

MINUTES

Government Operations & Audit Committee

Senator Deb Peters, Chair
Representative Jean Hunhoff, Vice Chair



Fourth Meeting, 2017 Interim
Monday & Tuesday, July 24 & 25, 2017

Room 362 – State Capitol
Pierre, South Dakota

The fourth meeting of the 2017 Interim Government Operations and Audit Committee (Committee) was called to order by Vice Chair Hunhoff at 8:00 a.m., July 24, 2017, in room 362, State Capitol Building, Pierre, South Dakota.

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

Staff members present were Mr. Martin Guindon, Auditor General; Mr. Bob Christianson, 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

Representative Anderson moved, seconded by Representative Steinhauer, the minutes of the June 6, 2017 meeting be approved ([Minutes 6-6-17 Doc.1](#)). Motion prevailed 5-2 on a roll call vote.

Representative Hunhoff advised of a change of order to the agenda. Item 11 would be addressed after Item 1.

Item 1 – Legislative Research Council to discuss the statutory authority of the Committee

- [GOAC SDCL's](#)

Mr. Doug Decker, Code Counsel with the Legislative Research Council (LRC), was present to address the Committee. Mr. Decker explained the authority of the Committee and referenced South Dakota Codified Laws (SDCLs) relating to the Committee. Representative Hunhoff asked if the Committee has the power to interview or investigate non-state department entities. Mr. Decker explained that the Committee can invite a private entity to testify. The Committee's oversight authority is limited to public entities and public agencies and how the State dollar was spent.

Senator Nelson stated that he reviewed contracts between the State of South Dakota and Mid Central Education Cooperative (MCEC). He stated the contracts are explicit in that MCEC has to answer the State's oversight questions. He feels the Committee is the body that has been appointed by the State to review the answers. Senator Nelson asked which statutes give the GOAC oversight is in regards to whom they have oversight over. Mr. Decker stated SDCL 2-6-2 and 2-6-4 clearly provide the authority to look

over a department, institution, board, or agency of the State. Mr. Decker advised this is where it limits the investigative authority of the Committee. Senator Nelson asked since MCEC had a contract with a State agency, doesn't that fall within the jurisdiction of the GOAC's authority to ask them questions about State money, because it's written in the contract. Mr. Decker explained the legislative authority extends to oversight of the department, what contracts they entered in to, how the contract was executed from the department's perspective. Mr. Decker advised there is a civil lawsuit pending, as well as three criminal trials pending regarding MCEC. The legislative authority extends to oversight on how to regulate things going forward. Senator Nelson stated that MCEC folks should be required to answer the Committee's questions on how they got away with misspending dollars. Mr. Decker stated that the Committee does not have prosecutorial authority to determine whether crimes were committed or violations occurred. The Committee can look at how the department administered its programs and its contracts. Senator Nelson asked if MCEC is an entity of the Department of Education (DOE). Mr. Decker advised that that was a subject of the pending lawsuits and he could not make a comment. Senator Nelson stated that the Committee has the obligation to look in to how MCEC managed to mishandle tax dollars for ten years. Questions need to be asked and answers given in order to provide legislation to prohibit this from happening again. Mr. Decker stated that the Committee does have authority and referenced the two audit reports provided from the Department of Legislative Audit (DLA). He advised the Committee is to use those reports to determine what needs to be changed. Mr. Nelson asked if they were limited to who they can call, and asked if they were only able to rely on the reports from DLA. He asked if DOE had to provide answers to the Committee, and any agencies they identify have to answer the Committee's questions. Mr. Decker stated the legislative oversight is to help the Legislature develop good public policy going forward.

Senator Peters asked if the Committee can ask organizations and citizens to come in and answer questions if they had contracts with DOE. Mr. Decker explained the authority extends to the exercise of your legislative function. Senator Peters stated the Committee has the authority to ask questions of DOE, but not people who executed contracts down the line. Mr. Decker agreed. Senator Tapio stated that if their task was to determine the proper course forward on how to write legislation, and if audits show red flags, shouldn't it be important to get the information to fill in the blanks. Mr. Decker advised the power to investigate is adjunct to the power to legislate. Investigation that results in no valid legislation is beyond the Committee's authority. Senator Tapio commented that they will try to develop legislation from the information received.

Senator Peters discussed changing current statutes regarding the Committees authority to allow further investigation of subrecipients. Representative Wismer quoted a section of SDCL 2-6-4 and asked what the difference was between prosecution and investigation. Mr. Decker advised the Committee can investigate what went wrong with the agencies. He explained there may be some overlap with fact finding and advised to be sensitive of the functions being performed by the executive and judicial branches. Representative Tieszen discussed that doing a parallel investigation might conflict with the criminal and civil litigation that is pending.

Senator Nelson asked how the Legislative Research Council (LRC) knows that looking in to MCEC will not result in valid legislation. He states there is corruption and asks if they are to do nothing, what will stop it from going forward. He asked how the Committee can not act. He stated that folks don't want them to look at this and that clearly the Committee has the ability to talk to partners in contracts. Mr. Decker

explained they can review the contracts and follow where the money went. He stated the reports issued by DLA do a good job of following the money and the Committee can inquire in to the findings issued by the report. The Committee has the authority to ask questions of MCEC employees and board members.

Item 2 – Department of Transportation to discuss:

- **The process of managing State railroad assets**
- **Processes involved in the storage of dangerous materials on railroad cars**
- [Letter to DOT Doc.2](#)

Mr. Darin Bergquist, Secretary of the Department of Transportation (DOT), was present to address the Committee. Mr. Bergquist provided information and background on the processes involved in managing the State railroad assets. The management and oversight is by the South Dakota Rail Board and they are very active and work closely with DOT. Any agreements require the written consent of the Governor. He advised that the State owns 406 miles of active rail lines and 124 miles of inactive lines. The State has six different leases on the active lines and they are generally with regional rail authorities. The lease rates are generally set at 1% between State and regional rail line and the regional rail line generally charges the operator 1 ½%, retaining the ½%. The revenue generated has been used to maintain the rail lines and replace bridges. He discussed different investments and loans provided by the Rail Board. Mr. Bergquist highlighted a few major rehabilitation projects completed by the Rail Board. Mr. Bergquist walked through each of the six leases and provided information on each.

Senator Nelson stated he has asked questions and asked for audits and they have not been provided to him. Mr. Bergquist explained that DOT did not conduct audits on the operators. He stated he received Senator Nelson's message requesting documents and provided those questions to DOT's legal counsel. They are working on it and it should be complete in the next couple of days. Mr. Bergquist advised that most documents are prohibited by law from disclosing.

Mr. Bergquist discussed the recent derailment east of Kimball. The official report from the Federal Rail Administration (FRA) was not available yet, but they think the derailment was the result of sun kink. An inspection vehicle drove the track about an hour before and did not notice any defects. Representative Hunhoff asked if the State had any part of the review done on the derailment and what the consequences were. Mr. Bergquist advised the State is on the receiving end of the review. There were about 14 cars damaged with grain spilled, as well as damage to the rail. All of the cars have been removed and the rail has been repaired. The line operators are responsible for the expenses related to derailments.

Representative Anderson asked if there is a repair maintenance agreement between the Rail Board and the operators, specifically for the bridge over the Big Sioux River near Elk Point. He asked since the plans are for a 100 year fix, is it more of a capital investment, making the State responsible for some of the costs. Mr. Bergquist advised there is not a clear line between what is considered maintenance and capital investment costs. Lease and sublease agreements relieve the State from any responsibility for maintenance activities. The Rail Board considers their role to help facilitate and provide rail service to the State, which is why they've gotten involved with funding different projects. There have been several conversations between the operator and Rail Board coming up with different funding options for the bridge near Elk Point. Representative Anderson asked if DOT would ask for appropriations to help fund a

project like this. Mr. Bergquist advised that he doesn't anticipate needing to ask for appropriations and the funds would most likely come out of the State Rail fund.

