

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Council. Pursuant to North Dakota Century Code (NDCC) Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Council. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state moneys is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to NDCC Section 54-35-02.2, the committee is charged with the duty of studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Representatives Francis J. Wald (Chairman), Ole Aarsvold, Wesley R. Belter, Rex R. Byerly, RaeAnn G. Kelsch, Doug Lemieux, Andrew G. Maragos, Ronald Nichols, Jim Poolman, Mike Timm, and Lonny B. Winrich and Senators Dwight C. Cook, Jerome Kelsh, Ralph Kilzer, Jerry Klein, Duane Mutch, David O'Connell, and Ken Solberg.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

During the 1999-2000 interim, the State Auditor's office and independent accounting firms presented four performance audit and evaluation reports and 101 financial or information technology application audit reports. An additional 79 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member.

The committee was assigned the following duties and responsibilities for the 1999-2000 interim:

1. Receive the annual audit report for the State Fair Association (NDCC Section 4-02.1-18).
2. Receive the annual audit report from any corporation or limited liability company that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (NDCC Sections 10-19.1-152 and 10-32-156).
3. Receive the annual audited financial statements and a report from the North Dakota low-risk incentive fund. (NDCC Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
4. Receive the North Dakota Stockmen's Association audit report. (NDCC Section 36-22-09 provides for the audit report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
5. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Developmental Center at Westwood Park, Grafton (NDCC Sections 25-04-17 and 50-06.3-08).
6. Receive the biennial performance audit report on Job Service North Dakota (NDCC Section 52-02-18).
7. Determine the frequency of audits or reviews of state agencies (NDCC Section 54-10-01(2)).
8. Determine necessary performance audits. (NDCC Section 54-10-01(4) provides that the State Auditor is to perform or provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee.)
9. Determine when the State Auditor is to perform audits of political subdivisions (NDCC Section 54-10-13).
10. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (NDCC Section 54-10-15).
11. Study and review audit reports submitted by the State Auditor (NDCC Section 54-35-02.2).
12. Receive reports from the director of the Workers Compensation Bureau and the chairman of the Workers Compensation Board of Directors, including a report on the biennial performance evaluation of the Workers Compensation Bureau (NDCC Sections 65-02-03.3 and 65-02-30).
13. Review the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee, a committee opposed to constitutional measure No. 3 in North Dakota's June 2000 primary election. (Assigned to the Legislative Audit and Fiscal Review Committee by the Legislative Council chairman on June 9, 2000.)

SUGGESTED GUIDELINES FOR PERFORMING AUDITS OF STATE AGENCIES

The committee reviewed guidelines, which were developed by prior Legislative Audit and Fiscal Review Committees, relating to

state agency and institution audits performed by the State Auditor's office and independent certified public accountants. The guidelines require that audit reports address the following:

1. Whether expenditures are made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues are accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control is adequate and functioning effectively.
5. Whether financial records and reports reconcile with those of state fiscal offices.
6. Whether there is compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there is evidence of fraud or dishonesty.
8. Whether there are indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in audit reports for preceding periods.
10. Whether all activities of the agency are encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the statewide accounting and management information system, including the cost allocation system.
12. Whether the agency develops a budget of anticipated expenditures and revenues and compares, on at least a quarterly basis, budgeted expenditures and revenues to actual expenditures and revenues accounted for using the accrual basis of accounting.

State agency and institution audit reports presented to the committee during the 1999-2000 interim addressed the 12 audit guidelines developed by the committee.

STATE AUDITOR

Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Bailly LLP, Certified Public Accountants, for an audit of the State Auditor's office for the years ended June 30, 1999 and 1998. The firm presented its audit report which, in accordance with the terms of the contract, included a review of the audit procedures and practices of the State Auditor's office. The report contained recommendations encouraging the State Auditor's office to:

- Determine if performance audit standards should be followed for audits of state agencies and institutions.
- Consider limiting the scope of performance audits.

New Audit Approach

The committee received testimony from a representative of the State Auditor's office regarding the agency's plan to change the audit approach used in conducting audits of state agencies and institutions. The committee learned that for audits of state agencies and institutions conducted by the State Auditor's office, governmental auditing standards for performance audits are more applicable than governmental auditing standards for financial audits. The committee was informed that reports on audits conducted using performance auditing standards will include audited financial statements but will not include an opinion on those financial statements because the audits will not determine if the financial statements are prepared in accordance with generally accepted accounting principles. While members of the committee expressed a concern that an opinion will not be issued on the financial statements included in these audit reports, the committee supported the proposal presented by the State Auditor's office to begin conducting audits of state agencies and institutions using governmental auditing standards for performance audits.

