

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, July 17, 2019
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 8:30 a.m.

Members present: Senators Jerry Klein, David A. Clemens, John Grabinger, Jordan Kannianen, Gary A. Lee, Judy Lee, Jim P. Roers; Representatives Mary Adams, Patrick Hatlestad, Mary Johnson, Keith Kempenich, Gary Kreidt, Vernon Laning, Scott Louser, Mike Nathe, Marvin E. Nelson, Jim Schmidt, Luke Simons

Member absent: Representative Wayne A. Trottier

Others present: Senator Ray Holmberg, Grand Forks, and Representative Karen M. Rohr, Mandan, members of the Legislative Management
 See [Appendix A](#) for additional persons present.

The Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

COMMITTEE DUTIES AND RESPONSIBILITIES

At the request of Chairman Klein, the Legislative Council staff reviewed a memorandum entitled [Legislative Audit and Fiscal Review Committee - Statutory Duties and Responsibilities for the 2019-21 Biennium](#). The Legislative Council staff said the Legislative Management by statute appoints a Legislative Audit and Fiscal Review Committee (LAFRC). Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created:

- For the purpose of studying and reviewing the financial transactions of the state.
- To assure the collection of revenues and the expenditure of money is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with formal, objective information on revenue collections and expenditures as a basis for legislative action to improve the fiscal structure and transactions of the state.

In addition, the committee is assigned the following duties and responsibilities for the 2019-21 biennium:

1. **State Fair Association** - Receive annual audit reports from the State Fair Association pursuant to Section 4.1-45-17.
2. **Ethyl alcohol and methanol producers** - Receive annual audit reports from any corporation that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 10-19.1-152, and receive annual audit reports from any limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 45-10.2-115.
3. **Department of Human Services' (DHS) accounts receivable** - Receive annual reports on the status of accounts receivable for DHS and the Life Skills and Transition Center pursuant to Sections 25-04-17 and 50-06.3-08.
4. **Low-risk incentive fund** - Receive annual audit reports and economic impact reports from the North Dakota low-risk incentive fund. Section 26.1-50-05 provides for the audit report to be submitted to the Legislative Council. The Legislative Management has assigned the responsibility to this committee.
5. **North Dakota Stockmen's Association** - Receive a biennial audit report from the North Dakota Stockmen's Association. Section 4.1-72-08 provides for the audit report to be submitted electronically to the Legislative Council. The Legislative Management assigned the responsibility to this committee.
6. **Job Service North Dakota** - Receive a performance audit report, upon the request of the committee, for Job Service North Dakota pursuant to Section 52-02-18.

7. **Performance audits** - The State Auditor is to conduct or provide for performance audits of state agencies as determined necessary by the Legislative Assembly, this committee, or the State Auditor. The State Auditor must obtain approval from this committee prior to conducting performance audits or hiring a consultant to assist with conducting a performance audit pursuant to Section 54-10-01.
8. **Frequency of audits** - Determine the frequency of audits or reviews of state agencies pursuant to Section 54-10-01.
9. **Political subdivisions** - Determine if the State Auditor is to perform audits of political subdivisions on a more frequent basis than once every 2 years pursuant to Section 54-10-13 and direct the State Auditor to audit or review the accounts of any political subdivision pursuant to Section 54-10-15.
10. **Study and review audit reports** - Pursuant to Section 54-35-02.2, the committee is charged with the following responsibilities:
 - a. To study and review audit reports selected by the committee from those submitted by the State Auditor.
 - b. Consider and approve contract services related to performing duties required by the federal government.
 - c. To confer with the State Auditor regarding the audit reports reviewed by the committee.
 - d. As necessary, to confer with representatives of state departments, agencies, and institutions audited in order to obtain information regarding fiscal transactions and governmental operations.

The Legislative Council staff presented a proposed action plan for the committee's consideration:

1. Receive 2-year audit reports prepared by the State Auditor's office (SAO) and independent auditors.
2. Consider and approve any State Auditor contracts for work required by the federal government.
3. Receive performance audit followup reports of audits conducted in previous bienniums.
4. Receive the State Auditor's plan for conducting performance audits, determine if any changes are needed to the plan, and approve the performance audit plan.
5. Receive performance audit reports.
6. Receive information technology audit reports, including an Information Technology Department system audit report and a North Dakota network and security audit report.
7. Request a performance audit be conducted, as deemed necessary by this committee, for Job Service North Dakota pursuant to Section 52-02-18.
8. Direct the Legislative Council staff to send correspondence, as deemed necessary, to each agency that has not complied with previous audit recommendations requesting the agency to appear before the committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations.
9. Receive annual reports on the status of accounts receivable for DHS and the Life Skills and Transition Center.
10. Receive annual audit reports from any corporation, limited partnership, or limited liability company that produces ethyl alcohol or methanol in this state and which receives a production subsidy from the state.
11. Develop recommendations and related bill drafts.
12. Prepare the final report for submission to the Legislative Management.

AUDIT PROCESS FOR STATE AGENCIES

Chairman Klein called on Mr. Joshua C. Gallion, State Auditor, who presented a document ([Appendix B](#)) providing an overview of SAO and its processes. Mr. Gallion said the mission of SAO is to produce informative audits to improve government. He said SAO may issue news releases relating to audits, and the office uses social media to provide information to the public. He said the audit schedule is available on the SAO website. He said SAO had not received a citizen petition audit request until 2018, at which time SAO identified that its internal process was not clearly defined. He said SAO has defined the process and posted it to its website.

