

# MINUTES

## Government Operations & Audit Committee

Senator Deb Peters, Chair  
Representative Jean Hunhoff, Vice Chair



**Sixth Meeting, 2017 Interim  
Thursday & Friday, October 5 & 6, 2017**

**Carnegie Town Hall  
Sioux Falls, South Dakota**

The sixth meeting of the 2017 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Peters at 1:00 p.m., October 5, 2017, at Carnegie Town Hall, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Wismer, Steinhauer, Tieszen, Anderson, Hunhoff and Senators Tapio, Nelson, and Peters. Senator Cronin joined by conference call. Senator Sutton joined after roll was called.

Staff members present were Mr. Tim Flannery and Mr. Russ Olson, State and Local Government Audit Managers for the Department of Legislative Audit (DLA).

*NOTE: For 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**

Senator Peters discussed the dissenting report submitted by Senator Nelson for the July 24 and 25, 2017 meeting. Representative Wismer commented the report had no substance and was factually incorrect. Doug Decker, Code Counsel to the Legislative Research Council (LRC), advised a dissenting report can be received upon vote of the Committee. He discussed the conditions imposed on dissenting reports and advised it was at the Committee's discretion whether to include the dissenting report. Senator Nelson made a point of order stating a dissenting report is not contingent on acceptance and stated every member of the legislature has a right to submit a dissenting report. The only thing that can be contested is if someone feels a word or words are out of bounds of the decorum standards.

Representative Tieszen moved, seconded by Representative Anderson, to reject the dissenting report. Senator Nelson made a point of order stating that this has already been moved by the member and is not open for discussion and approval. Senator Peters stated the report is not factually correct. Representative Tieszen commented that the report was not respectful to the legislature because it is not factually accurate. Senator Nelson said the statement is factually correct and it is his right as a Legislator. He stated the media reported that there is no record of Randy Schoenfish being mentioned in the July 24 and 25 audio transcripts, and was decided after the meeting. He advised this was a violation of legislative procedure and the report is appropriate. Senator Cronin discussed page 22 of 24 of the July 24 and 25 draft minutes, where Representative Tieszen discussed inviting the person responsible for signing the audit. He advised he was not aware of any other meeting and his understanding was they would invite whoever was in charge of the audit.

Senator Nelson asked for the rules allowing the vote on his dissenting report. Mr. Decker referred to the Interim Committee Rules, paragraph 14, advising that the Committee has discretion. Senator Nelson made a point of inquiry asking what is not respectful in his personal dissent that he has a right to submit. Senator Peters stated it was the accuracy of the report.

The motion to reject the dissenting report prevailed with 8 votes in favor, 1 against and 1 abstention.

Representative Anderson moved, seconded by Representative Hunhoff, the minutes of the August 29, 2017 meeting be approved ([Minutes 8-29-17](#)). Motion prevailed 9-1 on a roll call vote.

**Item 1 – Bureau of Information and Telecommunications:**

- **Executive Session – To discuss cyber security**
- **To discuss updates to their performance management indicators (SDCL 2-6-35)**
- [Letter to BIT Doc.2](#) • [BIT Performance Indicators Doc.2a](#)

Representative Hunhoff moved, seconded by Representative Anderson, that the Committee go into executive session to discuss cyber security. Motion prevailed 9-1 on a roll call vote. The Committee went into executive session at 1:18 p.m. The Executive Board came out of executive session.

Mr. Pat Snow, Chief Technology Officer with the Bureau of Information and Telecommunications (BIT), was present to address the Committee. He discussed the refinement of their performance management indicators, as well as their mission and goals ([BIT Performance Indicators](#)). The first goal is to provide a reliable, secure and modern infrastructure. Uptime is a base line measurement used by all kinds of data centers to show reliability. BIT is working toward 100% uptime. He explained the information about the value of BIT technology investments and showed the dollars spent by agencies outside of the BIT budget. He discussed the Top Critical Risks by Week chart and advised it represents about 200 million records of security events. It measures risk across the State and shows how well the operational practices are doing to mitigate risks. The goal is to minimize the risks and bring the bars down.

