

South Dakota Legislative Report  
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The 2017 South Dakota legislature convened Jan. 10 and adjourned Mar 27. They met for 38 days and considered 390 bills. The State's economy is still driven by agriculture and with commodity prices low, revenue estimates were less than anticipated. Legislators cut \$71 million from a \$4.6 billion dollar 2018 budget (\$10 general fund, \$24.7 federal fund expenditure authority, and \$36 million other fund authority). They also reduced full time equivalent employees by 41.6 positions. Resolving the budget shortfall was the number one issue of the session.

### **POLITICAL MAKEUP**

Republicans dominate statewide voter registration, but Independent registrations surged in 2016 from 84,727 to 118,603. Republicans were 252,084, Democrats 170,655.

Republicans hold every statewide elected office. That includes the U.S. Congress, Governor, Lt. Governor, Attorney General, Treasurer, Auditor, Secretary of State, Commissioner of School and Public Lands, and three elected Public Utilities Commissioners (PUC).

Legislative makeup is: House of Representatives: 70 members - 60 Rep, 10 Dem.  
Senate: 35 members – 29 Rep, 6 Dem.

Terms for both House and Senate members are two years. Members are term limited to 8 years per side, but can switch and start anew. There were 27 NEW members of the 105 in 2017. More importantly, conservative R members became a majority of the Senate R's. They replaced most of the committee chairs and installed their own. Many of them are still bristling over a one half cent sales tax increase passed in 2016 (\$100 million proceeds to education), because it followed a 6 cent gas tax, license and registration fee increase (\$85 million proceeds to roads and bridges) which passed in 2015. The Governor had intended to expand Medicaid in 2017, but pulled back because of finances and the uncertainty of the Affordable Care Act.

Congresswoman Kristi Noem won reelection in 2016 and then announced her candidacy for Governor in 2018 creating an open U.S. House seat in 2018. The vacancy has already attracted former PUC Commissioner Dusty Johnson and current Secretary of State Shantel Krebs who are both running. Billie Sutton, Senate Minority Leader has declared

for Governor and SD Attorney General Marty Jackley is challenging Noem for the Republican nomination.

It only takes 17,000+ signatures to get on the SD ballot and so outnumbered legislative Democrats have successfully done so the past few election cycles. In 2016, they supported 5 separate measures of the 10 considered. But the most significant of them all was Initiated Measure 22 brought by an outside group called Represent Us. It passed 51.62% to 48.38% and imposed draconian limits on gifts to legislators and candidates, established a State Ethics Commission, and created publicly funded elections.

The legislators repealed it during session as it was clearly unconstitutional and passed several measures replacing the most popular part of IM22. Despite that, public discontent is high and similar measures are circulating now.

Bills of Interest:

## **HOUSE BILLS**

**[HB 1012](#). REVISE CERTAIN PROVISIONS RELATED TO WIND AND SOLAR EASEMENTS.** To House Commerce and Energy. Do pass 13 to 0. Deferred. Passed by the House 67 to 0. To Senate Commerce and Energy. Do pass 7 to 0. Consent Calendar. Passed by the Senate 34 to 0. Signed by the Governor.

Brought by the PUC, the bill establishes solar easements as a real property right. It then defines their characteristics by inserting “or solar” into the existing wind easements statutes. Flew thru the legislature.

**[HB 1071](#). REQUIRE THE APPROVAL OF THE LEGISLATURE BEFORE ANY HIGH LEVEL NUCLEAR WASTE MAY BE PROCESSED OR DEPOSITED WITHIN STATE BOUNDARIES.** To House State Affairs. Do pass 12 to 0. Deferred. Passed by the House 67 to 1. To Senate State Affairs. Do pass 9 to 0. Deferred. Passed by the Senate 33 to 0. Signed by the Governor.

