

2011 SENATE APPROPRIATIONS

SB 2004

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004
January 12, 2011
12830

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill for an Act to provide an appropriation for defraying the expenses of the state auditor.

Minutes:

See attached testimony 1 & 2.

Chairman Holmberg called the committee hearing to order on SB 2004.
Tad H. Torgerson – OMB; Sheila M. Sandness – Legislative Council.

Robert R. Peterson, State Auditor, State of North Dakota
Testimony attached - # 1
Proposed changes attachment #2.

He was not going to read his testimony but started on page 5 highlighting various points as he gave an overview of the agency. He then concluded his testimony.

Senator Grindberg asked if it was possible to get a copy of the requirements, policy or entity that organizes the peer review that the department goes through annually or bi-annually. He also asked for comment on the rationale of starting a special performance audit of local campus funds in the university system during legislative session.

Robert Peterson replied that the review is done every three years, but as far as the performance audit, they have not started it yet, but they have visited with the University system about conducting a performance audit with local funds within the university system. That is still in the planning stages. He met with the Chancellor and Board chairman.

Chairman Holmberg closed the hearing on SB 2004.

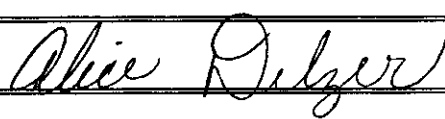
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004
01-25-2011
Job # 13373 (Meter 7.16-8.52)

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A DISCUSSION ON THE STATE AUDITOR'S BUDGET. (Several bills were discussed on this Job: 2001, 2002, 2003, **2004**, 2005, 2009, 2012, 2018, 2020)

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on 1-25-11 at 1:30 pm for general discussion with full committee. Joe Morrisette, OMB and Becky J. Keller, Legislative Council were also present.

Chairman Holmberg: State Auditor, we have a subcommittee, anything over and above. I recall they asked for more funding for salaries. Was it \$400K? 433 is what they asked for. We do have a subcommittee on that: Grindberg, Holmberg and Robinson. Anything else on Auditor?

Senator Robinson: I think FTE's is the issue.

Chairman Holmberg: I don't know if they asked for more FTE's or for more money for who they had.

Senator Robinson: They wanted to add some people. They said since 1999 they haven't increased the size of the State Auditor's staff and yet they've grown the number of audits if I understand the workload.

V. Chair Grindberg: I think we should get together for the first time. He was told they will. For what it's worth, I am a little troubled by an answer that an order on a special performance audit the 6th day of the legislative session of the University System and the answer was "I had to keep my people busy". That's troubling.

Senator Robinson: At a time he's pleading for more auditors, it didn't stack up.

The discussion was closed on SB 2004.

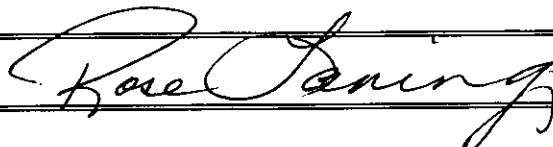
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004
February 18, 2011
Job # 14729 (Meter starting 6:00)

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a committee hearing to approve the auditor's budget.

Minutes:

You may make reference to "attached testimony."

Senator Grindberg added amendment 11.8137.01002 – it adds \$100,000 for the purpose of contracting for a private consulting performance review of the state auditor's office during the next biennium. Legislative management shall solicit bids from a national private accounting firm and contract by October 1, 2011 for the performance review of the state auditor's office including the following: quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review and reporting. The performance review shall be completed and delivered back by July 1, 2012.

Senator Grindberg moved Amendment 11.8137.01002

Senator Robinson seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

Senator Christmann added that he's trying to follow the path of the money. I'm not understanding what this does to the auditor's budget if we take \$100,000 of general funds and put it in the Legislative Council for us to do an audit. Does this go from the general fund into the auditor's office and from the auditor's office to Legislative Council – I'm not sure how this affects.....

Roxanne Woeste, Legislative Council – Currently the amendment does not take any state funds from the state auditor's office, as you can see on the SPA (in the middle of page1). The Senate version of their budget bill remains is – the amendment appropriates an additional \$100,000 from the general fund to the Legislative Council for completing their required study. This amendment doesn't take any money away from the state auditor. It just appropriates an additional \$100,000 from the general fund.

Senator Christmann: Is this for a note – or a reminder note – if it doesn't affect their budget.

Senator Grindberg: Legislative Council or management will put out for a bid and select a firm to provide this scope of work and we would pay for it out of our budget (Legislative management). Nothing is changed in the budget that was submitted by the Governor.

Chairman Holmberg: If we had HB 1001 here, that's probably where we would put it, but we don't have that.

Senator Grindberg: Part of the logic – some of the discussion of the subcommittee, if you recall, the auditor asked for increased funding for positions and salaries and we felt that until we really get a strong opinion on what we should be doing, then we would take this approach versus adding any money to the budget.

Senator Grindberg moved Do Pass as Amended on SB 2004.
Senator Robinson seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0
Senator Grindberg will carry the bill.

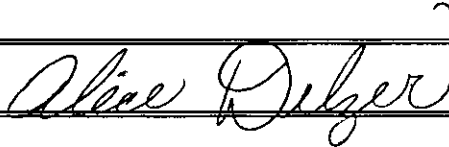
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2001, **2004**, 2005, 2009, 2018, 2014
04-05-2011
Job # 16331

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

DISCUSSION ON SEVERAL BILLS, NO ACTION TAKEN; SENATE BILLS 2001, 2004, 2005, 2009, 2018, 2014.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Tuesday, April 5, 2011 in the Harvest Room. Roll call was taken.

Chairman Holmberg: Our meeting here was to take roll and tell you what we are doing on the 12th order today and then to brake out for ½ hour for subcommittee work and then we come back and we will work on some of the 31 bills that we have left to handle in committee.

SB 2001 is the Governor's budget. The only change the House made is to make it clear that the \$21M plus change, that is a pass-through from the federal government is to be considered one time funding and not to be built into a base budget. I plan to concur on that budget.

SB 2004 is the State Auditor. This committee put in some requirements for a private audit of the process they use up there to do performance audits where there is some concern and complaining about. The House took that out. **We will not concur. The Conference Committee will be Grindberg, Holmberg, Robinson.**

SB 2005 was the State Treasurer. What they (the House) did there is we had not agreed to the Treasurer's request for more money, we did not put it in. The House put it in. We will not concur. Conference Committee will be Grindberg, Holmberg, Robinson.

SB 2009 is the Ag. Commissioner. The House made a bunch of changes. I won't go into them because I don't have them in front of me. The Conference Committee will be Christmann, Wanzek, O'Connell.

SB 2018 DO CONCUR, That's the State Historical Society. They (the House) made minor changes in that and the Historical Society is fine with the changes that they made so we will concur on that and the carrier is Senator Erbele.

SB 2014 on Protection and Advocacy. They (the House) took \$50,000, remember they had a pretty decent increase in funding this time, they took \$50,000 out of that budget. They didn't

tell the agency where to take the money from. They said reduce your general fund by \$50,000. And Senator Christmann isn't here right now, and I would like him to have been here for this. There he is. (Senator Christmann came into the meeting at that time).

Senator Warner: I would urge a do not concur.

Senator Krebsbach: I would recommend that we do not concur.

Chairman Holmberg: OK, we will do not concur. Let us do, he's very busy but, let's do Erbele, and do you want to be on that, Randy, you're pretty busy.

Senator Christmann: I can be on that one.

Chairman Holmberg: OK, Conference Committee will be Christmann, Erbele, and Warner. That's the end of that. We will come back at 9:40 a.m. The discussion was closed and committee dismissed.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2004

Page 1, line 1, after the semicolon insert "to provide an appropriation to the legislative council;"

Page 1, after line 23, insert:

"SECTION 3. APPROPRIATION - LEGISLATIVE COUNCIL. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the legislative council for the purpose of contracting for a performance review of the state auditor's office, for the biennium beginning July 1, 2011, and ending June 30, 2013. The legislative management shall solicit bids from national private accounting firms and contract by October 1, 2011, for a performance review of the state auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The performance review must be completed by July 1, 2012."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of Senate Action

	Executive Budget	Senate Changes	Senate Version
State Auditor			
Total all funds	\$9,571,330	\$0	\$9,571,330
Less estimated income	2,427,522	0	2,427,522
General fund	<u>\$7,143,808</u>	<u>\$0</u>	<u>\$7,143,808</u>
Legislative Council			
Total all funds	\$0	\$100,000	\$100,000
Less estimated income	0	0	0
General fund	<u>\$0</u>	<u>\$100,000</u>	<u>\$100,000</u>
Bill total			
Total all funds	\$9,571,330	\$100,000	\$9,671,330
Less estimated income	2,427,522	0	2,427,522
General fund	<u>\$7,143,808</u>	<u>\$100,000</u>	<u>\$7,243,808</u>

Senate Bill No. 2004 - Legislative Council - Senate Action

	Executive Budget	Senate Changes	Senate Version
Performance review		\$100,000	\$100,000
Total all funds	\$0	\$100,000	\$100,000
Less estimated income	0	0	0
General fund	\$0	\$100,000	\$100,000
FTE	0.00	0.00	0.00

Department No. 160 - Legislative Council - Detail of Senate Changes

	Adds Funding for State Auditor's Office Performanc e Review	Total Senate Changes
Performance review	<u>\$100,000</u>	<u>\$100,000</u>
Total all funds	\$100,000	\$100,000
Less estimated income	<u>0</u>	<u>0</u>
General fund	\$100,000	\$100,000
FTE	0.00	0.00

A section is added to provide funding for a performance review of the State Auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The Legislative Management shall solicit bids from national private accounting firms and contract for the review by October 1, 2011. The performance review must be completed by July 1, 2012.

Date: 2-18-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2002

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8137.01002

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Grindberg Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-18-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2004

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Grundberg Seconded By Lobenson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grundberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Grundberg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2004: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2004 was placed on the Sixth order on the calendar.

Page 1, line 1, after the semicolon insert "to provide an appropriation to the legislative council;"

Page 1, after line 23, insert:

"SECTION 3. APPROPRIATION - LEGISLATIVE COUNCIL. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the legislative council for the purpose of contracting for a performance review of the state auditor's office, for the biennium beginning July 1, 2011, and ending June 30, 2013. The legislative management shall solicit bids from national private accounting firms and contract by October 1, 2011, for a performance review of the state auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The performance review must be completed by July 1, 2012."

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Senate Bill No. 2004 - Legislative Council - Senate Action

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Less estimated income	0	0	0
General fund	\$0	\$100,000	\$100,000
FTE	0.00	0.00	0.00

Department No. 160 - Legislative Council - Detail of Senate Changes

Adds Funding for State

Total Senate Changes

Auditor's Office Performance Review		
Performance review	\$100,000	\$100,000
	\$100,000	\$100,000
Total all funds		
Less estimated income	0	0
	\$100,000	\$100,000
General fund		
	0.00	0.00
FTE		

A section is added to provide funding for a performance review of the State Auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The Legislative Management shall solicit bids from national private accounting firms and contract for the review by October 1, 2011. The performance review must be completed by July 1, 2012.

2011 HOUSE APPROPRIATIONS

SB 2004

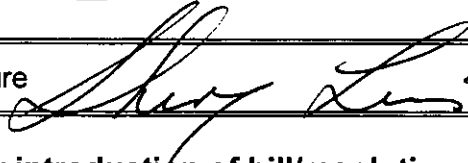
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2004
March 3, 2011
Recorder Job# 14902

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to the legislative council; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

Minutes:

Vice Chairman Klein: Opened the hearing on SB2004.

Robert Peterson, State Auditor, North Dakota Department of State Auditor: See attached testimony 2004.3.3.11A.

Vice Chairman Klein: Would you go back to page 3 and talk a little bit about that \$150,000.00 one time funding and how that turned out?

Robert Peterson: I do talk about that later on in my testimony.

Testimony continued.

Vice Chairman Klein: Go back and talk a little bit about that team mate working system.

Robert Peterson: The electronic work paper system was implemented this last biennium; so that we can become a paperless office. It allows the managers review audits on line. You can also find out where your auditors are at a particular point in time during their audits; you can see what progress they're making.

Vice Chairman Klein: Are you working with ITD? Is that part of their program?

Robert Peterson: No it's not.

Vice Chairman Klein: This is all within your system?

Robert Peterson: That's correct. This is all ours; I believe that there are 2 other agencies that are also interested in electronic work papers. I believe it's DOT and Bank of North Dakota.

Testimony continued.

Vice Chairman Klein: Where did you lose most of your people to; to the oil field?

Robert Peterson: No, we did not. We end up losing them to private sector, other state agencies.

Vice Chairman Klein: Is that 20% fairly normal for your agency going back?

Robert Peterson: Probably 3 bienniums.

Testimony continued.

Vice Chairman Klein: Going back to the performance audit on the university system capital projects. How long did that take you? That was a team of 4 people?

Gordy Smith, Audit Manager, North Dakota Department of State Auditor: The field work would have been team of 4 auditors; then I would have reviewed their work to help set the scope. My estimated guess is that it was somewhere around 1,800 man hours from start to finish.

Mr. Peterson continued with his testimony.

Vice Chairman Klein: Going back to that study that you made on the Wildlife Services Division. Since this section is going to be reviewing game and fish; would you make that report available to this committee?

Mr. Peterson: Certainly.

Testimony continued.

Vice Chairman Klein: What was behind the idea that they needed a separate audit? It seems like it wasn't high on your list of priorities.

Mr. Peterson: I really don't know. We didn't have our budget subcommittee with the senate. I appeared before the senate and made presentation on my appropriation.

Vice Chairman Klein: They didn't have a subcommittee?

Mr. Peterson: They had a subcommittee formed but we never met with them.

Testimony continued.

Vice Chairman Klein: Typically when these agencies require an audit, do they first ask to see if you can handle it before they go out for a contract? How do they decide; are you familiar with the system?

Mr. Peterson: It is up to them. There are some counties that we've never audited; they like to hire their own local accounting firms. The same with some cities. Because we have a limitation as far as staff, we can't always accommodate those requests; but, we try to accommodate all the requests that we can. If they contact us, we want to submit a bid. However, sometimes we're not the lowest bid; which is surprising because we're not trying to make money. We're just trying to break even on the whole process.

Representative Kroeber: On financial and compliance; what does the compliance part of the audit refer to?

Mr. Peterson: I believe the compliance would be laws, rules and regulations that surround that entity.

Representative Kroeber: So it's more involved than just a financial audit then? You get the same type of audit when someone else does it? They definitely have to conform with the compliance portion of this also?

Mr. Peterson: Yes, they should.

Representative Brandenburg: The audits that they do, what type of audit are we working with when they do the cities?

Mr. Peterson: Referenced his testimony.

Representative Brandenburg: Cities that deal with less than \$100,000.00 they're not doing an audit, they're just filling the reports out. How do you make the decision to do a full audit on them?

Mr. Peterson: A desk review; you're right it's very difficult to make that determination just from a desk review based on the report that they're filing with us.

Representative Brandenburg: Now I understand how you read in the paper that there's a problem with these local cities.

Mr. Peterson: That's one of the problems when you're that small and don't get an audit. We also recognize, even in some of the entities we audit, they only have one person doing everything. Your internal controls are at risk.

Testimony continued.

Vice Chairman Klein: This program 4 has probably expanded quite a bit for you. Have you had to add people in that area? Is that still where you were some time ago?

Mr. Peterson: We've lost auditors. The federal government cut our funding in this area; but, it's their program.

Vice Chairman Klein: Are you able to keep up with what you're supposed to be doing in that area? You're sort of the subcontractor for the federal government.

Mr. Peterson: We've been able to keep up because there's a time frame that you're allowed to go back; I believe it's 10 years. We have a 10 year window to go back and look at these royalties payments. The reporting has gotten better from the companies and so they have been able to keep up, I believe.

Testimony continued.

Vice Chairman Klein: When you say for an existing auditor position that you want funding. This is a vacancy you have in the system right now?

Mr. Peterson: No, it's not a vacancy. When we look long term into the future, we continue to reward people for getting their CPA's, other accreditations, and also we do give merit raises. During the next biennium, we would need another \$81,918.00; otherwise, we'll just wait for our vacancies to occur and we'll let the vacancies take care of this.

Representative Klein: So you don't have an existing position?

Mr. Peterson: We have an existing position. I'm not asking for another position.

Mr. Kempenich: You're just looking for more funding of that position?

Mr. Peterson: No, it's a shortfall on our end.

Representative Kroeber: What amount of dollars did you get last as a merit raise area for your department?

Mr. Peterson: We received \$100,000.00.

Representative Kroeber: With that \$100,000.00 were you able to upgrade some of your positions? I'm assuming when you have a 30% turnover, I'm assuming you're losing people because they're getting more dollars in most cases.

Mr. Peterson: Yes, we continue to invest in them because it seems that we will have you in that 3-7 year period; where if we can cross over that area and keep you, we stand a much better chance of retaining you for the long term. That's where we end up losing the auditor 2's and 3's.

Representative Glassheim: I'm interested in the work you did with commerce department. If I could get a copy of that report? There's been many findings in the commerce report and have those changes been resolved as a result of that? There's been questions raised in the legislature about the accuracy of jobs created. I don't know if you went into that; if you did, what were your findings? Did you come to any conclusions about actual as opposed to claimed job creation positions?

Mr. Smith: We recently completed our follow up audit of commerce. I would say they made pretty good progress in implementing or partially implementing the majority of the recommendations. There are a couple that they simply didn't agree with us on and they're not intending on implementing those. But they have made reasonable progress in doing

that. One of the goals when we looked at commerce was; we didn't actually get in to the centers of excellence, what we got into was is the department sufficiently monitoring those centers of excellence. We would go in and see what reports they were getting from the centers of excellence. What monitoring they were doing of them to ensure the accuracy of those. I believe 15 recommendations out of those 50 dealt specifically with additional monitoring of the centers of excellence. They were able to report to the legislature. We didn't get into the accuracy of jobs created; but, what we did was, we got into when the center of excellence claimed that; what type of work did the centers of excellence commission to direct the commerce department to do to follow up and evaluate those. We didn't think there was sufficient effort on commerce's part to follow up on a lot of those. Each year the center of excellence did a "functional report" that they turned into commerce. That was a self reporting deal. Our concern was commerce was compiling that information, but, they weren't evaluating whether they were accomplishing what the, when the center of excellence applied for the funding, what did the application say for their goals and what did they expect to happen. They have from our follow up have since went in and I think they've 9 centers of excellence and I think there was 24. They went on a site visit to 9 and evaluated that against the application and then they arrived at a point where they felt they were on their way to succeeding in what they were supposed to be doing; or whether they needed improvement with that.

Representative Kempenich: On these auditor 2 and 3 positions, do you have a breakdown of how many people are involved.

Mr. Peterson: We do have a breakdown that we can provide to you.

Representative Kempenich: Getting back to what the senate added on, it looks like a complaint session.

Chairman Thoreson: You're in discussion about the performance review?

Representative Kempenich: Yes.

Representative Dahl: I was wondering about your auditors 2 and 3. You said they were about 15% below what other auditors are making in the state. When you add in the benefits, do you have a better idea of where they compare once you put in health care, retirement, etc?

Mr. Peterson: I don't know if we can make that comparison because I don't know if we always know what the private sector is offering as far as health care and benefits.

Mr. Smith: That statement of 15% less than the private sector, that came from the draft report that the Hay Group did. I don't know if they took that into account; I would assume they did. I don't know because we haven't seen the final report. We view that as an affirmation for us; because, those are the most difficult positions that we have that we lose.

Representative Dahl: There's no question, I'm sure you're having difficulties keeping and retaining those positions. I think it gets at a bigger question with regard that we hear this from a lot of agencies in state government. When we just look directly at salaries,

sometimes it doesn't take into account the entire picture; because the benefits, in most cases, are a little more generous than they would be in the private sector.

Mr. Peterson: If I can keep them to a certain point and time you're right. At 10 years, you can say if I put in another 20 years, this is where I'll be. A lot of people do make that decision then because of the benefits.

Representative Kroeber: On the Hay Group study, it was basically a comparison with other state's auditors and not really a comparison between the public sector. It compared it to auditor's in our own and also auditors in other states of equal rank. As far as the benefits were concerned, with the other states, our benefit package is about in the middle with other states.

Vice Chairman Klein: When you put in your budget and the governor reviewed it, did you have at that time additional funds requested for upgrading your people and it was not approved by the governor?

Mr. Peterson: That's correct.

Representative Kroeber: I noticed on the green sheet and then looking on the state, it says you have 50.8 FTE's and on the green sheet, it says you have 51.8 FTE's. Apparently, you were down 3 from last time. In what divisions did we take away 3 FTE's?

Mr. Peterson: I believe those were in the political subdivision divisions. I closed my Bismarck office; because we were unable to function as an entity. All I have left to do political subdivision are my auditors in Fargo. That's were all my political subdivision auditors are located now.

Chairman Thoreson: How many do you have in Fargo?

Mr. Peterson: I have 5 auditors and 1 manager.

Representative Kroeber: Is your FTE count 50.8 or is it 51.8?

Mr. Peterson: Currently, it's 51.8; but, we're going to lose on the federal side.

Vice Chairman Klein: How many vacancies do you have now in your whole department?

Mr. Peterson: Right now, I don't have any.

Chairman Thoreson: That's an auditor position?

Mr. Peterson: Correct.

Representative Kempenich: Could you get not only that audit, but, also your spend down on your operating?

Mr. Peterson: Certainly.

Chairman Thoreson: Closed the hearing.


2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2004
March 17, 2011
Recorder Job# 15614

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to the legislative council; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor

Minutes:

Chairman Klein: Opened the discussion on SB2004.

Chairman Klein: I believe we had requested some additional information.

Gordy Smith, Audit Manager, North Dakota Department of State Auditor: See attached 2004.3.17.11A.

Chairman Klein: That additional salary was for a slot that empty for some time?

Gordy Smith: It's what we've accumulated through our excess turnover. We've had, in the Bismarck office, lost 6 positions in this biennium; so, that excess money would be left over from when we lost the position to when we filled it.

Chairman Klein: So you will be turning money back to the general fund?

Gordy Smith: Yes, we would.

Representative Glassheim: The question of the \$100,000.00 that the senate put in that I think we maybe want to take out.

Chairman Klein: I'd like to hear a little more about when you're due for that national revue? When was the last time you had it and were there any discrepancies that you were written up for?

Gordy Smith: That is the national state auditor's peer review; also called a quality control review. That's mandated by the standards to have that once every 3 years. They'll be here the first week of May or June. They get about 6 or 7 people that are my level of manager or higher from 6 or 7 different states. Their primary concern is looking at our work papers, all of our policies, making sure we're following all the standards that are out there, etc.

Their second thing would be if they see ways that we can do things more efficiently or better; they'll make those suggestions. Typically, there may be a finding in there; usually it pertains to our political subdivision audit. We've had no significant findings in probably at least 10 years.

Representative Kempenich: On your temporary salaries it's moving up from \$74,000.00 to \$144,000.00.

Donald Floran, Information Systems Audit Manager, North Dakota Department of State Auditor: We had 2 people in our political subdivision that did those report reviews and have retired. They've since come back part time to do those report reviews for us. That's what we expect to pay those 2 people.

Chairman Klein: You were fortunate in getting people back who had done it before.

Donald Floran: These 2 know everything about it and can do it without a whole lot of work. They come in the first 2 weeks of the month, do the report reviews and then they're gone for the month and come back and do it again.

Chairman Klein: As you know we have not solved the issue of pay increases; whether it's 3% and 3% or 4% and 1%. I think the house kind of feels that it should go 3% and 3%; until we reach an agreement we're just waiting.

Representative Glassheim: You had requested significant dollars to be competitive; but on all our bills we've taken out any kind of bumps.

Chairman Klein: What was the main behind that if you could address that please?

Gordy Smith: It was to try to give the state agency staff some equity increases. We've suffered through a lot of turnover over the years.

Chairman Klein: That was in the last session wasn't it?

Gordy Smith: We had \$100,000.00 of that equity pool that the legislature voted that we got and distributed to the staff. This biennium we've had, in the Bismarck office, a 30% turnover since January 1, 2009.

Chairman Klein: What's a CISA?

Gordy Smith: It's a Certified Information Systems Analyst. So for the IT people it would be like a CPA certificate on in the IS area.

Chairman Klein: I think we asked you a question but let me ask it again. On your computers, you change out how often?

Donald Floran: Every four years.

Chairman Klein: You changed out lately or are you due shortly?

Donald Floran: We general stagger it out to have 4 per biennium.

Chairman Klein: You change them out at one time?

Donald Floran: No, we stagger it out. The desktops are on 4 years and the lap tops are on 3 years.

(Inaudible)

Gordy Smith: That FTE we lost is in federal funds. The feds reduced money and we eliminated an FTE there. Our general fund FTE would be the same.

Chairman Klein: You're coordination with IT and so on, do you have any contracts for continuing maintenance? If you do, are they included with your operating?

Donald Floran: We pretty much get our services from ITD; so, we pay whatever rate they have. The only ongoing maintenance we have is with our new Team Mate working paper system. We pay a yearly maintenance fee for that and that is in the budget.

Representative Kempenich: That's in your data processing, that line item?

Donald Floran: Yes.

Chairman Klein: Last time when you implemented those electronic working papers, how is that working out for you? Is it doing what you wanted it to do?

Donald Floran: I think generally the staff has been happy with it. It's starting to save us time already which we really didn't expect in this first biennium.

Representative Kempenich: Is that why your supplies and IT software you're at about \$63,500.00?

Donald Floran: That wouldn't have anything to do with Team Mate. We have the Microsoft office and we have software insurance on it and pay them a yearly fee and whenever they upgrade it we get that automatically. Any increases would be in the cost of doing that software insurance.

Chairman Klein: Closed the discussion.

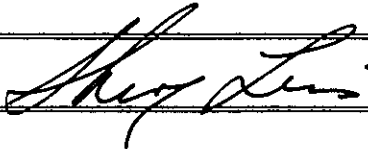
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2004
March 25, 2011
Recorder Job# 0

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to the legislative council; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor

Minutes:

No audio available.

Chairman Thoreson: Opened the discussion on SB2004.

Representative Dahl: Explained amendment 2004.3.25.11A

Representative Dahl: Made a motion to move the amendment.

Representative Klein: Seconded the motion.

Representative Klein: I think we discussed this before and don't see a reason for spending \$100,000.00 on something that isn't necessary.

Representative Kempenich: I was wondering if we were going to do this as the Hay Group comes out. Have you had any consultation or talked to the leadership about how we were going to handle this equity money?

Chairman Thoreson: I've not had any direct discussion about that yet. I don't know if we want to put specific language in bills.

Representative Klein: The way I understand it in the past it was in the OMB bill and then they would apply and OMB would pass that out.

Representative Kempenich: Usually in the past there's been dollar amounts identified. They did have some money in on and optional adjustment to their budget.

Chairman Thoreson: I prefer we don't do it here; we will have to take this bill to full committee. There's always the possibility of amending it there.

Representative Glassheim: Just a question for the procedure based on distributing that money. Wouldn't it be based on not what we say but about what they find out? And if they're underpaid according to the study, money will be proposed.

Representative Kempenich: Some of the preliminary stuff I heard is they're looking at getting rid of some of the classifications. Everybody has come forward always looking for more and this is one area we do have some issues.

Chairman Thoreson: I'm hesitant to put any intent language in this bill.

Representative Kempenich: There are some issues with retaining people and it's something I thought we should at least discuss.

A voice vote was called and the amendment was carried.

Representative Klein: Made a motion for a Do Pass as Amended."

Representative Kempenich: Seconded the motion.

A roll call vote was made for a "Do Pass as Amended." 7 Yea's 0 Nay's 0 Absent.

Chairman Thoreson: Closed the discussion.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2004
3/29/11
16097

☐ Conference Committee

Committee Clerk Signature

Meredith Tracholt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to the legislative council; and relating to the salary of the state auditor.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: We'll continue to the state auditor, SB 2004.

Representative Dahl: Went through the green sheet. There is a proposed amendment in your bill book, .02001. The Senate added \$100,000 for a performance review of the auditor's office, which we felt was unnecessary because they currently have two types of audits or reviews on a routine basis. I would move amendment .02001.

Representative Thoreson: Second.

Chairman Delzer: We have a motion to amend engrossed SB 2004 with .02001. Discussion? Did you ask Legislative Council (LC) who was available to do the type of audit the Senate had in mind?

Representative Dahl: Per the testimony, they already have two routine audits. LC contracts with a CPA firm to conduct a financial audit of the auditor's office once every two years; they also undergo a quality control review every three years, and an operations review.

Chairman Delzer: Questions? Motion to amend carries by voice vote.

Representative Dahl: I move Do Pass as Amended.

Representative Skarphol: Second.

Chairman Delzer: We have a motion for a Do Pass as Amended on SB 2004, discussion? Seeing none, we'll call the roll. Motion carries 20-0-1. Representative Dahl will carry the bill.

Date: 3-25-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2004

House Appropriations Government Operations Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Representative Klein Seconded By Representative Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Thoreson	<u>✓</u>		Representative Glassheim	<u>✓</u>	
Vice Chairman Klein	<u>✓</u>		Representative Kroeber	<u>✓</u>	
Representative Brandenburg	<u>✓</u>				
Representative Dahl	<u>✓</u>				
Representative Kempenich	<u>✓</u>				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Dahl

If the vote is on an amendment, briefly indicate intent:

VR
3/29/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2004

Page 1, line 1, remove the second "to"

Page 1, line 2, remove "provide an appropriation to the legislative council;"

Page 2, remove lines 1 through 9

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of House Action

	Executive Budget	Senate Version	House Changes	House Version
State Auditor				
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330
Less estimated income	2,427,522	2,427,522	0	2,427,522
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808
Legislative Council				
Total all funds	\$0	\$100,000	(\$100,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$100,000	(\$100,000)	\$0
Bill total				
Total all funds	\$9,571,330	\$9,671,330	(\$100,000)	\$9,571,330
Less estimated income	2,427,522	2,427,522	0	2,427,522
General fund	\$7,143,808	\$7,243,808	(\$100,000)	\$7,143,808

Senate Bill No. 2004 - Legislative Council - House Action

	Executive Budget	Senate Version	House Changes	House Version
Performance review		\$100,000	(\$100,000)	
Total all funds	\$0	\$100,000	(\$100,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$100,000	(\$100,000)	\$0
FTE	0.00	0.00	0.00	0.00

Department No. 160 - Legislative Council - Detail of House Changes

	Removes Funding for a Performance Review ¹	Total House Changes
Performance review	(\$100,000)	(\$100,000)
Total all funds	(\$100,000)	(\$100,000)
Less estimated income	0	0
General fund	(\$100,000)	(\$100,000)
FTE	0.00	0.00

¹ The section providing funding to the Legislative Council to contract for a performance review of the State Auditor's office is removed.

Date: 3/29
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2064

House Appropriations Committee

Legislative Council Amendment Number 02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Dahl Seconded By Rep Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote carries

Date: 3/29
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2004

House Appropriations Committee

Legislative Council Amendment Number 02001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Dahl Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich			Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2004, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2004 was placed on the Sixth order on the calendar.

Page 1, line 1, remove the second "to"

Page 1, line 2, remove "provide an appropriation to the legislative council;"

Page 2, remove lines 1 through 9

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of House Action

	Executive Budget	Senate Version	House Changes	House Version
State Auditor				
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330
Less estimated income	2,427,522	2,427,522	0	2,427,522
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808
Legislative Council				
Total all funds	\$0	\$100,000	(\$100,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$100,000	(\$100,000)	\$0
Bill total				
Total all funds	\$9,571,330	\$9,671,330	(\$100,000)	\$9,571,330
Less estimated income	2,427,522	2,427,522	0	2,427,522
General fund	\$7,143,808	\$7,243,808	(\$100,000)	\$7,143,808

Senate Bill No. 2004 - Legislative Council - House Action

	Executive Budget	Senate Version	House Changes	House Version
Performance review		\$100,000	(\$100,000)	
Total all funds	\$0	\$100,000	(\$100,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$100,000	(\$100,000)	\$0
FTE	0.00	0.00	0.00	0.00

Department No. 160 - Legislative Council - Detail of House Changes

	Removes Funding for a Performance Review ¹	Total House Changes
Performance review	(\$100,000)	(\$100,000)
Total all funds	(\$100,000)	(\$100,000)
Less estimated income	0	0
General fund	(\$100,000)	(\$100,000)
FTE	0.00	0.00

¹ The section providing funding to the Legislative Council to contract for a performance review of the State Auditor's office is removed.

2011 SENATE APPROPRIATIONS

CONFERENCE COMMITTEE

SB 2004

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004 conference committee
April 13, 2011
Job # 16566

☒ Conference Committee

Committee Clerk Signature

Rae Lanning

Explanation or reason for introduction of bill/resolution:

A bill for an Act to provide an appropriation for defraying the expenses of the state auditor.

Minutes:

You may make reference to "attached testimony."

Conferees present:

Senators Grindberg, Homberg and Robinson

Representatives Dahl, Thoreson (replaced by Rep. Klein due to illness) and Glassheim

Sheila M. Sandness - Legislative Council; **Tad H. Torgerson** - OMB

Chairman Grindberg called the conference committee hearing to order on SB 2004. Roll call showed all members present with **Rep. Klein** filling in for **Rep. Thoreson**.