The second goal is to deliver valuable services at economical costs. For this goal, they focus heavily on the development area of BIT and want to see increasing trends in projects completed, social media followers as well as the number of usage hours on SD.Net. They would like to see the unplanned work items shrink over time. Representative Hunhoff asked what the number of projects completed were measured against. Mr. Snow explained that they are not measured against anything, but it gives a sense of the amount of work completed over time. He advised that they could include more data in the future to show improvement. Representative Hunhoff also suggested including more information on the SD.Net usage to get a better understanding of what people are using.

The third goal is to build and retain a highly skilled workforce. Mr. Snow advised that this was probably the most important criteria for success. Their goal is to keep staff turnover low by treating the employees well, making sure they are challenged and well trained. Representative Steinhauer suggested adding more of a historical perspective to the information provided, include goal lines to show what they are trying to achieve and provide information about what types of projects the resources are being used for.

**Item 2 – Bureau of Administration – Annual report of activity relating to the Obligation Recovery Center (SDCL 1-55-16)**

- [Letter to BOA Doc.3](#)
- [FY2017 Obligation Recovery Center Annual Report Doc.4](#)

Mr. Scott Bollinger, Commissioner for the Bureau of Administration (BOA), was present to address the Committee. He covered some high points of the [FY2017 Annual Report](#). Mr. Bollinger addressed recent news reports and explained that the Obligation Recovery Center (ORC) does not procure or purchase any debts. They collect on debts owed to State agencies, including debts with the Board of Regents. Mr. Bollinger discussed the ORC's website and all of the information it contains at <http://boa.sd.gov/divisions/obligation>. He thanked the members who were on the ORC advisory group that was in place for two years and sunsetted on June 30, 2017.

Mr. Bollinger explained that agencies first go through their normal collection process, send a final 14 day letter requiring action, and then refer to the ORC if no resolution. The ORC then attempts to contact the debtor, giving them 60 days to respond before taking action. If there is no action, the notification processes begins and the ORC has only 180 days to collect. If there is no active process going on at 180 days, it is turned over to one of three collection agencies contracted by BOA. The agencies began collecting debt on March 13, 2017. BOA will notify the licensing agencies and then their role in the collection process stops. The licensing agencies will then complete their normal process. SDCL 1-55-11 states a debtor can't maintain a driver's licenses, motor vehicle registration or hunting and fishing license if they owe a debt to the State of South Dakota. If the collection agencies are unsuccessful after one year, the account goes back to the original State agency and could be a potential write-off with the Board of Finance.

Mr. Bollinger advised that the ORC took in 63,336 accounts in FY2017, resulting in 24 due process hearing requests. The majority of the hearings had to do with the debtor not being able to pay rather than the debt not being theirs, or the amount being incorrect. He described the hearings process and the meaning of the outcomes. Mr. Bollinger also discussed various debt types that are not submitted to the ORC for collection.

Mr. Bollinger reviewed the activity of the ORC and agencies brought in over \$3.3 million in FY17. Additionally, about \$7.7 million were set up on payment plans. When BOA met with the Appropriations Committee in January and February, they only had about four months of history and estimated the General Fund would benefit by about \$277,000. They ended up collecting about \$618,000 for agencies that went directly to the General Fund. Representative Hunhoff asked for a breakdown of the money paid to CGI and the third party debt collection agencies. Mr. Bollinger advised that about \$35-40,000 went to the third party debt collection agencies.

Mr. Bollinger discussed the \$450,000 budgeted for the ORC was reverted in FY2016 and about \$205,000 of \$450,000 budgeted was reverted in FY2017. The BOA does not retain any funds collected by the ORC.

Representative Steinhauer asked if they had any collection data from the State agencies to compare with to see if the Legislature made a good decision putting money in to the ORC. Mr. Bollinger advised that the State is not spending any money; the General Funds appropriated are offset by the cost recovery fees. He explained that they do not have collection information from the agencies. Representative

Steinhauer suggested reaching out to the State agencies and getting historical data. He also asked about not collecting from other State agencies. Mr. Bollinger advised that often times it has to do with a claim made by the State to the federal government that didn't get paid out and chances of collection are not very good without going through serious litigation.

Senator Tapio discussed a constituent case that has been dealing with the ORC for three weeks. He asked to review the revocation and reinstatement processes. Mr. Bollinger explained some of the processes used by the licensing agencies. Senator Tapio asked what the reinstatement process was once the debt has been resolved. Mr. Bollinger advised that with being in their first year, they are working out issues that have come up. The process in place is that the third party collection agencies are to update their systems and immediately notify the ORC, which in turn, updates their records to remove the block on the debtor's licenses. Their system updates nightly and is sent to the licensing agency the next day. Senator Tapio asked if there was a way for legislators to expedite the process, as taking someone's driver's license away affects their life. Mr. Bollinger advised that BOA is working on issues brought to their attention.