Representative Steinhauer asked about the State's return on assets and how we compare to other states. Mr. Bergquist does not know how the State compares, but he feels historically, the Board has been very focused on improving and rehabilitating the State owned lines and trying to improve and expand service. The lease agreements have been favorable for the operators. The Board's focus has changed in the past year, with revenue received being low. The Board is looking at sustainability for the State's lines. Representative Steinhauer asked that Mr. Bergquist share the information he finds out about how the State compares with others.

Senator Nelson made a motion, seconded by Senator Tapio, that the questions he provided to the Committee be provided to the Secretary of DOT and ask him to provide official answers to be entered in to the record at the next meeting. Senator Nelson commented that the questions address the concerns of his constituents in regard to those issues and will immortalize the Secretary's answers to the questions. Representative Anderson commented that he just received the questions and suggested waiting to vote on the issue until the next day. Representative Tieszen asked about the document provided and what was to be answered. Senator Nelson stated he just wants the questions answered.

Representative Steinhauer made a substitute motion, seconded by Representative Anderson, to consider the questions provided by Senator Nelson on the next day. Representative Wismer asked why the questions wouldn't be asked now, since Mr. Bergquist was present. Senator Nelson stated it was to save the Committee time. Representative Steinhauer stated he liked providing questions in writing, but would like to study the questions being asked. Representative Tieszen commented that he liked submitting written questions, but he would not support asking questions with editorial comments. The substitute motion prevailed 8-2 on a voice vote.

Senator Nelson's motion to provide questions to the Secretary of DOT and ask him to provide official answers at the next meeting was addressed again. The motion prevailed 8-0 on a roll call vote. Senator Nelson advised that he just wants the questions answered, should not include any of the additional comments. Representative Steinhauer suggested asking for the responses to be made before the next meeting, saving time and allowing for questions.

Senator Nelson asked for the information he previously requested. He asked if Mr. Ray was present. Mr. Bergquist answered that Mr. Ray was not present. Senator Nelson then asked if the operator of the rail line from Kennebec to Presho was keeping the trains at the 25 mile per hour standard. Mr. Bergquist stated that he couldn't comment on the 25 mph standard. The Rail Board has had concerns on Dakota Southern's maintenance on the line, inspections have been performed and maintenance plans have been requested. The Board is satisfied that Dakota Southern is meeting the maintenance responsibilities. Senator Nelson stated that on July 15th, a derailment occurred at a location that was red flagged by a DOT consultant. He asked why the problem was not fixed before the derailment. Mr. Bergquist was not familiar with the red flag at that location, but will look in to it and report back to the Committee.

Senator Nelson asked if hazmat cars carrying liquefied petroleum traveling west of Kennebec are being handled in accordance with federal regulations. Mr. Bergquist advised that to his knowledge, they are.

He explained the Department doesn't have regulations, but the FRA regulates the movement and storage of hazardous materials in railcars, as well as the Pipeline and Hazardous Materials Safety Administration and Homeland Security. Those agencies send inspectors throughout the country. He is not aware of the FRA issuing any compliance notices. Senator Nelson stated the FRA will come out and inspect the hazmat area and has asked if that has been requested. Mr. Bergquist replied that he's not aware of that. Senator Nelson asked if DOT will request the FRA to perform the inspection, stating there is no charge. Mr. Bergquist advised that he will get in touch with the FRA and talk to them about an inspection.

Item 3 – Department of Social Services to discuss:

- **The vacant Administrator position at the Human Services Center**
- **Performance management indicators (SDCL 2-6-35)**
- [Letter to DSS Doc.3](#)
- [Social Services Handout](#)
- [Social Services Handout 2](#)

Ms. Lynne Valenti, Secretary of the Department of Social Services (DSS), was present to address the Committee. Ms. Valenti advised the current Administrator, Troy Jones, resigned and will be moving due to family reasons. His last day will be August 31, 2017. Marcene Dickes has been hired as the Interim Hospital Administrator effective August 14, 2017. There is an ongoing national search for an Administrator. They have had initial interviews with candidates and are planning to bring them in for in-person interviews.

Senator Cronin asked how long the former interim administrator was employed before Mr. Jones was hired. Ms. Valenti answered the position was vacant for about a year. Senator Cronin asked why Ms. Dickes is not a candidate for the Administrator position. Ms. Valenti advised that their focus was to hire an interim administrator, allowing them time to search for a good permanent administrator. Ms. Valenti advised that Ms. Dickes was looking for an interim position. Senator Cronin asked what they were going to do differently to try and get someone in the position in a more timely fashion. Ms. Valenti advised they are going to be mindful in hiring someone with the right skills and competencies to be successful. The increase in the Administrator's salary has made the position more attractive to candidates.

Senator Sutton asked what initial conversations they had with Mr. Jones about how long he was planning to stay in the position. Ms. Valenti advised they had several conversations with Mr. Jones advising they needed someone who was committed to staying long term. Unanticipated family circumstances arose, requiring him to return back home. Senator Sutton asked for an explanation of the interview process and asked how long it will take. Ms. Valenti advised they use a team approach, listing the members of the team. They performed a couple of phone interviews with out-of-state candidates. The next step is to invite them to in-person interviews, including touring the facility. They hope to get the candidates in-state during the second week of August. They are hoping to make a decision as soon as possible.

Representative Steinhauer asked if Mr. Jones has secured employment in New Mexico. Ms. Valenti advised yes. Senator Cronin asked what the qualifications and requirements were for the Administrator position. Ms. Valenti answered that it does not have to be a physician. Substantial hospital healthcare administration management experience is necessary, as well as experience with behavioral health. Senator Cronin asked if the pool of candidates is extremely small and asked what the Legislature could do to help with hiring a good Administrator. Ms. Valenti stated the market for healthcare administrators

is very competitive, but believes the substantial salary increase last year has helped them be more competitive. Working with the national recruitment firm, as well as more experience and targeted recruitment should help the process.

Representative Wismer asked what the increase was for the salary. Ms. Valenti stated the prior Administrator was making about \$100,000 and the current range is \$160,000 - \$180,000. Representative Wismer discussed a prior Administrator and the fact that there has not been a steady Administrator since. She advised there are terrible consequences to not managing compensation and competing for talent.

Representative Hunhoff stated Mr. Jones did a good job, but understands that family comes first. She stated that Mr. Jones had successful qualities and she hopes they are looking for similar qualities in their candidates. Even with the salary increase, it is still low compared to metro and urban hospital administrators.

Ms. Valenti then discussed the draft of the performance management indicators including their mission, strategic plan goals and strategic plan outcomes ([Social Services Handout](#)). She stated that it is difficult to summarize DSS in three pages.

Representative Steinhauer congratulated Ms. Valenti for the national awards and asked about accelerating the move of patients in care to their home. Ms. Valenti discussed the program Money Follows the Person and the plan to utilize various funding services offered.

Senator Tapio asked for the number of people in the Meth Changes Everything program and the costs associated with the program. Ms. Valenti will follow up with those figures. Senator Cronin asked what the fiscal impact was of the Money Follows the Person program. Ms. Valenti stated that they intend to roll over the services when the grant ends. They are currently at 90/10 funding and will use the Federal Medical Assistance Percentages (FMAP) rate after funding ends in 2020. Representative Anderson asked if she knew the dollar amount currently being spent on the program. Ms. Valenti will follow up on the amount currently expended.

Representative Hunhoff offered advice to provide targets and goals in their presentation, and look at sources of information included. She would like to see more dollar figures in the outcome measures. Representative Hunhoff discussed adding information about parents that stay below the radar for providing child support.

Representative Wismer discussed that an important metric to consider including is the health and turnover of the workforce. Ms. Valenti stated that the Bureau of Human Resources (BHR) tracks the turnover and injuries for agencies. Representative Wismer thinks it is relevant to DSS.