Senator Grindberg asked the House to enlighten the committee with their side of the equation.

Rep. Dahl: Just to review, this is a pretty simple budget. I believe the Senate made one change and that was to add a performance review which the House, after discussion and testimony from the auditor's office, removed and my understanding is that it's the only difference between the two chambers.

Senator Holmberg: I'm assuming that the auditor's office would say they didn't want it. You had some other discussions besides, just because the auditor's office says we don't want this.

Rep. Dahl: We did look at this and the auditor's office is subject to two different audits. One is the financial audit and one is more of a performance audit of which the Senate amendment was getting at. Every three years, they have to undergo a quality control review and it includes the topics that the Senate included, so basically there's a team that comes in and looks at their quality control procedures, their applications, their reporting procedures. So it's the House's position that this \$100,000 is not necessary. It is redundant.

Senator Grindberg: I don't take the view that it is redundant because that's a peer review. This would be more of an outside private consulting view with an additional scope of work as outlined in the section of the bill. There is somewhat of a difference and they're not the same.

Call it the Good Housekeeping stamp of approval or more of a best practice; it's not really a good review of..... There is a difference. We did have discussion on that as well on our side, and it was the consensus of 100% of the committee that this was probably a good step to take just to take an independent look of what's going on.

Rep. Dahl: It's the National State Auditors Association that selects the team of individuals to come and basically conduct this review. It is somewhat independent to a certain extent, so how would hiring a private firm differ? Why is that more independent than this?

Senator Grindberg: My interpretation and explanation of that is that one would be an independent contract to a private national accounting firm that would have the expertise and the depth from a private accounting firm perspective.

Rep. Dahl: It seems to me that this group again does provide a level of independence and I understand that we want to hold our auditor's office accountable. I don't think anybody disagrees with that, but when we're talking about \$100,000 dollars coming from the general fund to do what I think is already being done, that's our difference.

Senator Grindberg: I certainly understand the difference. My other thought was that we report to legislative management. It would be a direct report to us and the interim so it would be working for us.

Rep. Dahl: We could also request a report from this group that comes in and does this.

Senator Grindberg: We will just percolate for the time being. We're adjourned.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004 conference committee
April 21, 2011
Job # 16829

☒ Conference Committee

Committee Clerk Signature

Rose Lanning

Explanation or reason for introduction of bill/resolution:

This is a conference committee hearing on SB 2004 – the Auditor's budget.

Minutes:

You may make reference to "attached testimony."

Conferees present:

Senators Grindberg, Holmberg and Robinson
Representatives Dahl, Thoreson and Glassheim

Sheila M. Sandness - Legislative Council; **Tad H. Torgerson** - OMB

Chairman Grindberg called the conference committee hearing to order on SB 2004. Roll call was taken – Rep. Thoreson was absent.

Rep. Thoreson entered the room and explained he was with the House Majority leader.

Senator Grindberg: Reviewing the one difference in the bill with the two different chambers is the performance audit RFP. Open up for any comments or discussion.

Rep. Dahl: I asked the auditor's office exactly what is entailed in the peer reviews. For the committee's information, for each of the performance audits, and I think there are 10 of their performance audits that are reviewed. Each one of these packets are filled out for each of those 10 performance audits. Also, just to note, the letter from the auditor's association indicates there was no significant findings on those performance audits. There were a couple minor findings and then some comments on their financial audits, but nothing on their performance audits.

Senator Grindberg: Further comments or discussions?

Rep. Thoreson: We've looked at this and the idea of taking a look at the auditor's office. I understand that this is something that is important to the Senate, we thought we'd remove that. For discussion, I do have an amendment that I'd like to distribute. This amendment would have the House recede from our amendments and then we would re-amend the bill by changing some of the language. The first thing would be on page 2, line 5 of the bill would make it that the legislative management "may" put out a request for proposal instead of "shall".

Then it would change language just to say that we would look for controls on quality procedures, application efficiency and staffing. Again, if conducted, but it would allow them to take a look at doing this and maybe changing the language a bit.

Rep. Thoreson moved amendment 11.8137.02003.

Senator Holmberg: Help me understand why I would vote to encumber \$100,000 and then leave it up to the legislative management to decide whether or not we're going to spend it. We either, as a legislature, feel that it is best that we should utilize or not – just to say, here's \$100,000 which will be encumbered on our books and yet, we're leaving it to someone else to determine whether or not what the full legislature passed, valued at \$100,000 is worthy of studying. You're turning that over to one person or a handful of people. Help me understand how that can be explained.

Rep. Thoreson: I know that management is tasked with making decisions for us as a body in these cases. I think maybe they would have some discussion as to whether they think this is important or not. We certainly have done so here, but I added this because I would feel more comfortable if they were to be the ones that would make the final decision on this as they have probably done in other cases where they've put out RFPs or looked for somebody to conduct reviews of certain areas, so that's why that language was there.

Chairman Holmberg: Passionate but not convincing.

Senator Grindberg: I was aware that attempt of "shall" to "may" was one of the items that we were going to discuss. I was not aware of the additional changes to the bill. I'm one who is of the belief that getting a more comprehensive review of what to provide the agency in the future by an independent private view versus a peer review would provide the agency solid ground. If a restructuring was proposed or kind of a whole new fresh look how the state auditor performs and that's my interest from an independent source – not a peer review source. I have participated in a number of peer review efforts in like industries over the years and they're just that, they're peer review. They're not going to give you the hard perspective of feedback. I'm not going to support the motion because I think customer feedback would be valid. I think a staffing review, efficiency, all would equate to a proposal that could strengthen the agency in the future in the next session. That would be my view. What I didn't understand was the additional language coming to us here.

Rep. Dahl: My concern with keeping words, like professionalism, in there is obviously expected of that office – to be professional in how they conduct the performance audits but I also want to make sure that we are able to keep these performance audits somewhat independent. Performance audits are just a lot of times contentious and I think that's the nature of some of those functions so if we have a process by which feedback can be facilitated. Yes, we want that, but we also need to be concerned with keeping those audits independent. I just want to be careful that we're allowing the auditors office to do their job without fear of pressure as a result of the audits.

Rep. Glassheim: I haven't heard a case where this is even a problem, either formally or informally. Why I would want to spend \$100,000 tracking an agency, as far as I know, he's doing a good job. And as far as I know, in it's technical applications, it's going to be reviewed

by outside people. They may be peers, but they're certainly not from here and they don't owe any obligation to us. I just haven't heard any case of what's so wrong that this needs to be done.

A Roll Call vote was taken. Yea: 2 Nay: 4 .

Motion failed.

Senator Grindberg: We'll adjourn this meeting and come back again later.


2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004 conference committee
April 22, 2011
Job # 16842

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a conference committee hearing on SB 2004 – the Auditor's office.

Minutes:

You may make reference to "attached testimony."

Conferees present:

Senators Grindberg, Holmberg and Robinson
Representatives Dahl, Thoreson and Glassheim

Sheila M. Sandness - Legislative Council; **Tad H. Torgerson** - OMB

Chairman Grindberg called the conference committee hearing to order on SB 2004. Roll call was taken and all committee members were present.

Senator Grindberg: I scheduled the meeting to see if there were any new suggestions or proposals on the table before we adjourn for the Easter weekend.

Rep. Thoreson: We're here all afternoon, so I suppose we could come back again.

Senator Grindberg: I have one at 3:30.

Rep. Glassheim: I was wondering if the Senate could present us with some kind of list explaining what problems you see that this is designed to deal with. We are in the dark if there are any problems within the department. I would appreciate some kind of listing what the concerns are that necessitates spending \$100,000 and taking up a huge amount of their time. If there are serious concerns, I guess I'd be more open to something.

Senator Grindberg: If there are no other suggestions, we adjourn the meeting.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004 conference committee
April 25, 2011
Job # 16878

☒ Conference Committee

Committee Clerk Signature

Rose Lanning

Explanation or reason for introduction of bill/resolution:

This is a conference committee hearing on SB 2004 – the Auditor's office.

Minutes:

See attached testimony # 1.

Conferees present:

Senators Grindberg, Holmberg and Robinson
Representatives Dahl, Thoreson and Glassheim

Sheila M. Sandness - Legislative Council; **Tad H. Torgerson** - OMB

Chairman Grindberg called the conference committee hearing to order on SB 2004. Roll call was taken and all committee members were present.

Senator Grindberg: Any thoughts from anyone regarding our last discussion?

Rep. Thoreson: I'm trying to remember our last discussion on this one.

Senator Grindberg: There was a proposal or amendment that was defeated with a "shall" to "may" study. I have an amendment (11.8137.02004 see attached # 1). It's a simple amendment – just one word. Some of the discussion we had at the last meeting, I sensed there was concern on having "professionalism" as part of the study, so all this amendment would do is remove that. We could argue that both sides are maybe a little bit subjective how you would measure that. I think removing that is something the Senate would agree to, but the majority of the RFP and the scope of work outlined, we think is important. If that eases your pain, we'd be interested in removing that word and keeping the rest of it intact.

Rep. Dahl: I would be willing to consider part of this amendment if we could go one step further and again have the conversation about replacing "shall" with "may". In my mind, I haven't yet heard a good justification as to why we need to spend this money. I'm open to this suggestion if we should have that conversation. But again, we haven't had that justification so I think, in light of the fact that this study is actually nowhere in the bill, because it last left the House without that study, I think that's a good compromise.

Senator Grindberg: Further discussion?

Senator Grindberg: The Senate is pretty solid on having the study or review as it's written, so I don't think at this time we're willing to entertain a "may" versus "shall". We are pretty solid that it has to be done.

Rep. Thoreson: The House was kind of on the opposite side obviously, but we're just looking for some area. I understand that's where your position is and where we are.

Senator Grindberg: So we'll let this germinate. We'll stand adjourned.

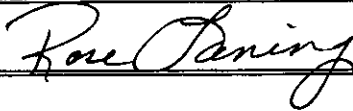
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2004 conference committee
April 26, 2011
Job # 16898

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

This is a conference committee hearing on SB 2004 – the Office of State Auditor.

Minutes:

You may make reference to "attached testimony."

Conferees present:

Senators Grindberg, Holmberg and Robinson
Representatives Dahl, Thoreson and Glassheim

Sheila M. Sandness - Legislative Council; **Tad H. Torgerson** - OMB

Chairman Grindberg called the conference committee hearing to order on SB 2004. Roll call was taken and all committee members were present.

He handed out 11.8137.02005 and captures a discussion that was suggested a few days ago. It removes "shall" and inserts "may", so it leaves it up to Legislative Management if they want to pursue a performance review accordingly. It's another idea to throw out to bring this one to closure.

Rep. Dahl: We're fine. If you're looking for a motion, this is fine with the House.

Rep. Dahl moved the House recede from the House amendments and further amend with amendment 11.8137.02005.
Senator Holmberg seconded.

A Roll Call vote was taken. Yea: 5 Nay: 1

Rep. Dahl will carry the bill on the House floor.
Senator Grindberg will carry the bill on the Senate floor.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2004

That the House recede from its amendments as printed on pages 1115 and 1116 of the Senate Journal and pages 1205 and 1206 of the House Journal and that Engrossed Senate Bill No. 2004 be amended as follows:

Page 2, line 5, replace "shall" with "may"

Page 2, line 7, remove "quality controls, procedures, technical applications,"

Page 2, line 8, replace "professionalism, customer feedback, efficiency, staffing review" with "controls on quality, procedures, application, efficiency, staffing"

Page 2, line 9, after "review" insert ", if conducted,"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of Conference Committee Action

	Executive Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
State Auditor						
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330	\$9,571,330	\$0
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808	\$7,143,808	\$0
Legislative Council						
Total all funds	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Less estimated income	<u>0</u>	<u>0</u>	0	<u>0</u>	<u>0</u>	0
General fund	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Bill total						
Total all funds	\$9,571,330	\$9,671,330	\$0	\$9,671,330	\$9,571,330	\$100,000
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,243,808	\$0	\$7,243,808	\$7,143,808	\$100,000

Senate Bill No. 2004 - Legislative Council - Conference Committee Action

This amendment changes Section 3 to change the components of the performance review of the State Auditor's office.

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Appropriations

Bill/Resolution No. SB 2004 as (re) engrossed

Date: 4-21-11

Roll Call Vote #: 1

11.8137.02003

Action Taken

- ☐ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Thoreson Seconded by: Dahl

Senators				Yes	No		Representatives				Yes	No
	4/3	4-21						4/3	4-21			
Senator Grindberg	✓	✓			✓		Rep. Dahl	✓	✓		✓	
Senator Holmberg	✓	✓			✓		Rep. Thoreson	✓	✓		✓	
Senator Robinson	✓	✓			✓		Rep. Glassheim	✓	✓			✓

Vote Count: Yes 2 No 4 Absent _____

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2004

That the House recede from its amendments as printed on pages 1115 and 1116 of the Senate Journal and pages 1205 and 1206 of the House Journal and that Engrossed Senate Bill No. 2004 be amended as follows:

Page 2, line 5, replace "shall" with "may"

Page 2, line 9, after "review" insert ", if conducted,"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of Conference Committee Action

	Executive Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
State Auditor						
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330	\$9,571,330	\$0
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808	\$7,143,808	\$0
Legislative Council						
Total all funds	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Less estimated income	<u>0</u>	<u>0</u>	0	<u>0</u>	<u>0</u>	0
General fund	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Bill total						
Total all funds	\$9,571,330	\$9,671,330	\$0	\$9,671,330	\$9,571,330	\$100,000
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,243,808	\$0	\$7,243,808	\$7,143,808	\$100,000

Senate Bill No. 2004 - Legislative Council - Conference Committee Action

This amendment changes Section 3 relating to the performance review of the State Auditor's office.

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Appropriations

Bill/Resolution No. SB 2004 as (re) engrossed

Date: 4-26-11

Roll Call Vote #: 1

11.8137.02005

Action Taken

- ☐ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Senators	<i>4-26</i>	<i>4-26</i>	<i>4-26</i>	Yes	No		Representatives	<i>4-26</i>	<i>4-26</i>	<i>4-26</i>	Yes	No
Senator Grindberg	✓	✓	✓	✓			Rep. Dahl	✓	✓	✓	✓	
Senator Holmberg	✓	✓	✓	✓			Rep. Thoreson	✓	✓	✓	✓	
Senator Robinson	✓	✓	✓	✓			Rep. Glassheim	✓	✓	✓		✓

Vote Count: Yes 5 No 1 Absent _____

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2004, as engrossed: Your conference committee (Sens. Grindberg, Holmberg, Robinson and Reps. Dahl, Thoreson, Glassheim) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1115-1116, adopt amendments as follows, and place SB 2004 on the Seventh order:

That the House recede from its amendments as printed on pages 1115 and 1116 of the Senate Journal and pages 1205 and 1206 of the House Journal and that Engrossed Senate Bill No. 2004 be amended as follows:

Page 2, line 5, replace "shall" with "may"

Page 2, line 9, after "review" insert ", if conducted,"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of Conference Committee Action

	Executive Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
State Auditor						
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330	\$9,571,330	\$0
Less estimated income	2,427,522	2,427,522	0	2,427,522	2,427,522	0
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808	\$7,143,808	\$0
Legislative Council						
Total all funds	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Less estimated income	0	0	0	0	0	0
General fund	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Bill total						
Total all funds	\$9,571,330	\$9,671,330	\$0	\$9,671,330	\$9,571,330	\$100,000
Less estimated income	2,427,522	2,427,522	0	2,427,522	2,427,522	0
General fund	\$7,143,808	\$7,243,808	\$0	\$7,243,808	\$7,143,808	\$100,000

Senate Bill No. 2004 - Legislative Council - Conference Committee Action

This amendment changes Section 3 relating to the performance review of the State Auditor's office.

Engrossed SB 2004 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2004



STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

**TESTIMONY BEFORE THE
SENATE APPROPRIATIONS COMMITTEE
Senator Ray Holmberg, Chairman**

January 12, 2011

S.B. No. 2004

Testimony - Presented by:
Robert R. Peterson, State Auditor

Brief Historical Perspective

The duties and responsibilities of the State Auditor are included in Article V, § 2 of the N. D. Constitution and Chapter 54-10 of the ND Century Code. Significant events include the following:

- 1889 – North Dakota's first State Auditor took office. Much as county and city auditors function to this day, for the first 72 years of the state's existence the State Auditor functioned as a bookkeeper or accountant rather than a true "auditor."
- 1961 – The State Auditor's responsibilities were changed to performing the post audit of all financial transactions of state government. At the time this meant auditing 100 separate departments.
- 1969 – The State Auditor began performing audits of political subdivisions.
- 1971 – The Legislature gave counties the option to contract for their own audits and soon after that other political subdivisions were given the same power.
- 1973 – The State Auditor modernized operations of the office by adopting generally accepted auditing standards.
- 1975 – The State Auditor started to conduct performance audits to help improve the effectiveness and efficiency of state government.
- 1982 – The State Auditor was given the responsibility for performing royalty audits to ensure royalties are properly paid on federal oil, gas, and coal leases.
- 1984 – The Single Audit Act was passed. This act combined the responsibilities for auditing government financial statements with auditing compliance with requirements relating to Federal financial assistance. The State Auditor was given this responsibility, significantly increasing the auditors' work load.

- 1986 – Because of the demands associated with the Single Audit Act, performance audits were discontinued.
- 1991 – The Legislature funded additional positions for the State Auditor to establish a performance audit function.
- 1991 – The Legislature required the State Auditor to audit the state-wide financial statements. At this time biennial agency audit reports went from including financial statements prepared in accordance with generally accepted accounting principles to only including reports on internal control and compliance with laws and regulations.
- 1991 – The State Auditor's Division of Local Government Audits became self-sufficient by the establishment of an operating fund for its revenues and expenditures.
- 1997 – Biennial agency audits started to include a statement of revenues and expenditures and an appropriations statement. These statements were audited in accordance with the financial statement audit standards.
- 2000 – Biennial agency audits switched to following the performance audit standards rather than the financial statement audit standards. This change was done in consultation with the Legislative Audit and Fiscal Review Committee. The objectives for biennial agency performance audits are to: provide reliable financial statements, identify and test controls for the most important areas of internal control; identify and test compliance for the most significant and high-risk areas of legislative intent, and; determine if there are areas of agency operations where we can help to improve efficiency or effectiveness.
- 2005 – The State Auditor received funding and authority to conduct the first statewide information technology security audit.

Specific Information Requested by Senator Ray Holmberg, Appropriation Committee Chairman

	2009-2011 Approp.	Estimated 2009-2011 Expenditures	2009-2011 One-time Funding Expend.	2009-2011 Appropriation Less One- Time Funding	2011-2013 Budget Needs	2011-13 One-time Funding Needs	Major Variances
<u>Major Program</u>							
Administration	378,552	381,302		378,552	378,960		
Div. of Local Govt. Audits	1,338,124	1,099,800		1,338,124	1,508,939		
Division of State Audits	6,383,677	6,220,274	150,000	6,233,677	7,198,568		433,720
Mineral Royalty Auditing	974,678	794,800		974,678	918,583		
Total Major Programs	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720
<u>Line Item</u>							
Salaries & Wages	8,015,046	7,650,036		8,015,046	9,060,478		433,720
Operating	785,985	587,585	26,000	759,985	794,572		
Capital Assets	124,000	124,000	124,000	0	0		
Info. Tech. Consultants	150,000	134,555		150,000	150,000		
Total Line Items	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720
<u>Funding Source</u>							
General Funds	6,762,229	6,601,576	150,000	6,612,229	7,577,528		433,720
Federal Funds	974,678	794,800		974,678	918,583		
Special Funds	1,338,124	1,099,800		1,338,124	1,508,939		
Total Funding Sources	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720

Total FTEs 51.8 50.8

Explanation of Major Variances

One Time Funding Expenditures

Governor's Rec. - Div. of ST. Aud.	6,764,848	TeamMate Software and Installation	124,000
General Funds eliminated to meet 100% budget	81,918	TeamMate Operating and Maintenance	26,000
Additional salary dollars requested	351,802		
Total GF requested for State Audits	<u>7,198,568</u>		<u>150,000</u>

Standards Overload

Each year new accounting and or auditing standards are issued. These new standards often increase the State Auditor's responsibilities and work load. The constant issuance of new standards from various standard setting bodies has caused many auditing firms nationally to complain about standards overload.

Mission and Purpose

The mission of the State Auditor's Office is to provide efficient, quality audit services, with limited interruption to our clients' operations, and to use the information gained from our audits to help state and local governmental units operate more efficiently and effectively for the benefit of the citizens of North Dakota.

An independent audit function is of critical importance to accountability in both business and government. The purpose of the State Auditor's office is to provide this critical element of accountability.

The Governor recommended an additional \$55,800 from the general fund to restore funding for the TeamMate electronic working papers. Additional funding is also needed to ensure our ability to retain and recruit highly qualified professionals. The economy in North Dakota is growing and competition for audit professionals has increased. Salaries paid by accounting firms are significantly higher than we can pay. These events have made attracting and retaining qualified professionals significantly more difficult.

Major Agency Initiatives for the 2011-13 Biennium

Our major initiatives include TeamMate, our electronic work paper system, and continuing to recruit and retain highly qualified professionals. Each of these is explained below where we discuss improving our efficiency and effectiveness.

Section 2 of HB 1004, passed by the 61st Legislative session, required that the use of \$150,000 of funding appropriated for electronic working papers be reported to the appropriations committees of the 62nd Legislative Assembly. As of 12/31/2010 we had spent \$137,759. We will spend an

additional \$12,241 this biennium to implement electronic working papers. Therefore, the total cost of implementing electronic working papers will be \$150,000.

We need to increase compensation to ensure we can attract and retain qualified professionals. Qualified professionals must be recruited and retained to meet our goals and objectives relating to both performance and financial audits. As government keeps growing we have more programs to audit, with the same number of auditors that we have had since the 1999-2001 biennium.

Various factors have combined to continually increase our workload. A couple examples include the growth of state government (more programs and more money to audit) and the continuous issuances of new accounting and auditing standards. Despite this increased workload the State Auditor's Office actually has fewer FTE's than it did in 1991. For the 1991-1993 biennium our office had a total of 65 FTE's (41 were funded by the state general fund). For the current biennium the State Auditor's Office has 51.8 FTE of which 37.8 are funded by the state general fund.

However we cannot continue to successfully address our increasing workload if we experience the same level of turnover we have over the last several years. In the current biennium we have experienced in excess of 30% turnover in our Bismarck state agency and performance audit staff. This results in increased training and supervision which increases the time necessary to complete our audits.

The Legislature commissioned a study to of the state's personnel system which was conducted by the Hay Group. The consultant's August 17, 2010 draft report indicated that Auditor 2's and 3's are making more than 15% less than their peers in the state. This report supports our experiences over the last several years as those are the level of auditors we most struggle to keep.

It is critical that we receive the additional salary monies we are requesting in addition to the Governor's budget in order to enable us to continue to employ professional staff. As I mentioned earlier the State Auditor's Office has fewer FTE than it had in 1991. We have been able to do more with less, however we cannot continue to be successful if we cannot reduce our turnover. We are having difficulty keeping our auditors more than 3 years, when they can leave and make a higher salary elsewhere. The August 17, 2010 draft report issued by the HayGroup showed Auditor 2's and 3's making more than 15% less than their peers in the state.

Program Goals and Objectives

The activities of the Office of the State Auditor are carried out through four programs, each of which has its own goals, objectives, and strategies. The following pages provide an overview of each of these programs.

Program 1 - Administration

This program includes all expenses associated with the State Auditor and the office manager, which consist primarily of salaries, travel expenses, professional development expenses, and professional services costs which benefit all programs of the office.

Senate Bill No. 2004 provides the necessary funding to successfully carry out the objective of this program.

Program 2 - Division of State Audits

The Division of State Audits conducts performance, operational, information technology and financial statement audits of state agencies. Each of these is discussed below.

Performance Audits -

Performance auditing is an integral part of state government and has resulted in significant improvements to state entities. Performance audits have contributed to improving processes, efficiency and effectiveness of operations, and compliance with laws, rules and regulations. For example, we estimate (and the agency concurred) implementation of five recommendations in the Department of Corrections and Rehabilitation performance audit report resulted in annual savings in excess of \$915,000 of state general funds for the agency. Essentially performance audits determine if programs and/or entities are operating efficiently and effectively, determine if the programs are accomplishing what the Legislature intended them to accomplish, and provide information to management, the Legislature and other stakeholders to make appropriate changes for improvement. A significant majority of the states have performance audit functions.

During the 2009-2011 biennium the performance audit team completed a performance audit of the Department of Commerce. The report contained 50 recommendations and was presented to

the Legislative Audit and Fiscal Review Committee on September 30, 2009. In addition the performance audit team also completed a performance audit of the North Dakota University System Capital Projects. The report contained 17 recommendations and was presented to the Legislative Audit and Fiscal Review Committee on May 12, 2010. The performance audit team also completed a performance audit on Medicaid Provider and Recipient Fraud and Abuse. The report contained 21 recommendations and was presented to the Legislative Audit and Fiscal Review Committee on October 21, 2010.

The performance audit team also conducted follow-up audits of the following performance audits during the 2009-2011 biennium:

- UND School of Medicine and Health Sciences;
- North Dakota Agriculture's Wildlife Services Division;
- Department of Commerce.

In all instances the vast majority of recommendations from the original performance audits have either been fully or partially implemented.

Occasionally our work requires that we hire a consultant. This has proven to be an extremely valuable tool in conducting performance audits as it allows us to expand the scope of our work into specialized areas. For example, we hired a national consultant for the performance audit of the UND School of Medicine and Health Sciences who specifically reviewed the institution's research efforts and programs, educational training related to primary care, and the merger of the Department of Family Medicine and the Department of Community Medicine. The State Auditor's Office felt these areas were of interest to stakeholders and required specific expertise.

Consultants also allow us to leverage expensive consultant hours with our own work and as a result our staff increases their knowledge of the state entity's operations. The Legislative Audit and Fiscal Review Committee must approve (in advance) the hiring of a consultant for a performance audit. The state entity being audited pays for the consultant.

Every three years the State Auditor's Office is required to undergo a peer review process (also referred as a Quality Control Review) by the National State Auditor's Association (NSAA). The NSAA organizes a team of management personnel from state audit organizations from around the country and reviews the audit process, audit reports and working papers from our office to ensure that our work meets nationally recognized standards. The performance audit division has not had a single finding in the past 3 NSAA peer review reports covering the past 9 years.

Operational Audits -

Our two-year biennial audits of state agencies are conducted in accordance with performance audit standards. The objectives of these audits are to provide reliable, audited financial statements and to answer the following questions: 1) What are the highest risk areas of the agencies' operations and is internal control adequate in these areas; 2) What are the significant and high-risk areas of legislative intent applicable to the agencies and are they in compliance with significant laws and regulations; 3) Are there areas of the agencies' operations where we can help to improve efficiency or effectiveness?

Operational improvements come from working with the state agencies, by using our expertise and research to offer constructive assistance and make recommendations for improvement. Our goal is to help individuals do their assigned work as efficiently and effectively as possible while giving them better control over the process.

Information Technology Audits –

The Office of the State Auditor performs information systems audits on individual computer applications and on the Information Technology Department. In addition, we hire a consultant once a biennium to do a security audit of the Information Technology Department and the state network.

During the current biennium we hired the consultant for the security audit, completed an information systems audit on the State Treasurer Tax Distribution and Outstanding Check Systems and audited the Information Technology Department. The information systems auditors have also been assisting with the implementation of TeamMate, our newly implemented electronic working paper system.

Information systems auditors are also responsible for helping with computer assisted audit techniques and handling computer support for our office at its three different locations.

Financial Statement Audits -

The Office of the State Auditor performs annual financial statement audits that include the state's Comprehensive Annual Financial Report (CAFR), the ND University System, the State Mill and Elevator and the ND Lottery.

Several important recommendations were made relating to our audits of the state's CAFR and the ND University System financial statement audit. For the 2010 State CAFR audit these findings

included both material weaknesses in internal control and significant deficiencies. The NDUS audit also identified material weaknesses and significant deficiencies.

The statewide single audit of federal assistance received by all state agencies is a type of financial statement audit. This audit is required by federal law and is performed once every two years. The 2009-2010 single audit will require over 11,000 hours. All colleges and universities, and 34 state agencies receive and expend federal financial assistance. The 2007-2008 single audit covered more than \$2.4 billion of federal expenditures. The 2009-2010 federal single audit will be completed by March 31, 2011, and will cover approximately \$3 billion of federal expenditures.

Program 3 – Division of Local Government Audits

The local government division is entirely self-funded. It operates on revenue generated from audit fees, fees charged for reviewing small government reports and private auditing firms' audit reports.

Financial and Compliance Audits -

Section 54-10-14 of the North Dakota Century Code requires counties, cities, school districts, and other political subdivisions to be audited every two years. The governing board of these entities may select the Office of the State Auditor, or a public accounting firm to perform the audit. Over a 2 year period our office performs about 85 audits, with public accounting firms performing about 600 local government audits during that time.

Annual Reports of Small Entities -

Cities with less than 500 population, school districts with less than 100 enrolled students, park districts and soil conservation districts with less than \$200,000 of annual receipts, and other political subdivisions with less than \$100,000 of annual receipts may file an annual report in lieu of an audit. These reports are reviewed and approved by our office. We review about 700 of these reports each year. Smaller local government reports reviewed include: park districts, school districts, rural fire protection districts, and rural ambulance service districts.

Review of State Subrecipient Audit Reports -

This division also reviews audit reports of local governments receiving federal financial assistance from 10 state agencies. This service saves those agencies from having to review the reports themselves. We review about 300 audit reports for these 10 state agencies.

Program 4 - Mineral Royalty Auditing

This program was started in 1982, and in 1985 the federal government started funding the program 100 percent. This program is responsible for ensuring that the federal government and the state of North Dakota are receiving their share of royalty payments for federal public domain leases located within the state. Royalty payments are made on oil, gas, and coal leases. There are currently 11 states and 7 Native American tribes participating in this program with the U.S. Department of Interior, Office of Natural Resources Revenue (ONRR). There are 4 auditors in this program.

STATE AUDITOR
ROBERT R. PETERSON



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STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

SENATE APPROPRIATIONS COMMITTEE
Senator Ray Holmberg, Chairman
January 12, 2011

Requested changes to SB 2004

1. Fund an existing auditor position 100% - \$81,918.
2. Increase funding for auditors, focusing on Auditor 2 and Auditor 3 positions to reduce turnover - \$351,802.

Total additional general funds requested - \$433,720.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2004

Page 1, line 12, replace "8,626,758" with "9,060,478"

Page 1, line 15, replace "9,571,330" with "10,005,050"

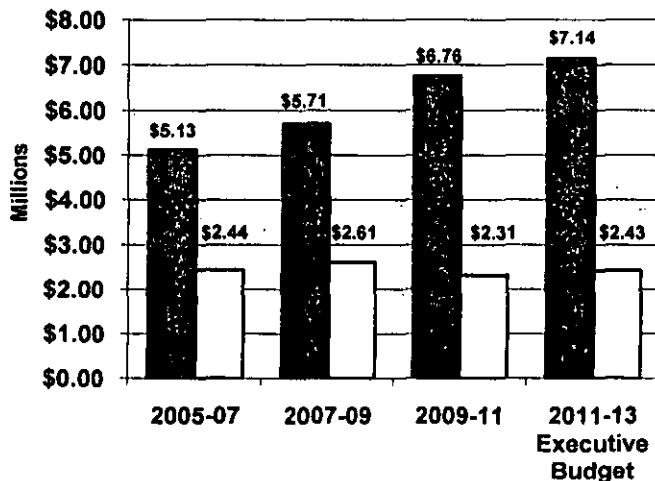
Page 1, line 17, replace "7,143,808" with "7,577,528"

**Department 117 - State Auditor
Senate Bill No. 2004**

	FTE Positions	General Fund	Other Funds	Total
2011-13 Executive Budget	50.80	\$7,143,808	\$2,427,522	\$9,571,330
2009-11 Legislative Appropriations	51.80	6,762,229	2,312,802	9,075,031 ¹
Increase (Decrease)	(1.00)	\$381,579	\$114,720	\$496,299

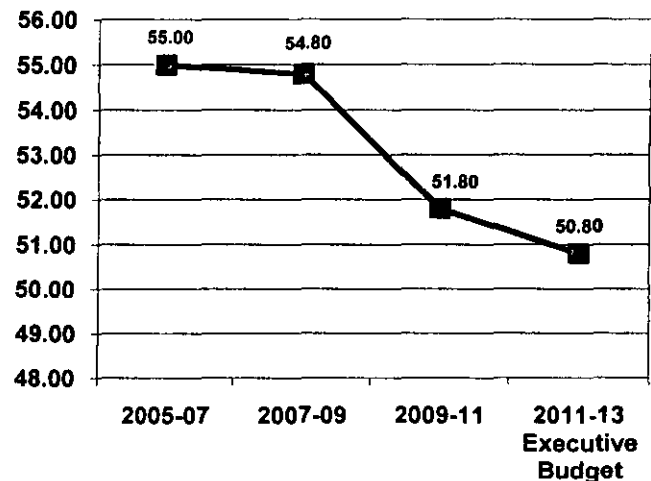
¹The 2009-11 appropriation amounts include \$100,000 from the general fund for the agency's share of the \$16 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for executive branch employees.

