

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Monday, November 26, 2001
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ken Solberg, Chairman, called the meeting to order at 10:30 a.m.

Members present: Senators Ken Solberg, Dwight Cook, Duaine C. Espeland, Jerome Kelsch, Jerry Klein, Kenneth Kroepin; Representatives Ole Aarsvold, Rex R. Byerly, Jeff Delzer, RaeAnn G. Kelsch, Doug Lemieux, Andrew G. Maragos, Mike Timm, Francis J. Wald, Lonny Winrich

Members absent: Senator Randel Christmann; Representative Bob Skarphol

Others present: See attached appendix

It was moved by Representative Wald, seconded by Representative Aarsvold, and carried on a voice vote that the minutes of the August 3, 2001, meeting of the Legislative Audit and Fiscal Review Committee be approved as distributed.

STATE AGENCY AUDITS

Chairman Solberg called on Mr. Ed Nagel, State Auditor's office, who presented the audit report for the North Dakota Potato Council for the years ended June 30, 2000 and 1999. Mr. Nagel said the audit includes an unqualified opinion and contains three findings and recommendations. He said the agency has not implemented audit recommendations included in the previous audit report.

Chairman Solberg called on Ms. Diane Peycke, Executive Director, North Dakota Potato Council, to comment on the audit recommendations. Ms. Peycke said the Potato Council agrees with the audit recommendations and has implemented the procedures recommended by the State Auditor's office. She said because of the time required to implement the new procedures, the audit findings were included in two audits.

Representative Delzer requested that the North Dakota Potato Council provide the committee with a schedule showing the agency's expenditures for promotional contracts.

Mr. Nagel presented the audit report for the Mill and Elevator for the years ended June 30, 2001 and 2000. He said the report includes an unqualified opinion and does not contain any findings or recommendations.

In response to a question from Representative Wald, Mr. Edward Barchenger, Controller, Mill and

Elevator, said the Mill and Elevator's renovation project is nearly complete with final certification of the new mill scheduled for December 2001.

The committee recessed at 10:55 a.m. due to activities of the 2001 special legislative session and reconvened at 11:30 a.m.

Chairman Solberg called on Mr. Gordy Smith, State Auditor's office, who commented on the North Dakota University System report on the status of recommendations included in the State Auditor's office followup report on the performance audit of state personnel systems. Mr. Smith said the status report has been reviewed by the State Auditor's office; however, the State Auditor's office cannot offer an opinion on campus compliance with newly adopted policies or other actions that have been taken since the conclusion of the audit period because no testing has been done. He said if the new policies are followed by the campuses and all proposed action steps are put into place, the State Auditor's office concerns will be addressed.

Chairman Solberg called on Ms. Laura Glatt, Vice Chancellor for Administrative Affairs, North Dakota University System, who reviewed the North Dakota University System report on the status of the State Auditor's office recommendations. A copy of the report is on file in the Legislative Council office. Ms. Glatt said the University System agrees with all recommendations of the State Auditor and is taking steps to implement all recommendations except recommendation No. 27, relating to the automation of the screening process utilized in hiring personnel. She said this recommendation will be addressed as the enterprise resource planning (ERP) project is implemented.

It was moved by Representative Wald, seconded by Representative Kelsch, and carried on a roll call vote that pursuant to North Dakota Century Code (NDCC) Section 54-35-02.2, the committee accept the State Auditor's office followup report on the performance audit of state personnel systems. Senators Solberg, Cook, Espeland, and Klein and Representatives Aarsvold, Byerly, Delzer, Kelsch, Lemieux, Maragos, Wald, and Winrich voted "aye." No negative votes were cast.

STATE AGENCY BIDDING REQUIREMENTS

Chairman Solberg called on the Legislative Council staff to present a memorandum entitled *State Bidding Requirements - Statutory Provisions, Administrative Rules, and Agency Policies*. The memorandum includes major North Dakota Century Code provisions which require state agency purchases or expenditures to be subject to competitive bidding requirements; a summary of other statutory provisions, administrative rules, and agency policies relating to competitive bidding; and a summary of statutory provisions, rules, and policies relating to the inclusion of scholarships, endowments, and premiums in bid proposals, the appeal process for aggrieved vendors, and penalties.