Senator Cronin asked how many notices are sent to debtors before their licenses are taken away. Mr. Bollinger advised that at a minimum, they would have received one or two phone calls and two letters. Senator Cronin feels the notification process seems adequate and gives the debtor plenty of opportunities to address the debt before revocation at the licensing agencies. Senator Sutton asked if there were any requirements that there was actual contact with the debtors before licenses are revoked and asked if it was possible for this to happen without receiving notification. Mr. Bollinger advised that the Department of Motor Vehicles sends a certified letter to the debtor based on the address on file. If the information on file is incorrect, it is possible that the debtor does not receive the notifications. Mr. Bollinger advised that the BOA tries to work with people and treat them in a fair and equitable manner.

**Item 3 – The Building South Dakota Fund annual reports from (SDCL 1-16G-49):**

- **Governor's Office of Economic Development**
- **South Dakota Housing Development Authority**
- **South Dakota Department of Education**
- [Letter to GOED Doc.5](#)
- [Letter to Housing Doc.6](#)
- [FY2017 GOED Building SD Report Doc.7](#)
- [FY2017 Housing Opportunity Fund Annual Report Doc.8](#)
- [FY2017 Workforce Education Fund Annual Report Doc.9](#)

Mr. Scott Stern, Commissioner of the Governor's Office of Economic Development (GOED), and Cassie Stoeser, Finance Director at GOED, were present to address the Committee. Mr. Stern discussed the vision and mission of GOED including the vision to grow the domestic product in the State, diversify the tax base and improve the quality of life. He advised that there have been 32 projects since January, resulting in \$427 million of capital expenditures and created 1,003 full-time equivalent (FTE) positions. They have hosted 22 companies since January and have received 32 specific proposals.

Ms. Stoeser discussed the four Building South Dakota Fund programs that GOED administers ([GOED Building SD Report](#)). The first program is The Local Infrastructure Improvement Program. Ms. Stoeser provided an overview of the program and advised that the grants are used to assist in funding the

construction and reconstruction of infrastructure for the purpose of serving economic development projects. Ten grants were awarded during FY2017 totaling \$2.6 million projecting to create 562 jobs.

The second program is the Reinvestment Payment Program. The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. This program allows for project owners to receive a reinvestment payment, not to exceed the sales and use tax paid on the project costs, for new or expanded facilities with project costs in excess of \$20 million, or for equipment upgrades with project costs in excess of \$2 million. Seven grants were awarded during FY2017 totaling \$13.3 million projecting to create 280.5 jobs.

The third program is the South Dakota Jobs Grants Program. The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. This program allows for project owners to receive a reinvestment payment, not to exceed the sales and use tax paid on project costs, for new or expanded facilities with project costs less than \$20 million or for equipment upgrades with project costs less than \$2 million. Two grants were awarded during FY2017 totaling \$129,801 projecting to create 24 jobs.

The fourth program is the Economic Development Partnership Program. This program can be used for a variety of purposes, with the primary purposes being to help local economic development programs with training needs and to help local economic development program recapitalize local revolving loan funds. Eighteen grants were awarded during FY2017 totaling \$1,049,145 projecting to create 117 jobs. Representative Hunhoff asked how they can measure that the training gained is being used in the workforce. Mr. Stern described the declining scale of assistance and the guidelines provided. They are in year three of four in the program and Mr. Stern feels they will know more after next year.

Representative Hunhoff asked who else looks at the reports provided. Ms. Stoesser advised that the Board of Economic Development and the GOED office review the reports. Representative Wismer asked about the Reinvestment Payment Program and construction excise taxes. Representative Hunhoff asked if GOED goes back to the projects to see if they meet the expected employment numbers or if the projects are completed. Mr. Stern advised there are audit procedures in place to review and verify the projects. GOED asks the company confidentially for income information when the project closes. They have actions they can take when clients do not follow through with what is expected of them. Representative Hunhoff advised she would like to see the information collected after the projects are finished.