Current law (SDCL 34-21-1.1) prohibits “the containment, disposal, or deposit of high level and nuclear fuel cycle wastes, defense wastes, radioactive substances, or radioactively contaminated materials or the processing of high level nuclear waste” without Governor approval. He may request legislative approval. Uranium ore or uranium mine tailings are not affected. The DENR Secretary approves low level nuclear waste. The bill would require legislative approval for high level waste. TJ Gabriel, a rancher, was the primary proponent and suggested that the legislature was closer to the

people. The legislature agreed and when Nathan Sanderson of the Governor's office appeared in support of the bill, passage was assured.

**HB 1081. REVISES CERTAIN PROVISIONS FOR ESTABLISHING A TRUST FOR AN UNLOCATABLE MINERAL OWNER.** To House Judiciary. Amended. Do pass as amended 12 to 0. Passed the House as amended 68 to 0. To Senate Agriculture and Natural Resources. Do pass as amended 9 to 0. Consent Calendar. Passed the Senate as amended 35 to 0. Signed by the Governor.

Revises the provisions for establishing a trust for an unlocatable mineral owner. A product of the State Bar Association natural resources committee, it improves language enacted in 2013 allowing a trust to be created for mineral proceeds to be deposited if the owner cannot be located. Harding County supported the bill suggesting that the costs of the single trust they held outweighed the proceeds of the trust.

**HB 1098. REVISE CERTAIN PROVISIONS REGARDING THE NOTICE REQUIREMENTS OF COUNTY COMMISSIONS IN AUTHORIZING INSTALLATION OF UTILITY LINES ALONG AND ACROSS HIGHWAYS.** To House Local Government. Deferred. Do pass amended 13 to 0. Consent Calendar. Deferred. Passed the House as amended 66 to 0. To Senate Local Government. Do pass 6 to 0. Consent Calendar. Passed the Senate as amended 34 to 0. Signed by the Governor.

Brought by the townships, the bill requires that the townships be provided notice of county meetings regarding utility crossings. In its original form, it also inserted the townships into the state and county approval process over entities with authority over pole installation, fixtures, guy wires, etc. DOT, the counties and the other utilities all concluded that that interference was a nonstarter. The townships removed that portion of the bill to satisfy our concerns. It passed in that form.

**HB 1145. DEFINE A NO-GO ZONE AND CREATE A PROCEDURE TO MANAGE NO-GO ZONES.** To House Judiciary. Withdrawn at request of prime sponsor.

Introduced by freshman Rep. Goodwin (R-Rapid City), it was poorly written, but defined "no-go zones" as a "contiguous geographical area consisting of public space or privately owned public space where community organizing efforts systematically intimidate or exclude the general public or public workers from entering or being present within the area." It went on to compel the Attorney General to work with the Dept of Justice to minimize the no go zones. He withdrew the bill because he couldn't find support.

**[HB 1166](#). REVISE CERTAIN PROVISIONS REGARDING OPEN RECORDS.** To House Judiciary. Deferred to the 41<sup>st</sup> day 8 to 3.

Brought by Rep. Greg Jamison (R-Sioux Falls), the bill amended open records statutes to require that the terms of any civil or criminal settlement between the state, county, city, school **or any other party** may not be confidential unless the court orders it so. After Jamison's testimony, there were about 12 opponents, including us and the PUC.

**[HB 1181](#). PROHIBITS HYDRAULIC FRACATURING.** To House Commerce and Energy. Deferred. Deferred to the 41<sup>st</sup> day 9 to 4.

Representative Bordeaux (D-Mission) brought HB1181. It's identical to the bill he brought last year (HB 1197) which died 12 to 1 in House Agriculture at its first hearing. It defined hydraulic fracturing as, "a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock" and then stated that, "notwithstanding any other provision of law, no person may engage in hydraulic fracturing in this state." Bordeaux was the sole proponent, Willard was the sole opponent speaking on behalf of the American Petroleum Institute.

**[HB 1190](#). ACCOMMODATE LEGISLATION RELATING TO THE PROTECTION OF PUBLIC SAFETY.** To House State Affairs. Withdrawn at request of prime sponsor.

