

EXHIBIT G

Transcript of November 15, 2021
GOAC meeting

**GOVERNMENT OPERATIONS & AUDIT COMMITTEE
TRANSCRIPT
November 15, 2021**

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SN: Senator Nesiba
SS: Senator Steinhauer
SH: Senator Hunhoff
SW: Senator Wheeler
RD: Representative Duba
RK: Representative Karr
RP: Representative Peterson
RO: Representative Otten
VC: Vice Chair Gross
CS: Chair Schoenfish
TM: Tim Flannery

CS: Government Operations is now, now in order. Asks that those in the room please silence your cell phones. We have two agenda items today. I think before we take testimony from the committee's members, we'll do public testimony first. First, we have, we still have two testifiers, is that correct?

VC: Senator, could we do roll first please?

CS: Ah yeah, oh yes, okay, secretary will call the roll.

Secretary: Senator Nesiba? Senator Steinhauer?

SS: Here.

Secretary: Senator Hunhoff?

SH: Here.

Secretary: Senator Wheeler?

SW: Here.

Secretary: Representative Duba?

RD: Here.

Secretary: Representative Karr?

RK: Here.

Secretary: Representative Peterson?

1
2 RP: Here.
3
4 Secretary: Representative Otten?
5
6 RO: Here.
7
8 Secretary: Representative Gross?
9
10 VC: Here.
11
12 Secretary: Senator Schoenfish?
13
14 CS: Here.
15
16 Secretary: You have a quorum.
17
18 CS: Thank you with that. The first agenda items, we will,
19 we'll take public testimony. We'll take, since the agenda
20 items are related, we'll take public testimony on both of
21 them. We'll have the staff call on the first testifier.
22
23 MT: Glen is that you?
24
25 SN: Reynold Nesiba here, I tried to log in from the computer
26 and it keeps me locked out, but I was able to dial in.
27
28 MT: And please state your name again.
29
30 SN: Yes, Reynold Nesiba.
31
32 MT: Oh, oh, Senator, I thought you were the public speaker,
33 I'm sorry.
34
35 SN: Yeah, hopefully I'm not saying very much at all today,
36 but.
37
38 MT: Can we hang on one second, we're trying to admit to
39 TEAMS, one of the public testifiers here.
40
41 SN: K. Was everyone else able to join?
42
43 MT: Yes, everybody else is on.
44
45 SN: Okay.
46
47 MT: Chair Schoenfish we, the ah public testifiers are not on
48 TEAMS at this point.
49

1 CS: O.k. if we can get them in a few moments then we'll move
2 to them but since we don't have them now, we'll start with
3 the, with the agenda items. First, first one is a follow up
4 to, to the documents for the appraisal plan and I'll confirm
5 with staff that at this time we have not received the
6 document, is that correct?

7
8 TM: That's correct.

9
10 CS: K. With that do we have a committee comments or action
11 on that agenda item? We've a, there'll be a motion forth
12 coming?

13
14 SW: Mr. Chair, this is Senator Wheeler.

15
16 CS: Senator Wheeler.

17
18 SW: If the Chair wants, I can make the motion regarding the
19 document request from the department of labor.

20
21 CS: (inaudible) I'll have you make the motion and then you
22 can, after we get a second then we'll have discussion on that
23 motion.

24
25 SW: K, do you want me to read it at length at this point?

26
27 CS: Um, I think that would be, would be alright to do that
28 just for the benefit of everyone online so we all see it and
29 know what we are discussing.

30
31 SW: k. So because this motion require, includes some
32 findings it is somewhat lengthy so I will read it out here.
33 So the motion has three parts, so I will move at this time
34 that one, to issue a subpoena to Secretary Marcia Hultman
35 requiring the secretary to produce the agreed disposition
36 between Cassidy Peters and the Appraiser Certification
37 Program and any other agreement between them that outlined
38 the training plan relating to the appraiser credential
39 application of Cassidy Peters, two, that any document
40 produced in response to the subpoena be kept confidential by
41 committee members and committee staff and three, to request
42 that the executive board of the Legislative Research Council
43 reedify the issuance of this subpoena. In accordance with
44 SDCL 2-6-4.2, the committee has determined one, the following
45 Legislative purpose exists, GOAC is conducting an inquiry and
46 review of the operations of the Appraiser Certification
47 Program un SDCL 2-6-2, and is exercising it's legislative
48 authority to examine the records and the general management
49 of the Appraiser Certification Program under SDCL 2-6-4. This