Representative Steinhauer discussed and advised it is good to look at the requests that are not fulfilled and asked how they reach the funding decisions. Mr. Stern advised that the Board of Economic Development makes those decisions and analyzes the information in great detail. Some factors could be a community's ability to match the amount of money available in the fund or the synergy created in the community.

Senator Tapio asked what the plans are for the STAR Academy in the Black Hills. Mr. Stern explained that GOED is functioning as the organization selling the property. They have not been engaged to perform any economic development. Representative Wismer discussed revolving loan funds, which

have been used by her community. She asked how efficiently revolving loan fund dollars are being used. Mr. Stern advised feedback he's received from the South Dakota Community Foundation and planning and development districts say the communities are doing a good job.

Mr. Mark Lauseng, Executive Director of the South Dakota Housing Development Authority (SDHDA), was present to address the Committee. He provided a copy of the FY2017 South Dakota Housing Opportunity Fund Annual Report ([Annual Report](#)). Mr. Lauseng provided history on the Housing Opportunity Fund (HOF), as well as the need and results. The SDHDA distributes HOF funds geographically throughout the State with 30% of the funds targeted for Sioux Falls and Rapid City and 70% of the funds targeted for the rest of the State. As a result of the application received in FY2017, 13 new homes will be built, 105 homes and seven rental units will be rehabbed and 39 future homeowners will be provided with down payment assistance. To date, the SDHDA Board of Commissioners has awarded \$10.2 million for 82 projects.

Representative Hunhoff asked how to get more money for the projects. Mr. Lauseng advised that there could never be enough money. He advised that it would be nice to have a consistent funding source for the program. Senator Sutton asked if GOED was involved in the 2017 Workforce Housing Study. Mr. Lauseng advised that he has attended the meetings and gave a presentation on the housing tax credit program. Senator Sutton thought there were some bills being drafted regarding the funding of the HOF. Mr. Lauseng advised that he has not been contacted about that by anyone on that committee.

Senator Cronin discussed the amount of funds being granted and the fact that they will need to find different funding next year. He asked if the HOF has a plan on where they are going to target their funding and advised it would be helpful going in to the budget process as well as address with the Workforce Housing Study committee. Mr. Lauseng advised that workforce housing is one of their priorities this year.

The Department of Education (DOE) submitted the Workforce Education Fund Annual Report ([Workforce Education](#)) to the Committee. Representative Hunhoff advised they will ask the DOE to come to the next meeting to review the report.

#### **Item 4 – Committee discussion of answers to follow-up questions to the Department of Transportation**

- [Letter to DOT Doc.10](#)
- [Reply from DOT Doc.10a](#)

Senator Nelson prepared and provided written information to the Committee ([Senator Nelson's Amendment](#)). Mr. Alex Huff, a former original founding owner of the Dakota Southern Railway, was present to address the Committee. He provided background on the railway and discussed answers submitted by the Department of Transportation (DOT). Mr. Huff recommended that the Committee monitor the current owner or look at selecting another one.

Representative Hunhoff suggested asking the Railroad Board Chair, the owner of Dakota Southern Railway and the Secretary of DOT to appear at a future meeting. Senator Nelson stated that this is a constituent issue and stated that the revenue figures need to be verified. Representative Steinhauer agreed with Representative Hunhoff saying it is a good idea to ask the three individuals to come before

the Committee. If they still have concerns after hearing from them, then it would be a good time to have the Auditor General look in to it further.

Senator Nelson moved, seconded by Senator Tapio, to have the Department of Legislative Audit (DLA) conduct an audit. Mr. Tim Flannery, Audit Manager with DLA, discussed that a verification of payment amounts might be more appropriate than calling for an audit. Senator Nelson stated that he would like to leave it open and give the Auditor General authority to look at what he deems appropriate. Senator Cronin stated that he thinks they need to specifically define what needs to be audited.

Representative Wismer made a substitute motion to ask that DLA perform specific procedures to confirm revenue due to the State Railroad Board and local railroad authorities and also come to the next Committee meeting with the last available financial reports on the State Railroad Board. Motion died due to a lack of second.

Mr. Russ Olson, Audit Manager with the Department of Legislative Audit, discussed the special review of the loans and leases with the regional rail authorities. He discussed the recommendations made to the State Railroad Board. Representative Wismer asked if the recommendations made to DOT have been implemented. Mr. Olson advised he was aware of discussion regarding the recommendations, but does not know if they have been implemented.

