



Legislative Research Council

SouthDakota

MINUTES

GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

Senator Larry Tidemann, Chair
Representative Dan Dryden, Vice Chair

Third Meeting
2014 Interim
July 29, 2014

Room 413
State Capitol Building
Pierre, South Dakota

The third meeting of the 2014 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Tidemann at 9:00 a.m., July 29, 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 and Tidemann. Representatives Dryden, Wismer, and Mickelson. Senator Hunhoff and Representative Cronin were present through a conference call. Senator Curd arrived during executive session. Senator Lucas and Representative Magstadt were 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

Senator Heineman moved, seconded by Representative Dryden, the minutes of the June 18, 2014 meeting be approved. Motion prevailed unanimously on a voice vote. Representative Mickelson moved, seconded by Representative Dryden, the agenda for the July 29, 2014 meeting be approved. Motion prevailed unanimously on a voice vote.

Item 1 – Attorney General – To discuss legal matters (Executive Session)

Attorney General, Marty Jackley, was present to address the Committee. He announced that the main reason he was present was to answer any legal questions from the Committee and to help the Committee decide what, if any, steps they may want to take in the future. Attorney General Jackley provided the following handouts: an April 8, 2013 letter from Governor Daugaard to the Attorney General requesting the initiation of the investigation; a November 21, 2013 response from the Attorney General to the Governor of what was found in relation to the vouchers and the concern over the \$550,000 Future Fund grant; an October 2013 draft criminal complaint and arrest warrant that was authorized by the Attorney General; an October 11, 2013 state grand jury notice; and a January 9, 2014 general summary of factual background information mainly derived from what Attorney General Jackley calls “the Bob Mercer Court Filings.”

Attorney General Jackley then walked through a chronological order of factual findings associated with the concern of the \$550,000 grant that began on December 2, 2010. The investigation began around April 10, 2013. This investigation included thousands of pages of documents including personal bank records, loan documentation, correspondence emails, witness interviews, preparation of criminal process documentation, and meetings with retained defense council. GOED was extremely cooperative throughout the investigation.

At the conclusion of the investigation Attorney General Jackley authorized a criminal complaint. It is dated October 2013. It is unsigned and was not filed because of events that happened. The individual it was to be filed against was presumed innocent. There is also a grand jury letter that was dated October 11, 2013 and was scheduled for October 28, 2013. The grand jury did not occur. On October 22, 2013, Richard Benda was found dead and it was ruled a suicide by the forensic pathologist, the coroner, and law enforcement.

It was determined that the \$550,000 was used improperly to make payments regarding the EB-5 program. Because the EB-5 program is a federal immigration program, the Attorney General has provided the entire investigation file to the federal authorities.

Attorney General Jackley was available to answer legal questions regarding the Committee's authority and what they could and could not do, but he suggests entering executive session before doing so, as it is legal advice.

Executive Session – Discussion before entering executive session

Representative Wismer was not comfortable having Attorney General Jackley appearing before the Committee as legal counsel because he represents the executive branch and also because she does not feel the Committee is clear on whether they are going forward in regards to criminal matters or legislative oversight matters.

Senator Tidemann allowed the Attorney General to respond to Representative Wismer's concerns and stated that he, as the Committee Chair, invited the Attorney General to speak to the Committee.

Attorney General Jackley responded by stating that pursuant to SDCL 1-11-1, the Attorney General does represent the legislature. He was unable to go into detail about what certain witnesses did or did not say, but he did state that SDRC, Inc., was a part of the investigation and that Joop Bollen was interviewed.

Representative Wismer wanted clarification on whether the Committee would be discussing legislative oversight duties or criminal matters. Senator Tidemann stated it would be to specifically talk about the legal situation that we may encounter as we move forward. Representative Wismer stated that she was not in agreement with the motion because she does not agree that the Attorney General is the legislature's legal counsel and is not aware of any proposed or pending litigation or contractual matters that need to be discussed in Executive Session.

Attorney General Jackley referred the Committee to SDCL 1-11-1, subsections 2, 6, and 8 regarding the duties and responsibilities of the Attorney General. Representative Wismer stated that she feels in this particular situation, in the Committee's oversight capacity, the Committee should not be using the Attorney General who is part of the executive branch to advise the legislature about these matters.

Representative Cronin feels that discussing these matters with the Attorney General is a good idea because he is not appointed by the Governor but by the people of South Dakota, and that he is one of the best assets we have because he is not connected with the three branches of government.

Representative Dryden moved that the Committee enter Executive Session, seconded by Senator Heineman. Motion prevailed on a voice vote with Representative Wismer stating that she was against the motion.

The Government Operations and Audit Committee went into Executive Session at 9:22 a.m.

The Government Operations and Audit Committee came out of Executive Session at 10:16 a.m. No action was taken.

Representative Wismer made a motion to subpoena Joop Bollen for the next meeting. Motion died for a lack of a second.