In response to a question from Senator J. Lee, Mr. Gallion said citizen petition audits are paid for by the agency being audited and SAO does not bill for performance audits of state agencies. He said SAO is not authorized to conduct performance audits of local governments. He said the cost of staff salary time for performance audits is paid by the SAO budget and not billed to any state agency.

In response to a question from Senator J. Lee, Mr. Gallion said SAO reviewed the costs of an audit compared to the fees charged to each agency. He said the billing amounts were outdated and state law requires the special funded portion of a state agency's audit to be billed accordingly. He said the billing system has been updated to reflect proper billing of special funded agencies.

In response to a question from Senator J. Lee, Mr. Gallion said according to state law, the cost of a citizen petition audit must be billed to the local government being audited. He said the local government is responsible to determine the source of funding for the cost of the audit. He said how citizen petition audits are paid for may need to be addressed during the 2021 legislative session.

In response to a question from Representative Nathe, Mr. Gallion said a citizen petition audit could be contracted, but due to contracted audits costing two to three times the amount charged by SAO, the office would attempt to do the audit to reduce costs to the entity being audited.

In response to a question from Representative Nathe, Mr. Gallion said agency responses are included in the substantially completed audit before the audit is released to the media.

Mr. Gallion introduced Mr. Ronald I. Tolstad, Jr., Audit Manager and Technical Specialist, State Auditor's office, who reviewed a document entitled *Overview of Auditing for the State of North Dakota Including the Office of the State Auditor's External Quality Control Report (Appendix C)*. Mr. Tolstad said agencies that are not audited by the State Auditor are audited by certified public accountant (CPA) firms. He said other state agencies also are audited by CPA firms at the request of the State Auditor when the State Auditor does not have sufficient resources to audit the entity. He said CPA firms are required to follow *Guidelines to Independent Certified Public Accountants Performing Financial Statement Audits of State Agencies*, and audits performed by CPA firms are paid by the state agency being audited. He said SAO is subject to a peer review every 3 years and the next peer review, along with the state federal single audit is anticipated to occur in the early part of 2020.

In response to a question from Representative Nathe, Mr. Tolstad said performance auditors are required to receive 80 hours of training each biennium and they typically receive 40 hours per year.

In response to a question from Representative Schmidt, Mr. Tolstad said Section 54-10-01 authorizes the State Auditor to determine the scope of an audit and Section 54-10-30 authorizes the higher education audit manager to determine the scope of a higher education-related audit specifically.

In response to a question from Senator J. Lee, Mr. Tolstad said as a result of the new Medicaid Fraud Unit, SAO may slightly change the scope of the DHS audit, because of a change to the risks associated with Medicaid, but SAO has never done the work the Medicaid Fraud Unit will be doing.

In response to a question from Representative Kempenich, Mr. Tolstad said Section 54-10-01 requires SAO to receive approval from LAFRC prior to contracting with a third party for a performance audit.

SPECIAL FUNDS PERFORMANCE AUDIT

At the request of Chairman Klein, Mr. Gallion presented a performance audit report entitled [State of North Dakota Special Funds](#). Mr. Gallion said the audit had the following two primary objectives:

- Are general fund resources being used to supplant special fund resources?
- Determine if selected special funds' fund balance levels are justifiable?

Mr. Gallion said one compliance finding was found and the client agreed with the SAO's recommendation.

In response to a question from Senator J. Lee, Mr. Gallion said the compliance finding was with the State Electrical Board having a fund balance of \$10.6 million, which was significantly more than the average operating costs of the board, providing for 31 months of reserve funds for the board. He said the board is to bill based on the costs required to operate the board and with such significant reserves the board clearly is billing more than is necessary for the operation of the board.

In response to a question from Representative M. Johnson, Mr. Gallion said SAO found no state law or board policy regarding an appropriate fund balance; however, because the board is to bill cost, a significant ending fund balance represents billing in excess of cost.

In response to a question from Representative M. Johnson, Senator Kannianen said electrician licensing fees have not changed, but wire certificate fees are based on a percentage of the cost of the job so as costs increased

during the oil boom, so did the wire certificate fees. He said the cost of the inspections have not increased in relation to the increase in revenue.

NORTH DAKOTA UNIVERSITY SYSTEM OPEN EDUCATION RESOURCES PERFORMANCE AUDIT

At the request of Chairman Klein, Mr. Craig Hashbarger, Audit Manager, State Auditor's office, presented a performance audit report entitled [North Dakota University System Open Educational Resources](#). Mr. Hashbarger said the 2015 Legislative Assembly appropriated \$110,000 of state funds to the University System for the purpose of adopting open educational resources. He said, based on the analysis of SAO, students have saved an estimated \$1.1 million to \$2.4 million on the cost of textbooks in the course of a couple of years.

Ms. Lisa Johnson, Vice Chancellor for Academic and Student Affairs, North Dakota University System, provided comments regarding the performance audit of the University System open educational resources (OER). She said courses that use OER materials are now being identified during the course registration process so students are aware of which courses offer or have access to OER materials. She said in the last year, the University System has made \$135,000 available to be distributed to the 11 institutions for OER programs.

UNIVERSITY SYSTEM ONLINE EDUCATION PERFORMANCE AUDIT

At the request of Chairman Klein, Mr. Hashbarger presented a performance audit report entitled [North Dakota University System Online Education](#). Mr. Hashbarger said SAO did an analysis of the precollege, the 100-level, and 200-level online courses available. He said SAO determined, from fall 2014 to spring 2018, the University System could have eliminated 560 online course sections, approximately 15 to 22 percent of online sections, and saved an estimated \$2.9 million by consolidating certain online course sections without impacting the number of students served or number of courses offered.

