



MINUTES

GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

Seventh Meeting
2005 Interim
Monday, October 17 & 18, 2005

LCR 1
State Capitol
Pierre, South Dakota

The seventh meeting of the Government Operations and Audit Committee was called to order by Chair Klaudt at 8:05 a.m., September 17, 2005, in the Legislative Conference Room 1, State Capitol Building, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jerry Apa, Jason Gant, John Koskan; and, Representatives Michael Buckingham, Ted Klaudt, Gerald Lange and Deb Peters. Senator William Earley joined the Committee later in the day.

Staff members present were Mr. Marty Guindon, Auditor General, Mr. Robert Christianson and Mr. Gary Hoscheid, State Government Audit Managers for the Department of Legislative Audit (DLA). Ms. Sue Cichos, Senior Fiscal Analyst, Ms. Annie Mehlhaff, Principal Fiscal Analyst, and Mr. Reuben Bezpaletz, Chief Analyst for Research & Legal Services represented the Legislative Research Council.

(NOTE: All referenced documents are on file with the Master Minutes.)

Approval of Minutes

Representative Buckingham moved, seconded by Senator Koskan, the minutes of the October 3, 4 & 5, 2005 meeting be approved. Motion prevailed unanimously on a voice vote.

Division of Insurance - Committee Discussion and Public Testimony

A handout was provided by the Division of Insurance. (**Document #1**) Mr. Gary Viken, Secretary of the Department of Revenue and Regulation, Mr. Jack Magee, Attorney for the Department of Revenue and Regulation, Mr. Merle Scheiber, Director for the Division of Insurance, Mr. Randy Moses, Assistant Director, Division of Insurance, Mr. Andrew Fergel, General Council to the Division of Insurance, and Mr. Brent Wilbur, Attorney were present to answer committee questions.

The committee asked how much the Department received in the form of penalties for the past three years and amount of average fines. Penalties collected were, \$190,000 for FY 2003, \$50,428 for FY 2004, and \$70,000 (estimated) for FY 2005. The range of fines imposed are \$250 (minimum) - \$5,000 (maximum) for agents and \$2,500 (minimum) - \$25,000 (maximum) for companies.

The committee requested the Division of Insurance provide the following:

1. A report detailing all investigations conducted for each of the last three completed fiscal years. For those cases that did not result in a Notice of Hearing being issued, the report should identify the ultimate outcome (consent order, suspension, penalty, fine, case dismissal, or any other action required/taken by the division) of each investigation including the dollar amount of each penalty or fee applicable to each case. This information should be summarized by category of actions taken. For those cases where a Notice of Hearing was issued, the report should identify the ultimate result/outcome of each notice, whether it was revocation, suspension, payment of a penalty or fine including the dollar amount of payment, dismissal, or any other action, including the time frame

- broken down in three month increments from when the case was initially opened until a notice of hearing was issued. This information should be summarized by category of actions taken.
2. A detailed listing of investigation/examination costs paid by insurance companies and the amount actually refunded by the Division of Insurance to these same companies for the cost of the investigation/examination. This information should be provided for the last three completed fiscal years.
 3. An organization chart for the Division of Insurance including the identification of individuals who are law enforcement certified.
 4. A comparative analysis of the statistics of the State of South Dakota, Division of Insurance with other regional states' divisions of insurance. The performance indicators would include such things as the number of licensed insurance agents, number of investigators, number of investigations conducted, number of complaints filed, number of dismissals, number of revocations, number of suspensions, number of fines, dollar amount of fines, and any other actions taken, covering the last three completed fiscal years.

Public Testimony

The Committee opened the meeting to public testimony concerning the Department of Revenue and Regulation, Division of Insurance policies and procedures.

Mr. Larry Baumgarn, Webster, South Dakota, testified regarding his concerns about investigation practices of the Division of Insurance. He provided the committee with a handout. (**Document #2**)

Ms. Kathleen Curry, Pierre, South Dakota, testified regarding her daughter's discussions with the Division of Insurance.

Mr. Jake Vande Hoef, Sioux Falls, South Dakota, testified regarding his contact with the Division of Insurance.

Mr. Greg Leonard, Sioux Falls, South Dakota, testified concerning his case with the Division of Insurance.

Ms. Sherry Hegg, South Sioux City, Nebraska, testified concerning an investigation she was involved in with the Division of Insurance.

Mr. Pat Bohall, South Sioux City, Nebraska, testified regarding his concerns with the Division of Insurance.

Mr. Rick Althoff, Yankton, South Dakota, testified concerning the Division of Insurance.

Representative Peters moved, seconded by Senator Koskan that the Committee go into executive session for the purpose of hearing confidential public testimony. Motion prevailed unanimously on a voice vote. Representative Buckingham moved, seconded by Senator Koskan to come out of executive session. Motion prevailed unanimously on a voice vote

Senator Koskan moved, seconded by Representative Buckingham that the Department of Revenue and Regulation shall, in a manner and at a time appropriate to the protection of the confidence of executive session, respond to the allegations made before the Committee and to which the Department of Revenue and Regulation has provided assurances that the Department of Revenue and Regulation will address to the Committee's satisfaction. Motion prevailed unanimously on a voice vote.