Agency Funding



■ General Fund □ Other Funds

FTE Positions



Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2011-13 Executive Budget	\$7,143,808	\$0	\$7,143,808
2009-11 Legislative Appropriations	6,612,229	150,000	6,762,229
Increase (Decrease)	\$531,579	(\$150,000)	\$381,579

First House Action

Attached is a summary of first house changes.

**Executive Budget Highlights
(With First House Changes in Bold)**

	General Fund	Other Funds	Total
1. Removes 1 FTE clerical position		(\$107,862)	(\$107,862)
2. Removes one-time funding provided for the implementation of electronic working papers in the 2009-11 biennium, including \$26,000 from the operating expenses line and \$124,000 from the capital assets line	(\$150,000)		(\$150,000)
3. Adds funding to maintain electronic working papers	\$55,800		\$55,800

Other Sections in Bill

Section 3 provides for the statutory changes necessary to increase the State Auditor's salary as follows:

Annual salary authorized by the 2009 Legislative Assembly:

July 1, 2009	\$83,550
July 1, 2010	\$87,728

Proposed annual salary recommended in the 2011-13 executive budget:

July 1, 2011	\$90,360
July 1, 2012	\$93,071

The executive recommendation provides funding for elected officials' salary increases equal to 3 percent of salaries effective July 1, 2011, and 3 percent effective July 1, 2012.

Performance review - The Senate added a section providing \$100,000 from the general fund to the Legislative Council for a performance review of the State Auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The Legislative Management shall solicit bids from national private accounting firms and contract for the review by October 1, 2011. The performance review must be complete by July 1, 2012.

Continuing Appropriations

No continuing appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

House Bill No. 1145 relates to political subdivision reports in lieu of audits.

ATTACH:1

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2004 - Funding Summary**

	Executive Budget	Senate Changes	Senate Version
State Auditor			
Salaries and wages	\$8,626,758		\$8,626,758
Operating expenses	794,572		794,572
Information technology consultants	150,000		150,000
Total all funds	\$9,571,330	\$0	\$9,571,330
Less estimated income	2,427,522	0	2,427,522
General fund	\$7,143,808	\$0	\$7,143,808
FTE	50.80	0.00	50.80
Legislative Council			
Performance review		\$100,000	\$100,000
Total all funds	\$0	\$100,000	\$100,000
Less estimated income	0	0	0
General fund	\$0	\$100,000	\$100,000
FTE	0.00	0.00	0.00
Bill Total			
Total all funds	\$9,571,330	\$100,000	\$9,671,330
Less estimated income	2,427,522	0	2,427,522
General fund	\$7,143,808	\$100,000	\$7,243,808
FTE	50.80	0.00	50.80

Senate Bill No. 2004 - State Auditor - Senate Action

The Senate did not change the executive recommendation for the State Auditor.

Senate Bill No. 2004 - Legislative Council - Senate Action

	Executive Budget	Senate Changes	Senate Version
Performance review		\$100,000	\$100,000
Total all funds	\$0	\$100,000	\$100,000
Less estimated income	0	0	0
General fund	\$0	\$100,000	\$100,000
FTE	0.00	0.00	0.00

Department 160 - Legislative Council - Detail of Senate Changes

	Adds Funding for State Auditor's Office Performance Review	Total Senate Changes
Performance review	100,000	100,000
Total all funds	\$100,000	\$100,000
Less estimated income	0	0
General fund	\$100,000	\$100,000
FTE	0.00	0.00

A section is added to provide funding to the Legislative Council for a performance review of the State Auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The Legislative Management shall solicit bids from national private accounting firms and contract for the review by October 1, 2011. The performance review must be completed by July 1, 2012.

2004.3.3.11A

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**TESTIMONY BEFORE THE
HOUSE APPROPRIATIONS COMMITTEE**
GOVERNMENT OPERATIONS DIVISION
Representative Blair Thoreson, Chairman

March 3, 2011

Engrossed S.B. No. 2004

Testimony - Presented by:
Robert R. Peterson, State Auditor

Brief Historical Perspective

The duties and responsibilities of the State Auditor are included in Article V, § 2 of the N. D. Constitution and Chapter 54-10 of the ND Century Code. Significant events include the following:

- 1889 – North Dakota's first State Auditor took office. Much as county and city auditors function to this day, for the first 72 years of the state's existence the State Auditor functioned as a bookkeeper or accountant rather than a true "auditor."
- 1961 – The State Auditor's responsibilities were changed to performing the post audit of all financial transactions of state government. At the time this meant auditing 100 separate departments.
- 1969 – The State Auditor began performing audits of political subdivisions.
- 1971 – The Legislature gave counties the option to contract for their own audits and soon after that other political subdivisions were given the same power.
- 1973 – The State Auditor modernized operations of the office by adopting generally accepted auditing standards.
- 1975 – The State Auditor started to conduct performance audits to help improve the effectiveness and efficiency of state government.
- 1982 – The State Auditor was given the responsibility for performing royalty audits to ensure royalties are properly paid on federal oil, gas, and coal leases.
- 1984 – The Single Audit Act was passed. This act combined the responsibilities for auditing government financial statements with auditing compliance with requirements relating to Federal

financial assistance. The State Auditor was given this responsibility, significantly increasing the auditors' work load.

- 1986 – Because of the demands associated with the Single Audit Act, performance audits were discontinued.
- 1991 – The Legislature funded additional positions for the State Auditor to establish a performance audit function.
- 1991 – The Legislature required the State Auditor to audit the state-wide financial statements. At this time biennial agency audit reports went from including financial statements prepared in accordance with generally accepted accounting principles to only including reports on internal control and compliance with laws and regulations.
- 1991 – The State Auditor's Division of Local Government Audits became self-sufficient by the establishment of an operating fund for its revenues and expenditures.
- 1997 – Biennial agency audits started to include a statement of revenues and expenditures and an appropriations statement. These statements were audited in accordance with the financial statement audit standards.
- 2000 – Biennial agency audits switched to following the performance audit standards rather than the financial statement audit standards. This change was done in consultation with the Legislative Audit and Fiscal Review Committee. The objectives for biennial agency performance audits are to: provide reliable financial statements, identify and test controls for the most important areas of internal control; identify and test compliance for the most significant and high-risk areas of legislative intent, and; determine if there are areas of agency operations where we can help to improve efficiency or effectiveness.
- 2005 – The State Auditor received funding and authority to conduct the first statewide information technology security audit.

Specific Information Requested by Senator Ray Holmberg, Appropriation Committee Chairman

	2009-2011 Approp.	Estimated 2009-2011 Expenditures	2009-2011 One-time Funding Expend.	2009-2011 Appropriation Less One- Time Funding	2011-2013 Budget Needs	2011-13 One-time Funding Needs	Major Variances
Major Program							
Administration	378,552	381,302		378,552	378,960		
Div. of Local Govt. Audits	1,338,124	1,099,800		1,338,124	1,508,939		
Division of State Audits	6,383,677	6,220,274	150,000	6,233,677	7,198,568		433,720
Mineral Royalty Auditing	974,678	794,800		974,678	918,583		
Total Major Programs	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720

Line Item

Salaries & Wages	8,015,046	7,650,036		8,015,046	9,060,478		433,720
Operating	785,985	587,585	26,000	759,985	794,572		
Capital Assets	124,000	124,000	124,000	0	0		
Info. Tech. Consultants	150,000	134,555		150,000	150,000		
Total Line Items	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720

Funding Source

General Funds	6,762,229	6,601,576	150,000	6,612,229	7,577,528		433,720
Federal Funds	974,678	794,800		974,678	918,583		
Special Funds	1,338,124	1,099,800		1,338,124	1,508,939		
Total Funding Sources	9,075,031	8,496,176	150,000	8,925,031	10,005,050	0	433,720

Total FTEs 51.8

50.8

**Explanation of Major
Variances**

Governor's Rec. - Div. of ST. Aud.	6,764,848	TeamMate Software and Installation	124,000
General Funds eliminated to meet 100% budget	81,918	TeamMate Operating and Maintenance	26,000
Additional salary dollars requested	351,802		
Total GF requested for State Audits	7,198,568		150,000

Mission and Purpose

The mission of the State Auditor's Office is to provide efficient, quality audit services, with limited interruption to our clients' operations, and to use the information gained from our audits to help state and local governmental units operate more efficiently and effectively for the benefit of the citizens of North Dakota.

An independent audit function is of critical importance to accountability in both business and government. The purpose of the State Auditor's office is to provide this critical element of accountability.

The Governor recommended an additional \$55,800 from the general fund to restore funding for the TeamMate electronic working papers. Additional funding is also needed to ensure our ability to retain and recruit highly qualified professionals. The economy in North Dakota is growing and competition for audit professionals has increased. Salaries paid by accounting firms are significantly higher than we can pay. These events have made attracting and retaining qualified professionals significantly more difficult.

Major Agency Initiatives for the 2011-13 Biennium

Our major initiatives include TeamMate, our electronic work paper system, and continuing to recruit and retain highly qualified professionals. Each of these is explained below where we discuss improving our efficiency and effectiveness.

Section 2 of HB 1004, passed by the 61st Legislative session, required that the use of \$150,000 of funding appropriated for electronic working papers be reported to the appropriations committees of the 62nd Legislative Assembly. As of 12/31/2010 we had spent \$137,759. We will spend an additional \$12,241 this biennium to implement electronic working papers. Therefore, the total cost of implementing electronic working papers will be \$150,000.

We need to increase compensation to ensure we can attract and retain qualified professionals. Qualified professionals must be recruited and retained to meet our goals and objectives relating to both performance and financial audits.

There are many factors that have combined to continually increase our workload. The first involves the growth of state government. The total state budget for the 1991-1993 biennia was approximately \$3.2 billion. The total state budget proposed by the Governor for the 2011-2013 biennium is approximately \$9.3 billion or almost three times what it was for the 1991-1993 biennium and yet we have fewer FTE to audit these monies. This increase in spending also involved new programs being created that required auditing.

The State Auditor's Office had 41 FTE in the 1991-1993 biennia that were funded by the state general fund (the office had a total of 65 FTE at that time). The state general funded FTE are the ones that audit state government. Currently the State Auditor's Office has 37.8 FTE that are funded with state general funds (and a total of 51.8 FTE). It's clear that we have done a great job of doing more with less.

Another example of why our workload has increased significantly is the constant new accounting and/or auditing standards that are issued each year. These new standards often increase our office's responsibilities and create additional work for the audit teams. The standards are issued by the standard setting boards and nationally have led to complaints from major accounting firms about standards overload.

Finally the increase in the number of federal programs and the amounts of federal monies provided to North Dakota has increased our responsibilities and workload. Federal law requires that these funds be audited and new requirements seem to be put in place each year. The most recent example of a significant increase in workload involves the federal American Recovery & Reinvestment Act (ARRA) funds distributed by the federal government. The regulations surrounding these funds require significant increased auditing.

Over the past few years we have consistently experienced 20% and higher turnover rates for the Bismarck state agency auditor positions that audit state government. During the current biennium that turnover rate for those positions is approximately 30%. The combination of this turnover and our increased workload raises concern about our ability to continue to fulfill our state and federal statutory responsibilities.

The Legislature commissioned a study of the state's personnel system which was conducted by the Hay Group. The consultant's August 17, 2010 draft report indicated that Auditor 2's and 3's are making more than 15% less than their peers in the state. This report supports our experiences over the last several years as those are the level of auditors we most struggle to keep.

It is crucial that we receive additional salary monies that we can distribute to the staff in the form of equity increases. As mentioned earlier, we are auditing almost 3 times the amount of expenditures as we were in the 1991-1993 and we have fewer FTE completing the work.

Program Goals and Objectives

The activities of the Office of the State Auditor are carried out through four programs, each of which has its own goals, objectives, and strategies. The following pages provide an overview of each of these programs.

Program 1 - Administration

This program includes all expenses associated with the State Auditor and the office manager, which consist primarily of salaries, travel expenses, professional development expenses, and professional services costs which benefit all programs of the office.

Engrossed Senate Bill No. 2004 provides the necessary funding to successfully carry out the objective of this program.

Program 2 - Division of State Audits

The Division of State Audits conducts performance, operational, information technology and financial statement audits of state agencies. Each of these is discussed below.

Performance Audits -

Performance auditing is an integral part of state government and has resulted in significant improvements to state entities. Performance audits have contributed to improving processes, efficiency and effectiveness of operations, and compliance with laws, rules and regulations. For example, we estimate (and the agency concurred) implementation of five recommendations in the Department of Corrections and Rehabilitation performance audit report resulted in annual savings in excess of \$915,000 of state general funds for the agency. Essentially performance audits determine if programs and/or entities are operating efficiently and effectively, determine if the programs are accomplishing what the Legislature intended them to accomplish, and provide information to management, the Legislature and other stakeholders to make appropriate changes for improvement. A significant majority of the states have performance audit functions.

During the 2009-2011 biennium the performance audit team completed a performance audit of the Department of Commerce. The report contained 50 recommendations and was presented to the Legislative Audit and Fiscal Review Committee on September 30, 2009. In addition the performance audit team also completed a performance audit of the North Dakota University System Capital Projects. The report contained 17 recommendations and was presented to the Legislative Audit and Fiscal Review Committee on May 12, 2010. The performance audit team also completed a performance audit on Medicaid Provider and Recipient Fraud and Abuse. The report contained 21 recommendations and was presented to the Legislative Audit and Fiscal Review Committee on October 21, 2010.

The performance audit team also conducted follow-up audits of the following performance audits during the 2009-2011 biennium:

- UND School of Medicine and Health Sciences;
- North Dakota Agriculture's Wildlife Services Division;
- Department of Commerce.

In all instances the vast majority of recommendations from the original performance audits have either been fully or partially implemented.

Occasionally our work requires that we hire a consultant. This has proven to be an extremely valuable tool in conducting performance audits as it allows us to expand the scope of our work into specialized areas. For example, we hired a national consultant for the performance audit of the UND School of Medicine and Health Sciences who specifically reviewed the institution's research efforts and programs, educational training related to primary care, and the merger of the Department of Family Medicine and the Department of Community Medicine. The State Auditor's Office felt these areas were of interest to stakeholders and required specific expertise.

Consultants also allow us to leverage expensive consultant hours with our own work and as a result our staff increases their knowledge of the state entity's operations. The Legislative Audit and Fiscal Review Committee must approve (in advance) the hiring of a consultant for a performance audit. The state entity being audited pays for the consultant.

Every three years the State Auditor's Office is required to undergo a peer review process (also referred as a Quality Control Review) by the National State Auditor's Association (NSAA). The NSAA organizes a team of management personnel from state audit organizations from around the country and reviews the audit process, audit reports and working papers from our office to ensure that our work meets

nationally recognized standards. The performance audit division has not had a single finding in the past 3 NSAA peer review reports covering the past 9 years.

Operational Audits -

Our two-year biennial audits of state agencies are conducted in accordance with performance audit standards. The objectives of these audits are to provide reliable, audited financial statements and to answer the following questions: 1) What are the highest risk areas of the agencies' operations and is internal control adequate in these areas; 2) What are the significant and high-risk areas of legislative intent applicable to the agencies and are they in compliance with significant laws and regulations; 3) Are there areas of the agencies' operations where we can help to improve efficiency or effectiveness?

Operational improvements come from working with the state agencies, by using our expertise and research to offer constructive assistance and make recommendations for improvement. Our goal is to help individuals do their assigned work as efficiently and effectively as possible while giving them better control over the process.

Information Technology Audits –

The Office of the State Auditor performs information systems audits on individual computer applications and on the Information Technology Department. In addition, we hire a consultant once a biennium to do a security audit of the Information Technology Department and the state network.

During the current biennium we hired the consultant for the security audit, completed an information systems audit on the State Treasurer Tax Distribution and Outstanding Check Systems and audited the Information Technology Department. The information systems auditors have also been assisting with the implementation of TeamMate, our newly implemented electronic working paper system.

Information systems auditors are also responsible for helping with computer assisted audit techniques and handling computer support for our office at its three different locations.

Financial Statement Audits -

The Office of the State Auditor performs annual financial statement audits that include the state's Comprehensive Annual Financial Report (CAFR), the ND University System, the State Mill and Elevator and the ND Lottery.

Several important recommendations were made relating to our audits of the state's CAFR and the ND University System financial statement audit. For the 2010 State CAFR audit these findings included both material weaknesses in internal control and significant deficiencies. The NDUS audit also identified material weaknesses and significant deficiencies.

The statewide single audit of federal assistance received by all state agencies is a type of financial statement audit. This audit is required by federal law and is performed once every two years. The 2009-2010 single audit will require over 11,000 hours. All colleges and universities, and 34 state agencies receive and expend federal financial assistance. The 2007-2008 single audit covered more than \$2.4 billion of federal expenditures. The 2009-2010 federal single audit will be completed by March 31, 2011, and will cover approximately \$3 billion of federal expenditures.

The Senate amended SB2004 to include \$100,000 of state general fund money in Legislative Council's budget to enable them to hire an outside firm to "provide funding for a performance review of the State Auditor's Office, including quality control, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review and reporting." We do not believe the performance review called for in the Senate amendment represents a good use of taxpayer dollars.

The State Auditor's Office currently undergoes two types of audits/reviews on a routine basis. The Legislative Council contracts with a CPA firm to conduct a financial audit of our office once every two years. In addition, our office is required by the auditing standards to have a quality control review (QCR), also known as a peer review once every three years. The National State Auditor's Association (NSAA) forms a team of management level audit personnel from other states and they conduct a thorough review of our auditing operation including a review of specific audit reports, audit working papers, our quality control system and our auditing manuals.

In addition, some of the specific review areas included in the Senate amendment are already covered by the QCR. Hiring a second independent entity to conduct duplicate audit work is a waste of taxpayer

money. The areas already included in the QCR are: a review of our quality control system; audit procedures, technical applications and reporting. We are scheduled to have our next QCR in May of this year and it makes no sense to spend tax payer monies to have a second independent entity review the same areas. We do not believe any significant changes to the operations of our office will result from the performance review called for in the Senate amendment.

Program 3 - Division of Local Government Audits

The local government division is entirely self-funded. It operates on revenue generated from audit fees, fees charged for reviewing small government reports and private auditing firms' audit reports.

Financial and Compliance Audits -

Section 54-10-14 of the North Dakota Century Code requires counties, cities, school districts, and other political subdivisions to be audited every two years. The governing board of these entities may select the Office of the State Auditor, or a public accounting firm to perform the audit. Over a 2 year period our office performs about 85 audits, with public accounting firms performing about 600 local government audits during that time.

Annual Reports of Small Entities -

Cities with less than 500 population, school districts with less than 100 enrolled students, park districts and soil conservation districts with less than \$200,000 of annual receipts, and other political subdivisions with less than \$100,000 of annual receipts may file an annual report in lieu of an audit. These reports are reviewed and approved by our office. We review about 700 of these reports each year. Smaller local government reports reviewed include: park districts, school districts, rural fire protection districts, and rural ambulance service districts.

Review of State Subrecipient Audit Reports -

This division also reviews audit reports of local governments receiving federal financial assistance from 10 state agencies. This service saves those agencies from having to review the reports themselves. We review about 300 audit reports for these 10 state agencies.

Program 4 - Mineral Royalty Auditing

This program was started in 1982, and in 1985 the federal government started funding the program 100 percent. This program is responsible for ensuring that the federal government and the state of North Dakota are receiving their share of royalty payments for federal public domain leases located within the state. Royalty payments are made on oil, gas, and coal leases. There are currently 11 states and 7 Native American tribes participating in this program with the U.S. Department of Interior, Office of Natural Resources Revenue (ONRR). There are 4 auditors in this program.

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HOUSE APPROPRIATIONS COMMITTEE
GOVERNMENT OPERATIONS DIVISION
Representative Blair Thoreson, Chairman

March 3, 2011

Requested changes to Engrossed S.B. No. 2004

1. Fund an existing auditor position 100% - \$81,918.
2. Increase funding for auditors, focusing on Auditor 2 and Auditor 3 positions to reduce turnover - \$351,802.

Total additional general funds requested - \$433,720.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2004

Page 1, line 12, replace "711,712" and "8,626,758" with "1,145,432" and "9,060,478", respectively

Page 1, line 15, replace "746,299" and "9,571,330" with "1,180,019" and "10,005,050", respectively

Page 1, line 17, replace "631,579" and "7,143,808" with "1,065,299" and "7,577,528", respectively

2004.3.7.11A

STATE AUDITORS OFFICE—SB2004 INFORMATION

1. General Fund operating expenses line turn back for the 2009-2011 biennium. Our estimate is we will turn back approximately \$25,000.
2. Actual audit hours for our performance audit of the North Dakota University Capital Project performance audit was 1,261. (During our budget presentation to the House subcommittee I erroneously guessed it was 1800 hours).
3. 2009 session laws passed related to Auditor's Office.
 - a) 2009 HB 1129. This bill raised the level at which a city has to have an audit. Previously cities with a population under 300 residents were able to fill out a form in-lieu of having a full audit done. This bill increased that level to cities with a population under 500 residents.
 - b) 2009 SB2142. This bill removed a requirement for ITD to file a report with our office involving wide area network service provided certain entities.
 - c) 2009 SB2144. This bill allows our office to bid out the conduct of fraud audits if any public employee or public official creates a liability against the state bonding fund if our office does not have the personnel to conduct these fraud audits.

State Auditor's Office
Proposed Salary Adjustments
2011-2013 Biennium

Level	Years of Service	Cert	Salary	Chart	Over/(Under)
Auditor IV	34.4		5,420	5,700	(280)
Manager	34.0	CPA	7,475	7,891	(416)
Manager	33.0	CPA	7,475	7,891	(416)
Audit Super.	31.4	CPA	5,525	5,900	(375)
Senior	29.6		6,390	6,800	(410)
Manager	28.8	CPA	7,415	7,891	(476)
Manager	23.5	CPA, Ma	7,415	7,850	(435)
Audit Super.	22.6	CPA, CM	6,385	6,725	(340)
Senior	21.6	CPA, CISA	5,995	6,450	(455)
Senior	20.9	CPA	5,630	5,900	(270)
Auditor IV	20.3	CPA	5,275	5,600	(325)
Senior	19.5		4,850	5,400	(550)
Manager	19.3	CPA, CISA	7,185	7,650	(465)
Senior	15.5	CPA	5,810	6,250	(440)
Senior	15.1	CPA	5,430	5,925	(495)
Auditor IV	13.1	CPA	5,120	5,700	(580)
Auditor IV	13.0	CPA	5,345	5,700	(355)
Auditor IV	12.5	MBA, M. Mgt	5,225	5,825	(600)
Auditor IV	11.5	CPA	5,130	5,475	(345)
Auditor IV	10.1		4,865	5,350	(485)
Auditor III	8.5		3,760	4,200	(440)
Auditor IV	6.5	CISA	4,525	4,875	(350)
Auditor IV	6.4	CPA	4,130	4,725	(595)
Auditor IV	6.1	MBA	4,065	4,625	(560)
Auditor IV	5.2	MBA	4,040	4,625	(585)
Auditor III	4.3		3,835	4,200	(365)
Auditor III	4.3		3,835	4,200	(365)
Auditor III	3.8	CPA	3,890	4,225	(335)
Auditor III	3.8		3,890	4,100	(210)

Total Per Month (12,318)

Total Biennium (295,632)

Fringes (19%) (56,170)

Total (351,802)

Information given to Rep. Keith Kempenich 3/4/2011

* Determined by Auditor's Office management based on employees performance, responsibilities and years of service. These salary levels would make our salaries reasonable in relation to our competitors.

3/3/2011

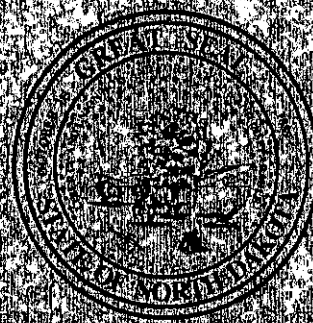
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OFFICE OF THE STATE AUDITOR

PERFORMANCE AUDIT REPORT

Wildlife Services Program
Report No. 3026

May 9, 2008



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May 9, 2008

Honorable John Hoeven, Governor

Members of the North Dakota Legislative Assembly

Transmitted herewith is the performance audit report on aspects of the Wildlife Services Program. This report contains the results of our review of the adequacy of the system established to monitor the program within the state.

The audit was conducted pursuant to Chapter 36 of the 2007 North Dakota Session Laws. We conducted this audit under the authority granted within North Dakota Century Code Chapter 54-10. Included in the report are the objective and scope, findings and recommendations, and management responses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson
State Auditor

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Appendix A: List of Recommendations

Appendix B: Additional Background Information

Executive Summary

Results and Findings

Recommendations addressed in this report are listed in Appendix A. Discussions relating to individual recommendations are included in Chapter 1.

Monitoring Operations

We determined the state has not established an adequate system for monitoring the Wildlife Services Program. We identified a number of concerns regarding a lack of monitoring. We identified changes were necessary to restrict payment to certain costs of the program which are reasonable and can be verified in a timely manner. There is a lack of commitment to, and activities performed with, the program related to the problems the state has with blackbirds in sunflowers.

GAME & FISH?

Monitoring the Wildlife Services Program

Introduction

The objective of this performance audit was to answer the following question:

"Has the state established an adequate system for monitoring the Wildlife Services Program?"

We determined the state has not established an adequate system for monitoring the Wildlife Services Program. Significant improvements needed in monitoring the Wildlife Services Program are included in this chapter. Improvements of less significance were communicated in a separate letter to management of the North Dakota Department of Agriculture.

Making Improvements with Expenses Paid by the State

The North Dakota Wildlife Services Program is a cooperative effort of state and federal agencies to provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services. A Cooperative Service Agreement between APHIS and the North Dakota Department of Agriculture is entered into each biennium. A separate Cooperative Service Agreement is entered into each biennium between the Department of Agriculture and the North Dakota Game and Fish Department related to funding of the program.

Bills are submitted to the Department of Agriculture by APHIS for salaries of field specialists and a pilot, costs of vehicle and aircraft operations, and miscellaneous expenses for the repair of equipment and expendable supplies needed in performing official duties. We identified a number of improvements were needed to ensure state funds were reasonably spent.

Ensuring Expenses Paid by the State are Verifiable

This performance audit included a review of information from the 2003-2005 biennium through February 2008. We judgmentally selected 12 bills submitted to the ND Department of Agriculture during this time period. In a review of expenditure information and a comparison to information in the Cooperative Service Agreements, we identified a number of concerns in which state funds were being used for expenditures which were not supported or were not reasonable. Examples include:

- The vehicle fuel costs of the field specialists are not readily traceable and are not verifiable. Certain vendors are providing discounts but there is no information as to discount amounts or what vendors offer discounts (program appears to be through the U.S. General Services Administration). Also, there is limited information on the purchase transaction listing which prevents receipts from being traced to the actual billed amount. It should be noted the vehicle fuel amounts charged to the state are less than the actual purchase receipt amounts.

Chapter 1

Monitoring the Wildlife Services Program

Expenditures paid by the state were not always supported or reasonable.

- The vehicles driven by the field specialists are purchased with federal funds and the state has no control over what vehicles are being purchased. The state does pay for vehicle fuel costs and maintenance such as oil changes. The vehicles driven by the field specialists are ¾ ton pickups including three 2008 diesel pickups. The field specialists incur a significant amount of travel time and these vehicles typically have relatively low miles per gallon. We also identified few controls in place regarding the use of these pickups. For example, no mileage log books are maintained by the field specialists identifying travel information.
- Varying salary amounts are paid by the state each month. For example, the salary amount paid by the state for April 2007 was \$31,708 and was only \$16,724 for May 2007 (federal funds used to pay salary differences). Rather than paying a certain percent of salaries or establishing another type of cost accounting system, APHIS will bill amounts depending upon the amount of funds available from the state and federal government. With the state budgeting cycle being a two year period starting July 1 and the federal budgeting cycle being a one year period starting October 1, costs paid by the state can fluctuate when sufficient federal funding for the program is available.
- Certain receipts were lacking for repairs and fuel purchases. We identified certain receipts also included taxes on purchases. Taxes should not be reimbursed by the state. Amounts we identified in the sample were determined to be insignificant.

State funding for the Wildlife Services Program does not pay for all costs incurred by the federal entity administering the program (APHIS also has federal funds to administer the program). Only those costs which are easily identified, attributed to the program, documented, and reasonable should be paid by the state.

Recommendation 1-1

We recommend the Department of Agriculture pay salaries of the Wildlife Services' field specialists and other cost(s) which can be verified in a timely and efficient manner.

Management's Response

We agree with the recommendation and will reimburse Wildlife Services only for salaries of Wildlife Services field specialists and other easily verified expenses.

Determining Amount of Pilot's Salary to Reimburse

The pilot's salary is paid by the state when very limited time is spent flying.

APHIS is authorized and does conduct aerial hunting of coyotes in the state. In a review of information, we identified the pilot of APHIS spends a relatively minimal amount of time flying. However, the pilot's salary was still paid by the state for certain months regardless of the amount of time spent flying. For example, from September 17, 2006 through October 14, 2006 (160 hour work period), the pilot flew 3 days and claimed 26.5 hours for these days. The remainder of the pilot's time was coded to regular hours (77 hours) and the remaining 56.5 hours coded to leave and holiday. The state paid all 160 hours of the pilot time

over this four week period. We were informed when not flying, the pilot spends time working in the shop doing maintenance work on equipment. The pilot is paid a relatively high salary amount (over \$15,000 more a year than the maximum a pilot employed by a state agency and classified in the state's classification system could earn).

Recommendation 1-2

We recommend the Department of Agriculture review the time of the pilot charged to the Wildlife Services Program and determine what percentage of the pilot's salary will be paid by the state.

Management's Response

We agree with the recommendation and will reimburse Wildlife Services a defined amount of the pilot's salary.

Improving Documentation of Travel Time

The field specialists of the Wildlife Services Program complete time sheets every two weeks and identify their work time under the category of "regular time." The field specialists also document their time spent on activities into the Management Information System (MIS, computer system used by APHIS). The information entered into MIS identifies activities by category (such as trapping, office duties, etc.) and identifies the time spent each day for each category.

In a comparison to the regular hours claimed on timesheets and the hours identified in MIS, we identified hours claimed did not equal the amount of time documented in MIS. For example, a field specialist identified one hour to trapping and claimed 8 hours worked for that same day. The difference was identified to us to be "travel time." There is no accounting of this travel time and a significant number of hours were identified as being "travel time." For example, a field specialist had nearly 50% of their time to "travel" one week with the next week having over 70% of their work time going to "travel" (excludes time taken for sick leave). This "travel" time is not documented and/or supported by other documentation.

Recommendation 1-3

We recommend the Department of Agriculture require travel time of the Wildlife Services' field specialists be adequately documented.

Management's Response

We agree with the recommendation and will require documentation of field specialists' travel time.

Monitoring Miscellaneous Time

In a review of the field specialists' time worked from September 17, 2006 through October 14, 2006, we identified time being charged to certain categories which appeared excessive. These categories include office duties, miscellaneous, and bad weather (used when a field specialist is scheduled to check on certain devices and is unable to do so because of weather conditions). For example, a field specialist coded time to miscellaneous on three consecutive days in October for 4 hours, 8 hours, and 8 hours respectively. Time charged to these relatively broad categories provides limited information as to what activities were actually performed or what was actually accomplished by the field specialists.

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Monitoring the Wildlife Services Program

Recommendation 1-4

We recommend the Department of Agriculture monitor field specialists' time charged to office, bad weather, miscellaneous, or similar categories. Appropriate action should be taken if time charged to these categories is excessive.

Management's Response

We agree with the recommendation and will require documentation of field specialists' time spent in the office for paper work, bad weather and other non-field duties.

Verifying Billed Amounts are Adequately Supported and Reasonable

Bills submitted to the North Dakota Department of Agriculture are a one page document with very little detail. Total cost amounts are identified by category such as salary, vehicle fuel, etc. The support for these bills is to be maintained by APHIS, Wildlife Services. The Department of Agriculture does not review support maintained by APHIS to ensure amounts are supported and reasonable. In a review of 12 judgmentally selected bills, we identified a number of concerns. Examples included a lack of support for certain vehicle maintenance and aircraft fuel expenses as well as taxes being included in billed amounts.

Recommendation 1-5

We recommend the Department of Agriculture periodically verify the Wildlife Services Program billed amounts are adequately supported and reasonable.

Management's Response

We agree with the recommendation and will periodically verify supporting documentation for billings.

Ensuring Blackbird Problems are Addressed

Significant damage is caused by blackbirds resulting in a negative economic impact.

In 2007, North Dakota's oil sunflower production was approximately 52% of the entire sunflower oil production in the United States (according to USDA statistics). A major concern identified by various parties, including the North Dakota Department of Agriculture and the National Sunflower Association, was the amount of damage blackbirds do to sunflowers and losses incurred due to blackbirds (while blackbirds eat sunflower seeds the way they sit on the sunflower head results in a number of seeds falling to the ground). Both parties also voiced concerns with the lack of blackbird commitment from personnel operating the Wildlife Services Program. A letter dated February 2006 from the President of the National Sunflower Association identifies the State Director of APHIS, Wildlife Services in North Dakota had informed the National Sunflower Association he had no interest in working on blackbirds. In review of the purpose of the Wildlife Services Program, the problems associated with blackbirds would be an area the program was intended to address.

