

MINUTES

Interim Joint Committee on Appropriations



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

**Fifth Meeting, 2018 Interim
Monday, December 03, 2018**

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

The fifth meeting of the Interim Joint Committee on Appropriations for 2018 was called to order by Co-Chair Senator Larry Tidemann, at 11:30 p.m. in Room 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 Lance Carson, Jean Hunhoff, Chris Karr, John Lake, and Sue Peterson (via phone); Senators Justin Cronin, Reynold Nesiba, Jeffrey Partridge, Billie Sutton (via phone), Jim White, and John Wiik. Excused: Representatives Dan Ahlers, Hugh Bartels, and Taffy Howard; and Senators Terri Haverly, and Deb Peters.

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 Carson, seconded by Senator Wiik, to approve the minutes of the September 11, 2018, Interim Joint Committee on Appropriations meeting. The motion prevailed on a voice vote.

Letters of Intent (LOI) Reports

Attorney General – Use of Consumer Settlement Funds for the Opioid Lawsuit Funding

Senator Tidemann explained the LOI sent to the Attorney General authorized the use of consumer settlement funds to provide for the investigation and litigation of opioid distributors and manufacturers. The LOI requested the Attorney General's office provide a status report regarding the investigation and litigation to the JCA prior to December 1, 2018 ([Document #1](#)).

Mr. Charles McGuigan, Chief Deputy Attorney General, reviewed the report submitted by the Attorney General's office to the JCA on November 29 ([Document #2](#)). In March, the Attorney General filed suit against three of the major opioid manufacturers: Purdue Pharma, Johnson and Johnson, Endo Health Solutions, and their subsidiaries. The suit was filed in the Sixth Judicial Circuit, Hughes County. An extensive motion to dismiss hearing was held before the circuit court. The judge asked for a modification to one part of the complaint specifying damages. The modification will be addressed, and an amended complaint will be filed in the spring of 2019. Mr. McGuigan reminded the committee that the case against the tobacco companies started in 2006 and was not completed until 2014, and this case will most likely follow the same timeframe.

Senator Cronin asked if the Attorney General's office has hired additional staff to work on this case. Mr. McGuigan said a paralegal has been hired and is working exclusively on the opioid case. The Attorney General's office also has several attorneys working part time on this case.

The JCA approved spending authority up to \$185,000 from the consumer settlement fund to finance preparation costs for the opioid trial. The only expense thus far is the \$15,000 for the new paralegal.

Department of Public Safety – Driver License Renewal Reminders

Ms. Shawnie Rechtenbaugh, Interim Secretary, and Ms. Jenna Howell, Department of Public Safety, talked to the JCA regarding the LOI sent in March about the driver license renewal reminders ([Document #3](#)). The LOI directs the Department of Public Safety to investigate more cost-effective ways to deliver license renewal reminders and organ donation information. Ms. Howell explained driver licensing receives \$15,000 a year in General Funds for organ donation purposes and all other expenses incurred by driver licensing are paid from driver license and identification card revenues.

The department does send out a reminder postcard and a birthday card to licensees when it is time to renew their driver license. Driver licenses are renewed every five years and the department believes it is important to continue to maintain some type of reminder program. The DMV sends one postcard reminder about renewing license plates/tags, but that is renewed on a yearly basis rather than every five years.

One option for sending a reminder is using email but driver licensing has collected a small percentage of licensees' email addresses as most people are hesitant to give an email address to the government.

Representative Karr asked why driver licenses are renewed every five years. Ms. Howell replied the licenses used to be renewed every four years and that was changed to five years several years ago. Representative Carson explained this was changed to every five years when the state increased the cost of the driver license.

Senator Tidemann commented that he likes the birthday card reminders as it appears that someone is watching out for the licensees. Senator Tidemann asked the Department of Public Safety to send the report on the funds that would be saved with the various options to the JCA members.

Senator Tidemann passed the gavel to Representative Hunhoff.