Item 2 – Governor’s Office of Economic Development (GOED) – To provide an update on corrective actions relating to the audit of the governmental funds of the GOED, the agreed-upon procedures engagement and the internal controls examination (discussed at the March 7, 2014 Committee meeting) and to answer Committee questions

Pat Costello, Commissioner of the GOED, addressed the Committee. He reminded the Committee that he was present on March 7, 2014, when the Committee discussed the various findings that resulted from the three engagements. The GOED handed out a report that recapped the status of their corrective actions.

Commissioner Costello discussed the new process for completing background checks. A law was passed to allow background checks to be completed for certain positions. The following positions will be required to have a background check: Commissioner, Deputy Commissioner, Finance Director, Deputy Finance Director, Loan Officer, Loan Specialist, Loan Grant Administrator, Loan Servicing Agent, Community Development Coordinator, Workforce Development Coordinator, Administrative Director, Travel Coordinator, Fiscal Assistant, Energy Director, and Director of Commercialization. Background checks are essentially performed for the positions that have access to financial account numbers of financial assisted applicants or authority to authorize grants, loans, or other financial assistance.

Senator Tidemann asked about the cost of the background checks and Commissioner Costello answered by stating that he is not aware of the current dollar amount. However, the potential employee would pay for the background check upfront and if the background check was acceptable they would be reimbursed. If the background check showed they were not able to be hired for whatever reason, they would not be reimbursed.

The State Auditor, Steve Barnett, was present to provide the Committee with an update on the changes made regarding the processing of travel vouchers. The time delay regarding the processing of vouchers was an area of concern. This has been corrected by imposing a rule that requires the claimant to submit their travel claim within sixty days from the date of travel. If this time frame is not followed there are additional steps that must be taken in order to submit the late claim. There is also more information required to be entered when submitting a claim. If there are overlapping dates per claimant, those vouchers are flagged. Out of state travel is only allowed to be submitted as one claim per voucher. This will help to reduce the size of vouchers and help increase audit accuracy of the State Auditor and the submitting agencies. There are also individual lines of coding that are required to be entered by the agencies that deal with the targeted expenses when dealing with out of state travel.

Senator Tidemann wanted to know if there were any changes being done as far as traveling out of the country and the need for presenting original receipts when requesting reimbursement. Mr. Barnett said that for us to require a receipt in English in a non-English speaking country will be difficult.

Commissioner Laurie Gill, Bureau of Human Resources (BHR), was present to provide the Committee with an update on corrective actions regarding the applicable findings. There were three categories that the findings related to: the BHR employee handbook, channels available for reporting employee theft and fraud, and background checks. In February 2014, the employee handbook was revised to include a policy to address fraud and theft in the workplace. That policy can be found on page 34 of the handbook and the handbook can be located on the BHR website at www.bhr.sd.gov. On the homepage you would select Policies & Forms and then click on State Employee Handbook. BHR has informed the state employees through a number of different methods. There are training classes provided. There is a manager’s conference that takes place every November. Human resource (HR) services have been centralized. A system of training has been developed for the HR managers so they

are aware of new policies. There will also be an update by email to every state employee regarding the changes in policies. And lastly, BHR has worked closely with GOED in regards to getting background checks done for all new hires.

Senator Tidemann shared with the Committee that Senator Lucas, who was not present, is putting together a bill regarding the conflict of interest issue. This bill will be brought to the Committee in the future to decide if it should be brought forth as a Committee or if an individual will bring it forward during the next session.

Commissioner Costello commented further on Senator Tidemann's previous question regarding foreign receipts. The State of South Dakota utilizes China Hand, a company that is run by a previous state employee. Using this company while traveling to China has eliminated foreign receipts but there are no guarantees for traveling to other countries in the future.

Commissioner Costello addressed the following questions that were submitted to him in writing, as prepared for the Committee by Representative Wismer:

How many jobs has EB-5 created in SD? How do you know? Where is the documentation? Based on reporting submitted by the U.S. Citizenship and Immigration Services (USCIS), covering fiscal year 2004 through fiscal year 2013, South Dakota has received a total of more than \$620 million in direct investments through the EB-5 program; adding at least 5,658 jobs to the American economy. Commissioner Costello believes these numbers are overstated because this is a federal program and they are concerned about jobs created in the United States, not just one particular state.

How many jobs were created for workers who were citizens of the state before they took the jobs? We simply do not track where the employees come from for any of the programs.

What is the average pay of the jobs created by the turkey plant in Huron and of the dairy employees? Legal counsel has advised the GOED that those pay rates are confidential and cannot be disclosed.

Why was the contract between SDRC, Inc. and the GOED cancelled? The contract was cancelled with cause and because of the threat of litigation, this cannot be discussed in further detail.

