

MINUTES

Government Operations & Audit Committee



Senator Kyle Schoenfish, Chair
Representative Randy Gross, Vice Chair

**Sixth Meeting, 2021 Interim
Tuesday, December 14, 2021**

**Room 414 – State Capitol,
Pierre, SD**

The sixth meeting of the 2021 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Schoenfish at 8:30 a.m., December 14, 2021, in room 414, State Capitol Building, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Duba, Karr, Otten, Gross and Senators Nesiba, Steinhauer, Hunhoff, Wheeler, and Schoenfish. Representative Peterson joined after roll was called.

Staff members present were Russell Olson, Auditor General for the Department of Legislative Audit (DLA), Bob Christianson and Tim Flannery, State Government Audit Managers for 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.

Item 1 – Former Director of the South Dakota Appraiser Certification Program to provide information about the program and answer Committee questions.

Sherry Bren, former Director of the South Dakota Appraiser Certification Program (ACP), was present to answer Committee questions. Senator Wheeler asked a series of questions about the ACP and why there was a shortage of Certified Appraisers in South Dakota. Ms. Bren attributed some of the shortage to federal regulations issued by the Appraiser Qualifications Board which caused issues for the entry level appraisers in the State. In addition, she stated that in 2008 the Federal Housing Administration (FHA) no longer accepted the work of State licensed appraisers. After working with Senator Thune's staff, federal legislation was introduced to allow State licensed appraisers to do FHA appraisals again. Senator Wheeler asked if there was a bottleneck relating to the need for experienced appraisers to supervise new appraisers. Ms. Bren believed that this training model was broken across the nation. She believed the solution was the Experienced Training Program (ETP). South Dakota has received a federal grant to implement the ETP, which will produce credentialed appraisers ready to go to work.

Representative Gross asked Ms. Bren when she started employment with the State. Ms. Bren stated she started with the State in 1970 and with the ACP in 1991. Representative Gross asked several questions about the federal government's involvement in the State's ACP. Ms. Bren stated that after the passage of Title XI in 1989, federal legislation mandated States comply with the minimum requirements of this legislation and that South Dakota has done this through the Administrative Rules process. Representative Gross asked if other States contracted with private organizations, outside of State government, to administer their appraiser licensing programs. Ms. Bren stated that she was not aware

of any. Representative Gross asked Ms. Bren to provide background information about the ACP Advisory Council. Ms. Bren stated this was an informal council established around 1991 to help the State implement the ACP. The Advisory Council has standing positions as well as positions filled with appraisers from the industry. The positions filled with appraisers from the industry are nominated by the industry and appointed by the Secretary of the Department of Labor and Regulation (DLR).

Representative Duba asked Ms. Bren to explain the licensing upgrade process. Ms. Bren stated the ACP receives the applications for license upgrade and verifies the applicant has met the educational requirements. Next, the ACP verifies the applicant has met the experience requirements by reviewing submitted appraisals and work files. The Executive Director and staff then redact personal information and submit the case file to a contracted reviewer to determine if the appraisal complies with the Uniform Standards of Professional Appraisal Practice (USPAP). The contracted reviewer completes the appraisal compliance review for each appraisal report submitted to the ACP. If the appraisals meet the requirements of USPAP the upgrade is issued upon verification of successful completion of the national uniform appraiser examination for the desired credential. If the appraisals do not comply with USPAP, the contracted reviewer completes a report with cited deficiencies and submits it to the ACP. If the deficiencies rise to the level of application denial, the applicant is provided the review report with cited deficiencies, a letter identifying the deficiencies and that the ACP would prefer not to deny the application if the applicant agrees to enter into an agreed disposition. The agreed disposition offers the applicant a second opportunity to submit USPAP compliant appraisals for review. The agreed disposition may include educational requirements to address the noted deficiencies. Once the agreed disposition is executed the Executive Director encourages the applicant to meet with the reviewer to go over the cited deficiencies and to answer any questions as to how to successfully correct and rewrite the appraisals to cure the deficiencies. Ms. Bren stated that the meetings with the reviewer have been very successful in the upgrade process. In the event the applicant does not agree with the cited deficiencies, the applicant can request a hearing through the Office of Hearing Examiners.

Representative Duba asked Ms. Bren to explain what a stipulation agreement was, as compared to an agreed disposition. Ms. Bren stated that a stipulation agreement was not within the normal procedures she was aware of, and that a stipulation agreement would offer a third opportunity for review. Representative Duba stated that the Committee heard testimony from the Secretary of the DLR, Marcia Hultman, that there had been no denials issued during the four-year period from 2018 to 2021. Representative Duba asked Ms. Bren if she was aware of any denials during that four-year period. Ms. Bren said she was aware of one denial issued between May 2019 and June 2020.