STATE AGENCY EQUIPMENT LEASES

Chairman Solberg called on the Legislative Council staff to present a memorandum entitled *State Agency Equipment Leases*. North Dakota Century Code Section 54-44.1-06 requires that budget data prepared by the Office of Management and Budget include a list of every individual asset or service and every group of assets or services with a value of \$50,000 or more acquired through a capital or operating lease or a debt financing arrangement. The list must include assets and services acquired during the current biennium and anticipated assets and services to be acquired in the next biennium. Pursuant to this section, the Office of Management and Budget has issued administrative policy No. 312 which provides that any state agency or institution that acquires an asset, excluding real estate, through a lease agreement must prepare a written analysis documenting the decision to acquire the asset. The analysis must be made available to auditors for review during the audit for the fiscal period during which the decision was made to lease the asset. In addition, the state integrated budget and reporting (SIBR) system guidelines issued by the Office of Management and Budget direct agencies to complete a SIBR lease purchase agreement form for current leases and any anticipated leases included in the agency's budget request for the next biennium.

Chairman Solberg called on Mr. Rod A. Backman, Director, Office of Management and Budget, who presented information on state agency payments for equipment leases. A copy of the information presented is on file in the Legislative Council office. The schedule presented by Mr. Backman shows general fund, federal fund, and special funds state agency expenditures for the 1999-2001 biennium for equipment lease payments. The schedule shows total payments of approximately \$13 million, \$4.7 million of which is from the state general fund.

The committee recessed for lunch at 12:10 p.m. and reconvened at 1:00 p.m.

STATE AGENCY AUDITS

Chairman Solberg called on Mr. Darrell Lingle, Eide Bailly LLP, Certified Public Accountants, who presented the audit report for the State Board of Nursing for the years ended June 30, 2000 and 1999. Mr. Lingle said the report contains an unqualified opinion and does not include any findings or recommendations.

In response to a question from Senator Solberg, Ms. Constance B. Kalanek, Executive Director, State Board of Nursing, discussed the amount of money the board maintains in certificates of deposit. In response to a question regarding the expenses of the board, Ms. Kalanek said the board meets six times per year and members are paid a per diem rate equal to that paid to members of the Legislative Assembly.

In response to a question from Representative Delzer, Ms. Kalanek said she will provide the committee with information on revenues and expenditures, including salary expenditures, relating to the administration of tests by the board.

Mr. Lingle presented the audit report for the partnership in assisting community expansion (PACE) fund for the years ended June 30, 2001 and 2000. He said the audit report contains an unqualified opinion and does not include any findings or recommendations.

Mr. Lingle presented the audit report for the Ag PACE fund for the years ended June 30, 2001 and 2000. He said the report contains an unqualified opinion and does not include any findings or recommendations.

Mr. Lingle presented the audit report for the Development Fund, Inc., for the years ended June 30, 2001 and 2000. He said the audit report contains an unqualified opinion and does not include any findings or recommendations.

Chairman Solberg called on Mr. Dean Reese, Chief Executive Officer, Development Fund, Inc., who responded to questions regarding the operating losses and investments of the fund.

In response to a question from Representative Byerly, Mr. Reese said he will provide the committee with a list of loans and equity investments written off during 2001.

Mr. Lingle presented the audit report for the North Dakota Building Authority for the years ended June 30, 2001 and 2000. He said the audit report contains an unqualified opinion and does not include any findings or recommendations.

Mr. Lingle presented the audit report for the State Auditor's office for the years ended June 30, 2001 and 2000. He said the audit report contains an unqualified opinion and does not include any findings or recommendations.

It was moved by Representative Byerly, seconded by Senator Klein, and carried on a voice vote that pursuant to NDCC Section 54-35-02.2, the committee accept the audit report for the State

Auditor's office for the years ended June 30, 2001 and 2000.

Mr. Lingle presented the audit reports for the Legislative Council and the Legislative Assembly for the years ended June 30, 2001 and 2000. He said the audit reports contain unqualified opinions and do not include any findings or recommendations.

It was moved by Representative Maragos, seconded by Representative Winrich, and carried on a voice vote that pursuant to NDCC Section 54-35-02.2, the committee accept the audit reports for the Legislative Council and the Legislative Assembly for the years ended June 30, 2001 and 2000.

The committee recessed at 1:45 p.m. due to activities of the 2001 special legislative session and reconvened at 3:40 p.m.

