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According to court papers filed Wednesday, USD responded on July 31, 2009, claiming that certain information requests were denied based upon exemptions in the new law and that USD would charge an estimated fee of \$2,000 to provide the requested information.

Court files show PETA requested 19 pieces of information in the summer of 2009, ranging from protocol revision request forms and veterinary medical records, to video and photographic footage of experiments, and copies of various reports, correspondence and minutes.

Jenski informed PETA that USD staff estimated that the time and materials needed to locate, assemble and reproduce the requested information would cost approximately \$2,000, and would take approximately 20 business days to complete.

PETA was willing to pay up to \$50, and requested all fees associated with providing the requested information be waived because of its non-profit status.

In late October, PETA pared its list of requested documents from 19 to 11. It also asked for copies of three records pertaining to the use of rabbits in experiments at USD.

Jenski responded to this request from PETA with a specific reason for denying nearly every document. In some cases, she noted, the requested document didn't exist. Some of the materials being sought

were exempt from South Dakota public records law to protect specific details of the research.

In some instances, Jenski agreed to provide information, such as meeting minutes pertaining to experiments, but personnel names were redacted in accordance to state law.

PETA states that its request for records will provide members of the public information about the operations and activities of USD, a publicly-funded institution. This information, it states, will also reveal information about the experiments conducted by USD, and USD's response to non-compliance with various laws and policies that exist to address the care of animals used in research.

"The university system has greatly increased the amount of federal grants that they go after, particularly in the bio-medical field," Collier said. "Sometimes those grants, depending on which agency is involved, will require certain kinds of reports that may not end up on the federal Web site, but there still may be some information that is of interest to the general public."

Collier said certain procedures must be followed when filing and serving legal action against a governmental institution.

"A summary of the complaint has been sent to Mr. Shekleton and to the (South Dakota) attorney general," she said Wednesday.

PETA's declaratory judgment request asks that:

- The court require the disclosure of all public records requested by PETA last October, which USD and the Regents have already agreed not to disclose.

- The court requires USD and the Regents to waive the costs of production, or reduce the costs based upon an accurate estimate.

- That USD and the Regents pay all of PETA's attorneys fees, tax and costs incurred by taking this legal action, and

- Any other relief to PETA deemed just by the court.

USD and the Board of Regents have 30 days to respond to the complaint filed Wednesday.

The court action, Collier said, is not a direct attempt by PETA to halt animal research experiments at USD.

"There is public records access law that is now in place in South Dakota, and we believe that the court needs to interpret this in a way that requires USD to open up these records," she said. "USD's argument is proprietary interest ... and in the complaint, we mention that and talk about how that's just not what other courts in states with similar laws have found to be proprietary interests."

PETA, Collier said, is not interested in obtaining information for the purpose of trying to use the research to develop, for example, a saleable product.

Court documents show that PETA is specifically interested in obtaining National Institute of Health (NIH) grant applications and progress reports submitted by Dr. Robert Morecraft, a USD professor in the division of basic biomedical sciences at USD's Sanford School of Medicine.

Morecraft's research centers on central nervous system mechanisms that support one's ability to recover from a stroke. He also is involved in finding the nerve pathways involved in a common neurological movement disorder called dystonia.

PETA claims that Morecraft conducts what it describes as "terribly painful" experiments on monkeys in his research.

"USD has squandered millions of taxpayer dollars to conduct these terribly painful experiments, and now the university wants to waste more money to hide what happened," said PETA Vice President of Laboratory Investigations Kathy Guillermino in a press release issued Wednesday. "Citizens have a right to know how public institutions are spending taxpayer money and how these facilities are treating animals - especially when their actions may constitute violations of the law."

PETA claimed Wednesday that Morecraft "for years has drilled holes into the skulls of monkeys and caused them to suffer strokes by clamping shut a blood vessel in their brains. The injured animals

are then observed as they struggle to grasp food. Morecraft's experiments also include attaching electrodes to the brains of restrained monkeys in order to provoke uncontrollable facial and body movements in the animals. The monkeys are killed at the end of these experiments, and their brains and spinal cords are removed and dissected."

"Everything that we've stated is based on information we've gleaned from his (Morecraft's) grant applications to the National Institute of Health, as well as his journal articles that he has published," Justin Goodman, research supervisor in PETA's laboratory investigation department, based in Washington, DC, told the Vermillion Plain Talk Wednesday. "These are details that are taken from his own materials."

"The focus of this lawsuit is that the university itself is refusing to turn over documents that would include more details not only about the experiments but also what happened to these individual animals that were used in this project," he said. "This is a project that is being funded by taxpayers."

