

# MINUTES

## Government Operations & Audit Committee

Senator Deb Peters, Chair  
Representative Jean Hunhoff, Vice Chair



**Fifth Meeting, 2017 Interim  
Tuesday, August 29, 2017**

**Room 362 – State Capitol  
Pierre, South Dakota**

The fifth meeting of the 2017 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Peters at 8:00 a.m., August 29, 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 Senators Tapio, Nelson, Cronin and Peters. Senator Sutton joined after roll was called.

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. The bulleted items below each agenda item are documents sent out by the Committee.*

### **Approval of Minutes**

Representative Hunhoff moved, seconded by Senator Cronin, the minutes of the July 24 and 25, 2017 meeting be approved ([Unapproved Minutes 7-24-17](#)).

Senator Nelson stated he wanted a dissenting report because of a secret vote to change the witness from Kyle Schoenfish to Randy Schoenfish. Additionally, he stated there was a summons sent to him that violated the rules. Senator Cronin stated that his recollection of the previous meeting was to call the managing partner. Senator Nelson explained that prior experience indicated that an invitation was an effective summons. He stated legislators have the right to decline to answer questions. Senator Nelson stated that he wants the dissenting report to reflect the errors and omissions of the minutes. Senator Peters advised that the Chair of the Committee has the right to send out letters to anybody requesting any information. Senator Cronin stated that Senator Nelson has his reasons for not bringing the information forward and he has that right. Senator Nelson advised that he never stated that he would not provide information. Representative Wismer stated that she believed everyone else was on the same page at the Committee meeting for addressing Randy Schoenfish and felt that there was not a secret meeting afterwards.

Discussion moved back to the motion to approve the minutes. Motion prevailed 9-1 on a roll call vote. A dissenting report will be attached to the July 24 and 25, 2017 minutes.

**Item 1 – Department of Revenue – Audit Division to answer Committee questions regarding the audit process**

- [Letter to Revenue Doc.2](#)
- [Reply from Revenue Doc.24](#)

Andy Gerlach, Secretary of the Department of Revenue (DOR), was present to address the Committee. Mr. Gerlach provided written answers to the questions asked ([Reply from Revenue](#)) and made a presentation ([DOR Audit Presentation](#)). He discussed the Audit Division within DOR and the audit selection process. Mr. Gerlach advised that they typically audit the top 100 businesses annually and perform audits in all business types or industries. Mr. Gerlach defined high risk audits as businesses with past compliance issues with assessments over \$10,000. Rachel Williams, Audit Director for DOR, advised that high risk audits are based on the final assessment, as well as internal controls and factors such as high staff turnover. Representative Hunhoff asked how do they know about turnovers and what percent of high risk audits are reevaluated. Ms. Williams advised that they closely communicate with the businesses and preparers. She will follow up with the percentages, but it is not automatic and they review each one before going back. Mr. Gerlach advised there were about 2,500 audits conducted in FY17 with about 1,000 businesses being in South Dakota.

Mr. Gerlach then described how audits are assigned, discussing the criteria used by the audit selection specialist. There are about 55 auditors within DOR based out of Aberdeen, Mitchell, Sioux Falls and Rapid City. Auditors choose an audit from the pool based on certain criteria. An inexperienced auditor, defined as an auditor with one year or less experience, has to have their audits approved by their audit supervisor. Senator Peters asked how staff workload correlates with the breakdown of the audits. Ms. Williams advised that she could follow up with some information on the hours spent on the audits. Representative Hunhoff asked how many businesses audited this year are repeats from last year. Ms. Williams will follow up with the information. Representative Wismer stated she was concerned that not enough time was being spent educating the smaller or troublesome businesses, and advised DOR not to ignore them. Representative Steinhauer thought it would be important to know how much money was collected from the various businesses.

Mr. Gerlach discussed audit division personnel and the idea of quality distinct audits. The amount of money returned does not affect the auditor's compensation. Auditor training takes about 1 ½ years and during this time the new auditor goes with a more experienced auditor.

Mr. Gerlach described the audit process and communication involved during the audit process. After each audit and after the closing conference, they send a survey to the businesses that were audited. They take the comments seriously and use them for training. Senator Sutton asked how they received feedback from the businesses during the closing conference. Ms. Williams advised that they could give feedback to the auditor during the closing conference, but the survey tends to feel more anonymous and is sent to the Director and Deputy Director. Senator Sutton asked what kind of complaints they have received through the survey process and what has been done to correct it. Ms. Williams advised that they have been doing the survey for three years. They have had one negative comment, which they weren't able to address due to lack of identifying information and one comment which resulted in the auditor being reassigned to a different audit. Senator Peters stated that she didn't think they were getting the full story from the survey responses. Senator Sutton asked if all audits were scheduled or if

they ever performed surprise audits. Mr. Gerlach advised that they are always scheduled and call ahead.

