy requested a bill be written that would be challenged and eventually come before the U.S. Supreme Court. In 2016, Senator Peters and Representative Roger Hunt prepared SB 106 which started the journey that led to the legislation being considered at the 2018 Special Session. This legislation is vital to South Dakota being on a level playing field with other states, and it is imperative that the South Dakota Legislature move forward with this as quickly as possible.

Mr. Jim Hood, South Dakota Retailers Association, testified that draft legislation Revenue 1 has been thoroughly explained and the South Dakota Retailers Association urges the Legislators' support of the bill.

Yvonne Taylor, South Dakota Municipal League, testified that it has been a long road finding a solution to the main street fairness issue and the South Dakota Municipal League thanks Senator Peters, Representative Hunt, and the Governor for following through on addressing this. Ms. Taylor added she hopes all Legislators will take pride in voting for these bills as they are fairness measures. In response to a question from Senator Partridge, Ms. Taylor said in 17 years no municipality has expressed opposition to this type of legislation.

No opponent testimony was given.

A motion was made by Senator Peters, seconded by Senator Wiik, to recommend the full legislature consider the Revenue 1 – Lift the Injunction legislation at the Special Session on September 12, 2018. The motion prevailed on a roll call vote with 18 voting AYE. Voting AYE: Ahlers, Bartels, Carson, Howard, Hunhoff, Karr, Lake, Peterson, Cronin, Haverly, Nesiba, Partridge, Peters, Sutton, White, Wiik, Tidemann, and Anderson.

Revenue 2 – Marketplace Provider

Draft legislation Revenue 2 requires a remote marketplace provider that meets the threshold as defined in the legislation to remit sales tax on all sales made through the marketplace provider's website starting March 1, 2019 ([Document #4](#)). Mr. Gerlach and Mr. Houdyshell explained this piece of legislation with assistance from **Ms. Alison Jares and Mr. Doug Schinkle with the Sales Tax Division of the Department of Revenue.**

Public Testimony

Mr. Shane Kramme, Fort Pierre, asked if this legislation would legalize the collection of tax on FanDuel Sportsbook. Mr. Gerlach thanked Mr. Kramme for his question but FanDuel taxation is about sports betting and is not germane to the legislation being discussed today.

Opponent Testimony

Mr. Ryan Rurode, Fort Pierre, said he has been selling items on eBay for ten years. Mr. Rurode is concerned about the sales tax being triggered when a remote seller has 200 or more transactions or sales over \$100,000. Mr. Rurode stated, 200 transactions at \$10 each equals \$2,000, yet the number of transactions will still trigger the need to collect and remit sales tax, while another seller may only make a few transactions but have \$90,000 in sales and not have to collect and remit sales tax. Mr. Rurode said he does not believe the number of transactions should trigger the need to collect and remit the tax.

A motion was made by Senator Tidemann, seconded by Senator Partridge, to recommend the full legislature consider the Revenue 2 – Marketplace Provider legislation at the Special Session on September 12, 2018. The motion prevailed on a roll call vote with 15 voting AYE; 3 voting NAY. Voting AYE: Ahlers, Bartels, Carson, Hunhoff, Karr, Lake, Peterson, Haverly, Nesiba, Partridge, Sutton, White, Wiik, Tidemann, and Anderson. Voting NAY: Howard, Cronin, and Peters.

Other Business

Senator Tidemann said he wished to thank the members from the American Legion who attended today's JCA meeting. Those members are: Kathy Dungan, National President; Jeannine Loesch, Deputy President; Barb Vetter, NW Division National Vice President; Laurel Stringer, Deputy Secretary; Teresa Huntimer, First Vice President; and Joyce Smith, District 7 First Vice President.

Adjourn

A motion was made by Representative Bartels, seconded by Representative Ahlers, that the Interim Joint Committee on Appropriations be adjourned. The motion prevailed unanimously on a voice vote.

The Committee adjourned at 5:00 p.m.