

**South Dakota
2023 Interim
Committee
Final Reports
& Judicial Opinions**





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The Agricultural Land Assessment Implementation and Oversight Advisory Task Force 2023 Final Report



Study Assignment

Established pursuant to [SDCL 10-6-134](#), the Agricultural Land Assessment Implementation and Oversight Advisory Task Force advises the Department of Revenue regarding the rules promulgated by the department to administer the assessment and taxation of agricultural lands and reviews the implementation of the assessment and taxation of agricultural land. The task force may present draft legislation and policy recommendations to the Legislative Research Council's Executive Board.

Summary of Interim

The Task Force held its first and only meeting on July 11 in Pierre. At this meeting, the committee elected Representative Kirk Chaffee as Chair and Representative Oren Lesmeister as Vice-Chair. Representatives from the Department of Revenue provided an update on data used for agricultural productivity calculations.

- The cropland average dollar per acre increased 3.7 percent on a statewide basis.
- The noncropland average dollar per acre increased 2.6 percent on a statewide basis.

Department staff also gave an update on parcel adjustments and the new changes that came from the passage of [HB 1325](#) during the 2022 Legislative Session.

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

The committee met on July 11, 2023 in Pierre.

Listing of Committee Members

Members of the committee were Representative Kirk Chaffee, Chair; Representative Oren Lesmeister, Vice-Chair; Senators Red Dawn Foster, Steve Kolbeck, Liz Larson, and Erin Tobin; Representatives Drew Peterson, and Kadyn Wittman; and public members David Anderson, Dan Doyle, Greg Endres, Caleb Finck, David Owen, and Larry Tidemann.

Listing of Staff Members

Staff members for the committee were Will Steward, Research Analyst; Amanda Marsh, Principal Research Analyst; Carter Dykstra, Fiscal Analyst; and Kaitlyn Baucom, Administrative Specialist.



Code Commission 2023 Final Report



Study Assignment

Established under [§ 2-16-3](#), the Code Commission supervises the publication of the South Dakota Codified Laws (Code), corrects errors to the Code, assists the code counsel, makes recommendations to the Legislature on the general improvement of the state's laws, and contracts for replacement volumes of the Code. It is one of the few interim committees that is a creation of statute, and not the Executive Board.

Summary of Interim

Trigger Language in Statute on the LRC Website

At least a dozen statutes--on topics as disparate as abortion, state trunk highways, and health insurance--contained parentheticals in the statute text describing the condition that would trigger enforcement or repeal of the statute (as opposed to being effective or repealed on a date certain, as with most statutes). While these "trigger law" parentheticals are helpful information to know when a law is effective or not, they created issues with drafting legislation that involves these statutes. The parentheticals were merely editorial notes to explain the effective or repeal trigger condition given in an uncodified section of the bill, but they might be misconstrued as the text of statute. To address this potential for confusion, the Code Commission approved code counsel's request to allow a "Commission Note:" to be inserted below the "Source" note on the LRC website's version of the statute to house this trigger law language, in the few statutes where it is used. Going forward, bill text should no longer include these parentheticals.

Long-Term Code Review Project

The Code Commission approved code counsel's request to conduct a review of the Code and informally e-mail the applicable enforcing agency with any issues involving technical corrections, unused rulemaking authority, obsolete content, clarity, or conflicts. This will be a long-term project and likely take many years. As of this report, code counsel has reviewed twenty chapters of Code.

Replacement Volumes

The official Code is contained in hard-bound books (i.e., volumes) published by West Publishing, a Thomson Reuters Company. Despite new statutes being incorporated into the Code each year on account of the preceding legislative session, new hard-bound volumes are not required to be republished and purchased for the entire Code, as that would be a great expense. Instead, more modest, softcover pocket parts are inserted into the back of the hard-bound volumes each year to show any changes to the law since the full volume was last republished. In other words, the pocket part provides all of the laws amended, repealed, or adopted for a particular segment of Code after the year when the hard-bound volume was republished. The pocket part grows over the years, as each successive year sees more statutes that modify that portion of the Code. At some point, however, the pocket part grows too big, triggering a republication of the more expensive hard-bound volume.

Annually, West Publishing provides to the Code Commission a "Pocketpart Growth Report." This report identifies the page count for each pocket part relative to the page count in its hard-bound volume. It is the practice of the Commission to consider volumes for reprinting when the pocket part growth relative to the hard-bound volume equals or exceeds 25 percent of the main volume. The Commission considers, on average, one-to-three volumes for replacement each year. After a discussion of the candidates for replacement, the Code Commission decided not to republish any Code volumes this year.

Publishing Contract

The contract for the publication of the Code is subject to Code Commission review and renewal. Code counsel facilitates the editing and final presentation of the contract to the Commission. At its June meeting, the Commission unanimously approved the publishing contract with the following revisions:

1. A final reference to annotations produced by West Publishing being approved by the Commission or code counsel was struck;
2. Prices for the Code were increased 10 percent per the Producer Price Index for Technical, Scientific and Professional Book Publishing; and
3. The requirement that West produce an electronic copy of the Code's General Index to LRC was modified to clarify the permissible purpose for using the Index and that the Index file is to be held secure by LRC.

Review of Statutory Authority to Distribute Free Copies of the Session Laws

[SDCL 2-13-7](#) authorizes the Code Commission to approve the distribution of free copies of the physical print of the Session Laws of South Dakota to "such county, state, and federal officers and offices as are approved by the Code Commission." The Commission requested that code counsel, in mailing out copies to the 129 offices on the free mailing list, provide a note that required the offices to e-mail code counsel to request a free copy of next year's physical Session Laws publication, given that the Session Laws are available on the LRC website. By the deadline, code counsel received requests from 46 offices. Code counsel was directed by the Commission to distribute physical copies to 45 of the 46 offices, as one of the offices--a City Attorney's Office--was not entitled to a free copy under statute because it is not a "county, state, [or] federal" office.

Copyright Protections

The Code Commission is statutorily required to enforce any copyright that exists in the Code, on behalf of the state. See [SDCL 2-16-8](#). The Commission studied the current federal case law precedent on the ability of states to copyright their code of laws.

Republication of Code Provisions

The Code Commission is the only entity authorized in statute to permit republication of any portion of the Code. See [SDCL 2-16-8.1](#). The Commission approved the request for republication of numerous Code titles by the South Dakota Association of Towns and Townships. The Commission also delegated approval for republication of portions of the Code by the South Dakota Retirement System and the South Dakota Secretary of State's Office.

Listing of Legislation Adopted by the Committee

At its October 2023 meeting, the Code Commission adopted a draft of a bill historically known as the codification bill ("Draft 144") that is annually introduced to codify the previous session's permanent acts. (Amending SDCL [2-16-13](#), [2-16-15](#), [2-16-16](#).)

Summary of Meeting Dates and Places

The Code Commission met three times this interim—on March 10, 2023, via teleconference and at the State Capitol in Pierre; on June 21, 2023, at the State Bar Convention in Sioux Falls; and on October 18, 2023, via teleconference and at the State Capitol in Pierre.

Listing of Code Commissioners

The Code Commissioners are Maggie Gillespie, chair; Doug Decker, vice-chair; Speaker Pro Tempore Mike Stevens; Senator David Wheeler; and Lindsey Riter-Rapp.

Listing of Staff Members

The staff members for the Code Commission are Justin Goetz, Code Counsel; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, IT Support Specialist.



Interim Rules Review Committee 2022 Final Report



Study Assignment

Created by [§ 1-26-1.1](#), the Interim Rules Review Committee oversees executive branch agencies in the exercise of their legislative authority to promulgate rules. The Committee is empowered to require agencies to go back to an earlier part of the rulemaking process (i.e., revert) if the Committee finds concerns listed in [§ 1-26-4.7](#), including concerns that the rule does not follow legislative intent or the Legislature's delegated authority.

Summary of Interim

Trends regarding this interim compared to prior interims for the Committee are showcased below in chart form.

Table 1. Number of Rule Packets by Interim – Reason for Rules

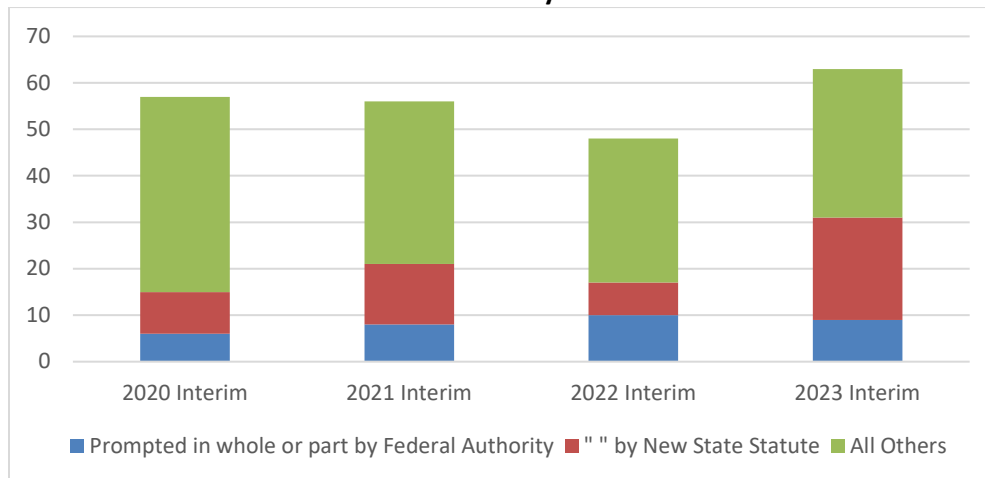


Table 2. Average Number of Rule Packets by Month (2020-23 Interims)

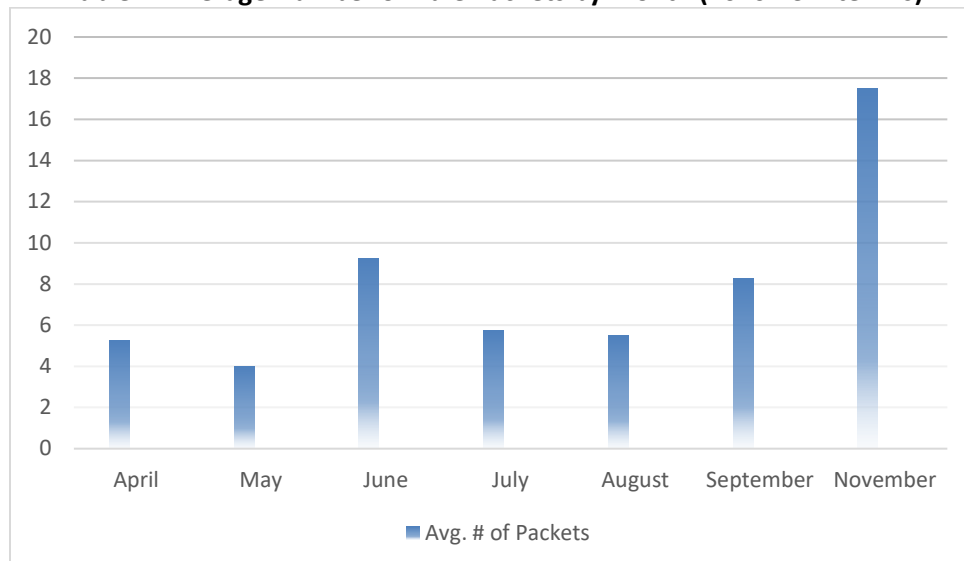
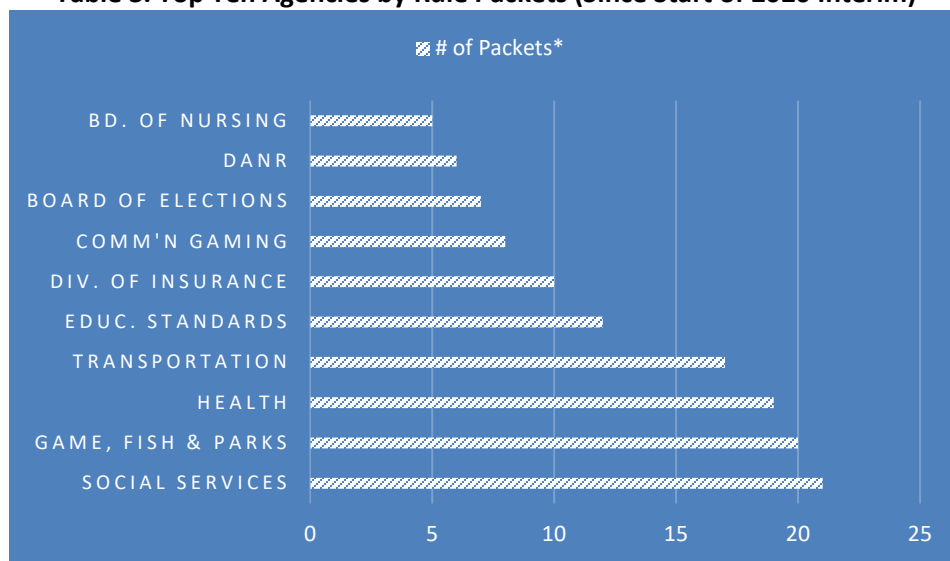
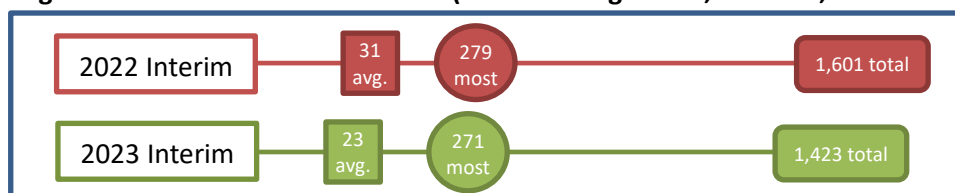


Table 3. Top Ten Agencies by Rule Packets (Since Start of 2020 Interim)



* 63 boards, commissions, agencies, and offices have presented a rules packet in the last four years.

Table 4. Pages of Rules Reviewed Per Packet (Not Counting Forms, Minutes, Written Comments)



The Committee met on the dates listed below. The Committee's actions at a given meeting are summarized below the corresponding date, with agency rules reviewed listed by agency name:

March 6, 2023:

- The Committee met to organize itself, selecting its chair and vice chair and setting the meeting schedule for the entire interim.
- Assignments as lead members on particular agencies' proposed rules were discussed.
- New members were briefed by staff on the authorities and processes associated with the Committee.

April 11, 2023:

- The members were notified of administrative rules drafting training provided to public attorneys.
- Water Management Board (Department of Agriculture and Natural Resources) – Update water pollution standards, modify beneficial use provisions, remove obsolete definitions and bodies of water.
 - These changes are the result of federal regulation.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Permit pets in cabins, lodges, or suites; define "pet," and establish a fee for pets in overnight accommodations.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Modify use of firearms for hunting and hunting areas in certain state parks, modify archery licenses, close the mountain goat season, no boating safety zone on Angostura.
- Transportation Commission (Department of Transportation) - Make escort vehicle requirements less restrictive on certain Black Hills highways, change approved routes for longer combination vehicles.
- State Board of Elections (Secretary of State) - Update voter registration form on account of litigation.
 - This revision was prompted by federal authority--a federal court case.
- Commission on Gaming (Department of Revenue) - Clarify rules to prevent minors from gambling, authorize new variations of craps and existing table side bet and pay table.

May 2, 2023:

- State Board of Water and Natural Resources (Department of Agriculture and Natural Resources) – Wastewater loan principal forgiveness rule updates, update Clean Water Act and Safe Drinking Water Act references, define emerging contaminants, expand eligibility of systems for funding from lead service line replacement and emerging contaminants funding.
 - These changes are the result of federal regulation.
- Department of Agriculture and Natural Resources – Increase gate admission for the State Fair.
- Civil Service Commission (Bureau of Human Resources) – Revise rules on the paid family leave program.
- Board of Education Standards (Department of Education) - Amend rules to create a student teacher permit and advanced student teacher permit.
- Updates to the permanent rulemaking forms were recommended by staff and approved by the Members.

June 13, 2023:

- Department of Health - Add dental hygienists to the list of professionals eligible to participate in the Rural Healthcare Facility Recruitment Assistance Program.
 - This was the result of the enactment of [HB 1155](#) by the 2023 Legislature.
- South Dakota Board of Massage Therapy (Department of Health) - Repeal the requirement that fees be paid to the Board only in the form of personal check, cashier's check, certified check, or money order.
- South Dakota Housing Development Authority – Propound the rules for the housing infrastructure loan and grant program.
 - The program is the result of the enactment of [SB 41](#) the 2023 Legislature.
- South Dakota Weed and Pest Control Commission (Department of Agriculture and Natural Resources) - Add wild parsnip to the local noxious weed and declared pest list.
- Department of Agriculture and Natural Resources - Update pest control certification and training regulations, update pesticide recycling rules on types of containers, and waive pre-registration for waste pesticide disposal.
 - Rules prompted in part by changes in federal regulations by the Environmental Protection Agency.
- Department of Social Services – Revise rules regarding registered day cares and group care centers, residential treatment centers, and intensive residential treatment centers.
- Department of Social Services – Update TANF payment standard amounts, federal medical services eligibility standards, Medicaid eligibility categories; extend Medicaid eligibility for Post-Partum from 60 days to 12 months; and add a new group to account for Medicaid expansion.
 - Rules prompted in part by changes in federal regulations.
 - Rule prompted in part by voter-approved constitutional amendment, [S.D. Const. Art. XXI](#), § 10.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) - Modify the number of waterfowl licenses available to nonresidents, modify deer season and deer hunting units.
- Division of Insurance (Department of Labor and Regulation) - Incorporate the 2023 Medicare Supplement coverage amounts set by the federal government.
 - Rules prompted entirely by changes in federal regulations.
- Office of the Attorney General - Implement the forfeiture report and procedures associated therewith.
 - Rule prompted entirely by the enactment of [HB 1328](#) by the 2022 Legislature.
- The Committee approved revisions to permanent rulemaking forms proposed by staff and approved a proposal for staff to notify agencies informally of outdated statutory authority cited by rules.

July 18, 2023:

- Board of Medical and Osteopathic Examiners (Department of Health) – Adopt educational and training requirements for a new critical care endorsement for paramedics; update educational standards for athletic trainers.

- Critical care endorsement rules prompted by [HB 1285](#) enacted by the 2022 Legislature.
- Department of Health – Update lists of communicable diseases that are reportable to the department and clarify methods of reporting.
- State Board of Dentistry (Department of Health) – Update clinical examinations and licensure rules; update general and specialty practice advertising regulations; update supervision requirements for administering sedation, analgesia, and anesthesia; eliminate collaborative supervision reporting requirements.
- Department of Social Services – Update nursing facility rate setting, revise provisions regarding classification review of new residents.
 - Rules prompted, in part, by federal regulation.
- Board of Addiction and Prevention Professionals (Department of Social Services) – Update to biennial license renewal and revise fees accordingly; update provisions regarding trainees, adopt a code of ethics, update continuing education requirements, and eliminate fees for certain services.
 - The revisions were largely prompted by the enactment of [SB 8](#) by the 2023 Legislature.
- South Dakota Animal Industry Board (Department of Agriculture and Natural Resources) – Comply with statutory authority on confidential records held by a state agency and modify rules on meat inspection.
- State Board of Elections (Secretary of State) – Amend rules on statewide runoffs, testing automatic tabulating equipment, and voter registration file security; revise the voter registration form, acknowledgement notice for voter registration, and voter cancellation form; and establish oaths for county recount and post-election audit boards.
 - These amendments were prompted in part by enactment of [SB 139](#) and [SB 140](#) in the 2023 session.
- South Dakota Investment Council (State Treasurer) - Adopt rules to clarify the Council's declaratory ruling process and repeal unnecessary rules.
- Commission on Gaming (Department of Revenue) - Amend and adopt rules regarding horse racing foreign substance prohibitions and drug administering requirements.
- Division of Insurance (Department of Labor and Regulation) - Amend rules to repeal grievance reporting requirements for health carriers and update materials incorporated by reference.
 - The repeal was prompted by the enactment of [HB 1012](#) in the 2023 legislative session.
- The Committee adopted changes to permanent rulemaking forms and approved the solicitation of a standing committee to introduce [Draft #106](#).

August 8, 2023:

- Department of Health – Define minimum regulations to maintain the health and safety of residents in assisted living centers, and update rules on reporting communicable disease and stocking naloxone for emergency use in assisted living centers.
 - The revisions appear to have been prompted by [HB 1139](#), enacted in the 2021 regular session, and [HB 1162](#), enacted in the 2023 session.
- Speech-Language Pathology Board of Examiners (Department of Health) – Remove unnecessary barriers to licensure, update language to reflect current technology and practice, and correct legal references.
 - The revisions appear to be largely prompted by [HB 1014](#), enacted in the 2023 session.
- Board of Minerals and Environment (Department of Agriculture and Natural Resources) – Update and adopt rules for the state's hazardous waste regulations by incorporating federal regulations adopted from July 1, 2018-June 20, 2022, by reference.
 - The revisions appear to be entirely prompted by federal regulation.
- SD Real Estate Commission (Department of Labor and Regulation) – Amend rules to reestablish the qualifications for the reinstated restricted broker's license for auctioneers and associated prohibitions.
 - The revision is entirely prompted by [SB 77](#), enacted in the 2023 session.
- The Committee adopted changes to permanent rulemaking forms and approved the solicitation of a standing committee to introduce [Draft #143](#).

September 21, 2023:

- Department of Health – Update rules on radiation use in healthcare settings and radiologists; improve radiation equipment operator training and protections, adopt regulations of radiation equipment that manufacturers must follow per the FDA.
 - The revision is prompted in part by updates to federal regulation.
- State Auditor – Repeal rules for reimbursement of mobile home moving and household moving claims for new or transferring state employees.
 - The repeals were entirely prompted by the enactment of [HB 1153](#) in the 2023 session.
- State Board of Finance (Secretary of State) – Repeal rules for reimbursement of moving expenses for new or transferring state employees; establish a requirement to pay back all or a portion of the allowance for moving expenses if the employee does not work for two years after hiring.
 - The repeals and revision were entirely prompted by the enactment of [HB 1153](#) in the 2023 session.
- Department of Social Services - Update rules associated with the child care licensing process and rules setting forth the training requirements for licensed day cares.
- Department of Agriculture and Natural Resources - Update the rule informing the enforcement of state feed control regulations by citing the latest model provisions of the Association of American Feed Control Officials.
- Transportation Commission (Department of Transportation) - Change the speed limits on a portion of I-90 between Sioux Falls and Brandon, and a portion of U.S. Highway 385 in Hot Springs.
- Transportation Commission (Department of Transportation) - Change the speed limit on State Trunk Highway 79 in Meade County in connection with the Sturgis Motorcycle Rally, eliminate a reduced speed zone on State Trunk Highway 48 in Spink, Minnehaha County, and eliminate an outdated statutory reference in transit grant audit rules.
- Department of Public Safety - Adopt the 2021 standards for boiler inspection, adopt the 2023 edition of the Commercial Vehicle Safety Alliance handbook, establish the process for obtaining a Black Hills burn permit in rule, and update rules on CDL third-party testers and motorcycle safety education courses.
- The Committee adopted changes to permanent rulemaking forms recommended by staff.