The loss of revenue and economic impact due to blackbirds in sunflowers can be significant. Using (USDA) production and pricing information and an estimate of 4% to 5% of damage caused by blackbirds, the blackbird problem equates to approximately \$14.1 million to \$17.6 million in losses in a year. While the blackbird problem would not completely be eliminated, any reduction in the problem could

Chapter 1

Monitoring the Wildlife Services Program

produce significant savings. Discussions with representatives of the North Dakota Department of Agriculture and National Sunflower Association identified the blackbird problem was occurring in the fall. At this time of the year, the amount of time needed by field specialists for coyote problems would appear to be at a minimum. Our review of activity information for the field specialists indicated it was a slower time for coyote activities.

Recommendation 1-6

We recommend the Department of Agriculture require the Wildlife Services' field specialists dedicate a certain amount of time in the fall to the state blackbird problem.

Management's Response

We agree with the recommendation and will require dedication of some of the field specialists' time in the fall for state blackbird work.

Improving Monitoring

In addition to the improvements already addressed in this report, we also identified additional improvements were needed in monitoring compliance with requirements in the Cooperative Service Agreements entered into for the program. Our review identified certain requirements of agreements in different bienniums were not fulfilled. For example, required discussions related to employment, salaries, expenses, and purchases were not held and required information to be submitted to the Department of Agriculture was not provided. The Department of Agriculture has established an informal monitoring process for the agreements and has relied on APHIS to comply with requirements.

Recommendation 1-7

We recommend the Department of Agriculture improve monitoring of Cooperative Service Agreements to ensure requirements are complied with.

Management's Response

We agree with the recommendation and will require that Wildlife Services complies with all conditions of an existing cooperative service agreement before entering into a new agreement.

Ensuring Requirements of Agreements are Adequate

A number of recommendations in this audit are being made with how the Wildlife Services Program is to operate, be monitored, etc. Certain recommendations will require changes to be made to the Cooperative Service Agreements entered into related to the program. In addition, we identified other changes were needed with the agreements including:

- Certain raises have been given to the field specialists and such raises are able to be granted without Department of Agriculture approval or knowledge. For the time period of October 2003 through September 2007, the average salary increase was 18.5% with the highest increase being 28%.
- The agreements do not contain measurable goals/objectives or other performance information in which the program or activities

Chapter 1

Monitoring the Wildlife Services Program

Changes to language in the agreements are necessary.

being performed can be compared to for ensuring state funds are used as intended.

- While we identified certain requirements in the agreement were not complied with, it appears certain requirements may not be necessary in monitoring the program.
- Work conducted through the Wildlife Services Program included activities performed in urban areas. North Dakota Century Code does not address activities of this program in urban areas. If such work is to be conducted, information should be in the agreement addressing this work. In June 2007, APHIS established a fee schedule for work performed in areas it determines to be urban.

Recommendation 1-8

We recommend the Department of Agriculture ensure appropriate changes are made to the Cooperative Service Agreements to address recommendations included in this audit report as well as to:

- a) Approve or require information be provided for salary increases of Field Specialists prior to being effective;
- b) Establish performance measures to evaluate the program;
- c) Require only necessary reports or information regarding the program; and
- d) Identify if, when, and where state funds are to be used for issues arising in urban areas.

Management's Response

We agree with the recommendation and will make changes to the Cooperative Services Agreement regarding salary increases, establishing performance measures, reporting requirements, and use of state funds for urban wildlife.

Making Changes to State Law

Through a review of North Dakota Century Code (NDCC) and discussions with representatives, we identified state laws which had not been updated since 1973 and were in need of review. NDCC Chapter 4-01 establishes responsibilities and requirements related to the Wildlife Services Program. An example of a law which is in need of review is NDCC Section 4-01-17.1. This section states the Department of Agriculture may cooperate with APHIS in the control and destruction of certain animals which are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss. Work is being conducted in urban areas under the Wildlife Services Program and clarification could be provided as to what areas the program is to serve and what animals are included as part of the program.

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Chapter 1

Monitoring the Wildlife Services Program

Recommendation 1-9

We recommend the Department of Agriculture, with assistance from the Office of the Attorney General, review North Dakota Century Code requirements related to the Wildlife Services Program. Appropriate action should be taken to modify or clarify sections to make requirements clear and up-to-date.

Management's Response

We agree with the recommendation and will consult with the Office of the Attorney General regarding appropriate actions regarding North Dakota Century Code requirements related to the Wildlife Services Program.

Reviewing Monitoring and Funding Responsibilities

The Wildlife Services Program is administered and operated by the federal U.S. Department of Agriculture Plant Health Inspection Service (APHIS), Wildlife Services. The North Dakota Department of Agriculture has a cooperative service agreement with this entity for the program and is responsible for the primary monitoring of the program by the state. However, while the primary monitoring responsibility is with this state entity, the primary state funding source is the North Dakota Game and Fish Department. The Game and Fish Department relies on the Department of Agriculture to monitor the use of the funds being provided and has very little if any input as to how the funds are to be used. With the concerns previously identified in this report with the monitoring of the program, there is a need for a review of the monitoring and funding of the program.

Recommendation 1-10

We recommend the Department of Agriculture and the Game and Fish Department formally identify advantages and disadvantages of the current monitoring and funding of the Wildlife Services Program. A determination should be made as to whether the primary monitoring and/or primary funding of the program need changing.

Management's Response

Department of Agriculture

We agree with the recommendation and will jointly identify with the Game and Fish Department advantages and disadvantages of the current monitoring and funding of the Wildlife Services Program. We will also jointly make a determination regarding changes, if any, in the primary monitoring and funding of the program.

Game and Fish Department

Game and Fish agrees with the recommendation and will work with the Department of Agriculture to review the current monitoring and funding of the Wildlife Services Program. We will work with them to determine whether the primary monitoring and/or primary funding of the program need changing.

Chapter 1

Monitoring the Wildlife Services Program

Obtaining Federal Information

Federal budget and expenditure information is not obtained by the state.

The Wildlife Services Program is funded with general funds (through the North Dakota Department of Agriculture), special funds (through the North Dakota Game and Fish Department), and federal funds (through U.S. Department of Agriculture). The North Dakota Department of Agriculture meets with the federal entity representative (State Director of APHIS, Wildlife Services) in an attempt to identify an appropriate budget request amount. The State Director determined additional funds were needed for the program after the 2007 Legislative Session had started. Rather than addressing this need with the Department of Agriculture, the State Director contacted local organizations and individuals informing them if additional funds were not received, field specialist staffing would be reduced. The Department of Agriculture was unaware of this occurring until information was provided to them from the North Dakota Game and Fish Department.

We reviewed information presented to appropriation committees during the 2007 Legislative Session. In certain instances, we identified information provided regarding the program appeared inconsistent and we were unable to verify certain federal expenditure information. This appears to have led to confusion regarding the funding of the program. Data related to all funding sources used should be obtained to adequately monitor a program. This will assist in determining an appropriate amount of funding to be provided. When APHIS determined additional funds were needed, the Department of Agriculture was unable to determine the reasonableness of the additional request for funding and was unable to provide information to appropriation committees regarding the program funding.

Recommendation 1-11

We recommend the Department of Agriculture obtain necessary federal budget and expenditure data for monitoring and budgeting purposes.

Management's Response

We agree with the recommendation and will obtain necessary federal budget and expenditure data from Wildlife Services in order to accurately budget and monitor expenditures.

Audit and Background Information

Purpose and Authority of the Audit

The performance audit of the Wildlife Services Program was conducted by the Office of the State Auditor pursuant to Chapter 36 of the 2007 Session Laws. As stated in this Session Law, the performance audit was to be conducted during the biennium beginning July 1, 2007 and ending June 30, 2009. The Session Law required the audit to include a review of all funding sources, including grants from the Agriculture Commissioner, Game and Fish funds, and federal funds, for the wildlife damage management program in North Dakota for the last 3 biennium. The results of the performance audit are required to be presented to the Legislative Audit and Fiscal Review Committee and filed with the Appropriations Committees during the 2009 Legislative Session.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of the Wildlife Services Program.

Background Information

The North Dakota Wildlife Services Program is a cooperative effort of state and federal agencies to provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services through cooperative service agreements with the North Dakota Department of Agriculture and the North Dakota Game and Fish Department. Authority for the program comes from the Animal Damage Control Act of March 2, 1931 (7 USC 426, 426b) and the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (7 USC 426c).

Pursuant to North Dakota Century Code Section 4-01-17.1, the Agriculture Commissioner may cooperate with APHIS or other appropriate federal agencies in the control and destruction of coyotes, wolves, bobcats, and foxes that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss.

The North Dakota Department of Agriculture is primarily responsible for monitoring the Wildlife Services Program. The North Dakota Game and Fish Department is primarily responsible for providing the state funding of the program. While the primary monitoring of the program resides with the Department of Agriculture, the primary state funding provided for

Chapter 2

Audit and Background Information

the program comes from the Game and Fish Department. State funding for the program is identified in the table below:

Table 1			
Wildlife Services Program State Funding			
Biennium	Game and Fish (Special Funds)	Department of Agriculture (General Funds)	Total
2003-2005 ¹	\$550,000	\$250,000	\$800,000
2005-2007 ²	\$680,000	\$250,000	\$930,000
2007-2009 ³	\$680,000	\$240,000	\$920,000
¹ Expenditure amount			
² Expenditure amount including emergency appropriation from the 2007 Legislature			
³ Appropriated amount			

See Appendix B for a more detailed description and federal funding information on the Wildlife Services Program.

Objective of the Audit The objective of this performance audit is listed below:

Has the state established an adequate system for monitoring the Wildlife Services Program?

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit field work was conducted from March 2008 through the beginning of May 2008. The audit period for which information was collected and reviewed was July 1, 2003 thru February 2008. Specific methodologies are identified in the respective chapters of this report.

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List of Recommendations

- Recommendation 1-1** We recommend the Department of Agriculture pay salaries of the Wildlife Services' Field Specialists and other cost(s) which can be verified in a timely and efficient manner.
- Recommendation 1-2** We recommend the Department of Agriculture review the time of the pilot charged to the Wildlife Services Program and determine what percentage of the pilot's salary will be paid by the state.
- Recommendation 1-3** We recommend the Department of Agriculture require travel time of the Wildlife Services' Field Specialists be adequately documented.
- Recommendation 1-4** We recommend the Department of Agriculture monitor Field Specialists' time charged to office, bad weather, miscellaneous, or similar categories. Appropriate action should be taken if time charged to these categories is excessive.
- Recommendation 1-5** We recommend the Department of Agriculture periodically verify the Wildlife Services Program billed amounts are adequately supported and reasonable.
- Recommendation 1-6** We recommend the Department of Agriculture require the Wildlife Services' field specialists dedicate a certain amount of time in the fall to the state blackbird problem.
- Recommendation 1-7** We recommend the Department of Agriculture improve monitoring of Cooperative Service Agreements to ensure requirements are complied with.
- Recommendation 1-8** We recommend the Department of Agriculture ensure appropriate changes are made to the Cooperative Service Agreements to address recommendations included in this audit report as well as to:
- a) Approve or require information be provided for salary increases of Field Specialists prior to being effective;
 - b) Establish performance measures to evaluate the program;
 - c) Require only necessary reports or information regarding the program; and
 - d) Identify if, when, and where state funds are to be used for issues arising in urban areas.
- Recommendation 1-9** We recommend the Department of Agriculture, with assistance from the Office of the Attorney General, review North Dakota Century Code requirements related to the Wildlife Services Program. Appropriate action should be taken to modify or clarify sections to make requirements clear and up-to-date.

Appendix A
List of Recommendations

Recommendation 1-10

We recommend the Department of Agriculture and the Game and Fish Department formally identify advantages and disadvantages for the current monitoring and funding of the Wildlife Services Program. A determination should be made as to whether the primary monitoring and/or primary funding of the program need changing.

Recommendation 1-11

We recommend the Department of Agriculture obtain necessary federal budget and expenditure data for monitoring and budgeting purposes.

Additional Background Information

Description

The North Dakota Wildlife Services Program is a cooperative effort of state and federal agencies to provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services through cooperative service agreements with the North Dakota Department of Agriculture and the North Dakota Game and Fish Department. Authority for the program comes from the Animal Damage Control Act of March 2, 1931 (7 USC 426, 426b) and the Rural Development, Agriculture, and Related Agencies Appropriation Act of 1988 (7 USC 426c).

Pursuant to North Dakota Century Code Section 4-01-17.1, the North Dakota Agriculture Commissioner may cooperate with APHIS or other appropriate federal agencies in the control and destruction of coyotes, wolves, bobcats, and foxes that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss.

Field Specialists are scattered throughout the state in 10 regions developed by the Wildlife Services Program. Each region has one field specialist. Each field specialist is responsible for incidents in their own region. A pilot is located in Bismarck and is responsible to assist all 10 field specialists with aerial hunting when needed. The field specialists are monitored by a supervisor located in the Bismarck office.

History

While the program has had various names and has been placed in different federal agencies, the annual reports prepared by the federal government on the program in North Dakota identified minimizing/reducing economic loss and/or minimizing damage caused by wildlife as a primary purpose. A brief outline of the history of the program in the state is below and is taken from annual reports:

- 1949: the Predator Control Program was administered by the U.S. Fish and Wildlife Services, Bureau of Sports Fisheries and Wildlife Division and was providing services for the district of Nebraska, North Dakota, and South Dakota with the main office in Mitchell, South Dakota
- 1961: in February, North Dakota became a separate district
- 1966: the branch of Predator and Rodent Control reorganized as the Division of Wildlife Services which included Animal Control and functions of Wildlife Enhancement and Pesticides Surveillance
- 1969: wetland enhancement activities became an operational branch of the Division of Wildlife Services
- 1974: administration of the program went from the Bureau of Sports Fisheries and Wildlife Division to the Department of Interior – U.S. Fish and Wildlife Service; for the first time, all funding for the program

Appendix B

Additional Background Information

was from federal and state appropriations (previously counties and other entities provided funding)

- 1985: Animal Damage Control Program was officially transferred from the Department of Interior – U.S. Fish and Wildlife Service to the Department of Agriculture – Animal and Plant Health Inspection Service

Funding

The primary monitoring of the Wildlife Services Program is conducted by the Department of Agriculture. The primary state funding for the program is provided by the Game and Fish Department. State funding for the program is identified in the table below:

Table 2 Wildlife Services Program State Funding			
Biennium	Game and Fish (Special Funds)	Department of Agriculture (General Funds)	Total
2003-2005 ¹	\$550,000	\$250,000	\$800,000
2005-2007 ²	\$680,000	\$250,000	\$930,000
2007-2009 ³	\$680,000 ✓	\$240,000 ✓	\$920,000 ✓
¹ Expenditure amount			
² Expenditure amount including emergency appropriation from the 2007 Legislature.			
³ Appropriated amount			

According to a Cooperative Agreement between APHIS and the Department of Agriculture, state funds are to be used to reimburse APHIS for expenditures of the Wildlife Services Program. Expenditures listed in the Cooperative Agreement include salaries for 10 wildlife specialists and 1 pilot (or as many personnel as dictated by funding levels and need), miscellaneous expenses for the repairs of equipment and expendable supplies needed in performing official duties, and costs of vehicle and aircraft operations. Bills submitted by APHIS are one page. Total amounts are identified for the following categories: salaries, vehicle fuel/oil, vehicle repairs, vehicle tires, aircraft fuel, aircraft labor, aircraft parts, aircraft hanger rent, and miscellaneous vehicle/ATV.

Federal funding for the Wildlife Service Program was obtained from the APHIS Regional Office. Federal funds are made available every federal fiscal year (October 1 thru September 30). Federal funding of the program is to be used to pay for federal retirement, insurance, and health care programs for the wildlife specialists and pilot. Federal funding is also to be used to replace vehicles used in the operations of the wildlife damage management program. Federal funding for the program is identified in the table on the following page. Additional federal funding is provided to the APHIS office in Bismarck for other projects.

Appendix B Additional Background Information

Table 3 Federal Funding ¹			
Federal Fiscal Year	Wildlife Services Program ND	Blackbird Directive	Cattail Directive
2003	\$399,790	\$320,201	\$87,011
2004	\$387,136	\$318,603	\$86,577
2005	\$612,913	\$285,614	\$77,612
2006	\$624,360	\$303,121	\$78,041
2007	\$635,614	\$314,873	\$78,896
¹ Federal funding can be used by the APHIS office in Bismarck for activities in both North Dakota and South Dakota.			

Statistics

Field specialists for the Wildlife Services Program enter work tasks into a Management Information System (MIS). This system is then used to create information on what is being accomplished by the program. Reports from MIS were provided by APHIS. These reports identify how many animals by species type were taken as a result of the program. The majority of animals taken are coyotes and beavers with other miscellaneous animals including fox, deer, jackrabbits, skunks, pigeons, vultures, etc. Data provided by APHIS identified the following information for the last three calendar years:

Table 4 Animals Taken through the Wildlife Services Program			
Calendar Year	Coyotes	Beavers	Other Animals
2005	2,355	1,217	459
2006	2,535	1,032	831
2007	1,825	909	1,334

Annual reports are also produced by APHIS regarding the Wildlife Services Program. Using the information in these annual reports, the following is a summary of highlights of the program:

2004

- Responded to 648 occurrences of predator conflicts with livestock
- Assistance was provided to 52 landowners in 14 counties to treat cattail wetlands to make the wetland less attractive for blackbirds
- Responded to 531 incidents of beaver damage to trees, roadways, and crops which resulted in losses totaling \$740,000
- Certified explosive specialists used binary explosives to remove 63 beaver dams in order to restore normal water flow in streams and creeks
- 750 pieces of equipment, such as live traps and propane cannons, were loaned free of charge so that individuals could solve their specific problems
- A total of 1,300 personal consultations and 22 instructional sessions were provided for 4,800 individuals and 1,900 information leaflets were distributed to the public

Appendix B

Additional Background Information

2005

- Responded to over 700 occurrences of predator conflicts with livestock
- Treated 5,000 acres of cattail wetlands with an aquatic herbicide to make them less attractive to the blackbirds
- Responded to over 500 incidents of beaver damage to trees, roadways, and crops which resulted in losses totaling more than \$500,000
- Certified explosive specialists used binary explosives to remove 50 beaver dams in order to restore normal water flow in streams and creeks
- Over 700 pieces of equipment, such as live traps and propane cannons, were loaned free of charge so that individuals could solve their specific problems
- Total of 1,100 personal consultations and instructional sessions were provided for 1,100 individuals and 400 information leaflets were distributed to the public

2006

- Responded to 550 occurrences of predator conflicts with livestock
- Treated 5,800 acres of cattail wetlands with an aquatic herbicide to make them less attractive to the blackbirds
- Responded to 390 incidents of beaver damage to trees, roadways, and crops which resulted in losses totaling \$430,000
- Certified explosive specialists used binary explosives to remove 50 beaver dams
- Over 900 personal consultations were provided for individuals throughout the state

2007

- Conducted 3,188 work tasks on 374 properties in response to predator conflicts with livestock
- Treated 4,500 acres of cattail wetlands with an aquatic herbicide to make them less attractive to the blackbirds
- Conducted 1,255 work tasks for 281 properties in response to beaver damage to trees, roadways, and crops
- Certified explosive specialists used binary explosives to remove 31 beaver dams
- Approximately 1,000 personal consultations were provided for individuals throughout the state

OFFICE OF THE STATE AUDITOR

PERFORMANCE AUDIT FOLLOW-UP REPORT

Of the Status of Recommendations from

WILDLIFE SERVICES PROGRAM

October 6, 2010

Report No. 3026.1



Robert R. Peterson, State Auditor

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ROBERT R. PETERSON



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STATE OF NORTH DAKOTA
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October 6, 2010

Honorable John Hoeven, Governor

Members of the North Dakota Legislative Assembly

A fundamental objective of the Office of the State Auditor's work is to bring about improvements through recommendations. To achieve this, our recommendations need to be timely and effectively implemented. The Legislative Audit and Fiscal Review Committee (LAFRC) has requested the Office of the State Auditor to perform follow-up work after presentation of performance audit reports to the Committee and to report those agencies which have not implemented audit recommendations.

The Office of the State Auditor conducted an audit follow-up on the performance audit of the Wildlife Services Program (report #3026) dated May 9, 2008. The objective of this follow-up audit was to determine the status of the 11 recommendations included in the performance audit report. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives. The audit period for which information was collected and reviewed was July 1, 2009 through June 30, 2010.

As a result of the follow-up review, 6 recommendations were determined to be fully implemented, 4 were determined to be partially implemented, and 1 was determined to be not implemented. We want to extend our appreciation to the Department of Agriculture for their assistance and cooperation during this follow-up audit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson
State Auditor

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Performance Audit No. 3026

Wildlife Services Program

Report Dated May 9, 2008

Transmittal Letter

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Recommendations Fully Implemented

Recommendation #1

We recommend the Department of Agriculture pay salaries of the Wildlife Services' Field Specialists and other cost(s) which can be verified in a timely manner.

Original Condition

State funding for the Wildlife Services Program does not pay for all costs incurred by the federal entity administering the program. The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS). Federal funds to administer the program are provided to APHIS. In review of expenditure information, we identified state funds were used for expenditures which were not supported or were not reasonable.

Action Taken

An annual Work/Financial Plan identifying each party's responsibilities is entered into between APHIS, the North Dakota Department of Agriculture, and the North Dakota Game and Fish Department. The yearly Work/Financial Plan now identifies only salaries and benefits of the APHIS Field Specialists and the Pilot are reimbursable. Spreadsheets documenting time and work duties have been implemented by APHIS. These spreadsheets were reviewed and approved by the Department of Agriculture prior to implementation.

Result of Implementation

By paying only the salaries and benefits of the Wildlife Services' Field Specialists and Pilot for eligible tasks, the North Dakota Department of Agriculture has limited the costs to those which can be verified in a timely and efficient manner.

Recommendation #2

We recommend the Department of Agriculture review the time of the pilot charged to the Wildlife Services Program and determine what percentage of the Pilot's salary will be paid by the state.

Original Condition

APHIS is authorized and does conduct aerial hunting of coyotes in the state. In a review of information, we identified the Pilot spent a relatively minimal amount of time flying. The Pilot's salary was paid by the state for certain months regardless of the amount of time spent flying. We were informed when not flying, the pilot spent time in the shop doing maintenance work on equipment.

Action Taken

The Department of Agriculture identified spreadsheets are completed by APHIS which document the Pilot's time and work duties. These spreadsheets identify the number of hours performed on each specific task performed during the day. The Department determined the tasks performed by the Pilot while not flying are necessary to the implementation and success of the Wildlife Services program. We identified federal funds are being used to pay for the Pilot's salary and benefits when the Pilot is performing Certified Flight Instructor duties. All other time of the Pilot is paid by the state.

Chapter 1

Recommendations Fully Implemented

Result of Implementation The Department of Agriculture has determined eligible tasks of the Pilot for the Wildlife Services Program which will be paid for by the state.

Recommendation #3 **We recommend the Department of Agriculture require travel time of the Wildlife Services' Field Specialists be adequately documented.**

Original Condition The Wildlife Services' Field Specialists completed their time sheets every two weeks and identified their work time under the category of "regular time." The Field Specialists also document time in the Management Information System (MIS) and identify the time spent each day on certain categories. In review of documentation, the time sheet hours attributed to "regular time" did not equal the amount of time documented in MIS. The difference was identified as travel time. The travel time was not documented and/or supported by other documentation.

Action Taken We identified spreadsheets documenting the Field Specialists' time and work duties, which includes travel time, have been implemented by APHIS. These spreadsheets define the number of hours performed on each specific task during the day. Also, the travel miles and time spent traveling are now documented in MIS.

Result of Implementation The Department of Agriculture is able to adequately monitor the time charged to travel and can determine whether the time charged is appropriate.

Recommendation #4 **We recommend the Department of Agriculture require the Wildlife Services' Field Specialists dedicate a certain amount of time in the fall to the state blackbird problem.**

Original Condition Concerns related to the amount of damage blackbirds do to sunflowers were identified by various parties including the Department of Agriculture and the National Sunflower Association. Losses were incurred due to blackbirds sitting on the sunflower heads, causing the seeds to fall to the ground. The loss of revenue and economic impact due to blackbirds in sunflowers was estimated between \$14.1 million and \$17.6 million per year. Both the Department of Agriculture and the National Sunflower Association voiced concerns over the lack of commitment from personnel operating the Wildlife Services Program. In review of the purpose of the Wildlife Services Program, we identified problems associated with blackbirds was an area the program was intended to address.

Chapter 1

Recommendations Fully Implemented

Action Taken

The Work/Financial Plans for state fiscal years 2010 and 2011 identify blackbird work as an eligible activity with up to \$149,300 available in general funds to reimburse expenditures. We identified a performance measure for blackbird work has also been included in the Work/Financial Plans. The Department of Agriculture indicated it has received no complaints related to the work performed on the blackbird problem from producers or from the National Sunflower Association in the last year. We identified APHIS has increased the number of part-time employees, using federal earmarked funds for sunflower blackbird work, to assist producers with blackbird problems. APHIS has also used a number of the state paid Field Specialists to assist with blackbird work during the busy fall season.

Result of Implementation

The performance of work by APHIS on the blackbird problem has helped farmers in North Dakota to address the damage blackbirds cause to sunflowers.

Recommendation #5

We recommend the Department of Agriculture ensure appropriate changes are made to the Cooperative Service Agreements to address recommendations included in this audit report as well as to:

- a) Approve or require information be provided for salary increases of Field Specialists prior to being effective;**
- b) Establish performance measures to evaluate the program;**
- c) Require only necessary reports or information regarding the program; and**
- d) Identify if, when, and where state funds are to be used for issues arising in urban areas.**

Original Condition

For the time period October 2003 through September 2007, the average Field Specialist salary increase was 18.5% with the highest increase being 28%. We identified raises were given to Field Specialists without Department of Agriculture approval or knowledge. In review of the Cooperative Service Agreements, it appeared the agreements did not contain measurable goals/objectives. We identified certain monitoring requirements in the agreements were unnecessary. Also, the agreements did not address work performed in urban areas.

Action Taken

In review of the Cooperative Service Agreements and Work/Financial Plans, we identified changes were made, including:

- The Department of Agriculture is notified of salaries at the beginning of Work/Financial Plan and receives a quarterly report of Field Specialist salaries.
- Performance measures are included in the Work/Financial Plan.
- Required reports are listed in the Work/Financial Plan.
- Urban work is addressed in the Work/Financial Plan as an ineligible activity. The Department of Agriculture indicated urban work is to be billed to the city or individual.

Chapter 1

Recommendations Fully Implemented

Result of Implementation

The Department of Agriculture receives additional information to allow it to monitor the Wildlife Services Program. Costs incurred for urban work should no longer be an expense of the state.

Recommendation #6

We recommend the Department of Agriculture, with assistance from the Office of the Attorney General, review North Dakota Century Code requirements related to the Wildlife Services Program. Appropriate action should be taken to modify or clarify sections to make requirements clear and up-to-date.

Original Condition

State laws related to the Wildlife Services Program had not been updated since 1973 and were in need of review. North Dakota Century Code (NDCC) Section 4-01-17.1 was an example of a law which needed review. It stated the Department of Agriculture may cooperate with APHIS in the control and destruction of certain animals which were injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss. Work was being conducted in urban areas under the Wildlife Services Program and clarification was needed as to what areas the program was to serve and what animals were included as part of the program.

Action Taken

NDCC was reviewed by the Department of Agriculture prior to the 2009 Legislative Session. A bill was introduced and passed by the Legislature to address certain areas. Chapter 67 of the 2009 Session Law made applicable changes to state law.

Result of Implementation

Ambiguity regarding the purpose of the Wildlife Services Program has been clarified in state law.

Recommendations Partially Implemented

Recommendation #7

We recommend the Department of Agriculture periodically verify the Wildlife Services Program billed amounts are adequately supported and reasonable.

Original Condition

Based on a review of bills submitted to the Department of Agriculture, we identified bills consisted of a one page document with very little detail. Total cost amounts were identified by category such as salary, vehicle fuel, etc. The support for these bills was to be maintained by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS). The Department of Agriculture did not review support maintained by APHIS to ensure amounts billed were supported and reasonable. In a review of 12 judgmentally selected bills, a number of concerns were identified. Examples included a lack of support for certain vehicle maintenance and aircraft fuel expenses as well as taxes being included in billed amounts.

Action Taken

To simplify billing, the yearly Work/Financial Plan was changed to indicate only salaries and benefits will be reimbursed. In review of the four quarterly billings sent to the Department of Agriculture from APHIS for state fiscal year 2010, we identified APHIS includes the salary and benefit amount to be reimbursed, detail on the amount by pay period and employee, and what amounts are eligible for North Dakota Game and Fish Department funds, Federal funds, or attributable to the North Dakota General Fund for blackbird work. The Department of Agriculture indicated they review all documentation sent by APHIS with the quarterly billing. However, no additional detailed support has been requested.

We requested and received detailed supporting documentation from APHIS for two quarters of state fiscal year 2010. Based on our review of documentation, we identified concerns with salaries. For example:

- We identified APHIS immediately hired an individual for a vacant Field Specialist position. This individual was transferred to North Dakota from another state and brought a significant amount of credit, comp, annual, and sick leave from another federal position (over 1,600 hours). This leave time now appears to be the responsibility of North Dakota even though it was earned elsewhere. Also, the employee was paid with state funds for over 40 hours of administrative leave for time related to the purchase of a new home. The Department of Agriculture indicated they were not aware of this information.
- In review of salary information, we identified an instance in which urban work was performed by a Field Specialist and charged to the State. Urban work is an ineligible activity according to the Work/Financial plan and is to be charged to the city or individual for whom the work is performed. APHIS indicated this was charged to the state in error. APHIS added the employee did not follow proper protocol in documenting the urban work and the problem would be addressed to prevent reoccurrence.

Chapter 2

Recommendations Partially Implemented

*Management's Response
and Future Action to be
Taken*

We agree with the status of the recommendation. We will continue to review and monitor the billed amounts and periodically verify supporting documentation for billings.

Recommendation #8

We recommend the Department of Agriculture improve monitoring of Cooperative Service Agreements to ensure requirements are complied with.

Original Condition

Based on a review of Cooperative Service Agreements, we identified certain requirements in different biennium's were not fulfilled. For example, required discussions related to employment, salaries, expenses, and purchases were not held and information required to be submitted to the Department of Agriculture was not provided. The Department had established an informal monitoring process for the agreements and had relied on APHIS to comply with requirements.

Action Taken

A number of changes have been made to the Cooperative Service Agreements and the annual Work/Financial Plans. For example, reimbursable items include only salaries and benefits, performance measures have been established, and APHIS is required to submit certain information. The Department of Agriculture does review the information submitted with quarterly billings. However, the Department does not review additional supporting documentation maintained at the APHIS office. In a review of supporting documentation, we identified concerns related to salary information.

APHIS has indicated the agreed upon Cooperative Service Agreement will not be sufficient to cover the salaries and benefits of the Field Specialists and Pilot for the 2009-2011 biennium. In our review of information, we identified areas where changes could have occurred which could have reduced the impact of the shortfall of funds claimed by APHIS. For example, immediately filling a vacant position rather than leaving the position open for a certain time period resulted in no cost savings. In addition, the individual selected for this position came from another state and was hired at a significantly higher rate of pay due to years of experience. This individual also brought over 1,600 hours of credit, comp, annual, and sick leave from the prior position.

*Management's Response
and Future Action to be
Taken*

We agree with the status of the recommendation and will continue to review support submitted with quarterly billings. Also, we will periodically review additional supporting documents maintained at the APHIS office to ensure compliance with the Cooperative Service Agreement.

Chapter 2

Recommendations Partially Implemented

Recommendation #9

We recommend the Department of Agriculture and the Game and Fish Department formally identify advantages and disadvantages of the current monitoring and funding of the Wildlife Services Program. A determination should be made as to whether the primary monitoring and/or primary funding of the program need changing.

Original Condition

The Department of Agriculture had a Cooperative Service Agreement with APHIS and was responsible for the primary monitoring of the Wildlife Services Program by the State. However, the primary funding source for the Wildlife Services Program was the North Dakota Game and Fish Department. The Game and Fish Department relied on the Department of Agriculture to monitor the use of funds being provided and had very little, if any, input as to how the funds were to be used. We determined monitoring and funding of the program should be reviewed.

Action Taken

While representatives from both the Department of Agriculture and the Game and Fish Department indicated discussions have been held regarding the monitoring and funding of the Wildlife Services Program, a formal analysis has yet to be completed. A representative of the Department of Agriculture indicated reviews have been conducted on how other states are funding the Wildlife Services Program.

Management's Response and Future Action to be Taken

We agree with the status of the recommendation. The Department and the Game and Fish will continue our discussions regarding monitoring and funding of the Wildlife Services Program. We will formally identify advantages and disadvantages of the current process. We will jointly make a determination regarding changes, if any, in the primary monitoring and funding of the program. Recommendations will be made to the Legislature if changes are needed.

Recommendation #10

We recommend the Department of Agriculture obtain necessary federal budget and expenditure data for monitoring and budgeting purposes.