Representative Tieszen asked to review the results of the survey conducted by the SD Retailers Association. Senator Peters thought the survey was still ongoing. Representative Tieszen reviewed some of the results and comments and advised they need to consider the context. Mr. Gerlach advised that processes and training are ongoing and he appreciated the comments.

Senator Sutton asked if a business calls and asks questions, will that spark an audit. Mr. Gerlach explained the role of the business tax division and stated that a call to them does not spark an audit. Business tax agents work with new businesses on licensing and provide them education. If something doesn't look right within the first few returns from the new business, the business tax agent will go to the business and perform a review. Senator Peters asked what the difference is between a review and an audit. Mr. Gerlach explained that a review is less expensive, as a tax agent is there for a couple of days, where an auditor could spend up to six months doing an audit. Ms. Williams explained that a review starts by looking at one single tax return and walking through the preparation. If errors are found, the agent would assist in amending and correcting the other errors. Representative Hunhoff asked if they do a review on every new business in South Dakota, and if not, how do they determine who gets reviewed. Mr. Gerlach advised that they do not. Ms. Williams explained that they use analytics as well to determine if there could be possible problems. Senator Peters asked for follow up on the percentage of budget used for education, review and audits and the return on costs.

Representative Wismer advised that use tax on a retail return is a typical finding and can be a source of conflict during an audit. She asked if there are any statistics available on use tax. Mr. Gerlach explained that use tax is due when a South Dakota individual purchases an online product from a business and the product is shipped to South Dakota. Compliance on submitting use tax from an individual standpoint is less than 5%. Mr. Gerlach touched on the contractor's excise tax and explained that is a very challenging tax and South Dakota is one of two states that administer it.

Senator Peters stated that businesses are afraid to call with questions because it could be used against them in a review or audit. Mr. Gerlach advised that the audit selection process does not include auditors reviewing the questions asked of the business tax division; analytics drive the selection. Representative Steinhauer suggested identifying some of the most common problems by industry and providing that information to the industry agencies.

## **Item 2 – Legislative Audit to discuss the audit process and answer Committee questions**

Marty Guindon, Auditor General for the Department of Legislative Audit (DLA), was present to address the Committee. Mr. Guindon reviewed the background events that led to the Mid Central Educational Cooperative (MCEC) Special Review. The MCEC Special Review and FY15 Single Audit reports were issued May 19, 2017 and were reviewed with the Committee on June 6, 2017.

Mr. Guindon advised there was a misappropriation of money and local government agencies do not have the authority to provide a local line of credit or loan service. The money involved belonged to MCEC. During the review, DLA had access to banking and accounting records and we used that to see who

received money from the various organizations, looking for improper payments. Criminal information found was shared with the Attorney General's (AG) office and contractual or financial violations were included in the report.

Findings also included unsupported costs for three grants. Risk was assessed for other grants as well during the review. DLA did not evaluate performance or check that the money was spent effectively. Mr. Guindon stated that our radar is always on and we continue to consider new information provided. DLA staff viewed the map at the University of South Dakota (USD) and spoke with the professor of the class and it did not provide any additional information that we were not already aware of.

Senator Nelson asked how far back DLA looked. Mr. Guindon answered that it depended on the availability of the records, with some going back to 2007. Senator Nelson stated SDCL 4-2-3 indicates that DLA is an arm of the Legislature and responsible to the Legislature. Mr. Guindon advised that the Executive Board of the Legislative Research Council (LRC) is DLA's administering body. Mr. Doug Decker, Code Council for LRC, advised SDCL 4-2-8 gives the Executive Board of LRC the administrative power over DLA. Senator Nelson stated statements were made that DLA had more power than the Legislature. Mr. Guindon discussed the authority granted to DLA in SDCL 4-11-4 and 4-11-2.1. Senator Nelson stated that any information that DLA comes up with is answerable to the Legislature. Mr. Guindon advised that he acts on the authority granted by the Legislature.

Senator Peters asked how many DLA staff hours were used for the two reports. Mr. Guindon advised approximately 2,500 hours. Senator Peters asked for the details of the processes completed. Mr. Guindon advised they went through banking and accounting records for all of the organizations they had access to for multiple time periods. The AG's office has access to DLA's working papers.

Senator Nelson stated the audits are not evaluations of the programs. Mr. Guindon agreed, stating the audits performed were not management or performance audits. Senator Nelson stated there hasn't been anything done to look at the operations to identify how, for ten years, \$62 million is unaccounted for. Mr. Guindon advised that they did review the internal controls and reported weakness. Mr. Guindon advised from April 2012 to September 2015, MCEC received \$10.6 million from the State for the GEAR UP program. Senator Peters clarified that the first GEAR UP grant was administered by the Department of Education from 2005 to 2011 and the second grant was administered by MCEC from 2012 to 2015. The total amount drawn by the State for the GEAR UP grant from April 2006 to September 2015 was \$17.9 million.