1 inquiry may lead to policy recommendations regarding the
2 structure of the Appraiser Certification Program. Two, the
3 subpoenaed documents are irrelevant and material to
4 accomplish the legislative purpose because it will verify or
5 refute testimony previously provided to the committee on this
6 topic and three, the information sought is not otherwise
7 practically available because the committee has previously
8 requested a copy of the document and the secretary has
9 declined to provide a copy of the document to the committee.
10 That is the entire motion.

11
12 RD: I second it.

13
14 VC: Second from Gross.

15
16 CS: Okay, thank you Senator, we have the motion and a second
17 from, can staff make the determination who seconded?

18
19 TM: Was that you Representative Peterson?

20
21 RP: No, it was Representative Duba.

22
23 TM: Oh, I'm sorry, Representative Duba seconded the motion.

24
25 CS: Okay, motion, okay, thank you. Further discussion on
26 that motion, ah Wheeler with anymore, Senator Wheeler anymore
27 comments on the motion at this time?

28
29 SW: Thank you. I would, is a briefly ah, comment that I
30 think is important for the committee to follow up on it's
31 request for this document, I think it's important to
32 verifying key information that was previously provided to the
33 test, to the committee, um, I ah, also want to point out that
34 this committee has broad authority under 2-6-4 to examine all
35 records of each department of state government. There's no
36 caveat to that, there's not exceptions to that, the, I know
37 that the department has cited a separate statute that's 1-26-
38 2, to keep the document confidential but 1-26-2 is in the
39 administrative procedures act and is a section of statute
40 that talks about public inspection of agency documents. That
41 does not apply to this committee's authority to get documents
42 and so I do not believe there's any legal impediment to the
43 department to turning over this document to the committee
44 especially when we have agreed to keep the matter
45 confidential. Thank you.

46
47 CS: Thank you Senator. Further comments from the committee?

48
49 SH: Mr. Chair.

1
2 CS: Senator Hunhoff.

3
4 SH: Thank you Mr. Chair. Question for the sponsor of the
5 motion. In item #2 that the documentation is to be
6 confidential, please explain that process and then what ever
7 that conclusion, what do we do with that information if it's
8 confidential? Thank you.

9
10 CS: Senator Wheeler.

11
12 SW: Regarding the process I would assume the process would
13 be just like the committee treated the report from the
14 Department of Corrections on juvenal corrections issues that
15 as a confidential report that was shared with the committee
16 members and was kept confidential by the committee and only
17 discussed in executive session. And then it, in terms of what
18 we do with it, I guess that will depend on what the document
19 says. If it confirms the testimony previously provided I
20 don't know that much else will be done.

21
22 SH: Follow up?

23
24 CS: Follow up Senator Hunhoff.

25
26 SH: Again, if the document provides other information,
27 what's the process then to communicate that for any action
28 that the committee would do?

29
30 CS: Senator Wheeler.

31
32 SW: Thank you. I do not have that answer. I believe the
33 committee would then have to discuss what action it might
34 want to take in that regard. I don't believe there's any
35 statute or rule governing that so we would have to find our
36 way forward.

37
38 SH: Thank you.

39
40 CS: K. Thank you. Further comment? Is that Senator Nesiba?

41
42 SN: Yeah, thank you.

43
44 CS: Senator Nesiba is that you?

45
46 SN: Yes, it is, can you hear me alright?

47
48 CS: Yep, we can hear you.

1 SN: Let me try, okay great. The, I think that the way we
2 handle confidential information when it came to do with
3 juveniles and the Department of Corrections, we were able to
4 go to executive session, have a robust conversation about
5 that and to come back out of that in a productive way and I
6 think we can do the same thing with this document. So I think
7 we've already demonstrated that this committee is able to
8 look at confidential documents to be able to act on them in a
9 responsible way and move forward and that's why I'm going to
10 support this motion. Thank you Mr. Chair.