Original Condition

The Wildlife Services Program is funded with general funds (through the North Dakota Department of Agriculture), special funds (through the North Dakota Game and Fish Department), and federal funds (through the U.S. Department of Agriculture). Information presented to appropriation committees during the 2007 Legislative Session appeared to be inconsistent and certain federal expenditure information was unverifiable. This appears to have led to confusion regarding the funding of the Wildlife Services Program. When APHIS determined additional funds were needed, the Department of Agriculture was unable to determine the reasonableness of the additional request for funding.

Chapter 2

Recommendations Partially Implemented

Action Taken

The Department of Agriculture receives a copy of the federal budget. The budget identifies the amount of federal funds for the North Dakota Wildlife Services Program. However, even with this budget information provided to the Department, apparently an issue of insufficient funds for the 2009-2011 biennium exists. It appears APHIS was aware of the budget shortfall before the biennium began. However, limited actions were taken by APHIS to compensate for the shortfall. The Department of Agriculture performs limited monitoring of the federal budget and expenditure data.

Management's Response and Future Action to be Taken

We agree with the status of the recommendation. The Department will continue to monitor Wildlife Service's federal budget and expenditures. Federal budgets and supporting documents will be required from the local and regional office to verify credibility and changes in federal funding.

Recommendations Not Implemented

Recommendation #11

We recommend the Department of Agriculture monitor Field Specialists' time charged to office, bad weather, miscellaneous, or similar categories. Appropriate action should be taken if time charged to these categories is excessive.

Original Condition

In a review of the Field Specialists' time worked, we identified time charged to certain categories which appeared excessive. These categories included office duties, miscellaneous, and bad weather. Time charged to these relatively broad categories provided limited information as to what activities were actually performed or what was actually accomplished by the Field Specialists.

Action Taken

We identified spreadsheets, which document the Field Specialists' time and work duties, have been implemented by APHIS and clearly define the number of hours performed on each specific task during the day. These spreadsheets were reviewed and approved by the Department of Agriculture prior to implementation by APHIS.

The Department of Agriculture indicated the time charged to bad weather, office duties, and other similar categories is not monitored. While the Department of Agriculture requires APHIS to have the supporting documentation for time charged to these categories available, the Department does not request the documentation to verify the time charged was reasonable.

The time attributed each day to work categories is documented in the APHIS Management Information System (MIS). In review of MIS information for two quarters in fiscal year 2010, we identified time attributed to bad weather, office duties, equipment maintenance, and other similar categories was inconsistent. For example:

- One employee charged 33 hours to bad weather in one week. Two weeks prior, this same employee charged one hour to bad weather and 7 hours to comp time on the same day.
- One employee charged under 25 hours to equipment maintenance in one quarter, while another charged nearly 120 hours for the same quarter.
- APHIS indicated several employees have been using the MIS 2K and office duties categories interchangeably. MIS 2K duties include updating MIS to include time and work performed.

Although the Department of Agriculture has taken steps to improve APHIS documentation of certain categories of work time, the Department still performs little to no monitoring of the time charged to these categories. No action has been taken on excessive time charged to these categories.

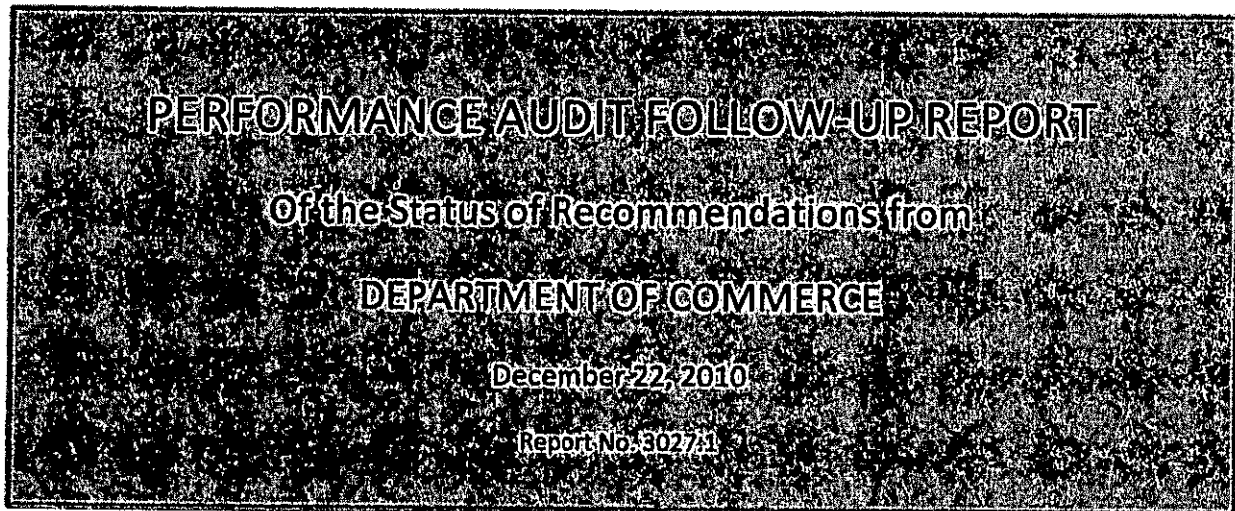
Chapter 3
Recommendations Not Implemented

*Management's Response
and Future Action to be
Taken*

We agree with the status of the recommendation. The Department will periodically verify the Wildlife Services Program billed amounts; reviewing field specialists' time spent as part of that process. Adjustments will be made if funds are used inappropriately.

2009.3.7.11D

OFFICE OF THE STATE AUDITOR



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December 22, 2010

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

A fundamental objective of the Office of the State Auditor's work is to bring about improvements through recommendations. To achieve this, our recommendations need to be timely and effectively implemented. The Legislative Audit and Fiscal Review Committee (LAFRC) has requested the Office of the State Auditor to perform follow-up work after presentation of performance audit reports to the Committee and to report those agencies which have not implemented audit recommendations.

The Office of the State Auditor conducted an audit follow-up on the performance audit of the Department of Commerce (report #3027) dated August 11, 2009. The objective of this follow-up audit was to determine the status of the 50 recommendations included in the performance audit report. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives. The audit period for which information was collected and reviewed was July 1, 2009 through October 31, 2010.

As a result of the follow-up review, 38 recommendations were determined to be fully implemented, 10 were determined to be partially implemented, and 2 were determined to be not implemented.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson
State Auditor

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Performance Audit No. 3027

Department of Commerce

Report Dated August 11, 2009

Transmittal Letter

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Recommendations Fully Implemented

Recommendation #1 **We recommend the Centers of Excellence Commission ensure compliance with North Dakota Century Code Section 15-69-04, Subsection 5 and determine whether Centers of Excellence are having the desired economic impact.**

Original Condition

North Dakota Century Code (NDCC) Section 15-69-04, Subsection 5 requires the Centers of Excellence Commission to "monitor the center's activities in order to determine whether the center is having the desired economic impact." Based on our review of information regarding the monitoring of the Centers of Excellence, there was no determination being made as to whether the Centers of Excellence were having the desired economic impact. There were no comparisons performed on the desired economic impact in applications to what the actual economic impact had been. There was no analysis readily available to measure whether the Centers of Excellence were having the desired economic impact.

Action Taken

The Centers of Excellence Commission established policies and procedures addressing how and when the Commission is to determine whether Centers are having the desired economic impact. Each Center of Excellence is to be reviewed after its third full year of operation to determine whether it is creating the economic impact projected in its application.

In June 2010, the Centers of Excellence Commission discussed whether nine Centers of Excellence in operation for three full years are having the desired economic impact. The Commission took into account commercialization, job creation, growth of private sector partners, matching funds received, and other criteria in making its conclusions. The Commission concluded seven of the nine Centers were on track to achieve their desired economic impact. The North Dakota State University Center for Surface Protection and the Valley City State University Enterprise University were both categorized as needing improvement. Concerns included limited job creation and questions about sustainability.

Result of Implementation

The Centers of Excellence Commission is in compliance with state law requirements. The Commission has identified two Centers of Excellence not meeting expectations.

Recommendation #2 **We recommend the Department of Commerce ensure applications provided to the Centers of Excellence Commission contain budgeted expenditures which are in compliance with state law.**

Original Condition

Applications to become a Center of Excellence are submitted to the Department of Commerce. In our review of 11 approved applications, we identified an application included \$165,000 for two outreach programs. While both outreach programs were in existence previous to the application, one of the programs (budgeted for \$105,000) appeared to use Centers of Excellence funding for supplanting current outreach operations.

Chapter 1

Recommendations Fully Implemented

NDCC Section 15-69-05, Subsection 1 states.

"A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs."

The use of Centers of Excellence funds to supplant current operations would result in noncompliance with state law (at the time of the review, no Centers of Excellence funds for this project had been expended). A discussion with a campus representative of this Center of Excellence identified outreach programs were a required part of federal grants in this area. Outreach programs are not a requirement of the Centers of Excellence program.

Action Taken

The Centers of Excellence Commission has established policies and procedures addressing the review process of Centers of Excellence applications. The review, performed by the Department of Commerce, is done to ensure applications are complete and in compliance with state law. This review occurs prior to applicants giving a presentation to the Commission. In our review of five applications, we identified budgeted expenditures appeared to be in compliance with state law.

Result of Implementation

An improved review process assists in ensuring applications are complete and budgeted expenditures are in compliance with state law.

Recommendation #3

We recommend the Centers of Excellence Commission establish formal policies and procedures for the evaluation of applications. At a minimum, the policies should address:

- a) A process incorporating all elements in North Dakota Century Code for consideration in approving and disapproving applications; and**
- b) Additional elements of consideration on applications from Centers of Excellence which were previously approved.**

Original Condition

In considering whether to approve or disapprove an application, NDCC Section 15-69-04, Subsection 3 required the Commission to consider various elements. For example, the Commission was to consider 9 elements such as whether the Center of Excellence would create high-value private sector employment opportunities in the state, leverage other funding, and become financially self-sustaining.

The Centers of Excellence Commission had established no formal policies regarding how applications were to be approved and disapproved. We were unable to determine whether the Commission had adequately taken into consideration the established legislative elements when determining whether applications would be approved or disapproved. When previously funded Centers of Excellence requested additional funds in a subsequent

Chapter 1

Recommendations Fully Implemented

biennium, the Commission used an informal process in collecting additional information and did not establish how previously funded Centers of Excellence would be evaluated for subsequent approval.

Action Taken

The Centers of Excellence Commission established policies and procedures for the evaluation of applications. Policies require each member of the Commission to complete an evaluation form for each submitted application. The results of the evaluations are used by the Commission to determine how the Centers will be presented and to ensure the Center has met the criteria established in state law. Policies have also been established related to applications submitted from existing Centers of Excellence.

Result of Implementation

The establishment of policies and procedures enhances consistency in the evaluation of applications. In addition, documentation detailing the requirements in state law was included in the evaluation process.

Recommendation #4

We recommend the Centers of Excellence Commission establish criteria to be used for determining the approved funding amount in applications and analyze the effects of changing requested funding amounts of projects.

Original Condition

Applications submitted by campuses and college associated foundations to become Centers of Excellence include a requested funding amount. The Centers of Excellence Commission reduced the requested amount by 30% or more on 13 of 24 approved applications. There was no formal analysis conducted for determining the amount to be approved and no formal analysis on the impact of lowering requested amounts. In review of the Commission meeting minutes, it was apparent the Commission made the decision to attempt to fund as many projects as possible.

Action Taken

The Centers of Excellence Commission has established policies and procedures which address reductions in requested funding amounts. The policies identify the criteria the Commission will utilize to determine the reduction of funds for a proposal. This includes considering the impact in relation to the scope, budget, and results of the proposal. Applicants must submit a new application which reflects the changes to the budget and scope of work to be performed.

Result of Implementation

The establishment of policies and procedures enhances consistency and established the criteria to be used for analyzing changes in requested funding amounts.

Recommendation #5

We recommend the Centers of Excellence Commission establish formal policies and procedures for technical reviews of applications. At a minimum, the policies should address:

- a) A process for identifying proposals requiring a review;**
- b) Selection of a vendor to perform the review; and**

Chapter 1

Recommendations Fully Implemented

c) Ensuring sufficient time exists to allow a review to be performed.

Original Condition

The Centers of Excellence Commission has statutory authority to contract for independent, expert reviews of applications to determine whether proposed Centers of Excellence were viable and whether they were likely to have the desired economic impact. No such technical reviews had been performed on Centers of Excellence applications. The Commission had established no formal policies and procedures detailing a process for technical reviews. In review of the application process, it was unclear whether sufficient time would have even been available to conduct technical reviews if it was determined necessary.

Action Taken

The Centers of Excellence Commission has established policies and procedures for technical reviews of applications. The policies include a process for identifying proposals requiring a review and direct Commerce to contract with an entity to perform the review. The policies also state the technical review will be considered by the Commission prior to its decision to approve or disapprove a proposal.

Result of Implementation

The establishment of policies and procedures enhances consistency in the evaluation of applications.

Recommendation #6

We recommend the Centers of Excellence Commission review the due diligence requirements and either:

- a) Move the due diligence work to the beginning of the application process; or**
- b) Ensure an adequate amount of time is provided to allow the Department of Commerce to complete the due diligence work.**

Original Condition

After applications received a preliminary recommendation for funding by the Centers of Excellence Commission, the applications had due diligence work performed on the private sector partners. Information regarding likelihood of viability of the project, risks, matching requirements, job creation projections, and other areas were reviewed. We identified such work was required to take place in a relatively short period of time (average time available for conducting the work was 11 calendar days).

Action Taken

The Centers of Excellence Commission established policies related to due diligence work. The policy requires work to be performed once the application is received by the Department of Commerce and prior to the application being forwarded to the Commission.

Result of Implementation

Sufficient time is available to adequately perform the required due diligence work.

Recommendation #7

We recommend the Centers of Excellence Commission enter into formal agreements with approved applicants. At a minimum, the

Chapter 1

Recommendations Fully Implemented

agreements should address:

- a) **Criteria for the use of state funds;**
- b) **Documentation requirements for payroll expenses; and**
- c) **Compliance with applicable purchasing policies.**

Original Condition

We reviewed 242 operating expenditures at selected Centers of Excellence. We identified 19 were not reasonable. Two of these expenditures (totaling over \$100,000) paid for the tuition and fees of students taking courses at a university. State law prohibits the use of Centers of Excellence funds to supplant current operations or academic instruction. We identified 5 expenditures used funds for purposes which did not meet the intent of the approved project. Other expenditures were a result of campuses' noncompliance with established purchasing policies and procedures.

Certain campuses used Personnel Activity Confirmation Reports (PACR) to support salary expenditures paid with Centers of Excellence funds. In our review of information, we identified three campuses in which PACR were not completed in a timely manner.

Action Taken

Upon approval of an application, a Compliance Agreement is entered into between the Centers of Excellence Commission and the campus. Information included in the agreements addresses the areas of concern identified in the original audit.

Result of Implementation

A formal arrangement with Centers of Excellence properly identifies requirements to follow and includes applicable contract language to reduce the risks of the state

Recommendation #8

We recommend the Centers of Excellence Commission update the functional review to improve the efficiency and effectiveness of the monitoring and reporting process.

Original Condition

The functional review is an annual report completed by the Centers of Excellence themselves which is then submitted to the Department of Commerce. This self-reporting process requires the Centers of Excellence to provide updates, progress information, and the status of the project. In our review of information, we identified a number of concerns related to various aspects including:

- Match amounts included in the application were not addressed in the functional review.
- The functional review stated the Centers of Excellence should attach support to corroborate reported contributions. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners. Also, we identified no donor letters of intent for 5 cash donors (total of \$50,000) listed in the functional review.

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- Inconsistencies in reporting information were identified in various functional reviews.

A number of questions on the functional review appeared to be irrelevant to the purpose of the functional review or did not improve the accountability of the Centers of Excellence. For example, Centers of Excellence were required to identify the cost per job. This information did not appear to have been used as a means of assessing the program.

Action Taken

The functional review outline was updated by the Department of Commerce. Questions which appeared irrelevant were removed. In our review of five functional reviews completed for 2010, we identified necessary supporting documentation had been submitted and match amounts were clearly stated.

Result of Implementation

The monitoring and reporting process is more efficient and effective.

Recommendation #9

We recommend the Centers of Excellence Commission establish formal policies and procedures for monitoring the Centers of Excellence. At a minimum, the policies should address:

- a) Establishing quarterly monitoring requirements;**
- b) Assessing job creation activities;**
- c) Assessing significant variations from the applications;**
- d) Establishing different reviews after the match has been met or after a specified period of time has expired; and**
- e) Establishing the frequency of updates to the Commission and/or holding meetings specifically for monitoring.**

Original Condition

NDCC Section 15-69-04, Subsection 2 states, in part, the Centers of Excellence Commission has the responsibility to "monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers." In review of the monitoring process, no formal policies and procedures for monitoring the progress of the Centers of Excellence were identified. While certain procedures had been established for monitoring, such procedures were not efficient or effective for monitoring the Centers of Excellence.

Action Taken

The Centers of Excellence Commission has established formal policies and procedures for monitoring the Centers of Excellence. The policies identify a number of requirements for monitoring progress of the Centers of Excellence. Examples include a requirement for quarterly updates and a requirement for a determination as to whether the Center of Excellence is having the economic impact projected in its application (after third full year of operation).

Result of Implementation

The establishment of policies and procedures enhances consistency with the monitoring performed on Centers of Excellence. The Centers of

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Excellence Commission is now able to identify where expectations are not being met by the Centers of Excellence.

Recommendation #10

We recommend the Centers of Excellence Commission require the Centers of Excellence to establish measurable goals and objectives at least annually.

Original Condition

In monitoring the Centers of Excellence, selected information on the progress of the Centers of Excellence was obtained. Comparing the progress of Centers of Excellence to expectations could be difficult as certain projects may take an extended period of time to be completed. Thus, a determination whether expectations were being met or were achieved may not be accomplished for a long period of time. Also, changes with partners may occur or other factors could change which delay projects and have an impact on measuring performance of the Centers of Excellence.

Action Taken

Included in the functional review is a requirement for Centers of Excellence to identify goals and objectives for the upcoming year. The progress on the goals and objectives is to be evaluated in the following functional review.

Result of Implementation

Measurable goals and objectives exist to measure and monitor the annual performance of the Centers of Excellence.

Recommendation #11

We recommend the Centers of Excellence Commission establish formal policies and procedures addressing actions to be taken when Centers of Excellence are in noncompliance with requirements and when Centers of Excellence are not meeting stated expectations.

Original Condition

A review of aspects of the Centers of Excellence identified noncompliance issues related to state law, noncompliance with reporting requirements, and indications of Centers of Excellence not meeting expectations. For example, Centers of Excellence funds appeared to have been used to supplant current operations, which is prohibited by state law. Also, one Center of Excellence application projected job creation of 35-38 private sector positions. Based on information provided by the Center of Excellence, a total of one private sector job and six positions at the university had been created in the three year span of the project. The Centers of Excellence Commission had no established policies for actions to be taken by either the Commission or the Department of Commerce when noncompliance issues were identified or when expectations were not being met.

Action Taken

We identified the Centers of Excellence Commission has established policies to address actions to be taken when Centers of Excellence are in noncompliance with requirements or are not meeting stated expectations. The policies state the Commission may withhold all or a portion of any

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undisbursed award funds from a Center. The policies also state the Commission may consult with the Office of the Attorney General to determine other courses of action.

Result of Implementation

The establishment of policies and procedures enhances consistency with actions taken by the Centers of Excellence Commission.

Recommendation #12

We recommend the Centers of Excellence Commission establish formal policies and procedures related to matching requirements. At a minimum, the policies should address:

- a) Required documentation to receive Centers of Excellence funds after an application is approved; and**
- b) Requirements for verifying match and leverage amounts are actually received.**

Original Condition

The Centers of Excellence Commission had no established policies or procedures related to verification of matching or leveraged funds being received. We identified inconsistencies with the reporting and verification of these funds. For example, Centers of Excellence were not providing information as to match amounts or leveraged funds identified in the application. Also, amounts reported were not accurate or supported by documentation. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners.

Action Taken

The policies and procedures established by the Centers of Excellence Commission state the Center of Excellence must provide documentation evidencing the availability of the statutorily required matching funds. The policies also require the Centers to submit documentation detailing the contributions made by its private sector partners. In our review of five functional reviews, we identified supporting documentation was included to verify the receipt or commitment of funds.

Result of Implementation

The establishment of policies and procedures enhances consistency on how matching funds will be monitored and verified.

Recommendation #13

We recommend the Centers of Excellence Commission establish a formal orientation training process for its members. At a minimum, the process should include:

- a) Identifying all state law requirements of the Commission; and**
- b) Ensuring compliance with Code of Ethics requirements.**

Original Condition

When the Centers of Excellence Commission was established (2005 Session Law), a Code of Ethics was adopted which required provisions of the code to be reviewed and signed by each Commission member at the time of appointment. Commission members were not signing a statement regarding their review of the Code of Ethics. We identified no formal orientation training process for newly appointed members.

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Action Taken Centers of Excellence Commission policies identify requirements for orientation and training. We identified a Code of Ethics statement had been signed by all six current members of the Commission.

Result of Implementation The Centers of Excellence Commission members are provided information needed to adequately perform their duties.

Recommendation #14

We recommend the Department of Commerce ensure administrative costs of local recipients paid with Community Development Block Grant funds are reasonable and adequately supported.

Original Condition The Community Development Block Grant (CDBG) funds provided to local governments include funds to pay for project costs and grant administration costs. We identified the Department of Commerce monitored the use of the project funds provided. However, there was no monitoring of the funds provided to local governments for administration costs. Local governments enter into contracts with their respective Regional Planning Council for grant administration. We identified a lack of support for grant administration expenditures.

Action Taken As of the beginning of the 2010 program year, the Regional Planning Councils were informed documentation for administrative costs was required to be tracked by all the councils for each grant. In review of a grant administration reimbursement request, appropriate documentation was submitted by the Regional Planning Council.

Result of Implementation Adequate documentation for grant administrative costs ensures grant funds are expended appropriately.

Recommendation #15

We recommend the Department of Commerce include requirements in the Operation Intern contracts to have employers:

- a) **Verify student eligibility and maintain documentation confirming eligibility; and**
- b) **Provide the midpoint and exit review materials to students at the appropriate time during the internships.**

Original Condition The Department of Commerce requested certain information from students participating in the Operation Intern program. The information requested related to eligibility requirements of the program. We identified eligibility requirements were not verified.

To assist in monitoring the program, Commerce requested students and employers to complete midpoint and exit reviews. These communications were used by Commerce to evaluate the students' and employers' experiences during the internships. In a review of selected files, we identified most employers did not complete the reviews.

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Action Taken

Commerce modified the contracts entered into with employers and required the employers to verify and retain records of the students meeting eligibility requirements. Commerce no longer requires midpoint and exit reviews as the department determined such information provided limited information as to the program's effectiveness.

Result of Implementation

Having eligibility requirements verified by employers is more efficient and provides assurance eligibility requirements are met.

Recommendation #16

We recommend the Department of Commerce make improvements to the Operation Intern program contracts. At a minimum, the Department of Commerce should:

- a) Develop a contract template using recommended language from the Office of the Attorney General's Contract Drafting and Review Manual;**
- b) Develop a contract amendment document;**
- c) Ensure the contract template and amendment are reviewed and approved by legal counsel; and**
- d) Ensure contracts with employers and applicable amendments are executed prior to students beginning work.**

Original Condition

Commerce entered into a contract with employers for the Operation Intern program. Our review of the contract identified standard terms and conditions were not consistent with the guidelines established by the Office of the Attorney General. Commerce representatives stated the Operation Intern contract had not been reviewed by legal counsel.

A new contract was entered into by Commerce for changes made to contractual terms. A standard contract amendment document would make such changes more efficient. Also, in review of 9 employers, we identified 5 were reimbursed for costs which were incurred prior to contracts being executed.

Action Taken

The Department of Commerce developed a new contract template and a contract amendment template which appear to include appropriate terms and conditions. In review of certain employers participating in the Operation Intern program, we identified Commerce is ensuring agreements are entered into prior to students beginning work.

Result of Implementation

The Operation Intern program contracts contain applicable provisions which provide the state the best legal protection.

Recommendation #17

We recommend the Department of Commerce comply with its policy when evaluating Tourism Infrastructure and Expansion Grant Applications to provide a fair system for all potential applicants.

Original Condition

A policy was established for the Tourism Infrastructure and Expansion Grant Program identifying the criteria to receive a grant. One criteria

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required applicants to provide a cash match. In review of six grants, we identified one applicant used a land donation as its match. The Tourism Director stated an exception was made for this project as this type of attraction was in high demand. If the land value was excluded from the match amount, it appeared the project would have been ineligible for consideration.

Action Taken

The policy related to match requirements was revised to allow real estate and equipment to be used as a match. In a review of eight grant application files, all eight files were approved or disapproved in compliance with program policy.

Result of Implementation

Consistently evaluating applications in accordance with stated criteria provides a fair process to all applicants.

Recommendation #18 **We recommend the Department of Commerce enter into formal agreements with Tourism Infrastructure and Expansion Grant recipients.**

Original Condition

Commerce sent a letter to recipients notifying them when they had been approved for a Tourism Infrastructure and Expansion Grant. No formal agreement was entered into with recipients containing appropriate grant language, providing the appropriate liability/insurance coverage for the state, and reducing the risk involved with funds being spent inappropriately.

Action Taken

Commerce developed a formal agreement template to be used for 2010 grants awarded. In review of five grants, we identified a grant agreement was signed by each recipient and Commerce.

Result of Implementation

The use of formal grant agreements will reduce the state's contract risks with the grant program.

Recommendation #19 **We recommend the Department of Commerce periodically review applicable North Dakota Century Code sections and ensure compliance with requirements or take appropriate action to make changes.**

Original Condition

In a review of selected NDCC requirements, we identified instances in which Commerce appeared to be in noncompliance. For example, NDCC Section 54-44.5-08 required the Division of Community Services to inform all state agencies and institutions of the State Facility Energy Improvement Program by August 15 of each odd-numbered year. No letter appeared to have been sent in 2007.

Action Taken

Commerce included a review of statutory changes at its December 2009 senior staff retreat. In addition, two additional senior management meetings in October and November 2010 included a review of potential

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changes with state law. Commerce created a Compliance Manager position in February 2010 to assist in monitoring compliance.

Result of Implementation

A review of applicable statutes should identify changes to bring to the Legislature for its consideration.

Recommendation #20 **We recommend the Department of Commerce make improvements with the Value-Added Agriculture Promotion Board by either:**
a) Ensuring compliance with state law requirements; or
b) Taking appropriate action to amend state law.

Original Condition

NDCC Section 54-34.3-12 establishes the Value-Added Agriculture Promotion Board. The Board is to consist of a minimum of nine and a maximum of eleven members. At the time of our review, the Board had not met in nearly three years. It was unclear how the Board was fulfilling its responsibilities. In addition, while state law required the Board to consist of at least 9 members, the total number of members was 8.

Action Taken

The Commissioner of Commerce stated a discussion was held with the Governor's Office regarding the Board. A determination was made no meetings would be called during the 2009-2011 biennium. As such, an additional member was not appointed. A bill has been submitted to the 2011 Legislature to eliminate the board.

Result of Implementation

Information has been submitted to the 2011 Legislature for consideration as to the existence of the Value-Added Agriculture Promotion Board.

Recommendation #21 **We recommend the Department of Commerce ensure the Commerce Cabinet complies with state law requirements related to meetings of public entities or take appropriate action to modify state laws.**

Original Condition

The North Dakota Commerce Cabinet is comprised of the directors of each Commerce division, executive heads of certain other state agencies, and the Commerce Commissioner. The Cabinet was in noncompliance with open meeting requirements as no public notice was given in advance of meetings as required.

Action Taken

Agendas for the cabinet meetings are now properly provided to the Secretary of State. The agenda outlines the topics covered during the meeting and the projected timeline of the meeting.

Result of Implementation

There is compliance with open meeting requirements.

Recommendation #22 **We recommend the Department of Commerce ensure contractual payments are made after services have been performed to the department's satisfaction.**

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Original Condition

In review of payments, we identified Commerce was making pre-payments to contractors. For example, a contract required Commerce to pay \$36,000 in advance of services being received. Also, while Commerce typically withheld final payments to presenters or promotional representatives until services are received, one payment was made before the event was held.

Action Taken

Commerce's Compliance Manager stated the practice of pre-payments was ended immediately following the original audit. In our review of four contracts (including the contract which had previously required a payment in advance), we identified no payments made in advance of receiving services.

Result of Implementation

Payment after receipt of goods or services being performed ensures such goods or services are satisfactory and in compliance with contracted terms.

Recommendation #23 We recommend the Department of Commerce make improvements to procurement processes to ensure compliance with laws and policies.

Original Condition

In review of 63 procurement related expenditures, we identified 7 instances of noncompliance with procurement laws, policies, and procedures. For example, Commerce purchased software (\$13,000) from a vendor no longer included on the state contract for software.

Action Taken

All contracts entered into by Commerce are now reviewed by the department's Compliance Manager (position filled in February 2010). Training on procurement requirements was provided to Commerce employees and the department's procurement policy was updated. In review of 25 expenditures, we identified no significant errors related to procurement requirements.

Result of Implementation

Commerce is in compliance with state procurement requirements.

Recommendation #24 We recommend the Department of Commerce make improvements with the monitoring of contracts. At a minimum, the Department of Commerce should:

- a) **Centralize contract administration and record keeping; and**
- b) **Ensure appropriate insurance certificates or endorsements are obtained.**

Original Condition

In review of 5 contracts, we identified improvements were needed with the monitoring of contracts. For example, in all 5 contracts reviewed, appropriate insurance documentation was not obtained and/or the insurance documentation did not identify the appropriate insurance requirements as required by the contract. Inconsistencies with documenting changes to contracts were identified and changes were needed with centralizing contract administration.

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Action Taken Commerce has created a Compliance Manager position. A responsibility of this new position is to assist in the centralization of the contracting process. All contracts are to be reviewed by the Compliance Manager prior to being signed by the Commissioner. In a limited review of expenditures and contracts, we identified contract monitoring improvements have been made.

Result of Implementation Centralizing contract administration has assisted in ensuring appropriate contract terms and conditions are included in contracts as well as ensuring appropriate documents are obtained from vendors.

Recommendation #25 **We recommend the Department of Commerce ensure employees are paid overtime and earn compensatory time only when hours actually worked exceed 40 in a week.**

Original Condition Based on a review of salary information and payments to employees of Commerce, we identified employees were being paid overtime and earning compensatory time in weeks when annual or sick leave was used. This contradicts Commerce's policy on calculating overtime and allows the employee to convert such leave into additional pay.

Action Taken Commerce implemented a new policy in December 2009 for calculating overtime payments. The policy indicates other non-work time (e.g. Annual Leave, Sick Leave, etc.), whether paid or not, is not to be counted as time worked in determining overtime or comp time. In our review of overtime payments to three employees, we identified overtime was calculated in accordance with the new policy.

Result of Implementation Commerce is calculating overtime in accordance with its policy and is no longer allowing sick and annual leave to be converted to overtime or comp time.

Recommendation #26 **We recommend the Department of Commerce make changes to their cell phone policy. At a minimum, the policy should:**

- a) Be consistent with Office of Management and Budget policy;**
- and**
- b) Address the use of state issued cell phones for personal use.**

Original Condition Office of Management and Budget (OMB) Policy 523 states an employee is eligible for reimbursement for business calls made on a cell phone only if the employee has exceeded the "free minutes" given to the employee by their cell phone provider. Commerce's policy was to reimburse employees for business related calls on personal cell phones regardless of whether the "free minutes" were exceeded due to the business calls. Commerce reimbursed employees under their policy and, as a result, payments were made to employees for more than what was allowed by OMB policy. The policy by Commerce did not address the personal use of state issued cell phones.

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Action Taken

According to Commerce representatives, the department began following the OMB policy in December 2009. Commerce has updated its policy to be consistent with OMB policy. In a limited review of expenditure information, no employees were identified as being reimbursed for cell phone expenses.

Result of Implementation

Commerce is in compliance with the OMB policy related to cell phones.

Recommendation #27

We recommend the Department of Commerce work with the Records Management Division of the Information Technology Department to make improvements to the records management program. At a minimum, actions should be taken to:

- a) Review all operations to identify appropriate records;**
- b) Ensure appropriate records series descriptions and retention periods are identified; and**
- c) Assign State Form Numbers to documents where appropriate.**

Original Condition

The Records Management Division of the Information Technology Department is responsible for establishing, implementing, and administering a records management program for all state agencies. Guidance provided by this division is to be followed by state agencies to ensure creation, maintenance, retention, and disposition of records. In review of selected Commerce programs, we identified a number of improvements were needed related to records management. For example, certain documents used by Commerce did not contain an appropriate State Form Number (SFN).

Action Taken

In January 2010, applicable training was received from the Records Management Division. Each Commerce division has worked to assign SFN's for applicable forms and ensure records series descriptions are created for all programs. In our limited review of programs and documents used by Commerce, it appears appropriate improvements have been made.

Result of Implementation

Commerce is in compliance with records management requirements.

Recommendation #28

We recommend the Department of Commerce ensure confidential or sensitive information is obtained through secured websites.

