



# **Legislative Research Council**

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## **FIFTY-SIXTH INTERIM REPORT NOVEMBER 2012**

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**500 East Capitol, Pierre, South Dakota 57501-5070**  
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## **AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE**

The Agricultural Land Assessment Implementation and Oversight Advisory Task Force consists of four members of the House of Representatives, four members of the Senate, and six members of the general public (at least two of the general public members shall have an agricultural background and at least two of the general public members shall have a business background).

### **Study Assignment**

**The Task Force shall review the implementation of the provisions of law concerning the assessment and taxation of agricultural land and advise the Department of Revenue regarding the rules promulgated by the Department to administer the provisions concerning the assessment and taxation of agricultural lands. In addition, the Task Force shall make recommendations in the following areas:**

1. The proper percentage of annual earning capacity to be used to determine the agricultural income value for cropland and noncropland; and
2. The proper capitalization rate that minimizes the shift in total taxable value between agricultural land and the other property classifications.

### **Summary of Interim**

**The interim Agricultural Land Assessment Implementation and Oversight Advisory Task Force held its first meeting on June 18. Mr. David Wiest, Deputy Secretary of the Department of Revenue, reviewed the history of the transition from a market value system to a productivity value system for assessing agricultural land. The goal was to have an initial statewide assessed value of \$19 billion dollars for ag land with about 85% of that value in cropland and 15% in noncropland. The cropland assessed value was based on gross income determined by a productivity model and noncropland based on cash rents, using an 8-year Olympic average for both. The landlord share of the equation was set at 35% for cropland and 100% for noncropland and the cap rate or multiplier was set at 6.6%.**

Mr. Michael Houdyshell, Director of Property and Special Taxes Division for the Department of Revenue, reviewed conservation easements and how adjustments to assessments could be made if authorized by the Legislature. Conservation easements are offered by various federal agencies and private land trusts. There was a review of the statutes relating to conservation easements, specifically SDCL 1-19B-56 to 1-19B-60, inclusive. Conservation easement programs are primarily available through the USDA Natural Resources Conservation Program, the US Fish and Wildlife Service, and other types of conservation easements programs including Land Trusts, SD Parks & Wildlife Foundation, Riparian Buffers, and USDA Farmers Home Administration deed restrictions.

Ms. Sara Thompson, Administrator, USDA Natural Resources Conservation Service gave an overview of the wetland and grassland conservation easement programs available through the USDA programs which are primarily available mainly in East River South Dakota. All easement programs are voluntary; the Wetland Reserve Programs can be for 30 years or

perpetual while the Grassland Reserve Program is perpetual; and the two emergency programs are perpetual. The following acres for land under USDA easements were provided to the Task Force: 62,225 Wetland Reserve Program acres; about 17,000 Grassland Reserve acres; 49,963 Emergency Watershed Protection Program acres; and about 12,000 Emergency Wetlands Reserve Program acres.

The Wetlands Reserve Program is the most popular, particularly because in recent years it includes a flooded pothole category and any land area that has been previously flooded. There is no limitation on crop history for USDA programs. When USDA makes an offer, it is separated into cropland and noncropland. Values offered are usually 15% to 20% less than the market value. She said the NRCS easements are all voluntary and that their easements are more restrictive than those offered by the US Fish and Wildlife Service. She said the WRP program prohibits cropping and although NRCS can give back certain rights, for example, grazing as a management tool.

The Grassland Reserve Program easements offer either permanent easement or rental contracts. The program allows no development or conversion to anything other than grass. A grazing management plan is required prior to recording a deed and the landowner retains only a small bundle of rights. NRCS easements strip a significant portion of rights away from the land, yet the agency has no property tax responsibilities.

The purpose of the wetland reserve is to restore wetlands that have been drained or altered. NRCS has a cost-share program whereas they initially restore the land so that it is noxious weed free and thereafter if the landowner fails to act, there are steps the agency can take through the federal government.

Mr. Bill Mulvaney, and Mr. Harris Hoistad with the U.S. Fish and Wildlife Office, spoke with the Task Force about the agency's wetland and grassland easement programs. The wetland easement is basically a no drain, no burn, no fill. A grassland easement maintains natural vegetation and has no grazing restrictions; however, to hay the land the owner must wait until after July 15. Criteria for both easements have remained the same for years and both are perpetual easements. The following acres are administered by the U.S. Fish and Wildlife in South Dakota: 524,509 wetland acres; 797,432 grassland easement acres; and 41,266 FMHA conservation easement acres.

Mr. Houdyshell said there are basically four issues dealing with agricultural land that has been encumbered by conservation easements in South Dakota 1) How should this land be assessed for purposes of property taxation under the productivity system? 2) Should such land be assessed at a reduced valuation? If so, how should the amount of the reduction be determined? 3) Does current state law allow for a reduced valuation of such land? 4) How significant would the tax shift be if adjustments were made to account for conservation easements?

SDCL 10-6-33.31 allows the county director of equalization to make adjustments in the assessed value of agricultural land. There may be an overlap between reasons land is put into an easement and allowable adjustments that can be made by statute, easements aren't specifically addressed by statute. There are two concerns with making adjustments for easements: 1) the approach and 2) the tax shift in counties that have a lot of grassland easements. This is a policy decision and the Department would like to see guidance concerning this particular area from the Legislature. The Department's goal is to have

adjustments that all sixty-six counties can use and develop consistency between counties. The Department seeks to establish for uniformity, accountability, and fairness in counties when assessing property.

During the second meeting on July 30, the Department presented a chart showing the change by county in 2013 ag land assessments. The chart incorporated the 2012 legislation which raised the 10 percent assessment increase limitation to a three-tiered limitation of 15, 20, and 25 percent, depending on how far a county is from its full productivity value for ag land. For the most part, noncropland is very close to full productivity value statewide, with only 14 counties in the limited range; while cropland is not, with 13 counties in the 15 percent limited range, 26 counties in the 20 percent range, and 27 counties in the 25 percent range.

Dr. Burton Pflueger, Economics Department, South Dakota State University submitted a presentation concerning four approaches in analyzing the landlord share rate, including: cost of production approach, return to land ownership approach, reported share rent approach, and valuation formula to calculate the landlord share factor. His recommendation would be to make no change in the landlord share factor at this time.

The Department responded to questions from the June 18 Task Force meeting. The first question concerned how the percent of value in cropland versus noncropland has changed since the inception of the productivity system. The productivity valuation formula was designed to be revenue neutral the first year of implementation, at which time the split between crop and noncropland was 85 percent and 15 percent, respectively. Taking into account the limited productivity valuations in 2013, the split will be 88.6 percent and 11.4 percent, respectively. If the productivity system was at full implementation, the split would be 90 percent and 10 percent, respectively.

