



# Legislative Research Council

SouthDakota

## MINUTES

### GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

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Senator Larry Tidemann, Chair  
Representative Dan Dryden, Vice Chair

Fourth Meeting  
2014 Interim  
September 24, 2014

Room 413  
State Capitol Building  
Pierre, South Dakota

The fourth meeting of the 2014 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Tidemann at 9:02 a.m., September 24, 2014, in LRC Room 413, State Capitol Building, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Heineman, Hunhoff, Lucas, and Tidemann. Representatives Cronin, Dryden, Magstadt, Mickelson, and Wismer. Senator Curd was excused.

Staff members present were Mr. Martin Guindon, Auditor General; Mr. Bob Christianson and Mr. Tim Flannery, State Government Audit Managers for the Department of Legislative Audit (DLA).

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order.*

#### Approval of Minutes and Agenda

Representative Cronin moved, seconded by Representative Magstadt, the minutes of the July 29, 2014 meeting be approved ([Minutes 7-29-14 Meeting Doc. 1](#)). Motion prevailed unanimously on a voice vote. Representative Magstadt moved, seconded by Representative Dryden, the agenda for the September 24, 2014 meeting be approved. Motion prevailed unanimously on a voice vote.

Before beginning the meeting, Senator Tidemann and Representative Dryden gave a brief review of the rules that guide the Committee as they are discussing topics on the agenda. The rules they use are the same rules used during session. There was a brief review of the Official Directory and Rules of the South Dakota Legislature and the Masons Manual of Legislative Procedure.

Senator Tidemann gave a chronological history of how the EB-5 Program was brought to the attention of the Committee and why the Committee is discussing it again today.

**Item 1 – Committee discussion – Review written responses from Governor Dugaard and Michael Rounds to Committee questions regarding the EB-5 program** (*the bullets listed below are documents the Committee sent out*)

- [Letter to Governor Doc. 2](#)
- [Letter 2 to Governor Doc. 3](#)
- [Letter to Michael Rounds Doc. 5](#)
- [Letter 2 to Michael Rounds Doc. 6](#)

The Committee discussed the questions and responses provided by Governor Dugaard ([Response from Governor Dugaard Doc. 4](#)). The Committee had discussion or comments on the following questions:

First set of questions:

Committee question number 2 states, "Who in state government did the Northern Beef CEO talk to ahead of time to feel comfortable giving Benda a check for \$550,000 upon his delivery of the \$1,000,000 Future Funds grant?" Senator Lucas wanted to clarify that nobody has probable cause to be charged with any crime in regards to the misdirection of the \$550,000 by Richard Benda or by the formation of SDRC, Inc.

Committee question number 8 states, "Why is Governor Dennis Daugaard pointing the finger at the Rounds administration but former Governor Mike Rounds says the check is the Daugaard administration's fault?" Senator Lucas asked if the new internal control procedures would prevent an unauthorized individual from writing a grant agreement. Senator Tidemann stated that the changes put in place would prevent unauthorized grants from being written. Mr. Tim Flannery, DLA, stated that the Finance Director and the State Auditor approve and sign the checks and that the letter of agreement (grant agreement) is signed by the Commissioner of the Governor's Office of Economic Development.

Committee question number 15 states, "Did any beneficiaries of the EB5 program make political contributions to elected officials, and/or their party committees, who oversaw the EB5 program?" Senator Lucas wanted to clarify that the political contributions can be found on the South Dakota Secretary of State website, but he believes the question is referring to the beneficiaries who oversaw the EB-5 program. Senator Tidemann also understood the question to mean the people who received the money and then used it to build the various projects, not just the employees of SDRC, Inc.

Second set of questions:

Committee question number 1.b. states, "Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?" Senator Lucas asked that the Board of Regents (BOR) be invited to answer questions relating to the EB5 program while the program was under the SDIBI.

Committee question number 2.b. states, "Who are the primary State contacts with the attorneys representing the State's interests in the Darley arbitration?" Senator Lucas stated that information regarding the money being spent each year to defend this lawsuit should be published and the Appropriations Committee should be seeing those amounts. Representative Mickelson commented that the state referenced the lawsuit in the 2010 and 2011 South Dakota Comprehensive Annual Financial Reports (CAFR) but the auditors determined that the possibility of an adverse settlement was so remote that it no longer required a disclosure in the state's financial statements. Senator Tidemann said that the Appropriations Committee puts together a list of dollars that are going to revert and also if there is any pending litigation for each agency.