There are discussions taking place between the Governor's office and a handful of legislators about how to respond to a Dakota Access Pipeline like protest on private lands in SD. The bill is a placeholder for those conversations and reads in its entirety, "When private lands are In case a title regarding the protection of the safety of the citizens of South Dakota is needed to accommodate the legislative process, this bill is being introduced to accomplish that purpose." The title is broad enough and the protagonists aggressive enough that we're watching it closely. In the end, the bill was withdrawn when the Governor introduced SB 176.

**[HB 1200](#). REVISE CERTAIN PROVISIONS REGARDING CONTRIBUTIONS TO BALLOT QUESTION COMMITTEES.** To House Judiciary. Amended. Deferred. Do pass amended 9 to 3. Passed the House as amended 42 to 25. To Senate Judiciary. Deferred to the 41<sup>st</sup> day 5 to 2.

Introduced by a large group of legislators from both parties with Rep. Mark Mickelsen leading the group, it tried to make it more difficult for ballot question committees by requiring that any organization contributing more than \$50,000 in an election cycle file a supplemental report identifying "the name, address, occupation, and current employer

of each of the 100 largest contributors to that organization during the previous 5 years. It was amended to be a little less onerous, but died in Committee with opposition from the NRA, Americans for Prosperity, the Family Heritage Alliance, the State Chamber, the Retailers, and others. We helped finance a constitutional query but didn't testify.

**[HCR 1013](#). TO URGE THE UNITED STATES DEPARTMENT OF STATE TO APPROVE THE PRESIDENTIAL PERMIT APPLICATION ALLOWING THE CONSTRUCTION AND OPERATION OF THE TRANSCANADA KEYSTONE XL PIPELINE BETWEEN THE UNITED STATES AND CANADA.** Passed the House 47 to 10. Passed the Senate 26 to 7.

There were 66 Republican sponsors on a resolution supporting the XL Pipeline. It adds that it should be done "in order to strengthen energy security, provide for critical pipeline infrastructure to achieve North American energy independence and to stimulate the economy and create jobs." The resolution quantifies demand, mentions Canada's trusted neighbor status, states that the pipeline is safer than alternatives, and touts the economic benefits of construction. Last year the body passed [HCR 1008](#) (53 to 10 and 23 to 9) which "urged Congress to ask the United States Secretary of State to approve the Keystone XL pipeline project...."

## **SENATE BILLS**

**[SB 27](#). PROHIBIT CERTAIN DIRECT CONFLICTS OF INTEREST BY PUBLIC OFFICIALS AND TO PROVIDE A PENALTY THEREFOR.** To Senate Judiciary. Do pass 7 to 0. Deferred. Amended. Passed the Senate as amended 33 to 0. To House Judiciary. Amended. Do pass amended 9 to 3. Passed the House as amended 58 to 9. Senate concurred in amendments 30 to 5. Signed by the Governor.

Brought by the Attorney General, it states that a public official may "only use the powers and resources of public office to advance the public interest and not to obtain any personal benefit or pursue any private interest". It defines public official quite broadly and would allow a Class 5 or 6 felony to be imposed.

**[SB 54](#). REVISE CERTAIN PROVISIONS REGARDING CAMPAIGN FINANCE REQUIREMENTS.** To Senate State Affairs. Deferred. Amended. Deferred. Amended. Do pass amended 5 to 4. Amended by the Senate. Passed the Senate as amended 19 to 16. To House State Affairs. Hoghoused. Do pass amended 10 to 3. Amended by the House. Passed the House as amended 55 to 12. Senate failed to concur, appoint Conference Committee passed. Conferees appointed. Amended. Senate Concurred 23 to 12. House concurred 61 to 6. Signed by the Governor.

Brought by the Secretary of State, it's a 45 page bill that has been amended throughout the process. It tightens definitions, limits transfers between political entities, increases reporting, imposes contributions limits, etc. Many of the original more restrictive changes were rolled back on the Senate floor.