Original Condition

An online application for students for the Operation Intern program was available on Commerce's website. The website used to gather student information, including social security numbers, addresses, and phone numbers, was not secure. Students' confidential or sensitive information was vulnerable to unauthorized use if someone had gained access to the website submissions.

Action Taken

We identified students interested in Operation Intern no longer submit information online. Students interested in Operation Intern are now

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required to print the enrollment form and mail it to Commerce. We performed a limited review of Commerce's website and identified no indications of confidential or sensitive information which was able to be submitted online through an unsecure website.

Result of Implementation The Department of Commerce has reduced the risk of exposure of confidential and sensitive information.

Recommendation #29 **We recommend the North Dakota Development Fund, Inc. ensure compliance with policies for investments. In instances of exceptions or waivers of policies, reasons should be adequately documented.**

Original Condition In review of 17 Development Fund investment files, we identified noncompliance with certain policies. For example, personal guarantees were not obtained as required from individuals owning 20% or more of the company in which the Development Fund made investments. Development Fund staff stated exceptions to investment policies were made on a case-by-case basis depending on the compensating strengths of each proposed investment. However, exceptions and compensating factors were not sufficiently documented in the investment files.

Action Taken We reviewed the files of four businesses in which the Development Fund has made an investment. We did identify certain instances in which the Development Fund did not comply with policy. For example, one investment was made even though the maximum dollar amount per full time employee projected to be added was exceeded. However, documentation included in the files gave justification for these noncompliance issues.

Result of Implementation The Development Fund staff have adequately documented exceptions granted with certain investments.

Recommendation #30 **We recommend the North Dakota Development Fund, Inc. ensure all relevant matters concerning investments, including monitoring activities and actions taken, are documented.**

Original Condition The Development Fund's policy requires a file to be maintained for each investment. Each file is required to contain sufficient information to provide a single reference source for all relevant matters concerning the investment. The Development Fund staff was responsible for monitoring loans and equity investments. A review of investment files identified all relevant matters were not documented. For example, staff did not document meetings held in person or via phone with companies who had a loan which was not being paid.

Action Taken The CEO of the Development Fund reviewed with staff the requirement to document relevant matters concerning investments. We reviewed the files of four businesses in which the Development Fund has made an

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investment. We identified appropriate documentation related to monitoring and actions taken were included in the file.

Result of Implementation

The Development Fund is in compliance with investment policies.

Recommendation #31 **We recommend the North Dakota Development Fund, Inc. formally establish the authority granted to the staff regarding changes to terms and conditions of investments.**

Original Condition

Investment policies state the Board of Directors may assign lending authority to the Development Fund staff as deemed appropriate. We identified very minimal to no formal authority being granted to staff. We identified decisions were made by Development Fund staff regarding investment terms and conditions, including changes to Board approvals, without documented Board review and approval. While the underlying reasoning provided by Development Fund staff appeared to support the decisions made, there was no documented authority allowing the staff to make such decisions.

Action Taken

In its January 28, 2010 meeting, the Development Fund Board took action to formally establish the authority granted to the staff regarding changes to terms and conditions of investments. The Board gave authority to the Development Fund CEO and Vice President to negotiate or waive any terms and conditions of a loan and equity investment approved by the Board of Directors, including the term of servicing the investment. The Development Fund CEO and Vice President were also given authority to increase the funding amount of loan and equity investments up to 10% of the originally approved amount.

Result of Implementation

The Development Fund staff have been given appropriate authority to make certain changes to investments approved by the Board.

Recommendation #32 **We recommend the North Dakota Development Fund, Inc. increase the dollar limit of investments the staff is authorized to approve.**

Original Condition

Development Fund investment policy required investment applications over \$50,000 be approved by the Development Fund Board. Investment applications under \$50,000 could be approved by Development Fund staff. We identified very few investment applications were less than \$50,000. In review of a selection of Development Fund investment files, the Board agreed with the staff's investment recommendations on all of the investment files reviewed.

Action Taken

In its January 28, 2010 meeting, the Development Fund Board took action to increase the dollar limit of investments the staff is authorized to approve. For example, the CEO was given authority to approve loans up to \$150,000 and equity investments up to \$100,000.

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Result of Implementation The investment approval process has become more efficient.

Recommendation #33 **We recommend the North Dakota Development Fund, Inc. review, with assistance from the Office of the Attorney General, open meeting law requirements and make appropriate changes to comply with these requirements.**

Original Condition NDCC Section 10-30.5-07 states commercial or financial information of an entity in which an equity interest is purchased or considered or to which a loan has been made is confidential. For this reason, the Board is required to move into executive session when discussing the confidential information. We identified discussions were held in executive session which were not related to confidential matters. We also identified actions were taken in executive session which should have occurred during an open meeting.

Action Taken Commerce representatives indicated the Development Fund Board and staff met with a representative of the Office of Attorney General in January 2010. In our review of Board meeting minutes from January 2010 through October 2010, we identified the Board appears to be moving in and out of executive session appropriately.

Result of Implementation The Development Fund is in compliance with open meeting law requirements.

Recommendation #34 **We recommend the North Dakota Development Fund, Inc. establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.**

Original Condition We identified a Code of Ethics had not been established for the Development Fund Board of Directors. A Code of Ethics would identify the ethical principles each Board member is expected to follow in carrying out their duties.

Action Taken We reviewed the signed 2009 Code of Ethics documents of the Development Fund Board members. All members of the Development Fund Board of Directors have a signed Code of Ethics form on file.

Result of Implementation Members of the Development Fund Board of Directors have signed and are aware of the Code of Ethics.

Recommendation #35 **We recommend the Agricultural Products Utilization Commission make improvements with the monitoring of requirements in North Dakota Administrative Code Title 95. At a minimum, the Agricultural Products Utilization Commission should:**

- a) Ensure compliance with requirements established in rules; and

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b) Take appropriate action to ensure rules are updated as necessary.

Original Condition

North Dakota Administrative Code (NDAC) Chapter 95-02-02 established the scoring system to be used by the Agricultural Products Utilization Commission (APUC) Board of Directors to evaluate each application. We identified grant applications from one category, Farm Diversification, were not scored as required by NDAC. NDAC for APUC had not been modified for an extended period of time.

Action Taken

We reviewed the files of six businesses who had applied for APUC grants. We identified no issues of noncompliance with NDAC Title 95. APUC has proposed changes to applicable NDAC and worked with the Office of the Attorney General. The proposed changes now go through a public hearing process prior to being formally adopted.

Result of Implementation

APUC has ensured compliance with North Dakota Administrative Code and has taken the appropriate steps to update the administrative rules.

Recommendation #36

We recommend the Agricultural Products Utilization Commission retain scoring documentation for each member of the Board of Directors.

Original Condition

NDAC Chapter 95-02-02 required each application to be evaluated using a certain scoring system. No documentation was maintained identifying Board members' evaluation of applications. It was unclear whether each Board member evaluated applications in accordance with NDAC.

Action Taken

In a review of six APUC files, we identified all the applications reviewed had been evaluated using the appropriate scoring system. The scoring documents of each member of the APUC Board of Directors were included in the corresponding project files.

Result of Implementation

Documentation is available identifying the required scoring system was used. Documentation is also available to support the approval or disapproval of APUC grant applications.

Recommendation #37

We recommend the Agricultural Products Utilization Commission ensure compliance with established guidelines for the grant program.

Original Condition

In review of 30 APUC grant files, we identified improvements were needed to ensure compliance with program guidelines. For example, the Nature-Based Tourism and Prototype guidelines stated peer reviews will be obtained for projects in these categories. Peer reviews were not obtained for the three grant applications reviewed in these categories.

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Action Taken We reviewed the files of six businesses who had applied for an APUC grant. We identified no significant noncompliance issues.

Result of Implementation APUC is in compliance with applicable program guidelines.

Recommendation #38 **We recommend the Agricultural Products Utilization Commission establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.**

Original Condition A review of APUC guidelines identified a Code of Ethics had not been established for the Board of Directors. A Code of Ethics should identify the ethical principles each Board member is expected to follow in carrying out their duties.

Action Taken A Code of Ethics was adopted and is to be signed annually by members of the APUC Board of Directors. We reviewed the signed 2009 Code of Ethics documents of the APUC Board members. All members of the APUC Board of Directors have a signed Code of Ethics form on file.

Result of Implementation Members of the APUC Board of Directors have signed and are aware of the Code of Ethics.

Recommendations Partially Implemented

Recommendation #39 We recommend the Centers of Excellence Commission establish formal policies and procedures for the application process. At a minimum, the policies should address:

- a) Definitions of key terms used in the application;
- b) Submission of revised applications, budgets, and/or other information when recommending a lesser amount than is being requested;
- c) Submission of information from Centers of Excellence previously receiving funding; and
- d) Completed applications being forwarded to the Commission.

Original Condition

North Dakota Century Code (NDCC) Section 15-69-04, Subsection 1 requires the Department of Commerce to forward completed applications to the Centers of Excellence Commission in accordance with guidelines established by the Commission. We concluded no guidelines had been established. In addition, we identified a lack of policies and procedures in the application process.

Action Taken

Policies and procedures related to the application process have been established by the Centers of Excellence Commission. We identified policies related to submission of information when recommending a lesser amount, submission of information from previously funded Centers of Excellence, and applications being forwarded to the Commission. However, there are still key terms used in the application which have not been defined or clarified. We identified neither the policies nor the application identified a definition for "high-value private sector employment opportunities." This is a specific criterion the Commission is to consider when approving or disapproving an application. Also, other terms such as supplanting and match versus leverage are not defined.

Management's Response

Commerce agrees with the status of this recommendation. Commerce will place the definition for "high-value private sector employment opportunities" in the policies and application. This definition has already been approved by the Centers of Excellence Commission. Also, Commerce will present suggested definitions for the other key terms to the Centers of Excellence Commission at an upcoming meeting.

Recommendation #40 We recommend the Centers of Excellence Commission monitor compliance with North Dakota Century Code Section 15-69-05, Subsection 2 and ensure annual audits are completed or take appropriate action to modify the requirement for annual audits of Centers of Excellence.

Original Condition

NDCC Section 15-69-05, Subsection 2 states, in part, "As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter." The Centers of Excellence engaged accounting firms to perform certain

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agreed-upon procedures on the funds received. We identified two Centers of Excellence combined their agreed-upon procedures work for two years rather than having the work done annually. One Center of Excellence did not have work done for one year. Based on our review of the agreed-upon procedures work and other information, we concluded such work is not an "audit" and thus, there was noncompliance with the state law requirement.

Action Taken

Audits are still not being conducted as required by state law. Instead of complying with the requirement, action was taken to have a bill introduced for the 2011 Legislative Session which would modify the annual audit requirement. This action appears to have been taken as the Department of Commerce and the Centers of Excellence Commission relied on advice from its Assistant Attorney General within the Office of the Attorney General.

An Assistant Attorney General (attorney) provided advice in a memo, dated January 15, 2010, to the Department of Commerce Commissioner which stated, in part, "the reasonable choice of action to comply with the audit recommendation would be to continue applying the agreed upon procedures until this matter may be resolved next session." Also, the same attorney presented information at the February 2010 Centers of Excellence Commission meeting. The minutes state the attorney recommended the Commission continue with the agreed upon procedures and begin preparing a bill draft to be introduced to the legislature.

In our review of the information provided by the Assistant Attorney General, we identified a number of concerns related to the accuracy and relevancy of information used and relied upon. While the memo states the attorney surmised what the Office of the State Auditor intended, the conclusion drawn by the attorney was incorrect and was made with no discussion with either our office or with our legal counsel. While the advice provided appears to be followed by the Commission and Department of Commerce, we conclude the advice provided resulted in noncompliance with a state law requirement for a significant period of time. Rather than attempt to come into compliance during the biennium, no action was taken to attempt to have audits performed.

Management's Response

Commerce agrees with the status of this recommendation as being partially implemented. The Centers of Excellence Commission and the Department of Commerce has worked to implement this recommendation, including putting the issue before the appropriate legislative committee which has put forward a bill, House Bill No. 1060, to clarify this issue. Commerce also met with University System personnel on this issue and subsequently sought, received, and followed guidance and advice from the Office of the Attorney General on how to proceed prior to the legislative session. Commerce intends to abide by any legislation enacted to address this issue.

Chapter 2

Recommendations Partially Implemented

Recommendation #41 We recommend the Department of Commerce establish an effective department-wide monitoring function emphasizing compliance, consolidation of processes and procedures, and efficient operations. If reallocating resources is not possible to establish such a function, the Department should take appropriate action to obtain additional full-time equivalent positions and/or other necessary resources.

Original Condition Through our review of limited aspects of Commerce, we identified a number of areas where improvements were needed. There was a lack of centralization of functions and uniform processes as each division within Commerce appeared to operate independently of other divisions. We identified limited department-wide monitoring efforts had been established.

Action Taken The Department of Commerce created a Compliance Manager position to centralize and monitor department functions. We identified improvements in monitoring and centralizing certain processes within the department. However, the Compliance Manager, who was promoted from within the department in February 2010, continued to perform grant administration duties. These duties appear to have taken a significant amount of time away from the Compliance Manager position's primary functions. As a result, additional work is still expected to be performed to implement a department-wide monitoring function.

Management's Response Commerce agrees with the status of this recommendation. There is additional work that still needs to be done by the Compliance Manager in this area. Commerce reassigned duties internally in order to be able to create the Compliance Manager position. Although, the majority of the duties from the previous position were reassigned, it was determined that the grant administration duties associated with the childcare program would remain with this individual due to the fact that the program was possibly nearing its conclusion.

Recommendation #42 We recommend the Department of Commerce make changes to the contracts entered into with the Regional Planning Councils for scoring and ranking Community Development Block Grant applications. At a minimum, the contracts should:

- a) Identify a maximum amount for subjective scores; and
- b) Require a Conflict of Interest and/or Code of Conduct statement be developed and signed annually by individuals conducting the scoring and ranking of applications.

Original Condition Commerce entered into a contract with each Regional Planning Council for the evaluation of applications to receive Community Development Block Grant (CDBG) funding. The top ranked applications at the regional level were forwarded to Commerce for approval. Each of the eight councils had developed their own scoring and ranking systems. In a limited review of scoring systems, we identified a relatively large amount of the total score was based on subjective criteria. For example, one

Chapter 2

Recommendations Partially Implemented

Regional Planning Council used 60% subjective criteria and 40% objective criteria to rank each project to determine those to be forwarded to Commerce.

The contract with the Regional Planning Councils contained Code of Conduct and Conflict of Interest statements which prohibit council members from obtaining a financial interest or benefit. However, neither statement required members to sign acknowledgment of these statements on an annual basis.

Action Taken

A representative of the Department of Commerce stated conflict of interest statements have been signed by all Regional Planning Council board members by April 30, 2010. In our review of information for three Regional Planning Councils, we identified conflict of interest statements had been signed. No changes were made to the contracts to identify a maximum amount for subjective scoring.

Management's Response

Commerce agrees with the status of this recommendation. We believe we have fully implemented part B and no further action is intended for part A.

Recommendation #43

We recommend the Department of Commerce make improvements to Operation Intern monitoring procedures to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) No longer require supporting documentation be submitted for all Requests for Funds;**
- b) Periodically select various employers to verify adequate support for expenditures is retained; and**
- c) Eliminate redundant monitoring processes.**

Original Condition

The Operation Intern program reimburses employers for student interns' salary expenses. Commerce required employers to submit supporting documentation for every reimbursement request. This was a significant amount of information being submitted, including time sheets, payroll reports, etc. In grant administration, it is not a common practice to require all support to be submitted when funds are requested. In review of other fiscal monitoring performed by Commerce, we identified the same information was being reviewed multiple times. The monitoring procedures were not an efficient or effective use of time.

Action Taken

Supporting documentation is no longer required to be submitted for all Requests for Funds. Operation Intern guidelines require 20% of participating businesses be reviewed. In our review of the monitoring procedures, we identified improvements had been made and redundant monitoring processes no longer exist. However, no monitoring policies and procedures exist to identify what constituted significant errors, steps to be taken when reviews performed identified significant errors, or who was responsible for pursuing errors or overpayments.

Chapter 2

Recommendations Partially Implemented

Management's Response Commerce agrees with the status of this recommendation. Monitoring procedures will be addressed in the Fiscal Manual which is nearing completion.

Recommendation #44 **We recommend the Department of Commerce comply with legislative intent for use of line item appropriations and full-time equivalent positions.**

Original Condition In review of Session Laws and Commerce expenditure information, we identified improvements were needed to ensure compliance with legislative intent. For example, we identified Lewis and Clark appropriated funds were used to pay non Lewis and Clark expenses.

Action Taken We reviewed four requirements from the 2009 Session Laws which required the Department of Commerce to take action, established new requirements for Commerce, and provided additional full-time equivalent positions. Our review identified Commerce has developed criteria for large tourism infrastructure grants, provided funds to the Lewis and Clark Foundation once matching funds were secured, and used the new positions for the areas identified. In our review of the grant program to finance early childhood facilities, we identified concerns regarding the grant program and conclude legislative intent was not followed. For example:

- While Chapter 108 of the 2009 Session Laws states a grant awarded for infrastructure may not exceed \$5,000 per recipient, Commerce determined no applications would be accepted for any project less than \$1,000. We conclude setting a minimum project cost could have had an adverse impact on the grant program. If a facility had a need for an improvement of less than \$1,000, the facility either didn't get the project completed or had to make the cost of the project higher than anticipated to qualify. In discussing this minimum project amount, Commerce representatives stated the department took into consideration administrative costs, driving down debt service, and attempting to use funds for larger capital items.
- The grant program required the applicant to have available \$1 of matching funds for every \$3 of grant funds (thus, the applicant had to have 25% available of a project cost). If an applicant only had available \$200 of matching funds, they were excluded from the program due to Commerce setting a minimum project amount.
- While the Legislature imposed a maximum of \$5,000 per recipient for infrastructure, Commerce imposed a maximum of \$3,000 for a certain type of infrastructure project (fences). This was determined after grant applications were received in the first round of funding.
- Commerce decided to provide grants in two rounds (a third round is being used as grant funds are still available). Commerce determined if a recipient received a grant in the first round for infrastructure, they could not receive another grant for

Chapter 2

Recommendations Partially Implemented

infrastructure in the second round even if the first grant was less than \$5,000. This determination does not appear to have been communicated to applicants prior to the first round of funding. This could have impacted how facilities submitted grant applications. For example, if a facility had multiple infrastructure needs and submitted a grant application for \$5,000 for fences, the facility could have only received a \$3,000 due to Commerce setting a maximum amount for fences. Even though the facility still could have had additional infrastructure needs, they were unable to apply and may have applied for these in the first round if they had known a \$3,000 maximum would be imposed.

- The 2009 Session Law states in making awards under the grant program, "the department shall ensure funds are fairly distributed between for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities." When asked how this requirement was complied with, a Commerce representative stated Commerce awarded grants to all applicants who applied and were qualified. However, Commerce did not appear to take into consideration the effect setting a new maximum and minimum amount could have on ensuring funds were fairly distributed.

During our review of recommendations related to the Centers of Excellence, we identified a 2009 Session Law requirement in which it appears Commerce was in noncompliance. During the 2009-2011 biennium, Commerce was to report on the status of the Centers of Excellence program and the status of the Centers of Excellence fund to the Budget Section during the third quarter of 2010. Neither report was provided during the third quarter of 2010. The report on the status of the fund was not provided until December 2010. We were also concerned with the information in the report provided on the status of the program to the Budget Section in June 2010. While a significant amount of information was provided in the report related to accomplishments and positive impacts the program has had, Commerce did not report to the Budget Section certain other information. In June 2010, the Commission reviewed whether each Center of Excellence in operation for three full fiscal years was on track to achieve its desired economic impact, on track to exceed its desired economic impact, or needed improvement in order to achieve its desired economic impact. The Commission's determination on two Centers of Excellence reviewed was they needed improvement in order to achieve their desired economic impact (total of 9 Centers of Excellence reviewed). This information was not presented to the Budget Section as part of the report on the status of the program.

Management's Response

Commerce disagrees with the status of this recommendation as being partially implemented. Commerce believes it complied with the legislative authority and intent granted to Commerce for use in line item appropriations and full-time equivalent positions. Full legislative intent is

Chapter 2

Recommendations Partially Implemented

found in final statutes and session laws. Legislative history is extremely useful in resolving ambiguities and providing guidance for implementing and administering programs, however it may not constitute a fair and objective standard from which to evaluate agency performance.

Childcare Grant Program

Commerce implemented the childcare grant program based on our interpretation of legislative authority and intent. We recognize that there is always room for improvement when a new program is implemented and Commerce will continue to improve this program in the future.

Centers of Excellence Reporting

Commerce provided reports to the Budget Section on the status of the Centers of Excellence program and the status of the Centers of Excellence fund. That, coupled with testimony; provided a report on the status of the Centers of Excellence program, specifically activity of the Centers of Excellence Commission and Commerce in relation to awards and distribution of funds. Commerce has prepared and provided to each legislator a copy of the newly completed 2010 Centers of Excellence Annual Report on January 25, 2011. Also included was a cover letter with a summary of the Centers of Excellence Commission's determinations about whether nine of the most mature centers are achieving the desired economic impact. Commerce will strive to be responsive to legislative requests for information concerning the COE programs.

-
- Recommendation #45** **We recommend the Department of Commerce establish a consistent and uniform process for hiring employees. At a minimum, the Department of Commerce should:**
- a) Centralize the hiring process;**
 - b) Establish a standardized scoring system; and**
 - c) Ensure compliance with laws and policies.**

Original Condition

A review of information regarding how employees of Commerce were hired identified the hiring process was decentralized and improvements were needed. Each division used their own screening and hiring process. Various point scales were used by divisions to evaluate candidates. In one instance, the point scale included an inadequate amount of veterans' preference points for applicable candidates.

Action Taken

The Department of Commerce has centralized the hiring process by having the Compliance Manager, appointed in February 2010, involved in the process. In a review of three competitive hiring processes, we did identify a similar process being used and a standardized scoring system was in place. However, we identified concerns related to veterans' preference being applied inappropriately in the hiring processes. The Department of Commerce relied on information received from the North Dakota Department of Veterans' Affairs. The information received from the Department of Veterans' Affairs was not consistent with proper

Chapter 2

Recommendations Partially Implemented

application of veterans' preference. Due to this, additional changes in the hiring process are needed.

Management's Response

Commerce agrees with the status of this recommendation. Commerce is currently seeking guidance from the Attorney General's Office to clarify these issues. Commerce will implement and follow this advice.

Recommendation #46

We recommend the Department of Commerce ensure programs and services have established policies and procedures which are reviewed and updated periodically.

Original Condition

In a review of six Commerce grant and loan programs, we identified improvements were needed with certain policies and procedures. While all programs within Commerce were not reviewed, we did identify certain programs did not appear to have policies and procedures. Without effective guidance, program operations may not be administered efficiently and effectively.

Action Taken

The Department of Commerce performed a review of policies and procedures and made certain changes. In our work performed on determining the status of recommendations, we identified additional changes were still necessary with certain policies and procedures. Also, in review of a new grant program for the 2009-2011 biennium (grants to Early Childhood Facilities), we identified limited formal policies and procedures were established prior to the first round of accepting grant applications. After applications were received, Commerce changed certain criteria in making the grant awards. Additional policies and procedures were established for the second round of grant awards.

Management's Response

Commerce agrees with the status of this recommendation. Policies and procedures will be implemented with appropriate programs and services.

Recommendation #47

We recommend the North Dakota Development Fund, Inc. make improvements with the policies established for investments. At a minimum, the Development Fund, Inc. should:

- a) Review and update current policies;**
- b) Update policies when changes occur to the investment program; and**
- c) Establish a periodic review process.**

Original Condition

We concluded the Development Fund policies required updating as they did not reflect current practices in all cases. For example, the investment policies identified limits for maximum investment per job created or retained as \$10,000 for urban and \$20,000 for rural. The Development

Fund CEO stated those limits had been increased to \$20,000 urban and \$30,000 rural, effective in May 2008.

Chapter 2

Recommendations Partially Implemented

Action Taken

The Development Fund, Inc. incorporated a new policy for a semi-annual review of policies. While certain changes have been made to policies, we identified certain authority granted to staff by the Development Fund Board had not been included in policies. For example, while the Development Fund Board granted authority to staff to change the terms and conditions of loans and equity investments or increase funding up to 10%, such information was not included in the policies.

Management's Response

Commerce agrees with the status of this recommendation. Internal loan policy was updated on December 27, 2010 to reflect the authority granted by the ND Development Fund Board of Directors to the Development Fund staff to change terms and conditions of loans and equity investments or increase funding up to 10%.

Recommendation #48

We recommend the Agricultural Products Utilization Commission make improvements with guidelines established for the grant program. At a minimum, the Agricultural Products Utilization Commission should:

- a) Review and update current guidelines;**
- b) Update guidelines when changes occur to the grant program; and**
- c) Establish a periodic review process.**

Original Condition

The Agricultural Products Utilization Commission (APUC) guidelines had not been updated since July 2005 and did not appear to be reflecting current practices. For example, while the Nature-Based Tourism and Prototype grant guidelines required a peer review be obtained, the APUC Director stated such peer reviews were not obtained as they did not add value to the process.

Action Taken

APUC is to annually review and make appropriate changes to its guidelines. In discussions with the APUC Program Manager, it was identified changes to guidelines were to be made once the North Dakota Administrative Code was modified. Since changes to administrative code could require changes with the guidelines, this appears reasonable. However, we identified guidelines still required independent peer reviews of certain grant applications. These peer reviews are not required by administrative code and APUC was not obtaining such peer reviews.

Management's Response

Commerce agrees with the status of this recommendation. The guidelines have been reviewed but not modified; therefore they are still dated July, 2005. APUC decided to wait to modify the guidelines until the new administrative rules have been adopted and implemented. After this has been completed, APUC will review the guidelines again and make any necessary changes. In regards to peer reviews; this was an oversight, which will be reviewed and addressed at the next regular meeting of the APUC Board.

Chapter 2
Recommendations Partially Implemented

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Recommendations Not Implemented

Recommendation #49 We recommend the Department of Commerce make improvements to Community Development Block Grant program monitoring processes to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) Identify information to the grant administrators on their responsibilities and duties;
- b) No longer accept and review supporting documentation on all Request for Funds; and
- c) Periodically select various grants and loans to verify adequate support for expenditures is retained.

Original Condition

The Community Development Block Grant (CDBG) program reimburses local governments for work performed on the project when a Request for Funds was submitted. Except in certain circumstances, the Department of Commerce did not require supporting documentation to be submitted when a Request for Funds was submitted. However, in review of 25 projects, the majority of requests included supporting documentation. Commerce invested time to review such documentation and determined whether expenditures were appropriate. Such grant administration work should have been performed at the local level, not by Commerce. CDBG funding is provided to local governments specifically for grant administration on each project. In grant administration, it is not a common practice to require all support be submitted when funds are requested.

Action Taken

While Commerce added in a requirement to the award letter related to compliance with the grant administrative manual, grant administrators were already required to follow such requirements. No changes related to monitoring processes appear to have been implemented by Commerce.

Management's Response

Commerce agrees with the status of this recommendation. This recommendation has not been implemented and no future action is intended.

Recommendation #50 We recommend the Agricultural Products Utilization Commission make improvements to expenditure monitoring procedures to increase efficiency and effectiveness. At a minimum, the Agricultural Products Utilization Commission should:

- a) No longer require supporting documentation be submitted for all reimbursement requests; and
- b) Periodically select various grantees to verify adequate support for expenditures is retained.

Original Condition

The Agricultural Products Utilization Commission (APUC) generally distributed funds in two payments. The first half was paid when the grant was awarded and the second half was paid after supporting documentation for expenditures was received. Grantees were required to submit supporting documentation for every expense included in the reimbursement request. This was a significant amount of information

Chapter 3

Recommendations Not Implemented

being submitted, including time sheets, payroll reports, receipts, etc. In grant administration, it is not a common practice to require all support be submitted when funds are requested. Typically, grantees are required to maintain supporting documentation and provide it only when requested. In addition, examples of APUC making the second payment when all required expenditure support had not been received were identified.

Action Taken

No changes related to monitoring processes appear to have been implemented.

Management's Response

Commerce agrees with the status of this recommendation. This recommendation has not been implemented and no future action is intended.

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OFFICE OF THE STATE AUDITOR

PERFORMANCE AUDIT REPORT

Department of Commerce
Report No. 3027

August 11, 2009



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August 11, 2009

Honorable John Hoeven, Governor

Members of the North Dakota Legislative Assembly

Transmitted herewith is the performance audit report on aspects of the Department of Commerce. This report contains the results of our review of the adequacy of the department's monitoring system and the application process and monitoring of the Centers of Excellence.

We conducted this audit under the authority granted within North Dakota Century Code Chapter 54-10. Included in the report are the objectives and scope, findings and recommendations, and management responses.

We want to extend our appreciation to the staff of the Department of Commerce for their assistance and cooperation during this audit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson
State Auditor

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Executive Summary

Results and Findings

Recommendations addressed in this report are listed in Appendix A. Discussions relating to individual recommendations are included in Chapters 1 through 4.

Centers of Excellence Accountability

We determined the application process and monitoring of the Centers of Excellence has not provided adequate accountability for the use of state funds. No determination has been made as to whether the Centers of Excellence are having the desired economic impact as required by state law. There is a lack of formal policies and procedures for the application process, evaluating applications, monitoring Centers of Excellence, and matching requirements. We identified changes are necessary in determining approved funding amounts, entering into formal agreements, and monitoring compliance.

Monitoring Department Operations

We determined the Department of Commerce has not established an adequate system for monitoring department operations. We identified improvements are needed to have an effective department-wide monitoring function. Changes are needed with the monitoring of grant and loan programs to improve efficiencies and effectiveness. We identified changes are necessary to ensure compliance with state laws, legislative intent, and policies. Also, improvements are needed to ensure policies and procedures are reviewed and updated periodically.

Development Fund, Inc.

Our review of the Development Fund, Inc. identified improvements are needed. Improvements are needed to ensure policies are reviewed, updated, and complied with. There is a lack of documentation regarding the monitoring activities taking place with investments. In addition, we identified improvements are needed with the authority granted to staff, complying with open meeting requirements, and establishing a Code of Ethics.

Agricultural Products Utilization Commission

Our review of the Agricultural Products Utilization Commission (APUC) grant program identified improvements are needed. We identified changes are necessary to ensure compliance with North Dakota Administrative Code. Improvements are needed to ensure policies are reviewed, updated, and complied with. Changes with monitoring are necessary to improve efficiencies and effectiveness. A Code of Ethics should be established.

Centers of Excellence Accountability

Introduction

An objective of this performance audit was to answer the following question:

"Does the application process and monitoring of the Centers of Excellence provide adequate accountability for the use of state funds?"

We determined the application process and monitoring of the Centers of Excellence has not provided adequate accountability for the use of state funds. Significant improvements needed with the application process and monitoring are included in this chapter. Improvements of less significance were communicated in separate letters to management of the Department of Commerce and the Chair of the Centers of Excellence Commission.

To determine whether the application process and monitoring of the Centers of Excellence was providing adequate accountability for the use of state funds, we:

- Reviewed applicable laws and procedures;
- Reviewed 11 applications approved by the Centers of Excellence Commission;
- Reviewed 6 applications not approved by the Centers of Excellence Commission;
- Reviewed applicable monitoring procedures;
- Reviewed supporting documentation for selected Centers of Excellence at four campuses; and
- Interviewed selected personnel.

Centers of Excellence

Three Centers of Excellence have been granted such status pursuant to state law (established by the 2003 Legislature with a specific appropriation). Other Centers of Excellence receive the designation and funding through an application process. This process was established by the 2005 Legislature and was continued by the 2007 Legislature (\$20 million available each biennium). The State Board of Higher Education was originally provided the statutory authority to be administratively responsible for applications. The 2007 Legislature modified state law to require the Department of Commerce to be administratively responsible and assist with monitoring at the request of the Centers of Excellence Commission.

Applications are submitted to the Centers of Excellence Commission which is comprised of 6 members, 3 each from the State Board of Higher Education and the North Dakota Economic Development Foundation. The Commission makes funding recommendations for Commission approved applications to the State Board of Higher Education, the North Dakota Economic Development Foundation, the Emergency Commission, and the Budget Section. None of the applications approved by the Centers of Excellence Commission have been disapproved by the other governmental bodies.

Chapter 1

Centers of Excellence Accountability

The Centers of Excellence Commission has approved 24 applications. Approved applicants must meet certain requirements in order to receive the funding. Two approved applicants were unable to meet such requirements and, thus, did not receive funding. Four Centers of Excellence have received funding twice (once in each biennium). See Appendix B for a listing of Centers of Excellence.

Determining Whether Centers are Having Desired Economic Impact

No analysis is readily available to measure whether the Centers of Excellence are having the desired economic impact.

North Dakota Century Code (NDCC) Section 15-69-04, Subsection 5 requires the Centers of Excellence Commission to "monitor the center's activities in order to determine whether the center is having the desired economic impact." Based on our review of information regarding the monitoring of the Centers of Excellence, there is no determination being made as to whether the Centers of Excellence are having the desired economic impact. We identified no comparisons performed on the desired economic impact in applications to what the actual economic impact has been. As a result, there is no analysis readily available to measure whether the Centers of Excellence are having the desired economic impact.

