



Department of Transportation

Division of Secretariat

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MEMORANDUM

Date: September 12, 2018

To: South Dakota State Railroad Board

From: Joel Jundt, Deputy Secretary

Subject: Fencing Program

On May 16, 2018, the Railroad Board discussed the fencing program and how to fund the program in future years. If you will recall, the requirement for payment of fencing 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 is under 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[.]

At the meeting it was clarified that fencing material reimbursement is the responsibility of the railroad and based on the definition, the State is excluded from the requirement. The railroad operator, whether on private or public railroad line, would not be excluded.

During the May meeting, the Railroad Board approved an annual funding amount of \$25,000 towards fencing projects with a maximum limiting amount of \$5,000 per project on state owned lines. To date, the Railroad Office has executed two fencing agreements totaling \$8,300 leaving a balance for the fiscal year 2018 fencing program at \$16,700.

Recently, Mr. Wilcott who is an adjacent landowner along the MRC line submitted two fencing project applications at \$13,000 each for a total request of \$26,000. The projects are located west of Oacoma in the area known as the “gorge”. The request is to provide fencing for approximately 3 miles on either side of the railroad which equates to approximately 31,680 feet of fence. The fence is in dire need of repair as five cattle owned by this landowner have been struck by a train in the past year.

DOT is requesting the Board take action so Mr. Wilcott can decide how to move forward with fencing the property. Possible options are to fully fund the fencing request using the railroad trust fund moneys, pass the expenses onto the operator Dakota Southern, or partially fund the request.

