

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Thursday, April 21, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Jerry Klein, Judy Lee, David O'Connell; Representatives Patrick R. Hatlestad, Jerry Kelsh, Keith Kempenich, Lawrence R. Klemin, Gary Kreidt, Andrew G. Maragos, Bob Martinson, Mike Nathe, Marvin E. Nelson, Robert J. Skarphol

Members absent: Representatives Corey Mock, Chet Pollert

Others present: Dick Dever, State Senator, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Senator O'Connell, seconded by Representative Maragos, and carried on a voice vote that the minutes of the January 14, 2016, meeting be approved as distributed.

AUDIT OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Chairman Klein called on Mr. Ron Tolstad, Audit Manager, State Auditor's office, who presented the internal controls and compliance report on the audit of the basic financial statements included in the June 30, 2015, [Comprehensive Annual Financial Report State of North Dakota Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2015](#). Mr. Tolstad said the State Auditor's office has audited the general purpose financial statements for the state of North Dakota for the year ended June 30, 2015. He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion, and the report identified one prior period adjustment and one prior period audit finding not implemented. He said the prior period audit adjustment relates to construction in progress. He said the prior period audit finding not implemented relates to improper reconciliation of motor vehicle clearing account.

Mr. Tolstad said Governmental Accounting Standards Board (GASB) State No. 70, which relates to accounting and financial reporting for nonexchange financial guarantees and GASB Statement No. 71 relating to pension transition for contributions made subsequent to the measurement date, have been implemented for the fiscal year ended June 30, 2015.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Ms. Rachel Kmetz, Accounting Manager, Office of Management and Budget, presented information on the [State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2015](#). She reviewed the information contained in the report and a supplemental report entitled *2013-15 Biennium Budget and Actual Detail*. Copies of both reports are on file in the Legislative Council office.

At the request of Chairman Klein, Ms. Kmetz provided information ([Appendix B](#)) regarding additions and deletions of the state's total debt, including bonds and notes payable for fiscal year 2015.

INTERNAL CONTROL AND COMPLIANCE REPORT

Ms. Robyn Hoffmann, Audit Manager, State Auditor's office, presented the [North Dakota University System Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2015](#). She reviewed the auditor's responses to the committee guidelines and said there were five audit recommendations, including four prior period audit recommendations not implemented.

The audit recommendations relate to legislative approval of local fund expenses, including compliance of North Dakota Century Code Sections 54-27-12 and 15-55-10, relating to approval of construction or renovation of any public building; ensuring proper controls for identifying actual sources of funds used for local projects; and taking appropriate actions to modify or clarify state laws with the Legislative Assembly to ensure the University Systems is receiving required approval for capital projects.

In addition, Ms. Hoffman said the four prior period audit recommendations not implemented relate to:

- Lack of comprehensive fraud and control risk assessment by each institution;
- Inadequate oversight of affiliated organizations compliance with State Board of Higher Education policies;
- Lack of cash reconciliations at Williston State College; and
- Inadequate employee criminal history background checks at Minot State University.

In response to a question from Representative Skarphol, Ms. Hoffmann said the Dickinson State University Foundation was unable to receive an audit opinion because of inadequate financial records. Ms. Hoffmann said the foundation has been forced into receivership by the Attorney General's office and is in the process of being dissolved.

Representative Klemin commented regarding actions to clarify state law to ensure the University System is receiving required approval for capital projects. He suggested the State Auditor's office provide recommendations to the committee regarding how to address clarifying state law.

Representative Kempenich suggested a bill be introduced to provide clarification of required approvals for University System capital projects.

COMMENTS FROM NORTH DAKOTA UNIVERSITY SYSTEM

Ms. Tammy Dolan, Chief Financial Officer, North Dakota University System, provided comments regarding the internal control and compliance report for the audit of the general purpose financial statements included in the June 30, 2015, annual financial report for the University System. She said the University System will establish a process to provide more clarity to institutions relating to capital project requirements. In addition, she said the University System will address prior audit recommendations that have not been implemented.

Representative Skarphol suggested the committee receive information from North Dakota State University regarding its goal of increasing enrollment by 4,000 students. He expressed concern that increasing the current student population will result in existing students incurring additional costs.