Department of Health – Rural Family Medicine Residency Reporting

Ms. Kim Malsam-Rysdon, Secretary, Department of Health, talked to the JCA regarding the 2018 LOI requesting an annual report be filed prior to December 1 on the rural family medicine residency program in Pierre ([Document #4](#)). Ms. Malsam-Rysdon went through the report submitted on November 28, 2018 ([Document #5](#)).

Ms. Malsam-Rysdon said individuals tend to practice close to where they get their education and where they do their residency. The residency for this program takes three years with the first year completed in Sioux Falls and the next two years are completed in Pierre. Currently, there are two residents completing the first year of residency in Sioux Falls and will be coming to Pierre in January. The Pierre residency is a partnership among the medical facilities in Pierre.

The report gives information regarding the program but there will not be any in-depth data available for this program until it has been in existence for several years. The first two physicians will not complete the program until 2021.

Representative Hunhoff returned the gavel to Senator Tidemann.

Update on Lean Audit Process

Senator Jeffrey Partridge reported on the Lean program which started in 2016 and is initiated through LOIs from the JCA to the selected state agencies ([Document #6](#)). The first agency selected for the Lean program in 2016 was the Bureau of Information and Telecommunications (BIT) and BIT has a variety of instances where the Lean program has helped them save time and money. The JCA continues to select two agencies each year, and the Department of Revenue conducted a Lean study without the JCA having to issue a request.

Representative Hunhoff asked which agencies are being considered for the next Lean studies. Senator Partridge said there are several agencies being considered, such as the Department of Education, the Board of Regents, and the Department of Transportation. The consulting needs have become more efficient reducing the cost of a Lean study, which can now be less than \$100,000 to get the program started with a new agency. The consultant says the state can save nine times the cost of the Lean program within the first three years of implementation. Senator Partridge said perhaps the name of the program should be changed to *Optimize South Dakota*.

Senator Tidemann suggested the JCA contact the new administration and explain the Lean program so the new Governor's office is aware of the process.

Update on Online Sales Tax Enrollees

Mr. Doug Schinkel, Director of Business Tax, Department of Revenue, went through the timeline of the 1,060 new sales tax licenses due mainly to the passage of SB106 in 2016 which led to the *South Dakota v. Wayfair* Supreme Court decision ([Document #7](#)). Representative Hunhoff asked how these changes have affected the workload and staffing needs. Mr. Schinkel said the Department of Revenue has been able to address this issue without additional staffing thus far but there will be ongoing needs requiring additional staffing, such as training, auditing, and finding and educating additional businesses.

In response to questions regarding access to specific businesses' tax information, Mr. Schinkel explained it is a crime for the Department of Revenue to share individual businesses' tax information with anyone outside the department, including the Bureau of Finance and Management and the Legislative Research Council.

State Radio System Upgrade Proposal

Mr. Matt Tooley and Mr. Dave Ackerman, SD Public Safety Communication Council, represented the SD Public Safety Communication Council regarding the funding request for upgrading the state radio system, *State Radio Sustainable Funding: Proposal for Consideration* ([Document #8](#)). Mr. Tooley presented the history of the state radio system. The system is vital for all emergency responders in the state. Mr. Ackerman, McPherson County Sheriff, talked about the history of the system and improvements made from the viewpoint of an emergency responder. Mr. Ackerman presented a document with a proposed method of funding and support for the system upgrade ([Document #9](#)).

Senator Cronin thanked the presenters and noted this is one of the more important issues the JCA will be discussing during the 2019 Legislative Session. Senator Cronin said the 40 cents per line will cause some concern, but the Communication Council's thorough plan and proposal is appreciated. The importance of this work and the state radio system needs to be emphasized. Mr. Toomey said this is the second part of the 9-1-1 call, the dispatcher must be able to contact the responding service to get assistance to the caller.

Medicaid 100% FMAP Update

Ms. Kim Malsam-Rysdon, Secretary, Department of Health, and Ms. Brenda Tidball-Zeltinger, Deputy Secretary, Department of Social Services, presented the "*Received Through*" *Policy State General Fund Savings Report* ([Document #10](#)). The report shows the total general fund savings to South Dakota Medicaid for July 1, 2018, through October 31, 2018, is \$2,252,788. Ms. Tidball-Zeltinger said substance abuse services for adults was added on July 1, 2018.