November 7, 2023:

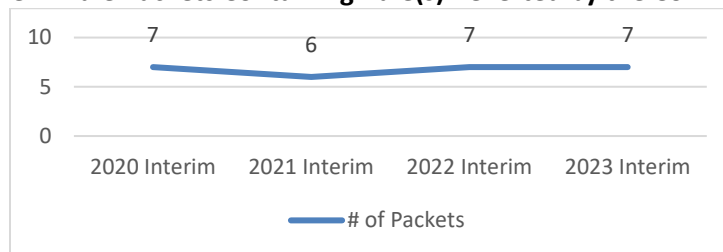
- Department of Health - Update medical cannabis rules, clarify the location of lawful sales, limit the use of additives in medical cannabis, add expiration dates, clarify inventory tracking requirements, increase the establishment fee, and repeal the petition process for debilitating conditions.
 - The repeal of the petition process was the result of [SB 1](#), enacted in 2023.
- Department of Health - Update and clarify regulations in most areas of hospital regulation, and add content on rural emergency hospitals.
 - Content on rural emergency hospitals is prompted by [HB 1123](#), enacted in the 2022 regular session.
- State Board of Nursing (Department of Health) - Update the scope and standards of practice for RNs and LPNs, clarify supervision requirements of LPNs, update IV tasks that an LPN may and may not perform.
- State Board of Nursing Facility Administrators (Department of Health) - update fees as originally scheduled in 2020 and delayed due to the pandemic.
- South Dakota Board of Physical Therapy (Department of Health) - Update licensure processes and continuing education requirements to account for two-year license periods and renewals, update the code of ethics and references to the oversight body now being the Board of Physical Therapy.
 - The revision of references was prompted by [SB 78](#), enacted in 2023, which transferred oversight to this new board.
- Department of Human Services – Add rules regarding abuse, neglect, and exploitation protections, update processes and notices for properly terminating services, update Family Support 360 services and processes, repeal registration requirements for interpreters and required reviews of a qualified provider.

- A few revisions were prompted by the enactment of [SB 9](#) and [SB 10](#) in the 2023 session.
- State Board of Dentistry (Department of Health) – Update and increase license, registration, and permit fees that have not been updated since 2012.
- Department of Social Services – Update and clarify provisions regarding Medicare billing codes and Medicare coverage of implanted contraceptives, foot care, and breast pumps; update and clarify rules on personal care services; clarify services covered under Family Support 360; update treatment plan timing; and remove the certificate of medical necessity requirement to align with Medicare.
 - A few revisions appear to be prompted by changes in federal regulation.
- Department of Social Services – Amend rules referencing the Division of Behavioral Health to simply reference the department to allow for restructuring of licensing with the department.
 - This entire revision was precipitated by [SB 28](#)'s enactment in the 2023 session.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) - Restrict the number of applications for leftover turkey and antelope season licenses, clarify fishery management permissions to private landowners, clarify methods for taking bait species, allow use of dip nets to take invasive species.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) - Consolidate all park entrance license exemptions, eliminate Mother's Day and Father's Day as free entrance days, adjust license allocations in Hunt for Habitat drawing.
- Transportation Commission (Department of Transportation) - Change the speed limit on State Trunk Highway 50 in and around Yankton.
- State Board of Elections (Secretary of State) - Establish post-election auditing board procedure and oath, define terms related to post-election audits, specify reimbursable costs of post-election audits.
 - The entire revision was prompted by [SB 160](#)'s enactment in the 2023 session.
- State Board of Elections (Secretary of State) - Establish notice of invalid voter registration, define nursing home absentee voting process, update instructions for optical scan ballots, clarify ballot box security.
 - Nursing home absentee voting rules prompted by enactment of [HB 1165](#) in 2023.
- South Dakota Board of Accountancy (Department of Labor and Regulation) - Update education prerequisites on credit requirements and accrediting programs, expand the qualifying period to pass the CPA exam.
- Board of Education Standards (Department of Education) - Adopt a rule to require all school districts uniformly transcribe postsecondary credits on a student's high school transcript.
 - This rule was prompted by the 2023 Legislature enacting [SB 182](#).
- Professional Teachers Practices and Standards Commission (Department of Education) - Clarify references to educators and add a teacher's code of ethics requirement for teachers to report code violations.
- Professional Administrators Practices and Standards Commission (Department of Education) - Add an administrator's code of ethics requirement for administrators to report code violations.
- Law Enforcement Officers Standards and Training Commission (Attorney General) - Update minimum standards, training, and employment regulations for LEOs and 911 telecommunicators, provide process for refusing school sentinel applications, allow limited hiring of 18-21 year olds as LEOs.
- Division of Insurance (Department of Labor and Regulation) - Remove the \$25 filing fee paid by a consumer when seeking external review of an adverse determination of coverage by a health insurer.

Rules Reverted to Prior Step

The following table provides a trend in the number of rules packets in which the Committee has reverted one or more rules:

Table 4. Rule Packets Containing Rule(s) Reverted by the Committee



In accordance with § [1-26-4.7](#), the Committee, at [its November 2023 meeting](#), reverted to a prior step in the rule promulgation process certain rules proposed by the:

- Department of Health:**
 - A new rule section would have prohibited the use of artificial or botanically derived terpenes in the flavoring of medical cannabis products. Members expressed concern that studies only appeared to show the hazards of flavoring inhalable products and not consumed products, and that flavoring is used in other medicines; and
 - A revision to [ARSD 44:90:09:07.01](#) would have eliminated the exception to testing pre-rolled medical cannabis joints. Members indicated that testing of paper for pre-rolls appears sufficient to protect patients, and is more efficient and reasonable than sampling many pre-rolled joints.
- Department of Human Services:** A revision to [§ 46:11:08:05](#) would have set the minimum amount of time for services to be provided (by community support providers) to persons with intellectual or developmental disabilities, as 120 days from the date of notice of termination if an appeal decision has not been reached. Members expressed concern that this period of time was too long for emergency cases where the provider was incapable of providing services, posing a safety risk to staff and clients.
- Board of Elections (Secretary of State):** Two new rule sections would have required the post-election auditing board, a requirement established by [SB 160](#) as enacted in the 2023 session, be responsible for placing the audited ballots in the ballot receptacle for final storage and to seal the receptacle. Members were concerned that vesting these responsibilities with the audit board directly conflicted with the plain language of [SDCL 12-17B-25](#), which provides "[t]he county auditor shall reseal and retain the ballots upon the completion of a post-election audit."
- Board of Education Standards (Department of Education):** A new rule section would have enacted a uniform high school credit calculation for postsecondary courses taken as dual credit, as required by [SDCL 13-28-37](#), which was newly revised by [SB 182](#), enacted in the 2023 session. Members expressed concern with a one-size-fits-all approach when the state's school districts are almost evenly divided between two competing approaches to calculating dual credit--suggesting a legislative fix may be required.
- Professional Teachers Practices and Standards Commission (Department of Education):** A revision to [ARSD 24:08:03:03](#), which provides a code of ethics for a licensed educator, would have made it a code of ethics violation for the educator to not report violations of the code of ethics if the educator has knowledge of the violation. Members expressed concern about the effect on local control and unintended consequences that a new central reporting system would have, and that the opponents must work with the Department to find a consensus position to establish a reporting obligation.
- Professional Administrators Practices and Standards Commission (Department of Education):** Similar to the revision proposed for the teachers code of ethics, this revision to [ARSD 24:11:03:01](#) would have made it a code of ethics violation for school administrators to not report violations of the code of ethics if the

administrator has knowledge of the violation. Members expressed similar concerns as those described in the teacher code of ethics reversion.

- *Law Enforcement Officers Standards and Training Commission (Attorney General)*: A new rule section would have allowed an exception to the requirement that licensed law enforcement officers be age 21 or older, allowing persons age 18 to 20 to be licensed if they successfully completed a technical college law enforcement program in the state and are effectively sponsored by a law enforcement agency. Members expressed concern about persons age 18 to 20 not generally having the intellectual development and temperament to be a law enforcement professional, and workforce shortages compounding the concern.

Listing of Legislation Adopted by the Committee

- [Draft #106](#) would amend [SDCL 1-26A-7](#), a provision that specifies how the Administrative Rules of South Dakota are cited. The revision reflects the overwhelming consensus of lawyers and jurists in citing the rules.
- [Draft #143](#) would amend [SDCL 1-26-4](#) to require agencies to provide their final rules packets to the Rules Committee members at least seven days prior to the Rules Committee's meeting, when the current provision only requires service on the members five days prior. This revision was proposed and the reasons for it were stated on the record at the end of the [Committee's July meeting](#).

Summary of Meeting Dates and Places

The Committee met at the State Capitol in Pierre on March 6, April 11, May 2, June 13, July 18, August 8, September 21, and November 7.

Listing of Committee Members

Members of the committee are Senator Jean Hunhoff, Chair; Representative Jon Hansen, Vice-Chair; Senators Red Dawn Foster and Jim Mehlhaff; and Representatives Roger DeGroot and Erin Healy.

Listing of Staff Members

Staff members for the committee meetings were Justin Goetz, Code Counsel; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, Legislative Systems Analyst.

Members of the Research Division who performed the initial rule review for style, form, clarity, and legality were Principal Legislative Attorney Anita Thomas, Legislative Attorneys Melanie Dumdei and Hillary Larsen, Principal Research Analyst Amanda Marsh, Senior Research Analyst Anna Madsen, and Research Analysts Will Steward and Jacob Carlson.

Members of the fiscal staff who reviewed rule fiscal documents were Senior Fiscal Analyst Joey Knofczynski, Fiscal Analysts Bill Douglas, Carter Dykstra, Joslyn Jessop, and Mitch Honan.



Interim Joint Committee on Appropriations 2023 Final Report



Study Assignment

The Special Committee (Interim JCA) was established by the 1974 Legislature in SDCL 4-8A-2. The nine members appointed to each of the House and Senate Appropriations committees during regular legislative sessions also serve on the Interim JCA. The committee meets at the call of the chair or co-chairs between regular legislative sessions. The committee serves to release sums of money from any general contingency fund, to continually review, evaluate, and coordinate state fiscal and budgetary policy including, but not limited to, the adoption of any new programs by any department of state government and to carry out any assignments made by the Executive Board of the Legislative Research Council.

Summary of Interim

JCA held three meetings so far during the 2023 Interim and plans to hold a final meeting on December 5th.

During the first meeting, held in Pierre on May 3, 2023, the Interim JCA:

- **Approved Letters of Intent.** A Letter of Intent (LOI) supplements an appropriation approved by the Legislature and enacted into law. It outlines policy guidelines for state agencies and expresses particular views held by the JCA when approving the appropriation. These guidelines do not have the direct force of statutory law and agencies are not required to follow them; however, they are used by the JCA as a means to conduct fiscal oversight of state agencies. The following Letters of Intent were adopted by the Interim JCA:
 - **Board of Regents (BOR) – Tuition Freeze.** The LOI states the committee's intention of freezing tuition and providing a 7% increase for permanent faculty and employees.
 - **Board of Regents (BOR) – Utility Alignment.** The LOI allows the universities to transfer moneys appropriated for utilities between the universities to address any surplus or shortfall in utility appropriations.
 - **Board of Technical Education (BOTE) – Tuition Freeze.** The LOI states the committee's intention of freezing tuition and providing a 7% increase for permanent faculty and employees.
 - **Department of Agriculture & Natural Resources (DANR) – State Fair & DEX Operations.** The LOI directs the agency to produce a report detailing revenues and expenditures for State Fair division operations with DEX operations separated out for calendar year 2023 and each year thereafter to be presented during the DANR annual budget hearing.
 - **Department of Human Services (DHS) – Annual Rate Model Review.** The LOI directs the agency in each intervening year between comprehensive rate analyses pursuant to SDCL 28-22 to monitor and review applicable provider rate model build-up components, relevant costs, and applicable inflationary factors as warranted and in partnership with providers.
 - **Department of Public Safety (DPS) – Grants to Volunteer Fire Departments.** The LOI provides guidance on documentation for grants and the disbursement of moneys in HB1127.
 - **Department of Social Services (DSS) – Medicaid Expansion.** The LOI directs the agency to include certain information regarding Medicaid expansion in the monthly report on Medicaid.
 - **Department of Tourism (TOUR) – Tourism Promotion Tax.** The LOI directs tourism to present a report during their budget hearing detailing how the 0.5% gross receipts are being utilized.
 - **Multiple Agencies – Construction Project Reports.** The LOI directs agencies with construction projects to work with the State Engineer to produce a standard report on various items regarding the construction project and to present to the report to JCA.
- Heard an update on American Rescue Plan Act (ARPA) expenditures.

- Heard an update from the Department of Social Services on Medicaid expansion implementation.
- Listened to an update from Legislative Audit on the Family Support 360 Study.
- Heard an update from the Governor's Office of Economic Development (GOED) on the marketing initiative.
- Listened to an update on the housing infrastructure funding (SB 41, 2023 Session) from the housing development authority.
- Heard an update from the Bureau of Human Resources (BHR) regarding the FY2024 state employee targeted pay distribution.

The JCA completed a west river tour of state sites and areas of interest from June 18 to June 21. The committee visited the Rosebud comprehensive health care facility, Oglala Lakota Living History Village, Black Hills State University, Sanford Underground Research Facility, School of Mines & Technology, BHSU-Rapid City, Care Campus and Pennington County jail in Rapid City, Bison Visitor Center, and the State Veterans Home.

During the second meeting, held in Pierre on July 26, 2023, the Interim JCA:

- Heard an update from Legislative Audit on the family support 360 study.
- Listened to a presentation from the Bureau of Finance and Management on final FY2023 revenues, expenditures, and reversions.
- Certified the proration of interest earnings for fiscal year 2023 in accordance with SDCL 4-5-30 as presented by the Bureau of Finance and Management.
- Heard an update on the Enterprise Resource Planning (ERP) initiative (SB23, 2023 Session).
- Listened to updates from the Bureau of Finance and Management and the Legislative Research Council on fiscal year 2024 general fund revenue projections as per SDCL 4-8A-16. The Bureau of Finance and Management predicted a negative (0.4%) decrease in ongoing FY2024 receipts as compared to the adopted amount and the Legislative Research Council predicted a 2.7% increase. Neither estimate exceeded the statutory threshold of negative 2.5% requiring proposals to eliminate the projected shortfall.
- Heard an update on the merger of BHR and BOA from the Bureau of Human Resources & Administration (BHRA).
- Listened to an update on leasing of space for state agency operations from the BHRA.
- Heard an update on the special emergency and disaster special revenue fund utilization and the status of firefighter safety equipment grants (HB1127) from the Department of Public Safety (DPS).
- An update on Medicaid expansion was provided by DSS.

The JCA completed an east river tour of state sites and areas of interest from September 17 to September 20. The committee visited Hiddenwood Lake, Richmond Lake, Northern State University, South Dakota School for the Blind and Visually Impaired, Human Service Agency Community Mental Health Center in Watertown, Lake Area Technical College, South Dakota State University, SDSU Research Park, South Dakota State Penitentiary, McCrossan Boys Ranch, Avel eCare Telemedicine, Human Services Center, and the Mike Durfee State Prison.

During the third meeting, held in Pierre on November 13, 2023, the Interim JCA:

- Heard an update from BFM on ARPA and Bipartisan Infrastructure Law (BIL) funding and expenditures.
- Listened to Reports on Letters of Intent
 - **Medicaid Expansion (DSS)**
 - **Opioid Funding (DSS & DOH)**
 - **Construction Project Reports (BOA)**
 - **USD Law School Budget (BOR)**
 - **DSU Cyber Expansion (BOR)**
 - **Big Sioux Watershed and River (DANR)**
 - **Marketing Strategy (GOED)**
 - **Expansion of Broadband (GOED)**
 - **Airport Funding (GOED)**

- Heard a presentation from the consultants of the Family Support 360 study.
- Listened to the recommendations of the county funding & services committee as well as the recommendations from the sustainable models for long-term care committee.
- Listened to the indigent legal services task force report from the Unified Judicial System (UJS).

Summary of Meeting Dates and Places

During the 2023 Interim, the Interim JCA held four meetings. All the meetings were held in Pierre.

Listing of Committee Members

Senator Jean Hunhoff Lead Co-Chair, and Representative Mike Derby, Co-Chair. Senators: Bryan Breitling, Jim Bolin, Jack Kolbeck, Red Dawn Foster, Ryan Maher, John Wiik, Dean Wink, and Larry Zikmund. Representatives: Tony Venhuizen, Chris Karr, John Mills, Chris Kassin, Lance Koth, Dennis Krull, Ernie Otten, and Linda Duba.

Listing of Staff Members

Jeff Mehlhaff, Chief Fiscal Analyst with Senior Fiscal Analysts: Joslyn Jessop and Joey Knofczynski and Fiscal Analysts: Carter Dykstra, Bill Douglas, and Mitch Honan and Administrative Specialist: Michelle Deyo-Amende.



Medical Marijuana Oversight Committee

2023 Final Report



Medical Marijuana Oversight Committee -- History and Purpose

In November 2020, the voters of South Dakota approved Initiated Measure No. 26, and in so doing, created the state's medical marijuana program. That Initiated Measure also established the Medical Marijuana Oversight Committee and directed that it meet at least twice per year for the purpose of evaluating and making recommendations to the Legislature and the Department of Health regarding:

1. The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical cannabis;
2. The effectiveness of the dispensaries and cultivation facilities, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services by dispensaries, the reasonableness of their prices, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the state's registered qualifying patients;
3. The effectiveness of the cannabis testing facilities, including whether a sufficient number are operating;
4. The sufficiency of the regulatory and security safeguards contained in this chapter and adopted by the department to ensure that access to and use of cannabis cultivated is provided only to cardholders; and
5. . . . [A]dditions or revisions to the department regulations or . . . chapter [34-20G], including relating to security, safe handling, labeling, and nomenclature; and
6. Any research studies regarding health effects of medical cannabis for patients.

The committee created by Initiated Measure No. 26 consisted of two legislators, one agent from the Division of Criminal Investigation, one staff member from the Office of the Attorney General, two representatives of law enforcement, one representative from the Department of Health, one practitioner with experience in medical cannabis issues, one nurse, one board member or principal officer of a cannabis testing facility, one person with experience in policy development or implementation in the field of medical cannabis, and three qualifying patients.

During the 2023 legislative session, the committee membership was reconfigured so that it consisted of four legislators, one physician, one physician assistant, one certified nurse practitioner, one chief of police for a municipality having a population in excess of 50,000, one county sheriff, one professional or addiction counselor, and one qualifying patient. The original purpose of the committee was expanded to include recommendations regarding medical and clinical aspects of the program.

Summary of Meetings

The Medical Marijuana Oversight Committee met in August and again in November 2023. At its initial meeting, the committee heard from representatives of the South Dakota Highway Patrol and the Department of Health. The former articulated concerns about unlabeled products in baggies and individuals who have possession of the product but not their registry card. Such circumstances make it difficult for law enforcement officers to discern whether the product was obtained legally. The latter provided a chronological history of the medical cannabis program and reiterated the department's focus on and role in ensuring that the state has a safe and effective program. Software programs, seed-to-sale tracking, departmental inspections, and laboratory testing play a major role in pursuing that goal.

Today, there are nearly 12,000 card holders and 43 cultivation facilities, a private laboratory, 18 manufacturing facilities, and 77 dispensaries.



The Department of Health receives \$5000 from each "establishment applicant" and the same upon licensure renewal. The department also receives \$75 for the issuance of a patient card, except in the case of a low-income patient, who is required to pay only \$20. The department's FY 23 program revenues were \$1.37 million, and the expenditures were \$1.2 million. The department expressed concern that the patient numbers would soon level out, thereby flatlining any revenue growth, while at the same time, personnel and computer technology costs would continue to increase.

Industry representatives articulated their continued focus on ensuring timely access to high-quality, cost-effective, and safe products but cautioned that marijuana is readily available in surrounding states and along the I-29 corridor and if the program is made too onerous, the result will be increased purchases on the black market.

Mental health professionals cautioned that marijuana is associated with addiction, depression, anxiety, psychosis, a higher risk of suicide, and traffic fatalities, and impacts the performance of employees and students. Without appropriate guardrails, they believe that a medical marijuana program is in fact a recreational marijuana program. In November 2022, the voters rejected recreational marijuana with their defeat of IM 27.

At its second meeting, the oversight committee continued to explore and discuss issues that were emerging as the program evolved. These included educational opportunities and requirements for medical practitioners who, during the course of their formal training, may not have had significant exposure to the benefits and risks of marijuana in their patients' treatment regimens, and educational opportunities and requirements for dispensary employees who interact with the individuals to help them find appropriate products for their medical conditions and symptoms. The oversight committee also addressed the legal implications for employers having to bridge the dichotomy between employees or potential employees who are legal users of medical marijuana and the drug free requirements for safety sensitive positions, and whether governmental entities, aside from the Department of Health, had clear statutory authority to inspect, seize, prosecute, or impose disciplinary action on cannabis dispensaries, cultivation facilities, manufacturing facilities, or testing facilities.

The oversight committee considered the efficacy of promoting a well-regulated and safe medical marijuana program in an environment that also allows smoke shops and gas stations to sell arguably stronger and cheaper products in untested and unmonitored amounts.

The oversight committee considered the programmatic staffing challenges that have plagued the Department of Health and how those challenges have allowed for administrative or interpretive inconsistencies, and operational delays, in addition to creating time lags in the development and implementation of rules for this rapidly growing and changing industry.

Finally, the committee continued its discussion regarding the practitioner-patient relationship, and particularly, what that should look like in the interest of ensuring "good medicine," while not statutorily prescribing the professional considerations that are an integral part of each such relationship. Topics included shared electronic patient registries, referring-practitioner notifications, length of time for appointments, the number of certifications that a practitioner could provide in a day, the nature and extent of a physical examination, and verification of a qualifying medical condition.

Legislation Considered by the Committee – Recommendations

The oversight committee had received seven bill drafts for the purposes of initiating conversations, refining perspectives, and considering implications pertaining to concerns that members or other parties had articulated.