Chairman Solberg called on Mr. Smith who presented the report on the performance audit of the service payments for the elderly and disabled (SPED) and expanded SPED programs for the period July 1, 1998, through December 31, 2000. Mr. Smith reviewed the recommendations contained in the report, which are listed as follows:

- Recommendation 2-1 The Aging Services Division implement controls to ensure that authorized amounts for services to clients are not exceeded by qualified service providers.
- Recommendation 2-2 The Department of Human Services implement additional controls to monitor duplicate payments on the Medicaid management information system (MMIS).
- Recommendation 2-3 The Aging Services Division implement controls to ensure that individual qualified service providers do not provide more than 200 hours of service in a month unless an emergency or unusual circumstance exists.
- Recommendation 2-4 The Aging Services Division implement additional monitoring procedures and management controls for the SPED and expanded SPED programs.
- Recommendation 2-5 The Department of Human Services review controls in the MMIS and take appropriate actions to ensure that SPED and expanded SPED claims are processed correctly and efficiently.
- Recommendation 2-6 The Aging Services Division:
 - Better communicate the requirements of provider log documentation and records retention requirements to qualified service providers; and
 - Monitor qualified service provider logs to ensure requirements are complied with.
- Recommendation 3-1 The Aging Services Division provide additional guidance for case management.
- Recommendation 3-2 The Aging Services Division provide additional training to the counties in the case management area.
- Recommendation 3-3 The Aging Services Division monitor case management billings.
- Recommendation 3-4 The Aging Services Division make

changes to the ratesetting process for case management.

Recommendation 4-1 The Aging Services Division implement procedures and establish controls related to clients' self-declarations of income and assets.

Recommendation 4-2 The Aging Services Division make improvements to the screening requirements and processes used to enroll applicants as qualified service providers.

Recommendation 4-3 The Aging Services Division, in conjunction with appropriate legal counsel, review laws, rules, and policies related to denying applicants applying for qualified service provider status and determine appropriate changes to provide additional authority to deny such applicants.

In response to a question from Senator Espeguard, Mr. Smith said the State Auditor's office is concerned about the lack of edit checks in the MMIS to ensure that duplicate payments are not made. He said the MMIS is used to distribute both Medicaid payments and payments to SPED and expanded SPED qualified service providers. He said the State Auditor's office conducts the state's single audit and will review the Medicaid payment system in the course of that audit.

Chairman Solberg called on Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, to respond to committee questions. Ms. Wright said she wanted to clarify several of the issues addressed in the performance audit. She said the Department of Human Services takes action on every complaint regarding a qualified service provider and the department makes every attempt to collect money owed the department related to any overpayments to qualified service providers. She said prospective quality service providers must sign a statement indicating they have no criminal record. She said the department will take action against any individual who has not truthfully completed the statement.

Mr. David Zentner, Medical Services Director, Department of Human Services, said when considering the recommendations relating to the MMIS, it is important to note that the system was put in place in 1978. He said the system is no longer state-of-the-art but will be expensive to replace.

In response to a question from Senator Solberg, Mr. Smith said the State Auditor's office will follow up with the Department of Human Services in 12 to 18 months to determine if the agency has complied with the audit recommendations.

Chairman Solberg invited a representative of the Department of Human Services to report back to the Legislative Audit and Fiscal Review Committee periodically regarding the status of its efforts to implement the audit recommendations.

It was moved by Representative Byerly, seconded by Representative Maragos, and carried on a roll call vote that pursuant to NDCC Section

54-35-02.2, the committee accept the following reports:

- **Mill and Elevator (June 30, 2001 and 2000)**
- **State Board of Nursing (June 30, 2000 and 1999)**
- **PACE fund (June 30, 2001 and 2000)**
- **Ag PACE fund (June 30, 2001 and 2000)**
- **Development Fund, Inc. (June 30, 2001 and 2000)**
- **North Dakota Building Authority (June 30, 2001 and 2000)**
- **Performance audit on SPED and expanded SPED (July 1, 1998, through December 31, 2000)**

Senators Solberg, Cook, Espegard, Kelsh, and Klein and Representatives Byerly, Lemieux, Maragos, Wald, and Winrich voted "aye." No negative votes were cast.