In response to a question from Representative Nathe, Ms. Dolan said any student fee increases must be approved by the University System office. Ms. Dolan said, if North Dakota State University increases its enrollment by 4,000 students, the University System office will be monitoring the situation to ensure student fees are not increased.

Representative Kempenich expressed concern regarding student fee increases. He said an existing student body may vote to increase student fees for a large project. He said the fee increase may continue for 10 to 15 years. He said often times, the students that voted for the student fee increases graduate before the student fee increases become effective.

Chairman Klein said the committee will ask representatives of North Dakota State University to comment on the university's goal of increasing student enrollment by 4,000 students at the next committee meeting and to confirm that student tuition and fee rates will not increase due to the enrollment increase.

UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

Ms. Robin Putnam, Director of Financial Reporting, North Dakota University System, presented [North Dakota University System Annual Financial Report Fiscal Year Ended June 30, 2015](#). She said the report for the University System includes the 11 public universities, the University System office, Core Technology Services, and 17 foundations which are required by government accounting standards to be included as component units of the University System. She said an unqualified opinion was issued on the financial statements. As of June 30, 2015, she said the University System had total assets of \$1.775 billion and total liabilities of \$550 million, resulting in net assets of \$1.225 billion. She said net assets increased \$163.3 million during fiscal year 2015.

Ms. Putnam said the annual degree credit head count for fall 2014 was 47,660, a decrease of 355 from the previous fall enrollment of 48,015.

AUDIT OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Chairman Klein called on Mr. Ed Nagel, Director, State Auditor's office, who presented [Department of Public Instruction Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2015](#). Mr. Nagel reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented [North Dakota Lottery Bismarck, North Dakota Audit Report for the Years Ended June 30, 2015 and 2014](#). He said the North Dakota Lottery audit is conducted on an annual basis. He reviewed the auditor's responses to the committee guidelines and said the report includes one significant accounting policy change related to GASB Statement No. 65 relating to items previously reported as assets and liabilities.

Mr. Nagel presented [Office of the Governor Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2015](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented [Office of Management and Budget Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2015](#). He reviewed the auditor's responses to the committee guidelines and said the report identified two audit findings relating to lack of reconciliations relating to sales and deposits for surplus property, and noncompliance with procurement laws.

Mr. Nagel presented [Office of the State Treasurer Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2015](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Chairman Klein called on Ms. Rhonda Mahlum, Mahlum Goodhart, PC, Certified Public Accountants, who presented [Education Standards and Practices Board Audit Report June 30, 2012](#). She reviewed the auditor's responses to the committee guidelines and said the report identified three audit findings relating to segregation of duties, preparation of financial statements and audit notes, and reconciliation of general ledger accounts.

Ms. Mahlum presented [Education Standards and Practices Board Audit Report June 30, 2013](#). She reviewed the auditor's responses to the committee guidelines and said the report identified three audit findings relating to segregation of duties, preparation of financial statements and audit notes, and reconciliation of general ledger accounts.

Representative Nathe and Representative Skarphol commented that due to recent media reports relating to the use of the board's credit cards, it is imperative for the committee to receive the audit report for the Education Standards and Practices Board for the fiscal years ended June 30, 2015, and 2014, at the committee's final meeting of this interim.

Chairman Klein said the committee will schedule the Education Standards and Practices Board audit reports for the fiscal years ended June 30, 2015, and 2014, at the committee's final meeting of this interim, unless the report is available earlier.

Ms. Mahlum presented [North Dakota State Board of Registration for Professional Engineers and Land Surveyors Audit Report June 30, 2014](#). She reviewed the auditor's responses to the committee guidelines and said the report identified three audit findings relating to segregation of duties, general ledger entries, and preparation of financial statements.

Ms. Mahlum presented [North Dakota Stockmen's Association Audit Report December 31, 2015 and 2014](#). She reviewed the auditor's responses to the committee guidelines and said the report identified one audit finding relating to segregation of duties.

