

# MINUTES

## Government Operations & Audit Committee

Senator Larry Tidemann, Chair  
Representative Jean Hunhoff, Vice Chair



**Fifth Meeting, 2016 Interim  
Tuesday, November 22, 2016**

**Room 412 – State Capitol  
Pierre, South Dakota**

The fifth meeting of the 2016 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Tidemann at 9:00 a.m., November 22, 2016, in room 412, State Capitol Building, Pierre, South Dakota.

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

Staff members present were Mr. Martin Guindon, Auditor General; and Mr. Tim Flannery, State Government Audit Manager for the Department of Legislative Audit (DLA).

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

### **Approval of Minutes**

Senator Heineman moved, seconded by Representative Hunhoff, the minutes of the October 18, 2016 meeting be approved ([Minutes 10-18-16 Doc.1](#)). Motion prevailed unanimously on a voice vote.

### **Item 1 – Senator Heineman to provide an update on Senate Bill 159, 2016 Session, an act to provide educational scholarships**

- [Letter to SH Doc.7](#)

Senator Heineman was present to give an update on the implementation of the educational scholarship program established by Senate Bill 159, 2016 session. Senator Heineman stated the program started on July 1, 2016. She explained the law states that company information is to be confidential; however the first two companies that contributed to the program have elected to make their contributions public information. The first generous contribution was provided by Sammons in the amount of \$150,000. The second contribution was provided by Avera Health Plans in the amount of \$100,000. She added that 80% of the contribution is a tax credit; contributions are really dependent on the company's generosity and belief in the program's goals.

Senator Heineman explained there were a total of 280 scholarships awarded totaling \$209,692 to students attending 38 different schools. The average scholarship was \$750. Scholarship checks have been sent to the schools in the parents' names. She explained the scholarships are awarded based upon family income and grade criteria, as dictated by the law. Applicant families may go directly to [myTADS.com](http://myTADS.com) to complete an application for the scholarships. Senator Heineman stated 325 families applied and unfortunately some were denied because they didn't fit the income limit or didn't match the eligible grade criteria. She stated all students determined to be eligible were awarded scholarships, with the lowest income families receiving the higher scholarship amounts.

Senator Heineman stated that another priority was to spread the scholarship dollars across the State. She explained 40 non-public schools have signed up to voluntarily participate in the scholarship program. She explained the goal was to be able to award some scholarships to students in every participating school. There were a few schools that had either none or a small number of eligible applicants. She stated that as parents become more aware of the program, participation should improve.

Senator Heineman stated Great Plains Education Foundation; a 501 c (3) non-profit, is serving as the scholarship granting organization and is handling all of the administration and financial functions. Senator Heineman thanked Harvey Jewett and the entire Great Plains board for their participation and expertise.

Senator Heineman stated families, schools, insurance companies, and the public can visit the website at [sdpartnersinedu.org](http://sdpartnersinedu.org) for more information about the scholarship program.

## **Item 2 – Associated School Boards of South Dakota to provide an update on their Health Insurance Program**

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

Wade Pogany, Executive Director for the Associated School Boards of South Dakota (ASBSD), was present to address the Committee. Director Pogany explained some of the operational and financial corrections the South Dakota School District Benefits Fund (SDSDBF) has made to improve its financial position in the last 16 months. He stated the SDSDBF has moved to a new third party administrator and has decreased the number of unique health plans from 260 to eight. He explained as of June 30, 2016 the plan was operating in the black, revenue exceed expenditures by \$1.4 million. He stated the SDSDBF still has a significant debt of \$9.2 million that it is working to eliminate. The board is working with a consultant and the member schools to reduce the debt, over time, to zero. In addition to paying off the debt, the SDSDBF's actuary has recommended the plan establish and maintain a cushion. Director Pogany stated premiums have been increased and an additional assessment has been made to the member school districts. Representative Cronin expressed concerns about the school districts' ability to pay for the additional assessments.