Senator Tapio discussed two key issues brought forward by Mr. Huff: storing hazardous materials and the condition of the track. He doesn't feel the initial motion addresses these issues.

Representative Steinhauer made a substitute motion, seconded by Anderson, to call the Secretary of DOT, the head of the Railroad Board and at their discretion, the head of the Dakota Southern Railway to an upcoming meeting to address numerous concerns brought forward today including storage of hazardous materials, the actions taken from the recommendations by DLA and the sublease that has not been properly authorized. Representative Wismer hopes that DOT will bring personnel who work closely with the concerns addressed. The motion prevailed 9-0 on a roll call vote.

#### **Item 5 – Procedures for determining school district enrollment used in the calculation of State Aid**

- [Letter to Tri-Valley Superintendent Doc.11](#)
- [Reply from Tri-Valley Superintendent Doc.11a](#)
- [Letter to Tri-Valley School Board Member Doc.12](#)
- [Letter to Chester Superintendent Doc.13](#)
- [Reply from Chester Superintendent Doc.13a](#)
- [SDDOE Fall Enrollment Process Doc.29](#)

Representative Hunhoff advised that letters were sent to the Superintendents of the Tri-Valley and Chester School Districts. Mr. Mike Lodmel, Superintendent of the Tri-Valley School District, and Ms. Nicole Pullman, a Tri-Valley School Board Member, were present to address the Committee. Mr. Lodmel discussed the letter he sent to parents of homeschool students and reviewed his answers to the Committee's written questions ([Reply](#)). He explained that his goal was to provide homeschool students valuable tools that would improve their learning opportunities while also increasing school revenue.

Senator Nelson asked who was going to pay for the laptops. Mr. Lodmel advised that it would have been the school district funds. The school provides all of their high school students with laptops. Senator Tapio asked for the current number of enrolled students and the number of homeschoolers. Mr. Lodmel advised their enrollment was about 915 students and there are about 43 homeschool students in the district.

Representative Wismer asked if there was a better date to use to determine enrollment. Mr. Lodmel answered that he doesn't have a specific date and thinks the current date works. Senator Sutton asked if there was a better process to determine enrollment. Mr. Lodmel stated the two year average formula helped for budgeting purposes.

Representative Sue Peterson submitted an email to the Committee ([Rep. Peterson's Response Re: Tri Valley](#)) and was present to address the Committee. She reviewed her email. Representative Hunhoff asked if she knew the students in the high school were already getting laptops. Representative Peters advised that it was not in the letter she received.

Ms. Lori Bohm, a parent from Crooks, was present to address the Committee. She feels that Mr. Lodmel wants all students to succeed and doesn't feel like it was a scheme. She suggested moving education and Medicaid to the top of budgets so teachers, students and the future of the State could move ahead.

Representative Hunhoff stated that the Superintendent is taking full accountability for the events. She advised that they may propose future legislation to clarify issues and discourage this type of behavior. They may also need to look at different ways of calculating the enrollment. Senator Nelson expressed his concerns about trying to get answers on GEAR UP.

#### **Item 6 – Follow-up on the GEAR UP grant and proposed legislation**

- [Letter to MCEC Board Member PH Doc.14](#)
- [Reply from MCEC Board Members Doc.16](#)
- [Reply from RM Doc.17a](#)
- [Reply from KM Doc.18a](#)
- [Reply from form Director LW Doc.19a](#)
- [Letter to Schoenfish & Co Doc.21](#)
- [Letter to SDDOE MS Doc.23](#)
- [Proposed Legislation – Senator Peters Doc.24](#)
- [Proposed Legislation – Senator Sutton Doc.25](#)
- [Proposed Legislation – Senator Sutton Doc.25a](#)
- [Proposed Legislation – Representative Steinhauer – Doc.26](#)
- [Proposed Legislation Doc.26a](#)
- [Letter to MCEC Board Member LP Doc.15](#)
- [Letter to GU Advisory Board RM Doc.17](#)
- [Letter to GU Advisory Board KM Doc.18](#)
- [Letter to former Director LW Doc.19](#)
- [Letter to former Director RC Doc.20](#)
- [Reply from Schoenfish & Co Doc.22](#)
- [Reply from SDDOE MS Doc.23a](#)
- [Follow-up Information DLA Doc.27](#)