Representative Wismer discussed a letter dated June 2012 that provided a list of all the lawsuits the attorney general was involved in and possible conclusions regarding those lawsuits. The Darley lawsuit was listed in that letter for fiscal year ended June 2011. She was unsure if there had been similar letters in the last two audits, but her understanding was that the DLA determined which lawsuits were included in the audit and DLA used the information provided to them from the departments. Mr. Flannery said the DLA uses Attorney Request letters to receive information from attorneys about the different lawsuits for each audit. Regarding the CAFR, it is the Bureau of Finance and Management's responsibility to disclose possible adverse judgments that could negatively impact the State's financial statements. DLA then compares the footnote disclosures in the financial statements to information received in the Attorney Request letters. Representative Wismer requested that the DLA provide copies of the Attorney Request letters for the June 2013 and June 2014 audits. Senator Tidemann requested that the entire Committee receive copies of the letters.

Committee question number 7 states, "If you were indeed aware of the ongoing Darley International lawsuit concerning Joop Bollen and the EB5 program, why was this information not provided by Commissioner Pat Costello to the Government Operations and Audit Committee earlier this year?" Representative Wismer asked when lawsuits are included in audit reports. Is there a minimum dollar

threshold for the lawsuit to be included as a footnote disclosure? Mr. Flannery stated there is a minimum dollar threshold; however, he could not recall the specific dollar amount. He added there has to be a good chance there will be a claim against the state or a potential loss. The Darley lawsuit is no longer disclosed because it was determined the chance for a claim was not significant. Representative Wismer asked if the exposure included both legal fees and claims or are the legal fees not considered part of the exposure to the state. Mr. Flannery believed the footnote disclosure covered the claim only.

The Committee discussed the questions and responses provided by former Governor Michael Rounds ([Responses from Michael Rounds Doc. 7](#)). The Committee had discussion or comments on the following questions:

First set of questions:

Committee question number 3 states, "Who in the Rounds Administration approved the \$1 million Futures Fund grant for construction reimbursement to Northern Beef Processors?" Senator Heineman commented that the audit stated that the transfer of the grant to the Northern Beef Packers (NBP) determined that there was no noncompliance during the issuance of this grant. The Attorney General found that allegedly the dollars had been misdirected by Mr. Benda after the funds had been given to NBP. Representative Mickelson said it is worth restating what the DLA and the Attorney General found because it is easy to get confused. The audit and the Attorney General's investigation found that the NBP did spend the required amount of money on construction equipment. The State of South Dakota complied with the grant agreement and issued the \$1,000,000 grant accordingly. The investigation found that Mr. Benda acted inappropriately on how he delivered the check and the NBP Chief Executive Officer made the decision about how the money was spent.

Representative Wismer questioned the supervision of Mr. Benda and how both administrations (Rounds and Daugaard) are saying neither had control over Mr. Benda when he took control of the check. Representative Mickelson pointed out that the audit and the Attorney General's investigation against Mr. Benda were after Mr. Benda was a state employee.

Committee question number 4 states, "Was Richard Benda working alone when he stole the state's money?" Representative Mickelson pointed out that the question seems to state the money was allegedly stolen from the state but should state that it was allegedly stolen from NBP. Senator Lucas asked if there are others who are not state employees that are being charged. Senator Tidemann felt that was private sector information that was not accessible by the Committee. Senator Heineman pointed out that in the audit report it stated that both parties complied with the terms of the grant with no further restrictions and once that money was received by NBP there were no restrictions on how it was to be used.

Committee question number 8 states, "Why is Governor Dennis Daugaard pointing the finger at the Rounds administration but former Governor Mike Rounds says the check is the Daugaard administrations fault?" Senator Lucas commented that the transition between administrations is a critical time for the state and there was also a new State Auditor at the same time. Had the State Auditor had some experience, maybe the check wouldn't have left the office with Mr. Benda. Senator Tidemann says there is always a transition no matter what section or office it happens in. The transition from previous employees to new employees doesn't mean the doors shut down while it happens.