Chairman Klein called on Ms. Katie Moch, Eide Bailly LLP, Certified Public Accountants, who presented [Financial Statements December 31, 2015 and 2014 Beginning Farmer Revolving Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Moch presented [Financial Statements December 31, 2015 and 2014 Community Water Facility Loan Fund](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Moch presented [Financial Statements September 30, 2015 and 2014 North Dakota Guaranteed Student Loan Program](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

In response to a question from Representative Kempenich, Mr. Robert Humann, Chief Lending Officer, Bank of North Dakota, provided information regarding the North Dakota guaranteed student loan program. He said many federal guaranteed student loans are being refinanced into alternative student loan consolidation programs including the DEAL One loan program at the Bank of North Dakota.

Ms. Moch presented [*Financial Statements June 30, 2015 and 2014 Workforce Safety & Insurance*](#). She reviewed the auditor's responses to the committee guidelines and said the report includes one significant accounting policy change related to GASB Statement No. 68.

DEPARTMENT OF TRUST LANDS PERFORMANCE AUDIT - ENERGY INFRASTRUCTURE AND IMPACT OFFICE

At the request of Chairman Klein, Mr. Jason Wahl, State Auditor's office, presented Information ([Appendix C](#)) regarding the performance audit of the Department of Trust Lands Energy Infrastructure and Impact Office. Mr. Wahl said the purpose of the performance audit was to determine if the Energy Infrastructure and Impact Office effectively administers its grants. He said the Energy Infrastructure and Impact Office is a division within the Department of Trusts Lands. He said the Director is appointed by the Board of University and School Lands. He said the powers and duties of the office include:

- Developing a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas;
- Establishing procedures and providing proper forms to political subdivisions for use in making applications for impact assistance;
- Receiving and reviewing applications for impact assistance;
- Making recommendations to the Board of University and School Lands on grants to political subdivisions in oil and gas development impact areas based on identified needs and other sources of revenue available to the political subdivision; and
- Making disbursements for grants awarded by the Board of University and School Lands.

Mr. Wahl said the Board of University and School Lands approved approximately \$124 million of oil and gas impact grants for the 2011-13 biennium and \$240 million of oil and gas impact grants for the 2013-15 biennium.

Mr. Wahl said the State Auditor's office determined certain aspects of grant administration were operating ineffectively. He said the audit includes 13 recommendations, which provide for the Energy Infrastructure and Impact Office to:

1. Establish procedures for political subdivisions to use in making applications for energy infrastructure and impact grant funds set aside for emergencies and contingencies, and ensure the procedures are effectively communicated.
2. Ensure the application screening process for energy infrastructure and impact grants is transparent and provides for fair and equitable treatment of all applications, including establish a grant application screening process to identify completed applications meeting the eligibility requirements, score only completed applications meeting the eligibility requirements, re-evaluate the grant application scoring criteria to ensure criteria are reasonable, provide a method for awarding priority points, separate compound criteria, define the point scale to be used for scoring, and ensure the screening process is documented.
3. Ensure recommendations of energy infrastructure and impact grants to the Board of University and School Lands comply with eligibility requirements.
4. Ensure all eligible applications for a grant round are given consideration before making recommendations to the Board of University and School Lands.
5. Ensure projects recommended to the Board of University and School Lands are achievable at the proposed funding levels.
6. Ensure the needs of entities provided priority in law are adequately addressed before consideration is given to other eligible political subdivisions.
7. Include contingencies in the recommendations made to the Board of University and School Lands when grant application project costs for larger projects are based on estimates rather than actual bids.
8. Ensure energy infrastructure and impact grants awarded annually do not exceed the state law maximum.
9. Request the Board of University and School Lands pass a motion outlining the authority granted to the department related to scope changes of Board of University and School Lands awards and ensure all required scope changes are taken to the Board of University and School Lands for approval.
10. Ensure grant payments are limited to the reimbursement of expenditures for projects outlined in the grant application and local match requirements and special conditions of the grant award are met, requests for reimbursement are adequately supported, and expenditures claimed for reimbursement are not reimbursed twice.

11. Obtain status updates for grants with outstanding balances in a more cost-effective manner by requiring status reports or telephone discussions, conduct site visits for grant awards based on risk of political subdivision or project, ensure site visit documentation clearly identifies the grant award being monitored, and the status of the project relating to the intent of the grant application.
12. Obtain a legal interpretation of the 2013 Session Law Chapter 471, Section 9, relating to distributions to counties experiencing new oil and gas development activities to determine if other counties were eligible for a distribution, and the county that was provided a distribution was eligible.
13. Ensure advisory committees assisting the Board of University and School Lands with grant determinations comply with open meeting laws.