Director Pogany emphasized the importance of building in safeguards so the SDSDBF doesn't go through financial problems again. Representative Anderson commented that this is an insurance pool and the pool's product has been underpriced for a number of years. Director Pogany stated there should have been assessments a long time ago.

## **Item 3 – Department of Game, Fish and Parks to discuss the sources and uses of funds in four Other Funds**

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

Mr. Kelly Hepler, Secretary of the Department of Game, Fish and Parks (GF&P), Mr. Chris Petersen, Finance Officer and Director of Administration were present to update the Committee on several others funds administered by the GF&P. Mr. Petersen started his presentation with the Department of Game, Fish and Parks Fund, other fund company 3122. He explained the total assets in this fund were \$14,331,853 and commitments were \$792,539. The revenue in this fund is derived from game and fish licenses issued. He added that the GF&P Commission has a targeted cash balance in this fund of \$10 million. Representative Hunhoff asked that the Committee be provided an analysis of resident and

nonresident hunting and fishing licenses over the last five years so the Committee could see how licenses have been trending over time. Mr. Petersen agreed to provide this information to the Committee. Representative Cronin asked if the Department could provide more information to hunters as to where it was legal to hunt. Mr. Petersen stated the Department is continually trying to improve information sharing with hunters and explained several efforts underway to do this.

Mr. Petersen moved on to the Parks and Recreation Fund, other fund company 3125. He explained this fund is used for operating and maintaining the existing park system. The source of revenue to this fund is from park license receipts. Mr. Petersen stated that fiscal year 2016 was a very good year and revenues were up from the prior year. He explained company 3125 had a cash balance of \$13.3 million as of June 30, 2016 and commitments totaling \$10.3 million. Representative Hunhoff asked that the Committee be provided an analysis of park license sales over the last five years so the Committee could see how licenses have been trending over time. Mr. Petersen agreed to provide this information to the Committee.

Mr. Petersen explained the two sub funds under company 3125 pertaining to Custer State Park: 1) the Custer State Park Bond Redemption Fund, and 2) the Custer State Park Improvement Fund. He explained concession contract revenues are deposited into the Custer State Park Bond Redemption Fund and are used to make bond payments. The Custer State Park Improvement Fund received net bond proceeds of \$11.3 million in May 2015 and these dollars have been used for construction, reconstruction, and modernization of facilities and related infrastructure at Custer State Park. Representative Cronin asked if these bonds could be paid off early. Mr. Petersen stated the bonds do have this option and if cash was available the state does have the right to pay them off.

#### **Item 4 – Department of Labor and Regulation to discuss the sources and uses of funds in the Unemployment Compensation Fund**

- [Letter to DLR Doc.4](#)

Ms. Marcia Hultman, Secretary of the Department of Labor and Regulation was present to update the Committee on the Unemployment Compensation Fund. She explained the fund provides temporary financial assistance (up to 26 weeks) for people who have lost their jobs, through no fault of their own. Temporary benefits are paid to help individuals get back on their feet. Secretary Hultman stated the minimum weekly benefit is \$28 and the maximum weekly benefit is \$380.

Secretary Hultman explained each state has its own account in the Federal Unemployment Trust Fund. Federal law requires the immediate deposit of all state-collected unemployment contributions into the U.S. Treasury. The state account consists of contributions and reimbursements collected and interest earned on these amounts. Withdrawals from this account can only be made for the payment of benefits and refunds of contributions paid in error.

Secretary Hultman stated employers are assigned tax rates based on their individual experience with unemployment (experience rating). New employers are assigned a set rate for the first three years. After three years, employers receive a tax rate based on experience. She added the taxable wage base is \$15,000 and contribution rates range from 0% to 9.5%.

Secretary Hultman explained the average high cost multiple (ACHM) compares benefit payments during an average recession to the Trust Fund balance. The U.S. Department of Labor (DOL) recommends states, to be minimally solvent, have reserves to pay at least one year of benefits (ACHM of 1.0) during an average recession. Representative Anderson asked what the ACHM ratio was for surrounding states. Secretary Hultman stated prior to the 2008 recession, Montana's was 1.45, North Dakota's was .79, Nebraska's was 1.19, Wyoming's was 1.15, and Iowa's was .88.