Please describe the state's monitoring responsibilities and process for each project as prescribed by the agreement between the USCIS and the State, which of those responsibilities were retained by the State, which were assigned to SDRC, Inc., which responsibilities were carried out by SDRC, Inc., and which were not. The state's role and responsibilities have not changed and do not change depending on the project. The GOED exercised oversight of SDRC and retained the approval authority of individual projects. The SDRC, Inc. then recruited and screened potential EB-5 investors using the EB-5 application process and any paperwork necessary to place the investment for approved applicants. SDRC, Inc. was also expected to monitor the EB-5 investments and file any required reports on behalf of the state to the USCIS. Under the contract, the state remained in control of approving any projects that came through and then relied on SDRC, Inc. to administer every other component of the program. The GOED maintained the ability to approve or reject any project, but there were guidelines already laid out on what did and did not qualify as an EB-5 project.

Where is the paperwork evaluating each investor and his/her integrity as required by the USCIS? Because the EB-5 program is a federal program, the USCIS administers the petition review process which includes the evaluation of the investors and their suitability for the program, that is not something the GOED would have access to. The GOED would have copies of the applications and paperwork, but the GOED would not have performed any investigative work on those applicants.

Discuss the Huron turkey plant EB-5 funding and why EB-5 was used after its construction. Does this fall within the parameters of the EB-5 funding guidelines? If so, how? State statute requires us to keep certain business information private, discussing the factors of the timing of the EB-5 program

investments is not allowed. However, all SD EB-5 investments were reviewed and approved by the USCIS and, therefore, the USCIS decided that funding for the Huron turkey plant was within their guidelines.

Senator Tidemann wanted to know how many employees there were at the Huron processing plant. Commissioner Costello did not have an exact number but said that it was required that there be 10 employees per investor so there are a significant number of employees.

How many foreign investors invested in projects in total? Through the end of fiscal year 2013, our annual reports with the USCIS indicate that the USCIS has approved 967 petitions for foreign investors for EB-5 visas related to South Dakota projects. However, it is possible that some of these investors may have chosen not to place their investments in the state. Commissioner Costello stated that each investor would have been issued a visa so the number of visas approved would be the same number of investors.

How many of those investors lost their money and how much did they lose in bankrupt projects? The USCIS requires that the program be considered at risk before approving investors and some projects result in a loss. The specifics of investors who have lost money would be a matter between the investors and the businesses they are invested in.

Representative Wismer stated that information regarding how many investors lost money, how much they lost, and how many South Dakota citizens lost money is relevant information to know.

Is the State of South Dakota a party to any lawsuits involving any of the projects or their investors? If so, please list the titles and dates of filing and status of the suits. Commissioner Costello stated he is not aware of any lawsuits with the State of South Dakota or that any former employees of the State of South Dakota are involved in any lawsuits.

How many of those investors achieved valid green card status by virtue of their investment? All USCIS approved EB-5 investors making an initial investment in South Dakota receive a conditional green card status. The USCIS then reviews the EB-5 investor after two years to determine whether to convert their conditional status to a permanent green card. According to the GOED's records, through the end of the fiscal year 2013, the USCIS approved 304 petitions to remove the conditional status of South Dakota EB-5 investors. The GOED is not involved in the decision whether to award the conditional or permanent green card to a foreign investor. This decision is made by the USCIS.

Representative Wismer asked if the foreign investors still qualified for green cards if the project they were involved in went bankrupt. Commissioner Costello stated that it is safe to assume that if a company filed for bankruptcy and did not create any jobs, the foreign investors would not have received permanent green card status.

Representative Wismer asked how many different entities they follow and what is the time frame they use to determine what qualifies as an employee. Commissioner Costello stated he is not aware of the time frame required to qualify as an employee, but the company has a two year time frame to create those jobs.

Senator Tidemann asked if construction employees qualified as meeting the requirements for creating jobs. Commissioner Costello stated, in the case of the Northern Beef Plant, he believed that some of the original employees qualified for the requirements of creating jobs because they were part of the construction of the plant and then were converted to production workers.

How many of the investors did not achieve valid green card status because jobs were not created? The GOED records indicate that through fiscal year 2013 the USCIS denied 1%, or 4 out of 308, of all the petitions reviewed seeking the removal of the EB-5's conditional green card status.

Representative Wismer asked if they were denied because the jobs weren't created or for some other reason. Commissioner Costello stated that is not something that the GOED has knowledge of.

Representative Wismer requested a resume of Joop Bollen. Commissioner Costello does not believe there is a resume available. Senator Tidemann stated that when Joop Bollen came before the Committee in 2007 or 2008 he was employed by Northern State University.

Representative Cronin asked if the GOED is tasked with the management of the investor's money or facilitating the capital and at what point they sever ties with the project. Commissioner Costello said that the go forward plan is basically to work with projects and if they are interested in the federal EB-5 program we will certify to the USCIS that their project falls within our industry needs and falls within the regional center. After that point, all the money handling, pooling the loans, and soliciting the investments is the responsibility of the project. They will hire a consultant to facilitate those responsibilities. The state does not have a role in that aspect of it.