Senator Peters asked if it was common for organizations to access funds through the U.S. Department of Education's (USDOE) Grant Management System, G5. Mr. Guindon advised that yes, it was common for any organizations with direct grants to access funds through the G5 system. Representative Wismer discussed the Roger Campbell email correspondence, where he asserted that the GEAR UP grant had not been audited within the last seven years. Mr. Guindon will review the program for outside audits and report back to the Committee.

Senator Nelson discussed DLA's review of the map at USD, as a review for the audit, not for operational or result orientated reviews. Mr. Guindon advised one of the objectives was to identify related parties and improper payments between parties. If DLA found conflicts of interests or improper payments that

violated any law, they would have been reported in the Special Review or Single Audit report. Senator Nelson stated that he doesn't feel that all of the related parties have been looked at and determined to be appropriate. Senator Peters discussed the conflict of interest laws from 2016 and 2017 that are in place to help close the loopholes. Representative Wismer asked what effect the conflict of interest laws would have had on MCEC. Mr. Decker described the conflict of interest law. Mr. Guindon replied that there were things that would have been required to be reported, but this was management level fraud, and they may not have been concerned with following the law. Representative Steinhauer asked if any of the missing money was South Dakota's. Mr. Guindon explained that the State reimbursed MCEC for allowable expenses. He also explained match requirements outlined by the Office of Management and Budget's Uniform Guidance (Uniform Guidance). All of the money drawn was documented as being used for some GEAR UP related purpose, other than what was identified in the findings of the report.

Senator Sutton asked about the monthly dollar amount paid to MCEC. Tim Flannery, Audit Manager for DLA, explained that the \$50,000 was based on MCEC expenditures to run the program. Senator Sutton asked why it was always \$50,000 a month. Mr. Flannery clarified that it was not always \$50,000, but was based on the actual expenditures.

Senator Nelson discussed the charges against individuals for falsifying documents and needing to have stronger conflict of interest laws. He asked if DLA accepted contracts at face value. Mr. Guindon stated that we looked at numerous contracts and reported on issues found with contracts. Senator Nelson stated there is no way to know how many fraudulent contracts there were that were only taken at face value. Mr. Guindon advised that they did not accept anything at face value.

Senator Tapio discussed that an audit may not capture everything they are looking for and his concern for the in kind contributions being used for matching. He also stated that he felt there was knowledge at some level. Not having proper oversight asks for fraud. He asked when the State became aware of Scott Westerhuis's involvement with American Indian Institute for Innovation. Mr. Guindon advised that DLA became aware in 2014, starting with his review of the MCEC financial report. Senator Tapio would like to know what the initial intentions were for matching and somebody should pursue it. Mr. Flannery explained that they reviewed the grant application approved by the USDOE and things did not appear to go as originally planned. The large Microsoft match was somewhat different than what was on the original grant application. Senator Tapio stated that the match was conditionally approved by the USDOE based on documentation. He believes it is the Committee's responsibility to find out how and who was involved in the determination of the valuation and documentation of the Microsoft match. Mr. Flannery explained that they asked those same questions. Essentially, it was the responsibility of MCEC to prove the matching amounts. Microsoft explained to DLA how they came up with the valuation of the licenses and initially the USDOE said that was acceptable. The GEAR UP grant was a State application, where they indicated that they would be partnering with MCEC to administer the grant. The State is the primary recipient of the grant. Mr. Guindon advised that DLA has issued findings regarding the match.

Representative Hunhoff asked who signed the agreements of the subsidiaries and asked if those agreements were approved by the State. Mr. Flannery advised that the director of MCEC signed the agreements and that was in the purview of MCEC. Representative Tieszen stated that he doesn't accept that the State has the responsibility for the match money.

Representative Steinhauer stated that he didn't think that others knew the fraud was going on. The fact that they knew each other is not necessarily wrong. The Committee's purpose is to discover fraud more quickly and find ways to determine if programs are effective. Senator Tapio feels that government is too focused and there were a number of red flags. He felt there were systems that should have been looked at further.

Senator Nelson took exception to Mr. Decker's explanation that the Committee did not have the power to summon a private person. He advised SDCL 2-6-4 has no limitations and discussed the South Dakota Supreme Court case Gray v. Gienapp. Mr. Decker agreed that the case identifies key components of separation of power. Mr. Decker then discussed the State of South Dakota v. Troy Township case as an additional case that discusses the separation of powers and the branch roles. Senator Nelson stated that it is not LRC's job to provide partisan opinionated positions on these matters. He also stated, statues do not limit their ability to summon individuals.

