

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, October 27, 2004  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Francis J. Wald, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Francis J. Wald, Ole Aarsvold, Al Carlson, Jeff Delzer, Andrew Maragos, Bob Skarphol, Blair Thoreson, Mike Timm, Lonny Winrich; Senator Jerry Klein

**Members absent:** Representatives Larry Bellew, RaeAnn G. Kelsch, Amy Warnke; Senators John M. Andrist, Randel Christmann, Aaron Krauter

**Others present:** See attached appendix

**It was moved by Representative Aarsvold, seconded by Senator Klein, and carried on a voice vote that the minutes of the August 10, 2004, meeting of the Legislative Audit and Fiscal Review Committee be approved as distributed.**

#### RACING COMMISSION AUDIT

Representative Maragos asked that the State Auditor's office conduct a special audit on the Racing Commission to reflect actions taken up to the date the Racing Commission director left his position in October 2004. He said as a division of the Attorney General's office, the Racing Commission is audited as part of the Attorney General's office. He said the State Auditor's office can incorporate the special audit of the Racing Commission into the audit of the Attorney General's office.

**It was moved by Representative Maragos, seconded by Representative Skarphol, and carried on a roll call vote that the Legislative Audit and Fiscal Review Committee, pursuant to subsection 2 of North Dakota Century Code (NDCC) Section 54-10-01, request the State Auditor's office to conduct an updated audit of the Racing Commission, including a detailed analysis of the racing promotion fund.** Representatives Wald, Aarsvold, Carlson, Delzer, Maragos, Skarphol, Thoreson, Timm, and Winrich and Senator Klein voted "aye." No negative votes were cast.

#### WORKFORCE SAFETY AND INSURANCE PERFORMANCE AUDIT

Chairman Wald called on Mr. Malcolm Dodge, Octagon Risk Services, Inc., Oakland, California, who presented the performance audit report for Workforce Safety and Insurance as of September 22, 2004.

Mr. Dodge said the audit report focuses on the following six elements that were felt to be the highest priorities for Workforce Safety and Insurance:

1. Assess the overall operational performance of the Special Investigations Unit.
2. Assess the overall operational performance of the claims department.
3. Assess fees paid to outside legal firms.
4. Determine if pharmacy costs were increasing during the performance evaluation period and, if so, ways for Workforce Safety and Insurance to address the increase.
5. Evaluate the extent to which the Office of Independent Review provides advocacy services in keeping with NDCC Section 65-02-27.
6. Determine the status of prior recommendations.

Mr. Dodge said the report includes 59 separate recommendations, including 5 repeat recommendations from the previous performance audit.

Mr. Dodge said 57 of 80 prior audit recommendations included in the Workforce Safety and Insurance 2002 performance audit were fully implemented, 13 were partially implemented, 6 have not been implemented, and 4 are no longer applicable.

In response to a question from Representative Skarphol, Mr. Dodge said total pharmacy costs incurred by Workforce Safety and Insurance increased by over \$1 million between calendar years 2002 and 2003, for a total of over \$6 million in calendar year 2003.

In response to a question from Representative Wald, Mr. Dodge said increases in medical costs are primarily due to higher pharmaceutical costs and greater utilization of medications.

In response to a question from Representative Aarsvold, Mr. Dodge said in most states approximately 20 percent of workers' compensation claims account for 80 percent of the total dollar amount of benefits paid. In fiscal years 1998 and 1999, he said, 1 percent of the total claims paid by Workforce Safety and Insurance accounted for approximately 50 percent of the total dollar amount of benefits paid during the year. He said many of the high-cost claims are cases involving serious injuries or death; however, some high-cost claims involve individuals with permanent total disability status.

In response to a question from Representative Skarphol, Mr. Dodge said there were 968 open permanent total disability claims in North Dakota as of March 31, 2004. He said those permanent total disability cases make up more than one-third of all open time-loss claims. He said this is an unusually high percentage and is partially due to unsuccessful vocational rehabilitation cases becoming lifelong benefit programs. He said North Dakota has a higher percentage of permanent total disability claims than most other states. He said many states require individuals to have a more serious impairment, such as blindness, burn, or severe head injury, to qualify for permanent total disability status.