Representatives of the State Auditor's office presented the initial reports on audits conducted using governmental auditing standards for performance audits. The audit reports were accepted by the committee and committee members provided the following comments and suggestions to the State Auditor's office regarding the new audit report format:

- Committee members commented that the information included in the *Discussion and Analysis* section appears subjective in nature and may not be appropriate for inclusion in an audit report. The committee learned in some cases the information in this section is prepared by the State Auditor's office and in some cases is prepared by the agency being audited.
- Committee members observed that the items listed in the *Noteworthy Accomplishments* section may be normal agency accomplishments, not extraordinary accomplishments, and suggested that it may not be appropriate to highlight in an audit report normal accomplishments associated with an agency's operations.

- Committee members observed that auditors may require additional training in order to be able to make appropriate recommendations for improved agency operational efficiency.

PERFORMANCE AUDITS AND EVALUATIONS

Workers Compensation Bureau

Pursuant to NDCC Section 65-02-30, a biennial performance evaluation was conducted of the Workers Compensation Bureau. The evaluation included an examination of the claims department, policyholder services department, fraud department, loss control department, the governance of the Board of Directors, cost containment activities, and performance measurements used by the agency. The evaluation was conducted by The Hays Group, Minneapolis, Minnesota. The resulting report included 138 recommendations, including the following:

- The Workers Compensation Bureau should set a deadline for determining the compensability of claims.
- The Workers Compensation Bureau should consider settlement of certain claims.
- The Workers Compensation Bureau should remove the payroll cap and calculate premiums on the basis of gross payroll.
- The Workers Compensation Bureau budget should be removed from the legislative appropriation process.
- The Legislative Assembly should amend open records laws to allow the Workers Compensation Bureau Board of Directors to hold closed meetings in certain cases.

The committee received testimony from representatives of the Workers Compensation Bureau and the Workers Compensation Board of Directors that indicated of the 138 recommendations, 24 were completely implemented, 51 were partially implemented, 45 were pending implementation, and 18 were not anticipated to be implemented. The committee accepted the performance evaluation report of the Workers Compensation Bureau.

Job Service North Dakota

Pursuant to NDCC Section 52-02-18, a biennial performance audit was conducted of Job Service North Dakota. The audit included an examination of the agency's strategic business plan, information technology plan, policies and procedures to reduce the duration of benefits and assess employment needs, Work Force 2000 program, staffing levels, and the status of the unemployment insurance trust fund. The audit was conducted by Brady, Martz & Associates, P.C., Certified Public Accountants, Bismarck. The resulting report included 36 recommendations, including the following:

- The Legislative Assembly should review the statutory definitions relating to "suitable work" and the benefit duration formula for claimants returning to their previous employers.
- The Legislative Assembly should provide specific appropriations for the administration of the Work Force 2000 program.
- Job Service North Dakota should provide a report to the Legislative Assembly regarding how the agency will restructure in response to proposed changes in federal funding.

The committee received testimony from a representative of Job Service North Dakota indicating the agency agrees with and has taken steps to implement nearly all recommendations included in the report. The committee accepted the performance audit report on Job Service North Dakota.

Child Support Enforcement Program

A representative of the State Auditor's office presented the results of a risk analysis of the various programs of the Department of Human Services conducted by the State Auditor's office for the purpose of prioritizing programs for performance audit. The risk analysis identified the child support enforcement program as having the highest risk rating within the Department of Human Services.

The State Auditor's office and TMR-MAXIMUS, a consulting firm contracted with by the State Auditor's office, conducted a performance audit of the state's child support enforcement program. The performance audit report included the following recommendations:

- The Department of Human Services should introduce legislation to allow the child support enforcement program to be state-administered, rather than county-administered.
- North Dakota should "universalize" its caseload to allow most child support enforcement cases to receive "IV-D services." (The federal child support enforcement program was established in 1975 under Title IV-D of the Social Security Act. Services provided through the state's child support enforcement program, referred to as "IV-D services," include establishing and maintaining case records, providing locate services to find the legally responsible parent, establishing paternity, establishing legal support orders, providing for the enforcement of support obligations, and providing for the

collection and distribution of payments.)