Senator Steinhauer asked Ms. Bren about the qualifications of the contracted reviewers. Ms. Bren stated when she was the Executive Director, the reviewers were very experienced and highly qualified. Senator Steinhauer asked if there was a backlog in getting the license upgrade appraisals reviewed. Ms. Bren stated that part of the delay could be the result of the low fees paid to the reviewers. She had recommended to Secretary Hultman to get their review fees closer to market. Senator Steinhauer asked what the average turnaround time was to complete the license upgrade appraisal reviews. Ms. Bren didn't know but thought the DLR could provide this information. Senator Steinhauer asked how many contracted reviewers there were. Ms. Bren stated that when she was the Executive Director there were four in-state contracted reviewers and one out-of-state contracted reviewer.

Representative Gross asked Ms. Bren if she had received any negative performance evaluations prior to her retirement. Ms. Bren stated she had not had any negative evaluations. Representative Gross asked Ms. Bren if she was asked to retire. Ms. Bren stated that she was forced to retire. Representative Gross asked Ms. Bren if she provided any assistance or training to the person that replaced her. Ms. Bren stated “no.”

Senator Nesiba asked for additional information about the national examinations and how many times an applicant can take the examinations. Ms. Bren stated the entry level examination can be taken as many times as the applicant desires. The licensed and certified examinations are limited to four times.

Representative Duba asked Ms. Bren about the information or report that was requested for the July 27, 2020 meeting with the Governor. Ms. Bren stated the following information was requested:

- Definition of a serious deficiency.
- What criteria do you use for denials?
- How many licenses are denied each year?
- How many are approved?
- Are we saying that Cassidy can take certain classes and resubmit?

Representative Duba asked Ms. Bren why she was asked to speak about serious deficiencies. Ms. Bren stated a proposed findings of fact and conclusions of law was mailed to Ms. Peters on July 20, 2020. Representative Duba asked Ms. Bren about who participated in the meeting on July 27, 2020. Ms. Bren stated the following participated in the meeting: Governor Noem, Marcia Hultman, Amber Mulder, Tom Hart, Cassidy Peters, Graham Oey, Tony Venhuizen and herself. Representative Duba asked Ms. Bren to describe the flow of the meeting. Ms. Bren stated she was surprised by those participating in the meeting and that she felt intimidated. Ms. Bren said the Governor commented that South Dakota was the hardest State to get licensed as an appraiser and that she intended to get to the bottom of this. Ms. Bren stated Cassidy Peters’ application was discussed and after the meeting was over a stipulation agreement was prepared and signed by Amber Mulder.

Senator Hunhoff asked if there were provisions in the contracts with the reviewers that identified the time allowed to complete the reviews. Ms. Bren stated there were no provisions in the contracts for a time frame for completion of the reviews.

Representative Duba asked Ms. Bren if she had started work on the ETP prior to the meeting in the Governor's office. Ms. Bren stated they had begun work on writing the grant application to the Appraisal Subcommittee and provided a summary of that work. Ms. Bren became aware of the grant being awarded to South Dakota around October 23, 2020. The development of policies and procedures for implementing the ETP began after that, with South Dakota State University developing a master’s degree program.

Representative Peterson asked Ms. Bren about the nearly \$300,000 settlement she received and who was involved in the conversations leading up to the settlement. Ms. Bren declined to comment based upon the advice of counsel.

Senator Nesiba asked Ms. Bren why she believed she was forced out of her position. Ms. Bren believed it was because of age discrimination.

Senator Steinhauer described a document that was handed to him during the break which appeared to be a stipulation agreement from 2017 and asked Ms. Bren and her attorney, Timothy Rensch, to comment on this document. Mr. Rensch explained the document was captioned from the Office of Hearing Examiners, which is a different process from the agreed disposition process she described earlier.

Representative Duba asked for Ms. Bren's opinion on whether the voluntary advisory council should be codified in law as a permanent board for the ACP. Ms. Bren stated there were pros and cons to making this a statutorily created board. She feared some consistency may be lost in the process if there was a permanent board. She also commented that if the board was permanently created by statute that it would ensure its involvement continues going forward.