Representative Steinhauer volunteered to come up with a standard format for agencies to use when developing the performance management indicator presentations. He offered several suggestions for key standard components. Representative Hunhoff agreed as this is a work in progress and asked if any other Committee members were interested in working with Representative Steinhauer to develop a

format. Representative Anderson offered to help and suggested linking it to their presentations for appropriations. Representative Hunhoff stated she would also be a part of the sub-committee.

Item 4 – Board of Regents to discuss:

- **Operational policies of acceptance, and admissions of undocumented students and resulting fiscal impact**
- **University Centers financial review (SDCL 13-51-1.4)**
- **U.S. Department of Education grants of interest by the Committee**
- [Letter to BOR Doc.4](#)
- [Board of Regents Report](#)

Dr. Michael Rush, Executive Director of the South Dakota Board of Regents (SDBOR), was present to update the Committee. Dr. Rush explained the admissions process for undergraduates and graduates and discussed the requirements for resident tuition rates. Applicants not fulfilling the resident requirements are charged the non-resident tuition rates. Male students are required to certify on the admission application that they have applied with the Selective Service registration requirement. The number of students who have not submitted residential documentation is very small and their impact is positive, as they are paying the higher non-resident tuition rates.

Senator Nelson stated there is no such thing as an undocumented student. He referenced an article in the Argus Leader about undocumented students at the school in Vermillion, which was being described as a sanctuary college. Senator Nelson asked how many illegal aliens were in South Dakota colleges and asked if the perception of the school in Vermillion being a sanctuary college was misplaced. Dr. Rush answered there are not any sanctuary campuses in South Dakota. He also stated they did not know the number of illegal aliens, as they are not required to ask or keep track of those numbers. About six to eight students have not submitted documentation. Senator Nelson stated statutes outline the admission policies and a response he received stated that colleges were not abiding by the statute regarding registration with the Selective Service and were not requiring them to provide documentation as outline by State law. Senator Nelson stated he was assured in 2012 that it was absolutely enforced that illegal aliens were not allowed to attend state colleges. Dr. Rush explained that they use a central admission application, and there was not a questions asking about the Selective Service. The application has now been corrected and is in compliance with that aspect. Senator Nelson stated that SDCL 13-53-1.1 requires that male students provide documentation; therefore, the colleges are still not abiding by State statute. Dr. Rush stated that the SDBOR intends to follow State statute.

Senator Tapio asked if SDBOR tracks the number of foreign born or international students. Dr. Rush stated they do track that, but would need to follow up with the Committee on the number. Senator Tapio asked if there was a process to ensure that the students Visas were up to date. Dr. Rush did not know, but would follow up on that.

Dr. Rush then discussed University Centers and their impact, struggles and recent changes made. Monte Kramer, the System Director of Finance and Administration for the SDBOR, reviewed the operating statements in Exhibit B of the [Board of Regents Report](#). He explained the Black Hills State University – Rapid City operating statement. The enrollment data provided is for end of term, including a full academic year.

Representative Wismer asked for an explanation of the Higher Education Facilities Fund (HEFF). Mr. Kramer explained that HEFF had a major change last year, rolling the university support fee for students into tuition to simplify the fee structure. With the increase in tuition, they no longer needed to charge as much for HEFF. HEFF is not included in the tuition revenue figure because there is no guarantee that the centers would get back all of the revenue that they put in and is not owned by the center.

Representative Steinhauer discussed satellite facilities and noted that the cost per student hasn't fluctuated much. Mr. Kramer explained that the campuses are responsible for maintaining the costs. The campuses are managing fixed and variable costs to keep costs down. Senator Cronin noted that instructional costs decreased by about \$500,000 and asked what led to that. Mr. Kramer explained that they are offering fewer courses, they are hiring fewer full time professors and main campus staff has more assignments.

Representative Hunhoff asked for the history of the Rapid City campus and Mr. Kramer provided it. Representative Tieszen commented on the contributions to campuses and stated that it translates in to a positive resource for campuses and is an important service to Rapid City.

Mr. Kramer then discussed the University Center – Sioux Falls operating statement. He pointed out that enrollment is going down, but they are trying to manage operating costs and courses. They have looked at a lot of changes over the last three years. Representative Steinhauer stated that we need to understand the difference between the fixed and variable costs. Mr. Kramer explained that the fixed costs are the operating costs and the contributions to campus costs are variable. Representative Steinhauer asked if the campuses didn't exist, would the costs go down. Mr. Kramer stated he didn't believe they would. Representative Steinhauer stated that any contribution made by the University Centers would be a positive. Mr. Kramer agreed.

Senator Tapio noted that the focus seemed to be shifting to research and asked if they are looking to generate more income from patents. Dr. Rush advised the statement doesn't include research figures, as they are a separate entity. They are trying to generate more income through that avenue.

Mr. Kramer then discussed the Capital University Center (CUC) operating statement and advised this center is very different, largely because they do not own the facility and rent from the CUC Board. Representative Hunhoff noted losses in net income and asked where the money comes from. Mr. Kramer advised it is absorbed by their self-support operation, going back to the main campus.

Dr. Rush described the move away from the model used for the last three years. It has been recommended to look at a completely different model, looking to the communities of Pierre and Ft. Pierre to help with funding. Representative Hunhoff asked if they have invited the Board of Education to participate in their discussion for the future. Dr. Rush advised that they did work with them at their last meeting.

Representative Wismer asked what percentage of students at CUC were State employees furthering their education. Dr. Rush did not have that available, but will provide. Senator Cronin asked for an explanation of why the nursing program is not included in the report. Dr. Rush explained that none of the State-supported programs are included in the financial reports.

Dr. Rush then discussed the federal grant overview program and grant control process. He stated that the State institutions get a lot of grant money and it is very important that they have proper procedures in place. Dr. Paul Turman, System Vice President for Academic Affairs with the SDBOR, gave an overview on the specific grants identified by the Committee. A narrative and matrix is included in Exhibit C in the [Board of Regents Report](#).

Representative Hunhoff asked if the roles and responsibilities of Mid Central Educational Cooperative (MCEC) were any different than what the SDBOR is performing and expected to do. Dr. Turman advised that they would have been expected to follow the same types of obligations.

James J. Doolittle, Associate Vice President for Research at SDSU, discussed the processes of managing sponsored programs. The majority of the federal awards are regulated under Uniform Guidance and the awards that come from the Department of Education follow Education Department General Administrative Regulations (EDGAR), offering more guidance. He reviewed the life cycle of a program and walked through the steps involved.

Representative Hunhoff asked who develops the pre-award routing requirements. Mr. Doolittle explained that they follow Uniform Guidance provided by the federal government, where they tell them what they are expected to do. The actual processes are developed by SDSU.

Representative Steinhauer asked if SDBOR will need to comply with contractual requirements implemented by the Bureau of Finance and Management (BFM). Mr. Doolittle answered yes. Representative Steinhauer asked who checks the fiscal fund manager. Kay Schiebe, Associate Director of Grants and Contracts at SDSU, stated the principal investigator (PI) is responsible, and her office is responsible for post-award management. Representative Steinhauer asked if there is a dashboard that summarizes what the Department finds. Ms. Schiebe advised they provide monthly reports to the PI's.

Senator Tapio asked how many grant contracts they manage and the dollar amount involved. Ms. Schiebe provided an estimate for FY16 at about \$50 million and FY17 was about \$48 million in awards. Senator Tapio asked if they break out the grants between research and education. Ms. Schiebe answered that they provide quarterly reports to the SDBOR and each grant is categorized at inception.

Senator Nelson stated he talked to researchers at Vermillion and they advised him of software available to identify corruption. He asked if SDSU has looked in to procuring this type of software to help with grant management. Mr. Doolittle advised that SDSU has looked at research administration platforms and they are in the process of determining what they want and what they can afford. Senator Nelson asked when this type of software might be in place. Mr. Doolittle advised they are in the process of working on a bid and securing funds. He anticipated with approval, that they should have something within about 1 ½ years to 2 years. Representative Wismer objected to encouraging the SDBOR to spend additional money. She stated the SDBOR is used to dealing with large amounts of money and has extensive processes in place.