- The Department of Human Services should introduce legislation to implement an administrative hearings process, in lieu of a judicial process, utilizing the Office of Administrative Hearings to conduct child support hearings; establish paternity; establish, modify, and enforce child support and medical support orders; and conduct hearings for license renewal and suspension issues. The report indicated that federal regulations allow the salaries of administrative law judges to be reimbursed with federal funds at the rate of 66 percent but do not allow for the reimbursement of judges' salaries.

The committee received testimony from a representative of the Department of Human Services indicating the agency agrees with the recommendations included in the report and plans to perform a cost-benefit analysis to determine the feasibility of implementing the recommendations. The committee accepted the performance audit report on the child support enforcement program.

Contracts for Services

The committee received a performance audit report from the State Auditor's office related to contracts for services entered into by state agencies and institutions of higher education during the period July 1, 1996, through June 30, 1999. The report included the following recommendations:

- The Office of Management and Budget should introduce legislation to allow the Office of Management and Budget to establish policies relating to the procurement of services and to establish master contracts for services.
- The Office of Management and Budget and the North Dakota University System should develop policies relating to the procurement of services and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget and the Attorney General should prepare a manual to be used by state agencies and institutions for contract drafting and review.
- The Office of Management and Budget should establish an on-line contract system accessible by all state agencies.
- The Office of Management and Budget and the North Dakota University System should establish policies relating to contract monitoring and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget and the North Dakota University System should determine if cooperative purchases of services would be beneficial.

The committee accepted the performance audit report on contracts for services.

Performance Audit Followup Report

A representative of the State Auditor's office presented a followup report on the performance audit of the Children's Services Coordinating Committee. The report on the performance audit of the Children's Services Coordinating Committee was issued on November 1, 1996. The followup report indicated that of the 39 recommendations contained in the audit report, 19 were fully implemented, 13 were partially implemented, one was not implemented, and six were no longer applicable.

Future Performance Audits

Prior to the 1999-2000 interim, the committee asked the State Auditor's office to give priority to conducting a performance audit of the Department of Transportation. The committee learned that although the State Auditor's office has not conducted a performance audit of the Department of Transportation, it is still considering the possibility of conducting such an audit. The committee learned before the State Auditor's office will proceed with an audit of the Department of Transportation, a risk assessment of the department's various programs will be completed and the results presented to the Legislative Audit and Fiscal Review Committee. Representatives of the State Auditor's office plan to develop a list of possible performance audit topics for the 2001-02 interim.

LAKE AGASSIZ REGIONAL COUNCIL

Background

During the 1997-98 interim, the committee requested that the Attorney General's office conduct an investigation regarding the formation of a nonprofit corporation by the Lake Agassiz Regional Council and the propriety of transfers made from the council to the nonprofit corporation. The Attorney General's investigation concluded that the Lake Agassiz Regional Council inappropriately transferred and assigned staff, assets, and bank accounts to the Lake Agassiz Regional Development Corporation. Based on the recommendation of the 1997-98 interim Legislative Audit and Fiscal Review Committee, the Legislative Council chairman requested the Attorney General to ask county state's attorneys, city attorneys, and county commissioners of political subdivisions affiliated with the Lake Agassiz Regional Council to take such action as may be necessary to dissolve the Lake Agassiz Regional Development Corporation and transfer its assets back to the Lake Agassiz Regional Council. In addition, the Legislative Council chairman urged state agencies to cease financial activity with the Lake Agassiz Regional Development

Corporation and the Lake Agassiz Regional Council.

Testimony and Findings

The committee learned the Lake Agassiz Regional Council worked with the state's attorneys and county commissioners of affiliated political subdivisions to transfer certain assets back to the Regional Council. A representative of the Lake Agassiz Regional Council testified that the Regional Council and the Regional Development Corporation are two separate organizations, and that it is necessary for a nonprofit corporation to continue to exist in order to receive donations and federal funds that the Regional Council cannot receive.

The Legislative Audit and Fiscal Review Committee requested the Attorney General's office conduct a followup review of the administrative structure of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation to determine the appropriateness of the new administrative structure. A report received from a representative of the Attorney General's office at a subsequent meeting indicated that the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation are two separate entities with separate boards of directors. While the entities continue to share office space and employ some of the same staff, the report from the Attorney General's office indicated this arrangement does not pose a problem as long as adequate records are maintained.

