NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Thursday, October 21, 2010
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Randel Christmann, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Randel Christmann, Joan Heckaman, Jerry Klein, Judy Lee; Representatives Rick Berg, Merle Boucher, Jeff Delzer, Patrick R. Hatlestad, RaeAnn G. Kelsch, Jerry Kelsh, Keith Kempenich, Gary Kreidt, Chet Pollert, Bob Skarphol, Blair Thoreson, Benjamin A. Vig, Lonny Winrich

Member absent: Representative Louis Pinkerton

Others present: Senator David O'Connell and Representative Lisa Wolf, members of the Legislative Management, were also in attendance.

See Appendix A for additional persons present.

It was moved by Representative Thoreson, seconded by Representative Skarphol, and carried on a voice vote that the minutes of the October 1, 2010, meeting be approved as distributed.

MEDICAID PROVIDER AND RECIPIENT FRAUD AND ABUSE OFFICE PERFORMANCE AUDIT

Mr. Gordy Smith, Audit Manager, State Auditor's office, presented the Medicaid provider and recipient fraud and abuse performance audit dated September 2, 2010. He said the objectives of the performance audit were to determine if the Department of Human Services:

1. Adequately identifies and pursues indications of potential Medicaid provider fraud and/or abuse.
2. Adequately identifies and pursues indications of potential Medicaid recipient fraud and/or abuse.

Mr. Smith said the performance audit contains 21 recommendations. The audit recommendations are attached as Appendix B. As a result of the performance audit, he said, the State Auditor's office determined:

- Improvements are needed to ensure an effective surveillance and review process is established to protect the integrity of the Medicaid program. The Surveillance and Utilization Review System Unit should be organized outside the control of other Medicaid operations. A review is necessary to ensure adequate resources exist to perform required functions.
- Potential Medicaid provider fraud and abuse is not adequately identified and pursued by the Department of Human Services. Improvements are needed to ensure appropriate action is taken when a provider is suspected of fraud or abuse. Improvements are needed with denied claims information received by the department from outside vendors. Changes are needed with the audits/reviews conducted on qualified service providers.
- Potential Medicaid recipient fraud and abuse is not adequately identified and pursued by the Department of Human Services. Changes are needed to ensure appropriate action is taken when a recipient is suspected of fraud or abuse. Improvements are needed within the department to communicate indications of fraud or abuse identified with program recipients.

In response to a question from Representative Skarphol, Mr. Smith said the Department of Human Services processes approximately $1.4 billion in Medicaid claims each biennium. He said if fraud or abuse is detected, it may have minimal effect on the receipt of federal funds if the federal government is confident the state is attempting to recoup the money and minimize the opportunities for fraud and abuse.

In response to a question from Representative Kempenich, Mr. Smith said the Department of Human Services would need to conduct a cost-benefit analysis to determine if the potential for recouping funds would be more than the cost of investigating fraud and abuse. He said determining the dollar amount of potential fraud or abuse was not included in the scope of the performance audit.

In response to a question from Representative Kreidt, Mr. Smith said instances of billing errors were identified in the audit as well as instances that indicated potential fraud. He said the Department of Human Services has the option of withholding future payments to recoup ineligible payments.

Chairman Christmann called on Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, to provide comments on the performance audit. Ms. Anderson said the performance audit was helpful in identifying areas of the Medicaid process that could be strengthened. She said the department continues to support efforts that identify fraud and abuse in all programs. She said the department began conducting provider audits

in 2009 and will continue to improve them. She said the department is adding a link to the department's website and adding an option to the telephone system to report suspected fraud or abuse.

Ms. Anderson said the department is revising policies and procedures and reviewing North Dakota Administrative Code provisions that may need revision. She said the department will explore the possibility of sharing fraud control units and other systems for identifying fraud and abuse with other states. She said the department plans to provide staff with additional fraud and abuse training.

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Mr. Ed Nagel, Director, State Auditor's office, presented the audit report for the Council on the Arts for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report identifies one internal control finding relating to reconciliation of federal revenues. He said the internal control finding was also a prior recommendation that has not been implemented.

Mr. Nagel presented the audit report for the Commission on Legal Counsel for Indigents for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented the audit report for the Racing Commission for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report identifies one internal control finding relating to establishing a fraud risk assessment system and one area of operational improvement relating to the continuance of a declining fund balance. He said both findings were also prior recommendations that have not been implemented.

