

# MINUTES

## Government Operations & Audit Committee

Senator Larry Tidemann, Chair  
Representative Dan Dryden, Vice Chair



**Second Meeting, 2016 Interim  
Monday, June 20, 2016**

**Auditorium - Developmental Center  
Redfield, South Dakota**

The second meeting of the 2016 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Tidemann at 10:00 a.m., June 20, 2016, in the auditorium of the Developmental Center, Redfield, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Tidemann, Heineman, Novstrup, and Representative Hunhoff. Representatives Cronin, Hunt, and Bartling joined by conference call. Representative Dryden joined the meeting after roll call. Senators Peters and Sutton were excused.

The staff member present was Mr. Tim Flannery, State Government Audit Manager for the Department of Legislative Audit (DLA).

*NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. The bulleted items below each agenda item are documents sent out by the Committee.*

### **Approval of Minutes**

Representative Hunhoff moved, seconded by Senator Novstrup, the minutes of the May 17, 2016 meeting be approved ([Minutes 5-17-16 Doc.1](#)). Motion prevailed unanimously on a voice vote.

### **Amend the Agenda**

Senator Tidemann asked for a motion to amend the agenda to include discussion of House Bill 1214, 2016 Session, and the letter drafted to Board members to help them implement the new law. A motion was made by Senator Novstrup to amend the agenda for this item, seconded by Representative Hunhoff. The motion passed on a voice vote.

### **Item 1 – Tour of the South Dakota Developmental Center (SDDC)**

- [Letter to DHS Doc.2](#)

Gloria Pearson, Secretary of the Department of Human Services (DHS), welcomed the Committee to Redfield and asked the following SDDC leadership staff to introduce themselves:

- Barb Abeln, SDDC Director
- Todd Schwartz, Program Supervisor – Program Two
- Debra Sanger, Program Supervisor – Program Three
- Wendy Beckler, Health Care Services Coordinator
- Rob Eggers, Program Manager – Program One

- Frank Schwartz, Program Supervisor – Program One
- Shane Wright, Physical Plant Manager
- Patrice Wilson, Human Rights Specialist
- Joe Morrisette, Program Supervisor – Day Services
- Jaimie Mogen, Program Manager – Program Two
- Terry Lloyd, Human Resources Manager

Senator Tidemann thanked the SDDC staff as well as South Dakota Public Broadcasting for their efforts in facilitating today's meeting. The Committee members then joined the SDDC leadership staff on a tour of the SDDC.

## **Item 2 – Department of Human Services (DHS) to discuss SDDC operations**

Senator Tidemann summarized information learned from the tour. He stated the SDDC has three programs: 1) the adult male program, 2) the adult female program, and 3) the youth program. The adult male program has the largest number of residents. He added that the SDDC currently has 132 residents and they have a goal of reducing that number to 120 residents. Senator Tidemann stated the Committee had an opportunity to visit with staff and residents during the tour. The Committee toured the dorms, walked the campus, and observed the buildings that are planned for demolition. Secretary Pearson provided the Committee an overview of the history of the SDDC. The Committee learned about the results of a staff survey completed by the DHS. Senator Tidemann stated that compensation and staff communications were a couple of negative points taken from the survey. The Committee also learned that recruiting staff has been a challenge and 44% of the current staff are baby boomers.

Representative Hunt asked for further explanation of the three programs at the SDDC. Debra Sanger stated program one is for adult males ranging in age from 20 years old to 70 years old. In this program residents learn coping skills and skills to properly interact with other people. She added that program one is currently full. She stated program two is the Turtle Creek Youth Program for young men and women. The youngest resident is 12 years old and the oldest resident in this program is 25 years old. This particular resident is waiting for a vacancy in program one to move to that program. Residents in program two spend a majority of the daytime in a classroom setting. Ms. Sanger concluded with program three. She stated that this program currently has women ranging in age from 22 years old to 70 years old. There is also a separate section in program three for gentlemen that are geriatric or autistic and are less capable than the residents in program one.

Senator Tidemann asked Representative Hunhoff to compare what she has learned today to her participation in a 2012 Legislative Summer Study of the SDDC. Representative Hunhoff stated one of the most significant differences is the decrease in the number of beds now available. She stated that the SDDC is trying to right-size with the current number of staff to be able to better meet the needs of the residents. Representative Hunhoff stated that it was interesting to see the buildings that are scheduled for demolition. She added that these buildings still remain because the Legislature did not provide funding for the demolition of these buildings. Lastly, Representative Hunhoff commented that community based supports are still not able to receive certain individuals with needs, so relocation to the communities continues to be a challenge.

Representative Bartling asked for information regarding overtime payments. Secretary Pearson did not have those figures, but will provide this information to the Committee as follow-up information.