The Legislative Audit and Fiscal Review Committee requested the State Auditor's office review transfers of assets originally made from the Lake Agassiz Regional Council to the Lake Agassiz Regional Development Corporation and transfers subsequently made to return assets to the Lake Agassiz Regional Council in order to comply with the committee's 1997-98 interim recommendation.

The committee received a report from a representative of the State Auditor's office regarding transfers of assets between the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation. Two loan programs and a donated building comprise over 90 percent of the assets originally transferred to the corporation from the Regional Council. The report recommended the donated building not be transferred back to the Lake Agassiz Regional Council, that one of the loan programs not be transferred back to the council for administrative reasons, and that the other major loan program could be transferred back to the council because it could be administered by either the council or the corporation.

The committee received testimony from the director of the Lake Agassiz Regional Council and members of the boards of directors of the Regional Council and the Regional Development Corporation regarding the need for the corporation to exist and the effectiveness of the services provided by both entities. The committee learned from a representative of the Attorney General's office that the state's attorneys in the area served by the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation were satisfied with the actions that have been taken to return assets to the proper entity.

Conclusion

The committee determined that the issues of concern relating to the organizational structure of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation and the transfers of assets between the two entities have been resolved. The Legislative Council chairman was informed of the resolution of the committee's concerns. A letter was subsequently sent by the chairman of the Legislative Council to various state agencies informing them the issues of concern relating to the organizational structure and the transfers of assets between the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation were resolved to the satisfaction of the Legislative Audit and Fiscal Review Committee and that state agencies could resume financial activity with the two entities.

DEPARTMENT OF PUBLIC INSTRUCTION CHILD AND ADULT CARE FOOD PROGRAM

Background

The committee received from the State Auditor's office the statewide single audit report for the years ended June 30, 1998, and 1997. The statewide single audit is the audit of all federal funds received by state agencies and institutions. The committee learned the largest questioned cost in the statewide single audit report relates to the child and adult care food program administered by the Department of Public Instruction.

Testimony

The committee learned the Department of Public Instruction made payments to Dakota Nutrition, Inc., for meal reimbursements through the department's child and adult care food program. Some of the amounts claimed by Dakota Nutrition, Inc., were later found to be unallowable or unsupported, thereby creating a questioned cost of \$1,412,438. No recommendation was made by the State Auditor's office regarding this finding because the monitoring procedures implemented by the Department of Public Instruction initially identified the problem. At the time of the report, the Department of Public Instruction had taken action to

address the issue and had turned the issue over to the Attorney General's office for prosecution.

As an authorized "sponsoring organization" through the department's child and adult care food program, Dakota Nutrition, Inc., accumulated meal counts from various day care providers in the Minot area, submitted the meal count information to the Department of Public Instruction, and was then reimbursed by the department for the meals provided at the daycare centers. Dakota Nutrition, Inc., then remitted the meal reimbursement funds to the various daycare providers. Discrepancies were discovered when the Department of Public Instruction performed a review of the claims filed by Dakota Nutrition, Inc. The department hired a certified public accounting firm to perform an audit of Dakota Nutrition, Inc. The accounting firm was unable to complete the audit because Dakota Nutrition, Inc., could not produce records substantiating \$1.4 million in claims.

The committee learned a default judgment was obtained against Dakota Nutrition, Inc., for \$12,438 relating to inappropriate administrative expenses claimed by Dakota Nutrition, Inc. A representative of the Attorney General's office reported that the director of Dakota Nutrition, Inc., had moved out of the state and did not respond to the lawsuit. Consequently, it is unlikely the state will be able to collect the \$12,438. The committee also learned the Attorney General's office does not plan to pursue a lawsuit regarding the \$1.4 million of questioned costs because it is unlikely the state will be able to collect the \$12,438 judgment and because the Department of Public Instruction believes the \$1.4 million was properly distributed. A representative of the Department of Public Instruction reported that even though records do not exist to substantiate the proper distribution of the \$1.4 million, the department believes the money was properly distributed because the number of clients receiving meal reimbursement has remained constant after Dakota Nutrition, Inc., ceased operating and because all providers Dakota Nutrition, Inc., claimed reimbursement for have been verified as actual providers.