In response to a question from Senator Christmann, Mr. Winston E. Satran, Director, North Dakota Racing Commission, said the 2009 Legislative Assembly changed the laws to reduce taxes charged to wagering companies. He said the reduction in taxes helped in retaining the existing wagering companies and attract new companies.

In response to a question from Representative Berg, Mr. Satran said $73 million was wagered in the past year, and wagering companies are estimating $185 million in wagers will be made in the next year. He said it takes approximately $250 million in wagers to generate the funding necessary to conduct an adequate racing program.

Mr. Nagel presented the audit report for the Department of Commerce for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report includes one finding of noncompliance relating to improper application of line item appropriation spending procedures.

Mr. Nagel presented the audit report for the Industrial Commission for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report identifies one finding of noncompliance relating to performance bonus laws.

Mr. Nagel presented the audit report for the Insurance Commissioner for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report identifies one internal control finding relating to segregation of duties surrounding accounts receivables and one finding of noncompliance relating to petroleum tank registration fees. He said the internal control finding was also a prior recommendation that has not been implemented.

Mr. Rob Sipes, Information System Auditor, State Auditor's office, presented the audit report for the State Treasurer's office tax distribution and outstanding checks information system audit for the period ended June 30, 2010. He said the objectives of the audit were to determine if:

- Security roles are designed to provide access based on a demonstrated need to view, add, change, or delete data.
- Distributions are established in accordance with the North Dakota Century Code.
- Distributions are correctly reported on the State Treasurer's website.

He 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 Senator Christmann, Ms. Carlee McLeod, Deputy Treasurer, State Treasurer's office, said the State Treasurer's office began using the system in 2008 and is using the system for the majority of tax distributions. She said coal severance and coal conversion tax distributions will be added to the system in the 2011-13 biennium.

Mr. Ron Tolstad, Technical Specialist, Division of the State Audit, State Auditor's office, presented the audit report for the State Treasurer's office for the years ended June 30, 2009 and 2008. He reviewed the auditor's responses to the committee guidelines and said the report includes two internal control findings relating to bank reconciliations and closing package errors and two findings of noncompliance relating to coal severance tax distribution errors and ambiguity in coal conversion tax laws.

In response to a question from Representative Boucher, Mr. Tolstad said further testing of bank reconciliations will be done during testing for the fiscal year 2010 Comprehensive Annual Financial Report.

Ms. Kelly Schmidt, State Treasurer, said the State Treasurer's office has always reconciled its bank records to the Bank of North Dakota. She said differences occurred on PeopleSoft records, but after receiving assistance from the Office of Management

and Budget, the reconciliation issue should be resolved.

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

Chairman Christmann called on Mr. Tim Porter, Chief Financial Officer, Bank of North Dakota, who presented testimony (Appendix C) on the audit report for College SAVE for the years ended December 31, 2009 and 2008. Mr. Porter said the Bank of North Dakota acts as trustee for the College SAVE plan, Upromise Investments, Inc., is the plan manager, and the Vanguard Group, Inc., is the investment manager. He said the College SAVE audit was conducted by Thomas & Thomas LLP, Certified Public Accountants. He said the audit report contains an unqualified opinion and does not include any findings or recommendations.

Chairman Christmann called on Ms. Sally Holewa, State Court Administrator, Supreme Court, who presented testimony (Appendix D) regarding uncollectible fines and fees. Ms. Holewa said unpaid fines and fees are cumulative and continue from one year to the next year. She said the balance of uncollected fines and fees was $12.54 million as of June 30, 2010. If that amount was collected, she said, $6 million would be deposited in the general fund, $4.9 million would be deposited in the common schools trust fund, $64,260 would be deposited in the restitution collection assistance fund, $20,386 would be deposited in the community service supervision fund, and $1.5 million would be shared between the indigent defense administration fund and the court facilities improvement fund.

Ms. Holewa said 27 percent of the amount outstanding at June 30, 2010, or $3.29 million, is less than one year past due, 14 percent or $1.76 million is between one year and two years past due, and the remainder of $7.49 million is more than two years past due.

Ms. Holewa said the courts have collected $10.6 million in revenues from fines and fees in fiscal year 2010, $10.7 million in fiscal year 2009, and $11.1 million in fiscal year 2008.