Representative Tieszen asked if the SDBOR has a policy in regards to cooperation with federal immigration authorities. Dr. Rush stated there was not a specific policy.

Item 5 – Department of Health to discuss performance management indicators (SDCL 2-6-35)

- [Letter to Health Doc.5](#)
- [Report from Department of Health](#)

Kim Malsam-Rysdon, Secretary of the Department of Health (DOH), was present to address the Committee. She advised that the dashboards presented come from the departments strategic planning process. DOH's strategic plan has five goals and can be found on their [website](#). Ms. Malsam-Rysdon discussed the first dashboard, access to preventative care. The goal is to increase the percent of adults who have visited a doctor for a routine check-up from 80.1% in 2014 to 90% by 2020. Colleen Winter, Division Director for Family and Community Health in DOH, discussed the second dashboard, infant mortality. The goal is to reduce the 5-year infant mortality rate from 6.9 deaths per 1,000 births in 2010-2014 to 6.0 by 2020. The third dashboard discussed was childhood immunizations, with a goal to increase the childhood vaccines from 76.3% in 2014 to 80% by 2020. The fourth dashboard is smoking, with a goal of reducing the percentage of adults who smoke from 18.6% in 2014 to 14.5% by 2020. Ms. Malsam-Rysdon discussed the fifth dashboard, suicide. The goal is to reduce the suicide death rate from 17.1 deaths per 100,000 people in 2014 to 12.6 per 100,000 by 2020.

Representative Hunhoff asked what the data source is for the preventative care information. Ms. Malsam-Rysdon stated they get the information from Behavior Risk Factor Surveillance System (BRFSS). BRFSS is a large telephone survey conducted annually. Last year about 7,000 people participated in the survey.

Representative Wismer asked about the statistic of about 25% of children do not have vaccinations. Ms. Malsam-Rysdon explained that the statistics reflect the number of children who receive all of the vaccinations. The 25% of children could include children who received some vaccinations, but not all. Ms. Winters stated that the majority of children who do not get the whole series have received all but the last dose.

Item 6 – Department of Labor and Regulation to discuss:

- **Insurance tax credit scholarship program**
- **Performance management indicators (SDCL 2-6-35)**
- [Letter to DLR Doc.6](#)
- [Report from DLR](#)
- [Scholarship Program Report](#)

Marcia Hultman, Secretary of the Department of Labor and Regulation (DLR), was present to address the Committee. Larry Deiter, Director of the Division of Insurance with DLR, discussed background of the insurance tax credit scholarship program. In tax year 2016, insurance companies donated a total of \$325,000, resulting in a tax credit of \$260,000.

Former Senator Phyllis Heineman discussed the scholarship program and thanked everyone for all of their work toward making this possible. She shared stories provided by families who benefitted from the scholarships. She also provided an overview of the information submitted in the March 1st annual report. Four insurance companies donated and 295 scholarships were awarded during the 2016-2017 school year. Most of the scholarship amounts varied between \$500-\$1,300, and did not exceed tuition fees. No student that applied and was eligible was turned down. Senator Heineman discussed budget neutrality.

Ms. Hultman then discussed the performance management indicators presented on the [Report from DLR](#). She reviewed the labor force indicators and defined the unemployment rate. She discussed the growing labor force and issues they are addressing with youth in the workforce. Their mission statement tries to cover all of the diverse aspects of the department. Ms. Hultman reviewed the rate and federal goals for the number of workers entering employment. She discussed unemployment insurance benefits and the various statistics they have tracked. The next standard they measure is the retained employment rate after six months, discussing the rate and goals. The last standard discussed was safe and sound business practices breaking out data for licenses issued to boards and commissions and regulatory divisions.

Representative Hunhoff asked if the people licensed, but don't practice, have to take continuing education. Ms. Hultman stated that yes, they do, to renew their license each year.

Representative Wismer asked for an explanation on the changes that took place in the entered employment from FY15 and FY16. Ms. Hultman stated that the formula to measure and methodology was changed. Representative Wismer asked if there was a real increase in the number of people entering employment. Ms. Hultman advised there was a decrease between the two years. Representative Wismer then asked about the changes between FY15 and FY16 in the retained employment after 6 months graph. Ms. Hultman explained that the methodology used to calculate the percentages was changed.

Senator Tapio asked where the figures for the labor force come from. Ms. Hultman advised that State staff compile data, and then forward that data to the federal government where it becomes incorporated in to their data. Senator Tapio asked if they keep demographic information on the labor force. Ms. Hultman advised they do, and will follow up with that information.

Representative Wismer asked why the statistics were presented in percentages, rather than actual numbers. Ms. Hultman advised that the federal government requires the percentages when reporting. Representative Hunhoff suggested adding additional graphs with the figures, as well as the percentages. Senator Cronin suggested adding a page to provide additional information on the Workforce Innovations and Opportunities Act (WIOA), which changed the formulas.

Item 7 – Department of Game, Fish and Parks to discuss FY16 Single Audit findings and answer Committee questions

- [Letter to GFP Doc.7](#)
- [Report from GF&P](#)

Chris Petersen, Finance Officer and Director of Administration for the Department of Game, Fish and Parks (GF&P), was present to address the Committee. Mr. Petersen discussed the four audit findings found in the FY16 Single Audit. He gave background information on the funding sources audited by the Department of Legislative Audit (DLA) in the Single Audit.

Mr. Petersen discussed the first audit finding and GF&P's response and corrective action plan. The U.S. Fish & Wildlife Service developed a website for guidance on compliance with the requirements. Mr. Petersen explained that DLA wanted documentation for what GF&P is doing specifically in South Dakota.

GF&P is moving information from the website and making it their own. The U.S. Fish & Wildlife Services are scheduled to perform a federal audit on GF&P in October. Representative Hunhoff asked when they will be completed with the documentation. Mr. Petersen advised they plan to have some of this done by the end of FY2018.

The second finding was due to three duplicate entries. Mr. Petersen explained this was the result of having their grant accountant retire and they moved from an accrual accounting basis to a cash basis.

The third finding related to double checking financial reports. Mr. Petersen explained that they have one accountant and will work to establish redundant internal processes while balancing staff resources.

The fourth finding had to do with the method of cost allocation for the transfer to the State's General Fund. Mr. Petersen advised they are working with the Bureau of Finance and Management to see if there is another cost allocation method that could be used.

Representative Steinhauer asked when GF&P became aware of the findings. Mr. Petersen advised they found out in late February or early March when their audit concluded. Mr. Petersen advised that the federal audit is not scheduled for a specific date, but they expect it to be performed in October or November. Representative Steinhauer stated the length of time to become compliant is alarming. Mr. Petersen advised one finding was corrected immediately and they plan to have another addressed in the near future. Reviewing the other two findings with the federal auditors seems like an appropriate use of resources. Representative Steinhauer suggested putting procedures in place regarding the first finding, and update if needed after the federal audit. Representative Hunhoff stated that the consensus of the Committee is to have GF&P write a policy and submit it in November. She also requested that GF&P bring the final federal audit report to the Committee when available.

Representative Wismer asked if the program reported in the third finding has been audited and why was this the first time it was noted as a finding. Tim Flannery, State Government Audit Manager with DLA, explained the program has been audited before. There was a new audit team in FY16 and they discovered the issue.

Representative Hunhoff asked if the federal audit provides recommendations during its audit. Mr. Petersen explained that the audit report is very similar to DLA's report. Representative Hunhoff asked about the timeframe of the federal audit. Mr. Petersen explained that the federal auditors will work with them during the course of the audit and the final report should be issued at the beginning of the calendar year.