Senator Heineman asked the Commissioner to discuss the status of the EB-5 program nationally. She asked if the federal government still looks favorably upon the program. Commissioner Costello says the program was reauthorized by the Senate in 2012 by unanimous consent and the House passed it by voice vote of 412 to 3. The program has a significant amount of congressional support. There have been challenges across the country, but the program has evolved from when it started to now. The USCIS continues to refine the program, but the evidence indicates that it is a good program. The State of South Dakota doesn't promote it but it is available. Commissioner Costello says the GOED is basically inactive when it comes to the EB-5 program. The GOED administers the regional center now, but has a much smaller role than the SDRC, Inc. had. If a project wants to take part in the federal EB-5 program, the GOED will certify that they qualify and then it is up to the project to take the next steps.

Senator Heineman asked if regional centers across the nation are run the way South Dakota now runs the program or are they run the way SDRC, Inc. use to run the center. Commissioner Costello believes that most are run the way SDRC, Inc. ran the program versus how the State of South Dakota now runs the program.

Item 3 – The Governor's Office of Economic Development (GOED) – To discuss the outcomes from the calendar years 2012 and 2013 Futures Fund grants

Commissioner Costello referenced section B of the previously mentioned GOED report. Section B provides an update regarding the Future Fund grants issued in calendar years 2012 and 2013.

Representative Mickelson asked if the Futures Fund program has been working and how important of a tool has it been for the GOED. Commissioner Costello stated the program has been a very important tool for the State of South Dakota. It is used to help offset workforce training and to compete with other states.

Senator Heineman asked how the GOED evaluates success and the results of the Futures Fund grants. Commissioner Costello stated the grants that are made are very diverse, from helping to market the state, to workforce development, to helping offset the cost of moving a company from Minnesota to South Dakota. All in all, the outcomes are fairly obvious. Examples would be a company that moved into the State of South Dakota and used the funds to offset those costs or an employee who used the funds for training which has increased their job skill and raised their pay grade.

Senator Heineman asked if the results of each grant are noted anywhere. Commissioner Costello says they are not tracked that way. He added that all the information regarding where the grant money went and when, and all the other information regarding the grants, is available on the GOED website.

Item 4 – The Building South Dakota Fund Annual reports from: Governor’s Office of Economic Development, South Dakota Housing Development Authority, and South Dakota Department of Education

Commissioner Costello referenced section C of the previously mentioned GOED report regarding the Building South Dakota Fund. He reminded the Committee that the Building South Dakota Fund funds three programs for the GOED: the Economic Development Partnership Program, the Local Infrastructure Improvement Program, and the Jobs Program. Of the money that goes into the Building South Dakota Fund, the Economic Development Partnership Program receives 15%, the Local Infrastructure Improvement Program receives 25%, and the Jobs Program receives 5%. The remaining portion of the funding goes to the South Dakota Department of Education and the South Dakota Housing Development Authority.

Commissioner Costello stated that 92% of the Economic Development Partnership dollars were used as of the end of the year. The funding was used to hire six new full time employees, elevate three positions to full time status, and hire a new part time employee. The Economic Development Partnership Fund started the year with \$1.5 million. He added that the report also shows quarterly breakdowns of how the funds were dispersed, the list of applicants, the requested amounts, the amount the board approved, and the percentage of the requested amount that was approved.

Senator Tidemann asked for additional information for those applicants, noted in the report, that were awarded zero dollars. Kim Easland, Director of Finance for the GOED, stated that the applicants awarded zero dollars did not meet the requirements in some way.

Representative Wismer requested information on the feedback the GOED has received regarding the allocation of the funds. Commissioner Costello stated there were significant expectations because it was a new program. He added that some of the challenges were a misunderstanding of the fact that this is a matching program. The State of South Dakota will help the local communities, but you, as a local community, have to invest in yourself. Ms. Easland stated that some of the concerns related to the hiring of economic development employees, applicants for administrative assistant positions or other positions that were not focused on economic development.

Representative Wismer asked if there were any applicants rejected in the first or second quarters that were successful in the third or fourth quarters. Ms. Easland said that because of the misunderstanding of the matching requirement, there were some that were not eligible in the beginning but were able to come back later and qualify for funds. Ms. Easland pointed out that the report showed who amended their application and submitted it at a later time and was approved. Some of the applicants withdrew after being approved but the reasons for the withdrawal are confidential.

Commissioner Costello referred to the International Economic Development Council (IEDC) Basic Training chart that was included in the report. The IEDC offers basic economic development training. The GOED asked the board to set aside \$25,000 of the partnership program money to allow communities to take part in this pre-approved program. The cost would be matched for them to send someone to the training.

Senator Heineman asked if the GOED was surprised that the training was only used by four applicants or if that is just because it was a new option. Commissioner Costello said that many more wanted to apply but the classes filled up. He anticipates there will be more requests in the future for this training. The locations and sizes of classes offered made it difficult the past year, but he thinks the money will be used up before the beginning of the year and they may consider asking for more to be set aside in the future.