The Committee had additional questions about the struggle that potential appraisers face when becoming certified. Brian Gatzke, owner of Northern Plains Appraisal in Brookings, and Chase Kristensen, former South Dakota appraiser and now full-time lender for Community Bank, both called in to discuss the hardships they've personally experienced in the appraiser certification process as well as struggles that they have heard from others. Mr. Gatzke relayed that one of the largest obstacles is finding a supervisor to train individuals. Supervisors need to be present for everything the trainee does and are held responsible for 100% of the trainee's work product. They also do not make any money doing so. With increased liability and no income, not many are willing to train up-and-coming appraisers. Representative Duba inquired about incentives to help reduce liability concerns. Mr. Gatzke is unsure if the State could afford such incentives. Mr. Kristensen commented on the time-consuming process of becoming certified. It typically takes a year to get started followed by a three-to-four year minimum until one is ready to take the exam. Another issue Mr. Kristensen spoke of was that trainees are not obligated to be paid during this process and receive no benefits so not a lot see the process as worthwhile.

Allen Hinkz, former appraiser for South Dakota, called in from Rapid City to share his recommendations on how to make the appraisal process better when it comes to upgrading. He suggested the Committee look at additional alternatives to training or maybe even bringing in appraisers that let their licenses lapse to train appraisers, as well as look at the liability that a supervisor takes on when they take a trainee under their guidance. A second suggestion made was to reevaluate the certification process for those who let their licenses lapse and potentially adjust it so they will no longer have to start the process over again to get recertified.

Craig Steinley, an appraiser from Rapid City, was present to speak more on the ETP. The ETP will be controlled by the DLR. The program will be offered at South Dakota State University and led by an experienced appraisal supervisor. The supervisor will lead a class of approximately 20 students through the process of obtaining their experience credit required by the ACP. These students would then go forward and take the national uniform licensing examination for whichever level they would like to obtain. The curriculum includes assignments for residential, agricultural, and commercial. Since DLR has

access to funds for training and retraining, they could offer a program to people who commit to serve rural areas.

Senator Steinhauer moved, seconded by Senator Nesiba, to request a report from DLR that includes information regarding timeliness of the approval process, suggestions on how to limit the liability cost for supervisors, recommendations on change of pay for reviewers, and if they think it is advisable to institutionalize the advisory council. Motion prevailed unanimously on a roll call vote.

Representative Duba moved, seconded by Senator Nesiba, to recommend the advisory council be involved in the finalization and execution of the ETP. Motion prevailed unanimously on a roll call vote.

A summary of what the Committee has learned is included as an Appendix.

Item 2 – Bureau of Administration to present the annual report of the Obligation Recovery Center (SDCL 1-55-16)

- [Obligation Recovery Center Report Doc.2](#)

Andy Gerlach, Deputy Commissioner of the Bureau of Administration (BOA), was present to address the Committee and present the 2021 report for the Obligation Recovery Center (ORC). Mr. Gerlach began by providing history of the ORC and spoke about the changes that the ORC adopted over the last year. Due to COVID-19, the ORC made the administrative decision to modify several of its practices to assist customers in these troubling times. One of the modifications consisted of ceasing the notification process for the suspension of hunting licenses and motor vehicle registrations for two months.

A debt collection agency by the name of Reliant Capital Solutions was selected as the new management for the ORC, replacing CGI Technologies. Reliant also chose two new third party collection partners with the help of BOA: Virtuoso Sourcing Group and HS Financial Group. The cost to have Reliant collect debt for the State of South Dakota is a little over \$75,000 more than CGI Technologies charged but under Reliant, the ORC saw a \$400,000 increase in collection recoveries. Mr. Gerlach stated that part of it is due to Reliant's approach to contacting debtors. The company focuses on outbound calling rather than sending letters and it has been proven to improve customer service, educate customers, and increase compliance.

The ORC's future consists of monthly meetings with Reliant and the third parties as well as State agency collection training and working with agencies to develop strategies for successfully collecting and/or closing accounts.

Representative Gross moved, seconded by Representative Duba to accept the annual report for the ORC. Motion prevailed unanimously on a roll call vote.

Item 3 – Department of Legislative Audit to provide the GOAC Blue Book of Other Funds for fiscal year 2021

- [Other Funds FY2021 Doc.3](#)

Bob Christianson, Audit Manager with the Department of Legislative Audit was present to address the Committee. He provided the GOAC Blue Book of Other Funds for fiscal year 2021 and discussed how it was prepared as well as what information is provided within it. Representative Gross inquired about nonbudgeted expenditures. Mr. Christianson explained that they could ask him first, then confer with the agency itself.