A concern to members of the committee was that the United States Department of Agriculture, the federal agency in charge of the program, could take action against the state relating to the \$1.4 million because records are not available to substantiate its distribution.

Conclusion

The committee chairman requested the Department of Public Instruction keep the State Auditor's office informed regarding the status of the lawsuit involving Dakota Nutrition, Inc., and regarding any action taken by the United States Department of Agriculture to recoup funds distributed by Dakota Nutrition, Inc.

CAMPAIGN CONTRIBUTIONS RELATING TO CONSTITUTIONAL MEASURE NO. 3 IN THE JUNE 2000 PRIMARY ELECTION

Background

In a letter dated June 9, 2000, the Legislative Council chairman assigned to the Legislative Audit and Fiscal Review Committee the duty of obtaining information and reviewing the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee. The committee is a committee registered with the Secretary of State's office in opposition to constitutional measure No. 3, which was defeated in the June 13, 2000, primary election. Measure No. 3 proposed to remove the State Treasurer as an elected state officer.

Testimony and Findings

The committee learned that of the \$50,650 of reportable contributions received by the State Treasurer's Office Preservation Committee and reported to the Secretary of State's office, \$50,000 was received from the National Association of State Treasurers and its regional divisions. The State Treasurer currently pays dues of \$1,500 per year to the National Association of State Treasurers. The committee learned the National Association of State Treasurers is organized under Section 501(c)(6) of the Internal Revenue Code. Although entities organized under Section 501(c)(3) are prohibited from attempting to influence legislation or participating in any political campaign, entities organized under Section 501(c)(6) are not so prohibited. The committee also reviewed statutory provisions relating to campaign contributions and the filing of campaign contribution statements. The committee was advised the National Association of State Treasurers and its regional divisions did not violate state law relating to the contributions made in opposition to constitutional measure No. 3 in the June 2000 primary election. A concern to committee members was that an out-of-state entity, which receives dues from the state of North Dakota, made significant political contributions to influence a North Dakota election.

The committee learned there are two affiliated organizations of the National Association of State Treasurers--the College Savings Plans Network and the State Debt Management Network. The two affiliated organizations did not make political contributions relating to constitutional measure No. 3. At the committee's last meeting, the committee requested the Legislative Council staff obtain information regarding:

- The tax status of the College Savings Plans Network and the State Debt Management Network.
- Information relating to whether or not the donations made by the National Association of State Treasurers and its regional divisions were the result of official actions of boards or committees of the national and regional organizations.

When available, the requested information will be distributed to committee members and a copy will be retained on file in the Legislative Council office.

The committee learned the National Association of State Treasurers is affiliated with the Council of State Governments. The vice chairman of the Legislative Audit and Fiscal Review Committee is a member of the governing board of the Council of State Governments and plans to discuss the issue of the campaign contributions made by the National Association of State Treasurers and its regional divisions at the next meeting of the governing board scheduled for December 2000. The governing board of the Council of State Governments includes two members of the National Association of State Treasurers.

Conclusion

The committee's review concludes that although the National Association of State Treasurers and its regional divisions did not violate state law relating to the contributions made in opposition to constitutional measure No. 3 in the June 2000 primary election, committee members were concerned that an out-of-state entity that receives dues from the state of North Dakota made significant political contributions to influence a North Dakota election. The committee makes no recommendation relating to the review of the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee.

LEWIS AND CLARK REGIONAL DEVELOPMENT COUNCIL

Background

At the committee's last meeting of the 1997-98 interim held on January 27, 1999, the committee received the audit report for the North Dakota Development Fund, Inc., for the years ended June 30, 1998 and 1997. The committee learned, at the time of the report, litigation was pending between the North Dakota Development Fund, Inc., and the Lewis and Clark Regional Development Council. The issue being litigated related to a contract entered into between the Development Fund and the Lewis and Clark Regional Development Council. After the contract was signed, the Lewis and Clark Regional Development Council unsuccessfully attempted to renegotiate the terms of the contract. The contract provided for the Development Fund to maintain control over certain funds and required that amounts repaid on a loan be placed in an account at the Bank of North Dakota under the name of both the Lewis and Clark Regional Development Council and the North Dakota Development Fund, Inc. An account was established at the Bank of North Dakota, but the Development Fund was not included on the account. After approximately \$12,000 had been repaid on the loan and deposited in this account, the Lewis and Clark Regional Development Council removed the funds from the Bank of North Dakota. The amount of money relating to the litigation is approximately \$12,000.