Representative Cronin asked Mr. Martin Guindon, Auditor General, about the request for the attorney letters regarding the Darley lawsuit. Mr. Guindon has placed a call to the Attorney General's office regarding this request. He stated that he is unsure at the moment on whether or not he can provide the actual letters to the Committee but that the Darley lawsuit was not included in the 2013 or 2014 responses to the DLA from the BOR. He will let the Committee know in the future if those letters can be made public.

Second set of questions:

Committee question number 1.b. states, "Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?" Senator Heineman wanted to know if there would be any reason that the Committee would have any knowledge of the contract and why would the Committee see a contract like that? Senator Tidemann said that in 2008 the Committee asked Mr. Bollen to come speak regarding his travel and to explain the EB-5 program. However, there was no knowledge of a contract at that time. Senator Heineman wanted clarification on whether reviewing a contract would be something that would be reviewed on a normal basis. Senator Tidemann said it is something an audit would look at.

Committee question number 2.e. states, "What was your participation in EB5 investor recruiting? Trips? Discussions? Correspondence?" Senator Lucas wanted to know if there were any legislators that went on any overseas trips with Commissioner Costello or Mr. Benda. Senator Tidemann says he is not aware of any trips of that nature. The only trips that may have been overseas travel are sponsored by a specific group and are not funded by the state. Representative Cronin says he believes the last trip for Governor Daugaard was regarding the Department of Agriculture.

Senator Tidemann stated that a letter was sent to the U.S. Attorney, Brenden Johnson ([Letter to U.S. Attorney Doc.8](#)), to invite him to attend the Committee's September 24, 2014, meeting. A response was received by email and letter indicating that they would not be present at the meeting ([Response from U.S. Attorney Doc.9](#)). They will also neither confirm nor deny that they are conducting an investigation. Representative Cronin wanted to know if anyone could explain why he cannot confirm or deny if there is even an investigation. Representative Mickelson said discretion has to do with the reason they will neither confirm or deny an investigation is being conducted. Senator Heineman stated that letters were sent out in 2013 stating that an investigation was going on so she wanted to know if there was something that formally states when an investigation is completed, but no one had an answer to that.

**Item 2 – Committee discussion – Develop questions for Joop Bollen and request that he respond in writing** (*the bullet listed below is a document the Committee sent out*)

- [Letter to Joop Bollen Doc. 10](#)

Senator Tidemann discussed that Mr. Bollen chose to respond by letter ([Response from Joop Bollen Doc. 11](#)) stating that he would not be attending the meeting but would be willing to answer any questions sent to him in letter form.

Senator Lucas introduced a report he put together ([Lucas Report Doc. 22](#)) regarding the EB-5 program. The report was handed out to the Committee. Senator Lucas gave a brief overview as to what was included in the report. Representative Wismer presented copies of e-mails from Representative Tyler to state officials regarding the Darley arbitration. In addition, she presented copies of legal invoices pertaining to the Darley arbitration ([Tyler e-mails and legal invoices Doc. 21](#)). There was a discussion amongst the Committee regarding these items before moving on to the questions to be submitted to Mr. Bollen.

Senator Tidemann asked for the Committee's input on an number of questions that had been developed for Mr. Bollen. Many of the questions had been prepared by Senator Lucas. Representative Mickelson asked if it would make more sense for Senator Lucas to submit to Senator Tidemann the questions he feels need to be included. Senator Lucas responded that he doesn't see a problem with going through the questions with Senator Tidemann. Representative Mickelson moved to stop the discussion of the questions presented by Senator Lucas and have Senator Lucas go through the questions with Senator Tidemann after the meeting. Representative Magstadt seconded the motion. Senator Lucas saw no problem with the motion. Senator Heineman wanted to know if the questions were from some sort of inquiry or if they were compiled. Senator Lucas said they were from the source

documents that were in his report from earlier in the meeting. The motion carried unanimously with a voice vote.

### **Item 3 – Committee discussion – draft amendment to SDCL 5-18A-17 as proposed by Senator Lucas**

Senator Lucas moved that the Committee introduce the amendment for SDCL 5-18A-17 in the 2015 session as a Committee bill. The returning legislators would have their names on the bill.

Representative Mickelson seconded the motion. Senator Lucas discussed the amendment that is being proposed ([Draft Amendment to SDCL 5-18A-17 Doc. 12](#)) and said he would speak in favor of the bill during session. Senator Tidemann stated that those who vote in favor of the motion will be listed as sponsors and those who vote against the motion will not be listed.