Committee members suggested that the constricted time frame did not allow for a full and thorough vetting of the bill drafts, nor sufficient time for those who would be impacted to suggest refinements or alternative directions. Nevertheless, the committee opted to express its support for the following concepts, in anticipation of seeing such pursued during the upcoming legislation session:

1. Ensuring that employers who have safety-sensitive positions are able to appropriately address requirements for a drug free workplace, without fear of litigation by employees or job applicants, who utilize medical marijuana within the parameters of this program;
2. Ensuring that law enforcement and various governmental entities are not precluded from inspecting, seizing, prosecuting, or imposing disciplinary action on cannabis dispensaries, cultivation facilities, manufacturing facilities, or testing facilities;
3. Monitoring efforts by the Governor, the Department of Corrections, and the Unified Judicial System to put forth legislation clarifying accessibility to medical marijuana by individuals who are on parole or probation; and
4. Promoting continuing education requirements for practitioners who issue written certifications for medical marijuana.

Summary of Meeting Dates and Places

The committee met August 14, 2023, and November 6, 2023, in the State Capitol.

Committee Members

Senator Erin Tobin, Chair; Representative Roger DeGroot, Vice-Chair; Senator Jim Mehlhaff; Representative Curt Massie; and Francine Arneson, Katie Kassin, Brian Mueller, Kristi Palmer, Jon Thum, and Rachel Waddell. Brian Doherty, served until his resignation on September 22, 2023.

Staff Members

Staff members for the Committee were L. Anita Thomas, Principal Legislative Attorney and Michelle Deyo-Amende, Administrative Specialist



Study Committee on County Funding and Services

2023 Final Report



Study Assignment

The scope of the study is to examine the appropriate administration and funding of certain services to be provided by county governments, including, but not limited to: medical assistance for indigent persons, juror fees, elections, veteran service officers, criminal defense costs, court costs, cybersecurity costs, and mental health holds. In particular, the study will seek policies to encourage regionalization, consolidation, or alternate provision of services to gain efficiency for county governments and taxpayers. The study will further examine the available revenue sources of county governments and their utilization.

Summary of Interim

The Committee held its first meeting on June 14 in Pierre. The first meeting was intended to be informational for the benefit of all the Committee members. At the Committee's first meeting, the Department of Revenue explained that the property tax is the primary funding source for counties. This source of revenue is subject to the property tax limitation program enacted in 1995. The Unified Judicial System shared that South Dakota is one of only two states with an entirely county-funded process for providing legal services to indigent defendants. The Committee received information from the Department of Corrections, Legislative Audit, Sheriffs Association, and State's Attorney Association.

The second meeting was held on July 12 in Pierre. The committee heard about county road funding challenges, including inflationary costs of gravel and asphalt roadways, equipment, and corrugated metal pipes. After appearing at the first meeting, Legislative Audit staff sat in on this meeting to answer any potential questions and provided follow-up data regarding county legal type expenditures and explained that these expenses have risen dramatically. The Committee received additional information regarding indigent health care, cyber security, welfare, Medicaid expansion, veteran service officers, and election administration.

The final two meetings of the Committee were held for members to offer potential solutions and for the Committee to hear additional testimony from counties.

The Committee's third meeting was held on August 16 in Pierre. The Committee heard public testimony from county officials who shared common concerns, including the continued rise in costs for law enforcement, transporting inmates, road maintenance, employee recruitment, and jails. The Committee heard from the Bureau of Information and Telecommunications, the Bureau of Administration, and follow-up information from the Department of Revenue.

Emergency managers detailed the federal requirements. The Emergency Management Performance Grant Program reimburses counties for fifty percent of allowable costs, including emergency manager wages and benefits. The state receives Federal Emergency Management Agency (FEMA) funding and sources it to emergency managers after certain requirements are met. The state and FEMA require certain plans and documents including emergency management plans, natural hazard mitigation plans, hazardous material plans, and community wildfire protection plans. Common issues shared by emergency managers include funding issues, administrative challenges, and first responder volunteer shortages.

The Committee held its fourth and final meeting on September 13 in conjunction with the annual meeting of the South Dakota Association of County Commissioners in Sioux Falls. The Committee heard public testimony regarding

common issues facing county government, concerns regarding revenue sources, operations costs, and increasing demands for law enforcement expenditures. Commonly, testifiers shared that no county is the same, and county needs may deviate from county to county.

Upon the completion of the public testimony, the Committee discussed legislative ideas ([Document 1](#)) and expressed informal support for legislation to be drafted in the following areas: allowing counties to impose administrative fees on property tax collections and tax increment finance districts; court-appointed attorney fees; redistribution of the alcohol beverage tax; funding of veteran service officers; grant to encourage cooperation between counties; and emergency managers; a resolution to support the creation of a centralized property tax database; mental health holds funding; hold counties harmless for road district maintenance; allow counties to collect debt through the obligation recovery center; a resolution to encourage an amendment to include certain wildlife lands in the PILT Act; and cybersecurity grant funding.

Listing of Legislation Discussed by the Committee

- An Act to allow for counties to impose an administrative fee on the collection and distribution of property taxes. (Draft 241)
- An Act to clarify provisions pertaining to tax increment finance districts. (Draft 240)
- An Act to provide for the employment of veterans' service officers by the Department of Veterans Affairs. (Draft 185)
- An Act to provide for the employment and maintenance of emergency management personnel by the Department of Public Safety. (Draft 239)
- An Act to modify provisions pertaining to payment of public defenders and court-appointed attorneys. (Draft 271)
- An Act to revise provisions regarding the alcohol beverage fund. (Draft 152)
- An Act to provide for the payment of mental health holds by the Department of Social Services. (Draft 275)
- An Act to create the county cooperation and collaboration grant fund and make an appropriation therefor. (Draft 243)
- An Act to revise provisions regarding township contracts for snow removal. (Draft 55)
- An Act to make an appropriation to the Board of Regents to provide cybersecurity grants to local governments. (Draft 245)
- An Act to provide for the use of the obligation recovery center by counties. (Draft 244)
- A concurrent resolution urging the Department of Revenue to establish a centralized property tax database. (Draft 242)
- A concurrent resolution urging the members of South Dakota's congressional delegation to sponsor and support an amendment to the Payment in Lieu of Taxes Act. (Draft 247)

Summary of Meeting Dates and Places

The Committee met on June 14, July 12, and August 16 in Pierre. The Committee met on September 13 in Sioux Falls.

Listing of Committee Members

Members of the committee were Senators Jim Bolin, Randy Deibert, Helene Duhamel, David Johnson, Liz Larson, Jim Mehlhaff, and Al Novstrup, and Representatives Amber Arlint, Kirk Chaffee, Roger Chase, Lance Koth, John Mills, Neal Pinnow, and Tim Reisch.

Listing of Staff Members

Staff members for the Committee were Amanda Marsh, Principal Research Analyst; Jacob Carlson, Research Analyst; Joey Knofczynski, Senior Fiscal Analyst; Rachael Person, Chief of Operations; and Joleh McCullough, Administrative Specialist.



Sustainable Models for Long-Term Care

Final Report



Study Assignment

The scope of the study is to examine current and 10-year projected state of South Dakota's long-term care population, including total population, Medicaid-eligible population, geography, and services provided. The study will further identify alternate or additional care delivery models including models that emphasize long-term care in the home, regionalization of long-term care facilities, or affordable care for long-term care patients and the state of South Dakota. Finally, the study will consider incentives for capital investment and innovation and sustainable funding mechanisms for Medicaid-provided long-term care.

Listing of Recommendations Adopted by the Committee

A more detailed description and other details for each recommendation can be found on pages 2-12.

- Creation of a healthcare workforce coalition.
- Legislation to join compacts for APRN, social workers, counselors, and psychologists.
- Implement a 1915(c) Medicaid waiver in long-term care for adult daycare in other licensed healthcare facilities.
- The State study and support a state program of all-inclusive care for the elderly (PACE) program.
- Funding for technology grants in long-term care facilities.
- Increasing the amount permitted for the personal needs allowance under SDAR 67:46:06:05.
- Amend and expand in-home services and establish new reimbursement rates.
- Provide greater reimbursement for remote patient monitoring services.
- Establish new eligibility for community support provider services for traumatic brain injury patients over age 22.
- Update Dakota@Home processes.
- Legislation and change to the State Medicaid plan defining and establishing palliative care.
- Legislation to amend the eligibilities for designation as a regional nursing facility and applicable reimbursement.

Listing of Legislation Adopted by the Committee

- [Adopt the psychology interjurisdictional licensure compact.](#) This bill draft is the compact for licensed psychologists.
- [Adopt the social work licensure compact.](#) This bill draft is the compact for licensed social workers.
- [Adopt the interstate counseling licensure compact and revise educational requirements to comply with the compact.](#) This bill draft is the compact for professional counselors and adjusts educational requirements.
- [Adopt the advanced practice registered nurse compact.](#) This bill draft is the compact for advanced registered nurses.
- [To conduct a feasibility study on a Medicaid program option that provides care to the elderly and make an appropriation therefor.](#) This bill draft proposes funding a study to determine the feasibility of a statewide Program of All-Inclusive Care for the Elderly (PACE).

- [To amend the eligibilities for designation as a regional nursing facility and applicable reimbursement.](#) This bill draft proposes changing how a regional nursing facility is designated and allows for the reimbursement of allowable capital costs.

Explanation of the Recommendations Adopted by the Committee

- *Creation of a healthcare workforce coalition.*

Create a standing coalition with diverse representation to convene regularly regarding healthcare workforce and program needs. Other states like [Indiana](#) have created similar healthcare workforce groups and the healthcare workforce coalition would model other states.

South Dakota operates components or pieces of the model but there is no overall coordination. The Department of Health currently operates the Healthcare Workforce Center. The purpose of the Center is to function as a clearinghouse for healthcare workforce-related data and information. The Center is also designed to develop and implement programs and projects to assist individuals, agencies, and facilities in their efforts to address current and projected workforce needs. The center operates several programs including: the [recruitment assistance program](#), [rural healthcare facility recruitment assistance program](#), and the [state loan repayment program](#). The Center produced a report in [2018 on healthcare workforce](#) in South Dakota.

South Dakota also operates the Center for Nursing Workforce, which was established in 2002 to address nursing workforce supply, demand, recruitment, retention, education preparation, and utilization of nurses ([SDCL 36-9-95](#)). The power of the nursing workforce center includes maintaining a database on supply, demand, and the need for nurses in the state, convene representatives of healthcare providers to make recommendations of actions; promote strategies to improving nursing environments, and other powers as listed in [SDCL 36-9-96](#). However, there is no center addressing the similar needs of the entire healthcare workforce in South Dakota.

There is likely a marginal fiscal impact to the state general fund or other state funds. The state would likely incur expenses to reimburse attending members for meals, lodging, and mileage. There could be an opportunity cost of time as a state employee(s) would spend time on this program instead of another program. A larger fiscal impact could occur if additional employees are needed.

- *Legislation to join compacts for APRN, social workers, counselors, and psychologists.*

The committee recommends the state of South Dakota pass legislation to join interstate compacts licensing APRNs, social workers, psychologists, and counselors. This increased flexibility accommodates increased rates of moving and anticipates federal support of these initiatives. Rural healthcare, and e-healthcare providers, can make good use of these initiatives as well. The Board of Nursing has expressed an ongoing commitment to keep standards in nursing education at the present levels, and compacts do not inherently jeopardize this.

Implementing compacts will likely reduce other fund fee revenue for the state. It is likely fewer people from out of state will be paying fees to be licensed in SD with compacts in place.

APRN compact				
% in SD		APRNs in 2023		
68.42%	In-State	1,768	245,480	Revenue without joining compact
31.58%	Out of State	816	167,960	Revenue retained after joining
			77,520	Revenue lost after joining

\$95*Fee revenue per APRN per year*

- *Implement a 1915(c) Medicaid waiver in long-term care for adult daycare in other licensed healthcare facilities.*

South Dakota can use a §1915(c) Medicaid waiver similar to the Elderly Waiver in MN (0025.R09.00) to allow licensed nursing home or assisted living facilities to take five or fewer people, who are neither residents nor patients, as adult daycare recipients. This option would be available to all licensed facilities in South Dakota. This could diversify revenue streams for smaller facilities and could allow increased revenue without increasing proportionally the required number of skilled nursing staff. The Minnesota statute focuses on small facilities and makes small changes to them by adding only up to five people per facility. Additionally, the reimbursement rate for adult day care is lower than for nursing care. For facilities not using available space because of staffing issues, this offers a way to use space and generate revenue without increasing the need for skilled nursing staff.

South Dakota DHS like Minnesota has a Medicaid waiver in place in long term care. In South Dakota, it is called the HOPE waiver. Title III funding may be available for adult day services provided in Assisted Living and Nursing home settings, with no maximum limit of residents. The providers must be contracted with DHS and meet all applicable provider provisions (which includes a staffing minimum).

Adult day services are also available through the HOPE Waiver, however, due to the CMS HCBS Final Settings Rule, the HOPE waiver funds may not be utilized to pay for adult day services in nursing homes. Adult day services may be provided in assisted livings to HOPE waiver participations as long as the assisted living is determined compliant with the HCBS Settings Final Rule and the provider is contracted with DHS.

There would likely be a fiscal impact of state general funds for this recommendation as there could be increased utilization of the adult day services rate. The rate for adult day services is \$14.12 per hour. The analysis below assumes various utilization rates for a facility. The number of facilities implementing the recommendation is not predictable, which is why the cost is provided on a facility basis. It is unclear if this recommendation would increase utilization, shift utilization, or a combination of both. Expenses for this recommendation would be paid from state general funds and federal funds, separated out in the chart below.

Fiscal impact of Elderly Waiver-style 1915(c) Adult Day in licensed facilities						
Assumed Utilization (people/day)	Adult Day Services Rate	Assumed Utilization (weeks)	Weekly Funding per Facility	Total Funds Needed per Facility	State General Funds Needed per Facility	Federal Funds Needed
5	\$ 14.12	52	\$ 2,824	\$ 146,848	\$ 68,211	\$ 78,637
5	\$ 14.12	26	\$ 2,824	\$ 73,424	\$ 34,105	\$ 39,319
2.5	\$ 14.12	52	\$ 1,412	\$ 73,424	\$ 34,105	\$ 39,319
2.5	\$ 14.12	26	\$ 1,412	\$ 36,712	\$ 17,053	\$ 19,659
1.25	\$ 14.12	52	\$ 706	\$ 36,712	\$ 17,053	\$ 19,659
1.25	\$ 14.12	26	\$ 706	\$ 18,356	\$ 8,526	\$ 9,830

- *The State study and support a state program of all-inclusive care for the elderly (PACE) program.*

A Medicare program and Medicaid state option provides community-based care and services to people 55 or older who would otherwise need a nursing home level of care. PACE covers all Medicare- and Medicaid-covered care and services, and anything else the health care professionals in the PACE team decide the patient needs to improve and maintain their health. This includes prescription drugs and any medically necessary care.

The State would need to fund a study to assess the feasibility of a PACE program in South Dakota for approximately \$65,000, add language to SDCL and Administrative Rules for PACE programs, and amend the State Medicaid Plan to elect PACE as a voluntary state option and seek CMS approval.

There will likely be a fiscal impact to the state general fund or other state funds associated with studying and implementing a state PACE program. State general funds or other state funds in the amount of \$65,000 could be needed to complete a feasibility study of implementing a PACE program in South Dakota. A feasibility study would likely identify the state costs for implementing the program. It is unknown what the cost for implementing a state PACE program would cost.

- *Funding for technology equipment grants in long-term care facilities.*

Technology is one of the key factors that will help long term facilities to care for more patients using less resources. This can include telehealth, health and position monitoring, and remote room control including windows and lights. Technology equipment grants would allow providers to apply for money to add impactful technology for their staff and residents. The appropriation would go to the Department of Human Services who would assess proposals for use of the technology equipment grants. The grants would then go to any long-term facilities following a successful application. The Department of Human Services would be required to give regular reports on who is using the grants and how the grants are being used. Improvements in technology can help long-term facilities monitor patients using less resources while improving the care of patients in long term care.

The committee recommended state general funds of \$5.0 million to administer and award technology equipment grants for long-term care providers.

- *Increasing the amount permitted for the personal needs allowance under SDAR 67:46:06:05.*

The committee concluded the current amount of personal needs allowance is insufficient to meet the personal needs of the recipients. The committee recommends increasing the personal needs allowance. The current personal needs allowance amount set under [SDAR 67:46:06:05](#) is \$60 and was last adjusted in 2004. The national average amount set for PNAs is \$62 per month, with South Dakota having the 20th highest PNA. The allowance may be used by recipients toward personal items and

services, such as clothing, shoes, snacks, haircuts, toiletries, and cell phone bills. A recipient's allowance cannot be used toward items or services paid for by Medicaid. An increase in the amount could help ensure the personal needs of elderly residents are being met without needing to be supplemented by family members or staff in the facilities where the residents live. A rule change to SDAR 67:46:06:05 South Dakota's personal needs allowance would need to occur to increase the amount.

There could be a cost of \$217,256 to \$869,025 to the state general fund depending on the increase in the personal needs allowance. The following tables provide the PNA increase amount and state general fund cost for assisted living and skilled nursing facilities.

Assisted Living PNA					
PNA Amount	\$ 60	\$ 70	\$ 80	\$ 90	\$ 100
PNA Increase	\$ -	\$ 10	\$ 20	\$ 30	\$ 40
Monthly Avg. # of Waiver Clients	757	757	757	757	757
Additional General Funds Needed	\$ -	\$ 90,840	\$ 181,680	\$ 272,520	\$ 363,360

Skilled Nursing PNA					
PNA Amount	\$ 60	\$ 70	\$ 80	\$ 90	\$ 100
PNA Increase	\$ -	\$ 10	\$ 20	\$ 30	\$ 40
Monthly Avg. \$ of Waiver Clients	2,340	2,340	2,340	2,340	2,340
Additional Total Funds Needed	-	280,800	561,600	842,400	1,123,200
Additional Federal Funds Needed		\$ 154,384	\$ 308,768	\$ 463,152	\$ 617,535
Additional General Funds Needed	\$ -	\$ 126,416	\$ 252,832	\$ 379,248	\$ 505,665

Total Dollars Needed					
PNA Amount	\$60	\$70	\$80	\$90	\$100
PNA Increase	\$ -	\$10	\$20	\$30	\$40
Additional Total Funds Needed	-	371,640	743,280	1,114,920	1,486,560
Additional Federal Funds Needed		\$154,384	\$308,768	\$463,152	\$617,535
Additional General Funds Needed	\$ -	\$217,256	\$434,512	\$651,768	\$869,025

- *Amend and expand in-home services and establish new reimbursement rates.*

Amend state Medicaid plan to provide a medication aide rate and allow virtual supervision of medication aide services. Currently no rate exists to reimburse medication aide services (except the personal care rate) and nurses are performing the services a medication aide is qualified to provide. Administrative rule [20:48:04.01:09.01](#) allows for the delegation of medication administration tasks to a nursing assistant and administrative rule [20:48:04.01:09](#) provides the requirements for delegating medication administration to a nursing assistant. Administrative rule [20:48:04.01:18](#) allows for the administration of one specific medication for someone who has not met the requirements of the previous rule.

There likely could be State savings associated with this change if providers utilize the personal care rate instead of the LPN or RN rate. The State could see a general fund savings of \$3.53 to \$5.20 per billing instance of 15 minutes. At this time, we are unable to estimate the number of times this may

occur as it is unclear how providers will utilize non-licensed aides with medication administration training.

Amend State Medicaid plan to provide mileage reimbursement for home care providers providing patient transportation services for medical appointments, assisting with living errands (groceries, hair care, other appointments), etc. Currently home care providers are doing these services and not receiving direct reimbursement.

This fiscal analysis looks at increasing the mileage reimbursement component by 100%. Other amounts can be calculated by taking a percent of the increase. An increase in general fund of \$127,333 could result from an increase of 100% in the mileage reimbursement component; however, this does not consider growth in billed units. The current Nursing RN and LPN, homemaker, and personal care rates include a mileage component built into the rate. The current mileage component adds \$1.79 for nursing and \$1.48 for non-nursing to the overall rate. An increase of 100% of the current amount would add an additional \$1.79 or \$1.48 of mileage reimbursement on top of the existing mileage built into the rate now.

Bill Code	Service	Times Billed in FY23	Assumed Increased	State General Funds Needed	Federal Funds Needed	Total Funds Needed
Multiple	Homemaker	134,797	\$ 1.48	\$ 131,193	\$ 68,292	\$ 199,485
T1019	Personal Care	93,999	\$ 1.48	\$ 64,621	\$ 74,498	\$ 139,119
S5125	Personal Care	40,263	\$ 1.79	\$ 33,477	\$ 38,594	\$ 72,071
T1000	Nursing RN/LPN	34,999	\$ 1.79	\$ 29,100	\$ 33,548	\$ 62,648
				\$ 258,391	\$ 214,932	\$ 473,322

Amend DHS in-home services provider provisions to offer greater unit flexibility for unexpected/urgent situations. Providers receive authorization to perform services in fifteen minute "units," and may only "spend" the number of units authorized. Example: A provider is authorized for 12 units for a client's weekly house cleaning. After the 12 units are completed during the week, the client has an accident requiring further house cleaning, which takes an additional 4 units. Currently, a provider can be authorized for the additional 4 units by contacting the LTSS Service Coordinator, but the provider must notify by the next business day, or the additional units will not be approved and may not be billed.

There is likely a minimal cost in state general funds regarding this change and the cost will depend on utilization by providers and the service (nursing, homemaker, personal care) rate billed to the State. The table below assumes an increase in utilization of 1% for billed units of each service.

Bill Code	Service	Times Billed in FY23	FY24 Rate	Utilization Increase	State General Funds Needed	Federal Funds Needed	Total Funds Needed
Multiple	Homemaker	134,797	\$ 10.22	1.0%	\$ 9,060	\$ 4,716	\$ 13,776
T1019	Personal Care	93,999	\$ 10.22	1.0%	\$ 4,462	\$ 5,144	\$ 9,607
S5125	Personal Care	40,263	\$ 10.22	1.0%	\$ 1,911	\$ 2,204	\$ 4,115
T1000	Nursing RN	34,999	\$ 21.42	1.0%	\$ 2,612	\$ 3,011	\$ 5,623
T1000	Nursing LPN		\$ 17.82	1.0%	\$ 724	\$ 835	\$ 1,559
					\$ 18,770	\$ 15,910	\$ 34,680

Eliminate duplicative DHS assessments and agency/provider assessments. When an individual applies for DHS services, DHS completes an assessment to determine if the individual is eligible for services. Thereafter, if/when DHS refers the individual to a provider for services, the provider will complete their own assessment of the individual and their living arrangements. There is likely no cost to the State regarding this change. Providers are likely to continue to perform the assessments regardless of whether they are required or not for liability reasons. The State cannot rely on an assessment done by a provider.