Mr. Dodge said the vast majority of fees paid to private investigators by the Special Investigations Unit are for injured worker investigations. He said the number of cases assigned were 405 in 2002 as compared to 358 in 2003; however, despite a smaller number of cases the total fees paid to private investigators increased from \$495,278 in 2002 to \$920,981 in 2003. He said based on this information, it is recommended that more Special Investigations Unit investigators be hired and trained to perform most if not all the work currently being provided by private investigation firms. He said the Special Investigations Unit staff should be located geographically around the state to improve expense efficiencies and the timeliness of investigations.

In response to a question from Representative Winrich, Mr. Dodge said during the audit process, there were a number of cases noted where injuries treated were to body areas that were not originally a part of the workplace injury and the claims staff did not adequately assess causation in many of those circumstances. He said the audit report includes a recommendation that the claims unit should train analysts and support staff in the area of compensability determination. He said training should include procedures relating to evaluation of injury histories to make sure they are consistent and the limitation of liability for injuries not directly related to the injury claim.

Mr. Dodge said the hourly rate paid for outside legal services by Workforce Safety and Insurance averages \$110 for attorneys and \$65 for paralegals. He said in comparing the two legal firms used most frequently by Workforce Safety and Insurance between July 2001 and December 2003, the average cost per referral paid was \$2,000 for one firm and \$3,150 for the other firm. He said the complexity of cases can affect the average cost. He said the report includes a recommendation that legal bills be sent to an outside legal firm for review in keeping with the published *Legal Services Guidelines*, which states that Workforce Safety and Insurance has the right to audit all bills using either in-house auditors or the services of an independent auditor.

Mr. Dodge said the report also includes a recommendation that Workforce Safety and Insurance assess the cost benefit of bringing in house the defense firm services that it currently outsources. He said consideration should be given to hiring an attorney and a paralegal to work from the Fargo office and one additional attorney and paralegal in Bismarck.

In response to a question from Representative Aarsvold, Mr. Dodge said there may be concerns by individuals that the Office of Independent Review is not completely independent from Workforce Safety and Insurance. However, he said, the Office of Independent Review has been consistent in informing individuals that if they are not satisfied with the advice provided, they may hire private legal representation and if their case prevails, the legal fees will be paid by Workforce Safety and Insurance.

In response to a question from Representative Wald, Mr. Dodge said chiropractic care is a service that is often overutilized. He said some states set limits on the number of chiropractic visits paid by workers' compensation.

In response to a question from Representative Carlson, Mr. Dodge said the 2004 performance audit included an examination of the recommendations included in the 2002 performance audit and identified the recommendations that have not been fully implemented. He said the 2004 performance audit focused on different areas than the 2002 performance audit.

In response to a question from Representative Carlson, the legislative budget analyst and auditor said that pursuant to NDCC Section 65-02-30, the director, chairman of the board, and a representative of Workforce Safety and Insurance are to present the performance audit report and any action taken to implement the recommendations to the House and Senate Industry, Business and Labor Committees during the next regular session of the Legislative Assembly following the performance evaluation.

Chairman Wald called on Mr. Robert Indvik, Chairman of the Workforce Safety and Insurance Board, who said the performance evaluation process has been a benefit to Workforce Safety and Insurance. He said the performance evaluation, however, does not provide for a process to determine if the recommendations implemented result positively, negatively, or have no effect on the services provided by Workforce Safety and Insurance.

Mr. Charles Blunt, Executive Director and CEO, Workforce Safety and Insurance, said representatives of Workforce Safety and Insurance will provide the 59th Legislative Assembly (2005) with any information requested regarding steps taken by the agency to implement the audit recommendations. He said internal auditors are closely working with managers to assist and verify that the performance audit recommendations are implemented.