Representative Wismer wanted clarification that this statute prohibits an employee from working for the state and then going to work for an entity that the employee approved or awarded a contract to while working for the state and this prohibition lasts for one year after the employee leaves the state. There was discussion that followed regarding the way it is worded but it was determined that it is true. Senator Lucas stated that this only affects a handful of state employees who approve or administer contracts and grants. The motion carried unanimously with a voice vote.

Representative Mickelson introduced an amendment to SDCL 3-16-7 which addresses contracts that do not involve the expenditure of public funds, which is the issue at hand with respect to the contract with Mr. Bollen ([Draft amendment to SDCL 3-16-7 Doc. 19](#)). This statute currently only affects state officers and not employees. The amendment would not require an expenditure of public funds and addresses the issue of self-dealing. Noncompliance with the statute would make the contract void. There would also be a one year time period between state employment and any employment with an entity in which a contract was made that the state officer or employee was involved in.

Senator Tidemann wanted to know if a spouse or child of the state officer or employee would be affected. Representative Mickelson stated the two amendments discussed today do not reach family members, but possibly should. Senator Tidemann stated that is something the Committee should consider as they move forward. Senator Heineman asked Representative Mickelson about the part of the amendment that discusses the malfeasance of an employee using their state position for self-interest rather than the public-interest. She gave an agricultural example and Representative Mickelson responded by stating that if the employee is not putting their self-interest ahead of the public's interest there isn't a conflict. He believed the language should be worked on and passed at a future meeting. The Committee agreed to discuss Representative Mickelson's amendment to SDCL 3-16-7 at a future meeting.

### **Item 4 – Public testimony relating to the EB-5 program**

Tom Fischbach, Brown County Commissioner, was present to address the Committee during public testimony. He was present to inform the Committee that the Brown County Commission (Commission) passed a resolution regarding the EB-5 program ([Brown County Resolution Doc. 20](#)). He informed the Committee that they had sent letters to the Banking Commission and to the Department of Revenue to inquire about the bank franchises that the Commission believes Mr. Bollen should have been paying. Brown County has had a lot of expenses due to NBP closing after only being open a few weeks and the Commission is looking for ways to recoup some of the money Brown County has lost. Representative Cronin asked if Brown County received any money (property taxes, etc.) of any kind from this project. Mr. Fischbach stated there was a tax increment finance bond issue and that the new owners have paid everything that was due. Mr. Fischbach wanted the Committee to be aware that Brown County is trying to recover some of the losses due to the closing of NBP.

Senator Hunhoff wanted to know if the Banking Commission had addressed the resolution. Mr. Fischbach stated that the Brown County Commission has not heard back from them as of yet.

Michael Myers, independent candidate for Governor, was also present and provided testimony to the Committee.

**Item 5 – Juvenile Corrections Monitor Semi-Annual Report for the period January 1, 2014 through June 30, 2014** *(the bullets listed below are documents the Committee sent out)*

- [Letter from Attorney General Doc. 14](#)
- [Letter to DHS Doc. 15](#)

Kathleen Colson, Juvenile Corrections Monitor, was present to address the Committee regarding the semi-annual report ([Semi-annual Report Public Doc. 13](#)). She gave a brief overview of the statistics on the report and an overview of the different types of complaints. She discussed the two investigations that had been done during the reporting period. Ms. Colson was available to answer Committee questions regarding the report.

Senator Heineman had a question regarding the staff issues and why the number of notes regarding this issue is down compared to the past. Ms. Colson said it is hard to know what the exact cause is to having lower staff issues but she believes it is the fact that she encourages the youth and the staff to try to work out their issue before involving her.

Senator Lucas asked her to elaborate more on the complaints regarding spoiled food and their cleaning chores. He asked for examples of what types of chores they are assigned to do. Ms. Colson said the spoiled food complaints came from a time when they received plain yogurt versus vanilla yogurt. Many of the youth thought it was spoiled because it tasted sour but it was actually because they had never had plain yogurt before. As far as the chores issue is concerned, it only came up a couple of times because they just simply didn't want to clean. There is a crew that goes out with the staff to clean hallways and bathrooms. It is just part of what they have to do while incarcerated and they just don't enjoy it.