Establish a centralized location for bathing assistance and nail care to reduce the number of individual visits and improve efficiency. There is likely no cost to the State associated with this change as the same number of services are likely to be utilized. Though not reimbursable through the homemaker program, nail and hygiene care is available at central locations and is reimbursable through adult day services.

Establish in rule an aide rate for nail care services. Providers indicate only nurses are performing nail care due to diabetes/wound concerns and liability issues. While there is no rule that specifically states an unlicensed aide may provide nail care, such care is not explicitly disallowed--see [ARSD 20:48:04.01:07](#), listing nursing tasks that may not be delegated. Nail care is not among those included. A non-licensed aide can provide nail care services at the personal care rate.

There is likely to be State savings associated with this change if providers utilize the personal care rate instead of the LPN or RN rate. The State could see a general fund savings of \$3.53 to \$5.20 per billing instance of 15 minutes. At this time, we are unable to estimate the number of times this may occur as it is unclear how providers will utilize non-licensed aides to provide nail care services.

Amend state Medicaid plan to provide urban and rural reimbursement rates for homecare providers to compensate for additional travel time and mileage in rural settings. For example, a provider based in Mitchell is dispatched to Gregory. The provider does not receive additional mileage reimbursement or dollars for the additional time spent traveling outside of the Mitchell area.

This fiscal analysis looks at increasing the mileage reimbursement component by 100%. Other amounts can be calculated by taking a percent of the increase. An increase in general funds of \$258 - \$391 could result from an increase of 100% in the mileage reimbursement component, however, this does not consider growth in billed units. The current Nursing RN and LPN, homemaker, and personal care rates include a mileage component built into the rate. The current mileage component adds \$1.79 for nursing and \$1.48 for non-nursing to the overall rate. An increase of 100% of the current amount would add an additional \$1.79 or \$1.48 of mileage reimbursement on top of the existing mileage built into the rate now.

More time and data are needed to establish a rural mileage rate. A rural mileage rate could be established, and then allocated, by designing a formula factoring in zip code, GPS location of zip code, and population of zip code, all compared against its neighbors within a specific radius. This formula could generate a single numeric score for each zip code and establish where within the resulting range of scores does a particular zip code become rural.

- *Provide greater reimbursement for remote patient monitoring services.*

Remote patient monitoring is a healthcare delivery method using technology to monitor patient health outside of a traditional clinical setting by electronically transmitting information between patients and providers. Commonly used devices include glucose monitors, blood pressure cuffs, scales, and wearable activity trackers tracking steps, heart rate, fall risk, or sleep. Providing reimbursement for these types of remote patient monitoring devices would encourage greater implementation of the technology and allow more individuals to stay in their home and improve access to in-home services in rural areas.

The State Medicaid plan may need to be amended to provide more robust reimbursement rates for remote patient monitoring services, including sensor technologies, vital readings, etc. More education and clearer guidelines to providers on what telehealth and home modifications can currently be reimbursed.

There is likely to be an increase in state general funds for remote patient monitoring services. It is likely in-home providers will begin to bill for remote patient monitoring services as this likely qualifies as specialized medical equipment and supplies (billing code T2029 and T5999). The table below provides the expected cost to the State assuming a 50% increase in utilization but does not consider growth in billing.

Bill Code	Item	Times Billed in FY23	Assumed Utilization Increase	Avg. Cost per Item Billed	State General Funds Needed	Federal Funds Needed	Total Funds Needed
T2029	Specialized Medical Equip	306	50%	\$ 288.12	\$ 20,476	\$ 23,606	\$ 44,082
T5999	Specialized Medical Supplies	44	50%	\$ 66.14	\$ 676	\$ 779	\$ 1,455
					\$ 21,152	\$ 24,385	\$ 45,537

- Establish new eligibility for community support provider service for traumatic brain injury patients over age 22.

Per federal regulation, individuals with a traumatic brain injury (TBI) do not qualify for Medicaid coverage unless the TBI occurs before age 22. Therefore, TBI patients whose injury occurred on or after their 22nd birthday are not eligible for community support provider (CSP) services in South Dakota. Currently, the only TBI facilities in South Dakota are Sunset Manor Avera in Irene (8 beds) and Brown Health Program in Rapid City (3 beds). If TBI patients became eligible for Medicaid CSP services, more TBI services could be offered throughout the state. DHS served 1,300 people with an acquired brain injury during FY22 with some being cared for out of state. It is unknown how many people with a TBI are not served by DHS today. DHS is currently partnering with USD – Center of Disabilities on a survey of TBI survivors and their families to get more information on any existing service gaps and to find pertinent solutions.

The State will need to establish a new 1915(c) HCBS waiver for adult TBI patients - requires approval from CMS. Other states offering adult TBI waivers include Indiana, Massachusetts, Minnesota, Mississippi, Nebraska, New York, North Carolina, and West Virginia.

There is likely to be State savings associated with this recommendation because instead of most of the costs billed to state general funds, 46.5% of the cost would be billed to state general funds and

the remainder to Medicaid. Currently, we are unable to estimate the dollar amount as we did not receive information on the expenses of TBI patients. However, there could be considerable savings considering the number of patients and expense for treating TBI patients.

- *Update Dakota@Home processes.*

The committee concluded the below changes would help streamline the Dakota@Home process, reduce redundancies between providers and agencies, and provide greater clarity for Dakota@Home users. The committee encourages the department to make the following changes: eliminate duplicative DHS assessments and agency/provider assessments, include a waiver for release of information for agencies so the agency can continue to assist clients with best referred services, provide greater transparency in the Dakota@Home process so providers and clients can see where an individual is at in the process, and integrate advance care planning duties to allow case managers to secure appropriate documents for clients and distribute to all appropriate providers.

There would be a fiscal impact to implement a software system to allow transparency to citizens in the long-term care application process. The cost and time associated is unknown. There would be a significant increase in resources needed for case managers to add advance care planning duties, such as securing appropriate documents and distributing to providers. Further, who assumes the responsibility/liability when the client updates those documents.

- *Legislation and change to the State Medicaid plan defining and establishing palliative care.*

Palliative care is medical care for individuals living with a serious illness. Palliative care is focused on providing relief from the symptoms and stress of illness with the goal of improving quality of life for both the patient and family. Effective palliative care is delivered by a trained team of doctors, nurses, social workers, chaplains, and other health professionals who collaborate to provide an extra layer of support. Based on the needs of the patient, not on prognosis, palliative care is appropriate at any age and any stage of serious illness and may be provided alongside curative treatments in primary and specialty settings.

Palliative care is not hospice care. Hospice is specialized medical care for people with a life-limiting illness who are no longer seeking curative treatment and their caregivers. Per Medicaid definition, hospice is provided to an individual whose doctor believes has six months or less to live if the illness runs its natural course.

Community-based palliative care is interdisciplinary team care provided wherever a person with a serious illness calls home, or in a clinic setting. Currently, interdisciplinary team palliative care is not reimbursed under South Dakota Medicaid. Providing home-based interdisciplinary team palliative care to LTSS waiver and Medicaid recipients living with serious illness would improve quality of life and reduce stress on patients and caregivers and reduce Medicaid expenditures through reduction in hospitalization and ER visits. [Several states](#) have implemented palliative care benefits into their respective state Medicaid plans.

There could be a considerable fiscal impact to state general funds as the recommendation provides adding palliative care services not currently part of the State Medicaid Plan. The cost to the state will depend on the utilization of palliative care services in a long-term care setting. This analysis uses the amount of clients in skilled nursing facilities, assumes a 50% utilization rate, uses cost data from two states offering palliative care services, and provides the cost based on the current FMAP. The utilization of services and billed services should be researched further to identify a more exact cost estimate.

Palliative Care Fiscal Impact Estimate					
Skilled Nursing Facility Clients	Assumed Palliative Care Utilization	Assumed Annual Billed Services per Client	Total State Expenses	State General Funds Needed	Federal Funds Needed
2,645	100%	\$10,024	\$ 26,514,009	\$ 12,315,757	\$ 14,198,252
2,645	50%	\$10,024	\$ 13,257,005	\$ 6,157,879	\$ 7,099,126
2,645	25%	\$10,024	\$ 6,628,502	\$ 3,078,939	\$ 3,549,563
2,645	10%	\$10,024	\$ 2,651,401	\$ 1,231,576	\$ 1,419,825

- *Legislation to amend the eligibilities for designation as a regional nursing facility and applicable reimbursement.*

Nursing facilities are not presently reimbursed in a way allowing them to cover necessary capital costs, restricting their ability to update and improve their infrastructure. As of July 1, 2023, capital costs are limited to \$20.95 per resident per day under Medicaid. For a facility with 60 residents on average, capital cost reimbursement would total \$458,805 a year. Currently, each new nursing home room (with a single bed) costs approximately \$300,000 to construct. For a facility to meet the minimum economies of scale to operate long-term, rooms for at least 60 beds are recommended. Thus, a new facility built to minimum efficiency would cost around \$18 million.

SDCL 34-12-35.12 (enacted in 2021) sets out the process for designation as a regional nursing home. Upon approval, after meeting five statutory criteria and completion of required construction/remodeling, the DHS shall designate the facility as a regional nursing facility. The only benefit from this process is ongoing Medicaid reimbursement in accordance with the regional nursing facility rate methodology. The rate incentives received for a regional nursing facility are the same received by access critical nursing facilities, but the latter designation does not require new construction or other capital expenditures (12 nursing homes are now designated as access critical). Yet, such financial incentives are not enough to stave off potential shortfalls, with the nursing facility in Martin closing this past year despite being an access critical nursing facility. While no facilities have yet been designated as regional nursing facilities, one application has been submitted to date.

The workgroup recommends changing the criteria for regional facility designation to the following:

1. Be enrolled and in good standing with South Dakota Medicaid;
2. Provide home and community-based services in the region through an affiliation or a contractual arrangement;
3. Demonstrate intent to construct a new nursing facility or to substantially remodel an existing nursing facility, upon merging with one or more nursing facilities within a sixty-mile radius, unless no other nursing facilities exist within a sixty-mile radius;
4. Demonstrate that the newly constructed or substantially remodeled nursing facility will:
 - Support a homelike environment;
 - Support access to a continuum of care;
 - Abide by best practices regarding infection control and prevention;
 - Allow for private visitation; and
 - Support other best practices related to aging to meet current market needs;

Further, the DHS would reimburse regional nursing facilities for allowable capital costs to construct or substantially remodel the regional nursing facility and make rules establishing application procedures, defining allowable capital costs, and establishing the method for reimbursing allowable capital costs.

It is currently unknown how many nursing facilities in the state would take advantage of this opportunity, but current market conditions suggest high potential for use. About 70 nursing homes are currently over 40 years of age. And as of July 1, 2023, capital costs are limited to \$20.95 per resident per day under Medicaid. For a facility with 60 residents on average, capital cost reimbursement would total just \$458,805 a year. This designation/reimbursement process is not intended to choose winners and losers; rather, nursing facilities interested in merging would bring their proposal to the DHS, with all proposals meeting the necessary criteria receiving reimbursement for their capital costs.

The cost to the State will depend on the number of mergers occurring and the size and cost of the new or remodeled facility. Below are charts showing the additional ongoing cost needed to cover any number of potential mergers from 1 to 20.

The costs outlined below show the state and federal moneys needed for the first 7 years. These cost numbers do not consider expected savings due to improved economies of scale realized through the mergers. The ongoing cost to the state assumes the state share of FMAP is 46.45%.

The costs outlined below show the **total** costs, including both state **and** federal moneys, needed each year for the first 7 years and then each year for the following 23 years. This difference in cost between the first 7 and following 23 years assumes 22% of new building costs will be for furniture/equipment, and such costs would depreciate over 7 years instead of 30 years.

Mergers	Add. General Ongoing Cost (Y 1-7)	Add. Fed. Ongoing Cost (Y 1-7)	Total State Ongoing Cost (Y 1-7)	Mergers	Add. Ongoing Cost (Y 1-7)	Add. Ongoing Cost (Y 8-30)
1	\$ 480,160	\$ 553,554	\$ 1,033,714	1	\$ 1,033,714	\$ 468,000
2	\$ 960,321	\$ 1,107,108	\$ 2,067,429	2	\$ 2,067,429	\$ 936,000
3	\$ 1,440,481	\$ 1,660,662	\$ 3,101,143	3	\$ 3,101,143	\$ 1,404,000
4	\$ 1,920,641	\$ 2,214,216	\$ 4,134,857	4	\$ 4,134,857	\$ 1,872,000
5	\$ 2,400,801	\$ 2,767,770	\$ 5,168,571	5	\$ 5,168,571	\$ 2,340,000
6	\$ 2,880,962	\$ 3,321,324	\$ 6,202,286	6	\$ 6,202,286	\$ 2,808,000
7	\$ 3,361,122	\$ 3,874,878	\$ 7,236,000	7	\$ 7,236,000	\$ 3,276,000
8	\$ 3,841,282	\$ 4,428,432	\$ 8,269,714	8	\$ 8,269,714	\$ 3,744,000
9	\$ 4,321,443	\$ 4,981,986	\$ 9,303,429	9	\$ 9,303,429	\$ 4,212,000
10	\$ 4,801,603	\$ 5,535,540	\$ 10,337,143	10	\$ 10,337,143	\$ 4,680,000
11	\$ 5,281,763	\$ 6,089,094	\$ 11,370,857	11	\$ 11,370,857	\$ 5,148,000
12	\$ 5,761,923	\$ 6,642,648	\$ 12,404,571	12	\$ 12,404,571	\$ 5,616,000
13	\$ 6,242,084	\$ 7,196,202	\$ 13,438,286	13	\$ 13,438,286	\$ 6,084,000
14	\$ 6,722,244	\$ 7,749,756	\$ 14,472,000	14	\$ 14,472,000	\$ 6,552,000
15	\$ 7,202,404	\$ 8,303,310	\$ 15,505,714	15	\$ 15,505,714	\$ 7,020,000
16	\$ 7,682,565	\$ 8,856,864	\$ 16,539,429	16	\$ 16,539,429	\$ 7,488,000
17	\$ 8,162,725	\$ 9,410,418	\$ 17,573,143	17	\$ 17,573,143	\$ 7,956,000
18	\$ 8,642,885	\$ 9,963,972	\$ 18,606,857	18	\$ 18,606,857	\$ 8,424,000
19	\$ 9,123,045	\$ 10,517,526	\$ 19,640,571	19	\$ 19,640,571	\$ 8,892,000
20	\$ 9,603,206	\$ 11,071,080	\$ 20,674,286	20	\$ 20,674,286	\$ 9,360,000

Below are the same charts showing the additional ongoing cost needed to cover mergers with reimbursement based on the number of Medicaid beds. According to available data (which includes 2023 survey results from about 1/3 of nursing facilities in the state), 50.19% of all nursing facility beds hold Medicaid patients. While these costs represent an average per merger, the actual cost of each merger would depend on the up-to-date Medicaid bed data for the nursing facilities merging.

Mergers	Add. General Ongoing Cost (Y 1-7)	Add. Fed. Ongoing Cost (Y 1-7)	Total State Ongoing Cost (Y 1-7)	Mergers	Add. Ongoing Cost (Y 1-7)	Add. Ongoing Cost (Y 8-30)
1	\$ 247,763	\$ 285,634	\$ 533,397	1	\$ 533,397	\$ 241,488
2	\$ 495,525	\$ 571,268	\$ 1,066,793	2	\$ 1,066,793	\$ 482,976
3	\$ 743,288	\$ 856,902	\$ 1,600,190	3	\$ 1,600,190	\$ 724,464
4	\$ 991,051	\$ 1,142,535	\$ 2,133,586	4	\$ 2,133,586	\$ 965,952
5	\$ 1,238,814	\$ 1,428,169	\$ 2,666,983	5	\$ 2,666,983	\$ 1,207,440
6	\$ 1,486,576	\$ 1,713,803	\$ 3,200,379	6	\$ 3,200,379	\$ 1,448,928
7	\$ 1,734,339	\$ 1,999,437	\$ 3,733,776	7	\$ 3,733,776	\$ 1,690,416
8	\$ 1,982,102	\$ 2,285,071	\$ 4,267,173	8	\$ 4,267,173	\$ 1,931,905
9	\$ 2,229,864	\$ 2,570,705	\$ 4,800,569	9	\$ 4,800,569	\$ 2,173,393
10	\$ 2,477,627	\$ 2,856,339	\$ 5,333,966	10	\$ 5,333,966	\$ 2,414,881
11	\$ 2,725,390	\$ 3,141,973	\$ 5,867,362	11	\$ 5,867,362	\$ 2,656,369
12	\$ 2,973,152	\$ 3,427,606	\$ 6,400,759	12	\$ 6,400,759	\$ 2,897,857
13	\$ 3,220,915	\$ 3,713,240	\$ 6,934,155	13	\$ 6,934,155	\$ 3,139,345
14	\$ 3,468,678	\$ 3,998,874	\$ 7,467,552	14	\$ 7,467,552	\$ 3,380,833
15	\$ 3,716,441	\$ 4,284,508	\$ 8,000,949	15	\$ 8,000,949	\$ 3,622,321
16	\$ 3,964,203	\$ 4,570,142	\$ 8,534,345	16	\$ 8,534,345	\$ 3,863,809
17	\$ 4,211,966	\$ 4,855,776	\$ 9,067,742	17	\$ 9,067,742	\$ 4,105,297
18	\$ 4,459,729	\$ 5,141,410	\$ 9,601,138	18	\$ 9,601,138	\$ 4,346,785
19	\$ 4,707,491	\$ 5,427,043	\$ 10,134,535	19	\$ 10,134,535	\$ 4,588,273
20	\$ 4,955,254	\$ 5,712,677	\$ 10,667,931	20	\$ 10,667,931	\$ 4,829,761

Summary of Interim

First Committee Meeting

The committee held its first meeting on May 23. The committee heard a presentation covering [background information](#) on long-term care. The committee then was [presented](#) with long-term data showing long-term care population, including total population, Medicaid-eligible population, geography, and other data points. The committee then heard a [summary of stakeholder input](#) from the South Dakota Association of Healthcare Organizations.

Second Committee Meeting

The committee met on June 12. The committee heard a presentation from the Department of Social Services on [how the Medicaid look back period works](#). The committee then divided into workgroups to discuss regulatory, innovation, workforce, location and infrastructure, and community-based services. The committee then heard an update from each of the workgroups regarding the discussions and ideas completed by the workgroup.

Third Committee Meeting

The committee met on July 27. The committee heard presentations on the [Dakota at home program](#) and the [Medicaid application content and process](#). The committee then divided into workgroups to discuss regulatory, innovation, workforce, location and infrastructure, and community-based services. The committee then heard an update from each of the workgroups regarding the discussions and ideas completed by the workgroup.

Fourth Committee Meeting

The committee met on September 25. The committee heard a presentation on [telemedicine support for long-term care facilities](#). Next the committee heard a presentation on the [Program of All-Inclusive Care for the Elderly \(PACE\) program](#). The committee then broke out into the workgroups to finalize recommendations to be presented to the committee. After lunch, a presentation on the Centers for Medicare & Medicaid Services (CMS) [staffing requirements](#) was provided. The committee then had a discussion on nursing home rates. Finally, the committee discussed reports from each workgroup outlining the recommendations. There was a total of 22 recommendations provided to the committee.

Fifth Committee Meeting

The committee met on October 18 to review the [workgroup recommendations report](#) and discuss the fiscal impacts of the recommendations. After public comments and committee discussion, the committee approved a total of 12 recommendations.

Summary of Meeting Dates and Places

The committee met in Pierre on May 23, June 12, July 27, September 25, and October 18.

Listing of Committee Members

Members of the committee were Senator Jean Hunhoff, Chair; Representative Taylor Rehfeldt, Vice Chair; Representatives Hugh Bartels, Linda Duba, Chris Karr, Mellissa Heermann, Dennis Krull, Brian Mulder; Senators Bryan Breitling, Sydney Davis, Erin Tobin, David Wheeler, Larry Zikmund, and Shawn Bordeaux.

Listing of Staff Members

Staff members for the Task Force were Jeff Mehlhaff, Chief Fiscal Analyst; Joey Knofczynski, Senior Fiscal Analyst; Bill Douglas, Fiscal Analyst; Melanie Dumdei, Legislative Attorney; Hillary Larsen, Legislative Attorney, Mitch Honan, Fiscal Analyst, and Bailey Fierro, Administrative Specialist.



State-Tribal Relations

2023 Final Report



Study Assignment

The State-Tribal Relations Committee is an ongoing statutory committee created by SDCL sections 2-6-20 to 2-6-23, inclusive, in 1993 as a part of the state's reconciliation efforts. The statute directs the committee to make a continuing study of the relations between the state and its political subdivisions and the tribes and their tribal governments. The committee provides a forum within state government for discussion of issues affecting the Native American community and issues involving tribal governments and state government. The committee also serves as a way of familiarizing legislators with those issues.

Summary of Interim

At the first meeting, the committee heard an update from Mr. Chad Mosteller, Assistant Director of Field Operations, South Dakota Department of Criminal Investigation, and Ms. Allison Morrisette, Missing and Murdered Indigenous Persons Coordinator, about the work of the Office of Missing and Murdered Indigenous Persons. The committee heard an update from Ms. Geri Opsal, Tribal Veterans' Service Officer, Sisseton Wahpeton Sioux Tribe, Mr. Robert Dunsmore, Tribal Veterans' Service Officer, Cheyenne River Sioux Tribe, and Mr. Darwin Wolf, sculptor, about the status of the Sioux Code Talker Monument project. The committee heard a presentation from the South Dakota Native Homeownership Coalition about the coalition's mission to assist South Dakota's Tribal communities to increase homeownership opportunities. The South Dakota Native Tourism Alliance (SDNTA) presented on the SDNTA's work with partners in the tourism industry and the state and federal government to develop Native American tourism experiences in the state. The committee heard from representatives of the tribes who discussed various issues that the tribes are currently facing.

At the second meeting, the committee heard from representatives from the Yankton Sioux Tribe (YST) who addressed several issues that the tribe is currently facing and possible solutions to these issues.

At the third meeting, the committee heard a presentation from Ms. Angelique Eaglewoman, Chief Justice of the Sisseton Wahpeton Oyate (SWO) Supreme Court and Professor of Law at Mitchell Hamline School of Law, about the history of the dispute over the status of the Lake Traverse Reservation. Judge B.J. Jones, Executive Director, University of North Dakota's Tribal Judicial Institute and Tribal Court Judge, and Ms. Mickey Divine, Program Director, SWO Child Protective Services, presented on the Indian Child Welfare Act (ICWA) and the impact of the United States Supreme Court's Decision in *Haaland v. Brakeen* (2023) on the tribes.