Senator Heineman asked how the GOED plans to measure the performance of this particular program long-term. Commissioner Costello said the guidelines currently used are the measures that were decided on by the Committee last fall and they have tried to meet those guidelines.

Senator Heineman asked if, in addition to hiring the economic development person in the communities, at some point in time will the GOED see actual progress and will there be some communities that learn from other communities. Commissioner Costello reminded the Committee that this program is for hiring and elevating positions, but it is also for training and for helping capitalize revolving loan funds.

Representative Mickelson recalled discussions regarding the lowering of the match amount over a three to five year period. Is the amount of the grant, shown in the report, just this time period's amount or is it the full time period amount? Commissioner Costello confirmed that it is the full time period amount.

Commissioner Costello discussed the Infrastructure Improvement Program, referenced in section D of the report. Commissioner Costello stated that this year the GOED served eight communities and 79% of the funding was utilized. The Infrastructure Improvement Program started the year with \$1.75 million. He added that the report includes a quarterly breakdown of how the funds were dispersed, a list of applicants, the requested amounts, the amount the board approved, the percentage of the requested amount that was approved, and a description of the projects.

Senator Tidemann asked how long the communities had to use the dollars for the local projects. Ms. Easland informed the Committee that they have 90 days to sign the award letter and a one year time frame in which they are asked to update the GOED on the progress of the construction. They are welcome to go to the board and request a longer time frame if needed.

Representative Wismer asked for an explanation of the criteria used for approving a project. Ms. Easland said the main impact the GOED looks at is tied to job creation. She added that in the beginning there were a lot of applicants that had no job creation tied to their infrastructure. One example is a pool. This would have created part time jobs but the GOED was looking for full time job creation. The assistance is now offered through the planning districts. The planning districts take the applications for these programs and assist the GOED with explaining to the applicants that it needs to be tied to job impact.

Representative Wismer wanted to know if the planning districts that received Futures Fund grants were related to this program or if that was something else. Commissioner Costello said they are related to the Building South Dakota Fund programs. The planning districts are engaged in infrastructure and planning throughout their regions so that is why it makes sense to have them assist with this process. It has been a long standing tradition for the GOED to assist the planning districts. The amount has been raised in recent years. Ms. Easland said that prior to fiscal year 2015 it was not spelled out that the planning districts would assist with the Building South Dakota Fund programs, only the Community Development Block Grant program. There was an increase this year of about \$10,000 per planning district contract, which helps with the assistance of this program as well as other economic development projects. Commissioner Costello stated that going forward it is \$35,000 per planning district and prior to that it would have been \$25,000.

Commissioner Costello discussed the South Dakota Jobs Grant Program, referenced in section E of the report. Commissioner Costello stated that this program served two communities and only utilized 9% of the funding. He stated there was not a lot of demand in this area this year but it will be utilized more in the future. He added that the report includes a quarterly breakdown of how the funds were dispersed, a list of applicants, the requested amounts, the amount the board approved, and the percentage of the requested amount that was approved.

The GOED also provide information on the Reinvestment Payment Program in section F of the report.

Mark Lauseng, Executive Director of the South Dakota Housing Development Authority, was present to address the Committee regarding the South Dakota Housing Opportunity Fund (SDHOF). He provided the Committee with the 2014 SDHOF Annual Report handout. He stated the SDHOF receives 25% of

the Building South Dakota Fund and there have been two application periods since the funds were awarded. The SDHOF received \$1.75 million for the fiscal year 2013 appropriation. The Attorney General's office received \$344,000 in foreclosure settlement funds which they put into the SDHOF.

The first round had an application deadline of October 21, 2013, and on December 18, 2013, the board awarded \$1.8 million in funds. The second application round consisted of \$2.5 million which was the fiscal year 2014 appropriation. There was an application deadline of February 28, 2014, and on May 5, 2014, the board awarded \$1.8 million in funds. The report provided includes an overview of the SDHOF, project names, locations, total units, amount allocated, and a summary of the projects. There is also a map of where all the projects were located and the type of projects across the state. The amounts listed are just the awarded amounts, not the expenditures. The requests began coming in for expenditures in July. There is a good diversity of rural and metropolitan areas. The law says that 30% of the funds go to Rapid City and Sioux Falls while the other 70% goes to the rest of the state. Household income is also limited to 115% of area median income. Because this is done on a competitive basis it is broken down to 40% rental, 40% home ownership, and 20% programs. There will be public meetings in August to take comments on the allocation plan and whether or not those percentages should be changed.

Senator Heineman asked how they arrived at the 115% of area median income. Mr. Lauseng said that 115% is the highest they can go up to. That is the match to the first time homebuyers program. When building an apartment building only half of the tenants have to meet the 115% household income qualification because the SDHOF is only providing half of the funding. Senator Heineman followed up by asking if there was any connection to any business development. Mr. Lauseng said he didn't think so directly, but if a community knows they have a business coming in they will need housing. Part of the process is to look at the need of any town that applies for funding. If they have a business coming in and they show that the business will cause a need for housing, they would be a good candidate for funds.