Senator Tidemann asked about the training Ms. Colson is doing with the staff and how that has reduced problems. Ms. Colson said the training she is doing with the staff is report documenting. She is teaching them how to correctly put in the dates and how to stay detailed without getting distracted. She is helping them learn to be more concise with their reports so that their reports more closely represent what the videos show. She says the reports have improved immensely and the training has made a big difference.

Senator Hunhoff asked if they do their documentation electronically. Ms. Colson said that everything is done on the computer. Senator Hunhoff wanted to know if they were using their technology to make sure everyone is using the correct templates. Ms. Colson said she sees the initial reporting of the incident and makes sure it is filled out correctly. This way she can make sure the names, dates, and times are entered correctly before it is sent out as a final.

**Item 6 – Department of Corrections – Report on Abuse and Neglect in Private Placement Facilities for the period January 1, 2014 through June 30, 2014** *(the bullet listed below is a document the Committee sent out)*

- [Letter to Corrections Doc. 16](#)

Doug Herrmann, Juvenile Services Director, was present to discuss the confidential report. This report contained information regarding allegations of abuse and neglect and injuries of restraint for private placement facilities. Mr. Herrmann said this report contains information regarding both in state and out of state programs. The report covers programs that can be group care level, psychiatric residential treatment facility level, and intensive residential level. There was some background information regarding the requirements of the facilities. The report provided to the Committee includes the report description and date of the report, the facility where the report took place, the allegation outcome, and other information that is pertinent to the report.

The first section of the report is about child abuse and neglect. There were six allegations but none were substantiated. There were some corrective action plans that were put in place to prevent future incidents. The second section of the report is about incidents involving restraints. There were three incidents. All the reports were determined to not need investigation because the reports did not meet the definition of child abuse or neglect. Mr. Herrmann was available to answer Committee questions regarding the report.

Senator Lucas asked a question regarding the youth at Aurora Plains Academy and whether most of the youth have had instances of sexual abuse in their past. Mr. Herrmann stated that Aurora Plains is licensed at the highest level of care, intensive care. There are about 72 beds and they are generally full. There are units of six beds across the campus and two or three of those units are specifically for sex offenders but there are also a few units specifically for mental health youth.

Senator Lucas then asked if the units are male and female together or if they are separated. He wanted to know about the sexual misconduct cases and how the males and females were able to work out a plan to get together. Mr. Herrmann believed that those instances were male to male contact.

Senator Heineman wanted to know if after a certain number or instances or reports for a specific facility if there is a process that is gone through with that particular facility. Mr. Herrmann stated that the Department of Social Services tracks all of the programs that involve the youth in all facilities. They watch for patterns and trends to see if there is a problem that needs to be taken care of.

**Item 7 – Bureau of Human Resources – To provide an update of the financial condition of the State Health Plan as of June 30, 2014, to discuss the availability of West River providers in the Tier 1 service program and the status of the contracts in the Tier 1 program** *(the bullet listed below is a document the Committee sent out)*

- [Letter to BHR Doc. 17](#)

Laurie Gill, Commissioner of the Bureau of Human Resources (BHR), and Tom Steckel, Director of Benefits, were present to address the Committee on an update of the financial condition of the state health plan and the Tier 1 program. Commissioner Gill reported that the previous fiscal years, 2012 and 2013, had a negative claims experience. The deficit amounts for fiscal years 2012 and 2013 were \$7 million and \$8.5 million, respectively. Fiscal year 2014 did not end with a negative experience in terms of claims.

Commissioner Gill stated that the impact of the Affordable Care Act has been significant on health plans. Changes have been put into place with an attempt to balance the impacts on employees versus employers and the providers. In fiscal year 2014 BHR considered changes to the prescription plan, BHR reviewed contracting with different providers and we studied options relating to high-cost claimants (claims greater than \$50,000). In fiscal year 2014 approximately \$42.8 million dollars of the claims were incurred by the high-cost claimant group. That is about 41% of the claimant group.

Commissioner Gill explained some of the programs available for high-cost claimants, such as, Intensive Case Management, a program managed by Dakotacare. They make sure the high-cost claimants are getting the care they need as well as getting to their appointments and taking the medications prescribed to them. Another program is called Conditions Management. This is a program managed by Health Management Partners. There are different programs within this program that deal with conditions a claimant might have, such as weight management, diabetes, kidney care, and my healthy baby. This allows people with those needs to receive the help they need to manage their situation. She added that effective July 1, 2014, the two lowest deductibles were raised, the medical out-of-pocket maximum was raised, and prescription co-payments were raised.