Item 8 – South Dakota High School Activities Association to discuss (SDCL 13-36-4):

- **The irrevocable investment in the South Dakota Community Foundation**
- **The process for selecting tournament locations**
- [Letter to SDHSAA Doc.8](#)
- [SDHSAA Foundation Handout](#)
- [SDHSAA Presentation](#)

Dan Swartos, Executive Director of the South Dakota High School Activities Association (SDHSAA), was present to address the Committee. Mr. Swartos provided background information on corporate sponsors and Foundation history. He discussed the various goals and contributions throughout the

years. Mr. Swartos discussed the reasons why the SDHSAA felt the need for a Foundation. The four monetary corporate sponsors have all indicated a desire to move their sponsor funds to the Foundation, but two sponsors have agreed to keep their money in the SDHSAA for another year. Mr. Swartos described the plans to move forward.

Senator Cronin asked if there are separate Boards for the SDHSAA and the Foundation. Isaac Jahn, Finance Director with the SDHSAA answered that there are separate Boards. Mr. Swartos listed off information on the makeup of the Boards. Senator Cronin asked to have copies of audited financial statements for both organizations.

Representative Hunhoff asked how the money is being spent this year. Mr. Swartos explained that it is at about \$350,000 and they plan to use the funds to offset costs at member schools. Representative Hunhoff asked how member fees are assessed. Mr. Jahn explained that they charge for catastrophic insurance and the fee is based on the number of students. Representative Hunhoff asked what percentage of fees earned go toward administration costs. Mr. Jahn advised there are 10 employees at SDHSAA and administrative costs were about 40%.

Representative Wismer asked why sponsors want their money to go to the Foundation. Mr. Swartos advised they are forming a committee to try to come up with answers and a plan. Representative Wismer feels the schools should not be putting money in a foundation.

Wayne Carney, former Executive Director of the SDHSAA gave a historical perspective of the Foundation.

John Krogstrand, Assistant Executive Director with SDHSAA, discussed the process used for site selections. Each sport has a section of guidelines and they are reviewed annually. Several pieces of information drive the site selection. City indicators are looked at and constantly reviewed. Mr. Krogstrand discussed the Site Selection Committee and who makes that up. The Committee works three years out and this has been a smooth process over the last couple of years. The Board of Directors has the final say as to where an event is held.

Senator Cronin asked about non-member schools. Mr. Krogstrand advised there are only a few schools that do not participate. The only recent reason why a school would be denied membership is if they do not follow SDHSAA rules.

Item 9 – Department of Revenue to provide an update on changes to their performance management indicators (SDCL 2-6-35)

- [Letter to Revenue Doc.9](#)
- [Revenue Summary](#)

Andy Gerlach, Secretary of the Department of Revenue, was present to address the Committee. He discussed the strategic plan and four directives outlines on the [Revenue Summary](#). Representative Hunhoff asked what factors contributed to the increase of classes offered after 2014. Mr. Gerlach explained that staff turnover and combining divisions has helped over the last three years. Representative Hunhoff asked if they have participant evaluations for the trainings. Mr. Gerlach advised they do and use those to shape future trainings.

Representative Wismer stated that she would like to see property tax information rather than information on the Lottery. Mr. Gerlach advised property taxes are hard to measure as they are provided at the local level. Representative Wismer asked if they could show a percentage of growth in new construction and change in value. Mr. Gerlach will follow up with that information.

Item 10 – Department of Education to discuss:

- **The Mid Central Educational Cooperative Special Review and FY15 Single Audit Report and answer Committee questions**
- **FY16 Single Audit finding and answer Committee questions**
- **[Letter to Education Doc.10](#)**

Dr. Melody Schopp, Secretary of the Department of Education (DOE), was present to address the Committee.

Senator Nelson made a motion, seconded by Senator Tapio to require the Secretary of the DOE to take an oath prior to testimony. Senator Nelson discussed that because DOE was the leading partner, this needs to occur. Representative Tieszen stated that the committee has the right to take testimony under oath, but doesn't find it necessary in this case. Senator Tapio discussed the ongoing investigation and the fact that prior testimony is being used. He believes this is important to protect the sensitive nature. Senator Nelson stated that they should use this tool. Representative Tieszen stated that if the members believe they have heard false testimony, they should vote in favor of the motion. Representative Steinhauer stated that he doesn't see any harm in doing this, but stated he believed the Secretary would give honest testimony. The motion died 5-5 on a roll call vote.

Dr. Schopp provided to the Committee a copy of her [DOE Documentation](#). She provided background on educational cooperatives, with their primary purpose to maximize efficiencies for special education. **Tab A** lists the 13 cooperatives and the schools in the cooperatives. **Tab B** shows a ten year history of the agreements DOE had with Mid Central Education Cooperative (MCEC). Dr. Schopp explained that MCEC had a lot of experience with managing large grants and DOE had success working with them. MCEC received revenue from numerous entities, including grants from DOE, revenues from fees and direct grants from the US Department of Education (USDOE).

The Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant was awarded to MCEC in 2011 and Dr. Schopp explained the purpose of the grant. The current GEAR UP grant awarded to South Dakota was \$24 million spread out over seven years, breaking down to \$3.4 million annually. MCEC was the subrecipient chosen by the DOE. She discussed the various reasons why MCEC was a good fit for the grant.

Tab C shows a summary of partner school districts reported by MCEC in the annual performance report. It also provides a breakdown by ethnicity and grade level. She described various programs offered through the GEAR UP grant.

The grant funding was awarded annually after the acceptance of the annual performance report. The entire amount was not received in advance. The funds were retained at the USDOE. MCEC made claims to DOE for payment. DOE determined if the claims met the federal requirements and if so, the claim

was paid to MCEC. Then DOE would request the reimbursement from the USDOE. **TAB D** shows the annual amounts that MCEC received as reimbursements.

Dr. Schopp discussed subrecipients and the monitoring requirements for MCEC. She listed off several steps DOE performed to meet the requirements. She then discussed the actions DOE took related to the MCEC Single Audits. DOE received the FY2012 Single Audit Report that was reviewed by the Department of Legislative Audit (DLA). There was an audit finding regarding segregation of duties, which DOE was required to act on and resolve. DOE also followed up on the errors and omissions audit finding. After having conversations with the independent auditor who performed the single audits, DOE accepted the audit findings.

Tab E provides the letter received from DLA upon the acceptance of the FY2012 Single Audit Report, as well as the letter sent by DOE to MCEC after accepting the corrective action responses from MCEC. **Tab F** shows the acceptance letter of the FY2013 Single Audit Report. There were findings again and DOE requested corrective action plans. They requested more detail and were provided a response by email from Scott Westerhuis on 10-26-2014. DOE expected MCEC to develop and implement effective internal controls concerning segregation of duties. Dr. Schopp also reviewed the MCEC monthly fiscal checklists that were expected to be complete each month. The FY2014 Single Audit Report had no federal compliance audit findings, which included reviewing GEAR UP. This led DOE to believe the checks and balances required by DOE were working. **Tab G** shows the acceptance letter stating that the audit report did not identify any audit findings pertaining to federal award programs.

Dr. Schopp then discussed the monitoring process DOE performed. Because this was a totally different grant than what MCEC had dealt with before, DOE created an online submission system in April 2012. In September 2012 DOE provided on-site technical support for MCEC. In November 2012, DOE started doing additional sampling and were finding requests that they denied. In May of 2013, DOE started to do line by line reviews and had to make a lot of requests for additional documentation. June 2013 is when DOE had conversations with the independent auditor.

Dr. Schopp also discussed the audits that DOE received. In FY2012, DLA's audit of DOE had no audit findings, as well as the audit for FY2013. DLA's audit of FY2014 had audit findings specifically regarding GEAR UP, and most audit findings had already been corrected prior to the release of the audit. The USDOE agreed with the Microsoft match and resolved the audit finding. DOE came in front of the Committee in August of 2015 to discuss the audit findings. DOE began working on the process of terminating the agreement with MCEC. The termination letter was sent to MCEC on September 21, 2015.

Dr. Schopp then discussed the steps taken post termination. DOE contacted DLA to look at contracts with MCEC. DOE conducted risk assessments relating to the other subawards, and decided not to renew any additional contracts. In October 2015, DOE requested from USDOE that the South Dakota Board of Regents take over the contract from MCEC.