**SB 59. DELAY THE EFFECTIVE DATE FOR INITIATED MEASURES AND REFERRED LAWS.**

To Senate State Affairs. Do pass amended 6 to 1. Passed the Senate as amended 28 to 7. To House State Affairs. Do pass 10 to 2. Deferred House. Passed the House as amended 53 to 14. Signed by the Governor.

Unless stated otherwise, ballot measures and initiated measures become law once the State Canvassing Board completes its official canvas of the votes cast in the general election. Brought by Senator Jim White, the bill changes the effective date for initiated measures and referred laws to July 1; similar to most laws created by the legislature, and also the start of the state fiscal year. It was amended in the Senate to strike a provision containing an emergency clause when White discovered that it could not be referred if passed in 2017.

**SB 60. REVISE CERTAIN PROVISIONS REGARDING THE SALE OF CONSUMERS POWER DISTRICT ASSETS.** To Senate Commerce and Energy. Do pass 6 to 1. Passed the Senate 34 to 1. To House Commerce and Energy. Do pass 11 to 0. Consent Calendar. Passed the House 63 to 0. Signed by the Governor.

Brought by Heartland Consumer Power District, it would allow them to sell any asset to whomever they wish. Current law limits such a sales to rural electric associations or public entities. Their specific intent is to sell a fractional interest in a generation facility in Wyoming.

**SB 65. ESTABLISH THE SOUTH DAKOTA BOARD OF TECHNICAL EDUCATION AND TO REVISE CERTAIN PROVISIONS REGARDING CAREER AND TECHNICAL EDUCATION AND POSTSECONDARY TECHNICAL INSTITUTES.** To Senate Education. Do pass 6 to 0. Passed by the Senate 33 to 0. To House State Affairs. Do pass 11 to 0. Deferred by the House. Fiscal note requested. Passed by the House 65 to 2. Signed by the Governor.

Last year, the legislature placed Constitutional Amendment R on the ballot to allow the technical schools to govern themselves. It won narrowly. The bill defines and provides that power to a 9 member Board appointed by the Governor from names submitted by the technical institutes. Thru the SDEUC, the companies contributed \$15,000 to that campaign. Everyone is supportive of the change, but they also wonder when the funding requests will begin.

**SB 71. REVISE CERTAIN PROVISIONS OF THE REINVESTMENT PAYMENT PROGRAM.** To Senate State Affairs. Do pass 9 to 0. Passed the Senate 34 to 0. To House State Affairs. Do pass 12 to 0. Passed the House 63 to 4. Signed by the Governor.

Adds advanced telecommunications to the list of projects eligible for tax relief from the Governors Office of Economic Development. To be eligible, projects must be larger than \$20 million or equipment upgrades larger than \$2 million. Advanced telecommunications is defined as broadband with speeds at least 25 megabits down and 3 megabits up.

**SB 77. PROVIDE FOR A FISCAL NOTE FOR ANY INITIATED MEASURE OR INITIATED AMENDMENT TO THE CONSTITUTION THAT WOULD HAVE A FISCAL IMPACT ON THE STATE.** To Senate State Affairs. Do pass amended 6 to 2. Deferred. Passed the Senate as amended 27 to 5. To House State Affairs. Do pass 10 to 3. Deferred. Passed the House as amended 47 to 21. Signed by the Governor.

Brought by Senator Ernie Otten (R-Tea), it requires the director of the Legislative Research Council to determine if a proposed measure has a financial impact. If it does, then LRC is compelled to prepare an estimate of that impact which would be published alongside the measure throughout the election process.

**SB 80. REGULATE THE USE OF DRONES UNDER CERTAIN CONDITIONS AND TO PROVIDE A PENALTY THEREFOR.** To Senate State Affairs. Reassigned to Senate Local Government. Do pass amended 5 to 1. Amended by the Senate and passed 26 to 9. To House Transportation. Amend the amendment. Do pass amended 10 to 1. Deferred. Passed the House as amended 61 to 4. Senate failed to concur, appoint Conference Committee passed. House Conference Committee appointments. Senate Conference Committee report adopted, passed 32 to 0. House Conference Committee report adopted, passed 63 to 3. Signed by the Governor.