At the fourth meeting, the committee toured Royal River Casino and Hotel, the Flandreau Santee Sioux Tribal Care Center, and the Native Nations Cannabis facility. The committee heard a presentation from Mr. Gary Kills a Hundred about the history of the Flandreau Santee Sioux Tribe (FSST) and the tribe's effort to repatriate historic objects. The committee heard a presentation from Ms. Cynthia Jacobs, CEO for Health Services, Flandreau Santee Sioux Tribal Health Center, about the history and work of the Tribal Health Clinic. The committee heard a presentation from Ms. Cassandra Doty, Administrator of the Flandreau Santee Sioux Tribal Care Center, about the process of getting the Tribal Care Center operational and the work of the center. Ms. Melissa Magstadt, Secretary of the Department of Health, presented information on the state of current health issues for the tribes in South Dakota. Mr. James McDermott, General Manager of Royal River Casino and Hotel, presented a history of Royal River Casino and Hotel, the impact the casino has had on the community, and plans the casino has for future development. The committee

heard a presentation from Native Nations Cannabis about the history of the medical marijuana industry in the tribe, and the impact the business has on the economic development of the community.

At the fifth meeting, the committee heard discussion from various presenters about current issues facing education for Native American schools and students. The committee received an update from Dr. Joseph Graves, Secretary of the Department of Education, about the implementation of the new social studies standards and the Oceti Sakowin Essential Understandings and Standards in public schools. The committee received an update from Mr. Fred Osborn, Director of the Office of Indian Education, about his work with the Tribal Education Directors.

At the sixth meeting, the committee heard a presentation from Mr. Mike Houdyshell, Secretary of the Department of Revenue, about current issues relating to tax agreements between the state and the tribes. The committee heard a presentation from Mr. Kevin Robling, Secretary of the Department of Game, Fish, and Parks, about current areas of collaboration and cooperation between the department and the tribes. The committee heard from various members of the community who discussed issues currently facing the Yankton Sioux Tribe and the surrounding communities.

The committee plans to meet again in December.

The committee recommends the Executive Board invite either Mr. J. Garret Renville, Tribal Chairman, Sisseton Wahpeton Oyate, or Mr. Tony Reider, President, Flandreau Santee Sioux Tribe, to give the State of the Tribes Address.

Listing of Legislation Adopted by the Committee

An Act to extend the length of time allowed for a tax agreement with an Indian tribe ([Draft 210](#)).

Summary of Meeting Dates and Places

The committee met in Pierre on January 12 and January 24, 2023; in Agency Village on June 26, 2023; in Flandreau on July 31, 2023; in Lower Brule on August 31, 2023; and in Lake Andes on September 22, 2023. The committee will hold a future meeting in December in Rapid City.

Listing of Committee Members

Members of the Committee were Representative Tamara St. John, Co-Chair; Senator Michael Rohl, Co-Chair; Senators Shawn Bordeaux, Red Dawn Foster, Tom Pischke, and Kyle Schoenfish; and Representatives Joe Donell, Eric Emery, Will Mortenson, and Peri Pourier.

Listing of Staff Members

Staff members for the committee are Jacob Carlson, Research Analyst; Carter Dykstra, Fiscal Analyst; and Joleh McCullough, Legislative Secretary.



**REPORT OF THE
GOVERNMENT OPERATIONS AND AUDIT COMMITTEE
2023**

COMMITTEE MEMBERS

**Senator Dean Wink, Chair
Representative Ernie Otten, Vice Chair**

**Representative Hugh Bartels
Representative Drew Peterson
Representative Tim Reisch
Representative Linda Duba**

**Senator David Wheeler
Senator Jean Hunhoff
Senator Tim Reed
Senator Reynold Nesiba**

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Committee Responsibilities

The Government Operations and Audit Committee was established by South Dakota Codified Law (SDCL) 2-6-2. The Committee is appointed at each regular session of the Legislature. The Committee consists of ten members, five members from the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be a member of the Judiciary Committee and five members from the House appointed by the Speaker of the House, one of whom shall be a member of the Judiciary Committee.

The responsibilities of the Committee are:

- To inquire and review any phase of the operations and the fiscal affairs of any department, institution, board, or agency of the State.
- To examine records and vouchers, summon witnesses, examine expenditures and the general management of departments, as deemed necessary.
- Develop and implement a performance management review process to evaluate the efficiency and effectiveness of State agencies.
- Review limitations on use relating to the University Centers off-campus sites in Pierre, Rapid City, and Sioux Falls and make recommendations to the Legislature regarding these limitations.
- To make a detailed report to the Senate and House of Representatives and submit a copy of its report to the Appropriations Committee of each House of the Legislature at the next succeeding session of the Legislature or any special session of the Legislature upon request of the body.
- To review the following annual reports:
 - Single Audit Report of the State of South Dakota
 - South Dakota 911 Coordination Board
 - South Dakota State Brand Board
 - South Dakota High School Activities Association
 - Obligation Recovery Center
 - Accountability report from the Board of Technical Education
 - Annual reports from each Department administering funds received from the Building South Dakota program
 - Department of Corrections' annual report on abuse and neglect in private placement facilities

- Annual report from juvenile monitor on complaints related to the care provided to youth in the custody or care of certain treatment centers, shelter care facilities or programs
- Habitat Stamp Expenditure Report from Game, Fish and Parks
- Report of compiled authorizations to derive a direct benefit from a contract, as collected by the Bureau of Human Resources
- Report of compiled authorizations to derive a direct benefit from a State authority, board, or commission contract, as collected by the Auditor General
- Report and annual work plan of the State Board of Internal Control

Committee Activity

Performance Reports

Senate Bill 120, 2017 session, assigned the Government Operations and Audit Committee the responsibility to develop and implement a performance management review process. The process is a collaborative effort between the agencies and the Committee. When agencies appear every three years, it is an opportunity for the Committee to revise, add, delete, or accept as is existing agency performance measures. The agency has the mission or vision for the Department as well as the data to track progress and the Committee provides feedback for establishing key performance measures. House Bill 1110, 2020 session, instructed the Government Operations and Audit Committee to develop and provide to each State agency a standardized, uniform template that, beginning January 1, 2021, each agency is to use when presenting information to the Committee. Six agencies appeared before the Committee and with feedback from the Committee developed the following performance measures.

Bureau of Information and Telecommunications

The Commissioner of the Bureau of Information and Telecommunications (BIT) explained their mission is to strive to be partners and technology leaders who enable innovative, secure, and efficient services for our citizens. The Commissioner described goal one to provide a reliable, secure, and modern infrastructure. To ensure success the BIT identified the following measures:

- Average uptime per month/year
- SD.net live delivery hours
- State employee email assessment annual failure rate
- Payment Card Industry (PCI) standard annual average score
- Meet internal security patch goals

The Commissioner described goal two to deliver valuable services at economical costs. To ensure success the BIT identified the following measures:

- Planned vs. unplanned work for development
- Service desk meets service-level agreements
- Satisfactory/neutral customer overall ratings after service desk experience
- Move analog phone lines to VOIP

The Deputy Commissioner described goal three to build and retain a highly skilled workforce. To ensure success the BIT identified the following measures:

- Annual staff turnover rate
- Employee engagement

The Committee approved the performance metrics.

Department of Revenue

The Secretary of the Department of Revenue (DOR) explained their mission is to serve South Dakota to provide fair, efficient, and reliable revenue administration with our partners to help fund public service statewide. The Secretary described goal one to provide consistent service to every customer, every time, and be adaptable with our customer service methods. To ensure success the following activities were identified:

- Activity A – Provide timely service and response to customer
- Activity B – Employ, train, and retain qualified staff
- Activity C – Provide service channel options to meet customer needs

The Department's second goal is to ensure that all DOR stakeholders understand the laws and regulations through education efforts. To ensure success the following activity was identified:

- Activity A – Business partner outreach and education

The Department's third goal is to provide critical funding for state and local governments through compliance and efficiency. To ensure success the following activities were identified:

- Activity A – Compliance efforts
- Activity B – Funding improvement or measurement

The Committee approved the performance metrics.

Bureau of Human Resources

The Commissioner of the Bureau of Human Resources explained their mission is to build, develop, and support a high-performing and healthy workforce. The Commissioner described goal one to promote employee wellbeing. To ensure success the following activities were identified:

- Activity A – Understand the employee’s health
- Activity B – Enhance the employee’s health and knowledge through tools and programs

The Bureau’s second goal is effective recruiting. To ensure success the following activities were identified:

- Activity A – Participating in active recruitment activities
- Activity B – Improving selection

The Bureau’s third goal is to develop and retain employees. To ensure success the following activities were identified:

- Activity A – Building better leaders
- Activity B – Developing employee skills
- Activity C – Promotions and career development

The Committee approved the performance metrics.

Department of Health

The Secretary of the Department of Health explained their mission is working together to promote, protect, and improve health. The Department’s first goal is healthy beginnings. To ensure success the following activities were identified:

- Activity A – Pediatric obesity rate
- Activity B – Childhood immunization rates

The Department’s second goal is maternal and child health. To ensure success the following activities were identified:

- Activity A – Infant mortality
- Activity B – Maternal mortality
- Activity C – Breastfeeding

The Department's third goal is injury harm prevention. To ensure success the following activities were identified:

- Activity A – Suicide deaths
- Activity B – Unintentional overdoses

The Department's fourth goal is access to care. To ensure success the following activities were identified:

- Activity A – Average scene time for ground EMS agencies
- Activity B – Healthcare professional licensees

The Committee noted a correction to be made to a status box in goal four and approved the Department's performance measures contingent upon fixing that error.

Department of Social Services

The Secretary of the Department of Social Services described their mission as dedicated to strengthening families to foster health, wellbeing, and independence. The Department's first goal is to ensure access to services for our customers. To ensure success the following objectives were identified:

- Objective A – Enhance opportunities to access services
- Objective B – Services and programs are needs driven, customer responsive and culturally relevant

The Department's second goal is to promote and support the health, wellbeing and safety of our customers. To ensure success the following objectives were identified:

- Objective A – Reduce risk factors and enhance protective capacities
- Objective B – Protect individuals from abuse, neglect and exploitation
- Objective C – Provide effective services to individuals who have been abused, neglected and exploited

The Department's third goal is to foster partnerships to maximize resources for our customers. To ensure success the following objective was identified:

- Objective A – Encourage and support partnerships to provide cost effective services

The Department's fourth goal is to support customers in achieving meaningful outcomes. To ensure success the following objective was identified:

- Objective A – Ensure the Department helps individuals and families achieve meaningful outcomes

The Department's fifth goal is to strengthen and align our team to accomplish our mission. To ensure success the following objective was identified:

- Objective A – Enhance recruitment and retention efforts that results in a workforce that possesses the values and competencies necessary to accomplish the Department's mission

The Committee approved the performance metrics.

Department of Labor and Regulation

The Secretary of the Department of Labor and Regulation (DLR) explained their mission is to promote economic opportunity and financial security for individuals and businesses through quality, responsive, and expert services; fair and equitable employment solutions; and safe and sound business practices. The Secretary described goal one to deliver quality, responsive, and excellent services. To ensure success the following activities were identified:

- Activity A – Deliver services efficiently
- Activity B – Deliver services satisfactorily

The Department's second goal is to achieve a skilled workforce contributing to economic development by serving businesses, job seekers, and community partners. To ensure success the following activities were identified:

- Activity A – Partner with the Department of Education to implement a regional model of career advising and work-based learning opportunities for students
- Activity B – Build the skillset of South Dakota residents to meet business' workforce needs
- Activity C – Connect businesses to untapped labor pools

The Department's third goal is to ensure safe and sound business environments and practices. To ensure success the following activities were identified:

- Activity A – Provide regulatory and supervision oversight
- Activity B – Ensure compliance with federal and state regulations and laws

The Department's fourth goal is to develop a sustainable, skilled Department of Labor and Regulation workforce. To ensure success the following activities were identified:

- Activity A – Recruit and retain qualified candidates
- Activity B – Maintain employee competency

The Committee approved the performance metrics.

Specific Matters Pertaining to Various State Agencies

South Dakota State Brand Board

The Director of the South Dakota State Brand Board was present to provide the Committee the State Brand Board Annual Report and answer Committee questions. She reported that the State Brand Board receives no General Fund appropriations and operates entirely on funds from the brand registration program and the brand ownership inspection program.

The annual report contained information on the number of livestock inspected during the calendar year, deposits for inspections, missing or stolen livestock, recovered strays, brand board holds, livestock investigations, and brand program registration activity. The Director reported that 1,675,636 head of livestock were inspected in calendar year 2022, as compared to 1,817,952 inspected in calendar year 2021. The Director stated that brands are renewed every five years and the next renewal period will be in 2025. The Director explained they are always looking for ways to improve the program. The Director reported the Brand Board is made up of five members and they currently have a staff of 11 full-time brand inspectors, four office staff, three brand enforcement investigators and approximately 120 part-time local brand inspectors. The Committee accepted the State Brand Board's annual report as presented.

The Building South Dakota Programs (BSD)

The Finance Director for the Governor's Office of Economic Development (GOED) provided an overview of the programs under the GOED. The Director presented the Building South Dakota Funds report, reviewing the Local Infrastructure Improvement Program (LIIP), the Economic Development Partnership Program (EDPP), the Reinvestment Payment Program (RPP), and the South Dakota Jobs Grants Program (JGP).

The Director explained the two primary purposes of the Economic Development Partnership Program (EDPP): 1) to help local economic development programs with training needs, and 2) to help local economic development programs recapitalize local revolving loan funds. Currently, the EDPP does not receive any new funding. Three grants were awarded totaling \$2,335 during fiscal year 2023.

The Director provided an overview of the Local Infrastructure Improvement Program (LIIP). The program provides grants to assist in funding the construction and reconstruction of infrastructure for the purpose of serving economic development projects. The LIIP awarded two grants during fiscal year 2023 totaling \$933,440. The Director explained the fluctuation in the number of awards is due to timing with how projects develop. The projected number of jobs created or retained was 219.

The Director provided an overview of the Reinvestment Payment Program (RPP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. This program allows for

project owners to receive a reinvestment payment, not to exceed the sales and use tax paid on project costs, for new or expanded facilities with project costs in excess of \$20 million, or for equipment upgrades with project costs in excess of \$2 million. The RPP awarded fourteen grants during fiscal year 2023 totaling \$29,565,048. The projected number of jobs created or retained was 917.

The Director provided an overview of the South Dakota Jobs Grant Program (JGP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. The unobligated balance is about \$1.5 million. There were no applications received and no awards made during fiscal year 2023.

The Executive Director of the South Dakota Housing Development Authority (SDHDA) was present to address the Committee regarding the South Dakota Housing Opportunity Fund (HOF). The SDHDA distributes HOF funds geographically throughout the State with 30% of the funds targeted for cities with a population of 50,000 or more and 70% of the funds targeted for the rest of the State. From the applications received in fiscal year 2023, 25 projects and programs were funded, which is anticipated to assist more than 220 households. In fiscal year 2023, \$3.8 million was awarded by SDHDA. The Director advised that every year SDHDA receives far more requests for program funding than what is available.

The Director of the Division of Career and Technical Education with the Department of Education (DOE) reviewed the Workforce Education Fund (WEF) Annual Report and provided an overview of the WEF. The 2018 Legislature passed Senate Bill 81, which limited the fund to providing grants for new and existing secondary career and technical education programs. The Director discussed the secondary career and technical education grants or workforce education grants, their requirements and provided a list of grants awarded, with five being awarded in 2023. The Director advised that this year's funded projects are a mix of equipment and construction. To date, they have awarded approximately \$7.4 million in grants. The Director advised that DOE does not have the ability to track where CTE students end up, but they do know that the students are proceeding on to post-secondary education at a high rate.

The Committee accepted the reports as presented.

State Board of Internal Control

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

- Five subrecipient audits reviewed
- Implemented the Internal Control Framework to four agencies
- Updated Internal Control Training Materials

The SBIC plans to start working with the Department of Human Services, Board of Regents, and the Department of Labor and Regulation in fiscal year 2024. The Committee asked that more details from the subrecipient audit report reviews be included in future reports. The Committee will monitor the State Board of Internal Control's activity on an annual basis.

The Committee accepted the report as presented.

South Dakota 9-1-1 Coordination Board

The Director of the Division of Criminal Justice Services for the Department of Public Safety presented the 9-1-1 Coordination Board Report, which is submitted each year. The South Dakota 9-1-1 Coordination Board continues to function as required. The State's deployment of its NextGen 9-1-1 network makes it possible to implement more accurate call routing and location information with geospatial call routing.

The Board completed evaluations and compliance reviews of fourteen Public Safety Answering Points (PSAPs) and all were in compliance. The Board also reviewed and approved 74 annual financial reports submitted by counties and PSAPs.

The Committee accepted the 9-1-1 Annual Report as presented.

Game, Fish and Parks annual report of habitat stamp revenue and expenditures

During the 2020 session, the Legislature authorized a habitat stamp fee on resident and nonresident hunting and fishing licenses. Revenue generated by the fee is to be used to enhance terrestrial habitat on public lands, provide additional access to private lands, and enhance aquatic habitat on public waters. The legislation requires the Department of Game, Fish and Parks (GFP) to deliver an annual itemized expenditure report to the Committee. The Director of Wildlife explained GFP's process for distributing funds and prioritizing projects. The Director provided a map of locations of completed projects on game production areas, correlating with the fact that about two-thirds to three-quarters of South Dakota's game production areas are in eastern South Dakota. The Director also discussed how the Habitat Stamp funds are used for the James River Watershed Conservation Reserve Enhancement Program (CREP) and Big Sioux River Watershed CREP. The Director provided data on the game production area accomplishments based on calendar years and advised they believe the current fees are adequate to cover the ongoing projects and activities they are doing.

The Committee accepted the report as presented.

Board of Regents

University Centers

In accordance with South Dakota Codified Law 13-51-1.4, the Committee reviewed the annual accountability reports of Black Hills State University – Rapid City and the University of South Dakota – Sioux Falls.

The Vice President for Finance and Administration with Black Hills State University provided an update on the West River Health Science Center and reviewed the mission adjustment for Black Hills State University – Rapid City (BHSU-RC) including four goals for the overall project. She provided the BHSU-RC operating statement for fiscal year 2023. They ended the year with a positive net revenue.

The President of the University of South Dakota reported the University of South Dakota – Sioux Falls (USD-SF) is on track with their five-year plan and that a lot of opportunity remains in Sioux Falls. The Vice President of USD-SF stated that they have been aggressively marketing themselves and engaging members in the Sioux Falls area. He described ways they are addressing regional workforce needs and unique partnerships they have formed. Finally, the Vice President for Finance and Administration with USD provided the USD-SF operating statement and advised the financials are tracking fairly closely with the new model they are using.

The Committee plans to continue monitoring the financial condition of the University Centers.

Compliance with SDCL 13-51-1.3

The System Vice President of Finance and Administration with the Board of Regents (BOR) advised that the BOR is in compliance with SDCL 13-51-1.3.

The Committee accepted the report as presented.

South Dakota Board of Technical Education Accountability Report

The Executive Director of the Board of Technical Education and the four Presidents from the technical colleges presented to the Committee. The Director advised they are in a season of strategic planning focusing on attainment, affordability, and alignment. The Director reported on graduate outcomes, enrollment, and retention.

The system produced 2,236 graduates during the 2021-22 academic year, with an on-time completion rate of 66.4%. According to the 2022 graduate outcomes report, which had an 96.9% response rate, the system's placement rate was 97.9% (2,117). The placement rate includes those who are employed, continuing their education, or joining the military. The 2022 rate is a slight decrease from the 98.4% placement rate in 2021. Among those graduates who

responded (2,168), 88.5% (1,919) remained in South Dakota after graduation. In academic year 2022-23, the system produced 2,598 graduates.

According to the system's fall 2023 enrollment report, unduplicated enrollment (full-time, part-time and dual-credit) decreased by 325 students (7,240 students to 6,915). The number of students participating in the dual-credit program decreased by 172 (1,346 students to 1,174), driving much of the enrollment decline.

The system's retention rate, which measures the number of students who enroll in the institution one fall and return (or complete) the following fall, was at 78% in the fall of 2022. Lake Area Technical College had a retention rate of 81%, Mitchell Technical College had a rate of 82%, Southeast Technical College had a retention rate of 75%, and Western Dakota Technical College had a rate of 71%.

The Director thanked the Legislature for the additional appropriations to the technical college system through Instructor Salary Support funding, Tuition Freeze/Salary Increase dollars, and the implementation of a multi-year Maintenance and Repair funding plan. The Committee accepted the annual accountability report.

Conflicts of Interest

Bureau of Human Resources and Administration

The Committee reviewed the annual report of Conflict-of-Interest Authorizations called for in SDCL 5-18A-17.2. Under this law, a governing body may authorize an officer or employee of a State agency to benefit from a contract if the contract is fair, reasonable, and not contrary to the public interest; these authorizations are required to be filed with the Commissioner of the Bureau of Human Resources and Administration and presented to the Committee annually. The Committee reviewed four approved authorizations (waivers) for the July 1, 2022 through June 30, 2023 reporting period. The Committee accepted the report as presented and plans to review approved waivers annually.

Auditor General

The Auditor General presented a Compilation of Conflict-of-Interest Disclosures for State Authorities, Boards and Commissions for fiscal year 2023 (SDCL 3-23-3). He advised that he is going to reach out to all the State Boards and Commissions to make sure they are remembering to file these. He did not see any concerns when viewing them from an auditor's perspective. The Committee accepted the report as presented and plans to review the disclosures annually.

Obligation Recovery Center

House Bill 1228 was passed during the 2015 Legislative Session (codified in SDCL 1-55) and created the Obligation Recovery Center (Center). The Center began operations on July 15,

2016. The Director of the Executive Management Finance Office with the Bureau of Finance and Management provided the annual report of the activities of the Obligation Recovery Center. The Center has entered into a memorandum of understanding with each agency that uses the Center to collect debt to ensure agency specific requirements are considered. She advised that the Center contracts with a company called Reliant Capital Solutions, and they subcontract with Government Performance Solutions. She reported debt recoveries of \$3,664,051 in fiscal year 2023. The Committee accepted the report and will continue to review the activity of the Center on an annual basis.

Juvenile Abuse, Neglect and Grievance Reports

Department of Corrections

The Committee is charged with the responsibility to review any allegations of abuse or neglect of individuals under the jurisdiction of the Department of Corrections within private contracted facilities per SDCL 26-11A-33.1.

The Director of the Juvenile Division presented the report for the time period from July 1, 2022 through June 30, 2023. Eleven cases were reported to the Committee during the period.

The Committee accepted the report as presented.

MWI Health – Monitor for Youth in Treatment Facilities

The Committee is charged with the responsibility to review a monitor report that contains a confidential addendum of investigations, specific findings and recommendations of the monitor, and the responses of the Department of Social Services to the recommendations (SDCL 26-6-52(5)).