Commissioner Gill stated, going forward the BHR is partnered with a consulting firm to work on better projections on budgeting, getting the data needed to create benchmarks and reporting, and working on

a multiyear portfolio for the years ahead. The BHR is also working with providers to help determine future steps regarding the healthcare program.

Commissioner Gill stated that in fiscal year 2014, the program costs came in at \$118,513,603, which was under budget. That left a cumulative positive balance of \$15 million. She discussed the different factors that caused the positive balance and what they are doing to keep a positive balance in the future. She stated there are discussions of the potential for a reserve. The amount currently in the reserve is \$3 million, however, this is considered too low. The goal is to get a reserve that could handle two adverse years if needed. That is a discussion that will take place going into the 2015 session.

Commissioner Gill stated fiscal year 2015 is currently running over budget by \$1.2 million but can swing either way very quickly. It is being monitored in two week increments and the BHR does not expect to come in over budget. Senator Tidemann asked if the current \$1.2 million over budget is due to high-cost claims. Commissioner Gill said that it is the claim amounts that are showing that amount. They are keeping a close eye on this year's amount versus last year's amount to see how this year is comparing. Senator Tidemann wanted to know how many years back they are comparing. Commissioner Gill said that every year they are adding to it. They are currently doing a four year comparison.

Representative Cronin wanted to know if they had a number of how many claimants make up the 41% that is referred to as high-cost claimants. Mr. Steckel said that for fiscal year 2014 the average number was about 340 employees. He said this number is typical for a plan this size.

Representative Wismer wanted to know what was included in the overage of \$15 million. Commissioner Gill said that amount is the amount over and above what was budgeted for fiscal year 2014. Representative Wismer then asked Commissioner Gill to remind the Committee what is done with the money. Commissioner Gill said that will be discussed in the future with the administration and appropriations. One of the discussions will be whether or not some of it should be put in the reserve for future claims years. Representative Wismer asked if it was normal operating procedure for the overage to stay with the plan instead of going back into general reserves. Commissioner Gill said that historically, this type of situation is discussed with the previous mentioned parties.

Mr. Steckel discussed the Tier 1 program. As of the end of August 2014, the program looked to be on track to obtain a savings of about \$1 million if the current rate of cases continued. The first couple of months had many continuity of care cases, which meant they were not subjected to the Tier 1 requirements. He stated a major issue that had to be dealt with was the significant geographic gaps in the providers that were under contract to offer services to the plan members. There are on-going contractual discussions with providers for services in West River.

Mr. Steckel said that Avera St. Mary's was also provided a new Tier 1 proposal for both gastrointestinal and orthopedic procedures. He believes they will have a response later in the week. Senator Tidemann commented that he received an Avera letter stating that Avera will honor the Tier 1 pricing for all procedures even though they are not a Tier-1 location. He wanted to know how that affects the existing contracts. Commissioner Gill stated that they are not prepared today to make a statement on that situation, as the legal team is working on it. Right now the Tier 1 program is in existence and the employee is told their options of locations and they can choose to use Tier 1 or a non-Tier 1 location.

Senator Tidemann wanted to know the range of cost if you choose not to use a Tier 1 location for different medical procedures. Mr. Steckel did not have the costs with him but the least costly procedure would be a colonoscopy which may range from \$500-\$1,000. A knee or hip replacement would be significantly higher. If they would go to a non-Tier 1 provider the cost may range over \$15,000 higher.

Senator Hunhoff asked if the state pays more than the amount that is contracted with a Tier 1 provider, if an employee chooses to use a non-Tier 1 provider, since there is no contract in place. Mr. Steckel

said that if someone chooses a non-Tier 1 provider they are subject to a higher out-of-pocket amount and the state's expense would also be higher because of not having a contract.

Representative Mickelson wanted to know if the BHR is looking into the fact that Avera is telling customers it will waive the higher out of pocket, but still expects the state to pay the higher cost for not having a contract with them. Commissioner Gill stated that it is being looked at by the legal team.