The Plain Talk contacted both Phil Carter of USD's University Relations Office, and Tracy Mercer of the South Dakota Board of Regents office in Pierre Feb. 3. Neither was aware of PETA's legal action taken earlier that day.

Legislation proposed to change the Unemployment Insurance tax system

The South Dakota Department of Labor has worked with the business community, state legislators and other interest groups in developing legislation to modify the Unemployment Insurance (UI) tax system and reduce the employer surcharge payable this year.

SB186 will reduce the surcharge amount for 2010 and 2011, increase the wage base and create a new tax-rate table with higher rates for employers with negative account balances.

"We understand that a recession is the worst possible time for employers to pay a surcharge," said State Labor Secretary Pam Roberts. "The bill will reduce the surcharge amount due this year and next."

An employer surcharge was triggered in the fourth quarter of 2009 and is expected to continue through 2010 and into 2011 if the Trust Fund balance remains below \$16.5 million. Under current law, employers will pay a 1.5 percent surcharge rate on base wages, with a maximum payment of \$142.50 per employee this year and \$150 per employee in both 2010 and 2011.

"SB186 proposes to cap the surcharge rate at one percent, or \$100 maximum per employee in 2010, and 0.75 percent, or \$82.50 per employee in 2011," Secretary Roberts explained.

Like other states, South Dakota has an automatic trigger mechanism when the state Trust Fund is in danger of becoming insolvent. The cur-

rent surcharge system has been in South Dakota law since 1939.

SB186 will also increase the wage base by \$1,000 per year through 2015. South Dakota's current \$10,000 wage base is one of the lowest in the region.

The legislation also ends the current tax-rate table, as of 2009. The new table will increase the maximum tax rate from 8.5 percent to 9.5 percent, with higher rates for employers with negative account balances. In addition, employers will need higher balances in their unemployment accounts for the various tax rates.

"The zero percent tax rate will still remain available to employers," Secretary Roberts said.

To receive a zero percent tax rate under the bill, employers must have \$675 per worker in their accounts in 2010. Currently, that amount is set at \$432.

The proposed legislative changes are projected to provide \$74.4 million for the Trust Fund, bringing the balance to \$1.8 million at the end of 2010.

"The same amount of revenue is necessary for the Trust Fund to become solvent," Secretary Roberts said. "All of the changes in this bill are revenue neutral for 2010."

The Trust Fund continues to pay benefits at an all-time high. For the last week in January, \$1.68 million was paid in state benefits to 6,944 claimants - more than double the amount compared to the same week two years ago.

Proposal to ban schools from suing state is tossed

By Chet Brokaw
Associated Press Writer

PIERRE, S.D. (AP) — A proposed constitutional amendment that would have prohibited school districts from suing the state was rejected Tuesday by a South Dakota Senate panel after opponents said it would have taken too much power from local school boards.

The Education Committee voted 4-3 to kill the proposal, which would have asked voters statewide to change the state constitution. The amendment would have barred school districts from filing or paying for lawsuits that challenge laws passed by the Legislature.

The measure was proposed after about half the state's school districts gave financial support to a lawsuit challenging the constitutionality of South Dakota's system of funding schools. A circuit judge last year ruled that the school funding system is constitutional, and that ruling has been appealed to the state Supreme Court.

Sen. Larry Rhoden, R-Union Center, the proposed amendment's main sponsor, said voters statewide should get a chance to decide whether a school district should use its property tax revenue to sue the state.

"We're using tax dollars to sue taxpayers for more tax dollars," Rhoden said.

Senate Republican Leader Dave Knudson of Sioux Falls, a supporter of the proposal, said it still would have allowed school districts to seek court interpretations of laws.

But opponents said they believe the proposed constitutional change would have prevented all legal action by school districts against the state.

Sen. Jim Peterson, D-Revillo, said the Legislature should allow each school board to decide whether to finance lawsuits against the state.

"To me this is all about local control," Peterson said.

After the school funding lawsuit was filed in 2007, Gov. Mike Rounds and then-Attorney General Larry Long argued the school districts could not legally pay to challenge the funding system's constitutionality. They said the Legislature created the school districts and "creations cannot sue the creator."

The school districts then sought a court ruling on the

financing issue. The Supreme Court eventually ruled that because the state constitution creates school districts and makes them beneficiaries of some funding sources, the schools have standing to

seek a court interpretation of the constitutional language dealing with school funding. Schools also have authority to finance such a lawsuit, the high court said.

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