The Department review several South Dakota Supreme Court decisions discussing the concept of highest and best use versus actual use regarding agricultural land assessments. Charts were provided with a description of assumptions the Department used, containing information on every county entitled "Estimation of Valuation Shift Going to Actual Use" and "Change in Taxes – County Taxes only Estimation of Actual Use Tax Shift. Using Aurora County as an example, there would be a 16.1 percent decrease in assessed value if an actual use system was adopted.

The Department reported that there were 28,367 acres of private conservation easements statewide. By adjusting for these private conservation easement acres and based on certain assumptions, the Department estimates a loss in agricultural land value of \$14 million can be attributed to these private easements.

The Department is encouraging the directors of equalization to be proactive concerning ag land adjustments and a copy of the 2011 memo on this subject was mailed again to the directors. The directors have been encouraged to take a fresh look at ag land adjustments. The Department that a shift to actual use would result in a decrease in ag value in most counties, and that an estimated \$3.6 billion would be lost in ag value statewide. This lost value would impact property taxes and the general fund levies for school districts for ag land would have to be reset. Several Task Force members expressed concern that the non-reported acres could significantly impact the Department's data. The Department assumes the numbers are accurate to the greatest extent possible, and although there may be

differences between the Department and National Agricultural Statistics Service numbers, at the end of the day there would be a reduced ag value if actual land use was adopted.

During the third meeting on September 17, seven draft bills were presented to the Task Force for discussion. The draft bills involved a review of the factors affecting productivity that could be applied if the actual use of agricultural land does not correspond to the soil classification standards. This draft proposed to amend SDCL 10-6-33.31 that is basically a toolbox of adjustments for the directors of equalization. One draft addressed how cropland used as grassland may be reclassified as noncropland based on its use and another draft based all ag land assessments on actual use.

There were two drafts concerning the assessment of ag land encumbered by a conservation easement that prohibits cropping in perpetuity or for an extended period of time. There was discussion concerning whether this was a management decision, the amount of compensation received by the landowner, the policy on whether it would encourage easements which may further lower the property tax base. There was also a draft to limit or restrict the term of conservation easements.

There was also a draft requiring the use of cash rent data to determine the agricultural income value of cropland for property assessment purposes. There was a discussion on the how the current model was developed, the history of the change, and the potential of tax shifts.

There was testimony presented by several associations representing various sectors within the ag industry, individual farmers and ranchers, the directors of equalization, and the Department of Revenue concerning the matters presented and discussed by the Ag Land Task Force.

### **Listing of Legislation Adopted**

1. *An Act to determine whether factors affecting productivity should be applied if the actual use of agricultural land does not correspond to the soil classification standards.*

The proposed legislation allows the landowner, if the actual use of the landowner's land does not correspond to the soil classification, to request the director of equalization to determine if any of the factors affecting productivity may be applied to the assessment of the land.

2. *An Act to restrict the term of conservation easements.*

The proposed legislation establishes a maximum term that a conservation easement may be placed on land.

### **Summary of Meeting Dates & Places and Listing of Task Force Members**

The Task Force met on June 18, July 30, and September 17 in Pierre.

Task Force Members Were: Senator Larry Rhoden, Chair; Representative Justin Cronin, Vice Chair; Senators Jason Frerichs, Tom Hansen, Billie Sutton; Representatives H. Paul Dennert, James Schaefer, and Steve Street; and Public Members Kirk Chaffee, Curt Everson, Larry Gabriel, Dave Knudson, Ron Olinger, and Jim Peterson.

Staff members were: Fred Baatz, Principal Research Analyst and Rena Ortbahn, Committee Secretary.

## JOINT COMMITTEE ON APPROPRIATIONS

### Study Assignment

A continuing review of the appropriations process.

### Summary of Interim

At its March 19, 2012 meeting, the JCA:

- Issued 8 Letters of Intent as Follows:
  - **Department of Social Services Funds** – Requesting the Department provide quarterly reports to the Joint Appropriations Committee regarding the amount and disposition of one-time carryover funding, FY13 budget status, and impacts on the FY14 budget request.
  - **Department of Education** – Directs the Department to distribute the nonrecurring funds made available to school districts on a fall enrollment basis using the actual 2011 fall enrollment figures.
  - **Office of School and Public Lands** – Directs the Office of School and Public Lands to utilize the additional \$500,000 made available for actual repairs and maintenance of state-owned dams rather than studies and assessments. The Committee also directed the Commissioner to find matching funds from other entities in the use of these monies.
  - **Departments of Social Services, Human Services, Corrections, and the Unified Judicial System** – This Letter sets forth the Committee's expectations regarding the distribution and use of the one-time funds made available under HB1137 for various community providers.
  - **Department of Education** – Provided direction concerning the use of an additional \$500,000 made available to the four postsecondary technical institutes. These funds are to be distributed according to the existing funding distribution formula in support of scholarship programs addressing the state's workforce needs.
- Received a LRC staff report on the Session Wrap-up, consisting of:
  - Summary of the FY13 Budget
  - FY12/13 Sources and Uses Scorecard
  - FY13 General Bill Summary

At its June 12, 2012 meeting the JCA:

- Issued 1 additional Letter of Intent as follows:
  - **Agricultural Experiment Station Funds** – Provides direction regarding use of an additional \$450,000 made available for the Experiment Stations.
- Heard a presentation from IBM regarding their Performance Management System proposed for possible application in South Dakota.
- The Committee approved the proration of interest earnings as recommended by the Bureau of Finance and Management and received a report on various transfers of funds.

- Approved a Board of Regents transfer of FY13 funds as requested to realign bases funding for the various universities.
- Heard reports on FY12 fiscal close and FY13 budget implementation from BFM and the Board of Regents.
- Heard a status report on several programs under the Department of Social Services followed by an update by DSS and the Department of Human Services on the allocation of one-time funding previously authorized.
- The Commissioner of School and Public Lands gave a report on the status of repairs to dams.
- Heard LRC staff reports on the following subjects:
  - Possible West Tour dates and itinerary
  - Budget Drivers and Performance Indicators
  - Long-Term Fiscal Planning

September 10-12 West River Appropriations Tour:

The tour included the following locations:

- Sanford Underground Research Facility, Lead, South Dakota
- Pine Beetle Damage and Facilities at Custer State Park
- Black Hills Correctional Transition Center, Rapid City
- South Dakota School of Mines and Technology
- Game, Fish and Parks Outdoor Campus – West
- University Center, Rapid City

Budget Drivers and Performance Indicators

- The Committee has been working with the Government Operations and Audit Committee, the Governor’s Office, and BFM toward a joint effort to review, broaden, and sharpen the existing budget drivers and performance indicators set forth in the Budget Book.
- Specifications for the proposed project are currently being prepared which will serve as the basis preliminary legislative discussions. The Governor has already approved the undertaking in principle.
- It is currently envisioned that the current intermediate-term fiscal planning efforts by the Committee will be rolled into this new initiative.
- Development of these Budget Drivers and Performance Indicators will proceed in parallel with GOAC’s agency-by-agency operations review.
- It is currently felt that proposed legislation setting forth the details of the effort and related funding will be desirable as a basis for further legislative discussion.