Senator Nesiba asked what the incentive is for Indian Health Services to work with the State. Ms. Malsam-Rysdon said IHS is an excellent partner with the State. The incentive is that IHS remains a part of the patients' care and they are better able to assist the patients' when they return home.

Senator Tidemann asked what the time limits are for the healthcare agreements. Ms. Tidball-Zeltinger said the agreements remain in place unless they are terminated.

Update on the Insurance Tax Credit Program

Mr. Larry Deiter, Director, Division of Insurance, Department of Labor and Regulation, said the Division of Insurance oversees the insurance company tax credit side of the Education Tax Credit Scholarship program established in 2016 and now codified in SDCL 13-65. The program allows contributions to scholarship granting organizations which provide scholarships for South Dakota students attending primary or secondary nonpublic schools in South Dakota. Insurance companies may be eligible to receive an 80% premium tax credit for contributions toward these scholarships. In 2016, \$325,00 was donated. In 2017, \$235,000 was donated.

Former-Senator Phyllis Heineman, South Dakota Partners in Education, presented an update on the scholarships granted for the 2017-2018 school year ([Document #11](#)). There were 480 scholarships granted for the 2017-2018 school year and Ms. Heineman shared a document listing the schools these students attended ([Document #12](#)). The families have assured the Partners in Education that, no matter what the amount, these scholarships do make a difference ([Document #13](#)). Ms. Heineman said the 292 students who attend private schools save the state almost a million dollars as they are not in the counts when the state determines the school formula for public schools.

School Finance Accountability Waiver Requests

Mr. Matt Flett, Director of Finance and Management, Department of Education, presented the *Report on School Finance Accountability Board Meeting: November 15, 2018* ([Document #14](#)). The report summarizes the recommendations of the School Finance Accountability Board regarding the requests for waivers submitted by school districts failing to meet the allowable monthly cash balance percentages.

There were 34 requests for waivers in 2017. There are only 3 requests for waivers in 2018. The Highmore-Harold School District did exceed the allowable fund balance but chose to forego the request for a waiver. The Arlington, Haakon, and Tripp-Delmont School Districts are the three school districts requesting waivers in 2018.

The Arlington School District exceeded the allowable cash balance by 1.4%. The school received a reimbursement grant that put the balance over the allowable amount. After hearing testimony, the board voted to recommend a waiver in its entirety.

The Haakon School District exceeded the allowable cash balance by 4.59%. The district was to complete a construction project prior to July 1 but the project was delayed and was not completed until after July 1. The excess cash balance would have been spent on supplies for the new building if the project had been completed on time. The board voted to recommend a penalty in the amount of \$54,365.

The Tripp-Delmont school district exceeded the allowable cash balance by 1.64%. The school district faced some management issues and there was a complete turnover in district administrative staff which led to the excessive cash balance. Due to these special circumstances, the board voted to recommend a waiver of the penalty in its entirety.

Mr. Terry Nebelsick, President, School Board Accountability Board, said the board takes it seriously that the schools learn from this process for the next year. The trend of the school districts is to be of compliance. Timing put some of these districts into these situations. Mr. Nebelsick said the school district business managers have invited him to speak at their state conference; the schools are working on educating everyone involved in the process.

Senator White asked how many students are enrolled in each of the school districts requesting waivers. Mr. Flett said the Tripp-Delmont school district has less than 200 students and the Arlington and Haakon School districts have between 200 to 600 students.

Senator White said it is evident by the decrease in the number of waiver requests the school districts are working on fine-tuning their budgets.