### **Item 3 – State Board of Internal Control – To discuss additional internal controls developed across State government (SDCL 1-56-7)**

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

Liza Clark, Commissioner of the Bureau of Finance and Management (BFM), was present to address the Committee. She discussed SB162 that became SDCL 1-58 and the letter she sent to the Committee on August 10, 2017 ([BFM Response Letter](#)). The Board of Internal Control (Board) has developed and continues to develop additional tools to reduce South Dakota's exposure to risk. The Board would like to be involved with future legislation. There are three main duties of the Board: code of conduct, conflict of interest and guidelines for an effective system of internal control.

The Board has adopted the Bureau of Human Resources' (BHR) Employee Handbook as the code of conduct for State employees, specifically pages 2-11. They are currently working on a code of conduct for Boards and Commissions. The Board also adopted a motion stating that all state employees are required to comply with conflict of interest laws (SDLC 5-18A-17 through 5-18A-17.6) and the process is included in the BHR Handbook on page 6.

As part of working towards and effective system of internal controls, the Board has established Internal Control officers in each agency and a Federal Grant Compliance workgroup, led by Keith Senger, BFM Director of Financial Reporting. The workgroup deals with the Uniform Guidance and they have adopted four standard tools: a contractor or subrecipient relationship determination checklist, a pre-award risk assessment tool, a subrecipient monitoring guide and a subrecipient agreement template.

Mr. Senger explained that the Board is looking at all internal controls for state government, but they are currently focusing on subrecipients. Mr. Senger provided a [flowchart](#) to help understand the process for pass-through grants to subrecipients. He explained that about 80% of federal grants are expended internally. He explained the difference between a contractor and subrecipient and discussed the tool developed. Representative Wismer asked if the pre-award risk assessment tool looks at the federal matching requirements. Mr. Senger stated that he didn't think there was a specific question regarding matching, but it took into consideration the complexity of the grant. Grants that are more complex have greater risk. Representative Wismer asked what the anticipated match sources were for the MCEC

grants and how it should be discussed. The Board has guidance for each agency to develop a monitoring plan and they are responsible for performing ongoing risk assessments.

Representative Steinhauer asked if the brown boxes in the flow chart were defined by federal guidance. Mr. Senger advised that there is guidance but it is not well defined. Representative Steinhauer would like to see more standardization and following up on effectiveness. Ms. Clark advised that is part of the role of the workgroup, and will take time to develop tools that work with various agencies and grants.

Senator Cronin asked if they have started this process with subrecipients and how agencies are responding to it. Mr. Senger advised that the forms became effective July 1, 2017 for any new grants. Ms. Clark advised that some like it and some are getting use to the change. Senator Cronin asked how many subrecipient grants will go through this process. Mr. Senger discussed the differences in various grants and advised that this process will be continuous. Using the FY16 Schedule of Expenditures of Federal Awards, Mr. Senger advised that South Dakota received \$2.3 billion in grants and \$239 million went out to subrecipients.

Representative Hunhoff asked who grants the waivers for conflicts of interest in regard to the subrecipient monitoring guide. Mr. Senger advised the subrecipient has the task of developing and enforcing conflict of interest rules and disclosures. Representative Hunhoff asked if agencies were required to report back to the Board after developing a monitoring plan. Mr. Senger advised that it is an agency specific responsibility and remains with the department. Representative Hunhoff asked who was responsible for measuring the outcome of the grant and what assurance is there that it is being done. Ms. Clark advised that it would be the responsibility of the agencies providing the subrecipient grant and advised that it should be discussed at the joint appropriations meetings.

Representative Steinhauer asked about the process of reviewing the subrecipients conflict of interest policy. Mr. Senger advised there are questions about it in the pre-award risk assessment tool. Representative Steinhauer advised that he doesn't feel the question is adequate. Mr. Senger stated the grant agreement requires them to address conflict of interest.

Senator Tapio asked who the Department of Education's internal control officer is. Ms. Clark stated Tamara Darnall. Senator Tapio asked if new information regarding the Microsoft match arose, is it the internal control officer's job to report this information to the federal government. Are there controls in place to report if errors are found in the future? Mr. Senger advised that when weaknesses are found, it is the agencies responsibility to correct it.

Representative Steinhauer asked how the agencies will be interacting with the Board to ensure there is a level of consistency and that minimum standards are met. Ms. Clark explained one of the Board's roles is to implement the statewide internal control framework. The Board is looking to contract with a company to work with each agency to implement the framework.

Senator Nelson asked how the members of the Board are appointed. Ms. Clark stated SDCL 1-56-2 provides criteria of the Board members. Senator Nelson asked if the gubernatorial appointment require legislative approval. Ms. Clark advised that she did not believe so.