The JCA will schedule a December meeting for the following purposes:

- Initial reaction to Governor’s budget
- Approval of JCA budget call to all state agencies
- Discussion of JCA agency hearing schedule and other hearing procedures
- Directions to staff

## Listing of Legislation Adopted

SEE Performance Indicators above.

## Listing of Committee Members

Bolin, Jim .....	House	
Brown, Corey .....	Senate	Lead Co-Chair
Carson, Lance .....	House	Co-Vice Chair
Deelstra, Bob .....	House	
Dennert, H. Paul .....	House	
Dryden, Dan.....	House	
Haverly, Jeffrey.....	Senate	
Heineman, Phyllis .....	Senate	
Juhnke, Kent.....	Senate	
Novstrup, Al .....	Senate	
Peters, Deb.....	Senate	
Putnam, J.E. 'Jim' .....	Senate	
Romkema, Fred .....	House	
Sutton, Billie.....	Senate	
Tidemann, Larry.....	Senate	Co-Vice Chair
White, Jim.....	House	
Wink, Dean .....	House	Co-Chair
Wismer, Susan .....	House	

## Staff

Fred Schoenfeld, Chief of Fiscal Analysis and Budget, Sue Cichos, Principal Fiscal Analyst; Annie Mehlhaff, Principal Fiscal Analyst, Denice Terry Miller, Senior Fiscal Analyst, and Aaron Olson, Senior Fiscal Analyst.

## **CODE COMMISSION (SOUTH DAKOTA)**

### **Study Assignment**

The Code Commission supervises the publication of the South Dakota Codified Laws, corrects errors to the code, assists the code counsel, makes recommendations to the Legislature, and contracts for replacement volumes.

### **Summary of Interim**

Replacement Volumes – The Code Commission met on June 21, 2012, to conduct routine business regarding the ongoing update of the Code. In that regard, the Commission authorized the reprinting of Volumes 2, 30, and 31 of the Code.

Publishing Contract – The Code Commission extended the contract with Thomson West for publication of the South Dakota Codified Laws (Code) for another year. The term of the contract extension begins on July 1, 2012, and continues until June 30, 2013, unless terminated earlier.

### **Listing of Legislation Adopted**

Annual codification of the previous year's legislation.

An Act to codify legislation enacted in 2012.

An Act to correct an error in the recreational vehicle title statute.

### **Summary of Meeting Dates and Places**

The Code Commission met two times. They met on March 2, 2012, at the State Capitol in Pierre and the second one was held in conjunction with the State Bar Association on June 21, 2012, in Rapid City.

### **Listing of Committee Members**

Code Commission members are Michael DeMersseman (Chair), Senator Joni Cutler (Vice-Chair), Representative Brian Gosch, Tom Lee, and Margaret Gillespie.

The President Pro Tempore of the Senate will need to appoint a Senator to replace the position held by Senator Cutler due to her not returning to the Senate.

### **Listing of Staff Members**

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

## **OIL AND GAS DEVELOPMENT COMMITTEE**

### **Study Assignment**

The Committee was established to study distinctive ownership configurations, abandoned mineral interests law, taxation, tax deeds, and any other related issue as a means of encouraging oil exploration in the state.

### **Summary of Interim**

During the first meeting on June 12, Mr. Steve Pirner Secretary of the Department of Environment and Natural Resources; Mr. Bob Townsend, Administrator of the Minerals and Mining Program within the DENR; Mr. Jason Evans, Deputy Director of Property and Special Taxes within the Department of Revenue; Ms. Jan Talley, Director of the Business Tax Division within the Department of Revenue; Mr. Nathan Sanderson, Policy Advisor to the Governor; and Mr. Jarrod Johnson, Commissioner of School and Public Lands made presentations to the committee. Each gave an overview of the current regulations South Dakota has regarding oil and gas exploration and production. Some important areas the presenters discussed were the permitting and bonding process and cost, current tax laws, types of taxes applicable to oil drilling and the amount of revenue the state collects annually from oil and gas production, and the status of the surface owners and various types of mineral interests that are currently owned or leased for mineral development.

During the second meeting on July 16 and 17, held in Buffalo and Bison, South Dakota, respectively, North Dakota Senator Bill Bowman advised the committee on many of the issues North Dakota faced when oil production spiked, and gave the committee insight into how North Dakota has handled the oil boom, including ideas for legislation. Reuben Bezpaletz, Chief Analyst for Research and Legal Services for the Legislative Research Council gave testimony on potential ways to address surface owner issues through legislation. Over one hundred local residents participated in public testimony.

On August 28 and 29, members of the committee visited the Bakken region in North Dakota. On Tuesday evening, August 28, the SD delegation met with Ron Ness and Alexis Brinkman from the ND Petroleum Council and Lynn Helms from the ND Department of Mineral Resources. The members received an in-depth presentation on the geology of the Bakken in North Dakota, the potential oil resources in South Dakota, and policies and draft legislation concerning oil exploration and drilling that South Dakota should consider.

On Wednesday August 29, committee members visited with industry officials who gave us an overview of the fracking process and North Dakota regulations and an idea of how the regulations have affected the industry. Some of the highlights of the trip included visits to office facilities, gas plant, train load stations, oil drilling rig sites, fracking site, crew camps, and North Dakota communities experiencing the effects of the oil boom.

During the third meeting on September 26, Fred Baatz and Amanda Reiss from the Legislative Research council gave the committee an overview of the committee trip to the North Dakota Bakken.

Nathan Sanderson, Policy advisor to the Governor presented the Summary of Findings from the Governors two summer work groups that studied the oil and gas development and

preparedness in South Dakota. His briefing included reports from Derric Illes, State Geologist for the DENR; Mike Lees, DENR; Mike Houdyshell, Director of Property Tax for the Department of Revenue; Dave Wiest, Deputy Secretary of the Department of Revenue; Bob Townsend of the DENR; Jason Glodt, Policy Advisor to the Governor; and Joel Jundt, Director of Planning and Engineering for the Department of Transportation. The general theme of the report indicated that even the most generous oil development predictions for South Dakota come nowhere near the current oil production that North Dakota has seen in recent years, and that the governor's office has determined that the state infrastructure can absorb an increased amount of use at this time, and that no specific updates to the infrastructure are needed at this time.

The committee also heard from oil developers currently working in South Dakota, Ken Luff and Richard George of Luff Exploration Company and Blu Hasley, Director of Government Affairs for Continental Resources indicated that increased government regulation increase the cost of production and slow expanded oil development and that economics play a major role in a company's decision to drill in an area.