Ms. Holewa said tax offsets, allowable under North Dakota Century Code Chapter 57-38.3, have resulted in direct payments from the Tax Department of $464,000 over the last three years. In addition, she said, several defendants who have received a notice of referral to the tax offset program have paid their fines in full to avoid having their refund delayed.

Ms. Holewa said the court has established collections projects in Ward and McHenry Counties. She said Ward County has increased annual collections by approximately $600,000 and McHenry County has collected approximately $60,000 to $70,000 of fines assessed prior to April 2001.

In response to a question from Representative Kempenich, Ms. Holewa said major reasons that fines and fees become past due are that some people are allowed to pay fines and fees over time, some people cannot pay what they owe, and some are unwilling to pay what they owe.

It was moved by Representative Berg, seconded by Representative Hatlestad, 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. **Medicaid provider and recipient fraud and abuse performance audit (September 2, 2010).**
2. **Council on the Arts (June 30, 2009 and 2008).**
3. **Commission on Legal Counsel for Indigents (June 30, 2009 and 2008).**
4. **Racing Commission (June 30, 2009 and 2008.**
5. **Department of Commerce (June 30, 2009 and 2008).**
6. **Industrial Commission (June 30, 2009 and 2008).**
7. **Insurance Commissioner (June 30, 2009 and 2008).**
8. **State Treasurer's office - tax distribution and outstanding checks information system audit (June 30, 2010).**
9. **State Treasurer's office (June 30, 2009 and 2008).**
10. **College SAVE (December 31, 2009 and 2008).**

Senators Christmann, Heckaman, Klein, and Lee and Representatives Berg, Delzer, Hatlestad, R. Kelsch, J. Kelsh, Kempenich, Pollert, Skarphol, Thoreson, and Winrich voted "aye." No negative votes were cast.

POLITICAL SUBDIVISION AUDIT DIVISION STUDY

The Legislative Council staff presented a memorandum entitled *Political Subdivision Audits in Other States*. She said the memorandum provides information on provisions for conducting political subdivision audits in North Dakota and other states, including Arizona, Arkansas, Hawaii, Minnesota, Missouri, Montana, New Hampshire, and South Dakota. She said most states allow political subdivisions to contract with private auditing firms. Montana requires all political subdivision audits to be conducted by private auditing firms. In Missouri, the State Auditor is required to audit all counties that do not elect a county auditor and other political subdivisions if petitioned to do so by a requisite percentage of qualified voters in the political subdivision. Arkansas has established an ad valorem tax fund for deposit of taxes levied against certain transportation companies which is used to pay administrative costs of auditing political subdivisions.

Mr. Smith presented information relating to the number of political subdivisions that are required to have audits and those that may submit annual reports for review by the State Auditor's office (Appendix E).

He said the State Auditor's office conducts approximately 85 political subdivision audits every two years and reviews approximately 600 annual reports submitted by political subdivisions in lieu of audit reports. He said private auditing firms conduct approximately 600 audits of political subdivisions every two years which must be reviewed by the State Auditor's office. He said the Political Subdivision Audit Division of the State Auditor's office would require approximately $184,800 from the general fund per biennium to cease billing the political subdivisions for review of annual reports. He said the Political Subdivision Audit Division in the Fargo office has the ability to conduct a limited number of additional political subdivision audits in the western part of the state.

Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, presented information (Appendix F) regarding suggestions for committee consideration regarding political subdivision audits. He said keeping the State Auditor involved in the audit process for political subdivisions is critical to all counties and will ensure counties have a firm to conduct the audits. He said competition among firms ensures more reasonable audit fees.

Mr. Birst said the North Dakota Association of Counties will consider the possibility of a joint bid process for audit services through an existing joint powers agreement for purchases. He said the Association is supportive of eliminating fees charged to political subdivisions for review of annual reports and providing the necessary funds to the State Auditor from the general fund.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

It was moved by Representative Berg, seconded by Representative R. Kelsch, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Management.

Chairman Christmann thanked the committee for their work during the interim and thanked Representatives Berg and Boucher for their years of service to the North Dakota Legislative Assembly.

No further business appearing, Chairman Christmann adjourned the meeting at 2:15 p.m.

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Becky Keller
Senior Fiscal Analyst

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Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:6