The Committee recessed at 7:30 p.m.

October 18, 2005

Meeting reconvened at 8:05 a.m.

Follow-up information from Prior Meeting

Handouts pertaining to the Railroad Trust Fund were provided by DLA and Department of Transportation (DOT) (**Document #3**) Ms. Judy Payne, Secretary of the DOT and Ms. Roxanne Giedd, Attorney General's Office gave an overview of the Railroad Trust Fund information requested by the Committee.

Ms. Judy Payne, Secretary of DOT and Mr. Darin Bergquist, Director of Operations, gave the Committee an overview of DOT land acquisitions. Handouts were provided by DLA. (**Document #4**)

The Committee requested that DOT provide the Committee with a written report that identifies the name of the individual(s) who owned the land and the length of time the land was owned by the seller prior to DOT attempting to purchase the land for any parcel purchased during the last three completed fiscal years where the purchase price exceeded the appraised price by 30% or more and was at least \$25,000 above the original appraised value of the land.

The Committee also requests a written report that explains how DOT obtains the additional funding to pay for these purchases of land in excess of appraised value and the impact these payments have on other highway projects or other DOT operations and associated budgets.

The Future Fund grants discussion was deferred to the next meeting.

Handouts covering the 2005 encumbrances outstanding updates and the Chiesman Foundation contracts were provided by DLA. (**Document #5**).

Department of Corrections

A report prepared by the Department of Corrections (DOC) was provided to the Committee which identified the actions taken by the DOC to address the issues raised by the Committee concerning the Mike Durfee State Prison during its May 2005 meeting.

The Committee requests that DOC provide the Committee with a written report that provides additional detail and clarification concerning the breakdown of the 170 additional jobs and educational opportunities at the Durfee State Prison that were identified in the response letter to the Committee concerning the issues raised at the May 2005 meeting. In relation to the additional jobs, please provide the specifics concerning whether the job was created by pairing down or splitting jobs or whether they are newly created jobs for each of the work sites identified in the response letter. The Committee also requests additional detail and breakdown of the educational opportunities that were referred to in the response letter. The Committee also requests that DOC appear at the meeting on November 21st to discuss these additional jobs and educational opportunities at the Durfee State Prison.

Annual Report Draft

A draft copy of the Government Operations and Audit Committee's Annual Report to be given to the Executive Board of the LRC was provided to the Committee for review. The Committee was informed that the draft report would need to be updated as necessary for actions taken during this meeting and also for the November 21, 2005 meeting.

Summary of FY2005 Other Fund Balances Report

A Summary of FY2005 Other Fund Balances Report was distributed by DLA. (**Document #6**) Mr. Bob Christianson provided an overview. The Committee instructed DLA to prepare a report that identifies those statutorily created funds that are no longer needed and to prepare draft legislation to do away with these funds.

Draft Legislation

Handouts were provided to the Committee regarding draft legislation. Mr. Marty Guindon gave an overview of the draft legislation pertaining to audit requirements for local government associations and risk pools. (**Documents #7**) Changes will be made to the draft legislation and will be discussed further at the next Committee meeting.

Draft legislation was provided to the Committee by Senator Apa (**Document #8**) regarding procedures applicable to the Division of Insurance.

Representative Peters moved, seconded by Senator Earley to delete from the Division of Insurance draft legislation "and to the insurers represented by such licensee or to the appointing agent of a producer" on page one, lines 9 and 10. Motion prevailed on a voice vote.

Representative Buckingham moved, seconded by Representative Peters to delete everything on page two, line 23 after the word "matter" and delete all of line 24 on page two and on page three, line 1, delete the words "to any person to whom the notice of hearing was sent" and insert after the word "letter" on page three, line 1, "to the licensee, the insurers represented by such licensee, or the appointing agent of a producer" so that the Division of Insurance draft legislation on page two, beginning on line 23 would now read, "At the conclusion of the matter, the director shall send a letter to the licensee, the insurers represented by such licensee, or the appointing agent of a producer, stating the final determination of the matter." Motion prevailed unanimously on a voice vote.

Child Protection Services

Handouts were provided by LRC concerning abused and neglected children. (**Document #9**) Mr. Reuben Bezpaletz, gave an overview of draft legislation pertaining to the Department of Child Protection Services placement of abused and neglected children. The Committee requested that draft legislation be prepared concerning issues involving non-custodial parents and the creation of an independent legislative ombudsman as discussed.

Future Meetings

The next meeting in Pierre is scheduled for Monday, November, 21, at 8:00 a.m.

It was moved by Representative Lange and seconded by Senator Koskan to adjourn the meeting. Motion prevailed unanimously on a voice vote.

The Committee adjourned the meeting at 2:00 p.m.



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