The committee also discussed options for potential legislation and directed the staff to draft numerous pieces of legislation to be discussed at the final meeting.

During the fourth meeting on October 30, Legislative Research Staff, Reuben Bezpaletz, Fred Baatz, and Amanda Reiss presented 17 pieces of legislation to the committee. The committee also heard testimony from DENR relating to the cost estimate of moving the Geological Department to Pierre or Rapid City. The committee went on to discuss the 17 pieces of draft legislation and took final action, adopting 8 bills as well as requesting staff to draft a letter of advisement for the Department of Public Safety.

## **Public Testimony**

Each meeting was well attended by interested parties and included surface land owners, attorneys, mineral interest owners, county officials from Harding County and Perkins County, and other interested parties. The testimony provided by the public gave an overview of the issues each group and individual faces, the benefits and detriments to oil exploration and recovery, and potential solutions.

## **Listing of Legislation Adopted**

1. *An Act to revise the provisions regarding plugging and performance bonds for oil and gas wells and to repeal the supplemental restoration bond requirement.*

The proposed legislation increases the individual bond amount from five thousand to fifty thousand dollars per well, and increases the blanket bond from twenty thousand to one hundred thousand dollars.

2. *An Act to provide for mediation between mineral developers, mineral owners, and surface owner in certain disputes over surface depredation.*

The proposed legislation establishes a voluntary mediation program for interested parties to resolve disputes over the determination of damages pursuant to section 45-5A-4 and provides guidelines and rule making authority to administer the program.

- 3. An Act to provide funding for unresolved surface depredation caused by oil and gas exploration and to make an appropriation therefor.*

The proposed legislation appropriates \$300,000 to the DENR from the petroleum release compensation fund to assist property owners with unresolved surface depredation issues resulting from oil and gas exploration in instances of bankruptcy or the financial insolvency of the explorer.

- 4. An Act to require certain posting of information if hydraulic fracture simulation is performed on oil and gas wells.*

The proposed legislation requires that oil developers post certain information on the FracFocus Chemical Disclosure Registry if hydraulic fracture simulation is performed on an oil or gas well.

- 5. An Act to require mineral developers to give notice to surface owners before entering the land, unless they have an existing use agreement.*

The proposed legislation requires a mineral developer to give notice to a surface owner before entering the land for exploration activities.

- 6. An Act to provide for the creation of a trust account for unlocatable mineral interest owners.*

The proposed legislation allows an interested party to petition the court to establish a trust fund on behalf of a mineral interest holder that remains unlocatable after a diligent effort has been made to locate the owner. The proposed legislation also provides guidelines for the creation and administration of the trust, and provides that the funds held in trust are subject to the state's current abandoned property laws.

- 7. An Act to revise certain provisions relating to the termination of certain mineral interests.*

The proposed legislation removes outdated portions of the current state law, clarifies the process for terminating mineral interest rights, and brings South Dakota law into conformity with North Dakota Law.

- 8. An Act to provide for the award of treble damages in certain surface depredation cases.*

The proposed legislation allows the courts to award treble damages at the court's discretion in cases where interested parties refuse to negotiate damages in good faith.

The Committee also voted to adopt a Letter of Advisement to the Department of Public Safety to address a safety concern in the Northwest corner of South Dakota due to a lack of highway patrolmen and motor service carriers patrolling the state highways in the Harding County, Perkins County, and Butte County area.

## **Summary of Meeting Dates & Places and Listing of Task Force Members**

The interim Committee met on June 12, September 26, and October 30 in Pierre and also met in Harding County on July 16.

Committee members were Representative Roger Solum, Chair, Senator Tom Nelson, Vice Chair, Senators Ryan Maher, Bruce Rempelberg, Timothy Rave, Larry Rhoden, Billie Sutton, and Craig Tieszen; and Representatives Paul Dennert, Spencer Hawley, Charles Hoffman, Melissa Magstadt, Betty Olson, Tona Rozum, and Dean Schrempp.

Staff Members were: Reuben D. Bezpaletz, Chief Analyst for Research and Legal Services, Amanda Reiss, Legislative Attorney, Fred Baatz, Principal Research Analyst and Cindy Tryon, Legislative Secretary.

## POSTSECONDARY EDUCATION STUDY COMMITTEE

### Study Assignment

The Postsecondary Education Study Committee was created to study the purpose and funding of postsecondary education in South Dakota. The committee was instructed to determine the purpose of public postsecondary education, and to establish policy performance expectations and a way to hold postsecondary education systems and institutions accountable. The committee was also instructed to look at alternative methods of funding postsecondary education, including ways that funding may be used to incentivize institutions, and to make recommendations on these topics to the Legislature.

### Summary of Interim

The first meeting was an organizational meeting held in Pierre. The committee heard from representatives of the Board of Regents, the public postsecondary technical institutes, and the Department of Education. Each of them was asked to respond to the following questions:

- What is the purpose of postsecondary education?
- Why is the state investment in postsecondary institutions important?
- What is the history of funding approaches for South Dakota public postsecondary institutions?
- What outcomes or changes would you like to see as a result of the work of this committee?

Dr. Kathryn Johnson, President, and Dr. Jack Warner, Executive Director of the Board of Regents spoke on behalf of the Board of Regents. They noted the importance of keeping South Dakota students in the state to complete their educations and to join the workforce. They also stressed the importance of research and the state's need to do more research due to the many benefits that come from it.

Deb Shephard, President of Lake Area Technical Institute, and Greg Von Wald, President of Mitchell Technical Institute, also addressed the committee. They spoke of the importance of providing quality technical education that is affordable for students, and the need to develop strategies to invest funding in training programs that have the biggest impact. They noted that many of the programs at the postsecondary technical institutes are filled to capacity and that their placement rates are among the highest in the nation.

Dr. Melody Schopp, Secretary of the Department of Education, said the role of the department is to help make students ready for college or a career and to make them aware of what their interests are and where the job opportunities are. She also spoke of the need for standardized data reporting for both inputs and outputs so that a student could be tracked all the way to a successful career.

The second meeting was a two-day meeting held on the campus of Dakota State University in Madison. The committee was given a tour of the campus, and it included a visit to the Heartland Technology Center, which provides many local jobs in the information technology industry.

Larry Isaak, President of the Midwestern Higher Education Compact, and David Longanecker, President of the Western Interstate Commission on Higher Education, were on hand to provide the committee with detailed information on the performance funding models used for postsecondary education in other states. Mr. Isaak noted that postsecondary enrollment in South Dakota is strong, but that the state needs to increase its degree production in order to keep pace with demand. He also noted that the academic preparation of students for postsecondary education in South Dakota needs attention as almost half of the state's students fail to meet the college readiness benchmarks in at least one subject area. Mr. Isaak said that affordability of postsecondary education is also an issue since the state has no needs-based student aid programs.

