

EXHIBIT A

Transcript of October 28, 2021
GOAC Hearing

1 **GOVERNMENT OPERATIONS & AUDIT — 2021**
2 **TRANSCRIPT**
3 **OCTOBER 28, 2021**

4
5 CS: Chair Schoenfish
6 VC: Vice Chair Gross
7 SN: Senator Nesiba
8 SS: Senator Steinhauer
9 SH: Senator Hunhoff
10 SW: Senator Wheeler
11 RD: Representative Duba
12 RK: Representative Karr
13 RP: Representative Peterson
14 RO: Representative Otten

15
16 MH: Marcia Hultman
17 AM: Amber Mulder
18 SG: Sandra Gresh
19 AF: Amy Frink
20 CA: Craig Ambach
21 RA: Rob Anderson
22 TF: Tim Flannery
23 DW: Daryl Washechek
24

25 CS: Good morning. Government Operations and Audit is out of
26 recess. I ask that everyone please silence your cell phones.
27 Anyone wishing to testify please sign as legibly as you can
28 on the sign-in sheet in the back of the room. For morning we
29 are going to have two topics. Department of Labor and
30 Regulation to discuss the Appraisal Program and the Office of
31 Risk Management to discuss Public Entity Pool for Liability
32 funds. Those two items kind of relate so we're gonna take
33 them both. After that I'll offer any public testimony if
34 applicable. We have three testifiers. We'll have the
35 Department of Labor, the Appraiser Association and then the
36 Director of the Risk Management Pool. Ms. Bren was invited
37 to testify and it was the Committees' understanding that she
38 would be here today. Her attorney sent a letter to the
39 Committee yesterday at 2:55 p.m. central indicating she would
40 not be here. So first up we'll have the Department of Labor.
41 And when we contacted Ms. Hultman she had a prior commitment
42 today but she was still willing to make the effort to be here
43 and we're very appreciative of that so thank you.

44
45 MH: Good morning Mr. Chair, Committee members. I am Marcia
46 Hultman and I serve as the Secretary for the Department of
47 Labor and Regulation. I thank you for the invitation this
48 morning to visit with you about the challenges facing the
49 appraiser industry in South Dakota and the steps the

1 Department of Labor and Regulation is taking to address the
2 issue. One thing I believe we can all agree on is there is a
3 need to additional appraisers in South Dakota. In fact, this
4 is not a new issue just for our state but for the whole
5 country. Concerns about the pathway to becoming an appraiser
6 and the need to increase the number of appraisers is actually
7 not new. It is something that has been discussed for the
8 past two decades and has become compounded in recent years as
9 appraisers leave the profession and the demand for services
10 increases. The negative impacts of insufficient numbers of
11 appraisers are felt the most acutely in our remote, rural
12 areas of the state. I would like to highlight an
13 announcement made just last week by the ASC which is the
14 Appraiser Subcommittee which is the Federal governing body of
15 appraisers. In a news release the ASC noted, we will be
16 conducting a comprehensive legal and policy review of the
17 appraiser certification criteria. The ASC is the independent
18 Federal agency that oversees the real estate appraisal
19 industry. The Counsel and Licensure Enforcement and
20 Regulation, CLEAR, will be selecting a number of
21 organizations to conduct this review. The ASC will be
22 looking at all the rules to ensure and promote fairness,
23 equity, objectivity, and adversity in both appraisals and in
24 the training and credentialing of appraisers. Jim Park, the
25 Executive Director of the ASC, acknowledged in some ways
26 trying to become a licensed appraiser is just too hard. ASC
27 will now be doing at the Federal level what we're doing at
28 the state level to address the needs for appraisers
29 nationwide. Before I speak specifically about the appraiser
30 program first let me share with you the work the Department
31 of Labor has been doing in recent years related to all
32 licensing boards and commissions. Since the Governor's first
33 State of the State Address, she has emphasized the need to
34 assure that we do not have unnecessary red tape or barriers
35 preventing licensure. To this end, the Department has led a
36 work group representing the Department of Social Services,
37 the Department of Health, and the Department of Labor to
38 review statutes and rules as well as policies and procedures
39 to make change were appropriate. Each year this has resulted
40 with rules or statues changes brought forth by the agencies
41 in an effort to cut the red tape. Th work we are doing with
42 the appraiser program is consistent with the work being done
43 in other areas. As the Secretary of the Department of Labor
44 and Regulation, it has been my goal to look at licensure from
45 the prospective of an educator rather than a regulator.
46 Considering the fact that I'm a third-generation teacher,
47 like my mother and grandmother before me, I was trained to be
48 a teacher. I taught in a facility for adjudicated male
49 delinquents and then started one of the first alternative

1 high schools in the state so definitely have the educator
2 lens when I look at things. However this lens does not mean
3 standards are lowered but rather that we develop pathways to
4 success by facilitating the knowledge and experience
5 acquisition necessary to demonstrate competency as determined
6 by each given occupational licensing board. I don't believe
7 the licensing process is the time for punishment or punitive
8 actions. If someone fails a class or classes in high school
9 we don't say you're denied your diploma but rather we give
10 additional opportunities for success or failure. We should
11 never grant a license if competence has not been demonstrated
12 by the legal prescribed method. Nor should be say never to
13 an applicant willing to take extra steps to learn the trade.
14 We have been working for at least the past three years to
15 streamline the appraiser certification pathway in a variety
16 of ways. One example is the work being done through a grant
17 applied for and awarded to establish an experience training
18 program that combined educational requirements and provides a
19 supervisor, so the trainee doesn't have to find a supervisor
20 on his or her own. This grant was written as a team effort
21 consisting of the DLR staff, our fiscal team, our legal team,
22 and the Executive Director of the Appraiser Certification
23 Program. At this time we are working very closely with South
24 Dakota State University on the content, curriculum, and
25 delivery of this program with the goal of having our first
26 students enrolled in the fall of 2022. With the proposed
27 revisions to our requirements we are most importantly working
28 closely with the ASC, which again is the Appraiser
29 Subcommittee, at the Federal level to review all of our South
30 Dakota specific statutes, rules, policies, and procedures to
31 assure compliance. DLR attorneys are in constant contact
32 with the ASC as we work through the process of determining
33 how our program may be improved. We will not put the state
34 in jeopardy of noncompliance. In fact, our goal is to
35 improve from our past good rating to an excellent rating in
36 the future. As a result of our ongoing work with ASC we were
37 just notified recently of a longstanding area of
38 noncompliance, which we will be addressing in a future rules
39 packet. And just yesterday Jim Parks, again who is Executive
40 Director of ASC, reached out to us asking us to meet with
41 their task force which is focusing on diversity challenges in
42 the industry. And the reason they reached out to us is
43 because of the work that we are doing here in South Dakota.
44 With responsibility for many complex Federal programs and
45 oversight of the banking, insurance, and licensing boards and
46 commissions, I fully understand and appreciate the importance
47 and necessity of compliance and DLR has a proven track record
48 in this area. We have introduced a rules packages with
49 suggested changes to the program that will have its first

1 hearing on November 15th. My team has started the review of
2 the letter that we received from PAASD and I know the members
3 have received that as well. And we are taking their comments
4 they made about the proposed rules changes into
5 consideration. Via this letter we learned the association
6 and members were frustrated with our communications and we
7 have noted this and outreach to PAASD will be part of our
8 process moving forward. We did properly publish our Notice
9 of Hearing regarding the rules package but we were unaware
10 that PAASD had been notified separately in the past. My team
11 has already reached out to the director and work is being
12 done to take those survey comments into consideration prior
13 to that hearing on November 15th. Please remember it is a
14 careful balancing act when enacting any changes to licensing
15 procedures. We must carefully consider not only the thoughts
16 of those already licensed but also the perspectives of those
17 seeking licensure, our consumers, and the Federal guidance.
18 Prior to today's hearing, questions were submitted to DLR for
19 consideration and following is the data that I had been
20 requested prior. We were asked the number of licenses and
21 the number of denials in the past four years so in 2018 there
22 were forty licenses issued; in 2019 there were twenty-eight;
23 in 2020 there were thirty-three licenses; and in 2021 there
24 were thirty-six. For denials issued in those same years, in
25 2019 there were no denials issued; in 2019 there were no
26 denials issued; in 2020 there were no denials issued; and in
27 2021 there have been no denials issued. Thank you for your
28 time today and as we look to making changes to the Appraiser
29 Certification Program our number one goal is to maintain high
30 standards and produce credible appraisers.

31
32 CS: Any comments or questions from the committee at this
33 time?

34
35 SH: Mr. Chair.

36
37 CS: Senator Hunhoff.

38
39 SH: Thank you. Madam Secretary, you indicated you started
40 this process for the review. When was that time frame for
41 the start of this?

42
43 MH: Mr. Chair. If I may clarification, the review of the
44 entire process for appraisers?

45
46 SH: Well you gave that you have established a task force and
47 you're working on what the Governor had recommended to making
48 licensures more user friendly for people. When was that time
49 frame for that started?

1
2 MH: Mr. Chair. We have been doing that for the past three
3 years.

4
5 SH: Follow up. So prior to what you just indicated that you
6 got notice that we were in noncompliance with some area, has
7 the rules always been in compliance with the Federal
8 guidelines?

9
10 MH: Mr. Chair. We recently found out that something we have
11 in rule is not in compliance. That is not in our rules
12 package to be heard on November 15th so we will be addressing
13 that in the next cycle of rules as we're able.

14
15 SH: One last question if I could Mr. Chair. So South Dakota
16 has to be in compliance with the Federal guidelines and then
17 we can we can do more but cannot do less?

18
19 MH: Mr. Chair. That is correct. And actually the issue
20 that we found out that we are not in compliance with is that
21 a state registered appraiser cannot do any appraisals without
22 supervision and we have been allowing limited appraisers to a
23 state registered and the ASC notified us that that is not in
24 compliance.

25
26 SH: Thank you.

27
28 CS: Representative Otten.

29
30 RO: Thank you Mr. Chair. Curious on what educational
31 requirements are there going into this field?

32
33 MH: Mr. Chair. It varies from the type of license that
34 you're seeking and it's progressive. I will defer to Amber
35 Mulder to address and Amber is here at my side is more
36 familiar with the exact requirements for licensure.

37
38 AM: Mr. Chair. Amber Mulder, legal counsel for the
39 department. I do not have in front of me all the educational
40 requirements, but with some of the certification levels a
41 college degree and then specific courses in appraisal work
42 and related to appraisal work and then a number of experience
43 hours are required for each level.

44
45 SH: Mr. Chair. Can I just have one more?

46
47 CS: Senator Hunhoff.

1 SH: Does the occurrence of the noncompliance have any impact
2 on what we've been doing with the appraisers and the outcomes
3 or nothing changes, we just have to change the rule?
4

5 MH: Mr. Chairman. Yes it's forward looking now that they
6 have pointed it out to us because as I noted we've asked them
7 to review all of our rules and statutes very recently, so this
8 is a new project we've embarked on and there's no threat of
9 looking back. We just need to assure that we'll address that
10 in the future.
11

12 CS: Representative Duba.
13

14 RD: Thank you Mr. Chair. Secretary, can you tell me, you
15 indicated there's a work there's been a working group of four
16 departments for the last three years just to streamline
17 regulations, can you tell me if there are minutes from those
18 meetings and if there are were there specifics related to the
19 appraisers program prior to let's say 2020?
20

21 MH: Mr. Chair. No that was an informal work group, and I
22 don't believe that any minutes would have been taken. There
23 has been legislative and different areas related to other
24 licensing boards and commissions that have resulted from
25 that.
26

27 RD: Ok. Was at any time this very, excuse you, I'm sorry.
28 Follow up. Was at any time was very specific discussion in
29 the last three years related to the appraiser program in
30 those informal meetings?
31

32 MH: Mr. Chair. I did not sit in on those meetings so I'm
33 not able to answer that question.
34

35 RD: Follow up. Since you were not at those meetings were
36 you aware or were you made aware by others who attended those
37 meetings where there was discussion around this program?
38

39 MH: Mr. Chair. I can tell you we've had conversations in
40 the last three years about edits and changes to the appraiser
41 program. I cannot confirm whether or not those came as an
42 outcome from that meeting.
43

44 RD: Thank you.
45

46 SH: Mr. Chair.
47

48 CS: Senator Hunhoff.
49

1 SH: Thank you. Madam Secretary. In that three-year time
2 frame were there proposed changes to the program that went
3 through the ruling hearing process and were changed along the
4 course of that time?

5
6 MH: Mr. Chair. I would like to go back and look at our
7 rules that we have proposed in the last three years before I
8 would answer that question. I don't remember any
9 specifically but there may have been some.

10
11 SH: Thank you.

12
13 CS: Representative Gross.

14
15 VC: Thank you Mr. Chair. Madam Secretary. Given the
16 background that we have that the savings and loan issue
17 resulted in (inaudible) uniform standards of appraisal
18 practice in place at the Federal level, can you expand on the
19 latitude or authority individual states or state agencies
20 have to modify appraisal standards or guidelines on their
21 own?

22
23 MH: Mr. Chair. Again we have to minimally comply and so
24 that is what the work we're doing with the ASC is on. And
25 then we can add additional requirements on top of that but we
26 must begin minimal compliance with the guidelines set forth
27 by the ASC.

28
29 VC: Follow up if I may. Given the fact that you've
30 commented on some changes that have been made in recent
31 years, can you give me a couple of examples of those that
32 would be within the state's purview?

33
34 MH: Mr. Chair. So one example is an exam that we have been
35 giving in South Dakota at the beginning of a training program
36 and we've recently changed or changing so that is not taken
37 before education and experience has occurred and will be
38 taken later in the process so we have not removed the
39 requirement for the exam we've just bumped it a little bit
40 later in the process.

41
42 VC: Thank you.

43
44 CS: How many states require a similar type of exam before
45 the education?

46
47 MH: Mr. Chair. I'm not sure if I can answer that, but in
48 talking with the ASC it's very clear that it is not required
49 at the beginning of the program.

1
2 SH: Madam Chairman. I'm sorry. So with the Federal
3 guidelines, and I'm just following up on Representative
4 Gross, what year are we following now because we tend to be
5 behind, so what is the current Federal guideline year that we
6 are operating under to meet?

7
8 MH: Mr. Chair. Our goal is to be operating under the
9 current guidelines and that's why we are working literally as
10 we speak to make sure that we're in compliance with what's in
11 place now.

12
13 SH: Thank you.

14
15 CS: Senator Nesiba.

16
17 SN: Thank you Mr. Chair. I do have a just a series of
18 questions for the Secretary. So thank you Secretary Hultman
19 for being here today and we're disappointed that Sherry Bren
20 was unable to be with us today. Would you agree that the
21 Governor was elected to work for the people of South Dakota?

22
23 CS: Senator, can you rephrase your question?

24
25 SN: Ok. Let me rephrase it another way. Would you agree
26 that the Governor should use her political power only to help
27 the people of South Dakota?

28
29 CS: Senator, can you keep it related to the appraisal or
30 related to the issue?

31
32 SN: I think part of our work here Mr. Chair is just the
33 concern about, about political power and the use of political
34 power and the removal of Ms. Bren from her position
35 overseeing the appraisal program and that's what I'm trying
36 to ask questions about Mr. Chair and so I'm not sure how I
37 can.

38
39 CS: Ok.

40
41 SN: If I can, if I can go in that direction or not. I
42 suppose I could ask it a different way. Is, has the
43 Governor, are you aware Secretary Hultman of the Governor
44 intervening in any other appraisal application in the way
45 that she did with the one involving her family member? Would
46 that be okay Mr. Chair?

47
48 CS: (inaudible)

1 MH: Mr. Chair. I believe that question has a presumption
2 that the Governor did intervene in the process and so I have
3 no answer to whether it happened any other time.

4
5 SN: Just a follow up.

6
7 CS: Could you rephrase your question to not be presumptuous?