COMMENTS BY DEPARTMENT OF TRUST LANDS

Mr. Lance Gaebe, Director, Department of Trust Lands, provided comments ([Appendix D](#)) regarding the Department of Trust Lands - Energy Infrastructure and Impact Office performance audit. He said the statutory mission of the Energy Infrastructure and Impact Office is to assist local political subdivisions in response to the needs directly as a result of actual or anticipated extraordinary expenditures caused by energy development and its associated growth. He said programs include a grant program for oil- and gas-impacted political subdivisions and a low-interest loan program for coal-impacted political subdivisions. He said the legislative appropriations for oil and gas tax impact grants increased from \$8 million in the 2009-11 biennium to \$165 million for the 2011-13 biennium, \$240 million for the 2013-15 biennium, and \$140 million for the 2015-17 biennium. He said the annual grants are limited to 60 percent of the biennial appropriation. He said grants approved by the Board of University and School Lands were provided to address infrastructure and to provide permanent housing and public safety improvements. In addition, he said some grants were provided for rural transportation, critical education construction, and safety projects.

Mr. Gaebe expressed concern regarding the audit process. He provided, as part of his testimony, additional information regarding department responses to audit findings.

In response to a question from Senator O'Connell, Mr. Gaebe said the Energy Infrastructure and Impact Office did ask the Attorney General's office to review information to provide a legal interpretation of the 2013 Session Law Chapter 471, Section 9, relating to distributions to counties experiencing new oil and gas development activities to determine if other counties were eligible, and to confirm the county that received a distribution was eligible. Mr. Gaebe said the Attorney General's office determined the Department of Trust Lands made the distributions correctly.

In response to a question from Representative Nathe, Mr. Gaebe said he believes the Energy Infrastructure and Impact Office is complying with state law when conducting its scoring process for determining grant awards.

In response to a question from Representative Kempenich, Mr. Gaebe said pledging future grant awards was initially done to allow selected applicants requesting funding for construction projects to begin the process of hiring engineers before the construction season began.

In response to a question from Representative Nelson, Mr. Gaebe said the Board of University and School Lands approved the pledge amounts.

In response to a question from Representative Skarphol, Mr. Gaebe said the Department of Trust Lands edited its responses to the audit findings after changes were suggested in a meeting between the department and the State Auditor's office.

In response to a question from Representative Klemin, Mr. Gaebe said an applicant that has been approved and awarded a grant, receives those grant funds on a reimbursement basis by submitting the bill from a contractor, an invoice receipt, or other voucher from the project.

Chairman Klein said the Legislative Assembly may need to consider better defining the use of oil and gas impact grant funds.

Representative Skarphol suggested centralizing a number of state grant programs in one agency to provide more consistency in the process of awarding grants.

At the request of Chairman Klein, Mr. Wahl provided comments regarding the State Auditor's process of reviewing department responses to audit findings. Mr. Wahl said the State Auditor's office does not change department responses to audit findings. He said responses included in the performance audit report were the responses submitted by the department for the audit findings.

DEPARTMENT OF TRUST LANDS PERFORMANCE AUDIT - TRUST ASSETS AND DEPARTMENT RESOURCES

Mr. Wahl presented information ([Appendix E](#)) regarding the performance audit of the Department of Trust Lands trust assets and department resources. He said the purpose of the performance audit was to determine if the Department of Trust Lands is obtaining, accounting for, and using resources efficiently and effectively. He said in 1889, Congress passed the Enabling Act which provided land grants to the State of North Dakota for the support of the common schools as well as colleges, universities, the State Capitol, and other public institutions. He said the department manages trusts and tracts of land for the various beneficiaries. He said the tracts are leased by the department to generate income for the trusts assigned to the tracts. He said leases give lessees the rights to the use of surface acres and the rights to mineral development. He said the department manages the following 13 permanent educational trust funds established to provide ongoing funding for education:

1. Common schools (K-12 public education);
2. Ellendale State College;
3. Mayville State University;
4. North Dakota State College of Science;
5. North Dakota State University;
6. North Dakota Vision Services - School for the Blind;
7. School for the Deaf;
8. School of Mines;
9. State Hospital;
10. University of North Dakota;
11. Valley City State University;
12. Veterans' Home; and
13. Youth Correctional Center.