Ms. L. Johnson provided comments regarding the performance audit of the University System online education. She said the University System partially concurs with the audit findings. She said the University System has been working to improve online course access and efficiency, which requires arrangements between institutions and equity and fairness issues need to be addressed. She said program accreditation requires certain instructor credentials, creating potential issues between institutions and program requirements. She said as institutions determine the need for a course, they have been utilizing other institutions' online courses to fulfill those needs when possible. She said SAO prepared a memorandum ([Appendix D](#)) for the State Board of Higher Education (SBHE), comparing North Dakota's distance education to other states. She said the memorandum indicates North Dakota had the highest percentage of students utilizing online education compared to surrounding states and North Dakota's percentage was higher than the national average.

PERFORMANCE AUDIT FOLLOWUP - UNIVERSITY SYSTEM PURCHASING CARD PROGRAM

Mr. Hashbarger presented a report entitled [Purchasing Card Program Used by the North Dakota University System](#). He said the report provides information on the status of the recommendations provided in the performance audit report dated August 30, 2016. He said the objectives of the performance audit were to determine the implementation status of the 13 recommendations presented in the performance audit report. He said of the 13 recommendations, 12 have been fully implemented, and 1 recommendation has been partially implemented. He reviewed the status of the 13 recommendations.

Ms. Tammy Dolan, Vice Chancellor of Administrative Affairs and Chief Financial Officer, North Dakota University System, provided comments regarding the performance audit followup report. She said individuals assigned a purchasing card receive training based on the transactions they are allowed to make. She said the purchasing cards save the state money by reducing the cost to process checks and card limitations allow for better internal controls.

PERFORMANCE AUDIT FOLLOWUP - NORTH DAKOTA STATE UNIVERSITY PARKING AND TRANSPORTATION SERVICES DEPARTMENT

Mr. Hashbarger presented a report entitled [NDSU Parking and Transportation Services Department](#). He said the report provides information on the status of the recommendations provided in the performance audit report dated February 23, 2017. He said the objectives of the performance audit were to determine the implementation status of the eight recommendations presented in the performance audit report.

Mr. Hashbarger said North Dakota State University (NDSU) Parking and Transportation Services has fully implemented all eight recommendations provided in the performance audit report.

Senator J. Lee said NDSU reported incurring 587 hours of staff time associated with the NDSU Parking and Transportation Services department performance audit. She expressed concern with the cost state agencies incur to provide information necessary for the performance audit of a parking lot.

In response to a question from Senator J. Lee, Mr. Hashbarger said based on an analysis of program risk and the benefit to the state, SAO would no longer choose to conduct an audit of this type again.

PERFORMANCE AUDIT - DAKOTA COLLEGE AT BOTTINEAU EMERGENCY PREPAREDNESS

Mr. Hashbarger presented a report entitled [Emergency Preparedness at Dakota College at Bottineau](#). He said SBHE adopted Policy No. 906 in May 2012. He said Policy No. 906 establishes the requirement for all University System institutions to develop and implement comprehensive emergency management plans. He said, in addition to Policy No. 906, SAO also reviewed outside sources for guidance on best practices for an emergency preparedness plan. He said the United States Department of Education and six other federal agencies developed a *Guide for Developing High-Quality Emergency Operations Plans for Institutions of Higher Education* in 2013, which was also used for the audit. He said Policy No. 906 and the federal guide provide a process for identifying high-risk areas where emergencies could occur at an institution level, and information regarding ways to develop an emergency operations plan to address those high-risk areas.

Mr. Hashbarger said the goal of the Dakota College at Bottineau (DCB) emergency preparedness performance audit was to determine whether the DCB emergency operation plan is designed and implemented pursuant to SBHE policies and best practices, and whether its continuity of operations plan is designed and implemented pursuant to best practices. He said SAO determined DCB has an emergency procedures guide, but does not have a comprehensive emergency operations plan. The State Auditor's office recommends DCB update its emergency operations and continuity of operations plans in accordance with SBHE's policy and applicable best practices.

Dr. Jerry Migler, Dean, Dakota College at Bottineau, provided comments ([Appendix E](#)) regarding the performance audit report. He said DCB agrees with all recommendations presented and the college's emergency management team is completely redeveloping its existing guide into a formal emergency management plan that meets the requirements of SBHE and the United States Department of Education guide.

PERFORMANCE AUDIT - NORTH DAKOTA STATE COLLEGE OF SCIENCE DIVISION OF WORKFORCE AFFAIRS

At the request of Chairman Klein, Mr. Gallion presented a performance audit report entitled [North Dakota State College of Science Division of Workforce Affairs](#). Mr. Gallion said the purpose of the audit was to determine if spending for the Career Workforce Academy was authorized and appropriate, if TrainND Southeast (TrainND SE) was meeting its identified goals, and if TrainND SE was reporting data accurately. He said the audit found the North Dakota State College of Science (NDSCS) Division of Workforce Affairs has engaged in inappropriate activities surrounding the Career Workforce Academy and is not meeting TrainND SE program goals nor is it accurately reporting its results.

In response to a question from Senator J. Lee, Mr. Gallion said SAO sends the audit engagement letter to SBHE and the institution being audited.