11

12 CS: And thank you Senator. Further comments from the
13 committee? K. Seeing ah, seeing none, the staff doesn't see
14 any questions from one either, we do have a motion, I think
15 the motion was, was read pretty clearly so unless a member
16 asks, I don't think we need to repeat the motion at length
17 but that, if there are no further comments from the
18 committee, I think it's time to take a vote on it. So with
19 that will the secretary will call the roll. Motion is to
20 subpoena the document and summary. Secretary will call the
21 roll.

22

23 Secretary: Senator Nesiba?

24

25 SN: Aye.

26

27 Senator Steinhauer?

28

29 SS: Nay.

30

31 Secretary: Senator Hunhoff?

32

33 SH: No.

34

35 Secretary: Senator Wheeler?

36

37 SW: Aye.

38

39 Secretary: Representative Duba?

40

41 RD: Aye.

42

43 Secretary: Representative Karr?

44

45 RK: Aye.

46

47 Secretary: Representative Peterson?

48

49 RP: Aye.

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2 Secretary: Representative Otten?

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4 RO: Aye.

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6 Secretary: Representative Gross?

7
8 VC: Aye.

9
10 Secretary: Senator Schoenfish?

11
12 CS: Aye.

13
14 Secretary: Eight yes, two no.

15
16 CS: Motion carries. With that I might just have staff check
17 one more time if we can get the public testimony through.

18
19 TF: Senator they have not joined at this time.

20
21 CS: Okay and with that there's very likely to be another
22 meeting covering these same topics so ah pending on the
23 testimony we had today and the actions taken should those
24 testifiers wish to testify at a future meeting we certainly
25 invite them to do that. Next up we will take the next agenda
26 item and those are the questions to Ms. Bren. The reply, the
27 response from her attorney has been posted and with that you
28 ah have the questions answer and it appears another subpoena
29 is to be in order and with that I would invite another
30 motion.

31
32 SW: Mr. Chair this is Senator Wheeler again.

33
34 CS: Senator Wheeler.

35
36 SW: I can proceed with that motion also. This motion, again
37 because it's a, issuing a subpoena also contains findings so
38 I will read that at length also. So that I move to issue a
39 subpoena to Ms. Sherry Bren to require her to appear before
40 the committee on a date to be determined and to provide
41 testimony regarding the Appraiser Certification Program and
42 to request that the executive board of the Legislative
43 Research Council ratify the issuance of this subpoena in
44 accordance with SDCL 2-6-4.2. The committee has determined
45 that one, the following legislative purpose exists, GOAC is
46 conducting an inquiry and review of the operations of the
47 Appraiser Certification Program under SDCL 2-6-2 and is
48 exercising its legislative authority to examine the general
49 management of the Appraiser Certification Program under SDCL

1 2-6-4. This inquiry may lead to policy recommendations
2 regarding the structure of the Appraiser Certification
3 Program. Two, the subpoena person is relevant and material to
4 accomplish the legislative purpose because Ms. Bren was the
5 previous director of the program and three, the information
6 sought is not otherwise practically available because Ms.
7 Bren through counsel has stated that she is willing to
8 provide testimony but only pursuant to a valid subpoena. That
9 is the motion.

10
11 CS: K. Thank you Senator and we will need a second, we'll
12 watch the.

13
14 SD: Second.

15
16 CS: Screen here, second, I think I, that was second from
17 Representative Duba I believe?

18
19 SD: That is correct.

20
21 CS: Alright, thank you, seconded by Representative Duba,
22 we'll go back to Senator Wheeler just to, for closing
23 comments on that motion if you like.

24
25 SW: Thank you. Ms. Bren's attorney has made clear that she
26 does want to testify before the committee but wants to do so
27 in response to a subpoena, so this will allow that process to
28 move forward.

29
30 CS: K, thank you Senator. I see Senator Steinhauer has his
31 hand raised, Senator Snteinhauer.