The Legislative Council chairman, based on the recommendation of the 1997-98 interim Legislative Audit and Fiscal Review Committee, urged state agencies to cease financial activity with the Lewis and Clark Regional Development Council.

Testimony

At the committee's October 5, 1999, meeting, testimony was received from the director of the Department of Economic Development and Finance indicating the lawsuit between the North Dakota Development Fund, Inc., and the Lewis and Clark Regional Development Council was resolved.

Conclusion

The committee determined that state agencies could resume financial activity with the Lewis and Clark Regional Development Council. The Legislative Council chairman, based on the recommendation of the Legislative Audit and Fiscal Review Committee, informed state agencies that the issue regarding the Lewis and Clark Regional Development Council and the North Dakota Development Fund, Inc., was resolved to the satisfaction of the Legislative Audit and Fiscal Review Committee and state agencies could resume financial activity with the Lewis and Clark Regional Development Council.

MONEYS RECEIVED AS A RESULT OF THE AMERICAN CYANAMID SETTLEMENT

Pursuant to a request of the committee, the State Auditor's office reviewed financial transactions relating to moneys received by the Attorney General's office as a result of the American Cyanamid settlement consent decree. Under Appendix A of the consent decree, the state received \$100,000, which was required to be used to benefit the state's agricultural community. The Attorney

General awarded those moneys to the Commission on the Future of Agriculture (COFA) on December 17, 1997, and the funds were transferred to the North Dakota Farmers Union, which acted as the fiscal agent for COFA. Under Appendix B of the consent decree, the Attorney General's office received \$31,114. In compliance with NDCC Section 54-12-18, the Attorney General's office spent \$28,924 of that amount for expenses relating to the Consumer Protection Division, and the remaining \$2,189 was transferred to the state general fund at the end of fiscal year 1998. The State Auditor's office concluded that the expenditures of the Attorney General's office related to the moneys received under Appendix A and Appendix B of the American Cyanamid settlement consent decree were within the guidelines set forth in the consent decree and within the requirements of state law.

The committee also requested an Attorney General's opinion to answer the following questions:

- Was the transfer of American Cyanamid settlement funds to COFA and the North Dakota Farmers Union in compliance with constitutional and statutory provisions?
- Could a state agency have served as the fiscal agent for the settlement moneys without violating the terms of the settlement agreement?

The Attorney General's opinion subsequently presented to the committee states that the use of moneys received by the state from the settlement of a federal multistate antitrust suit to fund COFA was in compliance with both state law and the terms of the consent decree. The opinion also provides that the consent decree did not prevent a state agency from acting as the fiscal agent in disbursing those funds.

ACCEPTANCE OF AUDIT REPORTS AND IMPLEMENTATION OF AUDIT RECOMMENDATIONS

During the 1999-2000 interim, 184 audit reports were accepted by the Legislative Audit and Fiscal Review Committee, including reports on performance audits, information technology application audits, other audits presented to the committee, and audits approved without being formally presented to the committee. The schedule attached as an appendix to this report is a listing of all audit reports accepted by the committee during the 1999-2000 interim, the date of the meeting during which they were accepted, and the date of the audit report.

The committee discussed the obligation of state agencies and institutions to implement audit recommendations in those cases in which there is disagreement between the auditor and the agency being audited. The committee learned, during the 1977-78 interim, the Legislative Audit and Fiscal Review Committee recommended all state agencies and institutions comply with and implement, within the limits of law, recommendations contained in audit reports prepared by the State Auditor's office. During the 1981-82 interim, the committee requested that the State Auditor's office begin to conduct reviews of audited agencies six months after an audit is performed to determine if agencies have complied with the auditor's recommendations.

The committee considered the differences between recommendations contained in financial audits, which deal with financial issues such as the misuse of funds, and the recommendations contained in performance audits, which deal with issues such as an agency's administration and management. A representative of the State Auditor's office indicated that for audit recommendations that do not relate to a violation of law, if the agency can document a justifiable reason for not implementing the recommendation, the State Auditor's office will not include the recommendation in subsequent audit reports.