In addition, Mr. Wahl said the department manages the following trust funds for the state or other beneficiaries pursuant to state law:

- Capitol building fund;
- Coal development fund;
- Indian cultural education trust; and
- Strategic investment and improvements fund.

Mr. Wahl said the State Auditor's office audited four areas of trust assets and department resources including surface and mineral areas, financial areas, human resource areas, and additional areas needing improvement. He said the State Auditor's office determined the department was not obtaining, accounting for, and using certain resources efficiently and effectively. He said the audit includes 29 recommendations, which provide the Department of Trust Lands:

1. Ensure tracts of land managed by the department are assigned to the correct trust and obtain guidance from legal counsel on correcting net assets and past distributions for trusts incorrectly assigned to tracts.
2. Conduct a formal review of oil and gas royalty payments to ensure amounts received were based on the correct decimal interest, and establish a periodic review to ensure operators are using the correct decimal interest.
3. Ensure oil and gas royalty payments are correctly allocated to the proper trusts, and obtain guidance from legal counsel on correcting net assets and past distributions for royalty payment allocation errors.
4. Ensure information submitted with oil and gas royalty payments is consistently obtained in an electronic format and includes all necessary information to adequately monitor payment amounts, and conduct audits of oil and gas operators submitting royalty payments to the department.
5. Establish an interest rate to be assessed on late oil and gas royalty payments, and a policy identifying the circumstances under which interest will be assessed.

6. Ensure penalties are consistently assessed on late oil and gas royalty payments and that calculations are accurate.
7. Monitor changes made to information in the minerals database to ensure changes are appropriate and adequately documented, and ensure lease agreements are appropriately updated when changes occur.
8. Ensure the minimum opening bids for pastureland result in a "fair market" return.
9. Analyze the use of additional online auctions, including costs associated with online versus live auctions, and use the auction process determined to be more beneficial to the trusts.
10. Ensure agreements are entered into and information is obtained for inspections not conducted by the department on state-owned tracts, and appropriate action is taken when violations or other concerns are identified on surface tracts.
11. Comply with North Dakota Century Code requirements relating to classifying all land owned by the state or its instrumentalities according to its highest and best use, or take appropriate action to modify the requirement of classifying all land owned by the state or its instrumentalities.
12. Ensure fiduciary responsibilities are fulfilled, ensure public funds are used in an appropriate manner, and enhance the organizational culture of accountability.
13. Ensure compliance with state procurement laws, rules, and policies.
14. Ensure payments for services are made pursuant to a written contract or agreement, perform a risk analysis for all contracts and agreements to ensure appropriate insurance provisions are included, include applicable terms and conditions within contracts and agreements as recommended by the Attorney General's office, and ensure appropriate reviews are performed by legal counsel.
15. Ensure direct costs are applied to the appropriate trust, program, and activity, and ensure nondirect costs are allocated in an appropriate manner to trusts, programs, and activities.
16. Conduct a formal fraud risk assessment as required by the Office of Management and Budget policy.
17. Avoid actions resulting in or creating the appearance of losing independence or impartiality, and actions that create an adverse effect on the integrity of the Board of University and School Lands or Department.
18. Ensure individuals hired into classified, nontemporary positions meet the minimum qualifications for the job class as required by North Dakota Administrative Code.
19. Follow Human Resource Management Services' hiring process best practices, and provide proper training to employees involved in the hiring process.
20. Comply with veterans' preference hiring requirements pursuant to North Dakota Century Code.
21. Comply with legislative intent for use of authorized full-time equivalent positions.
22. Comply with salary administration requirements pursuant to North Dakota Administrative Code.
23. Comply with session law requirements related to general legislative salary increases, and North Dakota Administrative Code requirements related to annual employee performance evaluations.
24. Establish an effective process for evaluating employees' performance.
25. Ensure appropriate information technology systems exist, user manuals are established, and systems are used to the fullest extent possible.
26. Establish formal policies and procedures, use a standardized format for policies and procedures, and review policies and procedures periodically to ensure information is current and relevant.
27. Ensure policies and procedures are available to all employees in a centralized location, and require all employees to periodically review department policies and procedures and signify acknowledgment in writing.
28. Perform ongoing monitoring of the design and operating effectiveness of the department's internal control procedures.
29. In conjunction with representatives of the State Historical Society, review records and identify permanently retained records and records with archival value, and transfer applicable records to State Archives.