8
9 SN: Can you talk to us about the meeting that you attended
10 with the Governor and Ms. Bren? And the nature of that
11 meeting and who else was there and what happened?

12
13 MH: Mr. Chair. The nature of the meeting was to talk about
14 the current licensing process to become an appraiser in South
15 Dakota and potential changes to that process.

16
17 CS: Representative Duba.

18
19 RD: Thank you Mr. Chair. Madam Secretary, can you tell us
20 who was included in that meeting and the purpose of their
21 attendance?

22
23 MH: Mr. Chair. In attendance in the meeting, I was there,
24 the Governor was there, Amber Mulder was there, Tom Hart was
25 there, I believe Graham Oey was in attendance for part of the
26 meeting on the phone as well as Tony Van Huizen. The intent
27 of the meeting was to talk about the current process for
28 becoming an appraiser in South Dakota; the history of that
29 process; and possibilities for changes to that process in
30 South Dakota.

31
32 RD: Follow up.

33
34 CS: Go ahead.

35
36 RD: Was there anyone else in attendance in that meeting?

37
38 MH: Oh I'm sorry. Kassidy Peters was also in attendance at
39 that meeting Mr. Chair.

40
41 RD: Follow up.

42
43 CS: K.

44
45 RD: So of all these participants what were the roles of each
46 individual in that meeting?

1 MH: Mr. Chair. I'm not sure of the nature of the question.
2 I could tell you the capacity the individual serve in if that
3 is relevant.

4
5 CS: Let's start with the capacity.

6
7 MH: Ok. Marcia Hultman, Secretary of the Department of
8 Labor and Regulation; Amber Mulder, legal counsel; Graham
9 Oey, legal counsel to the Department of Labor and Regulation;
10 Kassidy Peters, applicant to be an appraiser in South Dakota;
11 the Governor; and Tom Hart was serving as legal counsel to
12 the Governor at that time.

13
14 RD: Follow up.

15
16 CS: K.

17
18 RD: Since there were two legal counsels there for the
19 Department of Labor, Amber and Graham, what was the purpose
20 of their, why were they at the meeting? Were they
21 representing someone? What was the purpose of them being
22 invited to that meeting if you were gonna talk about process?

23
24 MH: Mr. Chair. Both Amber and Graham have worked
25 extensively with the appraiser program in the past. Both of
26 them have actually supervised the Executive Director of the
27 appraiser program so they are very familiar with the process.
28 They're very familiar with the rules and regulations and
29 requirements. Much more in-depth than I am personally
30 involved in the intricacies, so it was very relevant for both
31 Graham and Amber to be there given their expertise on the
32 appraiser program.

33
34 RD: Follow up.

35
36 CS: K.

37
38 RD: Thank you. Is it common practice to have an applicant
39 in a meeting such as that? To talk about the process.

40
41 MH: Mr. Chair. No.

42
43 RD: Follow up or I'll defer to someone else and then we can
44 come back.

45
46 CS: Representative Gross.

47
48 VC: Thank you Mr. Chair. I believe earlier, if I understood
49 you correctly when you were giving the I believe the four

1 years history of the approved or certified or excuse me if I
2 don't get the title right and the denied and there were
3 anywhere from twenty-some to forty-some approved and none
4 denied in the last four years. How many opportunities does a
5 person have to take the exams or the exam before they are
6 finally denied and if they're allowed multiple opportunities
7 what kind of pass percentages do you see in those exams?

8
9 MH: Mr. Chair. There were a lot of questions embedded in
10 that question. As far as the exam and I'm gonna defer and
11 just check myself with Amber, it can be taken as many times
12 as, there's no threshold in South Dakota or is it four times?

13
14 AM: Mr. Chair. We limit the number of times in South
15 Dakota; however, we just learned from the ASC that there is
16 no limitation on the number of times that a person may take
17 the national exam.

18
19 MH: And you also asked about the pass rate and there, there
20 are different like the test that I talked about we were
21 giving early in the process we have poor pass rates on that
22 given when it was given in the process so hopefully that will
23 improve with the education and training coming first. I
24 think there's also a bit of a misperception. An individual
25 submits actual appraisals for review and that also is
26 qualified as an exam though it doesn't really meet that
27 traditional definition that we may think of an exam.

28
29 VC: Follow up if I may. If a person does not pass the exam
30 on say their first try are they given a denial letter of the
31 licensure or certification? And if they come back later on
32 retake and pass are they considered never having been denied?

33
34 MH: Mr. Chair. As I said, we haven't issued any denials, so
35 the goal is if they weren't successful that first time then
36 to look at a path forward for success. So is there
37 additional education? Is there additional mentoring? Are
38 there other opportunities for them to come back and resubmit
39 or retake at the appropriate time?

40
41 VC: Thank you.

42
43 CS: Representative Otten.

44
45 RO: Thank you Mr. Chair. Madam Secretary, is there a time
46 frame from the original taking of a test? That they have to
47 wait x amount of time before they can take it again?

48
49 MH: Mr. Chair. I do not believe so.

1
2 RO: Follow up.

3
4 CS: Go ahead.

5
6 RO: You had mentioned that in the meeting that you were
7 discussing changes within the program. Do you remember what
8 the changes were? That were being discussed?

9
10 MH: Mr. Chair. Much of the meeting was spent with Ms. Bren
11 giving the history of the program; explaining how the program
12 worked; giving the details on the program. There was just
13 kind of the overall message to look for creative ways. One
14 big area of interest is the program that we continue to work
15 on with SDSU. So one obstacle has been in finding an
16 appraiser to mentor or supervise when you are doing your
17 training and the program we are working on will remove that
18 necessity. Just looking at our requirements. Do we have an
19 excess on those hour requirements above and beyond what is
20 required at the Federal level? So items like that.

21
22 RO: When it comes to an appraiser itself exactly are we
23 talking commercial, residential, how wide is the spectrum
24 that an appraiser will cover?

25
26 MH: Mr. Chair. It's all of the above. And there are
27 different levels and different appraisers that you are able
28 to complete considering the level of licensure that you have.

29
30 RO: So within that appraiser cap then there are different
31 levels? How many levels do we have?

32
33 MH: Mr. Chair. If I may. We have the certified general,
34 the certified residential and then a state-licensed and a
35 state-registered.

36
37 CS: Senator Nesiba.

38
39 SN: Thank you Mr. Chair. I think you circled back. I was
40 going to ask about what was the role of Ms. Bren in that,
41 that meeting but I think you've, you've answered that so let
42 me follow up with this. Is it, is it common or has there
43 ever been another circumstance where a denied applicant had a
44 meeting with the department to discuss the denial of their
45 application?

46
47 MH: Mr. Chair. There was not a denial and yes there have
48 been other times where we have visited with individuals on

1 their path to license to determine what the best path forward
2 would be.

3
4 SN: Mr. Chair, just a follow up. Was, was the application
5 of Ms. Peters was that application discussed at the meeting?

6
7 MH: Mr. Chair. At the very end of the meeting, we discussed
8 a possible plan forward for Ms. Peters which had been
9 determined prior to the meeting and it was a brief discussion
10 at the end but that plan had already been set in place.

11
12 SN: One final follow up. Thank you. So it, it does seem as
13 though the department had, had two members doing legal
14 counsel for them. The Governor also had counsel and Mr. Van
15 Huizen, who is also who is also a lawyer, correct? Did
16 Sherry Bren have, did she have counsel at the meeting?

17
18 MH: Mr. Chair. I have indicated who was present at that
19 meeting.

20
21 SN: Ok. Thank you, Mr. Chair, and thank you Secretary.

22
23 CS: Senator Wheeler.

24
25 SW: Thank you. When an applicant doesn't pass the exam when
26 they're work product is reviewed, is there a formalized
27 process for the next steps in terms of figuring out that path
28 forward?

29
30 MH: Mr. Chair. Yes there is a formalized process. An
31 agreement is entered into and then it's up to the licensee if
32 they want to do the additional education requirements on
33 their own and if they want to resubmit appraisals for
34 consideration.

35
36 SW: Follow up. What's commonly included in those types of
37 agreements?

38
39 MH: Mr. Chair. The education requirements, the standards
40 that are expected. I don't believe a time frame is included
41 in those. And then the standards don't change. They still
42 have to meet the standards established and they have to
43 submit the appropriate appraisers, which are, excuse me
44 appraisals which are then reviewed through the standard
45 process by individuals that we contract with to do those
46 reviews.

47
48 CS: Representative Gross.

1 VC: Thank you. If I may, I want to follow up on the
2 question just asked. You said an agreement is entered into.
3 One party would be applicant of course. Who specifically
4 would be the other party to the agreement?

5
6 MH: The other party to the agreement, excuse me, Mr. Chair,
7 would be the department representative at that level by the
8 Executive Director. All denials actually have to be signed
9 by the Secretary of Labor.

10
11 VC: Thank you.

12
13 CS: Senator Wheeler.

14
15 SW: Thank you. So you said that there had been no denials
16 issued so I want to make sure we're clear so if someone
17 doesn't pass the initial exam they're not denied they have
18 the opportunity to continue on with this agreement to do
19 extra education, try again, and then they can hopefully be
20 certified throughout the end of the process, is that correct?

21
22 MH: Mr. Chair. Yes, that is 100% accurate.

23
24 SW: How many of those agreements are entered into a year on
25 average?

26
27 MH: Mr. Chair. I wouldn't be able to give exact numbers. I
28 would say a handful each year. And again, we would be able
29 to go back and look at those numbers for you.

30
31 SW: And when you mentioned that at the end of the meeting
32 that there was a brief discussion about Kassidy Peters'
33 agreement would that have been the type of agreement we're
34 talking about?

35
36 MH: Mr. Chair. Yes, and as I have mentioned previously
37 Senator Wheeler the details of that agreement were discussed
38 and in place prior to that meeting.

39
40 SW: And I think that's important for people to know is that
41 if a process that is commonly used had already occurred prior
42 to the meeting I think that's a good fact that we need to
43 make sure the public is aware of.

44
45 CS: Senator Hunhoff.

46
47 SH: Thank you. Little bit on the same topic. So does
48 administrative rule outline the process for the applicant so
49 they know what they have to do if they do not pass that first

1 time and seek an agreement to what that continuing education
2 is?

3
4 MH: Mr. Chair. I'm gonna defer to Amber.

5
6 AM: Mr. Chair. We do not have that specific process
7 specifically outlined in our administrative rules. It's more
8 an internal informal practice and each agreement is specific
9 to each applicant in each situation.

10
11 SH: Follow up. Is there a written document then that
12 concludes what that expectation and what that education plan
13 is to be?

14
15 AM: Mr. Chair. Senator Hunhoff, I believe we have it
16 outlined on our website, but I can't confirm that right now
17 without checking that, but I am fairly certain that that
18 process is there. If it is not it is indicated that they may
19 contact the department of the Executive Director and discuss
20 the situation.

21
22 SH: Thank you.

23
24 CS: Representative Duba.

25
26 RD: Thank you Mr. Chairman. Madam Secretary you indicated
27 that there was a meeting prior to the meeting and there was a
28 plan that was put together. Who attended that meeting? Who
29 was involved in that meeting and what were the specifics
30 outlined in that meeting?

31
32 MH: Mr. Chair.

33
34 CS: I don't know if it is appropriate to go into specifics
35 with. Like type of specifics are you looking for?

36
37 RD: What were the requirements that were discussed that
38 needed to happen?

39
40 CS: Does that vary per applicant?

41
42 RD: That's what they just said.

43
44 MH: Mr. Chair. Yes, it's going to depend. It's going to be
45 case specific. I couldn't tell you it's the process, so we
46 didn't deviate from the regular process. My assumption is
47 that Ms. Mulder was involved in that discuss, that Ms. Bren
48 was involved in that discussion, and possibly Graham Oey.
49 The path forward was determined and there was an educational

1 course that was recommended. It was a course that was not
2 offered in state. The applicant would need to travel out of
3 state on their own expense, take that course and then work
4 with a mentor and resubmit the appraisals for consideration.

5
6 RD: Mr. Chair. Follow up.

7
8 CS: K.

9
10 RD: Miss Mulder, were you involved in that meeting prior to
11 the meeting in the Governor's office?

12
13 AM: Mr. Chair. It was not a formal meeting. It was
14 discussions but I was involved that discussion.

15
16 RD: So, if it wasn't a formal meeting, did you take it over
17 ZOOM, was it, were people in an office, or conference room,
18 can you tell us, give us a little bit more, was it by email?
19 What, what happened here? And then what's the normal course
20 of business?

21
22 MH: Mr. Chair. If I may. It was just handled in the way
23 that we normally handle things. I would assume there could
24 have been a variety of contacts; there could have been phone
25 calls; there could have been informal conversations; there
26 could have been passing in the hallway, so there was not a
27 specific formal organized meeting specific to the topic.

28
29 CS: Was there anything out of the ordinary with that meeting
30 compared to other meetings, compared to other situations
31 where you're talking with applicants?

32
33 MH: Mr. Chair. No, and that's why it's really hard to
34 define what exactly happened because it was just the normal
35 standard of doing business.

36
37 CS: Senator Nesiba.

38
39 SN: Thank you Mr. Chair and Secretary. Now I'm a little
40 more confused. So the meeting before the meeting there was
41 an understanding that Kassidy Peters' application was going
42 to be denied. There was a route forward for her to be able
43 to rectify that. So then what her purpose in the meeting in
44 July?

45
46 CS: Maybe I'll just clarify. You indicated that there was
47 no application denied, is that correct?

1 MH: Mr. Chair. Yes, as you can see from our numbers there
2 was not an application denied. And I've said the content of
3 the meeting at the residence, that I believe is what you are
4 referring to, was to talk about the status quo of how to
5 become an appraiser in South Dakota and possible changes to
6 that program.

7
8 CS: Follow up.

9
10 SN: Mr. Chair. I'm just trying to understand why somebody
11 who was in the process of becoming an appraiser was in the
12 room at that policy discussion. What did she bring to the to
13 the process I guess is what I'm trying to figure out why she
14 was there.

15
16 MH: Mr. Chair. I believe that somebody that is going
17 through the process regardless of who there are might have an
18 insight into exactly how the process works.

19
20 CS: Senator Hunhoff.

21
22 SH: Thank you. Just to understand. So you have indicated
23 that there has been no denial of applications. Can you be,
24 are there multiple tests that you have to take in order to
25 get certified and, in this scenario, someone didn't pass one
26 piece or portion of that, so really they had the opportunity
27 before the application was completed for approval? I'm not
28 following. I'm a nurse so you know I take a board and so
29 how, I'm trying to put the likelihood together here.

30
31 MH: Mr. Chair. We were at the stage in the process where
32 appraisals were submitted for review, and all personal
33 information is redacted at that stage, so the reviewer has no
34 idea whose appraisal they are reviewing. And there were, can
35 be deficiencies found but individuals then have the
36 opportunity to take further education, to continue with their
37 mentoring, and to resubmit for reconsideration.

38
39 SH: Follow up. So in that stage of the process, you are
40 still a valid applicant now needing some continuing education
41 to complete the certification process for approval? Is that
42 fair to say?

43
44 MH: Mr. Chair. Yes, that is fair to say.

45
46 SH: One other follow up question if I could Mr. Chair. How
47 many candidates have over the course of this time had the
48 same type of experience that you're talking about? Having to

1 do a portion of the test, retake or do some additional work
2 to get approval of their license.

3
4 MH: Mr. Chair. I believe just in this calendar year that
5 we've had three other individuals that have had similar
6 circumstances.

7
8 SH: Thank you.

9
10 CS: Senator Steinhauer.