A Registered Nurse with MWI Health (Monitor) presented the report to the committee in executive session. The Youth Services Grievance Monitor Program launched on July 1, 2022, and responds to grievances received from youth placed in shelter care facilities, group care centers for minors, residential treatment centers, intensive residential treatment centers, and independent living preparation programs. She provided program milestones and reviewed their on-site visits to the facilities. Raising awareness with participants at the facilities and with the public at large is ongoing and one of their larger goals for the coming year.

The Committee accepted the report as presented.

Audit Reports

South Dakota Single Audit Report for FY22

The Committee reviewed the South Dakota Single Audit Report for the fiscal year ended June 30, 2022.

Financial and compliance audits involve testing financial transactions of the State to determine that money is properly accounted for and expended in accordance with State and federal laws and regulations. All audits conducted of State agencies were consolidated and reported in the Single Audit Report. The Single Audit Report includes the Annual Comprehensive Financial Report for the State of South Dakota prepared by the Bureau of Finance and Management, a schedule showing the federal awards administered by the State and related expenditures, and audit findings and recommendations issued by the Department of Legislative Audit.

The Single Audit Report was issued in accordance with auditing standards generally accepted in the United States of America, Government Auditing Standards issued by Comptroller General of the United States, U.S. Office of Management and Budget (OMB) Uniform Guidance, and South Dakota Codified Laws. A copy of this report may be obtained from the Department of Legislative Audit.

The Committee reviewed the audit findings and corrective action plans in the Single Audit:

- Finding No. 2022-001 – Science and Technology Authority – A material weakness in internal controls over construction in process.
- Finding No. 2022-002 – Science and Technology Authority – A significant deficiency in internal controls over compliance.
- Finding No. 2022-003 – Department of Transportation – A material weakness and non-compliance in internal controls over Federal Financial Reports.
- Finding No. 2022-004 – Department of Human Services – A significant deficiency in internal controls over subrecipient monitoring of Nutrition Service Providers.
- Finding No. 2022-005 – Soybean Research and Promotion Council – A significant deficiency in the preparation of financial statements.
- Finding No. 2022-006 – South Dakota Public Broadcasting – A material weakness in internal control over segregation of duties.
- Finding No. 2022-007 – South Dakota Corn Utilization Council – A material weakness in internal controls in the preparation of financial statements and restatement.
- Finding No. 2022-008 – South Dakota Corn Utilization Council – A material weakness in internal controls over the segregation of duties.

The Department of Legislative Audit will follow-up on the audit findings and report back to the Committee regarding the implementation of the corrective action.

South Dakota High School Activities Association

The Executive Director of the South Dakota High School Activities Association (SDHSAA) reviewed the Fiscal Year 2022 audit report with the Committee. He reported that it was a clean audit with no findings. The Committee accepted the report as presented.



Senator Dean Wink, Chair
Government Operations and Audit Committee

Bureau of Information & Telecommunications

Agency's Mission Statement: The Bureau of Information and Telecommunications (BIT) strives to be partners and technology leaders who enable **innovative, secure, and efficient services for our citizens.**

Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Provide a Reliable, Secure, and Modern Infrastructure

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23 (as of April 27, 2023)
Activity A. What activities are you doing to accomplish Goal 1?									
Maintain 99.8% average uptime per month, year (Private Cloud)			100.00%	>99.8%	99.86%	100%	100%	100%	100%
Maintain 99.8% average uptime per month, year (Mainframe)			100.00%	>99.8%	99.93%	100%	100%	100%	100%
SDPB uptime			99.95%	>99.8%	99.99%	99.99%	99.90%	99.88%	99.95%
SD.net live delivery hours			1416	>750 hours	948	1,046	1,896	1,864	1,416
SDPB FM uptime			99.91%	>99.8%	99.89%	99.98%	99.89%	99.94%	99.91%
State employee email assessment annual failure rate			7.1%	<5%	7.1%	3.4%	3.5%	2.2%	7.1%
Payment Card Industry (PCI) standards annual average score			100%	>99.8%	100%	100%	100%	100%	100%
Meeting internal security patch goals			7.5	<10 days - 90% install	10.83	8.75	8.50	7.38	7.5

Agency comments regarding the accomplishment of Goal 1: Citizen services and employee productivity are hindered when networks are down. Keeping the state's network running and its data safe is our essential service to our customers.

Goal 2: Deliver Valuable Services at Economical Costs.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23 (as of April 27, 2023)
Activity A. What activities are you doing to accomplish Goal 2?									
Planned vs. unplanned work for Development									
Planned work			41%	>66%	64%	51%	59%	60%	41%
Unplanned work			59%	<33%	36%	49%	41%	40%	59%
Service Desk meets service-level agreements			92%	≥95%	82%	91%	91%	93%	92%
Satisfactory/neutral customer overall ratings after Service Desk experience			98%	≥95%	N/A	98%	95%	97%	98%
Move analog phone lines to VoIP			16%	10%/yr	47%	32%	22%	16%	16%

Agency comments regarding the accomplishment of Goal 2: Although we continue to move away from analog phone lines, we are simultaneously converting users to Teams Voice, which will maximize our investment in Microsoft Office365 and enables team members to make and receive calls from anywhere through their computer or cell phone.

Goal 3: Build and Retain a Highly Skilled Workforce

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23 (as of April 27, 2023)
Activity A. What activities are you doing to accomplish Goal 3?									
Annual staff turnover			8.7%	<10%	12.9%	7.7%	6.6%	12.9%	8.7%
Employee engagement (every two-year survey by BHR)									
Engaged employees			30%	≥30%	20%			30%	
Moderately engaged employees			49%	≥45%	50%			49%	

Agency comments regarding the accomplishment of Goal 3: (BHR conducts the employee engagement survey every other year, so there will be no results for FY23.) Employee turnover was significantly higher in FY22. COVID likely led to the artificially low numbers in FY20 and FY21. Unfortunately, we are now competing for talent nationally, not just locally. Several team members have left state government for higher-paying positions for

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

Department of Revenue

Agency's Mission Statement: Serving South Dakota to provide fair, efficient, and reliable revenue administration with our partners to help fund public service statewide.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1. Provide consistent service to every customer, every time. Be adaptable with our customer service methods.										
	Performance Measures				Historical Data Section					
	Trend	Status	Actual FY23	FY23 Target	FY17	FY18	FY19	FY20	FY21	FY22
Activity A. Provide Timely Service and Response to Customer										
i. Motor Vehicle Title Turnaround in calendar days			33.97	<= 15	14.1	13.2	16.5	16.7	18.3	15.4
ii. Business Tax Abandoned Rates										
iia. Business Tax Abandoned Call Rate			2.8%	< 3%	5.6%	4.0%	2.8%	4.2%	2.8%	2.7%
iib. Business Tax Abandoned Chat Rate			0.2%	< 3%				2.4%	0.9%	0.7%
iii. Motor Vehicles Abandoned Rates										
iiia. Motor Vehicles Abandoned Call Rate			9.6%	< 3%	4.3%	7.2%	3.8%	4.5%	3.5%	4.1%
iiib. Motor Vehicles Abandoned Chat Rate			1.6%	< 3%					1.6%	0.7%
Activity B. Employ, train, and retain qualified staff										
i. BHR Bi-Annual Employee Survey Response Rate				80%	87%		79%		79%*	94%
ii. % of Engaged DOR Employees from BHR Bi-Annual Survey				80%	84%		72%		79%*	76%
iii. Courses Completed by Employees in the Learning Management System			1727	1507			514	2044	1384	1463
iv. Employee Turnover Percentage			13%	< 10%	10.9%	15.9%	14.6%	12.7%	8.1%	11%
Activity C. Provide Service Channel Options to Meet Customer Needs										
i. Business Tax Returns filed electronically			84%	>= 82%	66%	69%	73%	77%	80%	82%
ii. Business Tax Revenue collected electronically			96%	>= 96%	91%	92%	93%	95%	95%	96%
iii. Motor Vehicle Registrations Renewed via SST or SD Cars			15%	>= 20%	8%	10%	11%	16%	16%	17%
iv. Property Tax Forms Submitted Electronically to DOR and Counties			5,133	5,060				2,678	4,770	5,866

Agency comments regarding the accomplishment of Goal 1:

- A-i. The FY23 target was not met due to continued staffing issues in FY23. Additional non-motor vehicle staff have been trained in title processing, summer temporary staff were hired to help process titles, and overtime is being utilized to try and get the days back under control. For FY24, the measure may be switched from calendar days to business days and the target may be adjusted to a more maintainable target of 15-18 days.
- A-iii-a. The FY21 goal was 5%. The FY22 target was set to 3% after attaining the previous benchmark for both business tax and motor vehicles. After missing the 3% goal in motor vehicles and analyzing the staff-to-call ratios for motor vehicles, it has been determined that 3% is not a maintainable goal. After the Department further evaluated the data, it was determined the motor vehicle abandoned call rate goal will be set at 5% for FY24.
- B-i and B-ii. The last three engagement surveys were administered by three different entities and may not be comparable. *Since BHR did not do the FY21 employee engagement survey, the FY22 survey response rate and engagement percentage results were from a DOR-only engagement survey administered by Guidehouse for strategic planning.
- B-iii. A DOR Strategic Planning group implemented professional development requirements for all employees.
- C-ii. 84% of the returns filed electronically account for 96% of the Business Tax revenue collected.
- C.iii. The State of South Dakota is currently in a plate reissue year and people are less likely to pay the plate mailing fee, resulting in a decreased rate of registration renewals via SST or SD Cars. The Department will continue to evaluate the motor vehicle registrations renewed via SST and SD Cars for FY24 without any revisions to the target.
- C-iv. DOR uses electronic submission for forms submitted centrally and offers the technology to the counties and taxpayers to utilize at their own discretion and preference.

Department of Revenue

Goal 2. Ensure that all DOR stakeholders understand the laws and regulations through education efforts.

	Performance Measures				Historical Data Section					
	Trend	Status	FY23 Actual	FY23 Target	FY17	FY18	FY19	FY20	FY21	FY22
Activity A. Business Partner Outreach and Education										
i. Number of DOR Provided Seminars and Classes			69	>= 60	101	104	73	33	41	57
ii. Attendees of DOR Provided Seminars and Classes			2212	>= 1,532	1960	2104	1005	954	1045	1688
iii. Routine License Reviews										
iiia. Business Tax License Reviews			266	>= 250	217	336	251	217	155	262
iiib. Motor Fuel License Reviews			71	100						75
iiic. Tobacco Inspections/License Reviews			660	600	980	776	710	472	190	712
v. Property Tax Division Hours Focused on Education			101	140					136	133

Agency comments regarding the accomplishment of Goal 2:

A-i & A-ii. DOR offers a variety of in-person and online options for education events.

A-iii-b. This was a new performance metric in FY22. A motor fuel agent was deployed for a significant portion of FY22 and FY23. Cross-training is being implemented to assist with meeting the target.

A-iii-c. Tobacco Inspections are completed in accordance with the Master Settlement Agreement. *FY22 was the first fiscal year that agents completed these reviews during their business processes.*

A-v. The Property Tax Division did not hold a Topics class or Ag Land Assessment classes for assessors in FY23 which decreased education hours. The need for those classes is determined by the South Dakota Association of Assessing Officers (SDAAO) Education Committee and the number of new assessors.

Department of Revenue

Goal 3. Provide critical funding for state and local governments through compliance and efficiency.

	Performance Measures				Historical Data Section					
	Trend	Status	FY23 Actual	FY23 Target	FY17	FY18	FY19	FY20	FY21	FY22
Activity A. Compliance Efforts.										
i. Percentage of Audit Hours Spent on Zero Audits			11%	<= 10%	9.8%	13.0%	11.8%	12.7%	14.0%	12%
ii. Percentage of Quality Distinct Audits			83%	>= 75%	57%	63%	69%	71%	72%	78%
iii. Business Tax Return Delinquency Rate			10.8%	<= 10%	9.4%	9.8%	10.1%	10.2%	9.2%	9.7%
iv. Motor Fuel Tax Return Delinquency Rate			0.8%	<= 10%						
v. Tax Discovery Leads Closed			14,966	22,000	26,103	35,133	25,818	22,688	29,843	18,445
vi. Property Tax Division - Average Form Turnaround Time (County Levy) in Calendar Days			44	45					35	46

Activity B. Funding Improvement or Measurement

i. Increased General Fund Revenues through Lottery Sales

ia. Instant Ticket Net Proceeds			\$5,971,394	\$5,367,995	\$5,240,567	\$6,399,685	\$6,896,813	\$5,053,476	\$5,059,850	\$10,348,489
ib. On-line Net Proceeds			\$11,838,568	\$7,818,775	\$7,044,532	\$8,395,339	\$8,256,004	\$6,894,061	\$7,969,368	\$7,591,044

Agency comments regarding the accomplishment of Goal 3:

A-v. The Tax Discovery unit has received fewer leads to work than in years past, partially due to more remote sellers being licensed. Remote sellers continue to come forward voluntarily and the DOR continues to license them without the need to create or work leads.

A-vi. FY23 Levy Verification was performed manually and electronically to validate the new electronic software solution (E-File). The target will be reassessed with only electronic filing going forward.

B-i. The decrease from FY19 to FY20 in Instant Tickets net proceeds was due to system upgrades. FY21 Instant Ticket net proceeds were low due to COVID issues. FY22 Instant Ticket net proceeds were high due to a low transfer in FY21 and a large unclaimed prize.

B-ia. Instant Ticket Net Proceeds vary based on the timing of games closing and unclaimed prizes.

B-ib. On-line Net Proceeds are driven by jackpots. This revenue can be unpredictable.

Bureau of Human Resources

Agency's Mission Statement: Build, develop, and support a high-performing and healthy workforce.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Promoting Employee Wellbeing

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23
Activity A. What activities are you doing to accomplish Goal 1?									
i. Percent of male employees or dependent spouses getting an annual physical from a primary care physician.			56%	≥ 60%			33%	27%	56%
ii. Percent of female employees or dependent spouses getting an annual physical from a primary care physician.			89%	≥ 75%			49%	47%	89%
iii. Percent of employees completing online risk assessment.			60%	≥ 65%	69%	72%	34%	65%	60%
Activity B. What activities are you doing to accomplish Goal 1?									
i. Percent of eligible plan members participating in disease management.			39%	≥ 50%	31%	30%	25%	30%	39%
ii. Percent of employees considered high risk from health screening.			16%	≤ 10%			29%	22%	16%
iii. Employee Assistance Program participation.			6.3%	≥ 8%	6.2%	6.8%	5.2%	6.2%	6.3%
iv. Participation in LiveWell SD challenges.			28%	≥ 30%			NA	30%	28%
v. Percent of employees participating in a wellness challenge or activity.			55%	≥ 30%			2%	49%	55%
vi. Percent of employees contributing to their Health Savings Account.			72%	≥ 75%	45%	68%	66%	82%	72%
vii. Percent of employees contributing to their Supplemental Retirement Plan.			67%	≥ 70%			67%	68%	67%

Agency comments regarding the accomplishment of Goal 1: A one-year-only change in the wellbeing incentive plan for FY21 significantly increased the number of employees getting an annual onsite wellness screening. That same change dropped the number of employees completing the online risk assessment by more than half. In FY22 the plan will go back to pre-21 design with a longer window for participation which is intended to maintain screening participation and increase the risk assessment to better inform our wellbeing programming. Over time, we will work to increase the number of employees obtaining a physical from their primary care physician which is of particular importance as people age. Employees contributed to their HSA at a significantly higher rate in FY21 as a higher level of education was provided throughout the year. Vendor transitions and their ability to measure impact other scores information which may drive not only changes in our work and programming but our goals for success to be more achievable. It was announced in FY23 that this year would be the last of onsite screenings and the numbers dropped accordingly. The more valuable Primary Care Provider visit numbers went up significantly. The partnerships for disease management and prevention in our well-being program are moving growing participation.

Goal 2: Effectively Recruiting

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23
Activity A. Participating in active recruitment activities									
i. Campus visits including job fairs, class visits, career events, etc.			48	≥ 50			15	10	48
ii. Native American outreach activities including career fairs, college visits, events, etc.			0	≥ 10			0	0	0
iii. Number of interns hired as permanent employees			31	≥ 30		0.13	33	10	31
Activity B. Improving selection									
i. Time to fill jobs.			60	≤ 55 days	54	58	57	59	60

Bureau of Human Resources

ii. New employee performance scores.		3.8	≥ 2	3.8
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Agency comments regarding the accomplishment of Goal 2: COVID-19 shut down access to college campuses and reservations for much of the year. The visits that we could have were done virtually. Internships provided a much higher number of new employees in FY21 partly due to a lower level of competition on campus and because offers were made earlier to capture the most successful interns. Time to fill remained about the same but still above our target. A number of factors contribute but a labor shortage is likely to make this worse not better. We are unable to measure this due to system changes. FY23 Given record low unemployment, time to fill just above our historic numbers is reasonable and expected. The Talent Acquisition team has expanded to better meet the needs of state government and provide for activity to increase.

Goal 3: Develop and Retain Employees

	Performance Measures		Historical Data Section						
	Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23
Activity A. Building better leaders									
i. Overall employee rating of supervisor effectiveness (1-6 scale).			4.9	≥ 5	4.8	4.8	4.8	4.9	4.9
ii. Percent of managers participating in leadership and supervision development.			36%	≥ 50%			54%	68%	36%
Activity B. Developing employee skills									
i. Net Promoter Score			51	≥ 50			47	50	51
ii. Percent executive branch employees participating in BHR trainings.			37%	≥ 40%			23%		37%
iii. Overall state retention rate, excluding retirement.			88%	≥ 88%	88%	89%	89%	89%	88%
Activity C. Promotions and career development									
i. Career development and movement.			593	≥ 500		427	441	549	593
ii. Overall employee engagement.			29%	≥ 33%	21%	21%	21%	29%	29%
Agency comments regarding the accomplishment of Goal 3: Supervisor effectiveness and employee engagement were measured in 2017 and 2019. The next survey will be taken in January 2022 and each two									

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

Bureau of Human Resources

Agency's Mission Statement: Build, develop, and support a high-performing and healthy workforce.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Promoting Employee Wellbeing

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY20	FY21	FY22	FY23	FY24
Activity A. What activities are you doing to accomplish Goal 1?									
i. Percent of male employee or dependent spouses getting an annual physical from a primary care provider.				60.0%	NA	33%	27%	56%	
ii. Percent of female employee or dependent spouses getting an annual physical from a primary care provider.				75.0%	NA	49%	47%	89%	
iii. Percent of employees completing online risk assessment.				65.0%	72%	34%	65%	60%	
Activity B. What activities are you doing to accomplish Goal 1?									
i. Percent of eligible plan members participating in disease management.				50%	30%	25%	30%	39%	
ii. Percent of employees considered high risk.				10%	NA	29%	22%	16%	
iii. Employee Assistance Program participation.				8%	6.8%	5.2%	6.2%	6.3%	
iv. Percent of employees participating in LiveWellSD challenges or programs.				30%	NA	2%	49%	55%	
v. Percent of eligible employees participating in specific partner program, i.e. pre-diabetes, pregnancy support, weight loss, etc.				30%	NA	NA	30%	28%	
v. Percent of employees contributing to their Health Savings Account.				75%	68%	66%	82%	72%	
vi. Percent of employees contributing to their Supplemental Retirement Plan.				70%	NA	67%	67%	67%	

Agency comments

Goal 2: Effectively Recruiting

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY20	FY21	FY22	FY23	FY24
Activity A. Participating in active recruitment activities									
i. Educational and recruiting visits including job fairs, class visits, career events, etc.				50	NA	NA	15	10	48
ii. Native American outreach visits including organizations, career fairs, college visits, events, etc.				10	NA	NA	0	0	0
iii. Number of interns hired as permanent employees				30	NA		33	10	31

Bureau of Human Resources

Activity B. Improving selection

i. Time to fill jobs.			55	54	58	57	59	60
ii. New employee performance scores.			>2	NA	NA	NA	NA	3.8

Agency comments

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Goal 3: Develop and Retain Employees

	Performance Measures		Historical Data Section						
	Trend	Status	Actual	Target	FY20	FY21	FY22	FY23	FY24
<u>Activity A. Building better leaders</u>									
i. Overall employee rating of supervisor effectiveness (1-6 scale).				5	4.8	4.8	4.9	4.9	
ii. Percent of managers participating in leadership and supervision development.				50%		54%	68%	36%	
<u>Activity B. Developing employee skills</u>									
i. Net Promoter Score				50	NA	47	50	51	
ii. Percent executive branch employees participating in professional development offered through BHR, i.e. SDLearn, delivered training, events				40%	NA	23%		37%	
iii. Overall state retention rate, excluding retirement.				88%	89%	89%	89%	88%	
<u>Activity C. Promotions and career development</u>									
i. Number of executive branch employees promoted or accepting new positions, i.e. lateral transfer, promotion in or out of agency				500	NA	NA	NA	NA	
iii. Overall employee engagement.				33%	21%	21%	29%	29%	

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

Department of Health

Agency's Mission Statement: Working together to promote, protect, and improve health

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Healthy Beginnings

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY18	CY19	CY20	CY21	CY22
Activity A. Pediatric Obesity Rate Reduce the percentage of WIC participants, aged 2 through 4, with obesity from 15.6% in 2019 to 14% by 2025.			16.2%	14.0%	15.7%	15.6%	16.9%	16.2%	17.0%
Activity B. Childhood Immunization Rates Increase the percentage of children vaccinated for MMR at kindergarten entry from 92.7% in 2022 to 95% by 2025.			92.7%	95.0%	96.2%	96.0%	94.6%	93.7%	92.7%

Agency comments regarding the accomplishment of Goal 1: Activity A - CY22 data is provisional

Goal 2. Maternal and Child Health

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY18	CY19	CY20	CY21	CY22
Activity A. Infant Mortality Reduce 5-year infant mortality rate from 6.3 infant deaths per 1,000 live birth (2014-2018) to 5.8 per 1,000 live births (2021-2025).			6.9	5.8	6.3	6.5	6.5	6.9	6.9
Activity B. Maternal Mortality Reduce 5-year maternal mortality rate from 16.4 maternal deaths per 100,000 live births (2014-2018) to 15.6 maternal deaths per 100,000 live births (2021-2025).			25.9	15.6	16.4	16.6	18.7	25.9	
Activity C. Breastfeeding Increase the percentage of infants still breastfeeding at 8 weeks from 75.7% from 2018 to 76.2% in 2025.			72.4%	75.0%	75.7%	74.1%	74.4%	72.4%	

Agency comments regarding the accomplishment of Goal 2: Activity A and B - Data is 5-year rate (CY18 - 2014-18; CY19 - 2015-19; CY20-2016-20; CY21 - 2017-21; CY 22 - 2018-2022); 2018-2022 infant mortality rate is provisional. 2022 data for maternal mortality and breastfeeding is not available.