Mr. Flannery discussed the letters sent by the Committee and the responses received. Representative Steinhauer discussed a memo sent by Roger Campbell on August 1, 2012 to Dr. Melody Schopp. In this memo, Mr. Campbell advised that Mid Central Educational Cooperative (MCEC) assumed the fiscal agent role. Mr. Russ Olson, Audit Manager with the Department of Legislative Audit (DLA), defined a fiscal agent as someone who accounts for the funds, brings them in and makes the disbursements at the request of the controlling entity. Representative Steinhauer stated his prior understanding was that the



Department of Education (DOE) was responsible for the first phase of GEAR Up, but Mr. Campbell's comments indicate MCEC had control of the funds. Senator Sutton asked if MCEC had involvement with the first phase of GEAR UP. Mr. Tim Flannery, Audit Manager with the Department of Legislative Audit, advised that from a payment perspective, the State did not pay MCEC. Senator Sutton thinks MCEC was more involved than originally thought. Mr. Flannery discussed there were related parties between MCEC and the Oceti Sakaowin Education Consortium (OSEC). Mr. Olson explained that DLA did not audit OSEC during the special review.

Senator Nelson asked if any audits were conducted on the first phase of the GEAR UP grant. Mr. Flannery advised that they discuss that in Item 2 in the [Follow-up Information from DLA](#). The information shows both from the State level, as well as the MCEC level. GEAR UP was not audited at the State level during the first phase. Senator Nelson asked why it wasn't. Senator Peters explained that GEAR UP did not fit the criteria requiring an audit based on a risk based analysis. Senator Nelson asked if the State had contracts with OSEC to administer GEAR UP funds. He asked if there were any provisions in the contract that they were required to cooperate or provide an audit. Senator Peters advised that the contract no longer exists due to record retention requirements. Senator Nelson asked if it is standard practice to have that type of language built in to every contract. Mr. Olson described differences between pass-through entities and contracting for a service. Senator Nelson asked what periods of time were there contracts with OSEC. Mr. Flannery advised from 2005-2011. DLA started looking at MCEC records in 2014 and the special review focused on MCEC and the second phase of GEAR UP. Senator Nelson asked if OSEC refused to cooperate with the MCEC special review. Mr. Olson explained that the OSEC organization had very little activity in 2014 and had practically ceased operation. He explained that the special review focused on transactions between MCEC and OSEC, not OSEC and the DOE. Senator Nelson stated there were no audits of the first phase of GEAR UP, therefore, we don't know if there was any money stolen. He wants to know why there weren't any audits. Mr. Flannery explained that there was no one to talk to at OSEC, as the Westerhuis's ran the financials.

Senator Sutton asked who else was involved with OSEC. Mr. Olson advised he would review records and follow up. Senator Sutton asked who advised DLA that the contract records with OSEC no longer existed. Mr. Olson will follow up on that information. Senator Sutton advised he would like to know who said the records weren't available and would like more information on their record retention procedures.

Representative Steinhauer asked if the GEAR UP money would have flowed through MCEC with them being the fiscal agent. Mr. Olson answered yes, it could have. Representative Anderson advised, the discussion was a bit frustrating as they are looking at emails from years ago and the Westerhuis's were involved in several different aspects. Senator Nelson stated it is important to look at the operations to figure out how this was able to continue for several years under the supervision of the DOE. He asked if DLA found any OSEC information regarding the first phase of the GEAR UP grant while going through all of the records seized. Mr. Flannery advised that they had access to all records at MCEC and addresses some issues in the findings in the Special Review. Mr. Marty Guindon, Auditor General at DLA, advised that they had access to many records, but that the same people were doing the books for several different organizations.

Senator Peters discussed the responses received from MCEC Board members and Rick Melmer. Senator Nelson asked when it was decided to send these letters, as he couldn't recall discussing them in prior meetings and he was not consulted. Senator Peters advised that there was not a secret meeting and as a prerogative of the Chair, they can send letters. Letters were sent and responses were received from Mr. Moore and Ms. Werdel. Representative Steinhauer discussed that the three entities involved were all blurred together, so when asking questions and receiving responses, they aren't always sure which entity was involved. A letter was sent to Mr. Roger Campbell and he called and spoke to Mr. Flannery and advised that he would not be attending the meeting or answering the written questions. A letter was sent and response received from Schoenfish & Co.