11
12 SS: Thank you Mr. Chair. It just want to check my
13 understanding. Here's what I'm hearing is there's never
14 really a denial because we never deny anyone of the
15 opportunity to continue to test in an effort to obtain the
16 license. They may fail an attempt but not denied the right
17 to continue to pursue. In fact, your department, because
18 you're trying to solve an issue with a lack of appraisers,
19 coach them and create for them a path suggested based on
20 maybe on they did on that appraisal that was examined. You
21 might need course work. You might want to just take it over
22 again and try in this area. So, you provide some coaching
23 basically on how they might succeed in the future, but
24 they're never really denied the opportunity to try again. Is
25 that essentially correct?

26
27 MH: Mr. Chair. Yes.

28
29 CS: Senator Wheeler.

30
31 SW: Thank you. So when I think you said that when an exam
32 is initially reviewed or done it's anonymized so the reviewer
33 doesn't know whose work product they are reviewing. Is that
34 correct?

35
36 MH: Mr. Chair. That is correct.

37
38 SW: Are those reviewers people, state employees, are they in
39 the program, are they out of state, who does the reviews?

40
41 MH: Mr. Chair. I believe we are contract with three or four
42 individuals both in state and out of state to conduct those
43 reviews.

44
45 SW: And so those are, these are contractors not state
46 employees?

47
48 MH: Mr. Chair. Correct, they are contracted.

1 SW: And so if what I'm hearing is correct then Kassidy
2 Peters went through the normal process, went through the
3 process of entering into an agreement to continue on with her
4 education, and to resubmit for that exam. After that point,
5 she participated in a meeting at the residence about the
6 process. After that meeting was there any change to her
7 program or agreement?

8
9 MH: Mr. Chair. No.

10
11 SW: And so then after that meeting was her exam then still
12 reviewed by the contractors either in state or out of state?

13
14 MH: Mr. Chair. Yes, as is standard process.

15
16 SW: Thank you.

17
18 CS: Representative Duba.

19
20 RD: Thank you Mr. Chair. Madam Secretary you indicated
21 that, and this may not have been her, but you said there was
22 an education course out of state that was recommended? Is
23 that true? Did you, is that correct? Did I hear that right?

24
25 MH: Mr. Chair. Yes, that is correct.

26
27 RD: Why was the education course recommended out of state?

28
29 MH: Mr. Chair. It was just timing on that particular
30 education course. I don't know if it's ever offered in state
31 or if it was a timing factor that the only one that was
32 available say in the next six months or twelve months or
33 whatever the time period that was the next available.

34
35 RD: Follow up. So I just heard you say that it may not be
36 offered in state. So you said I don't know if it's ever
37 offered in state or it may have been timing. Which was it?

38
39 MH: Mr. Chair. I said I didn't know so I'm not sure if it
40 was that it wasn't available or timing.

41
42 RD: Ok.

43
44 CS: Or simply just a variety of you know courses offered
45 various places. You know there's like some like different
46 ones for the applicant to pick from.

1 MH: Mr. Chair, correct. With the world of education today
2 that you may take something in state, you may take it
3 virtually, you may take it out of state.

4
5 RD: Okay. Follow-up. Um, is it common practice for us to
6 recommend to others to take courses out of state? Is that a
7 common thing that we do?

8
9 MH: Mr. Chair, we recommend the specific courses where
10 they're offered as a matter of timing and availability and so
11 we don't control that factor.

12
13 RD: Okay, I have one more follow-up please.

14
15 CS: Okay.

16
17 RD: Again we know that there were um, several attorneys in
18 that meeting and we know that there was a discussion at the
19 end of that meeting regarding Kassidy Peters' application.
20 Would have there been a need at the point for Sherry Bren to
21 have representation in that meeting?

22
23 MH: Mr. Chair, I'm not an attorney. I have no opinion on
24 that.

25
26 RD: Could I refer that question to Amber please. You are an
27 attorney and you are an attorney for the Department of Labor,
28 correct.

29
30 MH: Mr. Chair, if I may.

31
32 CS: Yea, okay, go ahead.

33
34 MH: The intent of that meeting was to talk about the
35 appraiser program and possible edits. Amber and Graham were
36 not there as legal representation for me. They were there
37 because of their expertise on the program.

38
39 RD: That, that wasn't my question. My question was at the
40 end of the meeting, when there is a specific discussion
41 around Kassidy Peters' application and path forward, would
42 there have been a need for Sherry Bren to have an attorney
43 present?

44
45 CS: That's more of an opinion, need a legal question, I
46 don't.

47
48 RD: And that's why I'm asking a lawyer.

1 AM: Mr. Chair, I'm here as council to Secretary Hultman. I
2 am, I was not asked to testify today.

3
4 SW: Mr. Chair.

5
6 CS: Senator Wheeler.

7
8 SW: Let me ask you this. So the way I've understood the
9 process is that um, I'll phrase it this way. After the
10 meeting at the residence, would Sherry Bren have had any
11 discretion to approve or deny Kassidy Peters' application.

12
13 MH: Mr. Chair, I'm not sure I understand the question but
14 the process was in place and so the ultimate decision on
15 approval or denial rested on the review done by the
16 contracted appraiser.

17
18 SW: And, and that's what I'm trying to get at is that if
19 we're all trying to make a deal out of this meeting, but
20 after that point there wasn't an opportunity for Sherry Bren
21 to approve or deny the application, then whether any pressure
22 was brought to bear or not is pointless because there was no
23 opportunity after that point. And that's what I want to make
24 sure I understand the process correctly that, there wasn't
25 some discretionary period after that point where pressure
26 could have in anyway affected Kassidy Peters' application.

27
28 MH: Mr. Chair, the approval or denial really rest on the
29 findings from the independent review of the appraisal
30 submitted.

31
32 SW: Thank you.

33
34 SH: Mr. Chair.

35
36 CS: Senator Hunhoff.

37
38 SH: Was, was the work plan completed by Kassidy Peters prior
39 to her receiving her license?

40
41 MH: Mr. Chair, yes.

42
43 SH: Just a follow-up. There has been indication about the
44 presence of attorneys at this meeting and you have indicated
45 to us it was because of their expertise. If you do any
46 recommendation or want to make any changes in the process
47 that are under administrative rule, who in your department
48 takes that lead to provide that and develop that or
49 presenting for public hearings and then to rules?

1
2 MH: Mr. Chair, that would be either Amber Mulder or Graham
3 Oey depending on the subject area.

4
5 CS: Senator Nesiba.

6
7 SN: Thank you Mr. Chair and Secretary Hultman. Is, is it
8 common for the Department to have meetings at the residence?

9
10 ? : I honestly don't know.

11
12 MH: Mr. Chair, yes it's common for me to attend meetings at
13 the residence.

14
15 SN: And, and, maybe just one other way trying to get at what
16 the, I think the good Senator from Huron was trying to get
17 at. Could you characterize um, Sherry Bren's, was she
18 enthusiastic about the work plan? Did you she feel like
19 there was a good um, a good path forward in terms of the
20 interims of the agreement for Cassidy Peters to, to become a,
21 to become an appraiser?

22
23 CS: Senator, that would be a question for Ms. Bren had she
24 chose to attend here. I don't think it's fair to ask um,
25 you know another testifier's opinion on another person's
26 enthusiasm. I mean, I guess you can answer if you wish but I
27 don't. Senator Hunhoff.

28
29 SH: Just a question. In that um plan, is there a sign-off
30 in the process by someone in the Department and the
31 individual that then is agreeable to take that plan on?

32
33 ? : Is that the standard?

34
35 MH: Mr. Chair, yes.

36
37 SH: Who signs off on it then?

38
39 MH: Again it depends on the level. At that level it would
40 be the executive director.

41
42 CS: Representative Duba.

43
44 RD: Thank you, Mr. Chair. Madam Secretary, is there a
45 possibility that we could see that document?

46
47 MH: Mr. Chair we would have to um, review the open records
48 as relevant to that. I'm not sure how that would all work.

1 RD: Well if it's possible, could you have that um, made
2 available to the committee please.

3
4 MH: Mr. Chair, we will review that request.

5
6 CS: Representative, would you care to make a motion to um,
7 well if it's, if it's an open record then I mean no motion.

8
9 ? : ... for that.

10
11 CS: It's not an open record.

12
13 RD: Follow-up.

14
15 CS: Okay, I guess.

16
17 RD: Okay, I'm gonna, I'm gonna move forward four months and
18 I'm gonna ask a question regarding, so we know that Kassidy
19 Peters was approved for um, certification. I'm looking at
20 your chart here. Was it state registered credential training
21 level certification that she was approved for? Or was it
22 just a level up from there?

23
24 MH: Mr. Chair, I believe it was certified residential but I
25 would want to.

26
27 RD: Certified residential. So that's like, that's like
28 three levels up? So there's state registered credential,
29 license credential, mid-level and then there is certified
30 residential which is the highest level for residential and
31 then there's one above that.

32
33 MH: Mr. Chair we have four levels.

34
35 RD: Yes.

36
37 MH: Yes. So there's a certified general, a certified
38 residential, a state licensed and a state registered.

39
40 RD: And she was going for the certified residential?

41
42 MH: Mr. Chair, I believe so.

43
44 RD: Okay, one, a follow-up. So that was um, granted and the
45 very next day um, the executive director was, was asked to
46 step down. Can you tell us why that was so close together?

47
48 MH: Mr. Chair, I'm not able to address anything related to
49 the personnel issues.

1
2 SN: Mr. Chair.
3
4 CS: Senator Nesiba.
5
6 SN: Maybe I can ask that question in a different way. Did,
7 did Ms. Bren at any point in this process ever recommend
8 denial of Kassidy Peters' application?
9
10 MH: Mr. Chair, not to my knowledge.
11
12 SN: Mr. Chair, just as a follow-up, was Ms. Bren, um, was
13 she, she was part of the agreement or was she, she was on
14 board with the plan going forward so that Ms. Peters could,
15 could meet this qualification and, and become an appraiser.
16
17 MH: Mr. Chair, as I indicated, yes.
18
19 CS: Any further questions or comments from the committee at
20 this time. Okay, we are gonna ask you to stay around if
21 there is questions between now and when we get through item
22 #10 on the agenda. Next up, we would like to have the
23 Appraisal Association come up.
24
25 SG: Sorry. Good morning Mr. Chair, Senators,
26 Representatives. My name is Sandra Gresh. I am currently
27 serving as President of the Professional Appraisers
28 Association of South Dakota. Also known as PAASD. Um, as a
29 representative of PAASD I do thank you, Mr. Chair, for
30 invitation to this meeting, a chance to discuss and help you
31 better understand the appraisal profession. I would like to
32 introduce if I may, Amy Frink, Vice President of PAASD. In
33 addition, Mr. Craig Steinley, who serves as the Secretary-
34 Treasurer and then also in attendance we do have some
35 additional appraisers in the audience who are also members of
36 PAASD. If I may Mr. Chair, I would like to give you a little
37 bit of my background.
38
39 CS: Yes.
40
41 SG: I earned by state certified general certification in
42 2008 working, living in Britton, South Dakota, where I
43 currently live and serve a tri-county area, primarily doing
44 residential, non-residential and agriculture real properties.
45 Since the beginning of my appraisal career, I have been when
46 I started my initial education in 2004, I've been associated
47 with PAASD and I have witnessed their continued involvement
48 in the advancement and providing education for appraisers.
49 Keeping apprised of the legislative issues that have an

1 impact on appraisers is of the utmost important to our
2 organization. We are one of the few states that have a state
3 regulator that oversees the appraiser certification in
4 comparison to other states where they have a board of
5 directors that oversee their program. In the past, PAASD has
6 worked closely with the regulator of the appraiser
7 certification program to update and assist in the pass of
8 revisions to the SDCL 36-21B as needed via the Appraiser
9 Certification Program Advisory Council. A collaborative
10 process that was successful in enhancing the public trust and
11 also helping the appraisal profession. There is a concern
12 by our group, going forward, this collaborative process has
13 ceased. With input from the advisory council no longer
14 requested from the Appraiser Certification Program, as
15 evidenced by lack of notification to the current proposed
16 rule changes. The licensing of an appraiser is different as
17 due to federal oversight in the way in which our licenses can
18 be decertified overnight if the regulator is not complying
19 with federal mandates. There has been a lot of previous
20 discussion today regarding the levels of certification, the
21 requirements on a federal level and state. We have provided
22 in the packet of information, this was attached to a letter
23 provided dated October 22, outlining, in yellow, all those
24 areas are federally mandated. The only area that the state
25 has control over is the entry level trainee exam. I want to
26 also make some clarification in regards to the exams cause
27 there's been a lot of discussion regarding that too. South
28 Dakota and four, South Dakota and only four other states
29 require passage of a trainee level exam that covers 75 hours
30 of education and there's no limit to the number of times that
31 this exam can be taken. The other certification levels going
32 on, you know start as a state registered licensed credential,
33 certified residential, certified general, they in addition
34 require, prior to licensing at those additional, those upper
35 levels, is to provide work product that is reviewed and then
36 they are required to take a national exam. There is a limit
37 on the number of times that an individual can take that
38 national exam with that application and that is four times.
39 If they do not pass that fourth time, then that application
40 is nullified and they have to begin that process again. So
41 as you can see, our profession is different than other
42 regulated professions or like lawyer, doctors, um, they do
43 not have that federal mandate like we do. So I just wanted
44 to clarify that with you. Um, so as you can see by the
45 example I showed you in this discussion, the South Dakota
46 appraiser certification has very little room to make changes
47 in the federal requirements. It's judged by the federal
48 government through its appraisal subcommittee for its decree
49 of compliance with implication of Title XI as passed in 1989.

1 So that's one main concern we have going forward under the
2 current appraiser certification is to be able to have a
3 continued relationship with them, a collaborative effort. As
4 new rules are proposed um, this is has served to work in the
5 past and we don't want to see that lost. Another issue um,
6 in past years South Dakota Appraisers have received their
7 licenses on a very timely basis prior to the September 30th
8 deadline. This was not the case in 2021. Many of the
9 licensees did not receive their, did not receive it until the
10 deadline date or the week prior and in previous years,
11 normally have received that certification and sometimes by
12 the first of August, well within 30 days prior to the
13 deadline. Some appraisers due to the late delivery of their
14 credential, their updated license, they were not able to help
15 buyers complete their home purchases. Many, the lenders as
16 I've said, many of them require that you have that license in
17 place at least 30 days before you are given an assignment, to
18 be assured that you can complete that assignment under that
19 license. PAASD has also been very proactive to find
20 solutions for barriers in the appraisal profession. And one
21 of the challenges that faces us at this time, that faces
22 South Dakota appraisers is bringing new people into the
23 appraisal industry. The supervisor training model which is
24 currently in place and is federally mandated has been
25 implicated by South Dakota appraisers since it was required
26 with varying success. Some of the negatives being it's not
27 financially productive for the supervisor due to the time
28 involved with the training increasing the supervisor's
29 general and professional liability, sometimes trainees
30 leaving prematurely after much time invested by the
31 supervisor and then this causes a delay for the public in
32 being able to purchase their homes, businesses and carry on.
33 Over the decades, PAASD has worked closely with the state
34 appraisal regulator and the ACP advisory council to create
35 acceptable alternatives, alternatives, to the current
36 training methods. Some examples being the South Dakota
37 version of the supervisor appraiser and trainee appraiser
38 training course. Appraisers now are able to perform
39 evaluations for federally regulated financial institutions.
40 PAREA has been introduced. Practical Applications of Real
41 Estate Appraisers, by the Appraisal Foundation, and this
42 currently being, is in the process of being implemented, some
43 of the procedures worked out, regarding the training models
44 via a computer technology and just recently approved in our
45 state, ETP. The South Dakota Experienced Training Program.
46 A trainee, an appraiser trainee scholarships have been
47 offered by PAASD and it's been on of PAASD's primary goals in
48 meeting the education needs of our members and this was the
49 reason for the formation of our group in 1991 to provide

1 education and so that appraisers could get the credentials
2 that they needed to go on into the appraisal profession under
3 the new federal guidelines. Our hope is that our present,
4 presence at this meeting will assist you committee members to
5 better understand the appraisal profession, the challenges we
6 currently face, the challenges that face South Dakota
7 appraisers. We want to rekindle that collaboration that we
8 previously had with the appraiser certification. It has
9 worked over the decades since implementation of the appraiser
10 certification program and we, we want to make sure that
11 federal mandates are being followed while also protecting the
12 public trust. I appreciate you listening to my opening
13 statement and I will welcome any comments or questions.