Representative Wismer wanted to know who does the housing studies on the communities and if these studies are required or what part they play in the distribution of these funds. Mr. Lauseng said there is a program that provides matching funds, under \$10,000, to smaller communities to have housing needs studies done in their community. There have been about 25 communities who have taken advantage of this program in the last 2 years. They can use that study, but they do not have to. If the economic development corporation proves there is a business coming in, they can use that information to demonstrate their need. Representative Wismer asked if there are other entities that communities can contract with to provide the studies. Mr. Lauseng said that most of the local planning districts provide housing studies. There is an organization in Minnesota that the GOED contracts with for their studies so they are all uniform.

Senator Tidemann asked why there is such a difference in pricing between areas when they are building the same type of housing unit. Mr. Lauseng said that the difference in pricing has to do with whether the town has other funds that are available. We only fund 50% of the project and the amount we approved is because that is what they requested.

Senator Heineman asked if there are different criteria for the Habitat for Humanity homes versus the housing funding. Mr. Lauseng stated that the habitat homes fall under the classification of home ownership, so any projects that fall under that category would be the same application process as the habitat homes.

Tamara Darnall, Director of the Office of Finance and Management, Department of Education, was present to provide the Committee a report on the Workforce Education Fund. Ms. Darnall discussed where the funds go and what they are used for. She stated the funds are first used to fund the limited Education proficiency (LEP) adjustment. After the LEP adjustment is funded, if the balance is greater than \$2 million in the fund, any amount greater than \$1 million will go to career and technical education (CTE) grants up to \$1.5 million. If there is still funds over \$1 million, than the rest goes to the school

district's to be distributed on a prorated basis. For the fiscal year 2014, there was only enough to fund the LEP adjustment.

Ms. Darnall stated that the Department of Education is currently working on promulgating rules for the CTE grants, hoping that by fiscal year 2016 the department will begin to make these grants. The first reading of the rules went in front of the Board of Education on July 21, 2014, and was approved for public hearing, which will take place in Rapid City on September 15, 2014.

Ms. Darnall stated that in fiscal year 2014, 2,783 LEP students were funded at a cost of \$1,195.29 per student. The total of the LEP adjustment was \$3,218,290 and the Workforce Education Fund paid for \$2.1 million. The projected number of fiscal year 2015 students is 3,117, with the total LEP adjustment amount being approximately \$3,725,703.

Senator Tidemann wanted a clarification on when the LEP goes totally to General Funds and Ms. Darnall confirmed that fiscal year 2017 would be the first year.

Item 5 – Oversight Council – To provide information regarding the annual report called for in the Public Safety Improvement Act

Jim Seward, General Counsel for the office of the Governor, was present to address the Committee. He discussed the overall implementation of the South Dakota Public Safety Improvement Act (PSIA). He displayed the PSIA website to the Committee while he discussed what information was provided on the website.

Mr. Seward stated there were approximately twenty major reforms and eight minor reforms in this legislation. The implementation of these reforms has been going very well. The Oversight Council, created by the legislation, can be viewed online at www.psia.sd.gov and then can be seen by clicking on the Oversight Council link on the left side of the screen. You can see when the council has met and who the members are, as well as many other documents. Each month there is an implementation status document posted on the website. The twenty-eight reform areas are listed on the website.

Mr. Seward added there are many implementation dates involved in the PSIA. The changes in the criminal codes started July 1, 2013 and the earned discharge on correction parole started July 1, 2013. The annual report, which will be done soon, will have all of the performance measures spelled out in detail. The Oversight Council meets twice a year and they plan to finalize the annual report at their meeting in November. Mr. Seward said at this point 85-95% of the implementation process is complete. There are a couple of items still being developed such as the tribal parole pilot project. This spring there was an agreement reached with one tribe to start a pilot project. There is a Hope Court in Selby that began January 1, 2014, and the Hope Court in Sioux Falls begins August 1, 2014.

Mr. Seward commented that many pieces of the reforms go along with something another agency is doing. An example would be the rural pilot project for substance abuse delivery. Providers in South Dakota have never really been able to financially deliver services to Selby, for example. If you have only one person in Selby, or another small area, it is hard to justify having a group. Telephone health delivery is currently being worked on. Mr. Seward said they were awarded a grant by the Bureau of Justice Assistance (BJA). Technical assistance was requested from BJA to help guide them through the process. The Unified Judicial System (UJS) and the Department of Corrections (DOC) are busy running the systems they have. They could use some help running and implementing these twenty new programs, so the Vera Institute of Justice (Vera) was hired to help and they informed Mr. Seward today that BJA approved a \$350,000 grant to help implement the telephone health delivery system. Also, during this interim, a second request-for-proposal was done by the Department of Social Services for the rural substance abuse delivery system. Two providers have been awarded contracts in rural areas.