In response to a question from Senator J. Lee, Mr. Gallion said the substantially completed audit report, is confidential and was limited to review by the SBHE audit committee and authorized individuals. He said the University System chancellor was included in the audit group who had access to the confidential audit report and could collect any information necessary to provide a response to the findings; however, the chancellor could not share the confidential audit report with unauthorized individuals. He said all responses to audit findings, in their entirety, are included in the completed audit reports.

At the request of Senator J. Lee, Chairman Klein requested the Legislative Council staff to include the NDSCS's response to the performance audit report of the NDSCS Division of Workforce Affairs in the committee minutes ([Appendix F](#)).

In response to a question from Representative Kempenich, Mr. Gallion said the restriction on access to view the confidential audit report does not allow unauthorized persons to read the report, and it does not restrict gathering information to respond to the report findings.

Dr. John Richman, President, North Dakota State College of Science, provided comments regarding the performance audit report. He said NDSCS values all feedback from its partners and that feedback is assessed and

used as learning opportunities. He said NDSCS assessed the performance audit report, from which it developed an action plan that was approved by SBHE ([Appendix G](#)). He said NDSCS is implementing many of the recommendations of SAO.

In response to a question from Representative Nathe, Dr. Richman said NDSCS has changed the institution's business interest form to clarify the information being requested, a staff member monitors the forms, forms are now updated twice a year, and NDSCS is providing additional training to staff. He said NDSCS also is working with staff to ask better clarifying questions of auditors prior to responding to the auditor's requests for information.

In response to a question from Senator Clemens, Dr. Richman said NDSCS did not receive a request for emails, but received a request for documentation related to the selection of the vendor chosen. He said documentation of the vendor chosen could not be provided as he had chosen the vendor during a phone call with the vendor. He said NDSCS had not received any requests for emails from the University System office or SBHE during the audit process.

In response to comments by Dr. Richman, Mr. Gallion said SAO sent a request to NDSCS requesting any and all correspondence related to the procurement of Flint Group. He said the request for information to the University System included key word search parameters to narrow the search to the documentation SAO was seeking if it was available. He said NDSCS said no email correspondence existed regarding the procurement of Flint Group, but the emails received from the University System identify email documentation of the procurement of Flint Group.

In response to a question from Representative Nathe, Mr. Gallion said the University System or the Legislative Assembly determines any consequences to NDSCS if it decides not to implement the audit recommendations provided by SAO.

COMPREHENSIVE ANNUAL FINANCIAL REPORT - INTERNAL CONTROL AND COMPLIANCE REPORT

Chairman Klein called on Ms. Allison Bader, Auditor, State Auditor's office, who presented a report entitled [Comprehensive Annual Financial Report State of North Dakota Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2018](#). Ms. Bader said SAO has audited the general purpose financial statements for the state of North Dakota for the year ended June 30, 2018. She said the report contains an unmodified opinion, and the report identified the following three significant deficiencies related to internal control over the preparation of the financial report:

- The Office of Management and Budget (OMB) did not properly calculate net investment in capital assets for governmental activities on the Government-Wide Statement of Net Position.
- OMB is not disclosing significant state special revenue fund balance amounts as to descriptive purpose within the notes to the financial statements (Note 5). Approximately \$266 million state special revenue committed fund balance is classified for "other" purposes. This amount comprises 67 percent of the state special revenue committed fund balance.
- The Self-Service Portal and Consolidated Eligibility System used by DHS to determine eligibility for Medicaid Affordable Care Act cases does not have system edit checks in place to ensure the verification procedures are used in the eligibility determination process.

Ms. Bader said OMB and DHS agreed with the SAO recommendations and the corrective actions are included in the report.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Ms. Crystal Hoggarth, Accounting Manager, Office of Management and Budget, presented a report entitled [State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018](#). She reviewed the information contained in the report. Copies of the report are on file in the Legislative Council office.

Representative Nelson said the state's net pension liability does not significantly impact the state as a result of offsetting fund balances, but political subdivisions that are members of the Public Employees Retirement System program pay higher interest rates on bond issues as a result of the state's net pension liability.

UNIVERSITY SYSTEM INTERNAL CONTROL AND COMPLIANCE REPORT

Chairman Klein called on Ms. Bader, who presented a report entitled [North Dakota University System Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2018](#). Ms. Bader said an unmodified opinion was issued on the financial statements for the business type activities of the primary institutions and a qualified opinion was issued on the aggregate discreetly

presented component unit statements because the Dickinson State University Foundation was not included as a component unit in the statements. She said the foundation was being dissolved, but had not been completely dissolved at the time of reporting, so it should have been included.

UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

Ms. Robin Putnam, Director of Financial Reporting, North Dakota University System, presented a report entitled [North Dakota University System Annual Financial Report Fiscal Year Ended June 30, 2018](#). She said the report for the University System includes the 11 public universities, the University System office, Core Technology Services, and 10 foundations which are required by government accounting standards to be included as component units of the University System. As of June 30, 2018, she said, the University System had total net assets of \$2 billion, which is an increase of \$62 million from fiscal year 2017.

Ms. Putnam said total liabilities of \$630 million were an increase of approximately \$86 million from fiscal year 2017. She said tuition and fees increased by 2 percent to \$334 million, which is 28 percent of total revenue compared to 26 percent in fiscal year 2017. She said salaries and wages decreased by \$32.2 million as a result of budget reductions; however, total operating expenses increased \$14.6 million in fiscal year 2018, primarily because of an increase in nonstate grants.

