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TO: South Dakota Railroad Board  
FROM: Jack Dokken, Program Manager  
DATE: May 10<sup>th</sup>, 2018  
SUBJECT: Railroad Fencing Program

This memo is to provide the Railroad Board background information on SDDOT's railroad fencing program and request the Board to consider whether any changes need to be made in administering the program.

Our current process has been that if the Department receives a request from an owner of land abutting state-owned railroad right of way to install, or rehabilitate a fence, the landowner is eligible for reimbursement of materials used to complete the project. SDDOT has been providing the reimbursement to the landowner and we have been administering the program this way since 1988. Payment for materials reimbursement has been paid out of the Railroad administration fund. Costs associated with this responsibility have ranged from \$3,700 to \$8,500 annually, the past 3 years.

The requirement for payment of materials is pursuant to SDCL 49-16A-91:

Fenced lands--Duty of railroad to fence along right-of-way--Type of fence--Maintenance. If the owner of a tract of land abutting on a road within this state plans to inclose the tract and constructs a good and sufficient fence about the tract on all sides except along the side abutting the road, the railroad shall supply the landowner with the materials needed to construct a fence not less than four and one-half feet high. If the owner incloses a tract of land with a woven wire fence with wires crossing each other close enough to keep sheep and hogs confined, the railroad shall supply the landowner with the materials needed to construct a like fence along its right-of-way on the side of the tract so far as it extends along the road. The railroad shall maintain or supply the materials to maintain the fence in

good repair and condition until released by the owner of the tract, or until the owner of the tract ceases to maintain his portion of the fence in good repair and condition for one year.

The definition of a railroad can be found in SDCL 49-16A-1(5):

"Railroad," any association or corporation, or other entity, other than a state agency or authority, engaged in operating a common carrier by rail regardless of motive power used, excluding street railroads[.]

As such, fencing materials reimbursement is the responsibility of the railroad but based on the definition, the State is excluding from the requirement. Any railroad operator, whether on private or public railroad line would not be excluded. We do not have historical documentation on reasons why the State elected to be the entity responsible for payment to the landowner.

Therefore, we are requesting the Board discuss this topic, and decide if funding for the fencing program should continue to be reimbursed by the State. The Department's recommendation is the Railroad Board continue funding the program based on the limited number of requests, timeliness of providing reimbursements and the low cost associated with the projects; however, if the Board agrees with this recommendation, we suggest the railroad trust fund be used to cover future reimbursements.