Representative Cronin asked who monitors the Unemployment Compensation Fund. Secretary Hultman stated the Unemployment Insurance (UI) Advisory Council. The members represent employers, employees, and public services and they meet at least twice a year. The UI Advisory Council makes recommendations for improvement to the Governor, the Legislature, and the Department of Labor.

#### **Item 5 – Board of Massage Therapy to discuss the sources and uses of funds in the Board of Massage Therapy Fund**

- [Letter to BMT Doc.5](#)

Jennifer Stalley, Executive Director of the Board of Massage Therapy appeared before the Committee. Director Stalley provided an overview of the Board of Massage Therapy (Board). She stated the mission of the Board is to protect the health and safety of the public by mandatory licensure of qualified persons and enforcement of the statutes, rules, and regulations governing the practice of massage therapy, including processing and investigating properly filed complaints and holding hearings as warranted.

Director Stalley stated the Board was created in 2005 and issued its first licenses in 2006 (479 licenses were issued in 2006). The Board has issued an average of 800 plus licensees annually since 2006. She added that licenses are required to meet minimum educational requirements, pass a national examination, and carry at least \$250,000 in malpractice insurance. In fiscal year 2016, there were 748 licenses renewed and 79 new licenses issued. The current renewal fee is \$45. Director Stalley stated the renewal fee was previously set by the Board at \$65, but was reduced to \$45 by the Legislature in 2013. She added that no renewal fees were collected in fiscal year 2014 due to statutory changes that reset the renewal date to a universal expiration date, which effectively left the Board with no revenue and all its expenses for one year.

Director Stalley stated the primary use of the funds collected by the Board is to ensure application compliance with licensure requirements, oversee the renewal of licenses, ensure licensee compliance with continuing education and insurance requirements, and receive and investigate complaints against licensees.

Director Stalley stated that when she appeared before the Committee on October 30, 2015, she informed the Committee that the Board was proposing legislation in 2016 to update its practice act. The Board's proposed changes were adopted by the Legislature and become effective July 1, 2016. She added that while the Board's role is not to enforce criminal violations, some of the changes made with the 2016 legislation were aimed at helping law enforcement identify violations of unlicensed practice. She stated that some of the changes included:

- Making it a petty offense to fail to display or produce a valid massage therapy license.

- Extending the definition of unlicensed practice to anyone who knowingly owns, operates or manages a business or contracts with a person who is unlicensed to perform massage therapy.

She added that the Board undertook a review of its administrative rules this summer. This was the planned second step in updating the Board's practice act and rules. At the Board's October 17, 2016 meeting, the Board approved a package of proposed changes to be submitted to the Department of Health for approval to begin the public rules process. Director Stalley stated that upon approval, the proposed changes would be submitted for public review and comment with an anticipated hearing date of April 10, 2017, in conjunction with the Board's scheduled meeting.

Director Stalley stated the Board unanimously approved the following proposed changes, which include an increase in certain fees. These increases were proposed by the Long-Term Financial Stability Workgroup:

- License fee                 \$45 to \$65
- Renewal fee                 \$45 to \$65
- Inactive license fee     \$25 to \$30
- Reactivation fee         \$45 to \$65
- Temporary permits     \$50 to \$75
- Late fees                    \$75 to \$80

Director Stalley stated these increases would bring in total estimated revenue of \$84,425 annually. She added the Board's budget request for fiscal year 2018 is \$87,062. In order to address the difference between revenue and expenditures, the Board will propose cuts in expenses to keep expenses even or below the projected revenue. She added that the fiscal year 2018 estimate should be budget-neutral and allow for a reserve of approximately \$40,000. These recommendations will be made at the April Board meeting.

Director Stalley concluded by stating these increases and the other changes included in the proposed changes to administrative rules will go through the normal rule making process, will be subject to input from licensees, the public, national stakeholder groups and other interested parties. The changes will be noticed publicly and comments will be taken by the Board ahead of and during a public hearing before any final changes are adopted by the Board and submitted to the Legislative Rules Review Committee for final approval.

