



LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, October 7, 2020
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Jerry Klein, David A. Clemens, John Grabinger, Jordan Kannianen, Gary A. Lee, Judy Lee, Jim P. Roers; Representatives Mary Adams, Patrick Hatlestad, Mary Johnson, Keith Kempenich, Gary Kreidt, Vernon Laning, Scott Louser, Mike Nathe, Marvin E. Nelson, Jim Schmidt, Luke Simons

Member absent: Representative Wayne A. Trottier

Others present: See [Appendix A](#)

It was moved by Representative Schmidt, seconded by Representative Johnson, and carried on a voice vote that the minutes of the July 7, 2020, meeting be approved as distributed.

At the request of Chairman Klein, Mr. Chris Kadmas, Fiscal Analyst, Legislative Council, presented a memorandum entitled [Summary of Major Items in Audit Reports to be Presented at the October 7, 2020, Meeting](#).

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Mr. Joshua C. Gallion, State Auditor, presented a report entitled [Lake Region State College Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included finding 2019-01 for not following state procurement rules. He said the State Auditor's office (SAO) recommended Lake Region State College properly procure commodities in compliance with North Dakota Century Code and North Dakota University System procurement requirements.

Mr. Gallion presented a report entitled [North Dakota Agricultural Experiment Station, North Dakota State University Extension Services, and Northern Crops Institute Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Mr. Gallion presented a report entitled [North Dakota State University Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included the following findings:

- Finding 2019-01 - Lack of proper documentation surrounding faculty personnel files;
- Finding 2019-02 - Inadequate monitoring of the trademark licensing program;
- Finding 2019-03 - Lack of trademark licensing policy; and
- Finding 2019-04 - Lack of request for qualification (RFQ) documentation for construction projects.

Mr. Gallion said the SAO made the following recommendations to North Dakota State University (NDSU):

- Finding 2019-01 - Properly administer contracts, maintain an official personnel file, and perform proper annual evaluations as required to ensure compliance with the Century Code, State Board of Higher Education policy, and NDSU's policies surrounding faculty contracts.
- Finding 2019-02 - Adequately monitor its trademark licensing program to ensure it is receiving accurate compensation in accordance with the contract from Learfield.
- Finding 2019-03 - Develop and document a policy on how to distribute royalty revenue earned from the sale of licensed merchandise.
- Finding 2019-04 - Properly retain RFQ documents to ensure compliance with the Century Code.

In response to a question from Representative Kempenich, Mr. Gallion said the NDSU Athletics Department retains 100 percent of the royalties. He said the royalty revenue is unrestricted.

Dr. Dean L. Bresciani, President, North Dakota State University, said NDSU is developing a trademark licensing policy that will include the monitoring of the trademark licensing program.

In response to a question from Representative Simons, Chairman Klein said agencies review the audit findings by the SAO and implement process changes to resolve those findings.

In response to a question from Representative Nathe, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, Legislative Council, said Section 54-35-02.2 authorizes the Legislative Audit and Fiscal Review Committee to recommend the next Legislative Assembly reduce the appropriation for an agency for the next biennium, if the agency fails to correct audit findings within 2 bienniums.

In response to a question from Representative Nathe, Ms. Robin Putnam, Director of Financial Reporting, North Dakota University System, said all SAO findings are presented to the North Dakota University System Audit Committee for review and to monitor the implementation of changes to address the findings.

Representative Kempenich said during each legislative session, the Appropriations Committees receive agency budget summaries called "green sheets" that identify audit findings included in the most recent audit report of the agency. He said the Appropriations Committees consider these during the appropriation process.

Dr. Mark R. Hagerott, Chancellor, North Dakota University System, said university audits and any findings are part of the accountability process for university presidents to implement. He said turnover of accounting staff at the universities contributes to a number of findings.

Mr. Gallion presented a report entitled [Valley City State University Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included finding 2019-01 for not following state procurement rules. He said the SAO recommended Valley City State University properly procure commodities in compliance with the Century Code and University System procurement requirements.

In response to a question from Representative Simons, Mr. Gallion said the audit team discusses the findings with the entity being audited and all recommendations are supported by documentation.

Mr. Gallion presented a report entitled [Williston State College Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included the following findings:

- Finding 2019-01 - Lack of controls surrounding cash and revenues; and
- Finding 2019-02 - Not following state procurement rules.

Mr. Gallion said the SAO made the following recommendations to Williston State College:

- Finding 2019-01 - Implement controls to ensure adequate reconciliations are performed to completely reconcile student finance to the general ledger and the bank statements; and the reconciliation of receipts to the daily summary is performed and completed by an independent individual.
- Finding 2019-02 - Properly procure commodities in compliance with the Century Code and University System procurement procedures.

In response to a question from Chairman Klein, Mr. Gallion said some findings could be the result of employee turnover.

Mr. Gallion presented a report entitled [Upper Great Plains Transportation Institute Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Mr. Gallion presented a report entitled [Department of Agriculture Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included finding 2019-01 for exceeding general fund appropriation limits. He said the SAO recommended the Department of Agriculture ensure it is in compliance with appropriation limits set by the Legislative Assembly. He said the agency did not agree with the finding.

Mr. Doug Goehring, Agriculture Commissioner, said the 2015 Legislative Assembly, at the request of the Agriculture Commissioner, authorized the Department of Agriculture to use up to \$50,000 from the general fund already included in the department's salaries and wages line item as matching funds for outdoor heritage fund grants. He said the agency will request clarification of these provisions from the 2021 Legislative Assembly.