32
33 SS: Thank you Mr. Chair, I'm not exactly sure where to
34 begin. I think what we all might be interested in this topic,
35 the question is in my mind is where it's going to lead.
36 Especially when we have a Government Accountability Board
37 that's looking at this issue. You know on one hand, you can
38 think that there's all kinds of nefarious things that
39 happened in this meeting and the fact that we had a private
40 citizen, Cassidy, involved and the other hand it might be
41 that the Governor is really smart having somebody that had
42 experience with the Department in the meeting so it depends I
43 guess really maybe on your position but you know if you've
44 got somebody that's got confidential, or excuse me, got
45 actual experience working with the program involving them in
46 a meeting seems to be maybe appropriate. Optics when it's a
47 family member politically maybe aren't the best but, I just
48 kind of, trying to figure out where we are headed with this.
49 We have a individual who was dismissed, claimed age

1 discrimination, signed a no disparage agreement, we give them
2 a list of questions which I think Senator Wheeler had pointed
3 out being the legal eagle here on this committee is that they
4 can make true statements and not violate that agreement and
5 yet this person has chosen not to answer them in writing. So
6 a person who signed an agreement, we're going to give them a
7 public forum to come in and talk about what their, it seems
8 like this thing could go sideways very, very quickly and I'm,
9 I just don't understand why we would be doing this before our
10 Government Accountability Board has completed their report.

11
12 CS: Okay, thank you Senator. Next up we'll have
13 Representative Duba.

14
15 RD: Thank you Mr. Chair. I actually had the opportunity to
16 in person attend the Government Accountability Board hearing
17 of which the majority of it was in executive session and when
18 they returned we were not clear, they did not name which
19 items they were continuing to investigate so, the first point
20 I would make is we do not know if there were two items that
21 they were proceeding on, and one that they dismissed. So we
22 do not know if this is one of the two items where they are
23 continuing their investigation and when they were asked in
24 terms of timing or information, they could not give a
25 definitive answer nor date on when they would receive
26 addition information so I support the motion by Senator
27 Wheeler and I support moving forward with this opportunity to
28 give Ms. Bren a public forum. Thank you.

29
30 CS: Thank you Representative, before we go to any other
31 members, Senator Steinhauer you still have your hand up, did
32 you have further comments or can we just have you remove your
33 hand, Senator Steinhauer.

34
35 SS: Thank you Mr. Chair. I simply forgot to lower it. I
36 guess I would thank Representative Duba for reminding us that
37 the Government Accountability Board has actually dismissed
38 one of the situations their looking into it and it may well
39 be this. I think again, I would suggest that we wait, let
40 them complete their work. If we're unsatisfied with that work
41 at that time then we consider proceeding. Thank you.

42
43 CS: K. Thank you Senator, further questions, or comments
44 from members of the committee? With that I'll go to
45 summarize, I do believe Government Operations and Audit has
46 different rules than the Government Accountability Board and
47 I certainly invite everyone to read the statutes relating to
48 both because their prominent duty is inquiry and in finding
49 information. I believe this motion will allow us to find more

1 information and continue our discussion on that. So with that
2 the secretary will call the roll on the motion to subpoena
3 Ms. Bren.

4
5 Secretary: Senator Nesiba?

6
7 SN: Aye.

8
9 Senator Steinhauer?

10
11 SS: No.

12
13 Secretary: Senator Hunhoff?

14
15 SH: No.

16
17 Secretary: Senator Wheeler?

18
19 SW: Aye.

20
21 Secretary: Representative Duba?

22
23 RD: Aye.

24
25 Secretary: Representative Karr?

26
27 RK: Here.

28
29 Secretary: Representative Peterson?

30
31 RP: Aye.

32
33 Secretary: Representative Otten?

34
35 RO: Aye.

36
37 Secretary: Representative Gross?

38
39 VC: Aye.

40
41 Secretary: Senator Schoenfish?

42
43 CS: Aye.

44
45 Secretary: Eight yes, two no.

46
47 CS: Motion carries. With that we have taken care of our
48 agenda items I think what we're gonna do is wait for official
49 action from the Executive Board on Wednesday and once we have

1 that we'll work with the attorney for Ms. Bren and
2 communicate with members so the committee to set another
3 meeting date to continue this discussion. Any further
4 comments from members of the committee? With that can we have
5 a motion to adjourn?

6

7 RD: I move we adjourn.

8

9 VC: Second.

10

11 CS: Motion by Representative Duba, seconded by
12 Representative Gross, those in favor, aye.

13

14 RD: Aye.

15

16 VC: Aye.

17

18 SW: Aye.

19

20 CS: Those opposed nay? We are adjourned.

21

22 END OF RECORDING

23

24