An economic impact report was completed by a professor of North Dakota State University. This report used 2007 payroll and expenditure data reported by the Centers of Excellence for computing the direct economic impact of the Centers of Excellence. We identified concerns related to the accuracy of the information reported by the Centers of Excellence. For example, supporting documentation included by a Center of Excellence did not agree with reported amounts. We also identified concerns with the accuracy of certain numbers within the economic impact report. For example, a table in the report identified 296.25 direct jobs and 408 secondary jobs created for a total employment effect of 799.25 (related to research and development activities). The total of the two numbers is 704.25. The 799.25 number is stated in various places of the report.

Recommendation 1-1

We recommend the Centers of Excellence Commission ensure compliance with North Dakota Century Code Section 15-69-04, Subsection 5 and determine whether Centers of Excellence are having the desired economic impact.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission will work with the Department of Commerce to develop a method to compare each Center's desired economic impact with the actual economic impact being realized. The mathematical error contained in the economic impact report has been corrected.

Chapter 1

Centers of Excellence Accountability

Making Improvements with Application Process

Applications to become a Center of Excellence are provided by and submitted to the Department of Commerce. An initial review of the applications is conducted by the Department of Commerce for completeness and compliance with legislative requirements. We identified improvements should be made with the review performed. Limited formal policies and procedures have been established by the Centers of Excellence Commission for the application process.

Ensuring Compliance with State Law

**Budgeted expenditures
included in an
application did not
appear to comply with
state law.**

In our review of 11 applications approved by the Centers of Excellence Commission, we identified an application included \$165,000 for two outreach programs (total amount approved for the project was \$2.95 million). The outreach programs are intended to motivate students to consider certain areas for study and career. While both outreach programs were in existence previous to the application, one of the programs (budgeted for \$105,000) would appear to use Centers of Excellence funding for supplanting current outreach operations. NDCC Section 15-69-05, Subsection 1 states:

"A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs."

The outreach programs do not appear to be within the legislative intent of the Centers of Excellence program. The use of Centers of Excellence funds to supplant current operations would result in noncompliance with state law (at the time of our review, no Centers of Excellence funds for this project had been expended). A discussion with a campus representative of this Center of Excellence identified outreach programs are a required part of federal grants in this area. Outreach programs are not a requirement of the Centers of Excellence program.

Recommendation 1-2

We recommend the Department of Commerce ensure applications provided to the Centers of Excellence Commission contain budgeted expenditures which are in compliance with state law.

Management's Response

Agree with the recommendation. The Department of Commerce will review applicants' budgeted expenditures to determine compliance with state law prior to consideration by the Centers of Excellence Commission.

Establishing Policies and Procedures

NDCC Section 15-69-04, Subsection 1 requires the Department of Commerce to forward completed applications to the Centers of Excellence Commission in accordance with guidelines established by the Commission. We determined no guidelines have been established.

In review of approved and disapproved applications, we identified the following:

Chapter 1

Centers of Excellence Accountability

Policies and procedures should be established for the application process.

- Definitions for key terms used in the application process have not been identified. While one criteria for funding is determining whether the applicant will create "high-value private sector employment opportunities in this state," no definition or other criteria for "high-value" has been established.
- While applicants identify a requested funding amount, the Commission can, and typically does, lower this funding amount in approving applications. The Commission has not established a formal policy regarding what is to be submitted by applicants when this occurs. During the 2007-2009 biennium, applicants were required to submit new applications reflecting the lowered funding amount. These new applications had to be submitted in a relatively short time period. For example, an application requesting \$3.5 million was recommended by the Commission to be funded at \$1.5 million. The campus needed to submit a new application within a week.
- Centers of Excellence who have previously been awarded funding are submitting additional applications in the subsequent biennium. We identified 4 Centers who received funding in two bienniums. While the Commission discussed receiving additional information on these Centers in the second biennium, an informal process was used to obtain information late in the application process.

Recommendation 1-3

We recommend the Centers of Excellence Commission establish formal policies and procedures for the application process. At a minimum, the policies should address:

- a) Definitions of key terms used in the application;
- b) Submission of revised applications, budgets, and/or other information when recommending a lesser amount than is being requested;
- c) Submission of information from Centers of Excellence previously receiving funding; and
- d) Completed applications being forwarded to the Commission.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission has now formalized in writing the policies and procedures for the application process which address the identified items.

Making Improvements to Application Evaluations

Once an application has been determined to be complete and in compliance with legislative requirements by the Department of Commerce, the application is provided to the Centers of Excellence Commission. Each applicant is provided time at a Commission meeting for a presentation on the application. Following such presentations, the Commission provides a preliminary recommendation for funding. In our review of the evaluation process of applications, we identified a lack of formal policies and procedures and requested funding amounts being lowered without a formal analysis. We also identified changes were needed with technical reviews and due diligence work being conducted.

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Centers of Excellence Accountability

Establishing Policies and Procedures

Policies and procedures should be established for evaluating applications.

In considering whether to approve or disapprove an application, NDCC Section 15-69-04, Subsection 3 requires the Commission to consider various elements. For example, the Commission is to consider 9 elements such as whether the Center of Excellence will create high-value private sector employment opportunities in the state, leverage other funding, and become financially self-sustaining. The Centers of Excellence Commission has established no formal policies regarding how applications are to be approved and disapproved. We were unable to determine whether the Commission had adequately taken into consideration the established legislative elements when determining whether applications would be approved or disapproved. While an evaluation guide was developed when the Commission was established, the guide was not adopted. When previously funded Centers of Excellence requested additional funds in a subsequent biennium, the Commission used an informal process in collecting additional information and did not establish how previously funded Centers of Excellence would be evaluated for subsequent approval.

Recommendation 1-4

We recommend the Centers of Excellence Commission establish formal policies and procedures for the evaluation of applications. At a minimum, the policies should address:

- a) A process incorporating all elements in North Dakota Century Code for consideration in approving and disapproving applications; and
- b) Additional elements of consideration on applications from Centers of Excellence which were previously approved.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission has now formalized in writing the policies and procedures for the evaluation of applications.

Determining Approved Funding Amount

No formal analysis was conducted when requested funding amounts were reduced.

Applications submitted by campuses and college associated foundations to become Centers of Excellence include a requested funding amount. The Centers of Excellence Commission reduced the requested amount by 30% or more on 13 of 24 approved applications. There was no formal analysis conducted for determining the amount to be approved and no formal analysis on the impact of lowering requested amounts. In review of the Commission meeting minutes, it was apparent the Commission made the decision to attempt to fund as many projects as possible. Of the 7 applications which were fully approved at the requested amount, 5 were approved in the final round of application awards in the 2007-2009 biennium. The Commission had over \$15 million of the appropriated \$20 million to award. This was due to two previously approved applications (totaling \$4.6 million) not receiving funding as they were unable to meet requirements.

Recommendation 1-5

We recommend the Centers of Excellence Commission establish criteria to be used for determining the approved funding amount in applications and analyze the effects of changing requested funding amounts of projects.

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Management's Response

Agree with the recommendation. The Centers of Excellence Commission has now formalized in writing the criteria and process for determining the appropriate level of funding for a Center. This includes the process to analyze the effects of changing the requested funding amounts.

Establishing a Technical Review Process

The Centers of Excellence Commission has statutory authority to contract for independent, expert reviews of applications to determine whether proposed Centers of Excellence are viable and whether they are likely to have the desired economic impact. No such technical reviews have been performed on Centers of Excellence applications. The Commission has established no formal policies and procedures detailing a process for technical reviews. In review of the application process, it is unclear whether sufficient time would even be available to conduct technical reviews if it was determined necessary.

Recommendation 1-6

We recommend the Centers of Excellence Commission establish formal policies and procedures for technical reviews of applications. At a minimum, the policies should address:

- a) A process for identifying proposals requiring a review;
- b) Selection of a vendor to perform the review; and
- c) Ensuring sufficient time exists to allow a review to be performed.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission has now formalized in writing the policies and procedures used to determine whether an application requires a technical review.

Reviewing Due Diligence

Due diligence work was required to take place in a relatively short period of time.

After applications receive a preliminary recommendation for funding by the Centers of Excellence Commission, the applications have due diligence work performed on the private sector partners. This work is conducted by an employee of the Economic Development and Finance Division of the Department of Commerce. Information regarding likelihood of viability of the project, risks, matching requirements, job creation projections, and other areas are reviewed. We identified such work was required to take place in a relatively short period of time as a report on the due diligence was provided to the Commission at the following meeting (average time available for conducting the work was 11 calendar days).

We identified changes were made to the due diligence reports starting in the 2007-2009 biennium which alleviated certain concerns we had noted with previous reports. In our review of due diligence reports, we did identify concerns with certain work not being performed in the time allotted. For example, the private partner on one application who represented approximately 50% of the matching funds and 50% of the projected job creation was "unavailable for verification." This application was approved contingent upon the verification of the match (verification was received prior to the funds being released). Without proper due diligence being completed, significant concerns associated with an

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application may not be properly identified and taken into consideration by the Centers of Excellence Commission.

Recommendation 1-7

We recommend the Centers of Excellence Commission review the due diligence requirements and either:

- a) Move the due diligence work to the beginning of the application process; or
- b) Ensure an adequate amount of time is provided to allow the Department of Commerce to complete the due diligence work.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission has moved the due diligence work to the beginning of the application process for the upcoming funding round.

Entering into Formal Agreements

No formal agreements are entered into between the Centers of Excellence Commission and approved applicants. Thus, no contract provisions are specifically identified related to the appropriate use of funds and other requirements which must be followed.

As part of this audit, we selected 11 approved Centers of Excellence applications. Of the 11 approvals, one did not meet certain requirements and did not receive funding. The remaining 10 applications selected for review were Centers of Excellence at Dickinson State University, Lake Region State College, North Dakota State University, and the University of North Dakota. We reviewed supporting documentation for certain expenditures which were paid with Centers of Excellence funds. Our reviews identified the following:

Operating Expenditures

We reviewed 242 operating expenditures and identified 19 expenditures were not reasonable. We identified 2 expenditures (totaling over \$100,000) paid for tuition and fees on behalf of students taking courses at a university. State law prohibits the use of Centers of Excellence funds to supplant current operations or academic instruction. The use of Centers of Excellence funds to pay for student fees (such as mandatory activity fees and university fees) appears to supplant current operations. Due to the time involved with determining the fees charged to each individual enrolled in the particular classes, we did not identify a total amount associated with supplanting current operations. Also, we identified 5 expenditures (totaling approximately \$3,850) used Centers of Excellence funds for purposes which did not meet the intent of the approved project. For example, a campus paid travel expenses for an individual on a trip which was not related to the Center of Excellence. Other expenditures we identified as not being reasonable were a result of campuses' noncompliance with established purchasing policies and procedures.

We identified two expenditures in which Centers of Excellence funds appear to have been used to supplant current operations which is prohibited by state law.

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Salary Expenditures

We reviewed documentation supporting the use of Centers of Excellence funds for salaries for selected employees at each of the four campuses. The four campuses do not have standardized documentation supporting salary expenditures. We identified certain campuses were using Personnel Activity Confirmation Reports (PACR) to support salary expenditures. The reports reflect an employee's time charged to grants (typically federal). The employee is required to sign reports three times a year signifying the information is an accurate reflection of the time they spent on grants. Typically, an employee working on grant projects is not completing timesheets or logging their time and the PACR is the only support for charging salary costs to grants. Results of our review at each campus follow:

We identified concerns related to the support for salaries paid with Centers of Excellence funds.

- Dickinson State University: we reviewed 12 PACR at this campus and identified 3 reports as not being signed in a timely fashion and one report was signed prior to work being performed.
- Lake Region State College: this campus is only completing PACR for federal grants. Thus, the campus had no PACR to support salaries paid with Centers of Excellence funds. Also, there were no timesheets or other evidence to support salaries being paid with Centers of Excellence funds.
- North Dakota State University: a department on this campus completes timesheets rather than using a PACR to document their time worked on projects. We identified no concerns with the use of timesheets to support salaries paid with Centers of Excellence funds. Of the 25 PACR reviewed, we identified 9 were not signed within two months of the end of the period covered by the report.
- University of North Dakota: we reviewed 51 PACR at this campus and identified 21 reports as not being signed in a timely fashion.

When PACR are not signed in a timely manner, it is unclear how employees can accurately recall how their time was spent on various projects from several months prior. Without reliable and accurate information being completed, the reasonableness of salaries being paid with Centers of Excellence funds could be questionable.

Recommendation 1-8

We recommend the Centers of Excellence Commission enter into formal agreements with approved applicants. At a minimum, the agreements should address:

- a) Criteria for the use of state funds;
- b) Documentation requirements for payroll expenses; and
- c) Compliance with applicable purchasing policies.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission will enter into formal agreements with approved applicants which will address the identified items.

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Making Improvements with Monitoring Process

State law requires the activities of the Centers of Excellence to be monitored for a minimum of 6 years and no more than 10 years. In our review of the monitoring performed on the Centers of Excellence, we identified a lack of formal policies and procedures. Also, improvements were needed to have monitoring be more efficient and effective, to ensure required audits have been performed, and to evaluate performance on current criteria.

Updating Functional Review

The functional review is an annual report completed by the Centers of Excellence themselves which is then submitted to the Department of Commerce. This self-reporting process requires the Centers of Excellence to provide updates, progress information, and the status of the project. The Centers of Excellence are specifically required to provide information in 12 areas. Examples include documenting the \$2/\$1 match, project timeline, and tracking expenditures.

Using the same applications we selected for reviewing expenditure information, we obtained copies of functional reviews submitted by certain Centers of Excellence. In our review of the information, we identified a number of concerns related to various aspects including:

- Match amounts included in the application were not addressed in the functional review. For example, an application lists \$775,000 of in-kind matches from North Dakota companies. Information related to these matches was not addressed by the Center of Excellence in the functional review.
- The functional review states the Centers of Excellence should attach support to corroborate reported contributions. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners. Also, we identified no donor letters of intent for 5 cash donors listed (total of \$50,000) in the functional review.
- Inconsistencies in reporting information were identified in various functional reviews. For example, summary financial information attached to the functional review did not agree to what was included in the functional review itself. Also, the functional review requests information on private sector equivalent jobs created. These are defined as jobs created at the university whose salaries are not paid by state general fund dollars. While a Center of Excellence identified no private sector equivalent jobs being created, we identified four positions being created which were paid in full or 50% from Centers of Excellence funds.

Improvements are
needed with the self-
reporting process.

In addition to the above concerns, we identified a number of questions on the functional review do not appear to be relevant to the purpose of the functional review or improve the accountability of the Centers of Excellence. For example, Centers of Excellence are required to identify the cost per job. Such information does not appear to have been used as a means of assessing the program.

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Recommendation 1-9

We recommend the Centers of Excellence Commission update the functional review to improve the efficiency and effectiveness of the monitoring and reporting process.

Management's Response

Agree with the recommendation. On June 3, 2009 the Centers of Excellence Commission authorized the Department of Commerce to update the functional review format. The functional review format has been updated.

Establishing Policies and Procedures

Policies and procedures should be established for monitoring the progress of Centers of Excellence.

NDCC Section 15-69-04, Subsection 2 states, in part, the Centers of Excellence Commission has the responsibility to "monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers." In our review of the monitoring process, we identified no formal policies and procedures for monitoring the progress of the Centers of Excellence. While certain procedures have been established for monitoring, we identified such procedures were not efficient or effective for monitoring the Centers of Excellence. As a result, the monitoring system does not provide adequate accountability of the use of state funds.

As previously mentioned in this audit report, we identified certain concerns with how state funds have been used as well as information reported by Centers of Excellence in the functional review. We identified no specific meetings held by the Centers of Excellence Commission for the purpose of receiving information on monitoring or meetings in which functional reviews were reviewed by the Commission. While the Department of Commerce did conduct on-site visits with Centers of Excellence in late calendar year 2008, contacts with Centers of Excellence could be made on a more frequent basis.

Recommendation 1-10

We recommend the Centers of Excellence Commission establish formal policies and procedures for monitoring the Centers of Excellence. At a minimum, the policies should address:

- a) Establishing quarterly monitoring requirements;
- b) Assessing job creation activities;
- c) Assessing significant variations from the applications;
- d) Establishing different reviews after the match has been met or after a specified period of time has expired; and
- e) Establishing the frequency of updates to the Commission and/or holding meetings specifically for monitoring.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission has now formalized in writing the policies and procedures for monitoring the Centers of Excellence which address the identified items.

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Complying with Annual Audit Requirement

NDCC Section 15-69-05, Subsection 2 states, in part:

"As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter."

Annual audits required by state law are not being conducted.

The Centers of Excellence engaged accounting firms to perform certain agreed-upon procedures on the funds received. Examples of procedures performed included reviewing cash match and other contributions received, reviewing support for jobs created, and reviewing a sample of expenditures for compliance with state law. We identified two Centers of Excellence combined their agreed-upon procedures work for two years rather than having the work done annually. We also identified one Center of Excellence did not have work done for one year.

The agreed-upon procedures work was done in an attempt to comply with the annual audit requirement in state law. Based on our review of the agreed-upon procedures work and other information, we conclude such work is not an "audit." No assertions are being tested by auditors and the auditors are expressing no opinions.

Recommendation 1-11

We recommend the Centers of Excellence Commission monitor compliance with North Dakota Century Code Section 15-69-05, Subsection 2 and ensure annual audits are completed or take appropriate action to modify the requirement for annual audits of Centers of Excellence.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission intends to request that the legislature clarify whether a full fiscal audit is required. The Commission is currently considering its options on how best to proceed with the annual audit requirement prior to the next legislative session.

Requiring Annual, Measurable Goals/Objectives

In monitoring the Centers of Excellence, selected information on the progress of the Centers of Excellence is obtained. Comparing the progress of Centers of Excellence to expectations can be difficult as certain projects may take an extended period of time to be completed. Thus, a determination whether expectations are being met or were achieved may not be accomplished for a long period of time. Also, changes with partners may occur or other factors can change which delay projects and have an impact on measuring performance of the Centers of Excellence. Monitoring of the Centers of Excellence is required by statute to be performed for a minimum of six years. The expectations identified in applications may not provide an effective means for monitoring year to year performance. Measuring performance should be based on current criteria.

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Recommendation 1-12

We recommend the Centers of Excellence Commission require the Centers of Excellence to establish measurable goals and objectives at least annually.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission will request each applicant to submit measurable goals and objectives as part of their application. In addition, each Center will be required to submit measurable goals and objectives on an annual basis.

Identifying Actions to Take

In our review of aspects of the Centers of Excellence, we identified noncompliance issues related to state law, noncompliance with reporting requirements, and indications of Centers of Excellence not meeting expectations. For example:

Policies and procedures should be established to identify actions to take when noncompliance exists and expectations are not being met.

- Centers of Excellence funds appear to have been used to supplant current operations which is prohibited by state law.
- When reporting information in the functional review, Centers of Excellence are required to attach support to corroborate reported contributions. In certain functional reviews, we identified a lack of support and support which was not consistent with reported amounts.
- One Center of Excellence application projected job creation of 35-38 private sector positions. Based on information provided by the Center of Excellence, a total of one private sector job and six positions at the university have been created in the three year span of the project.
- One Center of Excellence received their total approved amount of \$2 million in May 2006. Information in the 2008 functional review identified only \$2.7 million in matching funds had been obtained (\$4 million required).

The Centers of Excellence Commission has no established policies for actions to be taken by either the Commission or the Department of Commerce when noncompliance issues are identified or when expectations are not being met. For the 2007-2009 biennium, the Department of Commerce received legislative authority and established a process in which the Centers of Excellence were not awarded the full amount approved at the beginning of the project. Rather, the Department of Commerce set up a payment schedule for each Center of Excellence in order to obtain information prior to release of additional funds.

Recommendation 1-13

We recommend the Centers of Excellence Commission establish formal policies and procedures addressing actions to be taken when Centers of Excellence are in noncompliance with requirements and when Centers of Excellence are not meeting stated expectations.

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Management's Response

Agree with the recommendation. The Centers of Excellence Commission will establish written policies and procedures addressing action to be taken when Centers are not in compliance with requirements or are not meeting stated expectations. These policies and procedures may include provisions being inserted into the formal award agreements with the Centers on what the actions will be. Any potential actions will be within the authority granted to the Commission in state law.

Establishing Policies and Procedures for Matching

The purpose of the first objective of the functional review is to document the receipt of cash or commitment of in-kind contributions declared in the application. This is done in an attempt to confirm \$2 of private sector or other funds were received for each \$1 of state funds. The purpose of the second objective in the functional review is to have Centers of Excellence document other funds obtained not identified in the application ("leveraged" funds). We identified inconsistencies with the reporting and verification of these funds. For example:

Policies and procedures should be established related to verification of matching or leveraged funds received.

- Centers of Excellence were not providing information as to match amounts or leveraged funds identified in the application.
- Amounts reported were not accurate or supported by documentation. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners.
- While the functional review requests information as to the cash amount received as of the date of review, we identified Centers of Excellence used reports reflecting requests for reimbursement from federal agencies rather than reporting the actual amount of cash received.

The Centers of Excellence Commission has no established policies or procedures related to verification of matching or leveraged funds being received. In certain instances, the letters of commitment included in the application continue to be used as supporting documentation by the Centers of Excellence in the functional reviews.

Recommendation 1-14

We recommend the Centers of Excellence Commission establish formal policies and procedures related to matching requirements. At a minimum, the policies should address:

- a) Required documentation to receive Centers of Excellence funds after an application is approved; and
- b) Requirements for verifying match and leverage amounts are actually received.

Management's Response

Agree with the recommendation. The Centers of Excellence Commission will formalize in writing the policies and procedures related to matching requirements.

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Establishing Orientation Training

When the Centers of Excellence Commission was established (2005 Session Law), a Code of Ethics was adopted which required provisions of the code to be reviewed and signed by each Commission member at the time of appointment. Commission members were not signing a statement regarding their review of the Code of Ethics. We also identified no formal orientation training process for newly appointed members.

Recommendation 1-15

We recommend the Centers of Excellence Commission establish a formal orientation training process for its members. At a minimum, the process should include:

- a) Identifying all state law requirements of the Commission; and
- b) Ensuring compliance with Code of Ethics requirements.

Management's Response

Agree with the recommendation. A formal orientation and training process has now been established. The most recently appointed Centers of Excellence Commission member has been through this process and the existing members have received the orientation materials. Each current member of the Centers of Excellence Commission has signed an acknowledgement agreeing to the Code of Ethics requirements.

Centers of Excellence Established in State Law

The 2003 Legislature established the following three Centers of Excellence within state law (specific appropriation amount for each is in parenthesis):

- North Dakota State University Beef Systems Center of Excellence (\$800,000)
- North Dakota State University Center for Technology Enterprise (\$1.25 million)
- University of North Dakota Center for Innovation (\$800,000)

These particular Centers of Excellence are not monitored by the Centers of Excellence Commission. Also, the three are not required to have an annual audit conducted as is required of those approved by the Centers of Excellence Commission.

We had discussions with representatives of the Center for Technology Enterprise (now called the Research and Technology Park) regarding the use of state funds, operations, and history. We also toured the facility in Fargo.

We reviewed a lease agreement between North Dakota State University (NDSU) and the Research and Technology Park. The agreement identifies 55 acres of state owned land is leased to the Research and Technology Park for \$1 per year for 75 years. We identified a similar agreement at the University of North Dakota (UND) entered into with the UND Research Foundation for the Center of Excellence in Life Sciences and Advanced Technologies (\$1 per year for 30 years). We had

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concerns regarding the lease of state land for a low dollar amount. Based on discussions with a representative of the Office of the Attorney General, the authority granted in state law to the State Board of Higher Education would appear to make such lease agreements legal and would not violate constitutional provisions.

We conducted a limited review of the Beef Systems Center of Excellence. We had discussions with representatives regarding the use of state funds, operations, and history. We also toured the facility in Fargo. We reviewed 15 expenditures of this Center of Excellence and determined two of the expenditures used state funds inappropriately. While the amount of the expenditures is nominal (approximately \$330), appropriated funds were not used for their intended purpose. A NDSU representative stated both expenditures were inadvertently posted to the Center of Excellence.

Monitoring Department Operations

Introduction

An objective of this performance audit was to answer the following question:

"Has an adequate system for monitoring operations of the Department of Commerce been established?"

We determined an adequate system for monitoring operations of the Department of Commerce (Commerce) has not been established. While Commerce has made certain changes with monitoring since it was established in 2001, additional improvements are needed. Significant improvements needed with monitoring are included in this chapter. Improvements of less significance were communicated in a separate letter to management.

To determine whether an adequate system for monitoring operations of Commerce had been established, we:

- Reviewed applicable laws, policies, and procedures;
- Reviewed 6 grant and loan programs administered by Commerce (information related to our review of the Development Fund, Inc. and the Agricultural Products Utilization Commission is included in Chapters 3 and 4 respectively);
- Reviewed established plans, performance measures, and benchmarks;
- Reviewed applicable studies and reports;
- Reviewed supporting documentation for selected expenditures; and
- Interviewed selected personnel.

Establishing Department-Wide Monitoring

Improvements are needed to have an effective department-wide monitoring function.

Through our review of limited aspects of Commerce, we identified a number of areas where improvements were needed. Improvements related to compliance, efficiencies, and other areas were identified and are addressed in this chapter as well as Chapters 3 and 4. There is a lack of centralization of functions and uniform processes as each division within Commerce appears to operate independently of other divisions. We identified limited department-wide monitoring efforts of Commerce have been established.

In review of recent legislative changes related to Commerce, we identified a number of programs and various requirements have been added. Commerce needs to invest a significant amount of time establishing appropriate processes and procedures for these new duties. This, in turn, takes away resources available to existing operations.

Recommendation 2-1

We recommend the Department of Commerce establish an effective department-wide monitoring function emphasizing compliance, consolidation of processes and procedures, and efficient operations. If reallocating resources is not possible to establish such a function, the Department should take appropriate action to obtain additional full-time equivalent positions and/or other necessary resources.

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Management's Response

Commerce agrees with the recommendation and will review available resources and determine whether it is possible to reallocate resources or if Commerce will need to seek additional full-time equivalent positions to establish a department-wide monitoring function.

Making Improvements to Monitoring the Community Development Block Grant Program

As part of the performance audit, we selected certain grant and loan programs to review. Our review of the Community Development Block Grant (CDBG) program identified improvements were needed. We identified administrative costs at the local level were not adequately monitored. In addition, other monitoring improvements should be made and changes are needed with certain contracts.

The CDBG program provides financial assistance to eligible units of local governments in the form of grants and loans for public facilities, housing rehabilitation, and economic development projects. The primary beneficiaries of these projects must be low income individuals. The federal CDBG program was established by Congress in the Housing and Community Development Act of 1974. In 1981, Congress amended the act to authorize state governments to administer the State CDBG Program. The Division of Community Services within Commerce administers the program.

Verifying Administrative Costs are Adequately Supported and Reasonable

Federal funds provided for local grant administration are not monitored.

The CDBG grant funds provided to local governments include funds to pay for project costs and grant administration costs. We identified Commerce monitors the use of the project funds provided. However, there is no monitoring of the funds provided to local governments for administration costs.

Local governments enter into contracts with their respective Regional Planning Council for grant administration. Program information identified by Commerce estimated over \$300,000 a year of CDBG funds were used for local grant administration. We identified concerns regarding a lack of support for expenditures incurred by the councils. As a result, federal funds could be put at risk.

Recommendation 2-2

We recommend the Department of Commerce ensure administrative costs of local recipients paid with Community Development Block Grant funds are reasonable and adequately supported.

Management's Response

Commerce agrees with the recommendation. Commerce believed the current process reasonably monitored the administrative costs of the local recipients. In order to evaluate the current process, we intend, in consultation with the Auditor's Office, that this issue will be presented to the U.S. Department of Housing and Urban Development (HUD) and the formal guidance provided by them (signed by an appropriate federal official) will be followed.

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Improving Monitoring

Commerce performs grant administration work which should be performed at the local level.

The CDBG program reimburses local governments for work performed on the project when Request for Funds is submitted. Except in certain circumstances, Commerce does not require supporting documentation to be submitted when a Request for Funds is submitted. However, in review of 25 projects, we identified the majority of requests include supporting documentation. Commerce invests time to review such documentation and determines whether expenditures are appropriate. Such grant administration work should be performed at the local level, not by Commerce. CDBG funding is provided to local governments specifically for grant administration on each project.

In grant administration, it is not a common practice to require all support to be submitted when funds are requested. Typically, grantees are required to maintain supporting documentation and provide it only when requested. The current process of Commerce reviewing supporting documentation on Requests for Funds is not an efficient or effective use of time.

Recommendation 2-3

We recommend the Department of Commerce make improvements to Community Development Block Grant program monitoring processes to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) Identify information to the grant administrators on their responsibilities and duties;
- b) No longer accept and review supporting documentation on all Request for Funds; and
- c) Periodically select various grants and loans to verify adequate support for expenditures is retained.

Management's Response

Commerce agrees with part A of the recommendation and beginning Oct. 1, 2009, grant administrative duties and responsibilities will be listed on CDBG awards. Commerce disagrees with part B and C of the recommendation. Commerce believes it is in the best interest of the program to determine the amount of review needed. Commerce intends to continue to collect supporting documentation on all projects and will continue its practice of reviewing selected information.

State Auditor's Concluding Remarks

Management's response states it will continue to collect supporting documentation on all projects and will continue reviewing selected information. Collecting documentation which will not be reviewed is highly inefficient and we question the benefit of having to maintain such documentation when it is not to be used by Commerce.

Reviewing supporting documentation for all Request for Funds is also inefficient. Reviewing detailed supporting documentation to determine appropriateness is a primary duty of grant administration. Commerce provides over \$300,000 a year to local governments for grant administration. If adequate grant administration is not being provided at the local level, Commerce should evaluate the reasonableness of dollars being expended for a service which is not adequately performed. If

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Monitoring Department Operations

Improving Contracts with Regional Planning Councils

Certain regions use a scoring system weighted relatively high on subjective criteria to evaluate applications.

Commerce is going to have to continue to perform grant administration services, it should be compensated for this responsibility (withhold federal funds for administration purposes) and ensure adequate resources are available to perform this function.

Commerce enters into a contract with each Regional Planning Council for the evaluation of applications to receive CDBG funding. The top ranked applications at the regional level are forwarded to Commerce for approval. Each of the 8 councils has developed their own scoring and ranking systems. In limited review of scoring systems, we identified a relatively large amount of the total score was based on subjective criteria. For example, one Regional Planning Council uses 60% subjective criteria and 40% objective criteria to rank each project to determine those which will be forwarded to Commerce.

The contract with the Regional Planning Councils contains Code of Conduct and Conflict of Interest statements which prohibits council members from obtaining a financial interest or benefit. However, neither statement requires members to sign acknowledgment of these statements on an annual basis. There is no assurance all council members evaluating applications are aware of applicable requirements and their responsibilities in making decisions regarding the use of federal funds.

Recommendation 2-4

We recommend the Department of Commerce make changes to the contracts entered into with the Regional Planning Councils for scoring and ranking Community Development Block Grant applications. At a minimum, the contracts should:

- a) Identify a maximum amount for subjective scores; and
- b) Require a Conflict of Interest and/or Code of Conduct statement be developed and signed annually by individuals conducting the scoring and ranking of applications.

Management's Response

Commerce agrees with part B of the recommendation and will require signed Conflict of Interest statements from all board members participating in regional scoring and ranking sessions. Commerce disagrees with part A of the recommendation and will continue with the current scoring and ranking system, due to the unique needs and objectives of the eight regions.

Improving the Operation Intern Program

As part of the performance audit, we selected certain grant and loan programs to review. Our review of the Operation Intern grant program identified improvements were needed. We identified concerns with contract administration and monitoring procedures. We also identified improvements were needed with verifying student eligibility and obtaining reviews.

The Operation Intern program was created by the 2007 Legislature. The program provides matching funds to support the expansion of internships

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and work experience opportunities with North Dakota employers for students enrolled in a postsecondary school in the state. Commerce will pay 50% of the students' salary with a maximum of \$3,000 per student per year. Each student can participate in the program for up to two years.

Making Improvements with Monitoring

The Operation Intern program reimburses employers for student interns' salary expenses. Commerce requires employers to submit supporting documentation for every reimbursement request. This is a significant amount of information being submitted, including time sheets, payroll reports, etc. In grant administration, it is not a common practice to require all support to be submitted when funds are requested. Typically, grantees are required to maintain supporting documentation and provide it only when requested. Also, our review of other fiscal monitoring performed by Commerce identified the same information was being reviewed multiple times. The monitoring procedures are not an efficient or effective use of time.

Recommendation 2-5

We recommend the Department of Commerce make improvements to Operation Intern monitoring procedures to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) No longer require supporting documentation be submitted for all Requests for Funds;
- b) Periodically select various employers to verify adequate support for expenditures is retained; and
- c) Eliminate redundant monitoring processes.

Management's Response

Commerce agrees with the recommendation and effective September 1, 2009, supporting documentation will no longer be required at the time of the Request for Funds. Commerce will select various employers to verify that adequate support for expenditures has been retained. Commerce has begun to review and will continue to review our monitoring processes to eliminate redundancy.