A letter was sent and response received from DOE. Senator Sutton discussed the response to question nine and would like to know who specifically with DOE was involved and if the results were being reported to the Advisory Board. Senator Peters advised there is a list of members of the Advisory Board and that will be forwarded to Senator Sutton. Senator Nelson advised that this is a response from an attorney, not Secretary Schopp. He recommends rejecting this response and summoning Secretary Schopp before the Committee. Representative Wismer stated she feels they aren't getting anywhere. Senator Sutton discussed the response to question six and feels there should be some legislation addressing the fact that information is privileged. Senator Nelson stated that if the Committee does not summon, subpoena or put people under oath, it doesn't do any good to change the law.

Representative Wismer discussed Item #6 in the DLA Follow up Information and spoke to the credibility of the testimony received by DOE.

The Committee reviewed the proposed legislation submitted by Senator Sutton ([Doc 25](#)). Senator Sutton explained that the legislation is intended to provide more public access to records. There is difficulty getting emails, as they are not public record. Representative Anderson agrees and understands that public information is important, but states there are some issues in State government that should not be public information. He advised they need to consider how they can still respect privacy issues. Mr. Doug Decker, Code Counsel for Legislative Research Council (LRC), explained that there are additional statutes that address confidentiality and this legislation would not affect them. Representative Anderson advised that he is not comfortable with having everything public and feels that it could hinder communication. Representative Tieszen thinks this merits further discussion. Mr. Decker discussed SDCL 1-27-1.7 protecting the deliberative process. Representative Steinhauer advised he does not have a problem with the proposed legislation and stated that everything in the business world is discoverable. Senator Nelson expressed his support for the legislation and encouraged the Committee to become familiar with the Freedom of Information Act. Senator Peters advised they will publish this online for discussion.

The Committee reviewed the next proposed legislation submitted by Senator Sutton ([Doc 25a](#)). Senator Sutton explained that this would extend the record retention period to 10 years. He recognizes that they would need to consider the costs with this change and is hopeful that they would remain down. Senator Peters asked if there was any federal law or guidance that should be considered. Mr. Flannery advised retention is addressed in the Uniform Guidance issued by the Office of Management and Budget. Mr. Olson discussed the Records Management Department under the Bureau of Administration would be a good resource to work with. Mr. Guindon advised that he is on the Records Board and

described their role. Mr. Guindon suggested defining a fiscal record. Senator Peters advised they will publish this online for discussion.

The Committee reviewed the proposed legislation submitted by Representative Steinhauer ([Doc 26](#)). Representative Steinhauer explained that this brings it a little closer to whistle blower process and provided additional opportunity to report more than once. Representative Hunhoff asked if Representative Steinhauer worked with the Bureau of Human Resources on the whistle blower policy and wonders if it needs to be in statute if it is already in policy. Representative Steinhauer advised he did not and will check with them.

The Committee reviewed the proposed legislation submitted by Senator Peters ([Doc 26a](#)). Senator Peters explained that Sections 1 and 2 are to try to get information available. Representative Anderson suggested strengthening this by requiring board members to sign an affidavit when there are findings in an audit. Senator Peters explained that Section 3 adds new language related to the Board of Internal Control laws. Section 4 relates to the separation of duties and conflicts of interest. Section 5 provides for additional requirements for conflicts of interest to be submitted annually. Senator Sutton discussed the fact that OSEC didn't receive audits and asked if they should be exempt from the audit requirement if they receive State or federal money. Senator Peters advised that federal requirements have a certain dollar amount threshold for requiring audits. Discussion was held about requiring companies with State contracts to have audit requirements as well. Senator Peters advised there would be major costs related to the audits. Mr. Guindon advised that SDCL 4-11-2.1 gives DLA the authority to follow money to non-profits for money appropriated from the State or political subdivisions, but it does not include service contracts. Senator Sutton suggested they could adjust that statute to include service contracts. He will work with LRC to bring forward legislation. Representative Steinhauer stated he thinks the audit requirements for contracts should be based on need, not a certain dollar amount. Senator Nelson stated that he supports Representative Anderson's idea on requiring signatures. He discussed the idea of having audits signed by the auditor, or at least noted who conducted the audit to provide more accountability. Senator Nelson also asked if Section 2 covers cooperatives. Mr. Guindon explained that the accounting firm holds the license to issue audit reports in accordance with generally accepted auditing standards.