In response to a question from Representative Wald, Mr. Blunt said Workforce Safety and Insurance has collaborated with Accident Fund Insurance Company of America to offer "all state" accident insurance coverage to companies for a flat annual fee of \$600. He said this is a three-year pilot program that provides accident insurance coverage for employees who temporarily work out of state for a period of less than 30 days.

### **JOB SERVICE NORTH DAKOTA PERFORMANCE AUDIT**

Chairman Wald called on Mr. John Mongeon, Brady, Martz & Associates, P.C., Certified Public Accountants, who presented the performance audit report for Job Service North Dakota as of September 14, 2004. Mr. Mongeon said the performance audit of Job Service North Dakota was conducted pursuant to NDCC Section 52-02-18, which provides for an evaluation of Job Service North Dakota to determine if quality service is provided in an efficient and cost-effective manner. He said pursuant to Section 52-02-18, the executive director of Job Service North Dakota is to present the performance audit report and any action taken to implement the recommendations to the House and Senate Industry, Business and Labor Committees during the next regular session of the Legislative Assembly following the performance audit. He said the scope of the performance audit was limited to the following activities:

1. Evaluate the performance measures established by Job Service North Dakota.
2. Audit the unemployment insurance trust fund, including the department's plan to achieve targeted solvency levels as required pursuant to Section 52-04-05.
3. Audit the Work Force 2000 monitoring system.
4. Evaluate the efficiency and effectiveness of the Centralized Unemployment Insurance Claims Center.
5. Determine the status of prior audit recommendations.
6. Evaluate the effectiveness of the reemployment policy in reducing the duration of benefits.

Mr. Mongeon said the report includes 26 separate recommendations. He said 9 of 16 prior audit recommendations included in the Job Service North Dakota 2002 performance audit were fully implemented, 2 were partially implemented, 4 have not been implemented (the department has plans to implement 2 of these recommendations in the future), and 1 is no longer applicable.

Mr. Mongeon said NDCC Section 52-04-05 requires a balance in the unemployment insurance trust fund sufficient to pay one year of unemployment

benefits based upon past history. The targeted balance is to be achieved over a seven-year period starting on January 1, 2000. He said the trust fund reserve balance as of June 30, 2004, was approximately \$57.6 million, excluding Reed Act funds of approximately \$15.2 million. He said the Reed Act funds are available for benefits or unemployment insurance administration through legislative appropriation. He said because Job Service North Dakota anticipates using the Reed Act funds for administrative purposes, the funds are not included in determining the progress toward the solvency target.

Mr. Mongeon said based on the most recent calculation, which was made in November 2003, the targeted January 1, 2007, reserve level is \$69.3 million. He said based on current trends, the trust fund will reach targeted reserve levels by 2006. He said when House Bill No. 1135 (1999), the bill which provided for a required minimum trust fund solvency level, was approved, the targeted January 1, 2007, reserve level was \$72.2 million, and the actual balance of the trust fund was approximately \$31 million.

In response to a question from Representative Wald, Mr. Mongeon said pursuant to NDCC Section 52-04-05, Job Service unemployment rates cannot be lowered until the target reserve level is reached.

Mr. Mongeon said the audit report includes a recommendation that Job Service North Dakota consider conducting an independent review of the projections for the unemployment insurance trust fund by an expert, such as an actuary or an economist. He said this review would either confirm the Job Service North Dakota analysis or provide useful insight for potential changes that might make the projections more precise. He said Job Service North Dakota's response to the recommendation was that the amount of unemployment benefits paid on an annual basis can be quite erratic and still stay within the statistical parameters.

Mr. Mongeon said the audit report includes a recommendation that Job Service North Dakota and the Legislative Assembly review current law to determine if amendments should be made to ensure that tax rates stay reasonably stable once the trust fund reserve reaches solvency.