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Chairman Klein called on Mr. Patrick Brown, Brady, Martz & Associates, PC, Certified Public Accountants, who presented a report entitled [North Dakota Housing Incentive Fund Bismarck, North Dakota Audited Financial Statements for the Years Ended June 30, 2018 and 2017](#). Mr. Brown reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Brown presented a report entitled [North Dakota Housing Finance Agency Bismarck, North Dakota Audited Financial Statements for the Years Ended June 30, 2018 and 2017](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Brown presented a report entitled [Job Service North Dakota Financial Report for the Years Ending June 30, 2018 and 2017](#). He reviewed the auditor's responses to the committee guidelines and said the report identified a significant deficiency related to the accuracy of reporting. He said the report includes a recommendation that Job Service North Dakota implement additional review controls by which reports are reviewed for mathematical accuracy prior to being submitted and further recommends Job Service North Dakota consider implementing additional logical controls in the investigation claim tracking process to reduce the likelihood of manual errors going forward to correct the error on the ETA 227 report.

Chairman Klein called on Mr. Ryan Monson, Brady, Martz & Associates, PC, Certified Public Accountants, who presented a report entitled [North Dakota Department of Trust Lands Bismarck, North Dakota Audited Financial Statements for the Years Ended June 30, 2018 and 2017](#). Mr. Monson reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Chairman Klein called on Mr. Jason Ostroski, CliftonLarsonAllen LLP, Certified Public Accountants, who presented a report entitled [North Dakota Retirement and Investment Office Financial Statements June 30, 2018 and 2017](#). Mr. Ostroski reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Ostroski presented a report entitled [North Dakota Retirement and Investment Office - North Dakota Teachers' Fund for Retirement Schedules of Employer Allocations and Pension Amounts by Employer June 30, 2018](#). He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

Mr. Ostroski presented a report entitled [North Dakota Public Employees Retirement System Financial Statements Years Ended June 30, 2018 and 2017](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Ostroski presented a report entitled [North Dakota Public Employees Retirement System Schedules of Employer Allocations and Pension Amounts by Employer Year Ended June 30, 2018](#). He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

Mr. Ostroski presented a report entitled [North Dakota Public Employees Retirement System Schedules of Employer Allocations and OPEB Amounts by Employer Year Ended June 30, 2018](#). He reviewed the auditor's

responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

Chairman Klein called on Ms. Katie Williams, Eide Bailly LLP, Certified Public Accountants, who presented the audit report for the [Bank of North Dakota Financial Statements December 31, 2018 and 2017 and Schedule of Appropriated Expenditures Biennium Ended June 30, 2019](#). Ms. Williams reviewed the auditor's responses to the committee guidelines and said one internal control deficiency was identified as a result of the financial statement audit. She said there were no internal control deficiencies identified as a result of the audit of the Bank's compliance with its major federal programs.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Ag PACE Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 PACE Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements December 31, 2018 and 2017 Beginning Farmer Revolving Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements December 31, 2018 and 2017 Community Water Facility Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Infrastructure Revolving Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Medical Facility Infrastructure Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements December 31, 2018 and September 30, 2017 North Dakota Guaranteed Student Loan Program](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Addiction Counselor Internship Loan Program](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements December 31, 2018 and 2017 North Dakota Public Finance Authority](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 North Dakota Student Loan Trust](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Rebuilders Loan Program](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 North Dakota Development Fund, Inc.](#) She reviewed the auditor's responses to the committee guidelines and said the report includes one internal control finding relating to preparation of financial statements.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 Workforce Safety & Insurance](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements September 30, 2018 North Dakota State Fair Association](#). She reviewed the auditor's responses to the committee guidelines and said the report includes a qualified opinion as a result of the State Fair Association not determining the net pension liability and the other postemployment benefits liability, as of a measurement date no earlier than the end of the employer's prior fiscal year.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 School Construction Assistance Revolving Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled [Financial Statements June 30, 2018 and 2017 North Dakota Building Authority](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Ms. Bader presented the [Single Audit Report for the Two-Year Period Ended June 30, 2018](#). She said an unmodified opinion was given on North Dakota's schedule of federal expenditure awards and an adverse opinion was given on the Medicaid program relating to compliance with federal requirements. She said the following three findings contributed to the adverse opinion on the Medicaid program:

- DHS has not completed the quarterly CMS-64 report since the September 2017 quarter, resulting in a material noncompliance finding. The department is required to submit the CMS-64 report no later than 30 days after the end of each quarter. The department has been unable to access the necessary expenditure information from the new Medicaid management information system to complete the report.
- The Medicaid eligibility system did not have sufficient edit checks and system functionality to ensure eligibility determinations are proper, resulting in a material weakness and material noncompliance finding. The eligibility testing required by CMS (Round 5 pilot) performed by the department's Quality Control Unit for July through September 2016 for the Medicaid program identified 42 of the 200 cases tested had eligibility determination errors or deficiencies, an error rate of 21 percent, including improper federal payments of \$6,617.
- The information systems used by DHS to perform children's health insurance program (CHIP) eligibility determinations do not have sufficient edit checks and system functionality to ensure eligibility determinations are proper, resulting in a material weakness and material noncompliance finding. The eligibility testing required by CMS, (Round 5 pilot) performed by the Quality Assurance/Quality Control Unit for July 2016 through September 2016 for the CHIP program identified 14 of 50 active cases that had eligibility determination errors or deficiencies, an error rate of 28 percent, including improper payments of \$607.