14
15 CS: Is there like appraisal like, okay I'm a CPA, there's a
16 South Dakota Board Accountancy. Is there something similar
17 for the appraisal association like a government board for the
18 appraisers?

19
20 SG: Mr. Chair, um, currently no. The executive director is
21 the regulator of the appraiser certification program. There
22 is not a board.

23
24 CS: Okay, is that something that's been discussed before.
25 Is it a desire of the appraiser um, like community or is just
26 something that you know hasn't been brought up?

27
28 SG: Mr. Chair, I cannot um, I do not know the history of
29 that to answer that question. I don't know of any um, most
30 recent discussion on that but that may be a possibility to
31 look at going forward.

32
33 CS: Representative Duba.

34
35 RD: Thank you Mr. Chair. Thank you for coming today Ms.
36 Gresh and all of the information you sent us was very
37 valuable including that survey. I appreciated that. Um, you
38 mentioned, or you didn't mention you specifically stated that
39 communications have ceased, can, and this process has been in
40 place since 1991, can you tell me when you saw that break off
41 approximately when you saw that breakdown in communication
42 occur. It sounds like it's fairly recent but I just want to
43 understand.

44
45 SG: Mr. Chair, it's my understanding after visiting with
46 other um members of the advisory council that there has been
47 no, no, they have not received any notification since
48 February. Um, the most recent that was brought to light was

1 when we were um, it was brought to our attention on the
2 proposed changes, rule changes, isn't that correct, Amy?

3
4 AF: Yes.

5
6 SG: And.

7
8 AF: But it didn't come from, it didn't come from the
9 Department.

10
11 SG: Go ahead Amy.

12
13 AF: I apologize, sorry. Amy Frink. It didn't, we found out
14 about the rule changes through um, a different group that
15 discovered it and asked us about it so.

16
17 RD: Follow up. Normally where would you get that
18 communication? Would that come from the executive director?

19
20 SG: Yes it would.

21
22 RD: Okay. I have another follow-up question. Thank you.
23 Um, you also noted that there were problems with timely
24 licensing which really um, ultimately impacted a few home
25 owners or their ability to work with the lender to close on
26 their, their needs. Um, when did you start, and that
27 licensing's were delayed, when did that start to happen? You
28 said it in 2021.

29
30 SG: Mr. Chair, that was just for this renewal season for
31 2021. In the past they have been received on a timely basis.

32
33 RD: Follow up. And, and who would be normally responsible
34 for ensuring that those licenses were sent out. Would that
35 be an executive director type tasks?

36
37 SG: Mr. Chair, that is correct.

38
39 RD: Thank you. Appreciate that.

40
41 CS: Representative Gross.

42
43 VC: Thank you, Mr. Chair. If I may follow-up on that a
44 little bit, just to make sure I understand, did, a series of
45 a questions if I may. Each appraiser annually receives an
46 updated license, is that correct?

47
48 SG: Mr. Chair, that is correct.

1 VC: Were any of the licenses received after the expiration
2 of the previous license?

3
4 SG: Mr. Chair, that I'm not aware of. I know some did
5 receive it via e-mail. Normally we get a hard copy license
6 in the mail and some receive, received it via e-mail
7 indicating that hard copy would be mailed.

8
9 VC: So they did receive confirmation that their license
10 would in essence be renewed?

11
12 SG: Mr. Chair, that's my understanding, yes.

13
14 VC: And then would you expand if you would on what you said
15 earlier a little bit typically needing it 30 days in advance
16 of expiration because of a lender's requirement or
17 expectations. Make sure I understand that.

18
19 SG: Mr. Chair, okay, excuse me, Mr. Chair, some lenders will
20 order out for assignments possibly you know 4-6 weeks um,
21 prior to expected completion of the appraisal and they want
22 verification or notice that your credential is current, or 30
23 days excuse me. 30 days.

24
25 VC: Okay, that's what I was gonna ask you. Is current or is
26 current with at least 30 days before expiration, with at
27 least 30 days prior to expiration?

28
29 SG: Mr. Chair, correct, yes.

30
31 VC: Is that because there's a history of non-renewal of
32 licenses or over an abundance of caution on the part of
33 lenders or what is the reasoning for looking for that 30
34 days.

35
36 SG: Mr. Chair, that I can't answer. Amy do you know?

37
38 AF: Mr. Chair, um, so typically an appraisal will take, when
39 they order it to being finished, more than 30 days or at a 30
40 day, and so most appraisals through lending institutions
41 which are national, so most of it comes down, like if it's a
42 Wells Fargo, it comes to a national Wells Fargo Bank system.
43 And so they want to know that when you, when you get to do
44 their appraisal, that you will still be credentialed at that
45 moment so that they don't have to find a new appraiser and
46 reorder it with someone else and wait another 30 days for it
47 so they want to make sure that you have your license renewed
48 before the time that your gonna complete the report.

1 VC: Thank you. I'm reading that as an overabundance of
2 caution on the lender's part. Is there, what percentage of
3 your membership typically retires or does not renew their on
4 an annual basis?

5
6 SG: Mr. Chair, I do not know that number. I'm sorry.

7
8 VC: Okay, thank you.

9
10 SH: Mr. Chair.

11
12 CS: Senator Hunhoff.

13
14 SH: Thank you. I just need clarification. You're talking
15 about a rules package that you just follow, found out about,
16 what rule package are you making reference to?

17
18 SG: Mr. Chair, there um, there's proposed rule changes to
19 take effect to go before the Legislature in November.
20 There's three issues on those rule changes that we are
21 concerned with. The first one being that there propose,
22 they're proposing to do away with the trainee exam. Um, in
23 addition, they are also looking to reduce supervisor trainee
24 hours, supervisor over going out with inspections on a
25 trainee from 25 down to 0. They are, so, supervisor going
26 along inspections would not be required. The third being,
27 um, you know I referred to the ETP that was recently adopted
28 and approved by the state, um, and that hasn't even been
29 implemented yet. Um, they are looking to change and reduce
30 some of the education requirements.

31
32 SH: Follow-up. Thank you. You had indicated that it's
33 February of this year that the communication has changed. I
34 believe um, again I'm just looking at historically on a 10-16
35 of 20 you had a rule package that came and that addressed
36 some education for again, I'm not familiar with your
37 industry, but there were some rule changes there. At that
38 point in time, the information was sent out to um, three
39 newspapers, Mitchell Republic, Black Hills Journal and
40 Capital Journal here in Pierre. You also had 15 special
41 interest groups that that e-mail went out about the hearing
42 and 455 appraisers also received notification. And again at
43 that point in time, and in looking at the public hearing that
44 was held, there no opposition and at the rules meeting there
45 was no opposition, so up to that point in time, there was
46 information that was in the industry did not come to share
47 anything about that rule package. Alright now so now we're
48 fast forwarding, I have not seen the rule package yet so I
49 don't know what the attendance or the communication but I

1 will say, typically on every rule hearing, the appraisers
2 have been receiving the communication regarding notice of the
3 public hearing. I'm just trying to clarify, to follow-up on
4 your comments.

5
6 SG: Yep, Mr. Chair, that is true yes. In the past we have,
7 that has been the process of notification.

8
9 CS: I know you provided the committee with a survey of
10 appraisers you know on their thoughts on some of these
11 proposed rule changes, would you care to give a quick summary
12 on, you know, on the will of the appraisals, appraisers on
13 what they, you know, their support of the rule changes.

14
15 SG: Mr. Chair. Um, I, I, I apologize. I don't have that
16 right in front of me but I believe it was around that 70%
17 approval or I mean that they, majority of, 70% of the
18 appraisers were not in favor of not having the trainee exam
19 or having that not required. They're not an approval of the
20 reduction of the supervisor going out on inspections and not
21 in approval of reducing the requirements proposed in the ETP
22 training.

23
24 CS: Thank you. Representative Duba.

25
26 RD: Thank you Mr. Chair. Um, Ms. Gresh, I have a couple of
27 questions. First of all, we learned that there has, you
28 know, we know that we passed a, a bill, I can't remember the
29 name of it, SB whatever, that was specifically related to a
30 grant we got from the federal government.

31
32 SG: Uh huh.

33
34 RD: Was your association consulted or worked with in um, to
35 develop that new training program that will be partnering
36 with South Dakota State University? I'm curious, was there
37 feedback given from your group?

38
39 SG: Mr. Chair. Yes there was, there was, yes.

40
41 RD: Follow up. So now we come forward. We have new rules
42 that you just learned about, um, I think it was October 7
43 because I read all of your, your information and where are
44 these changes coming from? Are they coming from the federal
45 government or are they coming from the executive director of
46 the program in South Dakota?

47
48 SG: Mr. Chair. They would be coming from the appraiser
49 certification program.

1
2 RD: Okay. So one more follow-up. Did your group, you've
3 indicated that communications were sparce, did your group
4 have any input into these three changes at all?
5
6 SG: Mr. Chair. No we did not.
7
8 RD: Thank you very much. We appreciate that.
9
10 CS: Senator Wheeler.
11
12 SW: Thank you. Um, one of the proposed rule changes was
13 about getting rid of the exam required before starting hours.
14
15 SG: Uh huh.
16
17 SW: Um, what, why do we take the exam before the training
18 occurs or was there some sort of training that occurs before
19 they take the exam?
20
21 SG: Um, Mr. Chair, the complete, the trainee completes those
22 initial 75 hours of classroom and we've, you know, we believe
23 that for that, they need to take that, their, their, they can
24 go out and appraise with just that. We fill its important
25 that they take that exam to show that they do have some
26 competency to do that.
27
28 SW: Follow-up then so, it's a 75 hours of class-room
29 experience, or class-room time that they have and then they
30 take an exam, and then they can go get licensed. That's the
31 current process. Is that correct?
32
33 SG: Uh huh.
34
35 SW: Okay, what kind of, what kind of appraisals can they do
36 with that type of license?
37
38 SG: Amy, I will let you answer, please.
39
40 AF: Thank you, Chair. Um, they can do non-federally related
41 transactions. So if your, say getting a divorce and you need
42 to know the value of your property, someone with zero
43 experience and no supervisor with them. So the test is
44 basically a concepts test and it was agreed upon when the
45 state of South Dakota agreed that they would be able to
46 license registered appraisers. Cause most states start at
47 the license level and have three levels of it and we have
48 four and so it was agreed upon way back and it went through
49 the advisory council and it was, they just thought it, for

1 the public safety, that they just wanted to make sure that
2 the concepts were understood. It was just what the test goes
3 over.

4
5 SW: Thank you.

6
7 AF: Um, I'm hearing today that they're gonna keep the test
8 from what I'm, what I just understood but they're gonna to
9 put it at the end of your registered time so but then again
10 at the end, while you're being registered, if you want to go
11 to the next level, your taking more continuing education and
12 it's specific courses, that also have a test at the end.
13 Each, each class has a test at the end and then there's a
14 national exam at the three other levels that you take that's
15 a concepts test and so um, taking it at the end you're gonna
16 turn around and take another test that's national right after
17 that so to me it makes far more sense to make sure and also,
18 as a trainee, it, when you take the test you can find out
19 right away if this is for you. I mean if you don't get the
20 concepts, you might waste a year of your time doing, learning
21 something that you're just not going to be very good at and
22 you can figure it out, you and your supervisor might know
23 right away whether or not its for you, so.

24
25 CS: Senator Nesiba

26
27 SN: Thank you Mr. Chair and thank you good senator from
28 Huron as well. Ms. Gresh, how long did you work with Sherry
29 Bren?

30
31 SG: Um, Mr. Chair, I've had communication with her since I
32 first started in the appraisal profession at the initial
33 level in 2004.

34
35 SN: Mr. Chair, just a follow-up. Could you characterize, do
36 you think Mr. Bren would have been in favor of this, these
37 rule changes, or would she be opposed to these rules changes?

38
39 SG: Mr. Chair, I, I believe I cannot answer that, that would
40 be a question um, that Ms. Bren would have to answer. I know
41 that she would have counseled with us. Mr. Chair, can I
42 request um, since we've been addressing the training issues,
43 I would like to call on Mr. Craig Steinley for his comments
44 on regards, regarding that issue.

45
46 CS: A, we can't let, oh is there a follow-up to a.

47
48 SG: Oh, I'm sorry.

1 CS: Okay, Senator Steinhauer or, Senator Steinhauer and
2 then.

3
4 SS: Thank you Mr. Chair. Um, since these rules changes are
5 gonna be having a hearing at which time the final decision of
6 this committee is interested but actually there is a process
7 to handle rules changes that will be coming but, I'd just
8 like to understand if you would characterize the proposed
9 changes as making it easier to become an appraiser in the
10 state of South Dakota or more difficult?

11
12 SG: Mr. Chair, it would make it easier but not necessarily
13 better.

14
15 CS: Okay, um, Representative Otten.

16
17 RO: Thank you Mr. Chair, um, I think at the beginning you
18 had um told us but how many years you been in your position?

19
20 SG: I received my current certification in 2008. I started
21 the initial training in 2004.

22
23 RO: And in your position now?

24
25 SG: Mr. Chair, state certified general.

26
27 RO: Okay, Mr. Chair, during the process of time that you've
28 been involved in this and since there is no deviation from
29 the federal programs, have you ever seen, have there been
30 changes since you've got involved in this through the federal
31 end of this?

32
33 SG: Mr. Chair, yes there have been. Yes.

34
35 RO: Mr. Chair, and since there have been changes, how do you
36 begin to enact a change that would be different than what has
37 happened now.

38
39 SG: Mr. Chair, could Amy or possibly Craig address that?

40
41 AF: I'm not sure I understand the whole question in the
42 sense of, I mean when they federally mandated they, they
43 have a time frame that they are implemented and then the
44 state rules it all the way through to the end to all of us.

45
46 RO: So when you need a change, how do you begin to enact
47 that change at the federal level?

1 AF: At the federal level, sorry, Chair, at the federal level
2 um, they are constantly um, like the use PAP which is our
3 uniform standards. It is, it is gone over every year and if
4 there are changes to it um, they bring those forward and we
5 are required in our every two years of 28 hours of continuing
6 education and 7 of that has to be in use PAP and in South
7 Dakota it's, we have to take it in the first six months that
8 a new use PAP form has come through so that we're on the
9 current rules so every two years we get a new manual
10 basically and from that we have to take a seven, a full day,
11 a seven day course on it.

12
13 RO: Mr. Chair, what I'm alluding to is during these times of
14 changes as the feds are changing, there's a way for you to
15 get input into the system, correct?

16
17 AF: Yes, yes. Um, most appraisers are one person shops and
18 you don't think that your voice will be heard but if you are,
19 we are all told about them, sent e-mails from the ASC about
20 'em and you can go in and read the changes and give your
21 input and all of it is read and considered and so your voice
22 can be heard in that way, yes.

23
24 RO: Mr. Chair, so as this is going on, there, there is
25 constant input to you to somebody and somebody is returning
26 that input back to you, correct.

27
28 AF: Um, my input is being sent in and I don't know until,
29 until the standards come back out again, I don't know if any
30 of it gets implemented until that time so the feed back's
31 more of a one-way. I mean they tell us that they're gonna
32 make, that they're considering changes, you can make comments
33 on it but they then, they make the final decision about it.
34 When you get the book, you found out whether or not your
35 comments were put in it so.

36
37 RO: So what I've been alluding to is what is the difference
38 between what has been going on for quite some time, ten
39 years, whatever, 'til now. I mean where did the, I mean
40 where's it gone off the rails?