#### **Item 8 – Committee discussion of proposed solutions to correct the deficit in the Law Enforcement Officers Training Fund**

Senator Tidemann said that he, Representative Dryden, the Bureau of Finance and Management, the Department of Legislative Audit, the Attorney General, and the Unified Judicial System (UJS) met to come up with solutions to correct the deficit in the Law Enforcement Officers Training Fund. Representative Dryden stated that a portion of the deficit balance at June 30, 2014 was covered by the UJS. He then went on to discuss the short-term and long-term solutions that are being considered, as well as some other options that may be presented in the future.

Representative Dryden stated that the long-term solutions included raising the liquidated costs of the fines, using General funds to cover certain billings, and using General funds to cover the cost of the educator in the UJS.

Other solutions that are being considered are repealing a sunset provision in SDCL 16-2-39.1 or to repeal the sunset provision in SDCL 16-2-29.7 and amend 16-2-29.5.

Senator Tidemann stated that if nothing is done than the deficit will continue in the future. This is a topic that will be discussed in the future by the Committee.

#### **Item 9 – Committee review of agency encumbrances as of June 30, 2014**

Tim Flannery, Department of Legislative Audit, discussed the encumbrances as of June 30, 2014 ([FY2014 Carryover Report Doc. 18](#)). Mr. Flannery discussed the length of time that the report covers and the different reasons there might be a carryover. He stated that if the Committee was interested in looking further at any items listed in the report, additional information could be requested from the Bureau of Finance and Management.

Representative Wismer wanted to know if the list would have been just as long if they looked at it the year before and Mr. Flannery confirmed that. Representative Wismer then wanted to know why some of them have a purpose listed as "Allowable per HB1060 and HB1039" and others have a specific reason stated. Mr. Flannery said those that have a more specific definition usually have had a contract in place for that carryover. Senator Heineman wanted to know if the provisions of HB1039 authorize carryover of the funds for any dollar amount. Mr. Flannery said that agencies would need specific explanations for the need to carryover the funds.

Senator Heineman wanted to know how the agency determines if it will carryover or revert funds and is it up to the agency to determine that. Mr. Flannery said it is up to the agency to request in writing, from the BFM, the need to carryover funds and the BFM would then have approve the request. Senator Heineman wanted to know if BFM approves all carryovers and Mr. Flannery confirmed that they do. Senator Heineman then wanted to know if the money is reverted if it is not approved for a carryover and Mr. Flannery believed that was what happened.

#### **Item 10 – Committee discussion of future topics and the next meeting date**

There was discussion regarding the questions to Mr. Bollen and when to expect a response. There was also discussion about scheduling the next meeting to make sure there was enough time to receive the questions back with thorough answers. Representative Mickelson proposed a 30-45 day window.

Senator Lucas proposed that the deadline be shortened. Senator Tidemann said the 45 day period seemed reasonable and would be approximately the middle of November, which would still allow time to finish the report to the Legislature. Representative Wismer moved to have the meeting the last week of October and Senator Lucas seconded the motion. A substitute motion was made by Representative Wismer to hold the meeting the week of October 20-24. The motion was seconded by Senator Lucas. Another substitute motion was made by Representative Mickelson to hold the meeting on November 14<sup>th</sup> and was seconded by Representative Magstadt. Representative Wismer commented that she felt there was no reason to put off the meeting until the end of November. Representative Magstadt wanted to know if that would be enough time to complete the report and Mr. Flannery confirmed that he would like at least a week to complete the report. The motion to hold the meeting on November 14<sup>th</sup> was voted on. The motion passed with Representative Wismer and Senator Lucas voting no.

There was also a request to send a second letter to the U.S. Attorney requesting any information he can provide regarding on-going federal investigations into the EB5 program.

**Future topics:**

- Department of Health to provide an update on performance measures
- Department of Agriculture to follow-up on food safety measures for unpasteurized dairy products
- Agency Other Fund information – GOAC Blue Book
- Annual report from state 911 coordinator
- Update on the MMIS system
- Board of Regents
- Northern State University representatives
- LEOT Fund Discussion and follow-up

**Future Meeting Date**

\*The next meeting was scheduled to be held November 14, 2014 at 9:00 a.m. Representative Cronin moved to adjourn the meeting at 3:32p.m., seconded by Representative Magstadt, and carried by a voice vote.

\*Subsequent to the meeting the Committee changed the next meeting date to November 13, 2014.

**This meeting is being held in a physically accessible location. Any individual needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605-773-3251) in advance of the meeting to make further arrangements.**

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