**Item 4 – Committee discussion of draft legislation derived from the Mid Central Educational Cooperative reports**

- [Draft Legislation Doc.4](#)
- [Draft Legislation II Doc.25](#)

Senator Peters briefly discussed the draft legislation documents and advised that she would like to look at it closer during the next Committee meeting. Senator Sutton asked if the Committee was looking for additional ideas for legislation. Senator Peter advised yes and discussed the process of a Committee bill.

**Item 5 – Department of Education – Secretary Schopp to discuss answers to questions from Committee members stemming from the Mid Central Educational Cooperative reports**

- [Letter to Education MS Doc.5](#)
- [SDDOE Follow-up emails Doc. 26](#)
- [SDDOE Exhibit 2 Doc.28](#)
- [Reply from SDDOE MS & TD Doc.19](#)
- [SDDOE Exhibit 1 Doc.27](#)

The Committee reviewed the answers submitted by Dr. Schopp in the [Reply from SDDOE MS & TD](#). Follow up questions from the discussion of the responses will be submitted to Dr. Schopp for additional clarification. Senator Sutton asked that in future answers, the questions also be included. Senator Nelson asked if the Department of Legislative Audit (DLA) has looked at the questions and answers. Marty Guindon, Auditor General, stated they have not discussed them at this point, but can review them for the next meeting.

Representative Hunhoff asked who wrote the first GEAR UP grant. Representative Conzet was present and addressed the Committee. She stated that she worked for the Department of Education (DOE) from 2002 to 2005 and was the original writer of the grant. She stated she worked with Stacy Phelps on the grant. Senator Tapio asked about the original source of matching funds. Representative Conzet advised that GEAR UP was already in place at the School of Mines and was a successful program. The original intent was for the School of Mines to provide the in-kind match. Senator Tapio asked when her involvement ended and if she noticed anything that seemed amiss. Representative Conzet advised that she was gone before they received any of the federal funds. Senator Nelson asked if she was a State employee or contractor. Representative Conzet advised that she was a State employee for two years and then her employment ended. She had a monthly salary as a DOE employee and did not receive any additional funds as part of the grant.

Senator Sutton asked who wrote the second GEAR UP grant. Mr. Flannery, Audit Manager with the DLA, advised that they were informed in an interview that Brinda Kuhn was the author of the second grant. He did not know who hired her. Senator Nelson advised that he would like to know who hired her and how much she got paid.

Senator Peters asked for an explanation of the traditional procedures for writing grants. Representative Conzet explained the typical grant writing process. When receiving federal money, you are required to vet the application through the State. When she wrote the initial grant, it needed to be signed off on. She advised that it is not unheard of to have a State agency pass the grant on to other agencies. The authority in the second grant was given to Mid Central Educational Cooperative (MCEC).

Senator Sutton stated that the conflict of interest statues in place now are a good tool to prohibit self-dealing and he thinks the problem is addressed. Mr. Guindon advised that an effective implementation of conflict of interest laws and internal controls will help reduce risk. Representative Steinhauer advised there needs to be minimum standards and they need to follow up on monitoring. Senator Sutton believes that it is important to understand the workings of the administration in order to ensure that they are receiving the honest records.

Senator Nelson discussed Dr. Schopp's response to questions about LuAnn Werdell's termination of employment. He stated Dr. Schopp's testimony and written response contradicted each other. Ms. Werdell informed Senator Nelson by phone that there were other emails or memos providing additional information about mismanagement and fraud. Senator Nelson provided an [email](#) to the Committee that included an audio link of his conversation with Ms. Werdell.

Senator Peters requested that DLA review the questions and answers provided to the Committee, as well as, listen to the audio provided and report back to the Committee. She also discussed sending a letter to Ms. Werdell asking for facts with support.

**Item 6 – Department of Education – Tamara Darnall to discuss answers to questions from Committee members stemming from the Mid Central Educational Cooperative reports**

- [Letter to Education TD Doc.6](#)

The Committee reviewed the answers submitted by Ms. Darnall in the [Reply from SDDOE MS & TD](#). Follow up questions will be asked of Dr. Schopp for additional clarification. Senator Nelson asked if the Committee was going to send a summons to Brinda Kuhn to have her come in. Senator Tapio recommended waiting until they gathered the information about when she was employed, and then move forward.

**Item 7 – Review responses from Committee questions regarding the Mid Central Educational Cooperative**

- [Letter to BK Doc.7](#)
- [Letter to S&C Doc.9](#)
- [Letter to SN Doc.11](#)
- [Reply from BK Doc.8](#)
- [Reply from S&C Doc.10](#)

The Committee reviewed the responses provided by Schoenfish & Co., Inc. in the [Reply from S&C](#). Representative Wismer discussed the suggestion provided in the response to utilize the experience of private accountants that audit various entities. Senator Peters discussed the conflict of writing a grant and then evaluating the same grant. Representative Tieszen suggested sending a request to the South Dakota CPA Society to gain additional knowledge.