41
42 AF: Okay, so what I was talking about was on a federal level
43 and what, what's happened for our organization on the state
44 level is where the, the communication has stopped or is, has
45 seemed to not being existing anymore and so I think we were
46 talking about two different things in that sense so since the
47 last um, advisory council meeting was in February and it was
48 on Zoom, and there hasn't been once since then and we as
49 appraisers were not notified, haven't gotten any notification

1 from the state of South, the appraiser certification program
2 in South Dakota, about anything within the department, maybe
3 the change of the new executive officer but nothing along the
4 line of rules changes or any of that as a communication.

5
6 RO: So what I'm alluding to is as you get together with
7 these groups, surely you're talking about federal programs
8 during these conversations and how they would affect state
9 statute, so I'm missing on how we've gone off the rails here.

10
11 AF: Okay, well when we get together and talk about the
12 federally mandated ones, we talk about how it will affect us
13 but that we, they're federally mandated, we don't get to say
14 whether we want to do them or not. I mean it's just how are
15 we going to implement them within our organization and how,
16 how are we going to react to it but we don't get to have any
17 say in that. The South Dakota state rule changes are where
18 we would meet so like so the ETP program that's coming
19 through, they had experts that created it and forward the
20 suggestion as part of the grant and it's now been changed
21 from what was put through with the grant, to make in theory,
22 easier, to for someone to to do that and get through and, the
23 change from what was, from the beginning when they when they
24 got the grant to what it's finally coming out now in rule
25 what will actually happen, is where the communication broke
26 down because it's it's not how it was put forward at he
27 beginning and upon reading it was what was surprising to us,
28 what was no longer in the in the piece, okay.

29
30 Representative Duva,

31
32 Thank you Mr. Chair. So I'm gonna summarize and hope that
33 I've got it right, I think I did the first time, but to
34 summarize, the three main concerns that you have are to deal
35 with the changes that are occurring to this new uh, South
36 Dakota program that would be implemented from the department
37 of Labor and the executive director for state certification,
38 you participated in the original grant process and the
39 writing of the standards, after February of this year, you
40 had no communication until October 7, there were three
41 changes in there that you just learned of from this date of
42 South Dakota, and they were specifically to the program, to
43 not require the test to lesson or take the zero hours, and I
44 can't remember the other one, you put it very well in the
45 survey.

46
47 Mr. Chair, it's regarding reduction of some of the
48 requirements in the ETP program experienced training program.

1 Okay. So follow ups, uh Mr. Chair?
2
3 So the issues are not with the federal mandates, they're with
4 this new program.
5
6 Mr. Chair, correct.
7
8 Um and, they, these communication or the break in
9 communications started after your February meeting so March
10 going forward until October 7th?
11
12 Mr. Chair, correct.
13
14 Thank you very much, I appreciate that.
15
16 Mr. Chair,
17
18 Yeah we're gonna, let's see, okay we'll go to representative
19 Gross, and Senator Hunhoff and then I do wanna give them an
20 opportunity to to bring up the uh next testifier.
21
22 Okay.
23
24 Representative Gross.
25
26 Thank you Mr. Chair, now I'm gonna follow up on that just a
27 little bit, we've got some proposed rule changes in the
28 hopper for lack of a better term, that you have some concerns
29 about, do you think if implemented those rule changes enhance
30 the value of the appraisal report to the property owner or
31 lender or detract from the value of the report to the
32 property of or lender?
33
34 Mr. Chair, possibly detract.
35
36 Thank you.
37
38 Senator Hunhoff.
39
40 SH: Thank you, did you attend the public hearing on these
41 rules?
42
43 Um, no I did not Mr. Chair.
44
45 SH: You did not receive notice about the public hearing on
46 the rules package for these rules?
47
48 Um, not in a, we received notification, but we did not go to
49 the hearing. Our survey that we did for our group was still

1 because of the short notice was still being created being
2 asked by the members to to fill out and so we got the results
3 after um, on the 20th, and the final date to turn it all in
4 was the 21st so we put it together and then forwarded it on
5 to the hearings uh committee.

6
7 SH: just to be clear so the committee understands the
8 process, you were notified of the hearing, you chose not to
9 attend because you didn't have all your information, you do
10 have time after the hearing to submit written documentation
11 and you indicated that you did submit that written
12 documentation, thank you, I just want them to understand the
13 process, because the last step will be at the November
14 meeting, which you have opportunity to

15
16 Mmhmm.

17
18 SH: Come and provide testimony, am I correct?

19
20 Mr. Chair, correct.

21
22 SH: Thank you.

23
24 Mr. Chair, one more comment, we did notify the uh, department
25 too, we indicated uh, or the director, of the appraiser
26 certification we notified that we would be getting them um,
27 information at a later date, uh, due to us doing a survey and
28 not receiving proper notification in a timely manner of the
29 changes.

30
31 Okay, uh, we do wanna give them the chance to they wanted to
32 bring another person up here to one, briefly, okay.

33
34 Thank you Mr. Chair, and Ms. ?????? Um, Gresh. It's it just
35 sounds like that you were surprised by this rule change, how
36 would you characterize the change from the last director to
37 this director in terms of communication between your
38 organization and the director?

39
40 Mr. Chair, we had very open communication, um, as I uh,
41 expressed in my opening statement, um, we we um, had good
42 collaboration, um, our, we were counseled, um, to get our
43 opinion as to what the industry would think or you know,
44 about the proposed changes and we had input, um, so it was a,
45 it was a very open communication.

46
47 Just just to follow up to that. That, in your fifteen or
48 sixteen years of of working with the department, have you
49 gone through multiple rule changes during that period?

1
2 Mr. Chair, yes we have. I would say approximately ten to
3 twelve.

4
5 Okay and Mr. Chair, Just a final thought, follow up, so this
6 really was a change in communication, a change in the way
7 that you had been doing business with the department over the
8 last fifteen years?

9
10 Since it was implicate, implemented yes.

11
12 Okay, uh, can

13
14 Okay, I would like to call Mr. Craig Steinly, please? Mr.
15 Chair?

16
17 Thank you.

18
19 CS: Thank you Mr. Chair. Thank you Mr. Chair, my name is
20 Craig Stenly, I am a state certified general appraiser from
21 Rapid City, I'm a South Dakota through and through
22 individual, I was born in Bellfouche, I went to school at the
23 South Dakota School of Mines in technology, I served as a
24 assistant professor of math and computer science at tech, and
25 I chose at some point to deviate form acadamia and get into
26 uh, the appraisal business, my father had a real estate firm
27 so I'll let you draw the connection there if you would. Um, I
28 was first licensed in 1992, I have gone through all of the
29 levels in the program, from state licensed all the way up to
30 state certified general and have had quite an extensive
31 history with the department I am one of the um, contracted
32 use path examiner's, I receive work product from appraisers
33 as they try to upgrade or in the event of a consumer
34 complaint, uh that information comes to me as a contracted
35 use path examiner, uh, in redacted form and I'm asked an
36 opinion about whether or not the work product complies with
37 the minimum standards, a couple other things I wanna mention
38 before I give my comments about the ways in which the
39 industry has moved to offer alternatives to the experience
40 path that we're hearing today is the problem, I served with
41 the blessing of the department, with the help of the
42 department as um, a leader in the association of appraiser
43 regulatory officials, this is the group nationally like the
44 appraiser certification program states throughout the country
45 have um, if you will, the the uh, the regulators of lobbying
46 group although they don't lobby, um, but uh, arrow. A R R O I
47 served as the president in 2018, I'm currently the vice
48 president of the appraisal institute, you might be familiar
49 with the appraisal institute, it's the largest uh trade

1 organization for appraisers in the country, it offers the AMI
2 designation and the SRA designation uh for appraiser who
3 wanna further distinguish themselves, from the, uh, those
4 that are simply licensed at the state level, uh today my
5 role, I'm I'm not speaking for any of those groups but, I was
6 a twice past president of PASAD and I'm currently the
7 secretary/treasurer, and actually I wanna commend the
8 department in the past for, the way in which they've engaged
9 with the profession to try to find alternatives to the
10 experience requirement. Ms. Gresh held up uh, a document with
11 the yellow highlighting that shows how little flexibility
12 states have in terms of the process of becoming an appraiser.
13 There are really a number of components. You have to have a
14 formal education, for most of the licensing levels, you have
15 to have at least an associates degree uh, for the higher
16 levels, you have to have a bachelor's degree, so there's
17 formal education, there's appraisers specific education, the
18 number of hours vary with the path that you're on, there's an
19 experience requirement, and then finally there's the national
20 testing requirement. What you've learned today is that at the
21 entry level, or registered level, South Dakota is unique in
22 the sense that it's one of the few states to allow trainee's
23 without supervision, and that was done in a grand compromise
24 with the legislature when the program was first started. The
25 legislature said we need more appraisers but we need to
26 protect the public and so the thought was we'll allow
27 trainees unlike most other states, to do work independent of
28 the their supervisor, in non-federally related transactions,
29 but to make sure that their confident, to make sure they
30 don't show up on the door and say hi, I'm your appraiser and
31 this is the first time I've ever measured a house please be
32 patient with me, uh, the the the trainee exam is in place in
33 South Dakota uh, to, to assure that minimal level of
34 confidence can be taken an unlimited number of times as
35 you've heard today, that's different than the national exam
36 at the end of the process of getting your experience. You
37 cannot get around the national exam for the state license,
38 state certified general or state certified residential
39 levels. Appraiser practitioners in South Dakota are the ones
40 that have brought forward the experience training program
41 idea, which is, an alternative to the only federally
42 recognized way to gain experience, the federally recognized
43 way is the apprenticeship model. You have a supervisor and you
44 have a trainee, and appraisers in South Dakota working
45 through PASAD and with the department had an idea to do
46 something called an experienced training program which would
47 allow the state to uh, meet federal requirements but in a
48 very creative way. The, the department and um, and the
49 executive director at the time, Ms. Fran, helped us with the

1 federal grant application which the state had to do, that
2 could not be done by the profession, uh, and that's just one
3 of several examples in the correspondence that Ms. Kresh sent
4 you today, they are, there are really five different things
5 that are outlined, including a program called Peria, which
6 she mentioned, which is simulated experience at the national
7 level, it's another program a creative program that was
8 designed to get around this supervisor training model, that's
9 simulated experience like when pilots, uh, get their
10 experience or when Senator Huff, Hunhoff mentioned she was in
11 medical preps a nurse when nurses get their experienced
12 simulated at times, uh, that's what Peria is about, the South
13 Dakota experienced training program was designed to be an
14 actual supervisor that was a full time supervisor paid by the
15 state, and now by South Dakota State University and
16 collaboration with that group to give a class of roughly
17 twenty people at a time, the experience that they need. And
18 the federal government saw that as a really a great pilot
19 program, put their money behind, so that other states might
20 be able to copy that. And the concern you heard today from
21 Ms. Kresh is that the people who were asked to design that
22 program, to make sure that when they come out, these trainees
23 can serve in rural communities, that they know how to handle
24 excess acreage at the home place, that has a huge out
25 building, those are very difficult appraisal challenges,
26 those are not things that you just credential a bunch of
27 people and put them on the street, because people with
28 minimal experience go where the work is, they're gonna flock
29 to Rapid City or Aberdeen, or Sioux Falls, where there's a
30 lot more easier tracked housing type appraisals, so the
31 experienced training program was designed to confidently
32 bring people through the system to bypass the traditional
33 supervisor training model, and to put them out there in a way
34 that they can actually help lenders in small communities,
35 that they can actually appraise that two thousand acre
36 parcel, with the home place, that they can provide business
37 capital start up funds with the appraisals that they do in
38 small community which are much more difficult, the solution
39 is not just to put more people on the street, the solution is
40 to make sure that they have the training that they need to do
41 things, that benefit the small communities of South Dakota.
42 So we're pleased with the options that have been forth, the
43 department had cooperated significantly, we're just concerned
44 about the communication change as of February, and rule
45 changes that industry didn't weigh in on, that suddenly
46 offend the move, move the chairs on the deck, if you will. We
47 have never in the past, the appraiser industry has never in
48 the past commented on rules because the regulator and the
49 industry work together to craft the rules in advance that

1 were fair to the public and fair to the profession. This is
2 the first time that we've ever been at odds with the
3 regulator uh, in the process that has been put forth, so
4 we're hoping for the collaborative spirit to return, I enjoy
5 working with the department, I think that um, they're often
6 able to take comments from the profession and implement those
7 in the very narrow window that states have to control this
8 process that was started um, as representative Gross said, by
9 the savings so long crises and the resulting for
10 realegislation in 1989, we're happy that you were able to
11 listen today, appraisal is so federally complicated, that
12 when we come to you, with legislation, we often don't get
13 this opportunity to go into such great detail, about the
14 process of becoming an appraiser.

15
16
17 That's wonderful.

18
19 Okay, you're microphone's on, uh, any questions or comments?
20 Senator Wheeler.

21
22 SW: Thank you, thank you. So, where is the bottle that
23 created, why do we have this problem with the lack of
24 appraisers in South Dakota, is it just the federal
25 regulations, um, uh and we just can't get around that, uh,
26 how would PASAD answer that question in terms of, what are
27 causes the bottle neck to create the lack of appraisers in
28 South Dakota?

29
30 Chair, I'll refer that to Mr. Seinly, kindly answer.

31
32 CS: Mr. Chair, with your permission? Um, the bottle neck to
33 get into the profession is the traditional supervisor
34 training model that's mandated by the federal government.
35 That's where the bottle neck occurs and as you saw in our, in
36 this survey of the professionals, that changes that our
37 proposed in rule, really don't get at the problem, they don't
38 get to the barrier to entry, um, and in fact, in some ways
39 they jeopardize, at least in our opinion as industry
40 professionals, they jeopardize the safe guards that are in
41 place. We would like instead for the department to focus on
42 eliminating or reducing that supervisor training barrier, we
43 want them to get behind Peria as as it is proposed, currently
44 South Dakota is not a state that has rules in place to accept
45 Peria, twenty states do and we'd like South Dakota to do
46 that, um, and as far as the experienced training program, up
47 until the change uh that occurred that you've all heard
48 about, you know, we there was a hundred percent, uh effort
49 behind that program to show uh, with South Dakota ingenuity

1 what can be done to uh, bypass federal federal problems that
2 are, that exist, uh, you can lobby at the federal level as
3 the questions came earlier, you can lobby for those changes,
4 but we've been doing that, I have, since the 1990's that's a
5 slow way to change things, uh and so I appreciate the
6 department's flexibility in allowing appraisers in South
7 Dakota to be creative and to propose things that the federal
8 government says, yeah, we'd really like to try that as a
9 pilot program.

10
11 Representative Gross.

12
13 RG: Thank you Mr. Chair. I appreciate and understand your
14 description of the bottle neck, is it significantly worse in
15 South Dakota than any other states because as I understand
16 it, the federal requirements, uh the bottle neck is pretty
17 universal, but are we dealing with it moreso than other
18 states significantly?

19
20 CS: Mr. Chair, the bottle neck in South Dakota is more
21 pronounced due to the rural nature of the state. If I'm in
22 Pennsylvania, or if I'm in California, I can have an
23 appraisal business that can take on trainees because there is
24 work within a two mile radius that I can send those trainees
25 to. Our geography here is different, rural states typically
26 have a more pronounced problem because if I live in Britton,
27 and I wanna become an appraiser, if Sandy is not inclined to
28 help me with that, um, I'm not able to find a supervisor with
29 the geographic confidence to help me through that, I can find
30 somebody perhaps in Sioux Falls, or Rapid City, but I live in
31 Britton and I want to practice in Britton, and uh, so the,
32 the current model is the issue for small town USA.