COMMENTS BY DEPARTMENT OF TRUST LANDS

Mr. Gaebe provided comments ([Appendix F](#)) regarding the Department of Trust Lands - Trust Assets and Department Resources performance audit. In addition, he also provided a copy ([Appendix G](#)) of the department's biennial report entitled *61st Biennium Report of the Board of University and School Lands and Commissioner of University and School Lands* for the period July 1, 2013, to June 30, 2015. He said the department does not agree with the performance audit findings that the department is not fulfilling its fiduciary responsibilities, public funds are being used inappropriately, and that the organization lacks accountability.

Mr. Gaebe said the Department of Trust Lands serves the administrative function of the Board of University and School Lands. He said the Board of University and School Lands was created to manage the common schools trust fund and other permanent trusts. He said the board and the department also manage several state funds, including the strategic investment and improvements fund, the coal development fund, and the Capitol building fund. In addition, he said the department manages 708,000 surface acres of land being leased to ranchers and farmers. He said the department also oversees 1.7 million mineral acres of land for the permanent trusts, including use for oil, gas, coal, gravel, and subsurface mineral leasing and production. He said all trust balances and funds managed by the board continue to grow. He said funds managed by the board have grown from \$900 million in 2009 to a current balance of \$3.6 billion. He said permanent trust distributions are determined based on the average value of the trusts' financial assets. He said the trusts disbursed approximately \$138.7 million during the 2013-15 biennium, and approximately \$219.1 million was approved for distribution during the 2015-17 biennium.

Mr. Gaebe said the strategic investment and improvements fund earns revenue from production of 700,000 sovereign mineral acres managed by the department and a portion of oil and gas production and extraction taxes. He said funds were used for "surge" funding and several other programs including the school construction loan program, critical access hospital loan program, and several one-time construction and infrastructure items. He said during the period of the audit, the department administered \$1.7 billion of transfers and \$218 million for improving infrastructure, including highways, cities, schools, and hospitals.

Mr. Gaebe said, during the period of the performance audit, almost all department personnel participated with interviews, desk audits, responses to requests for information relating to policies, processes, and practices, to assist the State Auditor's office staff with understanding the department's data and systems, and to provide responses to recommendations. He said the department anticipated the audit would provide recommendations that would further enhance controls, increase efficiencies, and boost productivity. He expressed concern that the audit recommendations were more generalized and subjective than anticipated. In addition, he said the audit recommendations address unintentional errors and oversights. He said the department recently began the process of hiring a private firm to analyze and prepare specific improvement options.

Representative Skarphol said the performance audit has identified deficiencies and made recommendations to improve the department's processes. He said the department should implement the recommendations as soon as possible.

Senator O'Connell commented regarding the performance audit. He said the process of going through a performance audit is about making the process better and finding efficiencies.

DEPARTMENT OF TRUST LANDS PERFORMANCE AUDIT - UNCLAIMED PROPERTY

Mr. Wahl presented information ([Appendix H](#)) regarding the performance audit of the Department of Trust Lands Unclaimed Property Division. He said the purpose of the performance audit was to determine if the Department of Trust Lands is effectively administering unclaimed property. He said unclaimed property is property held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than the established time frame for the type of property. He said unclaimed property may include a check, unpaid wage, stock, an amount payable under the terms of an insurance policy, or contents of a safe deposit box. He said a holder may include a bank, insurance company, hospital, utility company, retailer, or local government. He said an owner is a person or entity with a legal or equitable interest in property subject to the unclaimed property law. He said since 1975, it has been the responsibility of the Unclaimed Property Division of the Department of Trust Lands to assist individuals with identifying property presumed abandoned. He said the administrator of the division is responsible for the operations of unclaimed property. He said the division acts as custodian of the unclaimed property received from holders. He said the property is held in trust in perpetuity by the state. He said the federal 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the state in 1985.