Mr. Seward stated another major discussion was trying to figure out how to get better outcomes from the community transition program at the penitentiary. They were able to contract with the St. Francis house in Sioux Falls and there are now participants living there. There is no outcome data because they are just getting moved into that program. The Reinvestment Fund will provide monies to counties if the probation numbers go up. The preliminary data from UJS at the end of fiscal year 2013 shows the numbers going up, but there are positive results from earned discharges on probation.

Mr. Seward testified that the Statewide Automated Victim Information and Notification (SAVIN) System is on schedule to be up and running by July 1, 2015. They are contracted with all the necessary companies needed to synchronize the systems and they are in contact with thirteen jails. This will allow victims to see when criminals are to be released, when they made bond, or if they went to the prison.

Representative Wismer was concerned with how it would be affecting the smaller counties, as far as jail capacity, etc. She asked about individual reactions from the counties and if the money had been paid out yet. Mr. Seward said checks are scheduled to be issued in October 2014. Some of the counties have seen a slight increase and there are approximately 200 more people on probation this year than last year. Mr. Seward stated that so far he has heard no negative concerns with the new reforms. He stated that of the \$1 million approximately \$330,000 should be issued, but he might be off on that number. There is a cap on the percentage that a county has to grow (10%), as far as the number of those on probation each year, in order to receive a check.

Senator Tidemann asked for additional information on the decision making process relating to the determination of parole versus imprisonment. Mr. Seward said there are less people on parole and more on probation. He added that substance abuse treatment has resulted in the training of providers and the delivery of a large number of services across the state, so that the individuals, whether through Hope Court, Drug Court, or regular probation, can be held accountable in their communities. Senator Tidemann asked if there was a drug court in all of the counties. Mr. Seward said there is not a drug court in every county, there is a plan for further expansion.

Senator Heineman asked what the new Oversight Council Annual Report will consist of. Mr. Seward stated they anticipate the annual report to be approximated ten to fifteen pages of dashboards and about six pages of the performance measures and the goal of each measure. Senator Heineman followed up by asking who was doing the work of reporting the performance measures and connecting them to the goals. Mr. Seward said that his office, UJS, DOC, Vera and the PEW Research Center are involved in the reporting process. Senator Heineman asked what Vera and the PEW Research Center's roles are. Mr. Seward stated that once the legislation passed, PEW Research Center's formal involvement ended. They still maintain some involvement because we have a great relationship with them. Vera was contacted by the BJA to give us the technical assistance we need to get the next step completed with the development of the dashboards and so forth. Vera is constantly in contact with the agencies to see what needs to be done next and how things are going. PEW Research Center is in more of an advisory role at this point.

Senator Heineman asked if the costs they expected were close to what was appropriated. Mr. Seward said that so far the numbers are pretty close. They estimated higher in some areas because of the time it takes to get the program going. The training dollars have been right on the mark. The three areas where there was no money budgeted, are areas where the BJA grant is going to help: telephone health technology, a parole time study, and money for the UJS to complete a drug treatment assessment study to figure out what exactly somebody in drug court needs for treatment and what it will cost. UJS will be doing a drug treatment assessment with these funds. Each of these areas will get just over \$100,000 from the BJA grant.

Representative Wismer asked how the UJS drug treatment assessment relates to all the drug court pilots. Mr. Seward said that the courts were being told different recommendations, by their own treatment providers, about what is needed for treatment options. There is no unified treatment regimen

or a unified way to pay for the treatments. This study will make sure they know what the treatment regimen is and what the costs will be.

Mr. Seward stated that an application was submitted in May for a \$2 million BJA grant. He added that this money would be used in Rapid City to start a program that will focus on females. There is a large population in the Pennington County area that is coming into the prison. Fifty-six percent of the females are Native American and a large number of them have drug and/or alcohol problems. Mr. Seward is hoping to hear a decision on this grant by the end of the summer.

Representative Wismer asked if the initiative is dealing with the very first contact with the judicial system and studying whether or not those first classes are effective. Mr. Seward stated that he believes that is the most important part of this initiative. They are now implementing evidence-based practices at the initial stage. There are assessments done from the beginning to determine what that individual needs and what their risk of reoffend is. Those individuals are being tracked and we will be able to see how many have completed everything successfully and how many have reoffended. If the offense is low-level and they are given a class, that is not part of this effort.

Item 6 – Department of Health – To review corrective action plans for fiscal year 2013 Single Audit findings

Joan Adam, Director, Division of Administration and Carrie Williams, Finance Officer for the Department of Health (DOH), were present to address the Committee regarding the DOH findings. The Committee was supplied with a handout that listed all the findings. Ms. Adam discussed these findings one by one and what is being done to correct the findings.

Finding No. 2013-012: Internal control over performance of management evaluations was not adequate to ensure compliance with rotation of local agencies.

Ms. Adam stated that a schedule of reviews has been put together through 2020 to ensure no clinics are missed in future reviews as a response to having missed two of the clinics that needed to be reviewed.