Senator Sutton commented on the response given about the gym at the Westerhuis property and asked if the Committee needed more detail. Senator Peters thought the discussion could be a normal small town discussion. Mr. Guindon advised that a lot of people asked about the property, but didn't go any further. Senator Nelson asked if it was common practice to not have specific auditors sign an audit. Mr. Guindon advised that unless the auditor is a sole practitioner, it is usually signed in the name of the firm, as it is the firm that has the authority to issue the reports. Senator Nelson asked if the auditors are

required to report any indications of fraud to law enforcement. Mr. Guindon discussed the standards and responsibilities of an auditor. He can follow up with specific provisions in the auditing standards that advise an auditor on what to do.

**Item 8 – Bureau of Human Resources to discuss:**

- **Report of compiled authorizations to derive a direct benefit from a contract (SDCL 5-18A-17.2)**
- **Revisions to performance management indicators (SDCL 2-6-35)**
- [Letter to BHR Doc.12](#)
- [Report of Approved Authorizations FY2017 Doc.21](#)
- [Conflict Waivers FY2017 Doc.22](#)
- [BHR Performance Indicators Doc.23](#)

Laurie Gill, Commissioner of the Bureau of Human Resources (BHR), was present to address the Committee. Ms. Gill discussed the annual Report of Approved Authorizations compiled by BHR and legislative history. The authorizations are referred to as waivers and are public documents. There were 14 waivers approved for FY17.

Representative Hunhoff asked who at BHR signs the waivers. Ms. Gill advised that department heads of agencies under the Governor had been given authority to approve the waivers. Agencies not under the Governor, such as the Unified Judicial System, have their own method of approval. The role of BHR is to receive the waivers, retain them and provide an annual report.

Representative Wismer asked if the law covered former State employees. Ms. Gill advised the law covers current State employees, as well as employees who dealt with contracts for up to one year after resignation from the State. Representative Wismer discussed the retirement of the manager at the South Dakota Developmental Center and conflict free case management. Representative Wismer asked if that person would need to complete a waiver if she started working for one of the conflict free case management companies. Ms. Gill advised there is a decision matrix on BHR's website to help individuals determine if they should fill out a waiver. Representative Wismer stated that BHR is responsible for compiling the report, but they aren't responsible for enforcing the use of them.

Representative Tieszen asked when the waivers become public information. Ms. Gill advised they become public when they are provided to BHR and reported to the Committee. The waivers are currently at BHR and are available upon request. Representative Steinhauer discussed that 9 out of 14 waivers came from the Department of Transportation (DOT) in FY17, which doesn't seem balanced. Ms. Gill described what BHR has done and what they are currently doing to get the word out. Senator Peters asked if State contracts are asking if individuals are former State employees. Ms. Gill advised that is not something BHR is involved with. Senator Peters asked if there were controls in place to ensure former State employees are completing waivers before contracting with the State. Representative Steinhauer advised to look at what DOT is doing and try to replicate that.

Representative Hunhoff asked if there were any positions within the State that required the conflict of interest waiver to be completed upon hire. Ms. Gill explained that agencies could specifically require it, but BHR provides information in the onboarding process. Representative Hunhoff asked if a Secretary or Commissioner is required to sign a conflict of upon appointment. Ms. Gill advised they are not, but there are a lot of things that are still in progress. Representative Hunhoff advised that she feels that anyone in a management position should sign a conflict of interest policy.

Ms. Gill also discussed the BHR performance indicators for FY18 and forward. They have used FY17 information to update their data and trends. She discussed their five goals, what they are doing to achieve them and trend information.

**Item 9 – Department of Transportation – Secretary Bergquist to discuss answers to Committee questions relating to railroads**

- [Letter to DOT Doc.13](#)
- [Reply from DOT Doc.18](#)

Darin Bergquist, Secretary of the Department of Transportation (DOT), was present to address the Committee. He discussed the answers provided to the Committee's written questions in the [Reply from DOT](#). Senator Nelson advised that he had written follow up questions that he would like to submit to the Committee. Representative Hunhoff asked how long the contract with Dakota Southern line has been in place. Mr. Bergquist advised the lease agreement on the Napa to Platte line has been in place since about December of 2016. Prior to that, the lease agreement only allowed for storage on the line. Representative Hunhoff asked who had the prior lease. Mr. Bergquist advised that the previous storage lease was with Dakota Southern.