David Longanecker gave the committee advice on how to design a performance funding model. He stressed that what works in one state does not always work in another. He also stressed the importance of identifying and involving all of the key stakeholders in the process. Also, he said it is important to determine the goals that must drive the outcomes up front and to build a consensus on those goals. Dr. Longanecker advised that a performance funding model will not be successful unless it is sufficiently funded, but putting too much money into it can also be problematic in that it may cause unintended consequences.

Following the performance funding presentation, the committee heard responses to the presentation from representatives of both the Board of Regents and the postsecondary technical institutes. In addition, Pamela Roberts, Secretary of the Department of Labor and Regulation, spoke to the committee about the state's workforce and job market. She spoke of the shortages of workers that exist in many of the state's industries, and she noted that often the problem is not a lack of workers, but rather a distribution problem in that the shortages exist in the more rural regions of the state.

The third meeting was held in Rapid City and Spearfish. In the morning, the committee toured the University Center-Rapid City, Western Dakota Technical Institute, and the South Dakota School of Mines and Technology. In the afternoon, the committee proceeded to Black Hills State University in Spearfish, where the members were given a brief tour and conducted their meeting.

The meeting in Spearfish began with a discussion of how to monitor the quality of an academic program. Mark Wilson, President of Western Dakota Technical Institute, and Greg Von Wald addressed the subject on behalf of the postsecondary technical institutes. Mr. Wilson noted that all the programs they offer are monitored annually which ensures accountability, and that many of the programs are accredited, which also requires a strict adherence to standards. Mr. Von Wald stressed that if industry is not hiring the graduates of a particular program, the program is either changed or discontinued.

Dr. Rod Custer, Provost and Vice President of Academic Affairs at Black Hills State University, spoke on the topic of monitoring program quality on behalf of the Board of Regents. He noted that quality is easy to recognize, but often hard to define. He, too, said that accreditation is key. The Board of Regents also has standards and requires program reviews every seven years.

Following that discussion, Mark Wilson and Greg Von Wald provided the committee with an overview of the postsecondary technical institutes' current funding formula, and Dr. Kathryn Johnson and Dr. Jack Warner discussed the current funding approach used for the Board of

Regents. They also described the performance funding pilot program that was undertaken by the Board of Regents this year.

The meeting concluded with a subcommittee report from Representative Perry. Senator Olson, the committee chair, appointed the subcommittee at the second meeting. Subcommittee members included Representative Perry, chair; Senator Peters; and Representatives Dryden, Jones, Kirkeby, White, and Wismer. They met via conference call on September 10, 2012, to put together a proposal for the full committee's review.

Representative Perry explained the proposal which provides a purpose and goals for state-support postsecondary education and the metrics to measure progress toward those goals. It also provides for the creation of a council charged with the task of determining future goals and metrics for postsecondary education that includes many of the key stakeholders. The subcommittee proposal also included a funding framework for the systems and institutions of public postsecondary education in the state.

Committee members convened one last time in Pierre on November 13<sup>th</sup>. They reviewed and discussed three bill drafts that were compiled based upon the recommendations of the subcommittee.

The committee solicited input from any interested parties and heard from Dr. Jack Warner; Harvey Jewett, a member of the Board of Regents; Deb Shephard; and Dr. Melody Schopp, who provided testimony and a few suggested changes relative to the bill drafts.

In the end, the committee further refined the bill drafts and recommended them as committee bills that will be introduced at the next legislative session.

### **Listing of Legislation Adopted**

- **An Act to establish the public purpose and goals of postsecondary education, to provide for the funding of postsecondary education, and to create the Council on Higher Education Policy Goals, Performance, and Accountability.**

This bill was the interim committee's main focus. It establishes goals for public postsecondary education in the state, creates a council to make recommendations on the goals and to measure progress toward those goals. It also establishes a funding structure for public postsecondary education to which the Legislature may adhere if adequate funding is available.

- **An Act to require the reporting of the outcomes of certain licensure and certification exams.**

This bill requires state entities that administer licensure or certification exams to report to the Legislature on the exam outcomes for those persons taking the exams who completed their education at a public postsecondary education institution in the state.

- **Act to require the Department of Labor and Regulation to determine certain job placement outcomes for graduates of all public postsecondary education institutions in the state.**

This bill requires the Department of Labor and Regulation to determine job placement outcomes for graduates of the regental institutions as well as for those completing degree programs or other training programs at the public postsecondary technical institutes.

### **Summary of Meeting Date and Places and Listing of Committee Members**

The Postsecondary Education Study Committee met in Pierre on June 27<sup>th</sup>, in Madison on August 21<sup>st</sup> & 22<sup>nd</sup>, in Rapid City and Spearfish on September 19<sup>th</sup>, and again in Pierre on November 13<sup>th</sup>.

Committee members were: Senator Russell Olson, Chair; Representative Tad Perry, Vice Chair; Senators Jim Bradford, J. Mark Johnston, Al Novstrup, Deb Peters, J.E. 'Jim' Putnam, and Larry Tidemann; and Representatives Dan Dryden, Tom Jones, Mark Kirkeby, Scott Munsterman, Jim White, Dean Wink, and Susan Wismer.

Staff members were Clare Charlson, Principal Research Analyst; Annie Mehlhaff, Principal Fiscal Analyst; and Cindy Tryon, Legislative Secretary.

## REGIONAL WATERSHED ADVISORY TASK FORCE

### Study Assignment

The Regional Watershed Advisory Task Force was created by SB 169 in the 2012 Legislative Session. SB 169 established the task force to operate until January 2015 and to address issues relating to watershed management, drainage, erosion, flood control, reclamation, and environmental protection and improvement of lands, soils, waters. The task force is to consider potential alternative organizational structures and entities to address such issues, including the proper role and structure for regional and local water and natural resources-related special purpose districts and local governments. The task force is also directed to review the role of special purpose districts and other state and local government entities with respect to drainage issues, including drainage management, resolution of drainage disputes, and recommendations for potential realignment of responsibilities for drainage matters.

The task force consists of fourteen members, including four members of the House of Representatives, four members of the Senate, and six members of the general public with backgrounds in natural resources law, science, or management; agriculture; or business. Current members will serve until January 2013, with new members appointed for a two-year term at that time. The Regional Watershed Advisory Task Force Chair is Representative Brian Gosch and the Vice Chair is Senator Mike Vehle.

### Summary of Interim

During the 2012 Interim, the Regional Watershed Advisory Task Force met at the Capitol in Pierre on July 23, 2012 and in Brookings on September 25, 2012. The task force will hold a third meeting in Aberdeen on December 10-11, 2012.