Senator Tidemann then opened the meeting up for public testimony. Paul Register, from Redfield, South Dakota, testified about past personnel matters. Senator Tidemann, after hearing about Mr. Register's concerns regarding personnel matters, asked the Committee for a motion to move into executive session. A motion was made by Representative Cronin to go into executive session to discuss personnel matters, seconded by Senator Heineman. The motion passed on a voice vote.

The Committee came out of executive session. Senator Tidemann asked that the Bureau of Human Resources be invited to the next Committee meeting to help answer some of the questions raised by Mr. Register. Representative Cronin asked for an explanation of the "whistleblower policy". Senator Tidemann stated that the "whistleblower policy" is in the employee handbook that can be found on the Bureau of Human Resources website. Senator Tidemann explained the steps an employee can take to resolve their grievance, which may include taking their grievance to the Attorney General. Senator Tidemann stated that the "whistleblower policy" is in place to protect the staff, the residents of the SDDC, and the State of South Dakota. He concluded that this policy should be explained to every employee and employees should not be treated unfairly if they come forward with information.

Susan Wismer, from Britton, South Dakota, testified that she has listened to stories from former employees about the culture at the SDDC. She explained that the culture did not allow for employee opinions to be expressed, for employees to come forward and express their concerns, or to communicate with people in higher positions. She believed if the culture improved there would be a larger pool of applicants to fill vacant positions. She encouraged the Legislature to continue looking into this matter. Representative Cronin asked Ms. Wismer to provide whatever information or documentation she had to the Chair. Ms. Wismer said that she would provide this to Chair Tidemann.

Secretary Pearson responded to testimony received by the Committee. She stated the many SDDC staff members have devoted their entire careers to the SDDC. Having heard the allegations against them, they are concerned for their reputations and their families. Secretary Pearson stated the staff has been open and cooperative to outside reviews of the organization, improvements have been made and the "sky is not falling" at the SDDC. Senator Tidemann recognized the SDDC staff members and thanked them for the information provided to the Committee during the tour of the SDDC.

Representative Cronin commented that the Committee looks for the best possible solutions to situations that come before the Committee; however, in many situations the Committee must wait for professional investigators to finish their work first. Representative Cronin emphasized the need for the Committee to take a step back and let investigators complete their work, such as was done with EB-5.

### **Item 3 – Department of Human Services to discuss the results of their investigation of LifeScape**

Gloria Pearson, Secretary of the Department of Human Services (DHS), stated DHS is working closely with LifeScape. She stated that LifeScape appropriately reported events that occurred to DHS. After events were reported, the Division of Developmental Disabilities conducted an investigation which resulted in LifeScape being placed on probation. She added that LifeScape has issued a plan for

corrective action and is being proactive in addressing the findings from the investigation. Secretary Pearson stated the abuse and neglect appeared to be an isolated incident and not systemic to the organization.

Senator Tidemann asked if the noted abuse and neglect occurred in one location. Secretary Pearson stated that it was in one location. She added that LifeScape has many locations throughout Sioux Falls which include apartments, group homes, and individual settings.

Representative Hunhoff asked how often the DHS does an assessment for compliance. Secretary Pearson stated that in addition to being nationally accredited by the Council on Quality and Accreditation, they are reviewed annually by the DHS. She added that this instance of abuse was not found from the annual review process, it was the result of LifeScape following the administrative process of self-reporting. Representative Hunhoff asked how instances like this one could have been prevented in the first place. Secretary Pearson stated that there is an on-going system of quality improvement in place.

#### **Item 4 – Department of Social Services to discuss the licensing procedures for outside juvenile placement facilities**

- [Letter to DSS Doc.3](#)

Virgena Wieseler, Director of the Division of Child Protection Services, stated that South Dakota law requires the licensure of child placement agencies, which includes group and residential facilities in South Dakota. Ms. Wieseler stated that each facility submits an application for renewal 60 to 90 days before their license renewal date. The DSS then sends a survey to every resident and staff in that facility, which asks them a number of questions about the facility. The surveys are reviewed by DSS staff prior to the DSS licensing visit. Ms. Wieseler gave examples of survey questions asked of the residents:

- Residents are asked about their treatment planning process.
- Residents are asked if they know where they are going once they are discharged from a treatment program.
- Residents are asked if they know who to report to if something happened at the facility they were uncomfortable with.
- Residents are asked if they feel safe.
- Residents are asked if they have the ability to participate in activities that relate to their culture.
- Residents are asked if they feel the treatment program is helping them.

Mr. Wieseler gave examples of survey questions asked of the staff:

- Staff are asked about their initial orientation.
- Staff are asked if they are prepared to meet the needs of the residents.
- Staff are asked if they are familiar with the policies and how to report abuse and neglect.
- Staff are asked what information and training they have received about the treatment planning process.
- Staff are asked what information and training they have received about behavioral, emotional, and medical needs of the residents.