Dr. Schopp reviewed the steps taken by DOE. They followed their processes and it worked. She then discussed the Special Review performed by DLA. The programs with DOE were on a draw-down basis. The missing funds did not come from the GEAR UP grant and no GEAR UP money was stolen.

DOE has a new process in place to determine whether a relationship is a subrecipient or a contractor. This ensures that audits are being done if required. There are more in depth risk analysis of potential grantees. DOE also requires grantees to notify them of any entities they are subawarding to. They also have several additional requirements for the grantees.

Senator Nelson asked since receiving the grant, how many Native American students went to college because of GEAR UP. Dr. Schopp referred to **Tab C** in the report, showing 285 students were reported for 2016-2017. Data in the annual performance reports submitted to the USDOE detail results achieved by the GEAR UP grant. Senator Nelson asked what metrics DOE was using to report the grant was a success. Dr. Schopp referred to the annual performance reports where evaluations were performed. High school graduation rates were an important metric.

Representative Wismer asked if the DOE was aware that Scott Westerhuis was an officer with the American Indian Institute for Innovation (AIII). Dr. Schopp advised DOE knew there was a relationship with AIII, but the conflict of interest was not disclosed at the board level. Representative Wismer asked if anyone at DOE looked at AIII's IRS Form 990. Tammy Darnall, Director of the Division of Finance and Management with DOE, answered they were not aware of the form 990's until their meeting with DLA.

Senator Tapio asked for Dr. Schopp's history with DOE. She provided that information to the Committee. Senator Tapio asked if there were any red flags during that time regarding MCEC. Dr. Schopp advised there is always talk, but they do not rely on hearsay. Senator Tapio asked if there is a formal complaint process relating to grants with DOE. Dr. Schopp advised there is not.

Representative Tieszen asked for a summary of DOE's work with MCEC before GEAR UP. Dr. Schopp reported MCEC had extensive experience with large grants and DOE had a lot of faith in them. MCEC received a number of direct federal grants.

Senator Nelson asked who Dr. Schopp reported concerns to that were brought forward by LuAnn Werdel and Roger Campbell regarding misconduct with MCEC and State funding. Dr. Schopp stated DOE had the responsibility to make determinations based on facts. Senator Nelson asked how soon after these people reported problems, they were fired. Dr. Schopp replied Mr. Campbell was not fired and Ms. Werdell left with the incoming of new administration. She does not know the specific time frame. Senator Nelson asked if there was any documentation of their complaints to the State. Dr. Schopp stated there was email correspondence with Mr. Campbell explaining some of his concerns. Senator Nelson asked if that Committee could have access to the email conversations. Dr. Schopp stated there is not a specific email exchange.

Senator Nelson discussed the [FY2015 Single Audit](#) on page 273 and asked about the statement regarding reviewing independent audit reports and not finding any significant risks. Dr. Schopp state the segregation of duties finding is common and they did request a corrective action plan.

Representative Hunhoff asked if the State had oversight on the subcontracts that were put out by MCEC. Dr. Schopp explained DOE's responsibility for monitoring MCEC as the subrecipient, entailed verifying the expenditures fell within the program's requirements. Representative Hunhoff asked who DOE

trained. Dr. Schopp explained training was provided to Scott and Nicole Westerhuis, as well as Stephanie Hubers. Representative Hunhoff asked if the expectation was for those individuals to then train other staff. Dr. Schopp advised yes. Representative Hunhoff asked if there was a follow up to ensure MCEC followed through on their correction plans. Dr. Schopp stated the assurance they received was that the next audit showed no findings. She stated the MCEC Board should have ensured they followed through. Representative Hunhoff asked if they wait a whole year to make sure things were followed through. Dr. Schopp advised they do use the findings of the next year, but they also follow up with them throughout the year.

Senator Sutton asked for clarification on the \$50,000 monthly installments to MCEC if they were on a reimbursement basis. Dr. Schopp explained \$50,000 was allocated to them on a monthly basis to cover the cost of staff. Senator Sutton asked if DOE felt they had the authority to request an audit of AIII. Dr. Schopp advised that they did not at that time. Senator Sutton asked if there were any discussions as to AIII's role and if conflicts of interest existed between MCEC and AIII. Dr. Schopp advised that DOE did not ask for it, but feels the responsibility lied with the MCEC Board. With the new laws in place, it should not happen again.

Senator Nelson asked if the USDOE has been notified of the problems. Dr. Schopp reiterated that there are no missing GEAR UP funds. Senator Nelson discussed his view on political connections between members. He asked what DOE has done to ensure that this doesn't happen again. Dr. Schopp discussed having individuals on boards and advised that DOE does not oversee contracts. Senator Nelson stated the DOE was the lead partner on the grants and was contractually obligated to MCEC. Dr. Schopp stated that DOE took responsibility by terminating the grant.

Representative Wismer asked if DOE was aware that Scott Westerhuis was receiving salaries from both MCEC and AIII. Dr. Schopp advised they were aware of the subcontracts, but not of the salary. Representative Wismer asked what the status is regarding the Microsoft match. Dr. Schopp advised there has not been a request from the USDOE for repayment. The civil suit allows them to recover funds if necessary. **Tab H** includes documentation where the USDOE accepted the value of the software. Representative Wismer asked what the factors would be for the USDOE to change their minds. Dr. Schopp read the response from the USDOE, and they don't know what there would be to make them change their minds.

Representative Steinhauer asked if DOE is considering any actions to prohibit the issues at MCEC from happening again or is there any legislation that should come out of this. Dr. Schopp discussed they do have new processes in place, including the process to determine the difference between subrecipients and contractors and the conflict of interest legislation has been important.

Senator Tapio asked who was responsible for writing the application for the GEAR UP grant. Dr. Schopp stated that MCEC wrote the application with DOE's approval. Brinda Kuhn was the individual who wrote the grant. Senator Tapio discussed the role of consultants and grant writers. He asked if MCEC qualified for other grants once they were approved for the GEAR Up grant. Dr. Schopp advised no, the other grants were outside of the GEAR UP grant. Senator Tapio asked if Ms. Kuhn and the former Secretary of DOE created an industry for grant writers. Dr. Schopp doesn't know their intentions, but there could

be situations where it would be appropriate. Senator Tapio discussed the idea that there is corruption in government and it worries people and he feels there needs to be transparency.

Senator Cronin asked how many other grants MCEC had and have any other sources of funds had any problems. Ms. Darnall advised the grants are listed on the Schedule of Expenditure of Federal Awards in the [FY2015 Single Audit](#) on page 56. Dr. Schopp referenced the DLA Special Review where funds were reviewed.

Senator Nelson discussed the verbiage in the grant requiring DOE to hire an independent evaluator and asked who the evaluator was and what their findings were. Dr. Schopp advised that Brinda Kuhn was the evaluator in year one. The report shows the inputs found. The second year DOE submitted a request for proposal for the evaluator. Per Group was the organization chosen in the second year, but backed out after going in to the evaluation. Brinda Kuhn finished the evaluation for them. The third year was evaluated by about five individuals with the University of South Dakota (USD).

Senator Nelson asked why school districts were being sued. Dr. Schopp explained that the civil suit is related to the Microsoft match. The suit is in place to recover funds from the schools in the case that the USDOE does not accept the value of the Microsoft software and requires equivalent payment.

Representative Hunhoff asked what was to be evaluated by the independent evaluation. Dr. Schopp explained that the annual performance review had specific indicators that were to be included in the first year evaluation. USD's evaluation used focus groups to gain perspective. The evaluation reports show the effectiveness of the program and course correct. Representative Hunhoff asked if MCEC followed the recommendations to the challenges found in the first evaluation. Dr. Schopp explained the results. Dr. Schopp advised she would provide the evaluation reports to the Committee and the public.