July 23, 2012 – Pierre. The task force held its first meeting in Pierre and heard presentations intended to provide background information and information on federal law and federal agency activity and an indication of federal limitations and constraints on state and local action. Mr. Mark Anderson, Dan Driscoll, and Ryan Thompson of the US Geological Survey, Rapid City and Huron, gave a presentation entitled "South Dakota Climate and Streamflow Conditions, Watershed Delineation." They discussed scientific monitoring of water resources, and they noted that winters have not been as cold in recent years. They also described increased water levels and flows, with the data showing that more precipitation and changing land use patterns are driving these changes. They explained watershed boundaries, standards, and mapping methods and discussed the kinds of data and information that are available, such as county hydrology studies.

Mr. Jeffrey Zimprich, State Conservationist, and Mr. Gerald Jasmer, State Resource Conservationist, Huron, Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, explained the role and activities of NRCS. They explained how the 1985 Food Security Act (Farm Bill) has affected wetlands and NRCS responsibilities in wetland conversion and watershed management. An area must meet three criteria in order to be considered a wetland – have hydric (wet) soil, hydrophytic (water tolerant) vegetation, and saturation or ponding by water most years. In order to participate in the Farm Program, a landowner must meet NRCS requirements relating to the protection of wetlands and erodible land.

Mr. Jay Gilbertson, Manager, East Dakota Water Development District (EDWDD), Brookings, stated that part of his district's role is to provide technical assistance on drainage and watershed management. Mr. Gilbertson reviewed drainage case law, the 1985 South Dakota drainage law (SDCL 46A-10A), and two county drainage ordinances. Only 18 of 66 counties have drainage controls. He noted several issues with the current law, including the permitting process, fee amounts for drainage permits, and criteria for applications and evaluations.

The task force heard public testimony.

September 25, 2012 – Brookings. The second meeting of the task force was held in Brookings. Mr. Rick Warhurst, Ducks Unlimited Great Plains Regional Office, Bismarck, ND, discussed wetlands characteristics and functions. He said when it comes to wetlands people are generally either for them or against them. It was his view that prairie pothole wetlands located in South Dakota, North Dakota, and Canada are important to duck and other wildlife populations. He considers it the most dynamic and productive ecosystem in the world and the duck factory of the nation. He stated that wetlands are a unique wildlife habitat that supports water-based recreational activities, natural downstream flood control, a natural treatment and filtering system for polluted water, and a potential source of ground water recharge. Mr. Warhurst stated that it is sometimes difficult to determine whether land is wetland, cropland, or both, and he noted that the draining of wetlands increases nitrate concentrations and increases sediment and pollutants in downstream rivers.

Mr. Steve Naylor, US Army Corps of Engineers, SD Regulatory Office, Pierre, discussed the role of the Corps of Engineers in watershed management and drainage Issues. He explained that Section 10 of the Rivers & Harbors Act of 1899 gives the Corps authority to issue a permit before any work or structure in, over, or under navigable waters in the United States. In South Dakota navigable waters under Section 10 are the Missouri River, James River, Bois de Sioux River, Lake Traverse, Big Stone Lake, and the lower five miles of the Big Sioux River. The Corps also has authority under Section 404 of the Clean Water Act of 1972 to issue a permit before any discharge of dredged or fill material into the waters of the United States. The goal of that Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Waters of the United States include all surface waters such as lakes, ponds, rivers, streams, and creeks, wetlands adjacent to these waters, and impoundments of these waters. Mr. Naylor indicated that Section 404 permits are not drainage permits, but impacts from drainage activities are sometimes indirectly regulated. Examples of projects that may need a Section 404 permit are drain ditches, drain tile installation, and excavation, cleanout, and maintenance of streams and levees constructed in floodplains. The limit of the Corp's jurisdiction is the ordinary high water mark for lakes, rivers, and streams and boundaries of wetlands.

Mr. Tom Magedanz, Legislative Research Council, Pierre, South Dakota, presented information on South Dakota's system of water and resource-related special purpose districts and discussed special purpose governments relating to water and natural resources. These include water development districts, water project districts, irrigation districts, water user districts, watershed districts, sanitary districts, drainage basin utility districts, conservation districts, and regional recycling and waste management districts. He also provided historical information on the development of water-related special purpose districts, the impact of the Pick-Sloan Missouri Basin Program, and the replacement of conservancy subdistricts with water development districts.

Ms. Diane Best, Assistant Attorney General, South Dakota Office of the Attorney General, Sioux Falls, South Dakota, discussed the principles of drainage law and South Dakota's drainage statutes. Her presentation included definitions of drainage and surface water drainage, and she discussed the principles of drainage law including common law, case law, and civil rule. She also discussed practices in South Dakota before the federal Clean Water Act of 1972, the impacts of federal legislation, and South Dakota's 1985 county drainage statutes (SDCL 46A-10A).

Mr. Ron Gillen, Brosz Engineering, White Lake, South Dakota, discussed his professional experience in dealing with drainage projects and disputes. He stressed the need for technical support and the importance of scientific and engineering information as the foundation for drainage activities and projects. He supports local control in drainage matters and is interested in ways of handling potential disputes locally out of court so that litigation on drainage questions is used as a last resort. He noted that drainage and engineering studies and modeling for particular watersheds are important tools in dealing with drainage problems and issues.

The task force heard public testimony.

December 10-11, 2012 – Aberdeen. The task force will hold a third meeting on December 10 in Aberdeen with a tour of affected areas scheduled for December 11 in the Aberdeen area. The tentative agenda will include presentations by the State Climatologist, Dr. Dennis Todey of SDSU; Dr. Chris Hay of SDSU on drainage practices and watershed and drainage management issues; Mr. Clark Moeckly of the Upper Crow Creek Watershed District; and presentations by Brown, McCook, Roberts, and Yankton counties on their experiences with drainage regulation and drainage issues. The task force will also hear public testimony and consider draft legislation that was requested at the second meeting.

### **Listing of Legislation Adopted**

The task force requested that legislation be drafted on the following topics and will take action on the drafts at the December meeting:

- Clarify, update, and remove inconsistencies from the current watershed district law (SDCL Chapter 46A-14).
- Establish a uniform, statewide drainage permit application that includes a means of tracking drainage information and activity.
- Establish a method of tracking drainage and drain tiling activity and permits on a statewide basis.
- Provide a source of technical expertise and assistance for use by local governments on drainage and watershed management issues.
- Authorize an informal drainage dispute resolution process such as the use of referees or mediation to be attempted before a dispute goes to court.

## **Summary of Meeting Dates and Places and Listing of Committee Members**

The task force met in the State Capitol in Pierre on July 23, 2012, and in Brookings on September 25, 2012. The task force will hold a third meeting in Aberdeen on December 10-11, 2012.