A motion was made by Senator White, seconded by Senator Nesiba, to approve the recommendation of the School Finance Accountability Board to grant an outright waiver to the Arlington School District. The motion prevailed on a roll call vote with 13 voting AYE; 5 EXCUSED. Voting AYE: Carson, Hunhoff, Karr, Lake, Peterson, Cronin, Nesiba, Partridge, Sutton, White, Wiik, Tidemann, and Anderson. EXCUSED: Ahlers, Bartels, Howard, Haverly, and Peters.

A motion was made by Senator Partridge, seconded by Senator Cronin, to approve the recommendation of the School Finance Accountability Board to grant a partial waiver to the Haakon School District with a penalty in the amount of \$54,365. The motion prevailed on a roll call vote with 13 voting AYE; 5 EXCUSED. Voting AYE: Carson, Hunhoff, Karr, Lake, Peterson, Cronin, Nesiba, Partridge, Sutton, White, Wiik, Tidemann, and Anderson. EXCUSED: Ahlers, Bartels, Howard, Haverly, and Peters.

A motion was made by Representative Lake, seconded by Senator Nesiba, to approve the recommendation of the School Finance Accountability Board to grant an outright waiver to the Tripp-Delmont School District. The motion prevailed on a roll call vote with 13 voting AYE; 5 EXCUSED. Voting AYE: Carson, Hunhoff, Karr, Lake, Peterson, Cronin, Nesiba, Partridge, Sutton, White, Wiik, Tidemann, and Anderson. EXCUSED: Ahlers, Bartels, Howard, Haverly, and Peters.

Program Evaluations

Drug Courts

The **Drug Courts Program Evaluation Report** was presented by Ms. Ariel Hammerquist, Fiscal & Program Analyst; Mr. Jeff Mehlhaff, Senior Fiscal & Program Analyst; and Mr. Shane Mattheis, Senior Fiscal & Program Analyst ([Presentation - Document #15](#)) ([Report – Document #16](#)). The South Dakota Drug Courts Program was first implemented in 2007 and currently has ten drug courts with the intention of reducing recidivism rates for participants all who have been found guilty of some type of drug offense. The evaluation team discussed the research and the data collected to reach the findings presented in the report.

Senator Cronin asked why the Drug Courts and the DUI Courts cannot be separated for tracking purposes. Mr. Mattheis replied that the UJS said there are efficiencies to the courts in keeping them together. Senator Cronin said he would like to see the two programs better separated.

Senator Nesiba asked if the Drug Court program could be expanded. Ms. Hammerquist explained the Chief Justice believes there are courts in every community that is currently able to support the program.

Dakota at Home

The **Dakota at Home Program Evaluation Report** was presented by **Mr. Jason Simmons, Principal Fiscal & Program Analyst; and Ms. Amanda Doherty-Karber, Senior Fiscal & Program Analyst** ([Presentation - Document #17](#)) ([Report – Document #18](#)). Dakota at Home is a disability resource center and people reach out to the service to learn about the options for long-term care. The fiscal staff discussed the research that was done and the data that was collected to reach the findings found in the report. The LRC staff was not allowed to shadow the Dakota at Home staff due to the Department of Human Services having confidentiality concerns.

Mr. Simmons said the staff was not allowed much of the information needed to get complete results. The program evaluations would be more beneficial if the LRC staff had access to primary data rather than having to rely on information offered by the department. The staff was hoping to determine if the Dakota at Home program is giving the caller the assistance they need, and the agency does have that information on a case-by-case basis but was not willing to share that information.

Representative Anderson asked if program analysts in other states are given access to primary data. Mr. Simmons said the LRC program analysts attended a national seminar and a common theme with most of the states was the issue of obtaining access to data.

Representative Hunhoff said it is imperative the LRC staff has access to that type information. The staff can sign a confidentiality waiver if needed.

Other Business

Senator Tidemann will not be returning to the Legislature in 2019 and offered a few words of advice for the Joint Committee on Appropriations. Senator Tidemann said the pieces of the puzzle will change but the mission of the JCA will not change. It is the mission of the JCA to make sure South Dakota is able to take care of the ongoing costs of this state while keeping a balanced budget.

Adjourn

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

The Committee adjourned at 5:30 p.m.