Ms. Bader said a qualified opinion was issued on the child care development fund program because DHS did not ensure child care providers had records for enrolled children as identified by federal health and safety requirements, resulting in a material weakness and material noncompliance finding. She said of 108 licenses tested, 45 were either missing records or did not have documentation identifying records, resulting in a 41 percent error rate. She said an unqualified opinion was issued on all remaining programs. She said the single audit is a significant audit for North Dakota and shows that over \$4 billion in federal awards were spent during the 2-year period being audited. She said 18 programs were audited covering 63 percent of the total federal program expenditures. She said 46 findings were identified, affecting 38 identified federal programs, with 23 of the programs being impacted by repeat findings. She said the prior single audit had 74 findings.

Mr. Gallion presented a report entitled [North Dakota Highway Patrol Audit Report for the Two-Year Period Ended June 30, 2018](#). He said the audit identified six findings and made the following recommendations:

- The Highway Patrol perform schoolbus inspections and reinspections according to internal policies.
- The Highway Patrol ensure complete and consistent records are managed and maintained in the schoolbus inspection database.
- The Highway Patrol ensure entity and schoolbus listings are defined and complete to carry out changes in internal policies.
- The Highway Patrol ensure procedures are in place to maximize the use of federal grant funds by complying with federal grant requirements.
- The Highway Patrol obtain blanket bond coverage and ensure that coverage is renewed on a biennial basis.
- The Highway Patrol properly capitalize assets with a value greater than \$5,000.

In response to a question from Senator J. Lee, Mr. Gallion said the Highway Patrol is contracted by the Department of Public Instruction (DPI) to conduct inspections of schoolbuses. He said the finding is regarding the Highway Patrol failing to follow its policy, poor records management regarding schoolbus inspections, and an incomplete listing of schoolbuses.

In response to a question from Representative Kempenich, Mr. Gallion said the Highway Patrol had requested the schools to self-report schoolbuses and 23 percent of school districts had not responded to the survey, so a complete and accurate listing of schoolbuses does not exist.

In response to a question from Representative Hatlestad, Mr. Gallion said DPI, the local school district, and the Highway Patrol, are involved in the inspection of schoolbuses, but there is no clearly defined oversight and legislative action may be necessary to improve oversight.

In response to a question from Chairman Klein, Mr. Gallion said the Highway Patrol agreed with the recommendations and is working to address the recommendations.

In response to a question from Representative Simons, Sergeant Wade Kadrmas, Safety and Education Officer, Highway Patrol, said the Highway Patrol does not conduct random inspections of schoolbuses as it does for the Department of Transportation truck inspections. He said schools coordinate bus inspections with the Highway Patrol. He said DPI has administrative authority regarding schoolbuses and historically has contracted with the Highway Patrol to conduct schoolbus inspections. He said the Highway Patrol is working with DPI to improve the inspection process.

In response to a question from Representative Kempenich, Sergeant Kadrmas said DPI, in its administrative rules, has adopted standards through the National Congress on School Transportation, which lists specifications schoolbuses must meet, and contracted bus companies have procedures in place to comply with state laws and administrative rules specific to schoolbuses.

In response to a question from Representative Hatlestad, Sergeant Kadrmas said the Highway Patrol does not have the authority to require a bus to remain parked if the bus fails the inspection.

Mr. Gallion presented a report entitled [Office of Attorney General Audit Report for the Two-Year Period Ended June 30, 2018](#). He said the audit included one recommendation to reduce the time to process work of the State Crime Laboratory. He said SAO recommended the Attorney General's office consider the following opportunities to reduce the time needed to process work of the State Crime Laboratory, including:

- Provide additional resources to help log evidence such as temporary employees or re-evaluation of authorized full-time equivalent position placement.
- Implementation of a fee schedule to strategically charge for services rendered.

Mr. Gallion presented a report entitled [North Dakota Indian Affairs Commission Audit Report for the Two-Year Period Ended June 30, 2018](#). He said the audit included the following three recommendations:

- The Indian Affairs Commission ensure all expenditures are in compliance with the Constitution of the State of North Dakota.
- The Indian Affairs Commission maintain a complete listing of assets, including the dates the items were purchased and the dollar value, and perform an inventory on an annual basis in accordance with Section 44-04-07.
- The Indian Affairs Commission establish and perform a fraud risk assessment on at least a biennial basis in accordance with OMB policy 216.

Mr. Donald LaFleur, Director, State Audit Division, State Auditor's office, presented a report entitled [North Dakota Information Technology Department Audit Report for the Two-Year Period Ended June 30, 2018](#). He said the audit included one recommendation that the Information Technology Department implement adequate annual physical inventory procedures to ensure:

- Sensitive assets at risk of loss are identified;
- Data on assets is properly encrypted; and
- Followup is completed on sensitive assets not located.

Mr. Gallion reported the following audit reports had no findings or recommendations:

- [North Dakota Department of Veterans Affairs Audit Report Two-Year Period Ended June 30, 2018](#)
- [ND Mill and Elevator Association Audit Report for the Years Ended June 30, 2018 and 2017](#)
- [North Dakota Lottery Audit Report for the Years Ended June 30, 2018 and 2017](#)
- [Department of Financial Institutions Audit Report Two-Year Period Ended June 30, 2018](#)
- [North Dakota Game and Fish Department Audit Report for the Two-Year Period Ended June 30, 2018](#)
- [North Dakota Protection and Advocacy Project Audit Report for the Two-Year Period Ended June 30, 2018](#)
- [North Dakota Securities Department Audit Report for the Two-Year Period Ended June 30, 2018](#)
- [State Historical Society Audit Report for the Two-Year Period Ended June 30, 2018](#)
- [Office of the Secretary of State Audit Report for the Two-Year Period Ended June 30, 2018](#)
- [Office of the Adjutant General Audit Report Two-Year Period Ended June 30, 2018](#)