Representative Anderson asked if no GEAR UP money was actually missing, what triggered red flags when the prior history with MCEC was positive. Dr. Schopp explained what DOE had with concerns with, documentation, back and forth conversations, DLA findings and the Westerhuis tragedy brought the issues to light.

Senator Tapio asked for a list of DOE employees and former employees, as well as superintendents and school district employees who contract over and above State employment. Dr. Schopp advised there are currently laws in place to address conflicts of interest. Senator Tapio discussed individuals who are profiting from relationships with the State.

Item 11 – Attorney General to provide an update on the status of his work on the Mid Central Educational Cooperative

- [Letter to Attorney General Doc.11](#)

South Dakota Attorney General, Marty Jackley, was present to address the Committee. He walked through the definition of an indictment and discussed the charges against three individuals associated with Mid Central Educational Cooperative (MCEC).

Dan Guericke is charged with six counts of Class 6 felonies. Counts one and two charge falsification of evidence involving back-dating and altering of contracts between MCEC and the American Indian Institute for Innovation (AIII) for the purposes of avoiding an audit. Counts three and four charge a conspiracy to offer forged or fraudulent evidence to avoid an audit. Count five is a charge of conspiracy to offer forged or fraudulent evidence in regards to backdating of a contract between MCEC and Rick Melmer. Count six is a conspiracy to offer forged or fraudulent evidence in relation to the Keith Moore contract.

Stacey Phelps is charged with four counts of Class 6 felonies. Counts one and two charge falsification of evidence alleging backdating and altering of contracts between MCEC and AIII to avoid an audit. Counts three and four charge a conspiracy to offer forged or fraudulent evidence to avoid an audit.

Stephanie Hubers is charged with six counts with three on an alternate. They are essentially Class 4 felonies. She is charged with falsifying invoices for a job and work not done in amounts over \$50,000.

Presently, there have been two major hearings and Mr. Jackley provided details about those hearings. The State has filed several 404(b) notices to provide evidence, including DLA's audit reports and GOAC minutes. A trial date has not been set.

Representative Wismer asked what the risks would be if the Committee had a MCEC board member come before the Committee. Mr. Jackley discussed the authority of the Committee and stated that they can send an invitation, but they have a right to decline the invitation.

Senator Nelson stated he forwarded questions to Mr. Jackley and asked if he could answer the questions, stating he would like an official response from the Attorney General's (AG) office. Mr. Jackley provided answers to the seven questions that were sent to him.

Representative Tieszen asked how Mr. Jackley would respond if the Committee asked prosecutors and Division of Criminal Investigation (DCI) agents to appear before the Committee. Mr. Jackley advised that he, as Attorney General, would not have a problem coming before the Committee. He did advise against inviting DCI agents, as they are actively testifying in the criminal prosecution. Mr. Jackley advised that his office worked with DLA offering information when needed.

Representative Steinhauer feels the deliberate actions of those involved with MCEC might indicate that the oversight of the Committee were effective. He asked Mr. Jackley if he could provide any suggestions for moving forward. Mr. Jackley answered that Senate Bill 27 gave the Attorney General more authority. Mr. Jackley suggests to keep asking the questions, but also focus on the follow up.

Senator Nelson stated he's heard comments from others that the AG's office was unable to prosecute several other individuals involved because the Committee had not sworn them in, rendering their testimony worthless. Mr. Jackley advised that he feels the Committee's proceedings are valuable and he is trying to use Committee minutes as evidence. Felony perjury charges would not be allowable, because the witnesses were not sworn in under oath. The Committee meeting would also have to be viewed as a proceeding to be able to pursue perjury charges. Senator Nelson stated there are several individuals involved that submitted timecards retroactively and asked why those individuals were not

being prosecuted. Mr. Jackley reminded that this is an ongoing investigation and further charges can be brought forward. Senator Nelson stated he has worked with fraud in the past and asked why we weren't looking at the other grants. Mr. Jackley advised that the AG's office and DLA are looking further.

Senator Tapio asked if the valuation of the Microsoft software would constitute fraud. Mr. Jackley advised there is an ongoing disagreement between the AG's office and the defense lawyers regarding the valuation. Mr. Jackley advised that he feels the information surrounding the valuation is relevant because it is part of the cover-up. Senator Tapio asked if there were any State employees involved. Mr. Jackley advised that DLA or DOE would be better sources for that answer.

Item 12 – Committee to complete discussion of the Mid Central Educational Cooperative reports and review Department of Education risk assessments completed by the Department of Legislative Audit. Committee discussion of draft legislation stemming from the Mid Central Educational Cooperative reports.

- [Mid Central Educational Cooperative Special Review Report](#)
- [Mid Central Educational Cooperative FY15 Single Audit Report](#)
- [Risk assessment of federal grants](#)
- [Draft Legislation](#)

Marty Guindon, Auditor General with the Department of Legislative Audit, was present to address the Committee. Mr. Guindon answered questions from the Committee regarding the Mid Central Educational Cooperative (MCEC) Special Review and Single Audit.

Senator Cronin asked if any other funds were reviewed as part of the audits. Mr. Guindon explained that the FY2015 Single Audit included all sources of revenue for MCEC and they performed risk assessments to determine which grants to look at. The Special Review used the additional authority granted to follow the money and access records of the money passed through MCEC to American Indian Institute for Innovation (AIII) and other non-profit organizations.

Representative Wismer referenced the Net Position reported in the FY2015 Single Audit Report asked if DLA had Net Position figures for any date after June 30, 2015. Mr. Guindon advised they do not at this time, but are engaged to perform the FY2016 Single Audit. Representative Wismer discussed the lawsuit between MCEC and the school districts and feels the positive net position is good for the school districts.

Senator Nelson discussed the value of the Microsoft match. Mr. Guindon explained that the FY2015 Single Audit finding had to do with the lack of documentation for the Microsoft match. Representative Hunhoff asked what kind of documentation was required. Mr. Guindon explained documentation showing the number of licenses activated, the number of students that used them and where. Senator Nelson discussed the civil suit between the State and MCEC and its school districts and the criminal charges against Dan Guericke. He said a State official came before GOAC and supported Mr. Guericke's testimony. He asked who is providing information to the USDOE regarding the Microsoft match. Mr. Guindon referred to the documentation provided in DOE's presentation showing the letter sent to the USDOE.

Senator Tapio asked if we knew how MCEC came into possession of the Microsoft software. Mr. Flannery explained it was an offer made by Microsoft Corporation. Senator Tapio asked if this was a

nationwide program Microsoft offered to grant holders. Mr. Flannery does not have that information. Senator Tapio asked if one of the goals of the grant was to advance students programming skills. Mr. Flannery advised that it was a goal of the summer programs. Senator Tapio commented that the Committee should get a better understanding of this situation. Representative Anderson asked if DOE had any part of acquiring the Microsoft program. Mr. Guindon answered that MCEC was responsible.

Senator Nelson discussed that it was expressed that MCEC board members were not made aware of the independent audits and stated that he has information that this is incorrect. Russ Olson, Local Government Audit Manager with the Department of Legislative Audit, advised that DLA interviewed an executive group of the board and reviewed minutes for a presentation of the audits. DLA never made an absolute statement, but reported based on what we found out. Senator Nelson asked what the independent auditors told them. Mr. Olson explained that they were told their procedure was to meet with the board president, director and business manager. Senator Nelson asked who the independent auditors told at the State level. Mr. Olson advised that he did not ask that question. Mr. Guindon explained that they are not required to report specifically to the State government. He discussed the process of the audit report going through DLA and being forwarded on to DOE. Senator Nelson asked if there was any record of Dr. Schopp speaking with the independent auditors. Mr. Guindon advised he has no knowledge of any, and it was not part of the scope of the evaluation. Representative Wismer reminded everyone that all audits are available on DLA's website. She asked if there was a time when they would not have been included on the website. Mr. Guindon advised that they have been on there since they have started posting them, for about 10 years.