DEPARTMENT OF HUMAN SERVICES ACCOUNTS RECEIVABLE

Chairman Solberg called on Ms. Brenda Weisz, Department of Human Services, who presented information on the status of the department's accounts receivable, pursuant to NDCC Sections 25-04-17 and 50-06.3-08. A copy of the information presented is on file in the Legislative Council office. Ms. Weisz said the total amount written off by the Department of Human Services for fiscal year 2001 was \$4,924,968, of which \$108,508 related to human service centers, \$4,573,162 related to the State Hospital, and \$243,298 related to the Developmental Center.

It was moved by Representative Winrich, seconded by Representative Maragos, and carried on a voice vote that pursuant to NDCC Sections 25-04-17 and 50-06.3-08, the committee accept the report on the status of the accounts receivable of the Department of Human Services.

COMMITTEE FOLLOWUP WITH AGENCIES THAT HAVE NOT COMPLIED WITH AUDIT RECOMMENDATIONS

Chairman Solberg said the committee should enhance its followup efforts relating to the implementation of audit recommendations and consider sending correspondence to agencies that have not complied with previous audit recommendations. He said the committee correspondence should indicate the committee has not accepted the agency's audit report and a representative of the agency would be invited to report to the committee regarding the reasons for the noncompliance. He said such a letter may encourage agency compliance with audit recommendations.

Senator Espegard expressed support for committee action to follow up with agencies that have shown a history of noncompliance with audit recommendations. Representative Aarsvold said he would

support such committee action if it is applied consistently to all agencies with a history of noncompliance.

Chairman Solberg called on the Legislative Council staff to present a memorandum entitled *Legislative Audit and Fiscal Review Committee Followup With Agencies That Have Not Complied With Audit Recommendations*. The memorandum details the committee's previous action to ensure that state agencies address audit findings, including requiring agency responses in the reports, inviting agencies to comment, and directing the State Auditor's office to do a six-month review. The memorandum details that in certain cases the committee could provide additional encouragement by sending correspondence to any agency that has not complied with audit recommendations that could include the following proposed language:

After reviewing your most recent audit report, the Legislative Audit and Fiscal Review Committee, Senator Ken Solberg, Chairman, has noted that your agency has not taken steps to implement previous audit recommendations. The chairman requests that you appear before the committee at its next meeting and provide a written explanation for your agency's noncompliance with the audit recommendations. If steps have been taken to address the recommendations, please include a description of those steps and the date implemented. If you plan to address the recommendations, but have not implemented steps to do so, please describe any planned action and include a planned implementation schedule. If your noncompliance relates to outdated statutory provisions, please provide proposed statutory changes for consideration by the committee.

The legislative budget analyst and auditor said the Legislative Council staff would do this followup on a case-by-case basis as directed by the Legislative Audit and Fiscal Review Committee.

It was moved by Senator Espegard, seconded by Senator Cook, and carried on a roll call vote that the committee approve the proposed enhanced followup procedure to be used for selected agencies that have failed to comply with audit recommendations as determined by the committee. Senators Solberg, Cook, Espegard, Kelsh, and Klein and Representatives Byerly, Lemieux, Maragos, Wald, and Winrich voted "aye." No negative votes were cast.

It was moved by Representative Byerly, seconded by Senator Espegard, and carried on a voice vote that the committee send correspondence to the North Dakota Potato Council indicating the committee has not accepted its audit report and requesting a representative of the Potato Council to report to the committee regarding the council's compliance with the audit recommendations.

DISCUSSION AND STAFF DIRECTIVES

Representative Wald requested that at the next committee meeting a representative of the Workers Compensation Bureau report to the committee on the status of the bureau's building project.

Representative Byerly requested that at the next committee meeting a representative of the Vocational Rehabilitation Division of the Department of Human Services provide a schedule to the committee showing, for the most recent 12-month period, revenues, expenditures, and transfers of funds by the division.

Chairman Solberg asked the State Auditor's office to comment on the status of future performance audits. Mr. Smith said the department is in the preliminary survey phase of a performance audit of the Veterans Home. He said the next scheduled performance audit, after completion of the Veterans Home audit, will be an audit of the Drivers License

Division or Motor Vehicle Registration Division of the Department of Transportation.

Chairman Solberg announced the next meeting of the Legislative Audit and Fiscal Review Committee will be tentatively scheduled during March 2002.

The meeting was adjourned subject to the call of the chair at 5:10 p.m.

Joe R. Morrisette
Senior Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:1