Members of the committee include Rep. Brian Gosch (Chair), Sen. Mike Vehle (Vice Chair); Senators Jason Frerichs, Jim Hundstad, and Russell Olson; Representatives Spencer Hawley, Tom Jones, and Kim Vanneman; and Mr. Dennis Duncan, Mr. Mike Jaspers, Mr. Brad Johnson, Mr. Rick Sommers, Mr. Paul Symens, and Mr. George Vandel.

Committee staff members are Tom Magedanz, Principal Research Analyst; and Kris Schneider, Legislative Secretary.

## **RULES REVIEW COMMITTEE**

### **Study Assignment**

A review of proposed state agency rules.

### **Summary of Interim**

As reported earlier, the Interim Rules Review Committee has had an interesting summer. The committee was asked to review rules relating to body grip traps, publication rates for public entity legal notices, and the octane rating of gasoline just to mention three of the more controversial subjects considered by the committee. These issues and the regular review of more than 66 different sets of rules from the executive branch agencies consumed the committee's time and attention.

The Game, Fish and Parks Department proposed rules to clarify the size and placement of certain traps on public land. The agency had to balance the interests of the trappers and the public regarding the use of these deadly traps. The rules as originally presented to the committee were unacceptable and were sent back to the agency to solicit additional comment from the interested parties. The agency sought further input from the trappers. After consideration of the committee's comments and additional comment from others, the rules were changed, presented to the committee, and approved.

The Bureau of Administration is required by statute to review the publication rates that legal newspapers may charge public entities to publish certain notices in the newspaper. The Bureau, at the suggestion of the newspapers, sought to amend rules to increase the publication rates. However some public entities objected to the rate increase at the Rules Review hearing on August 14<sup>th</sup>. As a result of the public entity comment, the committee voted to hold a hearing to suspend the rules. However before the suspension hearing scheduled for the September 12<sup>th</sup> meeting could be held, the Bureau withdrew the rules.

The Department of Public Safety determined that gasoline with an Octane rating of 85 was being sold in areas of the state where that gasoline had not been sold before. They also determined that certain pumps were labeled as 87 Octane were dispensing 85 Octane gas. The agency reviewed its statutory and rule authority and discovered that its authority to enforce its understanding of where 85 Octane may be sold was not clear. The agency proposed emergency rules to address its enforcement authority and to provide time to sort out the issues. Although the Legislative Research Council reviews emergency rules for legality and the statement that the emergency rules are necessary, the committee does not have formal authority to review emergency rules. Emergency rules end after 90 days. If an agency needs to act beyond that 90 day timeframe, the agency must propose permanent rules and then the usual rules review process is implemented. The agency presented the emergency rules to the committee to inform them and then presented the permanent rules to the committee later. The committee was unable to agree to the permanent rules. The committee deferred final action on the permanent rules until the September 12<sup>th</sup> meeting. This delay allowed the agency to consider the concerns raised by the committee and the public. As a result the agency revised the proposed rules to add a sunset provision to repeal the rules as of June 30, 2013. This action broke the log jam and the committee accepted the rules knowing that the Legislature will address this issue during the 2013 session. As a result, 85 Octane may be sold in its traditional western markets but not sold in the areas in the eastern

two-thirds of the state.

### **Listing of Legislation Adopted**

No legislation is proposed as of the date of this report.

### **Summary of Meeting Dates and Places**

The Rules Review Committee met via the Dakota Digital Network (DDN) in Pierre and at other teleconferencing sites in the state on the following dates: March 1, 2012; April 3, 2012; May 29, 2012; July 10, 2012; August 14, 2012; and September 12, 2012. The committee is scheduled to meet on November 13, 2012, and has tentatively set December 19, 2012, to consider any rules that need to be considered before the legislative session begins.

### **Listing of Committee Members**

Committee members were Senator Jean Hunhoff (Chair); Senators Angie Buhl and Mike Vehle; and Representative R. Shawn Tornow (Vice Chair) and Representatives Roger Hunt and Peggy Gibson.

### **Listing of Staff Members**

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

## **SOUTH DAKOTA DEVELOPMENTAL CENTER WORK GROUP**

The South Dakota Developmental Center Work Group consists of seven members; four legislators and three representing Community Support Providers (CSPs).

### **Study Assignment**

The work group was formed as a result of the Department of Human Services agency review during the 2011 interim. The mission of the work group is for further analysis to position the South Dakota Developmental Center in Redfield for its optimal use of campus and resources to meet the needs of the citizens of South Dakota.

### **Summary of Interim**

The South Dakota Developmental Center (SDDC) Interim Work Group held its meeting on October 25, 2012. Laurie Gill, Secretary of the Department of Human Services, gave a brief overview of the history of the SDDC. Ted Williams, Director of the SDDC, discussed the mission and programs at the facility. The facility strives to provide individualized treatment services and supports to people with developmental disabilities and challenging behaviors only when needed services are not available in a community setting. The FY13 budget is \$24,446,398 (Federal Funds - \$13,347,809; General Funds - \$10,106,444; and Other Funds - \$992,145). The SDDC has 395.6 FTE and a 16.4% employee turnover rate. The average population of the facility in FY12 was 139 people. The population has been trending downward since its peak in 1963 of 1,199 people. It is no longer the norm for people to come to the SDDC to live out their lives and the current average length of stay is 7.1 years.

There are three programs at the facility offering supports to people depending on their needs and cognitive functioning. Program One has a capacity of 60 men and provides structured living areas and a transitional living area. Program Two is the Turtle Creek Youth Program which provides structured living and transitional living for up to 30 male and 10 female adolescents. The Program Three "Cottages" has capacity to serve 50 people (men and women) and currently has 42 people. The services provided by these programs include: mental health services; health care services; dietary services; vocational training; and therapeutic recreational services.

The department provided very detailed information regarding all of the buildings and property of the SDDC facility. The committee heard that one dorm was closed on October 1<sup>st</sup>. Two parcels of land are currently being leased for \$1,198 and the SDDC received \$136,432 from the School and Public Lands Permanent Trust Fund in FY12. There are no current plans to build or make renovations to any facilities. The plant operations budget for the upkeep of the property for FY13 is \$2,287,097 of which \$452,919 is utility costs.

There is a close relationship with the City of Redfield and Spink County as well as the School District. The Committee heard public testimony from the Mayor of Redfield, Spink County Commissioner and Executive Director of Grow Spink, Spink County Sheriff, and Absolutely Aberdeen and Prairie Vision. All those testifying spoke favorably of the SDDC and encouraged continued communication and cooperation.

Secretary Gill discussed the "Rebalancing Initiative" that the department has been working on

for over a year under her leadership. She indicated the SDDC is committed to transitioning people into community-based settings while providing high levels of support to people remaining at SDDC. She outlined the following topics to the committee:

GOAL: Reduce population in order to serve people with available qualified employees.