Mr. Mongeon said the determination of a claimant's work search requirement is initially established when the original claim is filed. He said if the claimant indicates that he or she will be returning to work within the next month and a half for the previous employer, that person will not be subject to work search requirements. He said for the fiscal year ended June 30, 2003, 57 percent of total claims did not have a work search requirement and 65 percent of the total benefits paid were to individuals without a work search requirement.

Mr. Mongeon said the audit report includes a recommendation that Job Service North Dakota

develop a verification function for claimants classified as returning to their previous employer. He said this should include independent verification with the previous employer to validate the claimant's assertion regarding his or her employment status. In addition, he said, steps should be taken to monitor the claimant's actual history of returning to the previous employer after the initial claim is filed and to follow up with the claimant on the scheduled rehire date to determine the current status of the claim.

In response to a question from Representative Skarphol, Mr. Mongeon said in North Dakota 19 percent of the unemployment benefits paid are subsidized by positive balance employers. He said North Dakota has the lowest subsidization rate in the nation.

Chairman Wald called on Ms. Maren Daley, Executive Director, Job Service North Dakota, who said according to the performance audit report, Job Service North Dakota is a well-run organization that continues to improve its delivery of services to the citizens of North Dakota.

In response to a question from Representative Aarsvold, Ms. Daley said North Dakota does not currently have the highest percentage in the nation of individuals with more than one job.

In response to a question from Representative Wald, Ms. Daley said those individuals who are actively seeking a job, even if they have been out of the workforce for years, are considered unemployed.

## WHEAT COMMISSION AUDIT REPORT

Mr. Mongeon presented the audit report for the Wheat Commission for the years ended June 30, 2004 and 2003. He said the report contains an unqualified opinion and one finding of noncompliance with legislative intent. He said the Wheat Commission is currently involved in an unfair Canadian wheat trade case against the Canadian Wheat Board. He said the case was started in 1999 and is still ongoing as of June 30, 2004. He said outstanding liabilities for legal fees and other professional services associated with the case have accumulated to \$3,004,678 as of June 30, 2004. He said the commission did not have the resources necessary to stay current with its obligations. He said expenditures exceeded revenues by \$1,069,311 and \$1,527,736 for fiscal years ended June 30, 2004 and 2003, respectively. He said pursuant to NDCC Section 4-28-07, the Wheat Commission may use the amount raised by two mills of the levy provided to support the commission's involvement in trade issues throughout the world. He said the audit report contains a recommendation that the Wheat Commission take the following actions relating to the outstanding obligations for legal fees and professional services:

- Obtain immediate advice and approval from appropriate legislative authority and the Attorney General's office on a plan to fund the

outstanding liabilities. In addition, the Wheat Commission should not incur any additional legal fees without approval and the aforementioned plan in place.

- Develop procedures and controls to ensure that all activities are properly recorded and reported.
- Request a legal opinion from the Attorney General's office to determine the legality of the legal fees incurred in excess of available resources.
- Request a legal opinion from the Attorney General's office to determine if the commission is in violation of Section 4-28-07.

In response to a question from Representative Carlson, the legislative budget analyst and auditor said the duties of the Wheat Commission are detailed in NDCC Section 4-28-06. He said the Wheat Commission has continuing appropriation authority for use of its revenues, which are primarily from the wheat tax levy or "checkoff."

Ms. Sandy Tabor, Deputy Attorney General, said the Attorney General's office has conducted some preliminary work regarding whether a board or commission or any state agency with continuing appropriation authority can incur expenditures in excess of revenues. She said state laws (NDCC Section 54-27-12) prohibit an agency from spending more than the amount appropriated during a biennium; however, the law is not "clear" when it involves a continuing appropriation. She said she is not sure if the two-mill levy is an actual spending limit. She said the Attorney General's office has not yet received a request for opinion from the Wheat Commission.

In response to a question from Senator Klein, Mr. Mongeon said the Wheat Commission was current with its legal fees until September 2002. He said the Wheat Commission has incurred approximately \$6.4 million in total legal and other professional fees relating to the case as of August 2004. Senator Klein said the 2003 Legislative Assembly should have been informed of the accumulating legal bills.