33
34 Representative Duba

35
36 RP: Thank you Mr. Chair, um, thank you very much for that
37 detailed explanation, I had the opportunity to go out and
38 listen to the hearings of the senate bill that you're that
39 uh, the executive director Sherry Bren presented on I believe
40 January 25th in the Senate, I think a week later in the
41 House. Past almost unanimously in both houses, and again, I
42 ask you again, the information in the construct of the
43 training program, was a collaboration between the executive
44 director and your organization, correct?

45
46 CS: Mr. Chair, that is correct.

47
48 RP: Wonderful, and the three changes that you outlined in
49 this survey those were, those were recommended and suggested

1 will be heard in the rules committee, or have been, those um,
2 those were, those were not presented to you until October 7th
3 so you've had, you really pulled together a very quick survey
4 and comment which we all have access to by the way, I would
5 recommend if you didn't have a chance to look at them, read
6 em. They're informative. Those those and you are now aware of
7 the hearing in November are you planning to attend that
8 hearing?

9
10 Mr. Chair, yes.

11
12 RP: Thank you very much, appreciate that.

13
14 CS: Senator Nesiba

15
16 SN: Thank you Mr. Chair, and uh, and a question for Mr.
17 Steinly, are consumers being put at risk by the changing of
18 the timing of this exam, so my understanding was the exam was
19 done early to allow people to practice while they were in
20 this training process, but now, uh, would they still be
21 allowed to practice even before they take the exam, I'm
22 trying to understand uh, that it sounded like it was a
23 compromised that you have to take the test but will allow you
24 to to practice without being licensed, but now the exam is
25 moving to the end of the process.

26
27 CS: Mr. Chair. I'm not familiar with where the exam is gonna
28 be moved because the administrative rules say it's been,
29 they've struck it out, it's gonna be eliminated so I'm not
30 familiar with uh, what the secretary said earlier, I would
31 like to know more about that, I can say this, that, at a
32 trainee level, which is called a state registered permit,
33 these people have no appraisal experience whatsoever, they
34 pass 75 hours essentially two weeks of training. Um, and at
35 that point, the legislature in the 1990's when this program
36 was set up reached what I called the grand compromise, we
37 want trainees to be able to do work for non-federally related
38 transactions on their own, but we want to protect the public
39 and so the protections is the exam. It's as I said, it's the
40 exam that you can take an unlimited number of times but you
41 have to pass. That, was a reasonable compromise and the
42 industry was, willing to go along with that, if you remove
43 one of those pieces, now it seems like you have to deal with
44 the other piece as well. And so your question is about are
45 our consumers at risk, uh, I won't pass judgment on what the
46 legislature did in the 1990's, but certainly it's being
47 changed now and there has to be some unintended consequences
48 of that, if you take away part of that agreement but not the
49 entire agreement.

1
2 SN: And just a follow up, Mr. Chair. So is that, was that
3 put into statute in the 1990's and we're trying to use rules
4 to to change statute, that doesn't seem like that will work
5 and I haven't uh, gone back to look at the the codified law
6 in this, but, um, yeah can you just comment on that?

7
8 CS: Mr. Chair, I believe we're talking about mostly
9 administrative rules, 36-21B offers the department of labor
10 and regulation and formally, the department of revenue before
11 that, we've been housed in a number of different locations
12 but, uh, to promigate rules, to affect these kinds of things,
13 and I think the way the trainee program works is most likely
14 in rule

15
16 SN: Mr. Chair, and just thank you for that clarification so
17 the original agreement in the 1990's was about rules, it
18 wasn't a statutory agreement, it was an agreement that
19 expressed itself through our our rules making and it's these
20 rules that are now being proposed to be changed, okay thank
21 you.

22
23 Mr. Chair

24
25 CS: And representative Duba, we're gonna try to take a break
26 roughly around ten o'clock.

27
28 RD: Okay. I actually have question for Secretary Hultman??

29
30 CS: Okay, let's well, were there anymore questions uh, for,
31 appraisers at this time, okay.

32
33 RD: I can hold that until after ten o'clock if that's what
34 you want?

35
36 CS: Um, no, no let's do the question now, then uh, Ms.
37 Hultman.

38
39 RD: Thank you madam secretary, um so what we've heard today
40 is that, after February, there, um, there's been a lack of
41 communication uh from, the executive director to PASAD and
42 we're also hearing that there were rules changes that they
43 were not made aware of until very recently, were you aware of
44 this situation that has occurred between these two groups?

45
46 MH: Mr. Chair, again Marcia Hultman, Secretary of Department
47 of Labor and regulation, as I mentioned in my comments, we
48 um, we're aware when we received the letter that you've
49 received about our lack of communications to PASAD, we met

1 the legal requirements for notification on our rules, so just
2 to be clear, um, they were properly publicly noticed, as a
3 courtesy in the past, PASAD was also provided with separate
4 notice, and we missed that step, yes we have a new executive
5 director, um, I've apologized for that oversight and we're
6 committed to making sure that happens in the future, I can't
7 undo what just recently happened um, even since we received
8 the letter we've reached out to PASAD um, want to visit about
9 the comments from the survey and see if there's room for some
10 negotiations, edits, changes, we're open to that because
11 that's what the purpose of public comments are, those rules
12 are scheduled for rules hearing as appropriate, um, and we
13 look forward to the opportunity to visit with them prior to
14 that happening.

15
16 Follow up?

17
18 RD: Was there, so PASAD has indicated in the past they were
19 very collaborative, with the executive director and the
20 department of labor, but these changes have occurred from
21 March, going to now, and, and PASAD was not included in that
22 process, is, uh is is that part of the apology that you just
23 gave or is that normal course of business that that would not
24 happen?

25
26 MH: Um, Mr. Chair, I'm cannot be familiar with exactly what
27 normal course of business was, but as we're learning, we're
28 changing, um, it's a fairly short time since March, and we do
29 have a new executive director and we're going through the
30 process of learning the proper way to do things, so yes
31 apologize for the lack of communication and we look forward
32 to collaboration, I know that, in the industry change is hard
33 and we're just looking at positive way to improve access to
34 this profession.

35
36 RD: I have no more questions.

37
38 Now is an appropriate time to take a break, we'll meet back
39 here in uh, let's going fifteen minutes, ten fifteen.

40
41 Government Operations and Audit is back in order. Up next, we
42 have the Office of Risk Management to discuss a public entity
43 pool for the liability fund.

44
45 CA: Good morning Mr. Chair, uh Craig Ambach, executive
46 director of the Office of Risk Management, I don't have a
47 prepared speech for you this morning, I'm here before you to
48 answer questions, I would like to make an introduction uh, to
49 my left is Mr. Rob Anderson, he's the general counsel to the

1 people fund, I invited him here this morning in case there's
2 a question that he would be better equipped to answer than
3 myself.

4
5 CS: good morning, could we have you give a brief background
6 on the fund itself?

7
8 CA: The public entity pool for liability is a self funded
9 pool that was established in 1987 due to very rising costs
10 and the commercial market, it provides liability coverage for
11 negligent tort claims for our state employees that are in
12 ministerial position. It also provides law enforcement, med
13 now, some med now directors and officers, um employment
14 practices liability and errors and admission liability.

15
16 CS: Okay so you said it's self funded, do the, so are the,
17 can you explain how, where the money comes from exactly what
18 the fund, to fund the

19
20 CA: Mr. Chair, I'll do my best, um, I may need to, to have
21 some assistance from BFM, it is a self funded pool that I
22 haven't actuary, that, analyzes the fund and claims in
23 reserves every year and then makes a recommendation, for
24 general liability, an auto liability in regards to a bill
25 back rate per FTE.

26
27 CS: Okay so its uh, based on the recommended funding for the
28 year, it comes form the general fund uh?

29
30 Mr. Chair.

31
32 It's an internal service fund within state government so if
33 they bill the user agencies um, for the services.

34
35 CS: And that would be the agency that would have a claim the
36 funding would then come from that agency?

37
38 I think it's based on what Craig just testified the actuaries
39 based on their recommendation, the billing is established to
40 fund a plan throughout the user agencies that make up the
41 fund, that the fund covers.

42
43 CS: And uh, and this is, and the topic of interest, uh,
44 there was uh, two hundred thousand dollar claim made to an
45 individual um, that would have, did that come from the
46 department of labor, then?

47
48 CA: Mr. Chair, that, that payment came from the people fund.
49 Not from the department of labor. I would like to clarify

1 that the department of labor per FTE, contributes annually
2 into the people fund.

3
4 SW: Mr. Chair.

5
6 CS: Senator Wheeler.

7
8 SW: Thank you. Can you explain generally how the claims
9 process works, and, uh, does the office of risk
10 management provide the defense uh, to the claims, does the
11 people fund that provides the defense, uhm, and uh who you
12 know what uh, kind of which office manages or defends the
13 claim uh made against the state?

14
15 CA: Mr. Chair, there were a lot of questions in there but
16 I'll do my best um, claims are presented to my office,
17 claims, lawsuits, um, against state employees, and it is the
18 public entity pool for liability that provides the financial
19 backing to defend those claims with my oversight and
20 management. I hope that answers your question.

21
22 SW: That does, um, and who makes the determination to settle
23 a claims?

24
25 CA: Mr. Chair, I have sole discretion in regards to settling
26 claims, lawsuits, against the state employees.

27
28 CS: Representative Gross.

29
30 RG: Thank you Mr. Chair. In this particular instance we're
31 talking about, the two hundred thousand dollar settlement,
32 who initiated the claim to you? Who submitted that claim to
33 you?

34
35 CA: Mr. Chair, if I may? I received an EEOC charging
36 document from the bureau of human resources.

37
38 RG: Thank you.

39
40 SW: Mr. Chair.

41
42 CS: Senator Wheeler.

43
44 SW: Thank you, I'm still trying to make sure we kind of get
45 our head on the process, once you've received that, you
46 become solely responsible for the claim, your office does,
47 um, do you collaborate with the agency, do they have input
48 on, rather or not a settlement is made?

1 CA: Mr. Chair, if I may. Once that uh, claim came to my
2 office, I had no communications with the department of labor.
3 I wont say that in my thirty six years, that at times I don't
4 consult with an agency in this particular matter, I did not.
5 And I immediately hired counsel. To be able to respond to the
6 charging document.

7
8 SW: So you hire, uh, an outside counsel or state counsel?

9
10 CA: Mr. Chair, I hired private counsel.

11
12 CS: Representative Gross

13
14 RG: Thank you Mr. Chair, what in that claim triggered you to
15 hire outside counsel? What caused you to say I need outside
16 counsel on this particular case?

17
18 CA: Mr. Chair, it was an EOC charging document of age
19 discrimination and it has to be responded to, therefore, I
20 hired counsel to uh, handle the response.

21
22 RG: Follow up.

23
24 CS: Yup.

25
26 RG: Do you hire outside counsel on all EEOC uh claims?

27
28 CA: Mr. Chair, if I may, I'd have to go back and look but I
29 think as I sit here today, it's safe to say that I have
30 retained counsel on all EEOC charging complaints.

31
32 RG: Thank you.

33
34 CS: When you hire outside counsel, is that an additional
35 cost then for in every case? Or is that already built in to
36 the budget?

37
38 CA: Mr. Chair, uh, as I mentioned earlier, the people fund
39 has a million per occurrence, for negligent tort claims,
40 attorney fees are outside that mil per occurrence. So I would
41 classify it as additional.

42
43 CS: Let's see, I thought I seen Senator Nesiba move first
44 unless your.

45
46 SH: I'll go first.

47
48 CS: Okay. Senator Hunhoff.

1 SH: Thank you, I just wanna go back so I understand the flow
2 here. So when you asses the agencies on the per employee,
3 that, those dollars flow into the peoples fund and that's
4 what supports the fund?

5
6 CA: Mr. Chair, I wanna be clear, I don't do that, BFM does,
7 but I think your flow is accurate senator.

8
9 SH: And I, I'm not.

10
11 CA: For the most part.

12
13 SH: Okay, thank you. And I'm not saying that you control, I
14 just meant that's where the source of the dollars come to
15 build the fund to cover for the costs, that's what I'm trying
16 to understand.

17
18 CA: Mr. Chair, same answer that, that is correct.

19
20 SH: Thank you. So then, do you in your department, plan a I
21 can't remember cuz um, very seldom do you show up before our
22 committee, so I'm just trying to understand then, you're on
23 an annual basis, you keep so much in that fund, it just
24 builds up if there's not claims paid out, or is there a cap
25 on it?

26
27 CA: Mr. Chair, if I may, the contribution per FTE that comes
28 into the people fund determined by an actuary and agreed upon
29 by the bureau of finance and management, also have federal
30 funds attached.

31
32 SH: Right, okay.

33
34 CA: With them, so there is federal oversight of the fund,
35 and we can't just capitalize it like a private insurance
36 company.

37
38 SH: Okay.

39
40 CA: There are some checks and balances in controls in
41 regards to the reserves.

42
43 SH: Yes, okay. Thank you.

44
45 CA: If that answers your question.

46
47 SH: It absolutely does and that's what I was looking for,
48 thank you. Just one other if could. So the question was
49 asked that you obtained legal counsel for EOC claims, based

1 on past history and and the type of thing that's involved. So
2 nothing is atypical that was done coming to risk management
3 with this grievance or complaint or whatever we're calling
4 it. The normal process was followed on just as the other
5 ones, if you had them in the department, is that correct?

6
7 CA: Mr. Chair, if I may. That is correct.

8
9 SH: Thank you.

10
11 CS: Senator Nesiba.

12
13 SN: Thank you Mr. Chair, and, and I'm, I'm glad that the
14 good, uh, senator from Yankton asked those questions, I think
15 maybe just to back up, could you remind us sir if there is
16 somebody from BFM in the room, uh, to be able to talk about
17 it, just what is the annual budget for the people fund and
18 then, about how many claims per year come out of that people
19 fund as well, and people is P E P L um, maybe just explain
20 what that acronym is as well thank you.

21
22 CA: Mr. Chair, if I may. I don't know if there's anyone from
23 BFM in the room, um, I don't have with me today, annual
24 amount of claims, I was not asked for that information. We
25 could get that if you request it, for a certain time period.
26 I do not have that with me today.

27
28 SN: Mr. Chair I think I might be able to dig that up and
29 share from the go act blue book, I can pull that fund up if
30 that's identified in there.

31
32 CS: Um, um, how common are these type of payments like with
33 you know, for employee issues, like when you know is there
34 departments that have more cases or I mean is it you know, I
35 just kinda wanna make sure there's not like uh, it's not like
36 a pattern that you know, we have these type of, type of
37 issues going on?

38
39 CA: Mr. Chair, If I may, I'm trying to understand the
40 question, um, we have departments that have more exposure,
41 then other departments, law enforcement, DOT with a lot of
42 equipment, uhm, game fish and parks, with park and
43 recreations a lot of activity, board of regents with a lot
44 activities on their respective regional campuses, so there
45 are some departments agencies that have more exposure than
46 others. Does that answer your question?

47
48 CS: Kind of, I mean is uh, like have there been other age
49 discrimination payments or um, any type of you know um, I

1 mean similar issues with employment like like the one we're
2 discussing today.

3

4 CA: Mr. Chair, if I may. Um, and I don't mean to pause to be
5 inconsiderate I'm trying to think through the question, I
6 don't know that I recall one with age discrimination but I do
7 recall other EEOC charging documents and you probably all
8 remember back in 2018 I made a determination to try one of
9 those cases up in Aberdeen, it did result in a 1.3 million
10 jury verdict and an additional almost six hundred in
11 plaintiff and attorney fees.

12

13 CS: Okay, uh, Tim Flannery's gonna ask or answer, the
14 previously asked question.

15

16 TM: Senator Nesiba, this is the cash basis accounting for
17 the people fund over the last four years, up on your screen,
18 so in fiscal year 2021, they had total revenue of 1.4
19 million, they had expenses of 2.7 million. This is cash
20 basis, doesn't consider potential liabilities out there.