CHALLENGES: 1) Maintaining adequate staffing at SDDC. Efforts have been made in the past decade to change salary structure and position classifications and enhance recruitment strategies, but they continue to struggle with filling direct support positions. 2) Building community capacity and supports. 3) Establishing a structure/system to manage a more challenging population in the community.

ADDITIONAL OUTCOMES: 1) Through attrition, SDDC will be able to reduce the number of FTE required for direct support positions. 2) The developmental disability service delivery system will be able to support people transitioning from SDDC.

The work group agreed to the following findings:

1. The department's Rebalancing Initiative is going in the right direction.
2. Crisis intervention including transitioning back to the community needs to be further explored.
3. Further workforce recruitment and development is needed at SDDC as well as in the communities.
4. There needs to be transparency with the community partners (CSPs) so both know the kinds of services that will best assist individuals in need.
5. The department should continue to review the vision of the SDDC to ensure it is efficiently serving the needs of the state of South Dakota.

### **Listing of Legislation Adopted**

No legislation was proposed.

### **Summary of Meeting Date and Places and Listing of Committee Members**

The work group held its meeting at the State Capitol in Pierre on October 25, 2012.

Committee members were: Senator Jean Hunhoff, Chair; Senator Jim Hundstad, Representative Melissa Magstadt, Representative Peggy Gibson, Ms. Gloria Pearson, Ms. Anne Rieck McFarland, and Mr. Brad Saathoff.

Staff members were: Sue Cichos, Principal Fiscal Analyst; Amanda Reiss, Legislative Attorney; and Kris Schneider, Senior Legislative Secretary.

## STATE-TRIBAL RELATIONS STUDY COMMITTEE

### Study Assignment

The State-Tribal Relations Study Committee is an ongoing interim committee that was created in statute (SDCL 2-6-20 through 2-6-23) 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 by 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 such issues.

### Summary of Interim

The State-Tribal Relations Study Committee held two meetings during the 2011 Interim: a meeting at the Capitol in Pierre on June 27, 2012, and a meeting in Pierre on September 27, 2012. Representative Tom Brunner served as Chair and Senator Ryan Maher as Vice Chair for the 2011-2012 interims.

June 27, 2012 – Pierre. At the June 27 meeting in Pierre, the committee heard presentations by state agencies on topics affecting South Dakota's Native American population. Secretary J.R. LaPlante of the Department of Tribal Relations briefed the committee on his goals and activities for the department, which was newly created in 2011. He introduced new members of his staff and stated that they are identifying contact persons in each state agency, and he noted that one of the major purposes of the new department is to increase tribal access to state government. He also stated that Governor Daugaard has completed visits to every reservation and that these visits have been well received. He stressed the idea that the department's goal is to improve government-to-government relationships with the tribes and state agencies and entities. To do this it is necessary to know what the tribes need and want and to establish a permanent relationship, not just a temporary event.

Mr. Roger Campbell, Director of the Office of Indian Education, Department of Education, briefed and updated the committee on his office's activities and goals. He discussed the GEARUP and SD College Access programs and the Oceti Sakowin Essential Understanding and Standards document dealing with curriculum and course work in Native American history and culture. He also discussed the South Dakota Indian Education Summit held in September in Chamberlain.

Ms. Laurie Feiler, Deputy Secretary, Department of Corrections, discussed the department's role relating to the Native American inmate population and programs the department has in place to meet the needs and special circumstances of this group. Currently, 29.3% of South Dakota's inmate population is Native American. The department has implemented a number of programs and activities over the years to address inmates' cultural and spiritual needs. She discussed the department's cultural awareness group, which was established nine years ago, and she noted that each tribe has a tribal liaison with the prisons. The department also sponsors a Reentry Council to reduce recidivism rates, which are higher for Native Americans, but have been going down recently.

The committee also heard public testimony at this meeting.

September 27, 2012 – Pierre. The committee's second meeting was held on September 27 in Pierre and addressed topics relating to economic development. Ms. Tanya Fiddler, Executive Director of the Four Bands Community Fund, Eagle Butte, described her organization's operations. Four Bands is a nonprofit, Native community development financial institution that attempts to assist people in building sustainable small businesses and also focuses on workforce development. She also stressed the need for better banking relationships and noted that there is a serious predatory lending problem in reservation areas. Another problem area for economic development is lack of infrastructure for new businesses. Four Bands has granted more than \$4 million in business loans and have helped more than 100 businesses of various sizes.

Ms. Michelle DuBray discussed the Native Entrepreneur Investment Fund, a newly formed, statewide lending program for Native Communities. Mr. David Whitebull, Loan Portfolio Manager with Lakota Funds, of Kyle, SD, described their program on the Pine Ridge Reservation. Lakota Funds has loaned \$5.8 million to over 430 businesses. He also stated that the Lakota Federal Credit Union just received its charter and is the only financial institution on the reservation. Ms. Eileen Briggs, Executive Director of Tribal Ventures in Eagle Butte, discussed the Tribal Ventures program, which involved a \$9.5 million grant to the Cheyenne River Sioux Tribe to support economic development projects. Dr. Michael McCurry, State Demographer with SDSU, discussed demographic trends impacting Native Americans and noted that it is important that any business hiring Native American workers be aware of cultural differences. Ms. Courtney Two Lance, Executive Director of the Oglala Sioux Tribe Credit and Finance Program, discussed her office's role in preparing certificates of approval for leasehold mortgages on tribal lands and other issues.

Ms. Stacey LeCompte, Executive Director, Wakpa Sica Reconciliation Place, Ft. Pierre, informed the committee that Wakpa Sica funding had been lost but that other funding is being sought. She also noted that the United Sioux Tribes organization is being dissolved and will be replaced by The Great Sioux Nation of South Dakota. Mr. Nathan Lukkes and Ms. Kim Easland, Governor's Office of Economic Development, discussed the state's economic development efforts and programs and possible opportunities for cooperation between the tribes and the state on economic development issues. Secretary Jim Hagen, Department of Tourism, discussed working with the tribes to promote tourism on tribal lands. Secretary J.R. LaPlante, Department of Tribal Relations summarized information relating to economic development efforts and noted that there are many opportunities for private enterprise in Indian country and that there are many positive things happening.

The committee also heard public testimony at this meeting.

### **Listing of Legislation Adopted**

None

### **Summary of Meeting Dates and Places and Listing of Committee Members**

The committee met in the State Capitol in Pierre on June 27 and September 27, 2012.

Members of the committee included Rep. Tom Brunner (Chair), Sen. Ryan Maher (Vice Chair); Senators Jim Bradford, Russell Olson, Billie Sutton, and Craig Tieszen; and Representatives Ed Iron Cloud III, Kevin Killer, Patricia Stricherz, and Mike Verchio.

Committee staff members were Tom Magedanz, Principal Research Analyst; and Cindy Tryon, Legislative Secretary.