The committee determined that a state agency has some flexibility regarding the implementation of audit recommendations and that if the agency disagrees with the auditor regarding the implementation of an audit recommendation, the issue will likely be brought to the Legislative Assembly to be resolved.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the Comprehensive Annual Financial Report (CAFR). The CAFR contains the audited financial statements for state agencies and institutions. The committee received and accepted the state's June 30, 1999, CAFR.

STATE LIABILITY RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS

The committee reviewed the audit report for the State Board of Podiatry Examiners for the years ended December 31, 1998, and 1997. The audit report indicates that for calendar year 1997 the Board of Podiatry Examiners had a deficit fund balance of \$7,606. The board's deficit fund balance the previous year was \$3,337. The board's deficit fund balance improved slightly to \$6,972 at the end of calendar year 1998. At the committee's last meeting, the committee requested the Legislative Council staff provide information relating to:

- The state's liability, if any, resulting from financial activities and actions of occupational and professional licensing boards.

- Statutory provisions that prohibit an occupational or professional licensing board from operating with a deficit fund balance.

When available, the requested information will be distributed to committee members and a copy will be retained on file in the Legislative Council office.

TECHNOLOGY TRANSFER, INC., AND THE NORTH DAKOTA DEVELOPMENT FUND, INC.

The committee received and accepted the audit report for Technology Transfer, Inc., for the years ended June 30, 1998, and 1997. Section 18 of 1997 Senate Bill No. 2019, required that any moneys in any investment, contract, partnership, or other business transaction of Technology Transfer be transferred to the North Dakota Development Fund, Inc., effective July 1, 1999. The committee requested that the final audit of Technology Transfer, for the year ended June 30, 1999, include a chronological list of all Technology Transfer investment activities.

The committee received and accepted the Technology Transfer audit report for the years ended June 30, 1999, and 1998. The report, which was prepared by Eide Bailly LLP, included a schedule that showed, for fiscal years 1992 through 1999, the equity investments and royalty agreements entered into by Technology Transfer. The schedule also showed the amounts transferred to the Development Fund as of June 30, 1999.

The committee received and accepted the audit report of the North Dakota Development Fund, Inc., for the years ended June 30, 1999, and 1998. The committee requested that the Board of Directors of the North Dakota Development Fund, Inc., include in future audit reports of the Development Fund a list of companies in which the fund holds an equity interest and that, unless prohibited by law, the list include the original value of the equity investment and the value of the investment at the time of the audit.

NORTH DAKOTA UNIVERSITY SYSTEM

The committee received and accepted the North Dakota University System audit report for the year ended June 30, 1999. The report contained one prior audit finding that was not implemented and 11 new audit findings, including a finding that at the University of North Dakota, 61 equipment items with the combined cost of more than \$174,000 were believed to have been taken by two former professors. The committee later learned the issue was resolved, as the University of North Dakota established a fair market value for each of the equipment items and payment was either received or the equipment item was returned.

The committee also received and accepted audit reports for each of the institutions under the control of the State Board of Higher Education. (See the attached appendix for a listing of all audit reports accepted by the committee.) The audit reports for the University of North Dakota and North Dakota State University for the years ended June 30, 1999, and 1998, included recommendations relating to the following findings:

- Budget Section approval was not obtained on certain construction projects financed with grants or donations, as required by NDCC Section 15-10-12.1.
- The university did not retain adequate supporting documentation to validate student applications for resident status.

North Dakota Century Code Section 15-10-12.1 provides that the Budget Section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the Budget Section. The Budget Section has not established guidelines, and therefore Budget Section approval is required for all campus improvements and building projects financed with donations, gifts, and grants. The committee suggested the North Dakota University System provide recommendations to the 2001 Legislative Assembly regarding reasonable guidelines for Budget Section approval of higher education building projects financed with gifts, grants, and donations.

The committee learned institutions of higher education require a student to sign an affidavit when requesting resident status. The affidavit states it is a crime to falsify the information being provided. A representative of the University System provided testimony that implementing the State Auditor's recommendation would require copying and retaining various supporting documents, along with the student's application form, which would result in the need for additional time to process student applications and the creation of additional paperwork. A representative of the University System reported that rather than implementing the State Auditor's recommendation, the University System will consider conducting random checks to verify student claims of resident status.