Chairman Wald called on Mr. Neal Fisher, Administrator, Wheat Commission, who presented some information on the lawsuit against the Canadian Wheat Board. A copy of the information presented is on file in the Legislative Council office. Mr. Fisher said late in 2002 and 2003 the United States International Trade Commission and the United States Department of Commerce both arrived at affirmative decisions on their respective determinations of preliminary injury and counter available subsidies, resulting in significant duties being assessed against Canadian spring wheat and durum imports. In October 2003, he said, the International Trade Commission released its final ruling, finding that injury could be established only in the case of spring wheat

and unfortunately the durum duty was rescinded. He said the process of appeals required to maintain the spring wheat duties continues and an attempt to overturn the durum decision has resulted in significant additional legal costs being incurred throughout the fiscal years ended June 30, 2003 and 2004 and at more modest levels in the 2005 fiscal year. He said since the start of the case there has been a dramatic reduction in imports of spring wheat and durum and the improvement in price and income opportunities continue to be very significant for producers and the economy of the state of North Dakota.

Mr. Fisher said the Wheat Commission plans to request approval from the Legislative Assembly for an increase in the wheat "checkoff" from the present 1 cent per bushel (10 mills) to one and one-half cents per bushel (15 mills). If the increase is approved, he said, it would initially be used to retire the debt accumulated relating to the case against the Canadian Wheat Board but would eventually make additional dollars available for other priority programs.

In response to a question from Representative Carlson, Mr. Fisher said it was important for the Wheat Commission to maintain confidentiality regarding the legal costs so as not to "embolden" the Canadian Wheat Board. He said the law firm representing the Wheat Commission has agreed to accept a three-year repayment schedule. He said the Wheat Commission will manage to pay all legal fees over the three-year period even if the increase in the "checkoff" is not approved.

In response to a question from Representative Delzer, Mr. Fisher said the parties participating in the lawsuit are the North Dakota Wheat Commission, United States Durum Growers Association, and the Durum Trade Action Committee. He said other states surrounding North Dakota have benefited from the case; however, it is unlikely the wheat commissions from those states have the ability to financially support the case. He said the North Dakota Wheat Commission is financially responsible for the legal fees.

In response to a question from Representative Delzer, Mr. Fisher said an increase in the mill levy from 10 to 15 mills would increase annual revenues by approximately \$1 million. If the increase in the mill levy is approved, he said, the Wheat Commission would be able to pay all outstanding legal fees within two years.

Representative Delzer asked that the Attorney General's opinion regarding the legality of legal fees incurred in excess of available resources by the Wheat Commission be presented during the next meeting of the Legislative Audit and Fiscal Review Committee during the 2005 Legislative Assembly.

In response to a question from Representative Wald, Mr. Fisher said typically an increase in the "checkoff" will initially result in a slight increase in the number of refund requests.

Representative Skarphol said he will not support an increase in the "checkoff" unless the support from wheat and durum producers is near unanimous.

Mr. Harlan Klein, Chairman, Wheat Commission Board, said the Wheat Commission Board members have been working to gain support from the wheat and durum producers for an increase in the "checkoff."

Mr. Dan Wogsland, Executive Director, North Dakota Grain Growers and United States Durum Growers Association, said the United States Durum Growers Association did not authorize the lawsuit or have any association with the legal costs incurred by the Wheat Commission. He said the lawsuit has done some very good things for North Dakota farmers.

The committee recessed for lunch at 12:30 p.m. and reconvened at 1:30 p.m.

## **STATE AGENCY AND INSTITUTION AUDIT REPORTS**

Chairman Wald called on Mr. Darrell Lingle, Eide Bailly LLP, Certified Public Accountants, who presented the audit report for the partnership in assisting community expansion (PACE) fund for the years ended June 30, 2004 and 2003. He reviewed the auditor's responses to the committee's guidelines and said the audit report contains an unqualified opinion and does not contain any findings or recommendations.