Mr. Wahl said the State Auditor's office determined aspects of the unclaimed property program were operating ineffectively. He said the audit includes 19 recommendations, which provide the Department of Trust Lands:

1. Ensure complete and accurate resources are available to those searching for unclaimed property.
2. Increase efforts to locate owners of unclaimed property, and ensure efforts to locate owners are done in a fair and consistent manner.
3. Monitor abandoned property reporting information from entities in the state, and have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the department.
4. Provide proper guidance and training on unclaimed property requirements to state entities.
5. Eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.
6. Comply with state law requirements and provide written consent to holders if property is to be submitted to the department prior to the property being presumed abandoned and ensure property is held until the proper time has passed for property to be presumed abandoned.
7. Ensure unclaimed property data is complete, accurate, and consistently entered.
8. Receipt and maintain a complete list of unclaimed property consistently and appropriately.
9. Ensure unclaimed tangible property received is accounted for timely and comply with requirements for publishing notice in the newspaper.
10. Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value and take appropriate action to lower the aggregate reporting amount.
11. Adequately safeguard unclaimed property submitted to the department.
12. Adequately safeguard confidential and sensitive information obtained and maintained by the department.
13. Process claims for unclaimed property consistently and appropriately.
14. Eliminate the requirement that certain owners pay a fee to receive their unclaimed property, which has not been sold or liquidated by the department.
15. Comply with state law requirements related to unclaimed property in a state agency's name and ensure the Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified, not provide state agencies the "donation" option, and no longer publish state agencies in the annual notice of property.
16. Conduct periodic sales of unclaimed property and dispose of property with insubstantial commercial value.
17. Take appropriate action to establish holder, owner, and department requirements within North Dakota Administrative Code for unclaimed property.
18. Ensure proper records management series and appropriate disposal of records exist for unclaimed property.
19. Ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the department is unable to operate the unclaimed property program in this manner, the department should take appropriate action to attempt to remove the function from its responsibilities.

In response to a question from Representative Klemin, Mr. Wahl said there are no legal requirements for submitting a negative report.

COMMENTS BY DEPARTMENT OF TRUST LANDS

Mr. Gaebe provided comments ([Appendix I](#)) regarding the Department of Trust Lands - Unclaimed property performance audit. He said the unclaimed property division serves as a repository for financial accounts, cash assets, and securities that have been forgotten or abandoned by the rightful owner. He said some form of the federal Uniform Unclaimed Property Act has been adopted in all 50 states and 3 Canadian provinces. He said the Act directs unclaimed or abandoned funds be turned over to the unclaimed property program after a predetermined period of inactivity or lost contact between a business and the rightful owner. He said since 1975, the Board of University and School Lands has had this responsibility. He said the department serves as the centralized custodial repository for unclaimed property. He said the objective is to return property to the rightful owner, their heirs, or assigns. He said once property is received and posted, the department begins to make individuals and businesses aware of unclaimed property and assists claimants with the process. He said a total of \$9.2 million has been

collected during the 2015-17 biennium. He said a total of \$3.5 million has been paid in claims during the 2015-17 biennium.

Representative Martinson discussed his personal experience of using the Unclaimed Property Division services. He said the department staff were helpful and worked with him to identify information that could be used to claim the unclaimed property.

UPDATE ON PERFORMANCE AUDIT OF UNIVERSITY FOUNDATIONS

Mr. Wahl provided an update regarding the timeline for the next performance audit to be conducted by the State Auditor's office relating to the university foundations. In addition, he requested clarification from the committee of its intent regarding which foundations should be included as part of the performance audit. He also suggested the committee consider the performance audit period to include fiscal years 2013, 2014, and 2015, rather than fiscal years 2012, 2013, and 2014.

It was moved by Representative Skarphol, seconded by Representative Kempenich, and carried on a roll call vote that the performance audit of the foundations at the University of North Dakota, North Dakota State University, and Dickinson State University requested by the committee at its April 21, 2015, meeting, include the major foundation of each university that provides both academic and ancillary contributions in support of the university and that the audit period include fiscal years 2013, 2014, and 2015; and that the performance audit requested for the Dickinson State University Foundation not be conducted, but instead a summary review of the conclusions of the Attorney General's office investigation and receivership of the foundation. Senators Klein and O'Connell and Representatives Hatlestad, Kempenich, Klemin, Kreidt, Martinson, Nelson, and Skarphol voted "aye." Senator Lee and Representative Kelsh voted "nay."