Ms. Wieseler stated that the survey participation percentages are very high for both residents and staff. The DSS has the ability to follow-up with the residents and staff on any concerns raised in the surveys.

Ms. Wieseler stated that when DSS staff is on-site they review personnel files, resident files, interview staff, interview residents, and do a walkthrough of the facility. She stated that information is also obtained from juvenile corrections personnel with the Department of Corrections to see if they have concerns about the facility being reviewed. She added that an exit meeting is held with the administrator to provide the preliminary results of the review. The three program specialists, that perform these licensing reviews, will prepare a written report and list noncompliance issues with the timeframe for correction. Ms. Wieseler added that the program specialists will follow-up with the facility to ensure corrections have been made. She concluded by stating that a license review can result in a license being renewed, suspended, or denied. A license may be suspended if there are safety concerns for the children. A license can also be denied if there are significant noncompliance issues.

Senator Tidemann asked why the Aurora Plains Academy (APA) had the most reported incidents of injury during restraint, in the last Department of Corrections (DOC) report to the Committee. Ms. Wieseler stated that APA is the only intensive residential treatment facility in South Dakota. This facility treats the toughest youth. These youth have intense needs, such as mental health or offender issues. Ms. Wieseler stated that the DSS meets with the DOC juvenile division every two months to review the DOC juvenile report to the Committee. The DSS also meets every three months with the Association of Youth Care Providers to talk about training, policies, and rules to ensure youth are getting the treatment they need and are safe.

Representative Hunhoff asked if any youth came to DSS after the closure of the adolescent unit at the Human Services Center in Yankton. Ms. Wieseler stated this didn't have a significant impact. She did add that the DOC and DSS are struggling with the placement of youth with very high needs.

**Item 5 – Department of Transportation and the South Dakota State Railroad Board to discuss the operations of the State owned rail line leased to Dakota Southern Railway Company**

- [Letter to DOT Doc.4](#)
- [Letter to SDRRB Doc.5](#)
- [Letter to DSRC Doc.6](#)

Senator Tidemann asked that Darin Bergquist, Secretary of the Department of Transportation, begin by explaining when the reconstruction project was completed, the dollars spent on the project, and the contract terms with the lessee of the State owned rail line. Secretary Bergquist stated that this particular rail line is the Mitchell to Rapid City line which starts in Mitchell and runs west. He stated that there were two different rehabilitation projects on this line. Secretary Bergquist stated the first project, from Mitchell to Chamberlain, was a \$28.7 million project completed using a federal grant of \$16 million plus State funds and funds from other sources. That project was completed in the fall of 2012. The second project is on the same line from Chamberlain to Presho and this project is still being worked on. This project is being funded from a \$12.7 million federal grant plus \$7.2 in State funds, with an anticipated total cost of \$37.4 million when the project is completed. Secretary Bergquist described the lease from the South Dakota Rail Board to the Mitchell-Rapid City (MRC) Regional Rail Authority. The MRC Regional Rail Authority has entered into a sublease with Dakota Southern Railway Company

(DSRC). The DSRC pays the MRC Regional Rail Authority 1.5% of gross revenue. Two-thirds of that amount is paid to the State and the other one-third goes to the MRC Regional Rail Authority. Secretary Bergquist stated there is also a \$50/car surcharge for any cars originating or terminating on the line. This surcharge goes to the State Rail Fund to recoup construction costs as well as helping to fund other rail needs in South Dakota. Representative Hunhoff asked who pays the \$50/car surcharge. Secretary Bergquist stated the shippers pay this. Secretary Bergquist stated the on-going maintenance requirements associated with the lease and the sublease are placed on the operator. The operator is to maintain the line, three miles west of Mitchell to Chamberlain, at a class two standard. This means the line is capable of handling rail traffic speeds up to 25 miles-per-hour. Senator Tidemann asked what parts of the line are now below the class two standard. Secretary Bergquist stated that most of the line is still running at a class two standard. Representative Hunhoff asked for more information about the dates of the sublease agreement. Secretary Bergquist stated the sublease with DSRC is a 20 year agreement that was signed in 2012.

Secretary Bergquist stated the South Dakota Rail Board inspected the Mitchell to Rapid City line and had concerns about the maintenance that had been completed up until now. He added that the South Dakota Rail Board, at the last board meeting, asked the operator to come forward with a plan to fix the deficiencies in 90 days. The South Dakota Rail Board also asked for a long-term plan from the operator to keep the line in the same condition that it was in at the time it was leased to the operator. The operator did present a plan to the South Dakota Rail Board. The South Dakota Rail Board plans to inspect the line after the 90 day improvement plan has ended. Senator Novstrup asked where we were at in regards to the 90 day improvement plan. Secretary Bergquist stated that we are about 30 days into the plan.