Mr. Lingle presented the audit report for the Ag PACE fund for the years ended June 30, 2004 and 2003. He reviewed the auditor's responses to the committee's guidelines and said the audit report contains an unqualified opinion and does not contain any findings or recommendations.

Mr. Lingle presented the audit report for the State Building Authority for the years ended June 30, 2004 and 2003. He reviewed the auditor's responses to the committee's guidelines and said the audit report contains an unqualified opinion and does not contain any findings or recommendations.

Chairman Wald called on Mr. Ed Nagel, State Auditor's office, who presented the audit report for the Mill and Elevator Association for the year ended June 30, 2004. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion and does not contain any findings or recommendations.

## **POTATO COUNCIL AUDIT REPORT**

Mr. Nagel presented the audit report for the Potato Council for the years ended June 30, 2004 and 2003. He said the report contains an unqualified opinion and includes one finding of noncompliance with legislative intent relating to the issuance of a refund of assessment to an individual who did not properly notify the council in writing of his intention not to participate in the Potato Industry Promotion Act, pursuant to NDCC Section 4-10.1-12. He said the report includes one

internal control recommendation relating to paying outstanding invoices in a timely manner. He said two prior audit recommendations were not implemented.

Mr. Nagel said expenditures incurred by the Potato Council exceeded revenues by \$43,397 and \$185,785 for the two-year periods ended June 30, 2002 and 2004, respectively. He said the Potato Council's deposits and investments totaled \$21,277 as of June 30, 2004. He said this amount represents approximately nine days of expenditures considering a 250-day year. Pursuant to NDCC Section 4-10.1-09, the Potato Council has continuing appropriation authority for its "checkoff" revenues.

In response to a question from Representative Skarphol, Ms. Diane Peycke, Executive Director, Potato Council, said that some of the largest potato producers have requested "checkoff" refunds over the last two bienniums. She said there has been a reduction in the total potato acreage in North Dakota in the last few years. She said some of the producers who request refunds also frequently request services of the Potato Council.

In response to a question from Representative Wald, Ms. Peycke said she provides services to the Potato Council on a contract basis and is not a state employee. She said she also provides contract services for the Northern Plains Potato Growers Association and the Minnesota Potato Council.

In response to a question from Representative Carlson, Ms. Peycke said the late payment of bills relates to two telephone bills that were misdirected in the mail.

In response to a question from Representative Delzer, the legislative budget analyst and auditor said Section 34 of Senate Bill No. 2015 (2003) provides for the head of each executive branch agency or institution to report during their budget presentation to the Appropriations Committees during the 59th Legislative Assembly on statutory provisions authorizing the agency or institution to spend funds pursuant to a continuing appropriation. He said boards and commissions are not directed to report on continuing appropriation authority. He said agricultural commodity groups are required, pursuant to NDCC Section 4-24-10, to report to the standing Agriculture Committees during the legislative session.

Chairman Wald asked if the committee would be interested in receiving information on how surrounding states' Legislative Assemblies manage the appropriations and rates charged by agriculture commodity groups for presentations at the next meeting during the 59th Legislative Assembly.

**It was moved by Representative Carlson, seconded by Representative Skarphol, and carried on a voice vote that the Legislative Council staff research agriculture commodity groups in South Dakota, Minnesota, Wisconsin, Iowa, Wyoming, Montana, and Idaho regarding whether the state Legislative Assembly controls**

**appropriations and rates charged by agriculture commodity groups.**

## **DEPARTMENT OF HUMAN SERVICES REPORTS**

### **Child Support Internal Control Procedures**

Chairman Wald called on Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, who presented information regarding the Department of Human Services internal control procedures for child support. A copy of the information presented is on file in the Legislative Council office. Mr. Schwindt said the Department of Human Services audit report for the years ended June 30, 2003 and 2002 included a recommendation that controls be established over child support adjustments to ensure proper oversight and approval and ensure that adjustments are accurate and properly reported. He said the State Auditor's office determined that there may be a risk of an employee inappropriately adjusting child support receivables. He said the department agrees that such an event could conceivably occur; however, the probability of loss from such occurrence is minimal. He said should such an event occur, the department would know the person responsible, when it occurred, the amount of the adjustment, and could readily reestablish the balance. Mr. Schwindt said the Department of Human Services implemented the advice of the State Auditor's office and on a quarterly basis a number of cases are randomly selected and reviewed.