Mr. Gallion presented a report entitled [Department of Transportation Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Mr. Gallion presented a report entitled [Department of Public Instruction Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included finding 2019-01 for lack of guidance and monitoring for school district transportation funding. He said the SAO recommended the Department of Public Instruction (DPI) improve guidance to school districts on how to report miles and rides as well as strengthen procedures surrounding the monitoring of transportation data submitted by the school district. He said the Attorney General's office has determined neither the SAO nor DPI have the authority to request information from the school districts to validate the miles and rides information submitted to DPI.

Mr. Adam J. Tescher, Director, School Finance and Organization, Department of Public Instruction, said DPI agreed with the finding and is updating guidance and enhancing the review process. He said DPI does not have authority to request the information partly due to federal restrictions.

Senator J. Lee said school districts in Cass County enroll 400 to 500 new students every year. She said larger enrollments may not correlate directly to an increase in miles or ridership in the transportation system.

Representative Johnson discussed the process used by school districts to report the data to DPI.

Mr. Gallion said as part of reviewing the data for reasonableness, the SAO anticipated the information would not be the same from year to year, but found in some cases, no changes over several years.

In response to a question from Representative Schmidt, Mr. Gallion said the SAO could not verify the accuracy of the information submitted by school districts to DPI because neither the SAO nor DPI have the authority to request the transportation information from the school districts to test the accuracy of that information.

Mr. Tescher said DPI notifies the individuals submitting the data reporting false information is punishable by law.

Mr. Gallion presented a report entitled [Parks and Recreation Department Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Chairman Klein called on Ms. Mindy Piatz, Certified Public Accountant, Brady, Martz & Associates PC, who presented a report entitled [North Dakota Building Authority June 30, 2020 and 2019](#). Ms. Piatz reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

OTHER INFORMATION

Chairman Klein called on Mr. Gallion, who presented a report entitled [Office of the State Auditor External Peer Review April 1, 2019 through March 31, 2020](#). Mr. Gallion said the peer review was conducted remotely by the National State Auditors Association. He said the SAO received the highest rating possible which is "pass."

Chairman Klein called on Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, to provide an update regarding its investigation of the Department of Commerce, the State Library, and the North Dakota State College of Science (NDSCS) Division of Workforce Affairs. Mr. Seibel said all three investigations are completed and no criminal charges were filed.

In response to a question from Representative Nathe, Mr. Seibel said the Attorney General's office is required by state law to investigate possible violations submitted to the Attorney General's office. He said state law does not allow for discretion.

In response to a question from Chairman Klein, Mr. Seibel said state employees can file a claim with the Office of Management and Budget's Risk Management Division for reimbursement of legal fees. He said the decision to reimburse legal expenses is at the discretion of the Risk Management Division. He said the Risk Management Division had denied all claims resulting from the investigation of the NDSCS Division of Workforce Affairs and no claims were filed as a result of the investigation of the State Library.

In response to a question from Representative Nathe, Mr. Gallion said the issues identified in the NDSCS Division of Workforce Affairs audit were the first identified violation of Section 44-08-05.1. He said the SAO was advised to contact the Cass County State's Attorney by the Attorney General's office. He said in all three cases, the SAO discussed the appropriate process with the Attorney General's office. He said state law requires all individuals aware of a violation of state law to notify the Attorney General.

Ms. Michelle Kommer, Former Director, Department of Commerce, presented testimony ([Appendix B](#)) regarding the audit and investigation of the Department of Commerce and her experience. She provided a number of questions for the Legislative Assembly to consider to improve state government.

In response to a question from Representative Nathe, Ms. Kommer said the Risk Management Division denied her request for reimbursement of attorney's fees.

Dr. John Richman, President, North Dakota State College of Science, testified regarding the audit and investigation of the NDSCS Division of Workforce Affairs and his experience. He expressed concern regarding the handling of the audit and the investigation.

It was moved by Representative Nathe, seconded by Representative Laning, and carried on a roll call vote that, pursuant to Section 54-35-02.2, the committee accept the following reports reviewed by the committee at its October 7, 2020, meeting and its November 6, 2019, meeting:

- 1. Lake Region State College (June 30, 2019 and 2018);**
- 2. North Dakota Agricultural Experiment Station, NDSU Extension Services, and Northern Crops Institute (June 30, 2019 and 2018);**
- 3. North Dakota State University (June 30, 2019 and 2018);**
- 4. Valley City State University (June 30, 2019 and 2018);**
- 5. Williston State College (June 30, 2019 and 2018);**
- 6. Upper Great Plains Transportation Institute (June 30, 2019 and 2018);**
- 7. Department of Agriculture (June 30, 2019 and 2018);**
- 8. Department of Transportation (June 30, 2019 and 2018);**
- 9. Department of Public Instruction (June 30, 2019 and 2018);**
- 10. Parks and Recreation Department (June 30, 2019 and 2018);**
- 11. State Building Authority (June 30, 2020 and 2019);**
- 12. Department of Commerce (June 30, 2019 and 2018); and**
- 13. State Library (June 30, 2019 and 2018).**

Senators Klein, Clemens, Grabinger, Kannianen, G. Lee, J. Lee, and Roers and Representatives Adams, Hatlestad, Kreidt, Johnson, Kempenich, Laning, Louser, Nathe, Nelson, Schmidt, and Simons voted "aye." No negative votes were cast.

No further business appearing, Chairman Klein adjourned the meeting at 12:32 p.m.

Chris Kadmas
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:2