Finding No. 2013-013: Internal control over the certification and issuance of food benefits was not sufficient to ensure participants received the full food benefits to which they were certified.

Ms. Adam stated that the DOH is requiring more documentation in the files and requiring more training regarding how to document changes in the files. The electronic system that has been implemented will require you to complete the required documentation before you can move on or close that particular screen.

Representative Mickelson asked if the same individual can receive both food stamp benefits and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) benefits and how these benefits are coordinated between the Departments of Social Services and the Department of Health. Ms. Adam said that would be something the WIC program would need to follow-up on.

Senator Tidemann asked if applicants had to meet guidelines for both programs. Ms. Adam said that both programs do have strict requirements regarding who is eligible and who is not.

Finding No. 2013-014: Internal controls over the determination of eligibility were inadequate.

Ms. Adam state that the eligibility requirements are not strict and the decisions are left up to the states. The DOH has added more language to the enrollment form, the participant fills out, to state what the eligibility requirement is and then the participant must sign that this is true and accurate. She added that the DOH has also increased training with medical providers who participate, to reinforce the eligibility requirement. She stated that the DOH only has funds to cover so many screenings, so the

DOH has set the requirement level to 200% of the poverty level, but the program is able to go up to 250% of the poverty level.

Senator Tidemann asked how many people use this program. Ms. Adam stated she would find out and follow-up with the Committee.

Finding No. 2013-15: Internal controls were not adequate to ensure compliance with matching, level of effort, and earmarking requirements.

Ms. Adam said the match requirement for this program is adequate. The maintenance of effort for this program was believed to be \$144,586, but due to miscommunication, that amount was incorrect. The actual maintenance of effort was \$8,719. This has been updated and discussed with the Department of Legislative Audit. The maintenance of effort will be recorded on the documentation to avoid further miscommunication in the future.

Senator Heineman asked if the maintenance of effort changes every year or if it stays the same. Ms. Adam confirmed that it stays the same.

Ms. Adam said changes have been made in regards to the earmarking, to make sure that the funding is allocated correctly. There is a calculation that has been added to the reports to keep the separation of funds correct in the future.

Finding No. 2013-016: Matching amounts were not reported on the federal financial report (SF-425).

Ms. Adam said that those amounts were not on the forms, but the DOH has gone into the program and made sure to record the match amount on all the documents. This was a requirement that was new in 2012 that the department missed, but it is now being noted correctly.

Finding No. 2013-017: The Department of Health did not properly identify federal award information to the subrecipient at the time of subaward.

Ms. Adam said that the DOH did not meet the timelines required. They have since worked with everyone involved and made sure that all the appropriate information is now being reported going forward.

Representative Wismer asked for an example of a subgrantee. Ms. Williams stated that all of the county programs within the WIC program would be subrecipients. Representative Wismer followed up by asking if there were any non-governmental subrecipients. Ms. Williams said there was a couple, but she was not able to think of one at the moment and that she would follow-up with that information.

Finding No. 2013-018: Records were not submitted as required by the Federal Funding Accountability and Transparency Act (Transparency Act) for the Special Supplement Nutrition Program for Women, Infants and Children (WIC) program and Family Planning Services programs.

Ms. Adam said that the timeline was not met in fiscal year 2013. She added that the DOH has now implemented all the reporting requirements.

Representative Wismer asked how many of the reports were late and how late they were. Ms. Adam said they do not have that information with them, but this particular finding dealt with the WIC program and the subrecipient status for that program.

Representative Wismer asked that this topic be discussed at a future meeting.

Senator Tidemann asked what impact this finding will have on future grants and funding. Ms. Adam stated there has not been any impact on the DOH funding at this point.

Senator Heineman noted that a few of the issues were changes in federal law and she asked how the DOH is made aware of these changes. Ms. Williams stated the fiscal office works with the federal grant administrators to make sure they are aware of all the regulations. She added that when the DOH is awarded a grant, they read through the requirements to see if there is anything different from the last time that grant was received. Senator Heineman asked how some of these requirements were missed. Ms. Williams said she wasn't sure, but there were changes that took place a couple of years ago and the changes were overlooked.

Item 7 – Follow-up items from prior meetings:

Law Enforcement Officers Training (LEOT) Fund

Senator Tidemann and Representative Dryden met with the Bureau of Finance and Management, UJS, the Attorney General, and Mr. Flannery to look at the deficit spending in the LEOT Fund. They discussed a number of different items and decided on four ideas to move forward with. The plan is to discuss those ideas at a future meeting.

Item 8 – Committee discussion of future topics and the next meeting date

- DOH – Follow-up on findings
- LEOT Update
- Encumbrances
- Blue Book
- BHR – Health Plan
- MMIS Update
- DOH – Performance Measures
- 911 Coordinator Report
- Juvenile Corrections Report

Future Meeting Date

The next meeting will be held September 24, 2014 at 9:00 a.m.

Representative Dryden moved to adjourn the meeting at 3:30p.m., seconded by Senator Heineman, and carried by a voice vote.

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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