Mr. Schwindt said the state's official records of all child support amounts owed, collected, and distributed are maintained electronically on the fully automated child support enforcement system (FACSES). He said a payment ledger is maintained on FACSES by court order for each person involved with the child support enforcement program. He said debt adjustments may be required for a number of reasons, including when the department begins or ceases to enforce another state's order, a child support obligation is retroactively changed, the custodial parent and noncustodial parent remarry, legal custody of the child changes, or the noncustodial parent dies and the court order allows the obligation to stop. He said documentation is maintained to support each adjustment. He said the department believes that current controls are adequate.

### **Accounts Receivable**

Chairman Wald 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 2004 was \$5,155,726, of which \$225,212 related to the human service

centers, \$4,475,373 related to the State Hospital, and \$455,141 related to the Developmental Center.

**It was moved by Senator Klein, seconded by Representative Carlson, 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.**

### **TURNBACK OF UNSPENT GENERAL FUND APPROPRIATIONS - 2001-03 BIENNIUM**

Chairman Wald called on Ms. Pam Sharp, Director, Office of Management and Budget, who presented a summary of the turnback of unspent general fund appropriations for the 2001-03 biennium, comparing general fund appropriations, general fund expenditures, allowed carryover, and resulting turnback. A copy of the information presented is on file in the Legislative Council office. Ms. Sharp said the 2001-03 biennium general fund turnback was \$10.5 million, which is based on the following:

Total general fund appropriations	\$1,740,290,719
Less actual expenditures	1,721,881,358
Total unexpended	\$18,409,361
Less	
Capital construction carryovers	464,699
Other carryovers permitted by law	7,397,565
Total general fund turnback (.61% of total general fund appropriations)	\$10,547,097

In response to a question from Representative Delzer, Ms. Sharp said the Office of Management and Budget's appropriations bill exempted the Fiscal Management Division from NDCC Section 54-44.1-11, which requires state agencies to return unexpended appropriations to the general fund. She said carryover funds are currently being used for the ConnectND project.

In response to a question from Representative Aarsvold, the legislative budget analyst and auditor said because of the unpredictability of the length of the legislative sessions, the Legislative Assembly has the authority to transfer funds between bienniums.

### **INFORMATION TECHNOLOGY DEPARTMENT - ANNUAL REPORT**

Chairman Wald called on Mr. Mike Ressler, Deputy Chief Information Officer, Information Technology Department, who reported on the department's 2003-04 annual report, pursuant to NDCC Section 54-59-19. A copy of the report is on file in the Legislative Council office. Mr. Ressler said the annual report is composed of the following five sections:

- Section 1 - An executive summary that describes and quantifies benefits the state is realizing from investments in information technology.

- Section 2 - A status report on the costs and benefits of large information technology projects completed in the last 12 months.
- Section 3 - A summary of small information technology projects completed in the last 12 months.
- Section 4 - Information on the department's performance, including a rate comparison and an update on the department's performance measures.
- Section 5 - An overview of ongoing information technology initiatives.

### **AUDIT REPORTS FROM ETHANOL PRODUCTION COMPANIES**

The Legislative Council staff indicated that a copy of the June 30, 2004, audit report for Archer Daniels Midland Company was received and is on file in the Legislative Council office. Pursuant to NDCC Section 10-19.1-152, any corporation that produces agriculture ethyl alcohol or methanol in this state and receives a production subsidy from the state must file an annual audit report with the Legislative Audit and Fiscal Review Committee. The report was filed with the committee pursuant to this section.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

**It was moved by Representative Skarphol, seconded by Senator Klein, and carried on a voice vote that, pursuant to NDCC Section 54-35-02.2, the committee accept the following reports presented to the committee:**