Senator Nelson asked if the audits performed by independent audits are private, why they are provided to the State. Mr. Guindon discussed the guidelines and processes for what needs to be made available. Senator Nelson asked who pays for the audit. Mr. Guindon advised it is a contract between the companies or entities and the auditors. Senator Nelson asked if the State is paying for part of the MCEC audit due to the contractual relationship between DOE and MCEC. Mr. Guindon advised that DOE is not a named party in the audit contract. Mr. Olson stated the program was not charged for the audit, but it is permissible to charge a federal grant program for a percentage of time spent. In DLA's review, they did not see that the audit bill was specifically charged to the grant.

Senator Tapio discussed the March 9, 2016 letter from the USDOE that was provided to the Committee in the documentation DOE provided during their presentation. He feels the valuation of \$300,000 per student is fraudulent. Mr. Guindon clarified the State used \$4,000 as the value per license for a total of \$2 million per year. Senator Senator Tapio feels there should be additional investigation on the valuation of the Microsoft software.

Senator Nelson stated that after Mr. Guerke and a State official previously came in front of the Committee, there was an email exchange between them asking if the testimony was inaccurate. He asked if the Committee had record of the email. Mr. Flannery advised that the Committee does not have the email. Senator Nelson stated the Committee should obtain the email.

Representative Wismer discussed the importance of an audit and feels that they should be taken seriously.

Mr. Flannery discussed DLA's risk assessment of federal grants received by DOE. He reviewed the six grants discussed in the April 25, 2017 Committee meeting. He provided a list of all of the grants DOE has received in the last five years, and identified which ones had been audited and when. He discussed the six federal programs that were viewed as high risk, and the factors used to determine the risk. Mr. Flannery provided a list of payments over \$100,000 that DOE made to subrecipients in FY2016.

Senator Nelson asked if any external factors were used to determine risk. Mr. Flannery explained the six criteria used for the assessment. Representative Hunhoff asked if DLA could do an audit on these programs. Mr. Flannery explained that these programs could be audited. Mr. Guindon added that these grants identified and very small.

Mr. Guindon advised that intentional acts of fraud are hard to detect and prevent. The best way to prevent is to try to put controls in place and ensure they are effective.

Representative Hunhoff discussed what needed to be followed up on from the testimony provided over the past two days. Senator Tapio suggested that GOAC circulate a list of questions about the process of using the Microsoft software for matching. Representative Hunhoff discussed extending an invitation to Brinda Kuhn, as the author of the MCEC grant.

Representative Hunhoff reviewed inviting Secretary Schopp and Brinda Kuhn and asked if there was anyone else. Senator Nelson stated he definitely wants Representative Schoenfish to come and report what he knew and when he knew it. He'd also like anyone else from his accounting firm who was involved come forward and tell what they knew, when they knew it and who they reported it to. He would also like anyone who comes to light from Attorney General Jackley's responses to his questions. Discussion was had about the difference between an invitation and a summons.

Representative Anderson made a motion, second by Senator Cronin that an invitation, not a summons, be extended to individuals identified to attend the next meeting to answer questions submitted to them by the Committee. Discussion included Representative Wismer asking to review the names of people being asked to appear. Mr. Flannery listed Secretary Schopp, Brinda Kuhn and asked if they wanted Representative Schoenfish or the managing partner of the firm. Senator Nelson stated that Representative Schoenfish has information and he'd like him and any other auditor that has information to be present. Representative Tieszen suggested that the Committee find out who is responsible for the audit and that is who should be invited to the meeting. Representative Hunhoff asked if there was anyone else to add to the list to be invited. Senator Nelson forwarded information regarding emails between a State official and Mr. Guerke. He thinks they should invite the State official involved. Motion prevailed 8-0 on a roll call vote.

Discussion was had about inviting Tamara Darnall to the next meeting to answer Committee questions.

Senator Nelson made a motion, seconded by Senator Tapio, to invite Tamara Darnall to attend the next meeting to answer questions submitted by the Committee. Motion prevailed 8-0 by roll call vote.

Item 13 – State Board of Internal Control – Review the annual work plan and report (SDCL 1-56-7)

- [Letter to BFM](#)

Liza Clark, Commissioner of the Bureau of Finance and Management (BFM), was present to address the Committee. She discussed the creation of the Board of Internal Controls (Board) and listed the seven current members. They met monthly for the first twelve months and are now meeting quarterly. The Board's role is to develop tools to reduce the State's exposure to risk. Ms. Clark discussed the three main duties of the Board, laid out by statute, as well as other functions they are performing. This includes adopting a Code of Conduct and establishing an internal control system.

Ms. Clark discussed that a Federal Grant Compliance Workgroup was established and Terry Miller was named the Statewide Internal Control Officer. She reviewed four tools that were adopted by the Board. She discussed the process of moving forward with internal control framework.

Representative Steinhauer asked if both subrecipients and contractors need to file the IRS Form 990. Keith Senger, Director of Accounting and Financial Reporting at BFM, advised they used federal guidance to distinguish between the two. The law states that subrecipients, if applicable, need to submit Form 990, but he is not aware of a law requiring contractors to. Representative Wismer asked for a summary of the filing requirements for subrecipients and contractors. Mr. Senger referred to Senate Bill 162.

Item 14 – Department of Corrections – Report on Abuse and Neglect in Private Placement Facilities for the periods July 1, 2016 through June 30, 2017

- [Letter to Corrections Doc.13](#)

Kristi Bunkers, Director of Juvenile Services for the Department of Corrections (DOC), was present to address the Committee. She presented information on the two semi-annual reports on abuse and neglect. These reports are required by Senate Bill 87 from the 2017 Session. The Department of Social Services reviews every incident that occurs in state and allegations from out of state facilities are investigated by that state's licensing agency.

The first report covered July 1, 2016 to December 31, 2016 and noted six separate incidents. Five were categorized as abuse and neglect and the remaining one was categorized as injuries involved in a physical restraint. Ms. Bunkers discussed each report, the investigation that took place and the outcome of the cases.

The second report covered January 1, 2017 to June 30, 2017 and noted two separate incidents. The reports were categorized as child abuse. Ms. Bunkers discussed each report, the investigation that took place and the outcome of the cases.

Representative Tieszen asked if any of the cases took place in the same institutions. Ms. Bunkers advised that they were all in different facilities. Representative Hunhoff advised that she would like future reports to show trends and to list facilities involved with the incidents.

Item 15 – Bureau of Information and Telecommunications to provide an update on changes to their performance management indicators (SDCL 2-6-35)

- [Letter to BIT Doc.14](#)

This item was deferred until next meeting.

Item 16 – Brand Board information on investigation services and related costs

- [Letter to Brand Board Doc.15](#)
- [Letter from Executive Director](#)

Representatives from the Brand Board were not present, but had submitted a [Letter from Executive Director](#) providing information requested from the Committee. Representative May asked for clarification on information provided in the Brand Board's annual report relating to expenses and the recovery results. Senator Cronin suggested resending the question to Director Trapp asking for more specific information and dollar amounts. Representative May stated she would like to know how much it is costing South Dakota livestock producers in relation to the DCI.

Item 17 – Next meeting date and future meeting topics:

The next meeting is scheduled for August 29, 2017. Representative Tieszen suggested surveying the Committee to set the September meeting date.

The following agencies will be asked to report back on the performance management review report: Bureau of Information Telecommunications and the Department of Human Services.

Agenda items for the August meeting:

- Potential legislation submitted by Senator Peters
- Annual report from the Obligation Recovery Center (SDCL 1-55-16)
- Annual reports from agencies receiving funds from the Building South Dakota Fund (SDCL 1-16G-49)
- Report from Bureau of Human Resources on compiled authorizations to derive a direct benefit from a contract (SDCL 5-18A-17.2)
- GOAC Blue Book of Other Funds
- Cyber security – policies and procedures for combating cyber threats
- Sub Committee report on uniform metric for performance management review reports

Follow-up information from prior meetings:

- [Letter from the Department of Revenue](#)

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