Senator Tidemann asked what would happen after 90 days if the improvements haven't been made. Secretary Bergquist stated that the MRC Regional Rail Authority and the operator may be found in default to the contract. He added that the operator would likely have 30 days to clear that default. If the default is not cleared, the South Dakota Rail Board would have the option to terminate the lease with the MRC Regional Rail Authority and the MRC Regional Rail Authority would terminate the sublease with the operator.

Senator Tidemann stated the reason the topic is on the Committee's agenda today is to ensure contracts with the State are upheld and the people of the State are protected.

Todd Yeaton, Chair of the South Dakota Railroad Board (SDRRB), stated the SDRRB inspected the Mitchell to Rapid City line to determine if the line was in compliance with the lease agreement. Chair Yeaton stated that it was the consensus of the Board that we needed to make changes. Senator Tidemann asked if this was the first time the line had been inspected. Chair Yeaton said that individual Board members and the State had looked at the line in the past and the condition of the line has evolved through time. Representative Hunhoff asked if this was the only line the Board has inspected recently. Chair Yeaton stated members of the SDRRB have inspected every line the State of South Dakota has ownership of. Representative Hunhoff asked if there were any other State owned lines that have similar maintenance issues. Chair Yeaton stated there are not maintenance issues with the other lines, the Mitchell to Rapid City line is the one we have concerns with. Representative Hunhoff asked about the condition of the Napa line. Chair Yeaton stated the Napa rail is sufficient considering the current usage

of the line. Representative Hunhoff asked what the timeframe was for fixing the railroad crossing in Tabor. Secretary Bergquist stated that the DOT has offered to sit down with the City to make improvements. He added this needs to be a partnership between the City, to make improvements in the road leading up to the railroad crossing and the State, to make improvements on the crossing itself.

Michael Williams, owner of Dakota Southern Railway Company (DSRC), thanked the Committee for the opportunity to answer questions and provide information about the rail line. He stated that DSRC has ten railroads nationwide and bought the DSRC several years ago. He stated when he purchased DSRC the line was in poor condition. Mr. Williams stated that he contributed \$2 million to the first Mitchell to Rapid City reconstruction project, which brought in an additional \$8 million to help rebuild the railroad. He added that before the State received the federal grant for the first reconstruction project, he committed \$1.5 million to help rebuild the first three miles of rail. Mr. Williams stated that he and Burlington Northern contributed significant amounts of rail and ballast (rock) to the project. He explained that there are still bad spots in the line that need more ballast. He stated there was no money spent on bridges and culverts and this means the trains need to run slower when approaching these areas. Mr. Williams stated as part of the maintenance plan DSRC is putting in 2000 railroad ties and about 700 are in. He stated about \$4 million in equipment has been mobilized and 4,500 ton of ballast has been put in place. He stated that there has also been a significant amount of work done to repair bridges. Senator Tidemann asked if DSRC would meet the 90 day improvement plan deadline. Mr. Williams said, weather permitting, they would meet the deadline. Senator Tidemann stated the Committee will follow-up on the decisions of the SDRRB.

Representative Hunhoff asked what the future plans were for the Napa-Platte line. Mr. Williams was hopeful that this line would be reconstructed like the Mitchell to Rapid City line. He mentioned there were issues that would need to be resolved first and it would require a large long-term investment.

#### **Item 6 – House Bill 1214, 2016 Session**

Senator Tidemann explained a draft letter (see [Draft Letter of Intent](#)) from the Committee to Boards and Commissions to help them implement House Bill 1214, which becomes effective July 1, 2016. He explained the new law attempts to regulate conflicts of interest and the Committee has the responsibility to annually review potential conflicts. Senator Tidemann stated that he has received calls from members of Boards and Commissions suggesting they will be stepping down because of this new law. Senator Tidemann asked for Committee comments on the draft letter.

Representative Dryden stated the key to the new law is transparency, if a person believes they may have a conflict it is their responsibility to bring it forward. Representative Dryden approved of the letter. Representative Hunhoff asked if this letter was policy or more along the lines of administrative rule. Senator Tidemann stated this is a letter of intent similar to what the Appropriations Committee sends out. Senator Tidemann explained that he visited with the prime sponsor of House Bill 1214 and it is possible that this new law may be amended during the next session. Representative Cronin suggested the Committee could meet during the first week of the 2017 session and prepare changes to the law. A motion was made by Senator Novstrup to send out the letter to the various Boards and Commissions, seconded by Senator Heineman. The motion passed on a roll call vote.

**Item 7 – Future topics and next meeting date**

The Committee scheduled August 23, 2016 as the next meeting date.

A motion was made by Senator Heineman to adjourn, seconded by Senator Novstrup. The motion passed on a voice vote.