Goal 3. Injury and Harm Prevention

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY18	CY19	CY20	CY21	CY22
Activity A. Suicide Deaths Decrease the crude suicide death rate in South Dakota from 20.7 per 100,000 in 2020 to 18.6 per 100,000 in 2025.			21.4	18.6	19.0	20.9	20.7	22.6	21.4
Activity B. Unintentional Overdoses Decrease the crude unintentional overdose death rate in South Dakota from 7.8 per 100,000 in 2020 to 7.0 per 100,000 in 2025.			9.2	7.0	4.9	8.0	7.8	9.6	9.2

Department of Health

Agency comments regarding the accomplishment of Goal 3: Activity A - 2022 data is provisional. Activity B - 2022 data is provisional

Goal 4. Access to Care

Activity A. Average Scene Time for Ground EMS Agencies

Achieve and maintain an average scene time for ground EMS agencies of 16 minutes.

Performance Measures				Historical Data Section				
Trend	Status	Actual	Target	FY19	FY20	FY21	FY22	FY23
		16.4	16.0	17.8	16.2	16.7	16.8	16.4

Activity B. Healthcare Professional Licensees

Increase the number of health professionals licensed in South Dakota

Physicians		5728	6295	4459				5723
RNs/LPNs		22328	24560	21214	21250	21502	21922	22328
Advanced practice nurses		2590	2849	1669	1822	2003	2258	2590
Physician assistants		773	731	654				773
Advanced life support		969	1066	900				969

Agency comments regarding the accomplishment of Goal 4: Activity B - data not available for 2020-2022.

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

1	2022 Department of Social Services									
2	The South Dakota Department of Social Services is dedicated to strengthening families to foster health, wellbeing, and independence. Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).					Status Indicator:		= Green - the historical trend line indicates improved performance and the target has been met.		
= Yellow - the historical trend line indicates improved performance, but the target has not been met.										
= Red - the historical trend line does not indicate improved performance and the target has not been met.										
Indicates metric not available due to implementation dates or availability of data (SFY, FFY vs CY).										
3										
4										
5										
6	Goal 1: Ensure access to services for our customers.									
7										
8		Performance Measures								
		Trend	Status	Actual	Target	FY18	FY19	FY20	FY21	FY22
9	Objective A: Enhance opportunities to access services.									
10	Identify and develop integrated opportunities to access services and supports within the Department.									
11	Maximize federal policy change related to 100% Medicaid FMAP for American Indians and reinvest savings into the Medicaid program.									
12	i. Care Coordination Savings from Federal Medical Assistance Percentage (FMAP) Savings Report. 100% of savings have been reinvested in the Medicaid program. Majority of funds invested in provider rate increases.			\$10.5	\$10.5	\$4.6	\$8.4	\$9.3	\$10.0	\$10.5
13	ii. Number of enhanced Community Health Worker, additional Behavioral Health, and Substance Use Disorder treatment providers that have enrolled in Medicaid.			114	100	-	70	122	147	114
14	iii. Number of eligible providers that have provided services.			95	100	-	61	117	138	95
15	iv. Number of recipients who received Community Health Worker, Mental Health, or Substance Use Disorder services.			3,101	2,000	-	230	1,071	2,454	3,101
16	v. Number of Native American recipients who received Community Health Worker, Mental Health, or Substance Use Disorder services.			1,044	1,353	-	283	586	755	1,044
18	Increase the use of technology in providing access to information and services.									
19	Pilot telehealth sites to support and enhance access to services.									
20	i. Monitor utilization of mental health telehealth services to ensure appropriate use.			5,972	2,400	731	834	4,694	6,723	5,972
21	ii. Monitor utilization of substance use disorder telehealth services to ensure appropriate use.			1,186	500	-	252	1,079	1,761	1,186
22	iii. Telehealth claims in Medicaid increased from a monthly average of 227 in FY 2018 to a monthly average of 2,625 in FY 2022.			2,625	1,000	227	199	1,910	4,722	2,625
23	Implement a customer web portal for recipients and providers of Medicaid.									
24	i. Number of individuals with Primary Care Provider (PCP) or Health Home (HH) selection web forms submitted by Medicaid recipients.			6,080	6,000	-	-	3,602	4,363	6,080
25	ii. Number of Medicaid providers utilizing the portal to submit, view, and modify claims.			5,339	5,000	-	6,439	7,558	8,558	5,339
26	Enhance the Department's website and develop relevant decision support tools that better assist customers in accessing appropriate services.									
28	i. Increased number of DSS website users.			79,594	50,460	-	-	47,184	50,460	79,594
29	ii. Increased number of sessions per user.			1.57	2	-	-	1.79	2.45	1.57
30	iii. Increased number of page previews.			542,449	560,318	-	-	206,224	560,318	542,449
31	Implement digital foster adoptive family training statewide to improve access for prospective foster adoptive parents.									
32	i. Number of newly licensed foster families.			302	300	194	204	238	163	302
33	Access to Healthcare.									
34	The Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey by the Centers for Medicare and Medicaid Services indicates SD exceeds the national average for children across two key measures of access. SD meets or exceeds the national average for adults across three key measures of access.									
35	i. Children got appointments with specialists as soon as needed.			79%	81%	87%	83%	77%	76%	79%
36	ii. Adults got appointments with specialists as soon as needed.			74%	82%	-	81%	79%	85%	74%
37	iii. Easy for children to get needed care, tests, or treatment.			90%	90%	87%	90%	86%	87%	90%
38	iv. Easy for adults to get needed care, tests, or treatment.			85%	86%	-	81%	83%	85%	85%
39	v. Children got routine appointment at doctor's office or clinic as soon as needed.			86%	84%	88%	90%	90%	87%	86%
40	vi. Adults got routine appointment at doctor's office or clinic as soon as needed.			84%	81%	-	75%	78%	81%	84%
41	vii. Children got urgent care for illness, injury or condition as soon as needed.			95%	91%	90%	92%	95%	91%	95%
42	viii. Adults got urgent care for illness, injury or condition as soon as needed.			85%	83%	-	82%	90%	80%	85%

		Performance Measures				FY18	FY19	FY20	FY21	FY22
		Trend	Status	Actual	Target					
43										
44										
45	Objective B: Services and programs are needs driven, customer responsive and culturally relevant.									
46	Clients and other stakeholders experience timely and convenient access to services.									
47	i. Percentage of stakeholders surveyed that reported the location of behavioral health services was convenient for their clients.			85%	80%	82%	85%	89%	88%	85%
48	ii. Percentage of stakeholders surveyed that reported behavioral health services were available at times convenient for clients.			83%	80%	82%	80%	84%	80%	83%
49	iii. Percentage of adult clients served in substance use disorder services who reported ease and convenience when accessing services.			90%	90%	92%	92%	93%	94%	90%
50	iv. Percentage of youth clients who reported ease and convenience when accessing substance use disorder services.			87%	80%	80%	81%	85%	88%	87%
51	v. Percentage of adult clients served in mental health services who reported ease and convenience when accessing services, exceeding the national average of 87.8% for FY22.			93%	90%	96%	96%	96%	96%	93%
52	vi. Percentage of youth clients who reported ease and convenience when accessing mental health services, exceeding national average of 89.8% for FY22.			90%	90%	95%	92%	95%	95%	90%
53	Implement evidence-based model for individuals with methamphetamine substance use disorders in need of intensive-long-term treatment services.									
54	i. Monitor the percentage of clients served that report they have the motivation to not use substances at discharge.			89%	84%	74%	92%	88%	87%	89%
55	ii. Monitor the percentage of clients served that report they have the ability to control their substance use at discharge.			98%	96%	96%	100%	94%	96%	98%
56	iii. South Dakota successful discharge rate for IMT services is 10% higher than the national average (28%) for substance use treatment services.			37%	28%	41%	31%	35%	40%	37%
57	Support Community Behavioral Health Centers implementing and/or utilizing Zero Suicide approach and support other suicide prevention efforts.									
58	i. Increase the average monthly number of unique users who visit the SD Suicide Prevention website. Target is 4,638 by 2025.			2,030	4,638	1,964	2,178	1,798	2,291	2,030
59	ii. Maintain or increase the number of agencies that have been trained to implement the Zero Suicide approach. Total number of agencies, including HSC, implementing the Zero Suicide approach.			21	15	17	20	21	21	21
60	iii. Increase the number of annual gatekeeper trainings funded. Target is 71 by 2025.			105	71	-	-	56	29	105
61	iv. Increase the number of individuals trained. Target is to train 1,367 individuals annually by 2025.			3,572	1,367	-	-	767	637	3,572
62	v. Increase the number of calls from South Dakotans to the National Suicide Prevention Lifeline. Target is 4,661 calls by 2025. FY 2018 is a partial year (started January of FY 2018).			3,261	4,661	787	3,343	3,868	3,437	3,261
63	Agency comments regarding the accomplishment of Goal 1:									
64										
65	Goal 2. Promote and support the health, wellbeing and safety of our customers.									
66	Objective A: Reduce risk factors and enhance protective capacities.									
67	Implement Screening, Brief Intervention and Referral for Treatment (SBIRT) model in targeted primary care clinics across the state and monitor effectiveness of the model.									
68	i. Maintain or increase the number of primary care clinics implementing the SBIRT process.			4	2	4	6	6	5	4
69	ii. Increase the number of individuals screened at primary clinics.			18,100	11,775	6,036	11,775	12,462	6,633	18,100
70	Collaborate with DOH and other key stakeholders to develop a statewide strategic plan to focus on addressing Opioid use/misuse in South Dakota.									
71	i. Number of Medicaid recipients taking >90 Morphine Equivalent Doses (MEDs) of Opioids (June 30 of each SFY). Cancer patients excluded. Indian Health Service (IHS) data was added Q1 of 2020.			210	200	273	255	209	204	210
72	ii. Percent decrease of Opioid utilizing Medicaid members.			1%	0%	-	-18%	-9%	-12%	1%
73	iii. Percent decrease of Opioid utilizing Medicaid members with 3+ pharmacies (poly-pharmacy shoppers).			0%	0%	-	-	-9%	-2%	0%

		Performance Measures				FY18	FY19	FY20	FY21	FY22
		Trend	Status	Actual	Target					
74										
75										
76	Identify and implement strategies to notify program recipients of Medical, SNAP and TANF about wellness/prevention tips.									
77	i. The number of lessons accessed through SDSU and UND's collaborative nutrition education and food budgeting micro-lessons (The Dish) online platform.			487	350	-	-	-	389	487
78	ii. A pilot program provides families with activities and materials designed to engage children and their families in wellness activities. Number of families from Cheyenne River reservation that are participating in the pilot program. (The pilot program required Tribal approval and the program began August 21, 2021.)			9	60	-	-	-	0	9
79	Objective B: Protect individuals from abuse, neglect and exploitation.									
80	Permanency and Safety for Children									
81	Child Protection Services' goal is to reunify families whenever possible.									
82	i. Results: Of children reunited, 64% were reunited within 12 months of removal during SFY 2022. When that is not possible, we work to establish guardianship or adoption to divert from foster care placement.			64%	70%	74%	75%	75%	71%	64%
83	ii. During FFY 2021, 94% of caseworker visits happened where the child resides - exceeding the federal requirement of 50% by 44%. FFY 2022 data not available until December 2022.			94%	80%	96%	96%	95%	94%	94%
84	Objective C: Provide effective services to individuals who have been abused, neglected and exploited.									
85	Implement Permanency Round Tables statewide to expedite permanency for children in placement.									
86	i. Implemented Permanency Round Tables in 6 of the 7 regions to expedite permanency for children in placement.			6	7	-	-	5	6	6
87	Permanency Outcomes.									
88	i. Number of reunifications.			489	482	672	612	617	518	489
89	ii. Percentage of outcomes being reunifications.			49%	49%	57%	57%	55%	49%	49%
90	iii. Number of children placed for adoption.			267	203	195	178	204	262	267
91	iv. Number of finalized adoptions.			238	176	173	144	176	227	238
92	v. Percentage of outcomes being adoptions.			24%	16%	15%	13%	16%	21%	24%
93	vi. Number of guardianships.			116	118	104	125	116	135	116
94	vii. Percentage of outcomes being guardianships.			12%	11%	9%	11%	10%	13%	12%
95	Agency comments regarding the accomplishment of Goal 2:									
96										
97	Goal 3. Foster partnerships to maximize resources for our customers.									
98	Objective A: Encourage and support partnerships to provide cost effective services.									
99	Implementation of Prenatal/Primary Care Innovation Grants.									
100	i. Avera helps pregnant women in South Dakota diagnosed with gestational diabetes by providing remote blood sugar monitoring, specialized test strips and video visits with a diabetic educator. Goal is to improve access to OB care and treatment of gestational diabetes; reduce the number of c-sections, birth complications, and infant/mother mortality; and increase rates of healthy birth weight babies and the number of babies who are delivered at full term. The total number of people served during the grant was 299.			299	150	-	-	49	188	299
101	ii. Center for Family Medicine provides patients with a birth center/pregnancy health home approach to provide a full array of prenatal and postnatal care. This project will also train family medicine resident physicians in innovative, evidence-based prenatal care models. Goal is to improve screening services for those with increased risk for gestational diabetes and preeclampsia; and decrease rates of prenatal hospitalization and c-section, pre-term delivery, NICU stays, and other complications. The total number of people served during the grant was 251.			251	150	-	-	36	175	251
102	Agency comments regarding the accomplishment of Goal 3:									
103										

		Performance Measures				FY18	FY19	FY20	FY21	FY22
		Trend	Status	Actual	Target					
104										
105										
106	Goal 4. Support customers in achieving meaningful outcomes.									
107	Objective A: Ensure the Department helps individuals and families achieve meaningful outcomes.									
108	Connections to Work.									
109	i. For participants who must meet work requirements for Supplemental Nutrition Assistance (SNAP), percentage employed 30 days after starting job, the majority full-time.			82%	94%	93%	92%	94%	90%	82%
110	ii. For participants who must meet work requirements for Temporary Assistance for Needy Families (TANF), percentage employed 30 days after starting job, the majority full-time.			84%	89%	88%	85%	85%	83%	84%
111	iii. Community Based Adult Mental Health Services - Percentage of clients who reported employment compared to national average (target).			35%	25%	24%	24%	25%	34%	35%
112	iv. Community Based Adult Substance Use Disorder Treatment Services - Percentage of clients who reported employment at discharge compared to national average (target).			37%	18%	32%	29%	27%	26%	37%
113	Caring for People in the Most Cost Effective Manner.									
114	About 7,100 Medicaid recipients with high-cost chronic conditions and risk factors participate in the Health Home program. The goal of the program is to improve health outcomes and avoid high-cost care and includes incentive-based payments to high performing providers. Program has reached target for participants with a person-centered care plan. The program led to \$11.1 million in net cost avoidance in CY 2021.									
115	i. Health Home Program - Net cost avoidance in millions primarily due to a reduction in avoidable inpatient admissions and emergency department visits.			\$11.2	\$7.5	\$7.7	\$7.3	\$8.0	\$6.9	\$11.2
116	ii. Health Home recipients with an active person-centered care plan.			73%	70%	63%	73%	75%	73%	73%
117	Money Follows the Person - Implemented in 2014. Provides funding and supports to transition individuals from nursing home or other institutional settings back to their homes and communities.									
118	i. Number of individuals who transitioned from nursing home or other institutional settings back to their homes and communities.			27	26	34	22	24	24	27
119	ii. Number of individuals remaining in the community - 365 days later.			26	19	30	21	23	22	26
120	Geriatric Psychiatric Treatment - Clinicians from the Human Services Center provided psychiatric review and consultation services for 16 individuals.									
121	i. Percentage of individuals who did not require admission to HSC due to psychiatric review and consultation services provided by clinicians from the Human Services Center.			100%	80%	82%	82%	84%	94%	100%
122	Develop a process to identify, utilize and share key behavioral data with stakeholders.									
123	i. Maintain or improve the percentage of HSC patients who had an opportunity to talk with his/her doctor or therapist from the community prior to discharge.			60%	62%	60%	62%	58%	63%	60%
124	ii. Maintain or improve the percentage of HSC patients who reported participating in their planning discharge.			82%	79%	79%	75%	78%	80%	82%
125	iii. Maintain or improve the percentage of HSC patients who reported both they and their doctor or therapist from the community were actively involved in their hospital treatment plan.			75%	70%	68%	59%	70%	72%	75%
126	Community Based Adult Mental Health Services. Providing counseling, psychiatric treatment and case management services to individuals, decreasing reliance on publicly funded services.									
127	i. CARE and IMPACT Outcome Measures: Percent reduction in the percentage of clients who visited an emergency room for a psychiatric or emotional problem six months after start of services.			-12%	-12%	-15%	-13%	-13%	-12%	-12%
128	ii. CARE and IMPACT Outcome Measures: Percent reduction in the percentage of clients who spent night in the hospital six months after start of services.			-12%	-12%	-17%	-17%	-14%	-11%	-12%
129	iii. CARE and IMPACT Outcome Measures: Percent reduction in the percentage of clients who reported spending at least one night in a correctional facility six months after start of services.			-10%	-9%	-15%	-15%	-15%	-13%	-10%
130	iv. CARE and IMPACT Outcome Measures: Percent reduction in the percentage of clients who reported one or more arrests in the past 30 days six months after start of services.			-10%	-9%	-5%	-5%	-7%	-7%	-10%

Department of Labor and Regulation

Mission

To promote economic opportunity and financial security for individuals and businesses through quality, responsive, and expert services; fair and equitable employment solutions; and safe and sound business practices.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Deliver quality, responsive, and excellent services.

	Performance Measures			Historical Data Section				
	Trend	Actual	Target	FY19	FY20	FY21	FY22	FY23
Activity A: Delivery services efficiently.								
i. Percentage of reemployment assistance first benefit payments made in 14 days		 92.60%	87%	95.30%	87.50%	64.30%	88.70%	92.60%
ii. Percentage of reemployment assistance first benefit payments made in 28 days		 97.90%	87%	98.90%	94.70%	72.80%	94.80%	97.90%
iii. Percentage of Reemployment Assistance appeals heard at department level within 30 days		 34.60%	60%	95%	84.80%	3.10%	2.30%	34.60%
iv. Percentage of Reemployment Assistance appeals heard at department level within 45 days		 45.40%	80%	99.10%	99.10%	9.10%	2.80%	45.40%

Activity B: Delivery services satisfactorily.

i. Percentage of Workforce Innovation and Opportunity Act (WIOA) participant satisfaction rate of 70% or more.		 80%	70%	72%	67%	86%	66%	80%
ii. Percentage of Workforce Innovation and Opportunity Act (WIOA) business satisfaction rate of 70% or more.		 78%	70%	99%	98%	98%	68%	78%

Agency comments regarding the accomplishment of Goal 1:

Activity A: Part i., iii., and iv. are measures and target goals required for reporting to the federal government. Part ii. is an additional measure added, per request of GOAC to take the COVID-19 pandemic into consideration. The FY23 results for appeals are due to the drastic increase in caseloads due to the COVID-19 pandemic. Although we are currently performing above the target, this measure is a 12-month rolling average and the caseload due to the pandemic is still affecting the percentage reported. During the most recent one-year period, October 2022 through September 2023, the percentage of appeals heard within 30 and 45 days is 92.9% and 100%, respectively.

Goal 2: Achieve a skilled workforce contributing to economic development by serving businesses, job seekers, and community partners.

	Performance Measures			Historical Data Section				
	Trend	Actual	Target	FY19	FY20	FY21	FY22	FY23
Activity A: Partner with the Department of Education to implement a regional model of career advising and work-based learning opportunities for students.								
i. Increase unique schools served by 9 each year.		 93	69	28	28	37	60	93
ii. Increase the number of school districts served by 4 each year.		 85	38	21	21	25	34	85
iii. Increase the number of documented services to students by 15% each year.		 19534	6371	2257	4038	4644	5540	19534
iv. Increase the number of WIOA Title I referrals by 15% each year.		 58	85	64	30	35	74	58

Activity B: Build the skillset of South Dakota residents to meet business' workforce needs.

i. Registered Apprenticeship Occupational Diversity - Number of different occupations available through the Registered Apprenticeship program with an apprentice in it. Goal is to increase by 10% each year.		 43	30	18	27	24	27	43
ii. Number of new individuals who enter a Registered Apprenticeship Program. Goal is to increase by 5% each year.		 578	565	399	350	538	578	450*
iii. Program participants receiving workforce training opportunities. Goal is to increase by 5% each year		 3277	2654	2557	2250	1442	2528	3277
iv. Individuals served by Job Service offices. Goal is to increase by 5% each year		 5901	5091	10220	6975	3254	4849	5901
v. Provide a greater ratio of intensive services (WIOA) to the individuals served by Job Service offices.		 56%	40%	25%	32%	44%	52%	56%

Activity C: Connect businesses to untapped labor pools.

i. Recruitment rate - Percentage of out-of-state individuals referred to Dakota Roots who receive wages in SD (hired in SD)		 28%	15%	25%	17%	17%	28%	
ii. Number of out-of-state job seekers, utilizing SDWORKS, who were hired in SD		 956	N/A			872	608	956
iii. Percentage of job placement of individuals with a significant barrier		 66%	60%	62%	65%	58%	64%	66%

Department of Labor and Regulation

iv. Percentage of job placement of individuals without a significant barrier			81%	75%	75%	77%	74%	79%	81%
v. Job openings written by DLR staff to assist businesses			7864	N/A	10,995	8,021	8,735	9,001	7,864
vi. Percentage Employed of Wagner-Peyser participants 2nd quarter after exit			70%	65%	70%	70%	63%	69%	70%

Agency comments regarding the accomplishment of Goal 2:

Activity A i. - iv. Measures will no longer be relevant with DLR's future service delivery model with DOE and will need to be revised for next year.

Activity B i. Data comes from the U.S. DOL Office of Apprenticeship Registered Apprenticeship Sponsor Information Database (RAPIDS). Data counts the variety of occupations available that have an apprentice in it.

Activity B ii: Updates were made to U.S. DOL's Apprenticeship reporting methods and website where DLR gathers this information, which has resulted in changes to previously reported years. Data comes from the U.S. DOL Apprenticeship Data and Statistics website that uses Federal Fiscal Year (October 1 - September 30). FY23 450 is a partial year with three quarters reported.

Activity B iii - v. Goals are no longer sustainable with limited budgets.

Activity C ii. is by calendar year and is for informational purposes; therefore, will not have a target goal.

Activity C v. This number will continue to decrease with the increase in technology advances for our business community. This measure does not have a target and is for informational purposes.