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

Appendix

Government Operations and Audit Committee Appraiser Certification Review – 2021

What the Government Operations and Audit Committee (GOAC) has learned:

1. South Dakota, like most states, needs more qualified, well trained appraisers.
 - a) The process to obtain appraiser licensing/certification has historically been no more or less difficult in South Dakota than other states.
 - b) Primarily because of problems in the savings and loan industry during the 1980's, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989.
 - c) FIRREA established, among other things, criteria for becoming licensed/certified as an appraiser.
 - d) In addition, FIRREA resulted in creation of Uniform Standards of Professional Appraisal Practice (USPAP) which contains standards for all types of appraisal services.
 - e) Because FIRREA is Federal Law, states or individuals cannot unilaterally modify/simplify/adjust criteria for becoming licensed/certified. Changes must go through Federal law or rule change procedures.
 - f) The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 modified some FIRREA requirements but also resulted in unintended consequences for the appraisal industry.
 - g) Some changes to FIRREA and Dodd-Frank, over time, resulted in negative unintended consequences for the appraisal industry. For example, Federal Housing Administration (FHA) no longer accepted new applications for its appraiser roster from the licensed-level appraisers per the Housing and Economic Recovery Act of 2008. All roster appraisers must be state certified. As a result, licensed appraisers that were typically performing FHA appraisals in small towns in South Dakota were no longer eligible and many licensed appraisers did not see the need to upgrade to the Certified Residential level.

2. In some states, including South Dakota, a state agency manages the appraisal licensing/certification process.
 - a) Sherry Bren managed the licensing/certification process as an employee of the Department of Labor and Regulations (DLR) from its inception until March 2021.
 - b) Throughout the Federal legislation listed above, Sherry Bren monitored changes and worked on behalf of South Dakota appraisers and the State of South Dakota to encourage efficiency and support changes that would ease entry into the appraisal industry.

- c) Per her December 14, 2021 testimony to GOAC, Sherry Bren never received a negative performance evaluation.
 - d) Based on testimony to GOAC at its October 28, 2021 meeting, several individuals in the appraisal industry, including Sandra Gresh – President of the Professional Appraisers Association of South Dakota (PAASD), testified that Sherry Bren had a good working relationship with the industry and was viewed as a valuable industry partner.
 - e) The Appraiser Certification Program’s Advisory Council (AC) was informally constituted some years ago at Sherry Bren’s behest and was used as a vehicle for allowing the regulated professionals in South Dakota to provide input to the Appraiser Certification Program (ACP). Since her departure, the continued use of an AC as part of the Department’s overall decision-making process has been at the discretion of the new Executive Director of the ACP.
3. In 2019, Sherry Bren initiated a discussion to introduce a bill that would allow appraisers to perform evaluations (as contrasted to a formal appraisal) for financial institutions. With the adoption of this law in 2020, appraisers may perform evaluations which allows institutions to utilize their flexibility when an appraisal is not required and reduce the appraisal back log.
- a) In June 2020, the Appraisal Subcommittee of Federal Financial Institutions Examination Council (ASC) released a Notice of Funding Availability for State Appraiser Regulatory Agencies Support Grants pursuant to Title XI as amended by Dodd-Frank. These grants were to support state agency efforts to comply with Title XI.
 - b) PAASD, via Craig Steinley, worked with Sherry Bren to support a grant proposal to create a program to provide experience training for entry-level appraisers via development of a “super supervisor” program.
 - c) Sherry Bren testified that the Department Secretary and the Governor supported the proposal and that she was to proceed with applying for the grant.
 - d) Sherry Bren built support for the proposal from the PAASD, the South Dakota Chapter of the American Society of Farm Managers and Rural Appraisers, the South Dakota Bankers Association, and the South Dakota Association of Realtors.
 - e) The application for this grant was successful and resulted in development of the Experience Training Program (ETP).
 - f) A bill authorizing adoption of the ETP passed strongly in the 2021 South Dakota Legislature.
 - g) Prior to her leaving state employment, Sherry Bren continued to work on implementation of the ETP.