Brought by Senator Art Rusch (R-Vermillion), it defines drones, compels their operation to be consistent with federal law, defines unlawful activities, and creates penalties for those using a drone to cause harm.

**SB 88. REVISE THE DEFINITION OF AN ELECTRIC TRANSMISSION FACILITY.** To Senate Commerce and Energy. Do pass 7 to 0. Consent Calendar. Passed by the Senate 33 to 0. To House Commerce and Energy. Do pass 13 to 0. Deferred by the House. Passed by the House 64 to 2. Signed by the Governor.

Brought by Avangrid Renewables, a wind company, it allows a transmission line shorter than a half mile meeting certain conditions to be constructed without having to be permitted by the PUC. We helped as the transmission line they are building connects to an Xcel substation. Kolbeck testified for our group. Committee member Al Novstrup (R-Aberdeen) said it was the best bill he'd seen all session. We explored the Commission's appetite to ease approval for longer lines. They didn't have one.

**SB 104. PROTECT CERTAIN EASEMENT HOLDERS AND RURAL CUSTOMERS FROM SHUTOFFS BY CERTAIN ENERGY COMPANIES.** To Senate Commerce and Energy.

Deferred. Amended. Deferred. Do pass amended 5 to 2. Passed the Senate as amended 31 to 3. To House Commerce and Energy. Do pass 10 to 3. Deferred. Amended. Passed the House as amended 63 to 2. Senate concurred in amendments, passed 35 to 0. Signed by the Governor.

NorthWestern serves as a vendor to Northern Natural Gas providing service to nearly 200 farm tap customers in the south eastern part of the state. Previous generations provided easements to the pipeline dating back to the 1950's and have installed their own distribution lines to their homes, shops, barns, etc. The contract between Northern and NorthWestern expires December 31, 2017 and NorthWestern has signaled their intent to exit the contract at that time. Northern has said they can't serve the individual farm tap customers and their future service is uncertain. The PUC has facilitated meetings between all parties seeking resolution. The bill was brought by representatives from that area as a placeholder should a legislative solution be required or attainable. Originally, it read in its entirety, "in case a title affecting easement holders and rural customers in the state is needed to accommodate the legislative process, this bill is being introduced to accomplish that purpose." We substantially amended the bill (hoghoused) it to define farm taps and to sort out the liability.

When it was introduced, Senator Bolin and Representative Anderson's SB 104 placeholder read in its entirety, "In case a title affecting easement holders and rural customers in the state is needed to accommodate the legislative process, this bill is being introduced to accomplish that purpose." Its title revealed their motivation – "An Act to protect certain easement holders and rural customers from shutoffs by certain energy customers." They arrived not caring who provided the gas, just that service continued uninterrupted.

When it was introduced, our first thought was that the legislature had no business in a contractual issue. Our second and more alarming thoughts were of the 200+ motivated customers who would be storming the capital demanding that somebody keep their gas

on. We figured that's bad for NorthWestern, Northern, utilities in general, but particularly for the Commission who are susceptible to public pressure. In this particular instance, most of the PUC "solutions" were miserable for the investor owned.

We went to both sponsors to discern their intentions and discuss some alternatives. We decided to try to make something productive of the bill and they agreed to let us. We began negotiations with the PUC at that time. Northern came to the original committee hearing in opposition to our fix. They also hired a lobbyist who worked against us from the outset. And opposed us throughout the process until we forced them to support the final House version. We did pretty much achieved everything we sought and that was ONLY possible because of our ongoing relationship with the affected legislators, committees, etc. Because we started from scratch, the entire outcome was essentially a "trust me" deal. We are very hopeful that the parties come to an agreement before the 2018 session.