21

22 SN: Mr. Chair.

23

24 CS: Senator Nesiba.

25

26 SN: Just a question for Mr. Flannery, so the payment that
27 we're talking about today is that reflected in this document?

28

29 TM: Let's see I'm trying to think of the date that occurred.
30 This, this docu, this goes through June 30, of 2021. So it
31 might have occurred after the end of fiscal year 21 if I'm
32 not mistaken.

33

34 Or March.

35

36 TM: Was it March?

37

38 Yeah, yeah.

39

40 TM: Yeah it's in there. If it occurred before June 30 of
41 2021 it's in here.

42

43 SN: Under what category?

44

45 TM: I'm not, I'm not certain.

46

47 What's the date reflect?

48

49 That's the date of the

1
2 You might want to tell who it is, fiscal year.

3
4 CS: Okay.

5
6 CA: Mr. Chair, if I may. It is included on page five of the
7 reinsurance for general liability that I provided to the
8 committee. Fourth item down.

9
10 CS: Of which document.

11
12 That's the date of the occurrence, that's the date of the
13 payment was.

14
15 SN: I'm sorry Mr. Chair, which document and which page of
16 that document, I'm lost

17
18 CS: Hold on.

19
20 SN: Okay thank you.

21
22 The event date was twelve one of twenty.

23
24 CS: Um, can we clarify that the payment um, the line of the
25 payment and what we're observing here.

26
27 TF: This is a report that was prepared by Mr. Ambach listing
28 the, over the last three years all the general liability
29 claims paid out of the people fund and there's two types of
30 liabilities paid out of the people fund, general liability
31 and auto liability. This report lists the general liability
32 claims paid over the last three years. And on, you'll see on
33 page five of six, the payment of for a hundred and fifty
34 thousand dollars.

35
36 CS: Representative Gross.

37
38 RG: Thank you Mr. Chair. With that in front of us, the
39 nineteen thousand and one fifty one, is that the amount paid
40 to outside counsel then? That was involved in this situation.
41 The fifty thousand was paid to the claimants counsel is my
42 understanding. What was the nineteen thousand our expense for
43 hiring outside counsel to deal with it?

44
45 CA: Mr. Chair, if I may. Without having the file in front of
46 me, the majority of it probably is outside attorney's fees,
47 there could also be some adjusting fees, um, travel costs,
48 mediation costs, probably not a hundred percent attorney
49 fees.

1
2 RG: But for clarification, the bulk of that probably is
3 attorney fees then?
4
5 CA: Mr. Chair, that's probably fair.
6
7 RG: Than you.
8
9 CS: And then the total two hundred and nineteen, one fifty
10 one seventy two is the total fees related to that particular
11 case, right?
12
13 CA: Mr. Chair, that would be correct.
14
15 CS: Thank you.
16
17 SW: Mr. Chair
18
19 CS: Senator Wheeler.
20
21 SW: Thank you. Just to help, provide some general education,
22 could you explain what general liability covers, we're seeing
23 a lot of numbers on here, a lot of small dollar figure
24 settlements, what kind of cases fall under general liability
25 that you'd be settling?
26
27 CA: Mr. Chair, it would be any negligent uh, tort claim that
28 doesn't involve a state automobile. Uh, trip and falls, slip
29 and falls, um, dog bites, I mean, mechanical injuries just
30 about anything you can think of that does not involve a state
31 automobile to include the EPL, the employment practices
32 liability claims that I mentioned earlier.
33
34 SW: When uh, and, as an attorney I know that it's a the
35 decision to settle a case or go to trial is a difficult
36 decision to make, every case is unique and there's a lot of
37 risks involved in that, could you talk in general to the
38 committee about your process for making that determination?
39 How do you make that decision and when to go to trial, when
40 to settle?
41
42 CA: Mr. Chair, I may, that's a fair question, senator, I did
43 mention a case earlier in twenty eighteen that I made a
44 personal decision to try um, there's always a cost benefit
45 analysis that goes into determining the settlement of any
46 claim, dispositional of the lawsuit and I'm not going to get
47 into the specifics, of exactly what that entails, in general
48 terms and my determination on this specific case was
49 discussed with counsel.

1
2 RA: Mr. Chairman can I comment briefly?

3
4 CS: Yes.

5
6 RA: I've instructed Mr. Ambach not to talk

7
8 CA: could you say your name again?

9
10 RA: Oh yeah Rob Anderson, I'm general counsel for the people
11 fund Mr. Chairman. Um, discussions with the attorney hired to
12 defend this case investigate it, attend the mediation and
13 consult with him are subject to attorney client privilege and
14 we don't want to disclose any part of that for fear of
15 disclosing or waiving that privilege, so I have instructed
16 him not to discuss passed the detail he just did.

17
18 CS: Senator Nesiba

19
20 SN: Thank you Mr. Chair, and I think this is a question for
21 Mr. Ambach, but it might be a BFM how do we decide whether
22 somebody get's paid out of the, the PPLE fund or the
23 extraordinary litigation fund which we also backfill every
24 year in the legislature?

25
26 CA: Mr. Chair, if I may. Um, Senator, I make that
27 determination if it's eligible to be under the people fund,
28 that's where it gets placed, if it is not eligible to be
29 under the people fund, another words if there isn't a state
30 employee named as a defendant then it would go over to ELF.
31 Another words lawsuits or claims against the state um,
32 injunctive relief type claims, things of that nature, but I
33 make that determination.

34
35 CS: Okay Representative Gross.

36
37 RG: Thank you and if can follow up on that sir, you
38 mentioned a one you've litigated in 2018, of, that was a
39 large number, I don't see that on this list. Is that why it
40 was, was your previous explanation part of the reason for
41 that?

42
43 CA: Mr. Chair, if I may, the request I received from the
44 committee was for the three years, that case was settled
45 outside the parameters of the request. If the request would
46 have went further, it would show up.

47
48 RG: Okay yeah, I was just looking at the dates on the left
49 there going back to 2017. Thank you. .

1
2 CS: Further questions or comments from the committee on the
3 people fund? Okay, with that, we thank you for coming here
4 today and appreciate you answering our questions.

5
6 RP: Mr. Chair

7
8 CS: Representative Peterson.

9
10 RP: Thank you Mr. Chair. Uh just a couple general type
11 questions, it seems like I read somewhere that the, the limit
12 on this is a million dollars, is that correct, I'm not
13 finding where I saw that but it seem like I read that
14 somewhere.

15
16 CA: Mr. Chair, if I may, that is correct. It's in the
17 coverage document also that I provided to the committee.

18
19 RP: Thank you, Mr. Chair follow up.

20
21 CS: Go ahead representative Peterson.

22
23 RP: So there, was a claim that happened to go over the
24 million dollars, how would that be covered, do you have an
25 umbrella, policy or some sort of other way that you cover
26 those?

27
28 CA: Mr. Chair, if I may, I can only respond to how that
29 particular claim that went over a million dollars was
30 handled, because there would be different ways in which you
31 could look at it, but one million came out of the people
32 fund, the remaining balance came out of the extraordinary
33 litigation fund and then the people is reinsured at five
34 hundred thousand so there was a reimbursement from
35 reinsurance on that one million. If, as I sit here today, I
36 don't recall the exact figure, but I believe it was close to
37 about six hundred fifty thousand in reimbursement.

38
39 RP: Thank you, Mr. Chair, one or two more questions, please.

40
41 CS: Okay. Go ahead representative Peterson.

42
43 RP: Thank you. So I'm just, these are more just general type
44 questions, but I'm looking at the um, the auto liability as
45 well and from your explanation, I'm understanding that that's
46 these spreadsheets pertain to negligent tort claims, and, so
47 that would be then my understanding payments to whoever the
48 claimants would be, but what if there was an injury to, say
49 the state employee who was driving one of these vehicles, is

1 there coverage that would cover their injuries or how is that
2 handled?

3

4 CA: Mr. Chair, I'm gonna refer to counsel on that. His
5 response is outside my expertise.

6

7 RA: Mr. Chair, to answer that question there's two
8 exclusions that are contained in the memorandum of coverage
9 which is part of the documents that apply here, and if a
10 state employee is injured and it's within the course and
11 scope of their employment, they'd be covered by workers
12 compensation uh, the two exclusions exclude anybody who's
13 covered by workers compensation and anyone who is a state
14 employee, so those are, those are excluded uh, under the
15 terms of the memorandum of coverage. Now, I think that
16 response to representatives question.

17

18 CS: Representative Peterson.

19

20 RA: Thank you. Follow up on that, so what I'm understanding
21 is that, those types of claims would be covered under workers
22 comp, not on the auto spread sheet. Is there some sort of
23 spread sheet or record of workers comp's claims that we could
24 have?

25

26 CA: Mr. Chair, I'll defer to counsel again, that's outside
27 the perview of my office.

28

29 RA: Yes the uh, Mr. Chair, the workers, state employee
30 workers compensation plan is administered by the bureau of
31 uh, human resources and a separate plan, under a specific
32 section in Title 3 of the South Dakota code, so Mr. Ambach's,
33 Ambach's office would not have documentation or figures
34 relating to that.

35

36 RP: Mr. Chair.

37

38 CS: Yeah representative Peterson.

39

40 RP: Thank you, but what I'm hearing you saying is that
41 information should be available through the bureau of human
42 resources, is that correct?

43

44 CA: Mr. Chair, I can only assume so but I don't know that.

45

46 CS: Okay. Yeah representative Peterson, I encourage you to
47 maybe check with a, or have Mr. Flannery check with a, human
48 resources if we could get that information.

49

1 RA: Yes. Thank you.
2
3 CS: Yup, thank you. Senator Nesiba.
4
5 SN: Thank you Mr. Chair, just a couple more questions. Mr.
6 Ambach, is this two hundred and nineteen thousand dollar
7 claim, is that the biggest claim in the last four years?
8
9 CA: Mr. Chair, if I may, we only printed out for the last
10 three years, per the request of this particular committee,
11 um, and I didn't study these print outs but I believe, I
12 believe that it is.
13
14 SN: Okay, thank you and I, I'm just looking at it myself. I
15 think it is the, the biggest, the biggest one on there as
16 well, um.
17
18 CA: Mr. Chair.
19
20 SN: And I am sorry, yep go ahead and then I'll come back,
21 and a question for Mr. Flannery.
22
23 CA: If I may follow up just for clarification, for general
24 liability it would be the biggest one for the three years,
25 but not if you look at auto liability also.
26
27 SN: Thank you for that clarification and then just a
28 question back to Mr. Flannery. So we can see this, in this
29 document here, I don't understand why it didn't show up in
30 the blue book but I'm not an accountant um, and so it might
31 be my own shortcoming that I didn't understand why it didn't
32 appear in the document that you had put up there earlier.
33
34 TF: You know I'm guessing it was just coded to another, one
35 of those categories, it's in there, it might not be under the
36 benefits you expect, um, maybe under personal services or
37 something. I'm not certain how it was coded.
38
39 CA: Um, so then I don't know for sure on that.
40
41 VC: Mr. Chairman
42
43 CS: Representative Gross.
44
45 RG: Thank you, I'm still a little confused on the dates on
46 this report. We asked for the last three years but we've got
47 stuff on here, is there, is this the three years of when they
48 were paid out, or when they, cuz we've got, all we've got is
49 an event date not when the payments were made and we're, I

1 think what's confusing us on this list a little bit is we've
2 got event dates going back to 2017 but we don't have a payout
3 date maybe.

4
5 CA: Mr. Chair, if I may. That's a very question Senator.
6 We had to actually uh, make this, a, document for purposes of
7 this committee. My REMS, it's a risk insurance management
8 system, tracks everything by event date. This committee asks
9 for only settlements so we had to go back and screen all the
10 settlements within the last three years, which are included
11 in this document, but the event date is when it actually
12 occurred.

13
14 VC: For clarification, does this include events that go
15 beyond what we asked for? The three year period?

16
17 CA: Mr. Chair, no.

18
19 RD: So the payouts in the last two . . .

20
21 CA: Mr. Chair. Senator Duba is accurate on that.

22
23 CS: Senator Wheeler.

24
25 SW: Thank you, yea you mentioned reinsurance and I think it
26 would be good so people understand the financing of the pool
27 a, how does reinsurance work in reference to the people fund?

28
29 CA: Mr. Chair, if I may, and that's a very good question, as
30 I indicated we got a million per occurrence in the first five
31 hundred thousand is out of the pool. That's on us. Anything
32 after that is reinsured with Great American and I negotiate
33 that contract and coverage with them every year. And
34 anything that goes over five hundred thousand we can submit a
35 reimbursement. Not only for the indemnity, but also for our
36 expenses.

37
38 SW: Thank you.

39
40 CS: Further questions from the committee for, for the People
41 fund. Alright, I think, I think we're a, don't see anyone
42 online with their hand raised, so okay. Thank you, thanks
43 again for doing that. Appreciate you getting the report
44 ready for us too and um, now I'm gonna ask was there anyone
45 who signed up for public testimony related to the first three
46 topics that hasn't testified yet. Okay. State your name
47 for the record and go ahead.

1 DW: Thank you Mr. Chairman. I'm Daryl Washechek. I'm a
2 state certified general appraiser out of Nemo, South Dakota.
3 Black Hills region. I had no intention of speaking today but
4 a, listening to the testimony this morning I just wanted to
5 comment on the, kind of the breakdown of the communication
6 between the department and the appraisers in the state. Um,
7 I have had the privilege a, to serve on the, to serve the
8 department as an advisory council member and um, yea we
9 haven't had any input into this certification program since
10 February. It was the last time we had been notified about
11 anything. Um, even the rule changes. We didn't even get
12 notification of that. But a, it's been a, this is my second
13 term and this advisory council and I'm hoping the secretary
14 puts this back into place. This is an avenue for like the
15 PAASD Association to relay what the appraisers are feeling
16 out here. It opens us up a, as a phone, you know any
17 appraiser can pick up the phone and call us and say hey you
18 know, such and such, this is getting to be a problem. You
19 guys need to talk about this. Well at these advisory council
20 meetings that we have four times a year, we hash this out.
21 And there's, there's four appraisers that make up this
22 advisory council member panel. There's a, realtor, the
23 realtors are involved in it. The banking's involved in it.
24 The institutions like farm credit, they have a representative
25 on there. So we have a variety of people that sit on this
26 advisory council and we talk about problems that's happening
27 out here. Um, the major, one of the major last rule changes
28 that we made, I believe was the supervisor roles and it was,
29 it was because we had appraiser out here that were appraising
30 property that had no training. They had not training at all
31 and the banking was complaining about it. The realtors were
32 complaining about it. So we had to come up with something to
33 address this. And when you first write rules, they're gonna
34 be pretty stringent and then you loosen them up over time and
35 we have loosened those guidelines but this appraisal
36 shortage, it's been a, it's been a topic of this committee
37 for years. And this education program that got some, you
38 know that come forth, the advisory council is 100% behind it.
39 Because this, we're seeing this as an avenue to get away from
40 the supervision. And the reason for this shortage and some
41 of that didn't get caught up this morning either, it's very
42 costly for somebody to train. I've trained, I've, I've been
43 appraising for 24 years. I've trained five individuals.
44 It's costly. The lost one I actually kept tabs on because he
45 was my son and at the end of the, at the end of the year, I
46 looked at him and I said you know it cost my \$25,000 to train
47 you this year because that was a loss of revenue I had.
48 Because it took that much more time with that one person. So
49 you can see why people are lacking to wanting to train

1 because they can't keep up anyway. Our, our, our, the amount
2 of appraisers that we did a year went down because of this
3 training. We didn't do the number that we normally do and so
4 that was the loss of revenue because I, my time was devoted
5 to them. But the, that's why the appraisal shortage and I
6 think that's nationwide and a, but I hope the secretary puts
7 this advisory council back in place because this is an avenue
8 these organizations to voice their opinions and, and they are
9 invited to these meetings. Their, you know, the president of
10 all the associations get invited. Any member, any appraiser
11 member can come to these meetings and it was just an avenue
12 of a, like these rules, there would be no opposition to these
13 rules if we had been involved. You know, for these would
14 have been discussed at these, we would have brought up these
15 concerns already. They would already been hashed out. So
16 I'm hoping the secretary um, puts that program back into
17 place because as far I know we don't have an advisory council
18 anymore because I've never been notified since February.