4. Kassidy Peters, daughter of Governor Kristi Noem, had been working through the appraisal licensing/certification for some time.
 - a) Licensing/certification steps involve detailed review of sample work completed and submitted by the trainee, in addition to completing course work and passing uniform tests. Sample work submitted is reviewed by highly qualified industry professionals and the name of the trainee is unknown to the reviewers.
 - b) In late March or early April of 2020 Kassidy Peters had an agreed disposition to correct training work deficiencies.
 - The disposition contained required course training.
 - DLR Secretary Hultman changed the disposition agreement and removed the requirement for additional course training.
 - This was the first time the DLR Secretary inserted herself into any disposition agreement.
 - c) On July 20, 2020, a notice was mailed to Kassidy Peters regarding findings of fact and conclusions of law regarding her appraisal training progress.
 - This is a notice of a pending denial.
 - d) On July 27, 2020, a meeting was held at the Governor's residence. Those in attendance were the Governor, Secretary Hultman, Sherry Bren, Kassidy Peters, Amber Mulder, Tom Hart, Graham Oey, and Tony Venhuizen.
 - Sherry Bren was asked to bring the following:
 - What specific errors were part of Kassidy Peters work product?
 - What criteria is used to determine these errors?
 - Provide the number of denials annually for the last four years.
 - What specific training/next steps are recommended for Kassidy, so she is able to pass?
 - e) On August 7, 2020, Kassidy Peters and the DLR entered into a Stipulation Agreement that outlined additional steps Kassidy Peters would take to complete her upgrade to State-Certified Residential Appraiser. This document specified resubmission of appraisal work following completion of additional appraisal course work requirements.
 - Sherry Bren confirmed this was not part of the Certification process.
 - The stipulation agreement, in essence, gave Kassidy Peters a third chance to pass the level of certification she was trying to attain.
 - This was supported by DLR Secretary Hultman.
 - This is outside of the requirements. Kassidy Peters should have waited the required six months and reapplied for this level.
5. Sherry Bren left employment with the State of South Dakota on March 26, 2021. She told GOAC on December 14, 2021, that she was forced to retire.
 - a) On March 31, 2021, Sherry Bren and the State entered into a Settlement Agreement and Release that referred to her leaving as "resignation/retirement".

- b) Basis for the Settlement Agreement was an age discrimination claim made by Bren. Sherry Bren received \$200,000 under the agreement.
 - c) The Settlement Agreement contained a non-disparagement clause binding on all parties.
6. At its October 28, 2021 meeting, Secretary Hultman told GOAC that there was an agreed upon remediation plan in place prior to the July 27, 2020 meeting that addressed steps Kassidy Peters would be expected to complete to finish her licensing/certification.
- a) On December 14, 2021, Sherry Bren told GOAC that Secretary Hultman modified (removed the requirement for additional appraisal course work) in an agreed disposition plan for Kassidy Peters, prior to the July 27, 2020 meeting.
 - b) Although the additional appraisal course work was in the Stipulation Agreement, dated August 7, 2020, provided by Kassidy Peters.
7. At the same October 28, 2021 GOAC meeting, Secretary Hultman also indicated that she was not aware of another time when someone in training for a position, such as Kassidy Peters, had been included in a meeting such as the one on July 27, 2020.
8. Sherry Bren notified GOAC on October 27, 2021, that she would not be at the October 28, 2021 GOAC meeting.
9. At a meeting on November 15, 2021, GOAC voted to request that the Legislature's Executive Board approve subpoenas for both Sherry Bren and Secretary Hultman. The subpoena for Secretary Hultman was specific to the remediation agreement between Kassidy Peters and the ACP. These subpoena requests followed required procedures.
- a) Prior to Executive Board action on the subpoena request, Kassidy Peters provided a copy of the remediation plan in question. It was dated August 7, 2020, several days after the July 27, 2020 meeting at the Governor's residence. At the same time Kassidy Peters made public statements to the effect that she would not be continuing with her certification and would no longer be continuing her appraisal activities.
10. At its December 14, 2021 meeting, Sherry Bren testified in front of the GOAC committee. She has since provided written copies of some of her comments for the committee's records.
- a) When asked during the December 14, 2021 GOAC meeting if she provided training or written documentation to assist in the transition to her successor, her response was no.
 - b) During her December 14, 2021 testimony, Sherry Bren shared information on her work, work performance evaluations, efforts and limitations on recruiting and training more appraisers, her good relationship with PAASD, and generally responded with helpful information regarding the appraisal licensing/certification process.

- c) During her December 14, 2021 testimony, Sherry Bren described the July 27, 2020 meeting at the Governor's residence as "intimidating".
- d) During the same testimony, Sherry Bren said she could not recall a situation/meeting, or a Stipulation Agreement, similar to the one regarding Cassidy Peters.
- e) Following a recess in the December 14, 2021 GOAC meeting, the committee was presented a copy of a Stipulation Agreement dated 2017 that appeared similar to the one on behalf of Cassidy Peters. It was heavily redacted to protect the identity of the person involved. Sherry Bren explained the process differences between the 2017 agreement and the one for Cassidy Peters.
- f) At the December 14, 2021 meeting, other stakeholders (bankers, appraisers, etc.) testified regarding the need to continue efforts to get more qualified appraisers and follow through on efforts initiated by Sherry Bren. This included the desire that the department formalize use of the AC and continue to implement the ETP.
- g) Shortly after the December 14, 2021 GOAC meeting, the Governor's staff made public comments questioning the integrity of some of Sherry Bren's statements.