Senator Peters asked what procedures are in place to ensure the mechanics of the contracts are being enforced. Mr. Bergquist explained that the operators send in supporting documentation and DOT reviews the documentation. If there are questions or concerns, DOT can contact the shippers directly to verify information. Senator Peters asked if there was a policy in place for verifying information. Mr. Bergquist advised there is not a specific policy, as the various lease agreements can be very different. The practice has been in place for a very long time. They are working on developing a consistent process.

Representative Wismer asked what kind of an audit question 10 was referring to. DOT did not feel they could do a full audit based on the lease payment supporting documentation received. Representative Wismer asked if the rail board has authority to require an audit of Dakota Southern. Mr. Bergquist advised the lease agreements give the Board, Department and Regional Rail Authority the authority to inspect financial records of each of the rail operators. He is not aware that any audits have been performed on any of the short line operators and doesn't think that audited financial statements are a requirement of the lease.

Senator Peters asked what changes are in the proposed amendment discussed in the answer to question 12. Mr. Bergquist provided background on the issue. Dakota Southern is claiming that income received from the car owners was applied to a past due debt, and should not be considered revenue when submitting the State's share.

Senator Nelson asked for more of an explanation on the answer to question 12. Mr. Bergquist advised that they were discussing an amendment to the lease agreement, but the negotiations fell through. The cars and car storage were moved to a different location due to logistics. Senator Nelson asked why the State did not renew the lease with the Napa Platte Authority. Mr. Bergquist advised the Board and rail authority had differing opinions. Senator Nelson asked what funds were used for the proceedings

against the Napa Platte Authority. Mr. Bergquist advised that the proceedings are ongoing. He did not have the cost to date and advised they are paid out of the Rail fund.

Representative Hunhoff discussed DOT's presentation at the 6-20-16 Committee meeting regarding the 90 day maintenance plan with Dakota Southern. She asked for confirmation that the maintenance plan was completed. Mr. Bergquist advised that the Board has been active in pursuing maintenance plans and inspecting and following up on those plans.

Senator Nelson asked if Dakota Southern earned any income during the 2014-2016 and when was the lease allowed to expire. Mr. Bergquist advised there was revenue from car storage and he didn't have the figure available. The lease expired in 2016.

Senator Peters requested that questions for agencies on the agenda be provided before the meeting. Senator Tapio made a motion to send a personal letter to the Secretary to have his questions answered. Senator Cronin stated he would like to know if there is a problem. Senator Nelson discussed articles he's provided regarding derailments and safety issues.

**Item 10 – Department of Human Services to discuss their performance management indicators (SDCL 2-6-35)**

- [Letter to DHS Doc.14](#)
- [DHS Performance Indicators Doc.20](#)

Gloria Pearson, Secretary of the Department Human Services (DHS), was present to address the Committee. She highlighted the three goals and strategies included in the strategic plan. For their first goal, they are focusing on a right sizing initiative at the South Dakota Developmental Center (SDDC) as well as becoming a person centered organization. The current population at the SDDC is 117. The DHS Division of Developmental Disabilities administers two Medicaid waiver programs to support people with disabilities in the community. In January 2017, the Division of Adult Services and Aging at the Department of Social Services moved to DHS, becoming the Division of Long Term Services and Supports. They have developed a steering committee to maximize the well-being of citizens with disabilities.

The second goal is to raise awareness of the resources available to support people with disabilities through education and advocacy. They are currently running an Ability for Hire campaign to spread the word. There are two non-profit business led organizations in South Dakota designed to help provide education to local businesses for hiring people with disabilities. Project Skills is a paid work experience program for high school students with disabilities and has recently expanded to State government.

The third goal is becoming a person centered organization. They are working to expand person centered service delivery, developing a no wrong door approach, expanding the community provider base and improving the capacity of families to provide support.

Representative Tieszen asked what kind of facilities the 25 people currently on the outplacement list need to go to. Ms. Pearson stated the 20 community providers located around the State, back to their families or require no additional support. Representative Hunhoff stated she would like to see the progression and expectation for the transitions in case management. Senator Peters advised the goals

are good, but they need to be measurable. Ms. Pearson advised that the strategies are what they use to achieve goals.

Representative Steinhauer discussed concerns expressed by community support providers and finding a good balance. He feels we need to pay attention to the community support providers and their struggles. Ms. Pearson agreed and advised that they have been receptive to the community support providers when they need help. SDDC is working to support the providers and they know they have to maintain a partnership. Representative Steinhauer suggested including a more global picture that includes the community support providers.

Representative Wismer would like to see more information on how the workforce is doing for goal three, such as workforce injuries and turnover. She also asked for information in the future about the conflict free case management, wanting to see the requests for proposals, bidders, and the transition process. She expressed her concern of not seeing conflict of interest waivers for any former State employees working for the conflict free case management companies. Ms. Pearson advised there were four companies they have contracted with.