19
20 CS: Thank you. Senator. Senator Nesiba.

21
22 SN: Thank you Mr. Chair. And would you repeat your name
23 again? I'm not sure how to address you.

24
25 DW: Mr. Chairman. Daryl Washechek.

26
27 SN: Washecheck.

28
29 DW: Yea, you got it.

30
31 SN: That's a good Irish name. This is the first I was aware
32 that there had been an advisory council and so could you talk
33 a little bit about how many years have you served on it. And
34 then, do you know does this exist simply at the will of the
35 director of the appraisal program or does the secretary of
36 the Department of Labor, is it written down. What guides the
37 advisory council? Is there some guiding document or how
38 often you meet and whose on it and just details about it.
39 Cause as I sad, there's a whole bunch. That's ten questions.
40 I'll let you, Mr. Washecheck, be able to address all of
41 those. Just tell us a little bit more about this advisory
42 council and how it's guided.

43
44 DW: Okay. Mr. Chairman. Um, I'm not sure who, I'm assuming
45 it's the secretary and, and, and the, usually the executive
46 director calls the meeting and the, most of the times we
47 drive into Pierre and we meet for four or five hours,
48 whatever it takes and, and we discuss what issues are here
49 are here. Now we'll, you know, us as appraisers or the real

1 estate commission or the banking commission, if they got
2 issues they want to bring forth, that goes on the agenda and
3 we discuss 'em and, and we're also looking for input from
4 like the PAASD Association at that time and everybody's
5 opinion. Just and then we take that and we either make
6 recommendations to the executive director as advisory council
7 we make either by writing or we vote on it that day. We
8 might take it home and think about it a little bit and then
9 you know, do an e-mail to the executive director of what we
10 perceive would be the right way to proceed and then I'm
11 assuming the executive director took it to the secretary
12 then. Either to make it a policy or whatever but we usually
13 met four times a year providing we have something to discuss.
14 And I, it's, it's a, it's a, it's a think tank committee. I
15 mean, at the pleasure of the secretary. I mean we don't
16 charge. We, we this is all voluntary based. And this is a,
17 the terms of 'em like you basically, once you get on the
18 board you, you serve two four-year terms so basically you're
19 on it eight years at a time and this is my second term. So
20 if I serve this second term out it would be 16 years I've
21 been on this board.

22
23 SN: Mr. Chair and Mr. Washecheck, I'm doing my best with
24 that, that name so thank you for that, for answering my
25 stream of consciousness of questions there. Do you know if
26 the secretary would have the agendas from your meetings or is
27 there any documents that, that your organ, this organization
28 has existed and is there any, was there a termination? Was
29 anybody sent a notice that the advisory council has been
30 disbanded or has just not been called back in to session.

31
32 DW: Mr. Chairman. Um, there has been notif, there has been
33 no notification of even if we exist anymore so I can't answer
34 that question. You have to ask secretary. Um there are
35 minutes taken of this, these meetings and actually we get
36 copies of them, um, so they should have a copy, the executive
37 director should have a copy of those minutes.

38
39 CS: Maybe I'll just say would it be possible for the staff
40 to just kind of find out when the last meetings have been
41 held, if the council is in existence or just a little
42 background on this advisory council that's been discussed.

43
44 SH: Mr. Chair.

45
46 CS: Senator Hunhoff.

47
48 SH: Oh, I just pulled up the advisory council and the
49 gentlemen that is speaking is listed as a member of the

1 council. Um, I'm not computer savvy. Everyone knows that
2 so I don't if it looks, it gives all kinds of information um,
3 but it, I don't see that it gives anything for what your
4 asking for. It has council meetings. And it gives the dates
5 and the last one was February 25, 2021. That's what it has.

6
7 CS: Thank you Senator.

8
9 DW: Thank you. We had no notification of determination of
10 secretary or the executive director Sherry Bren and we had no
11 notification of a new director.

12
13 CS: Any further questions for Mr. Washecheck. Well we thank
14 you for being here and for your perspective today. A,
15 further public testimony? Okay further comments from the
16 committee members?

17
18 RD: Mr. Chair.

19
20 CS: Representative Duba.

21
22 RD: Um, so I'm gonna make some comments or maybe summarize
23 what I heard this morning. Um, obviously we talked the first
24 questions and inquiry focused around what the process is and
25 I want to thank the PAASD members because they provided for
26 us very detailed documentation about the training program, um
27 how it works, how its changed. They did a survey they
28 provided us and we got 75% of the mem, well almost I think
29 they were 196 people out of 226 that responded to that
30 survey. Now I don't know if you guys have ever dealt with
31 surveys in the past. I used to manage them for a company and
32 to get a response rate like that is incredible so we thank
33 you for that. 75% of the members responded and a, with
34 three major concerns that were outlined this morning. I
35 think we need to take further look into that and, and I know
36 that the secretary addressed the fact that there was a gap
37 and she said it was a short gap but lets talk about that gap.
38 The last meeting was held on we now know February 25, 2021.
39 The first notification they got was on October 7. So we had
40 a seven month gap. To me that is not a short window and, and
41 there were clearly changes made to the training program that
42 these individuals participated in with the ED at that time.
43 Big changes, three major changes and now we're looking at
44 their responses to those and I hope that now going forward
45 that your voices will be heard before that rules meeting and
46 you will be able to have feedback. So that's, the first
47 thing I see is a, is just a disregard for the appraisers in
48 the state of South Dakota. Not sure why. Might want to
49 understand and depose the new secretary and find out why

1 that's happening. Second thing we talked about was the
2 actual meeting that occurred at the Governor's residence um,
3 in July of 2020. We've got some information there but what
4 we do know is that um, we invited an individual to that
5 meeting who had, was having difficulty getting certified.
6 And that is, and clearly the secretary said that is not a
7 normal process that is hasn't happened. We need to
8 understand why that happened because we know and there are
9 people sitting in this room who've had situations where they
10 were, maybe they didn't pass their test or maybe they were
11 um, needed to do some further education and at no time, we
12 didn't hear that in our testimony but I talked to a few
13 afterwards, at no time were they invited to the Governor's
14 mansion to talk about their certification process. So to me
15 I think we need to understand why that occurred and um, and I
16 have some concerns around that and you know maybe no one else
17 does but, but to, it just doesn't look right to me. Now we
18 don't know the contents of that meeting and we don't, and we
19 don't have Sherry Bren here to talk to us about her situation
20 and she's also had to sign an agreement that said she will
21 not disparage the department. I respect her for that. The
22 other thing I want to say is Sherry Bren was under pressure
23 to leave the department in a job that she been in since 1991.
24 She came before the House and the Senate and testified on the
25 grant that she had obtained. She worked with the individuals
26 in this room to develop a program and she was professional
27 right up until the day she had to resign and I believe that
28 day was March 10. So I want to recognize and thank her for
29 her service and it sounds to me, from what we've heard in
30 terms of testimony today that the communication was strong
31 between the executive director and with the PAASD board and
32 the state appraisers. That she took pride in her work.
33 They took pride in their work and they worked together. So
34 going forward I think we need to um, for the people of South
35 Dakota and the appraisers that are in the room, we need to
36 find out why that link has been broken. We need to help you
37 re-establish that and we need to value you as, as supporting
38 members of this um, state of South Dakota and thank you for
39 the work that you do and that's all I have to say at this
40 time. Thank you.

41
42 CS: Thank you Representative. Further comments, questions,
43 or just comments now. With that the next item on the agenda.

44
45 : Senator.

46
47 CS: Senator Hunhoff.

1 SH: Thank you. Um, I guess I heard the same information.
2 I do not disagree with what my colleague has stated but I
3 think there were some things that were evidenced here and I
4 think both the secretary and this group has identified. When
5 there was a change in an executive director, the
6 communication changed. Now the pieces we don't know why that
7 changed and we cannot speculate because we don't have the
8 facts. So I think the secretary has indicated that
9 recognizes the importance of the appraisers to come forward
10 and to meet and discuss these rules that are being proposed
11 that are out there so I think she made that and she made that
12 commitment and I think she heard us say and she heard the
13 appraiser say that is one of their chief concerns. How do we
14 stay engaged? I think the second thing that we heard and
15 this at the last, the advisory council is on here, it hasn't
16 met, met since February, so I think that's an opportunity to
17 maybe send a, a, memo or send, ask to the department to say
18 are you going to, we've heard that was important and we'd
19 like a status update if that advisory council is going to
20 continue cause I think that's a very import piece to have
21 that information. In regards to the other piece about the
22 involvement of the governor and her daughter and that
23 meeting, what we did hear is that a plan was prior made, that
24 there was an agreement, alright. So that was in place,
25 again we don't know all the details but we do know that a
26 plan was put into place. So I think that says you know that
27 was and that's open to anyone. We did hear that other people
28 can have mentoring and I'm not an appraiser so I don't know
29 what your mentoring program is but I have to tell you, I'm
30 really impressed that you can take your test many times. As
31 a nurse I could take it once and I got to get into a program
32 to program to get my skills up so I can pass that. So I
33 think that is a great opportunity and your working. So with
34 that said, I think that unfortunately there may be was a, was
35 an action or a behavior that was done and we all in
36 management, in our businesses or whatever sometimes we do
37 foopah and we learn from that. So I'm just hoping that is
38 but I don't believe that it was out of context in the sense
39 that the plan was in place for this individual to move on.
40 I think we spent a lot of times on the rules discussion and
41 that belongs, the process belongs in the rules committee, in
42 the public hearing and this committee does not have oversight
43 over that. If you want to get on rules committee and do it
44 but I think those things belong in the rules to deal with the
45 public hearing and to deal with the industry and I'm
46 anticipating this room will be full on November 15 when we
47 address those rules for the appraisers so we get that kind of
48 input so I say thank you to all of you. I will agree that
49 with Ms. Bren, I have worked with her for over 20 years as

1 she has come before rules and always been prepared to do that
2 but again we don't know the circumstances. I think Mr.
3 Arbach, and I might have said his name incorrectly, from Risk
4 Management, he said the process was consistent. So I don't
5 care if there was a concern or a grievance from Department of
6 Health for somebody that maybe had the age discrimination,
7 they followed the process and he has demonstrated that and
8 that's why he's in that position. We trust the decisions
9 that are made and certainly the conscientiousness about the
10 settlements that are made and I think the good attorney on my
11 left here raised questions of how you come to some
12 conclusions and you look at minimizing the exposure and the
13 risk and that's the job they have in that office and that is
14 an HR problem. An employee dealing with state government, it
15 is not a problem that our operations committee dwells in
16 because that operations so with that I say thank you for all
17 of you for providing the testimony. Thank you to my
18 colleague for the comments and committee members. Thank you.

19
20 CS: Thank you Senator. Senator Wheeler.

21
22 SW: Thank you. I want to echo some of that and make sure
23 that what we've learned here today is that regarding the
24 application for Kassidy Peters is that the conversations that
25 she had to get her license with Sherry Bren occurred before
26 the meeting in the residence. Um, and a, and that after
27 that point her license was no longer in Sherry Bren's hands.
28 It was in the hands of her, Kassidy herself, to complete her
29 education and in the hands of the independent reviewers who
30 are then going to review her work product as part of her
31 examination and to me that is important to point out. That
32 is something I learned new today that that time line says
33 that that meeting that occurred in the residence, although I
34 would agree that a, there's two ways of looking in that. One
35 is that you know the Governor had a family member who was
36 going through the process and it's maybe, there is some
37 insight in there you can have easy access to, to learn about.
38 On the other hand she had a pending application for a
39 licensure and it does a, create the appearance of conflict
40 that generated all the controversy that brought us here
41 today. And so, but when we get down to the facts of what
42 actually happened, the evidence that we have today indicates
43 that there was no point pressure brought on Sherry Bren to
44 have any affect on Kassidy Peters license. And that's the
45 take away I have from today.

46
47 CS: Thank you Senator. State your question.

1 : Um, will we still be able to get access to the open public
2 record of the, of the additional requirements that I asked
3 for earlier in the meeting? Did we take that down?

4
5 CS: I'm going to defer to Senator Wheeler on this one.

6
7 SW: Thank you. In preparing for the meeting I did do a
8 little research as to what happened. I'm aware that the
9 media made an open record request for the agreement that
10 Kassidy Peters entered into along with other individuals.
11 The Department of Labor determined that was a confidential
12 record not subject to being open. They went through the
13 appeals process through the Office of Hearing Examiner. The
14 Office of Hearing Examiner sustained that and determined that
15 under the open records rules it's not a public document. So
16 at this point, according to OHE, it's not a public document.
17 We would have to take other steps to obtain that.

18
19 CS: Follow-up.

20
21 : Okay so I'm confused. Maybe I didn't say it correctly
22 but the secretary sat right there and indicated that she
23 could get us a copy of what we're requesting. I mean we can
24 go back and listen to the recording. She did say that.
25 Unless I fell asleep during the meeting.

26
27 SW: My recollection is that she would have to review that to
28 determine if she could release it.

29
30 CS: Okay, we can follow-up to make sure but I think Senator
31 explained it well. Are we ready to move on to the next
32 agenda item. Senator Nesiba.

33
34 SN: Yea just a few comments, Mr. Chair. I think I'm coming
35 away from this just with a different experience this morning.
36 I'm still left with a variety of, of questions about why
37 Sherry Bren was let go. Um, what the nature of that anti-
38 disparagement clause was. It would have been clearer if we
39 could have had her here today but the, it would be really
40 helpful if we could waive that anti-disparagement clause to
41 find out what happened fully in that meeting at the, at the
42 Governor's residence. We're not able to hear the voice of
43 Sherry Bren and how she interpreted what happened at that
44 meeting. Um, we don't know why she was dismissed and, and so
45 we don't know um, as the good Senator from Huron suggested
46 it, it continues to look bad but we can't either clear the
47 air because we can't ask the rest of the questions because of
48 the anti-disparagement clause and so I guess the question
49 would be is, is there mechanism, would the Governor willingly

1 waive the anti-disparagement clause or is that a process by
2 which we could ask for that to be done. And I don't know who
3 I'm directing that question to Mr. Chair so um, is there
4 anyone we could ask to waive the anti-disparagement clause.

5
6 CS: That seems more like, like a legal question um, but
7 again Ms. Bren was invited. It was the committee's
8 understanding that she was going to be here today until I
9 received an e-mail stating differently at 2:55 yesterday and
10 um, now again it's not a lawyer's and maybe Senator Wheeler
11 could explain a little better. I don't believe a non-
12 disparagement clause prevents anyone from simply stating
13 facts if they were, if they were willing.

14
15 : The, that agreement that was publicly made available on
16 the non-disparagement clause, I don't have the language in
17 front of me but it referred to basically prohibiting
18 statements that are false or statements that were unfair to
19 the party and there's more language in that. That's, I don't
20 want to, don't quote me on that is what I'm saying is to the
21 exact nature of it but it's not a, it was not a
22 confidentiality agreement. It's not a, an agreement which
23 you are not allowed to talk at all about it. You cannot talk
24 in terms that are disparaging to somebody else. So my take
25 away from that was that as long as you are talking truthfully
26 what occurred um, that someone would be able to talk about
27 the events.

28
29 SN: Mr. Chair

30
31 CS: Senator Nesiba.

32
33 SN: Yea just my final comment is it, it, seems to me like
34 there is still a lot of questions that remain unanswered.
35 I'll leave it at that.

36
37 CS: And just like we have done with other topics, you know if there is
38 something that's possible to be revisited later on another meeting date
39 we can always reserve that right to do that.