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

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

Senator Lee requested the audit report for the State Board of Addiction Counseling Examiners for the fiscal year ended June 30, 2015, and 2014, be presented at the next committee meeting.

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

1. North Dakota Comprehensive Annual Financial Report (June 30, 2015).
2. North Dakota University System Annual Financial Report (June 30, 2015).
3. Department of Public Instruction (June 30, 2015 and 2014).
4. North Dakota Lottery (June 30, 2015 and 2014).
5. Governor's office (June 30, 2015 and 2014).
6. Office of Management and Budget (June 30, 2015 and 2014).
7. State Treasurer's office (June 30, 2015 and 2014).
8. Education Standards and Practices Board (June 30, 2013).
9. Education Standards and Practices Board (June 30, 2012).
10. State Board of Registration for Professional Engineers and Land Surveyors (June 30, 2014).
11. North Dakota Stockmen's Association (December 31, 2015 and 2014).
12. Beginning farmer revolving loan fund (December 31, 2015 and 2014).
13. Community water facility loan fund (December 31, 2015 and 2014).
14. Guaranteed student loan program (September 30, 2015 and 2014).
15. Workforce Safety and Insurance (June 30, 2015 and 2014).

Senators Klein, Lee, and O'Connell and Representatives Hatlestad, Kelsh, Kempenich, Klemin, Kreidt, Martinson, Nelson, and Skarphol voted "aye." No negative votes were cast.

It was moved by Senator Lee, seconded by Representative Skarphol, and carried on a roll call vote that, pursuant to Section 54-35-02.2, the committee accept the following reports available but not selected for presentation:

1. State Board of Optometry (June 30, 2015, 2014, and 2013).
2. Peace Officers Standards and Training Board (December 31, 2014 and 2013).
3. Real Estate Appraiser Qualifications and Ethics Board (June 30, 2011, 2010, 2009, 2008, 2007, and 2006).

Senators Klein, Lee, and O'Connell and Representatives Hatlestad, Kelsh, Kempenich, Klemin, Kreidt, Martinson, Nelson, and Skarphol voted "aye." No negative votes were cast.

It was moved by Representative Kreidt, seconded by Senator O'Connell, that pursuant to Section 54-35-02.2, the committee does not accept the following performance audit reports presented to the committee:

1. Department of Trust Lands - Energy Infrastructure and Impact Office Performance Audit (November 6, 2015).
2. Department of Trust Lands - Unclaimed Property (January 5, 2016).
3. Department of Trust Lands - Trust Assets and Department Resources (March 18, 2016).

In response to a question from Chairman Klein regarding the effect on the State Auditor's office if the report is not accepted, Mr. Robert Peterson, State Auditor, said the performance audit report for the Department of Trust Lands has been finalized and published. He said the State Auditor's position on audit findings and recommendations will not change.

Representative Skarphol suggested the committee accept the performance audit report and receive an update from the Department of Trust Lands regarding its progress in implementing the recommendations at a later committee meeting. **Representative Kreidt withdrew his motion with the consent of Senator O'Connell.**

Chairman Klein said the committee will receive an update from the Department of Trust Lands regarding its progress in implementing the recommendations provided by the State Auditor's office at a later meeting.

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

1. Department of Trust Lands - Energy Infrastructure and Impact Office Performance Audit (November 6, 2015).
2. Department of Trust Lands - Unclaimed Property (January 5, 2016).
3. Department of Trust Lands - Trust Assets and Department Resources (March 18, 2016).

Senators Klein, Lee, and O'Connell and Representatives Hatlestad, Kelsh, Kempenich, Klemin, Kreidt, Martinson, Nelson, and Skarphol voted "aye." No negative votes were cast.

Chairman Klein said the committee will be notified of the next meeting date.

No further business appearing, Chairman Klein adjourned the meeting at 4:45 p.m.

Michael C. Johnson
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:9