- **Workforce Safety and Insurance performance audit (September 22, 2004).**
- **Job Service North Dakota performance audit (September 14, 2004).**
- **Wheat Commission (June 30, 2004 and 2003).**
- **PACE fund (June 30, 2004 and 2003).**
- **Ag PACE fund (June 30, 2004 and 2003).**
- **State Building Authority (June 30, 2004 and 2003).**
- **Mill and Elevator Association (June 30, 2004).**
- **Potato Council (June 30, 2004 and 2003).**
- **Department of Human Services (June 30, 2003 and 2002).**
- **Reports available but not selected for presentation:**
  - **Barley Council (June 30, 2004 and 2003).**
  - **Corn Utilization Council (June 30, 2004 and 2003).**
  - **Dry Bean Council (June 30, 2004 and 2003).**

**Soybean Council (June 30, 2004 and 2003).****Department of Corrections and Rehabilitation subject tracking and reporting system (December 31, 2003.)**

In response to a question from Representative Wald, the legislative budget analyst and auditor said pursuant to a request from the Budget Section, state agencies and institutions were asked to present a summary of assets owned as part of 2003-04 budget-tours. He said the committee or an individual legislator may propose an interim study of all state-owned assets, which would provide an opportunity for agencies to identify and provide details of their major assets. Representative Skarphol asked that the proposed study resolution be drafted for him by the Legislative Council staff.

In response to a question from Representative Timm, Mr. Gordy Smith, State Auditor's office, said it is routine for the State Auditor's office to follow up on audit recommendations included in the previous audit report when conducting operational audits. However, he said, there is a two-year period between most state agency audits. He said 12 to 18 months after completing a performance audit, the State Auditor's office will follow up with the agency regarding implementation of audit recommendations.

Chairman Wald said the committee could periodically receive updates from the State Auditor's office regarding the progress made by state agencies on significant audit recommendations.

In response to a question from Representative Wald, Mr. Smith said the State Auditor's office would need to conduct additional followup reviews to support assurances from state agencies that significant recommendations have been implemented. He said he is not sure if the State Auditor's office staff would have sufficient available time to complete such reviews.

Representative Carlson said the performance audit followup reports for Workforce Safety and Insurance and Job Service North Dakota should be presented to the Appropriations Committees rather than the Industry, Business and Labor Committees.

Representative Delzer said a copy of the agency audit reports could be provided to the chairman of each of the Appropriations Committees. Representative Skarphol said it would be difficult for legislators not on the Legislative Audit and Fiscal Review

Committee to become familiar with all the issues addressed by the committee.

The legislative budget analyst and auditor said during the 1997-98 interim, the Legislative Audit and Fiscal Review Committee recommended that the State Auditor's office should consider providing a report to the Appropriations Committees and each member of the Legislative Audit and Fiscal Review Committee at the beginning of each session regarding significant audit findings and recommendations contained in the financial and performance audit reports presented to the Legislative Audit and Fiscal Review Committee during the previous interim.

In response to a question from Representative Skarphol, Mr. Smith said the State Auditor's office would be willing to provide a report of significant audit findings and recommendations to the Appropriations Committees, if approved by the State Auditor. He said because of the number of audits performed during the biennium, it would take a significant amount of time to reexamine each audit. In the future, he said, as audits are completed, the recommendations could be compiled into a report.

**It was moved by Representative Timm, seconded by Senator Klein, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.**

Chairman Wald said the next meeting of the Legislative Audit and Fiscal Review Committee will be conducted during the 2005 legislative session, probably at the end of January 2005. He said the Department of Corrections and Rehabilitation performance audit, the North Dakota University System audit, and the Attorney General's opinion regarding the Wheat Commission's legal fees are anticipated to be presented during the meeting.

The meeting was adjourned subject to the call of the chair at 3:20 p.m.

---

Donald J. Wolf  
Senior Fiscal Analyst

---

Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:1