In response to a question from Senator Clemens, Mr. Ed Barchenger, Chief Financial Officer, North Dakota Mill and Elevator, said the mill and elevator does not purchase grain from Canada and sellers delivering grain to the state mill must sign a document indicating the delivery does not contain grain from Canada. He said 95 to 99 percent of the grain purchased by the state mill comes from Minnesota and North Dakota.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

It was moved by Representative Kreidt, seconded by Representative Kempenich, and carried on a roll call vote that, pursuant to Section 54-35-02.2, the committee accept the following reports presented to the committee:

1. Special funds performance audit (December 18, 2018)
2. University System open educational resources (September 4, 2018)
3. University System online education (November 9, 2018)
4. University System purchasing card program audit followup report (March 7, 2019)
5. NDSU Parking and Transportation Services Department audit followup report (February 27, 2019)
6. Dakota College at Bottineau's emergency preparedness performance audit (June 7, 2018)
7. NDSCS Division of Workforce Affairs (March 26, 2019)
8. North Dakota Comprehensive Annual Financial Report (June 30, 2018)
9. University System Annual Financial Report (June 30, 2018)
10. Housing incentive fund (June 30, 2018 and 2017)
11. Housing Finance Agency (June 30, 2018 and 2017)
12. Job Service North Dakota (June 30, 2018 and 2017)
13. Department of Trust Lands (June 30, 2018 and 2017)
14. Retirement and Investment Office (June 30, 2018 and 2017)
15. Retirement and Investment Office - North Dakota Teachers' Fund for Retirement Schedules of Employer Allocations and Pension Amounts by Employer (June 30, 2018)
16. Public Employees Retirement System (June 30, 2018 and 2017)
17. Public Employees Retirement System Schedules of Employer Allocations and Pension Amounts by Employer (June 30, 2018)
18. Public Employees Retirement System Schedules of Employer Allocations and OPEB Amounts by Employer (June 30, 2018)
19. Bank of North Dakota (December 31, 2018 and 2017)
20. Ag PACE fund (June 30, 2018 and 2017)
21. PACE fund (June 30, 2018 and 2017)

22. Beginning farmer revolving loan fund (December 31, 2018 and 2017)
23. Community water facility loan fund (December 31, 2018 and 2017)
24. Infrastructure revolving loan fund (June 30, 2018 and 2017)
25. Medical facility infrastructure loan program (June 30, 2018 and 2017)
26. Guaranteed student loan program (September 30, 2018 and 2017)
27. Addiction counselor internship loan program (June 30, 2018 and 2017)
28. Public Finance Authority (December 31, 2018 and 2017)
29. Student loan trust fund (June 30, 2018 and 2017)
30. Rebuilders loan program (June 30, 2018 and 2017)
31. Development Fund, Inc. (June 30, 2018 and 2017)
32. Workforce Safety and Insurance (June 30, 2018 and 2017)
33. State Fair Association (September 30, 2018)
34. School construction assistance revolving loan fund (June 30, 2018 and 2017)
35. State Building Authority (June 30, 2018 and 2017)
36. Statewide single audit (June 30, 2018 and 2017)
37. Highway Patrol (June 30, 2018 and 2017)
38. Department of Veterans' Affairs (June 30, 2018 and 2017)
39. Mill and Elevator Association (June 30, 2018 and 2017)
40. North Dakota Lottery (June 30, 2018 and 2017)
41. Department of Financial Institutions (June 30, 2018 and 2017)
42. Game and Fish Department (June 30, 2018 and 2017)
43. Protection and Advocacy Project (June 30, 2018 and 2017)
44. Securities Department (June 30, 2018 and 2017)
45. State Historical Society (June 30, 2018 and 2017)
46. Attorney General (June 30, 2018 and 2017)
47. Indian Affairs Commission (June 30, 2018 and 2017)
48. Secretary of State (June 30, 2018 and 2017)
49. Adjutant General (June 30, 2018 and 2017)
50. Information Technology Department (June 30, 2018 and 2017)
51. State Board of Dental Examiners (June 30, 2017 and 2016)
52. State Board of Nursing (June 30, 2018)
53. State Board of Barber Examiners (August 31, 2018)
54. North Dakota Barley Council (June 30, 2018 and 2017)
55. North Dakota Beef Commission (June 30, 2018 and 2017)
56. North Dakota Corn Utilization Council (June 30, 2018 and 2017)
57. North Dakota Dairy Promotion Commission (June 30, 2018 and 2017)
58. North Dakota Dry Bean Council (June 30, 2018 and 2017)
59. North Dakota Dry Pea and Lentil Council (June 30, 2018 and 2017)
60. North Dakota Ethanol Council (June 30, 2018 and 2017)
61. North Dakota Milk Marketing Board (June 30, 2018 and 2017)
62. North Dakota Oilseed Council (June 30, 2018 and 2017)