OTHER REPORTS

University of North Dakota Aerospace Foundation

The committee requested that representatives of the University of North Dakota (UND) Aerospace Foundation and the University of North Dakota present a report regarding the status of the foundation's activities with the university.

Representatives of the UND Aerospace Foundation and the University of North Dakota reported to the committee that the Aerospace Foundation is conducting a review of its activities and will present a report to the university president who will make a decision regarding the future role of the foundation.

Although not required to be accepted by the committee, the UND Aerospace Foundation audit report for the years ended June 30, 1999, and 1998, was subsequently presented to the committee.

State Board of Reflexology

The committee learned the State Auditor's office was unable to obtain an audit report for the State Board of Reflexology, even though the board is required to submit one pursuant to NDCC Section 54-10-01. Representatives of the State Board of Reflexology indicated because the board receives a small amount of revenue, less than \$2,000 annually, the board could not justify the cost of an audit (the estimated cost of the audit was approximately \$600). A representative of the State Auditor's office reported to the committee that there is no penalty provided in statute for noncompliance with NDCC Section 54-10-01.

The committee requested that a representative of the State Board of Reflexology either appear before the committee or provide correspondence to the State Auditor's office indicating how the board intends to comply with NDCC Section 54-10-01. The State Board of Reflexology subsequently contracted with the State Auditor's office to conduct a financial audit of the board for the years ended June 30, 2000 and 1999. The audit report was received and accepted by the committee.

Ethanol Production Companies

North Dakota Century Code Section 10-19.1-152 provides that any corporation that produces agricultural ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section the audit report for Alchem, Ltd., for the years ended December 31, 1999, and 1998, was filed with the committee and distributed to committee members.

Departmental Statements By Fund

The committee received copies of the departmental statements by fund reports for fiscal years ended June 30, 1998, and 1999. The reports were prepared by the Office of Management and Budget and include a statement of assets, liabilities, and fund equity and a statement of revenues and expenditures by fund for each agency and institution of the state.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to NDCC Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to present a report to the Legislative Audit and Fiscal Review Committee regarding accounts receivable writeoffs at the State Hospital, Developmental Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 1999 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 1999, were \$14,554,545 at the State Hospital, \$171,613 at the Developmental Center and \$128,322 at the human service centers. The department's report for fiscal year 2000 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2000, were \$6,576,631 at the State Hospital, \$227,192 at the Developmental Center, and \$141,057 at the human service centers.

Electronic Bingo Card Marking Devices

The committee received a report regarding actions taken by the Gaming Commission to allow the use of electronic bingo card marking devices. Electronic bingo card marking devices are hand-held electronic devices that allow a bingo player to play up to 72 cards at one time. Electronic bingo card marking devices were field tested at five sites authorized by the Gaming Commission. The test began in October 1999 and concluded in May 2000. Test sites were located in Bismarck, Minot, Fargo, and Devils Lake. The committee expressed concern that the use of electronic bingo card marking devices may be an expansion of electronic gaming in North Dakota.

The committee learned the Gaming Commission planned to propose changes to the North Dakota Administrative Code relating to the use of electronic bingo card marking devices. The Legislative Council chairman, at the request of the Legislative Audit and Fiscal Review Committee, provided correspondence to the chairman of the Legislative Council's Administrative Rules Committee summarizing the testimony received by the Legislative Audit and Fiscal Review Committee and the committee discussion relating to the use of electronic bingo card marking devices in North Dakota. The rules proposed by the Gaming Commission were considered by the Administrative Rules Committee, and the committee did not take action to void the proposed rules.

Governmental Accounting Standards Board Statement Nos. 34 and 35

The committee learned that Governmental Accounting Standards Board Statement Nos. 34 and 35 will require significant changes in governmental accounting beginning with fiscal year 2002. The Governmental Accounting Standards Board statements require that depreciation expense and the value of infrastructure be reported in governmental financial statements. State agencies in North Dakota are currently required to capitalize any asset over \$750. The new accounting model will require agencies to depreciate assets that are capitalized. The committee learned in order to reduce the administrative burden on state agencies, the Office of Management and Budget plans to introduce legislation to be considered by the 2001 Legislative Assembly to amend NDCC Section 54-27-21 to increase the asset capitalization threshold for state agencies and institutions from \$750 to \$5,000. However, agencies will still be required to maintain adequate inventory records for assets with a value of less than \$5,000, pursuant to NDCC Section 44-04-07.