Senator Tidemann asked if there was information regarding the rates charged by other states. Director Stalley stated the fee increase the Board is proposing in rule changes is not out of line with other states. Senator Heineman asked if expenses should be cut before a fee increase. Director Stalley stated the Board is using a combination of both. Some expenses have been cut, such as the number of Board meetings and moving to electronic communications.

Senator Heineman asked why the complaints against unlicensed practice seems to be an ongoing issue. Director Stalley stated the Board does not have criminal enforcement authority. The Board investigates and handles complaints against licensees but does not have the authority to pursue criminal charges against someone practicing without a license or committing a criminal act. She added the Board works

to protect the public by maintaining a list of licensed massage therapists so you know who has the qualifications to perform your massage and who does not.

Senator Heineman asked if the Board of Massage Therapy was missing anything from the Legislature where the criminal aspect is involved. Director Stalley stated the Board does not license establishments; the Board licenses the individual massage therapist. She stated that the Cosmetology Commission can shut down an establishment if there is an issue, the Board of Massage Therapy can only pursue the individual massage therapist, not the establishment. She added that the Board discussed licensing establishments when we updated the practice act, however massage therapists did not support that option.

Representative Cronin asked why some therapists aren't filing for licenses. Director Stalley stated the Board maintains a list of licensed massage therapists on its website. Why someone would not be licensed is hard to say. They may not be qualified to be licensed or they may not intend to offer massage. It is important the public knows who those qualified, licensed therapist are so they know who to choose for a massage.

#### **Item 6 – Juvenile Justice Oversight Council to provide the annual report called for in the Juvenile Justice Public Safety Improvement Act**

- [Letter to UJS Doc.6](#)

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System presented information on the draft Juvenile Justice 2016 Annual Report. Mr. Sattizahn stated that for many of the reforms, outcome data is only available for six months as the result of the January 1, 2016 implementation date. He explained the early stages of reform indicate fewer youth are being committed to state custody, and instead are receiving treatment and services in their community. Since Senate Bill 73 went into law, the number of youth on probation decreased, as well as the amount of time a youth spent on probation. Youth being supervised in the community are also completing supervision at higher rates and violating less. He stated that bringing youth home to the parents and having the parents take control of the problem is helping. Mr. Sattizahn explained there are family therapists available that will go to the homes. The Department of Social Services, in collaboration with the Department of Corrections, and the Unified Judicial System identified community-based services for juveniles with justice system involvement and established a referral process. Functional family therapy (FFT) was the first service implemented. FFT is an evidence-based, family-centered treatment program that targets problem behaviors, including substance abuse issues, family problems, and acting out. Beginning in calendar year 2016, FFT became available to youth and families statewide. Mr. Sattizahn explained the State reallocated \$242,000 to the counties to help them with community-based treatments.

Mr. Sattizahn explained there were four types of juvenile citations in fiscal year 2016: 1) petty theft, 2) truancy, 3) alcohol possession, and 4) intentional damage to property. Alcohol possession and truancy combined comprised over two-thirds of all juvenile citations. He stated truancy is the one the schools are concerned about the most. Mr. Sattizahn suggested the need for truancy and diversion programs, but recognized there will be challenges with this. With more opportunities available to the court system, the use of diversion has increased (over 1,000 instances).

Mr. Sattizahn explained new juvenile citations are being issued to address certain violations swiftly and in the community. Youth receiving a citation may be required to pay a fine or complete community services. A judgment, in the form of a fine or community service, was entered in 60% of all juvenile citations filed in fiscal year 2016.

Mr. Sattizahn stated the number of youth being supervised on probation dropped during fiscal year 2016.

Mr. Sattizahn stated the final report will be completed soon and made available to the public.

A motion was made by Senator Heineman, and seconded by Representative Anderson to accept today's handouts as Committee documents. The motion passed on a voice vote.

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