63. North Dakota Potato Council (June 30, 2018 and 2017)
64. North Dakota Real Estate Commission (June 30, 2018)
65. North Dakota Soybean Council (June 30, 2018 and 2017)
66. North Dakota Wheat Commission (June 30, 2018 and 2017)
67. State Board of Physical Therapy (June 30, 2018 and 2017)
68. State Board of Medicine (December 31, 2017)
69. State Board of Professional Soil Classifiers (June 30, 2018)
70. State Board of Veterinary Medical Examiners (June 30, 2018 and 2017)
71. Stockmen's Association (December 31, 2018 and 2017)
72. Education Standards and Practices Board (June 30, 2017)
73. State Seed Department (June 30, 2018 and 2017)
74. State Board of Reflexology (June 30, 2018)
75. State Board of Funeral Service (June 30, 2018 and 2017)
76. State Board of Dietetic Practice (September 30, 2018)
77. Medical Imaging and Radiation Therapy Board (June 30, 2017 and 2016)

Senators Klein, Clemens, Grabinger, Kannianen, G. Lee, J. Lee, and Roers and Representatives Adams, Hatlestad, Johnson, Kempenich, Kreidt, Laning, Louser, Nathe, Nelson, Schmidt, and Simons voted "aye." No negative votes were cast.

The Legislative Council staff distributed a memorandum entitled [Summary of Audit Reports Not Selected for Presentation](#).

Chairman Klein called on Mr. Gallion to present the SAO plan for conducting performance audits of state agencies for committee consideration and approval, pursuant to Section 54-10-01. Mr. Gallion presented a memorandum ([Appendix H](#)). He said based on the Attorney General's opinion, SAO will not be submitting its plan for conducting performance audits to LAFRC for approval. He said SAO has implemented methods of communicating and providing transparency on the schedule of audits and audit reports, including posting information on its website.

In response to a question from Senator Roers, Mr. Gallion said the performance audits presented today were initiated by SAO.

Representative Kreidt suggested the State Auditor inform the members of LAFRC of audit findings prior to issuing press releases relating to the audit findings so committee members may be prepared to respond to questions.

Chairman Klein said LAFRC and the Legislative Assembly want to be supportive of the State Auditor's work but also need to be adequately informed of the plans and direction of SAO. He said the committee's goal through the auditing process is to continue to improve the operations of state government, but would like the State Auditor to involve the committee in the process.

Senator J. Lee suggested that the State Auditor inform committee members by email of any changes to the posted schedule of audits.

Representative Nathe said occasionally the Legislative Assembly may pass a law that is difficult for a state agency to administer. He said the agency generally works with the legislative branch to the extent possible to meet the intent of the law until it may be amended during the next legislative session. He said he was hopeful the State Auditor would be willing to cooperate with the committee to comply, to the extent possible, with the intent of the law regarding performance audits until it may be addressed during the next legislative session.

Senator Grabinger said the State Auditor testified during the 2019 legislative session that unless the office received additional state agency auditors, the office would be unable to conduct performance audits. He said the Legislative Assembly did not add state agency auditors, but SAO is continuing to do performance audits.

Representative Schmidt expressed concern regarding the potential cost to state agencies of performance audits.

Mr. Gallion said SAO does not charge for performance audits of state agencies unless SAO hires a consultant. He said SAO may hire a consultant only if approved by LAFRC.

Representative Simons expressed support for the State Auditor continuing to conduct performance audits.

In response to a question from Representative Kempenich regarding the difference between operational audits and performance audits, Mr. Gallion said almost all audits conducted by SAO are performance audits. He said in the past, SAO described many of the 2-year audits as operational audits, but since those audits are completed using performance auditing standards, the office now refers to them as performance audits.

In response to a question from Representative Nelson regarding the provision approved by the 2019 Legislative Assembly in Section 54-10-01 that requires the State Auditor to obtain approval from LAFRC in order to contract for work required by the federal government, Mr. Gallion said based on the Attorney General's opinion, SAO will not be requesting approval from LAFRC to contract for work required by the federal government.

In response to a question from Representative Nathe, the Legislative Budget Analyst and Auditor said as of July 1, 2019, Section 54-10-01 requires the State Auditor to obtain approval from LAFRC prior to conducting performance audits. He said until four of the five justices of the North Dakota Supreme Court determine it unconstitutional, it is state law.

Representative Nathe expressed concern that the State Auditor has chosen to ignore the law and not inform LAFRC of the office's performance audit plans.

Chairman Klein asked the State Auditor to provide LAFRC with a list of planned audits.

Representative Nathe requested SAO notify and provide LAFRC a copy or link to the completed audit report. He requested SAO to provide the information to the committee in a reasonable amount of time before the audit is released to the public.

Regarding the paper copies of audit reports, Chairman Klein requested SAO only provide a limited number of paper copies of the audits to LAFRC and requested the Legislative Council staff to provide an electronic copy or link of the reports to the committee.

It was moved by Representative Nelson, seconded by Representative Simons, and failed on a roll call vote that, pursuant to Section 54-35-02.2, the committee forward the Indian Affairs Commission audit report for the two-year period ended June 30, 2018 and the performance audit of NDSCS Division of Workforce Affairs to the Attorney General's office for investigation of the potential violation of state law. Senators Clemens, Grabinger, and Kannianen and Representatives Adams, Laning, Nelson, Schmidt, and Simons voted "aye." Senators Klein, G. Lee, J. Lee, and Roers and Representatives Hatlestad, Johnson, Kempenich, Kreidt, Louser, and Nathe voted "nay."

Chairman Klein requested the Legislative Council staff to include the Indian Affairs Commission audit report and NDSCS Division of Workforce Affairs performance audit report on the committee's next meeting agenda for additional consideration and to receive information on the audit findings from the Indian Affairs Commission and SBHE.

No further business appearing, Chairman Klein adjourned the meeting at 3:43 p.m.

Chris Kadrmas
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:8