Mr. Michael Wyland, an owner and partner of the consulting firm Sumption & Wyland, was present to address the Committee. His firm has worked with non-profits and government since 1990, developing successful grant applications on behalf of the State of South Dakota, with the majority being for the DOE and the Sanford USD School of Medicine. He provided his thoughts on the proposed legislation. He stated that a third party writing a grant without compensation with the expectation to receive work funded by the grant is unethical. He described the typical steps taken when writing a grant and the role of an evaluator. Mr. Wyland advised that prohibiting an evaluator on being paid when participating in drafting an application and subsequently doing services will reduce the quality of the information being submitted because it will lack the name of an external evaluator. Mr. Wyland advised that he found it difficult to find the definition of what constitutes a conflict of interest in State government. He used the decision tree on the Bureau of Human Resources' website and it would not have assisted with those involved in GEAR UP. He recommends looking at the Internal Revenue Service's definition of a disqualified person and the conflict of interest sample on Form 1023. Representative Anderson asked if

the grant writing standards were well defined, as the Legislature has adopted various industry standards. Mr. Wyland advised that they are long standing and often called the CANARAS Principals.

Senator Tapio asked Mr. Wyland if he thought the \$4.3 million valuation of the Microsoft match was fraudulent. Mr. Wyland advised their view is that matching funds should be based upon a fair market value, making it justifiable. Senator Tapio asked if the software has a value if it is determined that it was never used. Mr. Wyland advised that he would not document an expenditure that he believed would not be followed through on by the client.

Senator Tapio commented on what has been learned. He advised that he would be an opponent of any legislation that comes out of this because he feels they have not done a proper analysis of what the problems are. Senator Tapio identified the following problems:

1. There was fraud, and fraud possibly by State employees
2. There were warnings of fraud to State employees that were not acted upon
3. There were matching funds that were allocated and valued that were later determined never used
4. We don't know who in State government knew about fraudulent activity and the valuation of the match to federal funds
5. All of the players are interconnected

Senator Tapio stated he is ashamed of the Committee because there are unanswered questions and the Committee didn't subpoena people who know the answers. Representative Anderson made a point of order objecting to Senator Tapio's comment.

Representative Hunhoff discussed program evaluations and advised the Committee should address outcomes. Representative Steinhauer suggested additional work on how the Legislature can have oversight on the effectiveness of flow-through money in grants offered.

**Item 7 – Review draft of the GOAC Annual Report to the Executive Board and authorize the Chair to finalize the report**

- [Draft GOAC Annual Report 2017 Doc.28](#)

Senator Peters advised that the Executive Board is meeting Monday, November 13, 2017. The finalized GOAC Annual Report needs to be submitted seven days prior to the meeting. Senator Nelson asked if the Committee could hold off on making a decision to digest the report and provide additions. He advised that he has some things he'd like to provide.

Representative Steinhauer feels the Committee has had a daunting task. He wondered if this should be addressed in the Annual Report. Senator Peters advised the Annual Report is a summary of the Committee's activities. She suggested they could convey this to the Executive Board and to the Legislature. Senator Peters advised that the information from this meeting will be added.

Additions to the GOAC Annual Report will be provided to the Committee by Monday, October 16, 2017. Committee member changes are due to staff by October 20, 2017 at 5:00 p.m. The Committee will approve the final report at the October 30, 2017 meeting.

**Item 8 – Next meeting date and future meeting topics:**

The next meeting is scheduled as a conference call on Monday, October 30, 2017 at 12:00 p.m. Central.

Agenda items for the October 30<sup>th</sup> conference call meeting:

- The Committee will vote on the GOAC Annual Report
- Follow up items from October 5th
- Annual report from the South Dakota 911 Coordination Board (SDCL 34-45-20)

The final meeting is tentatively scheduled for December 18, 2017 in Pierre with the following agenda items:

- GOAC Blue Book of Other Funds
- GF&P Other Funds
- Board of Education Standards – annual accountability report from the Technical Institutes (SDCL 13-48A-7)
- Legislation and pre-filing

Senator Peters requested that Committee members review the GOAC Blue Book of Other Funds and compile a list of funds they would like to discuss for the meeting in December. She requested members email their list to Mr. Flannery before the meeting so he can invite those agencies to the meeting. The list of accounts over \$500,000 was included in the Blue Book and those will be discussed as well.

A motion was made by Senator Sutton to adjourn, seconded by Representative Anderson. The motion passed on a voice vote.