**SB 151. CREATE A COMPLAINT PROCEDURE TO RESOLVE ALLEGATIONS OF MISCONDUCT REGARDING CERTAIN PUBLIC OFFICIALS.** To Senate State Affairs. Deferred. Amended. Do pass amended 6 to 3. Passed the Senate as amended 19 to 16. To House State Affairs. Amended. Do pass amended 13 to 0. Passed the House as amended 64 to 3. Senate failed to concur, appoint Conference Committee passed. House Conference Committee appointments. Senate Conference Committee report adopted, failed 16 to 19. Back to Conference Committee. Amended. Senate Concurred 18 to 17. House Concurred 65 to 2. Signed by the Governor.

Brought by Senate leadership, the bill defines to whom a complaint would be lodged depending upon the complaint. Legislative complaints would go to the operations and audit committee. Candidate complaints to the Secretary of State. The State Board of Internal Control would receive complaints regarding employees.

**SB 158. IMPOSE A TARIFF ON CERTAIN PIPELINES CARRYING CRUDE OIL AND TO CREATE A CRUDE OIL PIPELINE COMPENSATION FUND THAT MAY BE USED IN THE EVENT OF A CRUDE OIL SPILL.** To Senate Taxation. Deferred to the 41<sup>st</sup> day 6 to 1.

Brought by eight Democrats (which portended defeat), the bill did several things. It exempted crude oil pipeline companies that transport "on average less than ten thousand barrels of crude oil per day." It established a tariff of twenty percent "on the value of each length of pipe not manufactured in the United States" used in this state. It established a crude oil pipeline compensation fund. Caps its balance at \$30 million. Gave rulemaking ability to the Secretary of Revenue to administer the fund. And specified that it pay only for incidents larger than \$10,000.

**SB 171. ESTABLISH THE GOVERNMENT ACCOUNTABILITY TASK FORCE TO STUDY GOVERNMENT, CAMPAIGN FINANCE, LOBBYIST RESTRICTIONS AND ETHICS, AND TO DECLARE AN EMERGENCY.** To Senate State Affairs. Amended. Do pass as amended 8 to 1. Passed the Senate as amended 34 to 0. To House State Affairs. Amended. Do pass as amended 13 to 0. Passed the House as amended 54 to 12. Senate failed to concur, appoint Conference Committee passed. House Conference Committee appointments. Senate Conference Committee report adopted, passed 27 to 7. House Conference Committee report adopted, passed 61 to 5. Signed by the Governor.

Lots of sponsors from both parties. It establishes a task force of members appointed by the Senate and House; Auditor General, Governor, Secretary of State, and the Attorney General to spend the summer studying campaign finance, ethics and lobbyists. Appointments would be made by May 31, 2017 with recommendations to be completed by December 31, 2017. Those recommendations could then be acted upon by the 2018 legislature.

**SB 176. TO AUTHORIZE THE CREATION OF PUBLIC SAFETY ZONES, TO AUTHORIZE CERTAIN ACTIONS TO BE IMPLEMENTED BY THE GOVERNOR AND TO PROVIDE CERTAIN PENALTIES.** To Senate State Affairs. Amended. Do Pass as amended 6 to 3. Failed to Pass the Senate 21 to 14 (needed two-thirds approval). Amended. Passed the Senate 21 to 14. To House State Affairs. Amended. Do pass as amended 11 to 2. Reconsidered by the House. Amended. Passed the House as amended. 49 to 18. Senate failed to concur, appoint Conference Committee passed. House Conference Committee appointments. Senate Conference Committee report deferred. House Conference Committee report adopted, failed 45 to 22. Immediate consideration. House Conference Committee report adopted, passed 55 to 12. Signed by the Governor.

Brought by the Governor's office, the bill adds language to the statutes that state, "upon the occurrence of an event that may consume significant public resources, poses a threat to public or private property, and poses a threat to the health and welfare of the public, the Governor may declare any location within the state to be a public safety zone..." It then grants specific authority to control ingress and egress to the zones and creates penalties for violators.