**Item 11 – Brand Board and the Division of Criminal Investigation to discuss investigation services and related costs (SDCL 40-18-18)**

- [Letter Brand Board Doc.15](#)

Debbie Trapp, Director of the South Dakota Brand Board, was present to address the Committee. She provided background information on the Brand Board. Ms. Trapp advised that they pay the Attorney General's office based on an itemized voucher every month for the two Special Assistant Attorney Generals. Senator Peters asked for the correlation between the expenses paid and the outcome of the investigations.

Ms. Trapp provided a [handout](#) with the SDCL's regarding the law enforcement officers, as well as, a breakdown of the expenses reported in the FY16 report. Representative Hunhoff asked how many cases were investigated and is looking at the cost benefit. Ms. Trapp advised there were 384 head of cattle that were reported missing or stolen in CY16. On average, a cow is worth \$900. Representative Wismer suggested basing the cost on per head inspected. Ms. Trapp advised that in FY17, 1.7 million cattle were inspected. The comparable cost in CY15 was about \$130,000 and CY16 was about \$150,000. Travel expenses play a big part, as both agents are located in Pierre.

Representative Tieszen asked how many cows were found by the owners, rather than the investigators. Ms. Trapp did not have the figures available. In CY16, the brand inspectors recovered 194 head of cattle.

Representative May discussed the producers concerns of the Brand Board spending \$142,857 to recover nine horses and two calves. The producers have a problem with the amount the Division of Criminal Investigation (DCI) is charging the Brand Board. Senator Cronin asked if the producers have brought their concerns to the Brand Board. Representative May advised that they have. They don't feel the two agents are effective and need clarification on what can be done locally. Senator Cronin asked if the Brand Board has discussed the prices with DCI to see if they can be lowered. Representative May

advised the statutes need to be reviewed on how the Brand Board needs to handle the thefts. She feels the local sheriffs need the authority to help the DCI in the investigation and recovery.

Brett Spencer, a Supervisory Special Agent for the Brand Investigators with the DCI was present to answer questions. Senator Sutton asked for his comments about the need for additional investigators. Mr. Spencer explained that the Brand Investigators are Special Assistant Attorney Generals (SAAG) and get paid far less than DCI Special Agents. He advised that if the funds were available, he would like to have two more investigators in western South Dakota.

Representative Tieszen asked if the Brand Investigators do any other case work. Mr. Spencer advised that in the past, they have assisted agents with major crimes, but since he has been the supervisor, they have only worked on brand related crimes. They work a normal 80 hour two week period. Mr. Spencer explained that the Investigators jobs are to assist the Sheriffs and local law enforcement when needed. They follow up on violation reports from the Brand Board in conjunction with the local offices. Representative Tieszen asked if there were any statutes prohibiting Sheriffs from investigating the cases. Mr. Spencer believes the Sheriffs have the authority to complete the cases. The Brand Investigators are needed when local law enforcement needs additional resources. Representative Tieszen asked why the two agents are located in Pierre. Mr. Spencer explained that when DCI took over the Brand Investigators, the agents were already located here, and they did not make them move.

Mr. Spencer advised that FY18 has already had 7 reports with 297 head of cattle missing and they have recovered 257 head. The tracking of numbers has become more effective and efficient since FY16 and the number in the report may not be accurate. Senator Peters advised the Brand Board and DCI to bring forward recommendations for going forward.

#### **Item 12 – Next meeting date and future meeting topics:**

The next meeting is scheduled for the afternoon of October 5, 2017 and morning of October 6, 2017.

Representative Steinhauer discussed the outcomes from the subcommittee to provide guidelines for the performance indicators. They have developed [guidelines](#) including providing historical perspective and trends, state and chart goals, show cost per unit, provide raw data, comments and a rating. Representative Steinhauer suggested having the department secretaries present their goals at the beginning of the legislative session. Representative Anderson also discussed getting together during the budget address.

Bob Christianson, Audit Manager with the Department of Legislative Audit, provided hard copies of the 2017 Government Operations and Audit Committee Other Information by Agency ([GOAC Blue Book](#)) report to Committee members. The [Other Fund Analysis](#) can be found online. Senator Peters advised that she will review the report with Representative Hunhoff and bring forward the higher risk other funds for review at the next meeting.

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 October meeting:

- Follow up questions from today's meeting
- 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)
- Annual report from the South Dakota 911 Coordination Board (SDCL 34-45-20)
- GF&P Other Funds
- Bureau of Information and Telecommunications to discuss cyber security and updates to their performance management indicators (SDCL 2-6-35)
- Annual accountability report from the Technical Institutes (SDCL 13-48A-7)

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