Goal 3: Ensure safe and sound business environments and practices.

	Performance Measures			Historical Data Section					
	Trend	Actual	Target	FY19	FY20	FY21	FY22	FY23	
Activity A: Provide regulatory and supervision oversight.									
i. DOB percentage of bank examinations completed by their mandate (36 months)			94%	100%	92%	95%	100%	100%	94%
ii. DOB percentage of trust examinations completed by their mandate (24 months)			43%	100%	37%	42%	46%	32%	43%
iii. DOB percentage of bank examination reports issued within 30 days of exit meeting			81%	80%	58%	75%	77%	85%	81%
iv. DOB percentage of trust examination reports issued within 30 days of exit meeting			67%	80%	70%	62%	72%	86%	67%
v. DOB process complaint, send letter to named institution, and send update letter to complainant within 30 days			56%	80%	99%	94%	72%	90%	56%
vi. DOI On-time completion of Insurance Company Financial Exams			93%	100%	100%	89%	100%	100%	93%
vii. Number of DOI conducted Broker/Dealer & Investment Adviser exams a year. (65/year)			94%	90%	106%	88%	86%	88%	94%
viii. Percentage of DOI consumer complaints with initial response made within 3 calendar days			95%	95%	95%	93%	97%	98%	95%

Activity B: Ensure compliance with federal and state regulations and laws.

i. Percentage of One-Stop offices who achieved certification.			100%	100%	100%	100%	100%	100%	100%
ii. Percentage of Human Rights claims with initial response made within 7 days.			100%	90%	95%	96%	100%	93%	100%
iii. Wage and Hour complaints received/resolved ratio			99%	95%	99%	96%	106%	99%	98%
iv. Division of Banking accreditation for safety and soundness required every five years			Yes	Yes	Yes	Yes	Yes	Yes	Yes
vi. Division of Insurance accreditation every five years			Yes	Yes	Yes	Yes	Yes	Yes	Yes

Agency comments regarding the accomplishment of Goal 3:

ii. - The statutory mandate for trust companies is 36 months, but recommendations from the 2017 Accreditation process suggested a 24 month exam cycle for public trust companies. This recommendation has been challenging to meet with the growing number of companies and recent changes in federal requirements which increase the amount of time needed to complete each exam. If the measure was based on the 36 month mandate for all companies, the results would be 100% for each year.

Activity A iii. - The CSBS best practice for Report turnaround is 30 days for State-only bank exams and 45 days for joint exams with the FDIC or FRB. Our turnaround percentage is calculated using these timeframes.

Activity B iii. Goes by calendar year, not fiscal year.

Goal 4: Develop a sustainable, skilled Department of Labor and Regulation workforce.

Section A: Develop a sustainable, skilled Department of Labor and Regulation workforce.									
	Performance Measures			Historical Data Section					
	Trend		Actual	Target	2018	2019	2020	2021	2022
Activity A: Recruit and retain qualified candidates.									
i. Percentage of time took to fill a position is reasonable			93%	85%	88%	72%	70%	89%	93%
ii. Percentage of annual employee turnover with more than a year of tenure			75%	85%	89%	86%	82%	71%	75%
Activity B: Maintain employee competency.									
i. Percentage of Learning Management System Learners who have completed a course in the year.			60%					74%	81%

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ii. Percentage of Learning Management System Learners who have completed a lesson in the year.



60%

76%

79%

Agency comments regarding the accomplishment of Goal 4:

Activity A i. is based on BHR survey data (employee perception) and is based on calendar year not fiscal year.

Activity A ii. Uses BHR data pulled from the TKS. The tenure is based on time worked with the state, not with DLR (e.g. Employee worked 7 years with DOT and 2 years with DLR will have a tenure of 9 years on the report).

Activity B - DLR implemented its own Learning Management System (LMS) in January 2022 and started with a pilot of the Workforce and Field Operations Division including 190 learners.

Key		Value
Green	Goal is met.	2
Yellow	Improved performance but goal is not met	1
Red	No improved performance and goal is not met.	0

Judicial Opinions Report 2023



Study Assignment

Under [SDCL 2-9-1.1](#), the Legislative Research Council is required to prepare an annual report of the opinions of state and federal courts that interpret South Dakota statutes and the intent of the Legislature. In the cases listed below, the issuing court:

- (1) Has found that the Legislature's intent behind a statute is unclear or may conflict with other statutes; or
- (2) Has indicated that the plain language of statute may pose unintended outcomes.

The report may include recommendations for corrective action. Under [SDCL 2-9-4\(8\)](#), the Executive Board shall review this report and make recommendations for further action, if any.

Summary of South Dakota Supreme Court Cases

[Endres v. Endres, 2022 S.D. 80](#)

Summary: After the settlement of a consolidated suit among co-trustees and beneficiaries of a family trust, one co-trustee filed a motion for attorney fees, which was denied by the circuit court. On appeal, the South Dakota Supreme Court analyzed [SDCL 55-3-13](#), which states that a trustee is entitled to repayment of all expenses properly incurred in the performance of the trustee's duties. The statute further states "[e]xpenses in performance of the trust include those expenses actually and properly incurred in the exercise of the trustee's powers as described in the governing instrument, in any applicable court order, or in chapter 55-1A." Arguments were made by both parties regarding whether the use of the word "include" indicates an exhaustive or non-exhaustive list. In its decision, the Court determined that because the co-trustee incurred legal fees without majority approval by the co-trustees, his attorney fees were not "properly incurred." Therefore, the Court was not required to decide whether "include" introduces an exhaustive or non-exhaustive list in the third sentence of [SDCL 55-3-13](#).

Recommendation: To prevent future uncertainty, the Executive Board may wish to amend [SDCL 55-3-13](#) and clarify the list of what expenditures qualify as "expenses in the performance of [a] trust." For example, the third sentence may be amended to state: "Expenses in performance of the trust ~~include~~ are those expenses actually and properly incurred in the exercise of the trustee's powers as described in the governing instrument, in any applicable court order, or in chapter 55-1A," if the examples are intended to be exhaustive.

[Stanley v. Department of Public Safety, 2023 S.D. 13](#)

Summary: The Department of Public Safety disqualified defendant's commercial driver license (CDL) after he pled guilty to unauthorized ingestion of a controlled drug or substance. The arrest occurred while defendant was operating a motorcycle. Pursuant to [SDCL 32-12A-36\(4\)](#), CDL disqualification is mandatory if a person is "convicted of a first violation of using a commercial or noncommercial motor vehicle in the commission of any felony." The South Dakota Supreme Court previously interpreted the "any felony" language of [SDCL 32-12A-36\(4\)](#) as a catch-all provision that requires the disqualification of CDL privileges whenever a vehicle is *used in the commission of a felony*. Thus, [SDCL 32-12A-36\(4\)](#) applies to any felony offense that can be committed with or without the use of a vehicle, but the Court must look at *how* the offense was committed to determine whether [SDCL 32-12A-36\(4\)](#) requires CDL disqualification. If the vehicle is used to commit the offense, the statute applies.

In this case, the Court found no evidence that defendant utilized the motorcycle to commit the crime of ingestion of a controlled substance. Therefore, the offense as committed by defendant was not subject to mandatory CDL disqualification under [SDCL 32-12A-36\(4\)](#).

Recommendation: Under [chapter 32-12A](#), CDL disqualification is a consequence of violating a traffic control law. See [SDCL 32-12A-64](#). Ingestion of a controlled drug or substance is not a traffic control law. However, driving under the influence (DUI) offenses are included among the violations requiring mandatory CDL disqualification. In this case, defendant was initially charged with DUI, but the charge was dismissed. Had defendant been convicted on the DUI charge, [SDCL 32-12A-36\(1\)](#) would have mandated CDL disqualification. Furthermore, had the Office of Hearing Examiners determined defendant was driving under the influence at defendant's initial administrative hearing, that "conviction," as defined in [SDCL 32-12A-1\(7\)](#), would have mandated CDL disqualification. The Office of Hearing Examiners did not make this determination, however. Therefore, in this factual instance, CDL disqualification did not result, and there does not appear to be a gap in the statutory framework for disqualifying a CDL due to the violation of a traffic control law. That being said, if the Executive Board wishes to establish a mechanism for CDL disqualification due to an offense such as ingestion of a controlled drug or substance, the Executive Board may wish to amend [chapter 32-12A](#) with a statute similar to [SDCL 32-12-52.3](#).

Matter of Implicated Individual, 2023 S.D. 16

Summary: Following the conclusion of a criminal investigation involving the implicated individual, the circuit court entered an order to unseal search warrant affidavits related to the investigation as mandated by [SDCL 23A-35-4.1](#). The implicated individual appealed, arguing that for [SDCL 15-15A-13](#) to be meaningful, the party challenging public access to the information must be given an opportunity to inspect the affidavits to determine whether there is confidential or sensitive information in need of redaction. [SDCL 15-15A-13](#) states "[a] request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion" and provides the procedure for making such a request. In its analysis, the South Dakota Supreme Court found that nothing in the language of [SDCL 15-15A-13](#) affords an affirmative or substantive privacy right to the implicated individual in the content of the affidavits, nor does the statute forestall public access to the affidavits under [SDCL 23A-35-4.1](#) after the criminal investigation has been completed. The approach to redaction is soundly within the discretion of the court.

Recommendation: No action is needed unless the Executive Board wishes to create a mechanism for a party to review search warrant affidavits prior to unsealing, necessitating an amendment to [SDCL 15-15A-13](#).

Kirwan v. City of Deadwood, 2023 S.D. 20

Summary: The owner of a saloon in Deadwood renovated the exterior of the building without first seeking approval from the Historic Deadwood Commission. After the fact, the owner sought permission and was denied by the Commission because the new look was not consistent with the original 1879 appearance, and the Commission ordered the owner to remove the new façade. The owner appealed the decision to the circuit court pursuant to [SDCL 1-19B-50](#), which states "[a]ny applicant aggrieved by a determination of the Historic District Commission may appeal to the circuit court for the county in which the land concerned is situated." The circuit court upheld the decision by the Commission. The South Dakota Supreme Court affirmed the ruling but found that while the Legislature expressly authorized appeals from the decisions of historic district commissions, it did not prescribe guidance for procedural rules or the applicable standard of review. The Court stated that while the standard used would not be outcome determinative in this case, "it is important to determine a standard of review for this class of administrative appeals. Doing so will provide clarity for parties and circuit courts in the absence of a specific statutory standard of review." Drawing upon the standard widely used to review factual

findings in administrative appeals under [SDCL 1-26-36](#), and more broadly in the common law, the Court found a "clearly erroneous" standard to be the appropriate standard of review for these cases.

Recommendation: No action is needed unless the Executive Board wishes to establish a different standard of review for an appeal of a Historic District Commission decision, necessitating an amendment to [SDCL 1-19B-50](#).

[LeFors v. LeFors, 2023 S.D. 24](#)

Summary: In a divorce proceeding, the wife sought separate maintenance and requested that a decree of divorce be delayed two years for the purpose of obtaining military spouse benefits. The circuit court granted the wife separate maintenance, awarding her permanent alimony and making an equitable division of marital property. The husband appealed, arguing the circuit court had no authority to divide the marital estate as part of an order for separate maintenance because South Dakota law only allows a division of marital property as part of a divorce decree. [SDCL 25-4-44](#) explicitly authorizes the court to make an equitable division of property in a divorce, and [SDCL 25-4-75](#) and [SDCL 25-4-79](#) allow for the division of marital assets in a decree of legal separation. However, the South Dakota Supreme Court held separate maintenance to be distinct from legal separation and found "the remedy of separate maintenance, provided for in [SDCL 25-4-39](#) and [SDCL 25-4-40](#) . . . provides no authority for a circuit court to equitably divide a marital estate." By its plain language, [SDCL 25-4-40](#) explicitly limits the court's power to "award[ing] temporary alimony, suit money, and permanent support for a spouse and the children of the parties." Given this, the Court determined that in the absence of statutory authority to make a property division in a decree of separate maintenance, the circuit court abused its discretion in equitably dividing the wife and husband's property.

Recommendation: No action is needed unless the Executive Board wishes to provide statutory authority for a court to divide marital property in an action for separate maintenance, necessitating an amendment to [SDCL 25-4-40](#).

[State v. Fidler, 2023 S.D. 25](#)

Summary: Defendant was convicted of hunting on private land without permission from the owner in violation of [SDCL 41-9-1](#). Defendant appealed, arguing [SDCL 41-9-1](#) is not a strict liability offense and the state failed to prove the *mens rea* element of the crime, *i.e.*, that defendant was aware of the character and nature of his acts. [SDCL 41-9-1](#) states no person may "hunt upon any private land without permission from the owner . . . A violation of this section is a Class 2 misdemeanor and is subject to [SDCL 41-9-8](#)." Under [SDCL 41-9-8](#), if a person is found guilty of [SDCL 41-9-1](#), the court *may* revoke the person's hunting privileges for one year, but if "a person *knowingly* enters or remains on private property for the purpose of hunting . . . the person *shall* be fined five hundred dollars" and lose hunting privileges for one year. Because "the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence," the South Dakota Supreme Court held there must be some indication of legislative intent to dispense with the *mens rea* element of a crime. In its analysis, the Court found that the manifest purpose of [SDCL 41-9-1](#) is to punish, as a Class 2 misdemeanor, both knowing and unknowing violations of the statute. Such intent is reflected by the Legislature's reference to [SDCL 41-9-8](#), which subjects all violations of [SDCL 41-9-1](#) to the potential penalties associated with a Class 2 misdemeanor and the loss of hunting privileges, but also requires a maximum fine of \$500 and the loss of such privileges for one year if the offender knowingly enters or remains on private property. The Court acknowledged that "[l]egislative acts which are essentially public welfare regulatory measures may omit the knowledge element without violating substantive due process guarantees." The Court found [SDCL 41-9-1](#) to be regulatory measure that does not contain a *mens rea* element for the less punitive violation, but [SDCL 41-9-8](#) does require a violation to be knowing for the harsher penalty. Therefore, it is apparent that the Legislature intended [SDCL 41-9-1](#) to be a strict liability offense.

Recommendation: No action needed.

State v. Dutton, 2023 S.D. 29

Summary: Defendant was convicted as an accessory to aggravated assault for intentionally harboring or concealing a juvenile in the commission of a felony. Defendant appealed, arguing that she cannot be convicted as an accessory to a felony because the principal was a juvenile subject to a civil delinquency adjudication rather than criminal prosecution. [SDCL 22-3-5](#) states "[a] person is an accessory to a crime, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person." In analyzing the "commission of a felony" language of the statute, the South Dakota Supreme Court held that the element can be satisfied by criminal acts committed by a juvenile. The Court stated "[t]he fact that a juvenile's felonious conduct is being addressed under the juvenile code does not, nor was it intended to, shield adults from liability for an independent criminal offense that involves a minor's illegal conduct . . . one who harbors or conceals a person after they commit a felonious act, regardless of [that] person's age, embarks on a dangerous course that may endanger the community." The crime of accessory is a distinct offense committed by the offender, based on the actions of the offender, not the principal actor. [SDCL 22-3-5](#), by its plain language, states "[a]n accessory to the commission of a felony may be prosecuted, tried, and punished, even if the principal is not prosecuted or tried, or even if the principal was acquitted." Therefore, an individual may be prosecuted, tried, and punished as an accessory to a crime under [SDCL 22-3-5](#) when the principal felony is based on the acts of a juvenile, regardless of the existence or status of any prosecution against the juvenile.

Recommendation: No action needed.

State v. Smith, 2023 S.D. 32

Summary: Defendant was convicted of second degree murder and aggravated assault and appealed, claiming he acted in self-defense and was entitled to statutory immunity. [SDCL 22-18-4.8](#), commonly known as a "Stand Your Ground" law, states that a person justified in using or threatening the use of force is immune from criminal prosecution. Because [SDCL 22-18-4.8](#) became effective during the pendency of the case, the South Dakota Supreme Court analyzed whether the provision applies retroactively, stating that a statute does not operate retroactively unless the act clearly expresses an intent to do so, or the statute is merely procedural in nature. Because no statutory language indicated retroactive application, the Court analyzed whether [SDCL 22-18-4.8](#) was a procedural or substantive change. The Court determined that [SDCL 22-18-4.8](#) is more than just an affirmative defense to a crime; the immunity afforded by the statute is a legislative determination that justifiable homicide is not a crime subject to prosecution. The statute does not merely "regulate the steps" of prosecution, i.e., a procedural change. Rather, it provides a substantive right to be free from civil or criminal culpability. Because the statute is substantive in nature and not retroactive by its own terms, the Court held that [SDCL 22-18-4.8](#) does not apply retroactively.

Recommendation: No action is needed unless the Executive Board wishes to provide for retroactive application of [SDCL 2-18-4.8](#), necessitating an amendment to the statute.

State v. Kwai, 2023 S.D. 42

Summary: Defendant was convicted of felony hit and run after driving over an individual during an altercation between defendant and the individual. Defendant appealed, arguing [SDCL 32-34-5](#) encompasses only accidental acts, and that by presenting evidence that defendant intentionally ran over the individual, the state failed to prove that an accident occurred. The South Dakota Supreme Court analyzed whether the Legislature, in using the word "accident" in [SDCL 32-34-5](#), intended to exclude incidents wherein a driver intentionally causes injury

or death. The Court identified that the manifest purpose of the requirement to stop the vehicle at the scene of the accident "is to prevent drivers from seeking to evade prosecution by escaping before their identity can be determined." The Court further observed that punishment under [SDCL 32-34-5](#) is not directly for inflicting damage or injury, but rather for the driver's failure to stop in the case of an accident and provide information and aid to injured persons pursuant to [SDCL 32-34-3](#). If [SDCL 32-34-5](#) applied when the driver of the vehicle did not intend injury or death, it would mean that "a person could, by design, maim another person with a car and drive off, without fear of violating" [SDCL 32-34-5](#). Because such an interpretation contravenes the intent of the statute, the Court held that [SDCL 32-34-5](#) applies regardless of whether the defendant's acts were intentional. Whether a collision was intended or not is not an element of the crime of felony hit and run.

Recommendation: No action needed.

[Kovac v. S.D. Reemployment Assistance Division, 2023 S.D. 45](#)

Summary: Appellant was ordered by the Department of Labor and Regulation to repay federal pandemic unemployment benefits. Appellant sought to file an appeal with the circuit court by letter. On the final day permitted for filing, the clerk of courts' office rejected the appeal and mailed the letter back to appellant, citing non-compliance with various Supreme Court Rules. The circuit court later dismissed appellant's second appeal, finding that the circuit court lacked subject matter jurisdiction due to appellant's failure to include a case filing statement pursuant to [SDCL 15-6-5\(h\)](#). On appeal, the South Dakota Supreme Court stated that for a circuit court to properly obtain jurisdiction of an administrative appeal, an appellant must comply with [SDCL 1-26-31](#). [SDCL 1-26-31](#) states "[a]n [administrative] appeal shall be taken by serving a copy of a notice of appeal upon [specified parties], and by filing the original with proof of such service in the office of the clerk of courts of the county in which the venue of the appeal is set." In analyzing the statute, the Court first determined that "filing" refers to the date the original document is received by the clerk of courts' office, regardless of the date the office formally accepts the notice of appeal. Therefore, the acknowledgment of receipt of appellant's letter by the clerk of courts' office was sufficient to constitute timely filing under [SDCL 1-26-31](#). Secondly, the Court found that [SDCL 15-6-5\(h\)](#) is a Supreme Court rule requiring a case filing statement in a civil suit, however, nothing in [SDCL 1-26-31](#) or [chapter 1-26](#) requires the filing of a case statement to perfect an administrative appeal to circuit court. Therefore, appellant's failure to include a case filing statement did not deprive the circuit court of jurisdiction.

Recommendation: No action is needed unless the Executive Board wishes to:

- (1) Alter the meaning of "filing" under [SDCL 1-26-31](#) to require the acceptance of a notice of an administrative appeal by the clerk of courts, not merely the receipt of the notice of appeal, necessitating an amendment to [SDCL 1-26-31](#); or
- (2) Make a case filing statement a requirement to properly file an administrative appeal in circuit court, necessitating an amendment to [SDCL 1-26-31](#), or an addition to [chapter 1-26](#).

Summary of U.S. District Court - District of South Dakota Cases

[Eddie's Truck Center, Inc. v. Daimler Vans USA LLC, D. South Dakota, Western Division, May 11, 2023](#)

Summary: Plaintiffs sued defendants for damages as a result of defendants' alleged termination of a commercial vehicle dealer agreement without good cause, in violation of [SDCL 32-6B-45](#). [SDCL 32-6B-45](#) states "[n]o franchisor may . . . terminate, cancel, fail to renew, or substantially change the competitive circumstances of a vehicle dealership agreement without good cause." The statute defines good cause and states "[i]n addition, good cause exists if:" followed by eight distinct factors. Defendants argue that this list of good cause reasons to

terminate is nonexclusive, and defendants' line-make discontinuation constitutes good cause for termination of the agreement. In analyzing [SDCL 32-6B-45](#), the U.S. District Court for the District of South Dakota determined that the eight factors do not constitute exclusive grounds for termination of an agreement. Interpreting [SDCL 32-6B-45](#) to contain an exclusive list would render [SDCL 32-6B-49](#) (listing examples of when a franchisor cannot terminate a dealer agreement) superfluous, and potentially impose unconstitutional burdens on interstate commerce. Citing South Dakota state courts, the District Court held that without statutory language of exclusion or inclusion, a list of reasons or factors in a statute should not be considered an exhaustive list. The Court stated that without exclusivity language, it is reasonable to assume that the South Dakota Legislature was merely providing examples of when "good cause" exists to terminate a franchise, not an exhaustive list of circumstances that must be present. Therefore, line-make discontinuation could constitute good cause to terminate an agreement under [SDCL 32-6B-45](#).

Recommendation: No action needed. Of note, however, the District Court stated in its decision: "While the court agrees . . . that there are legitimate public policy interests in protecting South Dakota franchisees . . . the South Dakota Legislature has not specifically provided any such relief for South Dakota dealers in the context of a line-make discontinuation. Without the Legislature having specifically addressed this issue, the court finds it prudent to interpret the statute at issue in a way that avoids a constitutional problem." Other states have separate statutes regulating line-make discontinuations and providing when dealers are entitled to remedies. *See, e.g.,* [Fla. Stat. § 320.64\(36\)\(b\)](#); [Mass. Gen. Laws ch. 93B, § 5\(k\)](#); [Mich. Comp. Laws § 445.1571\(3\)](#); [63 Pa. Stat. § 818.313](#); [Tex. Occ. Code Ann. § 2301.4651](#); [Wis. Stat. § 218.0132](#).

This report was written by Melanie Dumdei, Legislative Attorney, on October 26, 2023, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.