Verifying Eligibility and Providing Information

Commerce requests certain information from students participating in Operation Intern. Students are to certify on the application form they are a United States citizen and are enrolled in a North Dakota college or university. Other eligibility requirements established by Commerce include:

- Minimum 2.75 GPA;
- Not delinquent on student loans; and
- Applying for an experience that corresponds with his or her academic major or course of study.

Student eligibility requirements are not verified.

In review of information and in discussion with Commerce representatives, eligibility requirements are not verified. Thus, there is limited assurance students have met eligibility requirements. Rather than Commerce investing the necessary resources, assurance of eligibility could be obtained by requiring employers to verify certain

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information (such as obtaining a transcript from the students). Employers are in a better position to verify eligibility than Commerce.

To assist in monitoring the program, Commerce requests students and employers to complete midpoint and exit reviews. These communications are used by Commerce to evaluate the students' and employers' experiences during the internships. In review of selected files we identified 7 out of 9 employers did not have all midpoint reviews completed during the internships. Additionally, 5 out of 6 employers did not have exit reviews completed following the internships. Employers have relationships with the students and should be able to initiate such reviews being performed rather than Commerce. This should assist in increasing the response rate to a more appropriate level.

Recommendation 2-6

We recommend the Department of Commerce include requirements in the Operation Intern contracts to have employers:

- a) Verify student eligibility and maintain documentation confirming eligibility; and
- b) Provide the midpoint and exit review materials to students at the appropriate time during the internships.

Management's Response

Commerce agrees with the recommendation and will include employer requirements in Operation Intern contracts. We will ask employers to verify student eligibility and maintain documentation confirming eligibility. Commerce has begun to provide employers with an electronic survey of midpoint and exit student reviews. We will encourage the use of this survey tool to gather valuable program feedback.

Making Improvements with Contracts

Commerce enters into a contract with employers for the Operation Intern program. Our review of the contract identified standard terms and conditions were not consistent with the guidelines established by the Office of the Attorney General. Commerce representatives stated the Operation Intern contract has not been reviewed by legal counsel.

A new contract is entered into by Commerce for changes made to contractual terms. A standard contract amendment document would make such changes more efficient.

In review of 9 employers, we identified 5 employers were reimbursed for costs which were incurred prior to contracts being executed. Also, we identified 2 instances in which contract extensions were executed after the expenditures had already been incurred.

Recommendation 2-7

We recommend the Department of Commerce make improvements to the Operation Intern program contracts. At a minimum, the Department of Commerce should:

- a) Develop a contract template using recommended language from the Office of the Attorney General's Contract Drafting and Review Manual;
- b) Develop a contract amendment document;

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- c) Ensure the contract template and amendment are reviewed and approved by legal counsel; and
- d) Ensure contracts with employers and applicable amendments are executed prior to students beginning work.

Management's Response

Commerce agrees with the recommendation and will make improvements to the Operation Intern program contracts in consultation with the Attorney General's Office.

Improving Tourism Infrastructure and Expansion Grants

Our review of the Tourism Infrastructure and Expansion Grant Program identified improvements were needed. We identified noncompliance with a program policy and identified no formal agreements were entered into with grant recipients.

Tourism Infrastructure and Expansion Grants support new or expanding tourism facilities, recreation facilities, and designated development areas primarily through infrastructure projects. Non-profit organizations may apply to Commerce for infrastructure project funding. A project may receive a maximum award of \$24,000. Organizations must have a cash match of at least 50% of the award.

Complying with Grant Policy

A policy was established for the Tourism Infrastructure and Expansion Grant Program identifying the criteria to receive a grant. One criteria required applicants to provide a cash match. In review of six grants, we identified one applicant used a land donation as its match. The Tourism Director stated an exception was made for this project as this type of attraction is in high demand. If the land value was excluded from the match amount, it appears the project would have been ineligible for consideration. Changing criteria can lead to an unfair process as potential applicants may not have applied due to not meeting stated criteria.

Recommendation 2-8

We recommend the Department of Commerce comply with its policy when evaluating Tourism Infrastructure and Expansion Grant Applications to provide a fair system for all potential applicants.

Management's Response

Commerce agrees with the recommendation and will comply with our policy in reviewing Tourism Infrastructure and Expansion grant applications. The policy has been revised to allow for real estate and equipment.

Entering Into Formal Agreements

Commerce sends a letter to recipients notifying them when they have been approved for a Tourism Infrastructure and Expansion Grant. No formal agreement is entered into with recipients containing appropriate grant language, providing the appropriate liability/insurance coverage for the state, and reducing the risk involved with funds being spent inappropriately.

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Recommendation 2-9

We recommend the Department of Commerce enter into formal agreements with Tourism Infrastructure and Expansion Grant recipients.

Management's Response

Commerce agrees with the recommendation and is drafting a formal agreement to be included with the next grant award letters.

Complying with North Dakota Century Code

Through a review of North Dakota Century Code (NDCC) and discussions with Commerce representatives, we identified improvements were needed to ensure Commerce was in compliance with state law requirements. A process for periodically reviewing state law should be established and appropriate actions may need to be taken to make changes to state law.

Ensuring Compliance with North Dakota Century Code

In a review of selected NDCC requirements, we identified instances in which Commerce appeared to be in noncompliance. Examples include:

Improvements are needed to ensure compliance with state law.

- NDCC Section 54-44.5-08 requires the Division of Community Services to inform all state agencies and institutions of the State Facility Energy Improvement Program by August 15 of each odd-numbered year. The notification is provided through a letter sent to all state facility managers with information on how to apply for funding to improve energy efficiency at their facilities. No letter appears to have been sent in 2007.
- Prior to the 2009 Legislative Session, NDCC Section 54-34.4-04 required a North Dakota motion picture development office to be a part of the Division of Tourism. We identified Commerce was in noncompliance with this section as no such office was in existence for an extended period of time. While the office was apparently funded and staffed at one time, the Tourism Director stated the office had not been in existence for at least six years. At the request of Commerce, the motion picture development office language was removed from NDCC by the 2009 Legislature.
- Prior to the 2009 Legislative Session, NDCC Section 54-60-03 stated the Commerce Commissioner was to prepare a list of economic development moneys included in budget requests of certain agencies. We identified this was not being accomplished. This requirement of the Commissioner was removed from NDCC by the 2009 Legislature.

Recommendation 2-10

We recommend the Department of Commerce periodically review applicable North Dakota Century Code sections and ensure compliance with requirements or take appropriate action to make changes.

Management's Response

Commerce agrees with the recommendation and will continue to strive to comply or will take the appropriate action to make changes.

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Making Improvements with the Value-Added Agriculture Promotion Board

NDCC Section 54-34.3-12 establishes the Value-Added Agriculture Promotion Board. The Board consists of a minimum of nine and a maximum of eleven members. Prior to the 2007 Legislative Session, the Board's role included reviewing proposals for value added agriculture projects, prioritizing projects, and appointing financing advisory groups for projects. In review of information, it appears Commerce was reviewing projects without consulting the Board due to the rapid change and development of projects. The 2007 Legislature modified the Board's role to:

- a) Serve in an advisory role to the Commissioner of Commerce on issues related to value-added agriculture;
- b) Meet at times determined by the Commissioner; and
- c) Promote the formation, development, and growth of value-added agriculture projects across the state.

At the time of our review, the Board had not met in nearly three years. We are unsure how the Board is fulfilling its responsibilities. In addition, while state law requires the Board to consist of at least 9 members, the total number of members is 8.

Recommendation 2-11

We recommend the Department of Commerce make improvements with the Value-Added Agriculture Promotion Board by either

- a) Ensuring compliance with state law requirements; or
- b) Taking appropriate action to amend state law.

Management's Response

Commerce agrees with the recommendation. Commerce anticipates taking action to amend state law to either eliminate the Value-Added Agriculture Promotion Board or more carefully prescribe its role and its discretionary status.

Complying with Open Meeting Requirements

The North Dakota Commerce Cabinet is comprised of the directors of each Commerce division, executive heads of certain other state agencies, and the Commerce Commissioner. The Cabinet is to coordinate and communicate economic development and tourism efforts of the agencies represented. We identified the Cabinet is in noncompliance with open meeting requirements as no public notice is given in advance of meetings as required.

Recommendation 2-12

We recommend the Department of Commerce ensure the Commerce Cabinet complies with state law requirements related to meetings of public entities or take appropriate action to modify state laws.

Management's Response

Commerce agrees with the recommendation and has now implemented the requirements related to meetings of public entities.

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Making Improvements with Procurement

Improving Payments for Services

Payments were made in
advance of services
being performed.

Based on a review of the Department of Commerce procurement process, we identified improvements were needed. We identified payments were made before services were performed. In addition, we identified changes were needed to improve compliance with procurement laws and policies.

In review of payments, we identified the Department of Commerce was making pre-payments to contractors. For example, a contract required Commerce to pay \$36,000 in advance of services being received. Also, while Commerce typically withholds final payments to presenters or promotional representatives until services are received, we did identify a payment was made before the event was held.

When advance payments are made, there is a risk the goods or services will not be received or required specifications will not be met. Withholding payment until satisfactory performance has been accomplished is one way to ensure the state receives goods or services in compliance with contract terms.

Recommendation 2-13

We recommend the Department of Commerce ensure contractual payments are made after services have been performed to the department's satisfaction.

Management's Response

Commerce agrees with the recommendation and has improved our procurement process to ensure contractual payments are generally made after services have been performed. Commerce also understands that some exceptions are permitted and will ensure that all exceptions will be in accordance with information provided to us by the State Auditor's Office.

Complying with Purchasing Policies and Procedures

In a review of 63 procurement related expenditures, we identified 7 instances of noncompliance with procurement laws, policies, and procedures. For example, we identified Commerce purchased software (\$13,000) from a vendor no longer included on the state contract for software. In the Department of Commerce financial audit report for the biennium ended June 30, 2007, a recommendation was made related to noncompliance with procurement requirements. While Commerce has made certain changes to the procurement process, improvements are still needed to ensure compliance.

Recommendation 2-14

We recommend the Department of Commerce make improvements to procurement processes to ensure compliance with laws and policies.

Management's Response

Commerce agrees with the recommendation and will make improvements with our procurement processes to ensure compliance with laws and policies.

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Improving Monitoring of Contracts

In review of 5 contracts, we identified improvements were needed with the monitoring of contracts. For example, in all 5 contracts reviewed, appropriate insurance documentation was not obtained and/or the insurance documentation did not identify the appropriate insurance requirements as required by the contract. We identified inconsistencies with documenting changes to contracts and changes were needed with centralizing contract administration.

Recommendation 2-15

We recommend the Department of Commerce make improvements with the monitoring of contracts. At a minimum, the Department of Commerce should:

- a) Centralize contract administration and record keeping; and
- b) Ensure appropriate insurance certificates or endorsements are obtained.

Management's Response

Commerce agrees with the recommendation and will make improvements with the monitoring of contracts.

Complying with Legislative Intent

In review of Session Laws and Commerce expenditure information, we identified improvements were needed to ensure compliance with legislative intent. Two instances identified included:

Lewis and Clark appropriated funds were used to pay non Lewis and Clark expenses.

- Starting in the 2001-2003 biennium and continuing through the next two bienniums, Commerce's appropriation included a line item funding amount for "Lewis and Clark bicentennial." In review of 5 expenditures paid by Lewis and Clark appropriated funds, we identified one expenditure was unrelated to Lewis and Clark activities (\$4,000). While Commerce representatives stated they believed this line item was intended to pay for more than just Lewis and Clark activities, our review identified the specific appropriation was required to be expended only on Lewis and Clark activities. We also identified the other four expenditures reviewed included Lewis and Clark and non Lewis and Clark expenses related to other tourism areas. Lewis and Clark appropriated funds paid for the entire expenditure. Commerce representatives stated splitting bills and allocating costs would have been time consuming. Also, Commerce representatives stated other funding sources were used to pay for Lewis and Clark activities. However, no listing was maintained of Lewis and Clark activities paid with other funds.
- Based on a review of legislative information, the 2005 Legislature provided one full-time equivalent (FTE) position to Commerce for operating an American Indian Business Development Office within the department. The FTE position provided for this office was used by Commerce to hire a human resource person in February 2007. In the spring of 2006, the American Indian Business Development Office was established through a contractual relationship with an outside vendor. Based on guidance we received from the Office of the Attorney General, it

An FTE position provided to Commerce for operating an American Indian Business Development Office was used to hire a human resource person.

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appears Commerce had legal authority to do this based on the broad authority granted to the Commissioner within NDCC Chapter 54-60. However, we conclude the FTE position was specifically given by the Legislature to Commerce for operating an American Indian Business Development Office within the department and this did not occur.

Recommendation 2-16

We recommend the Department of Commerce comply with legislative intent for use of line item appropriations and full-time equivalent positions.

Management's Response

Commerce agrees with the recommendation, however, Commerce believes it complied and will continue to comply with the legislative authority and intent granted to Commerce for use of line item appropriations and full-time equivalent positions. See Appendix D for the remainder of Commerce's response.

State Auditor's Concluding Remarks

While Commerce states it agrees with the recommendation, Commerce states it believes it complied with legislative intent. Thus, it appears Commerce actually disagrees with our conclusion regarding noncompliance with legislative intent. See Appendix D for the remainder of the State Auditor's concluding remarks.

Making Changes with Calculating Overtime and Compensatory Time

Based on a review of salary information and payments to employees of Commerce, we identified employees were being paid overtime and earning compensatory time in weeks when annual or sick leave was used. This contradicts Commerce's policy on calculating overtime and allows the employee to convert such leave into additional pay. For example, an employee who worked 39 hours in a week also recorded 16 hours of sick leave. Rather than reduce the amount of sick leave taken to one hour, the employee received 15 hours of compensatory time.

Recommendation 2-17

We recommend the Department of Commerce ensure employees are paid overtime and earn compensatory time only when hours actually worked exceed 40 in a week.

Management's Response

Commerce agrees with the recommendation and immediately implemented it after it was brought to our attention.

Establishing a Uniform Hiring Process

Based on a review of information regarding how employees of Commerce are hired, we identified the hiring process was decentralized and improvements were needed. Each division uses their own screening and hiring process. We identified various point scales used by divisions to evaluate candidates. In one instance, the point scale included an inadequate amount of veterans' preference points for applicable candidates.

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Recommendation 2-18

We recommend the Department of Commerce establish a consistent and uniform process for hiring employees. At a minimum, the Department of Commerce should:

- a) Centralize the hiring process;
- b) Establish a standardized scoring system; and
- c) Ensure compliance with laws and policies.

Management's Response

Commerce agrees with the recommendation and will establish a more uniform hiring process.

Improving Policies and Procedures at Commerce

Based on a limited review of policies established by Commerce, we identified improvements were needed. We identified a policy contradicted an Office of Management and Budget (OMB) policy, certain policies may be outdated, and certain programs within Commerce had no established policies and procedures.

Making Changes to the Cell Phone Policy

Reimbursements to employees for cell phone charges were for more than what was allowed by OMB policy.

OMB Policy 523 states an employee is eligible for reimbursement for business calls made on a cell phone only if the employee has exceeded the "free minutes" given to the employee by their cell phone provider. Commerce's policy was to reimburse employees for business related calls on personal cell phones regardless of whether the "free minutes" were exceeded due to the business calls. In review of selected payments to employees, we did identify Commerce was reimbursing employees under their policy rather than OMB policy. As a result, payments were made to employees for more than what was allowed by OMB policy. We also identified the policy by Commerce did not address the personal use of state issued cell phones.

Recommendation 2-19

We recommend the Department of Commerce make changes to their cell phone policy. At a minimum, the policy should:

- a) Be consistent with Office of Management and Budget policy; and
- b) Address the use of state issued cell phones for personal use.

Management's Response

Commerce agrees with the recommendation and will amend our cell phone policy.

Ensuring Policies and Procedures are Established

In review of six Commerce grant and loan programs, we identified improvements were needed with certain policies and procedures. In certain programs reviewed, we identified policies did not reflect current practices as changes made to programs were not appropriately reflected in updated policies.

While all programs within Commerce were not reviewed, we did identify certain programs did not appear to have policies and procedures established. Policies should be established and kept current in order to ensure consistency with program operations. Without effective guidelines, program operations may not be administered efficiently and effectively.

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Recommendation 2-20

We recommend the Department of Commerce ensure programs and services have established policies and procedures which are reviewed and updated periodically.

Management's Response

Commerce agrees with the recommendation and will establish policies and procedures for all appropriate programs and services. These policies and procedures will be reviewed and updated periodically.

Making Improvements with Records Management

The Records Management Division of the Information Technology Department is responsible for establishing, implementing, and administering a records management program for all state agencies. Guidance provided by this division is to be followed by state agencies to ensure creation, maintenance, retention, and disposition of records. In review of selected Commerce programs, we identified a number of improvements were needed related to records management. Examples include:

Improvements are
needed with documents
and records created and
maintained by
Commerce.

- Certain documents used by Commerce do not contain an appropriate State Form Number (SFN). For example, applications used for Centers of Excellence awards, Development Fund, Inc. investments, and Operation Intern grants do not have a SFN assigned.
- Record series descriptions should be established to identify all appropriate records of the program and/or operation. We identified certain documents did not have a record series established. For example, letters sent to companies who are late on a loan payment to the Development Fund, Inc. are not included in a record series. Such documents are not maintained by the Development Fund, Inc.
- A record series has been established related to Centers of Excellence documents such as minutes, applications, and functional reviews. This series has an established retention period of four years. However, state law requires the Centers of Excellence to be monitored for not less than six years.

Recommendation 2-21

We recommend the Department of Commerce work with the Records Management Division of the Information Technology Department to make improvements to the records management program. At a minimum, actions should be taken to:

- a) Review all operations to identify appropriate records;
- b) Ensure appropriate records series descriptions and retention periods are identified; and
- c) Assign State Form Numbers to documents where appropriate.

Management's Response

Commerce agrees with the recommendation and has begun to work with Records Management to make improvements to our records management program.

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Using Secured Websites

An online application for students for the Operation Intern program was available on Commerce's website. The website used to gather student information, including social security numbers, addresses, and phone numbers, was not secure. Students' confidential or sensitive information is vulnerable to unauthorized use if someone were to gain access to the website submissions. Once the security concern was identified to representatives of Commerce, appropriate action was immediately taken.

Recommendation 2-22

We recommend the Department of Commerce ensure confidential or sensitive information is obtained through secured websites.

Management's Response

Commerce agrees with the recommendation and has removed the confidential and sensitive information from the online student application and will monitor all future online forms and documents.

North Dakota Development Fund, Inc.

Introduction

As part of the performance audit, we selected certain grant and loan programs to review. Our review of the North Dakota Development Fund, Inc. identified improvements were needed. Significant improvements are included in this chapter. Improvements of less significance were communicated in a separate letter to management.

The Development Fund, Inc. is established in North Dakota Century Code (NDCC) Chapter 10-30.5 as a nonprofit development corporation. It has the authority to provide capital for new or expanding businesses in this state, or relocating businesses to this state. Capital is provided through loans, equity investments, and other financing mechanisms. The corporation's principal mission is the development and expansion of primary sector businesses in this state.

The Development Fund, Inc. is responsible for the administration and management of the Development Fund, the Regional Rural Development Revolving Loan Fund, and the New Venture Capital Program. Those interested in obtaining funding submit an application to or contact representatives of the Development Fund, Inc. Investments are evaluated by an eight member Board of Directors. The Board is comprised of the Commissioner of the Department of Commerce or designee and representatives appointed by the Governor. The Development Fund staff are employees of the Department of Commerce.

To review the Development Fund, Inc., we:

- Reviewed applicable laws, policies, and procedures;
- Reviewed the application evaluation process;
- Reviewed documentation for 17 selected investment files;
- Reviewed applicable studies and reports;
- Reviewed contract management practices; and
- Interviewed selected personnel.

Making Improvements with Policies

Policies have been established for the administration of the North Dakota Development Fund, Inc. (Development Fund). We selected 17 investment files and compared the application process, payments to the recipient, and monitoring activities to the policies. We identified improvements should be made with reviewing and complying with investment policies.

In review of Development Fund investment files, we identified noncompliance with certain policies. Examples include:

- Personal guarantees were not obtained as required from individuals owning 20% or more of the company in which the Development Fund made investments.
- Investments were made in which no local institution was financially committed. The investment policy states the borrower must have a financially committed local financial institution.

Improvements are needed with reviewing and complying with investment policies.

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Development Fund staff stated exceptions to investment policies are made on a case-by-case basis depending on the compensating strengths of each proposed investment. However, exceptions and compensating factors were not being sufficiently documented in the investment files.

Development Fund policies require updating as they do not reflect current practices in all cases. For example, the investment policies identify limits for maximum investment per job created or retained as \$10,000 for urban and \$20,000 for rural. The Development Fund CEO stated those limits had been increased to \$20,000 urban and \$30,000 rural effective May 2008.

Recommendation 3-1

We recommend the North Dakota Development Fund, Inc. ensure compliance with policies for investments. In instances of exceptions or waivers of policies, reasons should be adequately documented.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and will ensure compliance with investment policies. Exceptions and waivers will be adequately documented and the reasoning for the exception and/or waiver will be added to the respective customer file.

Recommendation 3-2

We recommend the North Dakota Development Fund, Inc. make improvements with the policies established for investments. At a minimum, the Development Fund, Inc. should:

- a) Review and update current policies;
- b) Update policies when changes occur to the investment program; and
- c) Establish a periodic review process.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and will review the Fund's policies on a semi-annual basis. Any changes to the policies will be implemented as soon as they are changed.

Documenting Monitoring Activities

Relevant matters
concerning investments
were not documented.

The Development Fund's investment policy states:

"A file must be maintained for each investment approved by the Fund. Each file must contain sufficient information to provide a single reference source for all relevant matters concerning the investment. This information must include documentation on all action taken or proposed to be taken and all approvals and signatures required by this policy and established investment procedures."

The Development Fund staff is responsible for monitoring loans and equity investments. In our review of investment files, we identified all relevant matters were not documented. For example, staff do not

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document meetings held in person or via phone with companies who have a loan which is not being paid. In certain instances, we were unable to determine what monitoring activities or actions occurred.

Recommendation 3-3

We recommend the North Dakota Development Fund, Inc. ensure all relevant matters concerning investments, including monitoring activities and actions taken, are documented.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and will establish a system and requirement that all relevant matters concerning investments, including monitoring activities, are documented.

Making Improvements with Staff Authority

Establishing Authority of Fund Staff

The Development Fund investment policies state the Board of Directors is responsible for the general supervision of all affairs of the Fund, including establishing the investment policies of the Fund and approving all projects. We identified improvements should be made with establishing the authority granted to the Development Fund staff.

The policy manual states the Board may assign lending authority to the Development Fund staff as deemed appropriate. We identified very minimal to no formal authority being granted to staff. In review of a selection of Development Fund investments, we identified decisions were made by Development Fund staff regarding investment terms and conditions, including changes to Board approvals, without documented Board review and approval. Examples include:

Investment terms and conditions were being changed by Development Fund staff without documented Board review or approval.

- Approval conditions requesting life insurance and personal guarantees on key individuals of an investment file were waived by Development Fund staff.
- Development Fund staff was identified as making changes to interest rates and fees and extended approval periods without Board approval.

While the underlying reasoning provided by Development Fund staff appears to support the decisions made, there was no documented authority allowing the staff to make such decisions.

Recommendation 3-4

We recommend the North Dakota Development Fund, Inc. formally establish the authority granted to the staff regarding changes to terms and conditions of investments.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and the Board and staff will identify authoritative limits.

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Increasing Approval Authority

Development Fund investment policy requires investment applications over \$50,000 be approved by the Development Fund Board. Investment applications under \$50,000 can be approved by Development Fund staff. Summary information on requests less than \$50,000 is presented to the Board. However we identified very few investment applications less than \$50,000.

The Development Fund staff investment authority is low.

In review of a selection of Development Fund investment files, the Board agreed with the staff's investment recommendations on all of the investment files reviewed. The only investment which was not approved by the Development Fund Board also aligned with the Development Fund staff's do-not-approve recommendation. It appears the Development Fund staff investment authority of \$50,000 is low and could be increased.

Recommendation 3-5

We recommend the North Dakota Development Fund, Inc. increase the dollar limit of investments the staff is authorized to approve.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and the Board and staff will identify appropriate authoritative limits.

Complying with Open Meetings Laws

Discussions related to public information were held in executive session.

NDCC Section 10-30.5-07 states commercial or financial information of any entity in which an equity interest is purchased or considered or to which a loan has been made is confidential. For this reason, the Board is required to move into executive session when discussing the confidential information. In review of executive session meeting minutes, we identified discussions were held in executive session which were not related to confidential matters. For example, while in executive session discussion was held on the financial status of the Development Fund. We also identified actions were taken in executive session which should have occurred during an open meeting.

Recommendation 3-6

We recommend the North Dakota Development Fund, Inc. review, with assistance from the Office of the Attorney General, open meeting law requirements and make appropriate changes to comply with these requirements.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and will review the open meeting law requirements with the Office of the Attorney General and will make the appropriate changes.

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Developing a Code of Ethics

In review of Development Fund policies, we identified a Code of Ethics has not been established for the Board of Directors. A Code of Ethics identifies the ethical principles each Board member is expected to follow in carrying out their duties. A signed Code of Ethics ensures Board members are aware of their responsibilities in making decisions regarding the use of public funds.

Recommendation 3-7

We recommend the North Dakota Development Fund, Inc. establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.

Management's Response

The North Dakota Development Fund, Inc. agrees with the recommendation and will establish a Code of Ethics to be signed annually by all members of the Board of Directors.

Agricultural Products Utilization Commission

Introduction

As part of the performance audit, we selected certain grant and loan programs to review. Our review of the Agricultural Products Utilization Commission (APUC) grant program identified improvements were needed. Significant improvements are included in this chapter. Improvements of less significance were communicated in a separate letter to management.

The APUC grant program is funded through the Agricultural Fuel Tax Fund, created by North Dakota Century Code Section 4-14.1-02, and general fund appropriations. The mission of APUC is to create wealth and jobs through the development of new and expanded uses of North Dakota's agricultural products. APUC grants are intended for North Dakota companies that add value to a raw North Dakota agriculture commodity.

Those interested in obtaining an APUC grant are required to submit a grant application. Applications are evaluated by a nine member Board of Directors. The Board is comprised of representatives appointed by the Governor and state agency designees.

To review the APUC grant program, we:

- Reviewed applicable laws, policies, and procedures;
- Reviewed the application evaluation process;
- Reviewed documentation for 30 selected grant files;
- Reviewed applicable studies and reports;
- Reviewed contract management practices; and
- Interviewed selected personnel.

Monitoring North Dakota Administrative Code

North Dakota Administrative Code (NDAC) Chapter 95-02-02 establishes the scoring system to be used by the Board of Directors to evaluate each application. We identified grant applications from one category, Farm Diversification, were not scored as required by NDAC. When this grant category was created, APUC determined a subcommittee would evaluate the applications rather than using a scoring system. As a result, APUC is in noncompliance with NDAC. We identified NDAC for APUC has not been modified in an extended period of time.

Recommendation 4-1

We recommend the Agricultural Products Utilization Commission make improvements with the monitoring of requirements in North Dakota Administrative Code Title 95. At a minimum, the Agricultural Products Utilization Commission should:

- a) Ensure compliance with requirements established in rules; and
- b) Take appropriate action to ensure rules are updated as necessary.

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Management's Response

The Agricultural Products Utilization Commission agrees with the recommendation. APUC began updating their Administrative Code at their quarterly meeting on July 23, 2009 and will ensure compliance with requirements established in those rules.

Retaining Evaluation Documentation

NDAC Chapter 95-02-02 requires each application to be evaluated using the following scoring system:

Documentation of Board members' evaluation of applications is not maintained.

- Maximum 30 points for demonstration of high probability of job and wealth creation;
- Maximum 30 points for technical and commercial feasibility;
- Maximum 15 points for high probability of rapid commercialization;
- Maximum 10 points for demonstration of a shared commitment for matching funding;
- Maximum 5 points for geographical considerations (preference given to nonurban locales); and
- Maximum 10 points based on the Board member's judgment.

No documentation is maintained identifying Board members' evaluation of applications using the above scoring system. Board members are only providing a total score for each application. We were unable to determine whether each Board member evaluated applications in accordance with NDAC.

Recommendation 4-2

We recommend the Agricultural Products Utilization Commission retain scoring documentation for each member of the Board of Directors.

Management's Response

The Agricultural Products Utilization Commission agrees with the recommendation. APUC has kept an overall score sheet with all of the individual scores for each project from each commissioner. As of the July 23, 2009 quarterly meeting, APUC now retains the individual score sheets from each Commissioner.

Making Improvements with Guidelines

Improvements are needed with reviewing and complying with program guidelines.

We selected 30 grant files and compared the application process, payments to the grantee, and monitoring activities to the guidelines established for the administration of the APUC grant program. We identified improvements should be made with reviewing and complying with program guidelines. Examples related to noncompliance include:

- Nature-Based Tourism and Prototype guidelines state peer reviews will be obtained for projects in these categories. Peer reviews were not obtained for the three grant applications we reviewed in these categories.
- Upon approval, 50% of the awarded amount is provided to the grantee. Grantees are required to submit supporting documentation before the final payment is made. We identified a

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final payment was made to a grantee when no receipts or supporting documentation were included in the grant file.

- The Nature-Based Tourism guidelines state the maximum grant for a single enterprise is \$1,000. The Board approved a grant for a single enterprise under this category for \$10,000.

APUC guidelines have not been updated since July 2005 and do not appear to be reflecting current practices. For example, the APUC Director stated peer reviews were not obtained for Nature-Based Tourism and Prototype grants as they did not add value to the process.

Recommendation 4-3

We recommend the Agricultural Products Utilization Commission ensure compliance with established guidelines for the grant program.

Management's Response

The Agricultural Products Utilization Commission agrees with the recommendation. The Commission reviewed current guidelines during the July 23, 2009 quarterly meeting and will ensure compliance with established guidelines.

Recommendation 4-4

We recommend the Agricultural Products Utilization Commission make improvements with guidelines established for the grant program. At a minimum, the Agricultural Products Utilization Commission should:

- a) Review and update current guidelines;
- b) Update guidelines when changes occur to the grant program; and
- c) Establish a periodic review process.

Management's Response

The Agricultural Products Utilization Commission agrees with the recommendation. The Commission is currently reviewing the guidelines and will make changes that better reflect new policy. A yearly review schedule has been implemented.

Monitoring Expenditures

APUC performs grant administration work which should be performed at the local level.

APUC generally distributes grant funds in two payments. The first half is paid when the grant is awarded and the second half is paid after supporting documentation for expenditures is received. Grantees are required to submit supporting documentation for every expense included in the reimbursement request. This is a significant amount of information being submitted, including time sheets, payroll reports, receipts, etc.

In grant administration, it is not a common practice to require all support be submitted when funds are requested. Typically, grantees are required to maintain supporting documentation and provide it only when requested. The current monitoring procedures are not an efficient or effective use of time. In addition, examples of APUC making the second payment when all required expenditure support had not been received were identified.

Chapter 4

Agricultural Products Utilization Commission

Recommendation 4-5

We recommend the Agricultural Products Utilization Commission make improvements to expenditure monitoring procedures to increase efficiency and effectiveness. At a minimum, the Agricultural Products Utilization Commission should:

- a) No longer require supporting documentation be submitted for all reimbursement requests; and
- b) Periodically select various grantees to verify adequate support for expenditures is retained.

Management's Response

The Agricultural Products Utilization Commission disagrees with the recommendation. The recommended monitoring process has been utilized in the past. It was determined at that time to not be an effective process due to numerous inconsistencies and misunderstandings at the local level regarding specific use of funds.

State Auditor's Concluding Remarks

Management's response indicates the recommended monitoring process was used previously and was determined to not be an effective process. The reason identified for this relates to inconsistencies and misunderstandings at the local level regarding the use of funds. This appears to relate to a problem with the grant awarding process. Such misunderstandings should be addressed upfront in the grant process through education at the local level as well as being adequately addressed in grant agreements. These problems do not relate to the changes we recommend for monitoring. Commerce provided no evidence indicating the past problems encountered still exist. In our review of 30 grant files, we did not identify one instance in which APUC identified an inconsistency or misunderstanding of how the funds were to be used.

Reviewing detailed supporting documentation to determine appropriateness is a primary duty of grant administration. APUC grant applications require a fiscal agent to be identified. The fiscal agent would be responsible to account for the APUC grant funds and ensure they are spent appropriately. If the fiscal agents are not fulfilling their responsibilities, APUC should evaluate the reasonableness of dollars being expended for a service which is not adequately performed.

Developing a Code of Ethics

In review of APUC guidelines, we identified a Code of Ethics has not been established for the Board of Directors. A Code of Ethics identifies the ethical principles each Board member is expected to follow in carrying out their duties. A signed Code of Ethics ensures Board members are aware of their responsibilities in making decisions regarding the use of public funds.

Recommendation 4-6

We recommend the Agricultural Products Utilization Commission establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.

Chapter 4

Agricultural Products Utilization Commission

Management's Response

The Agricultural Products Utilization Commission agrees with the recommendation and a Code of Ethics will be developed, adopted and signed annually by the Board of Directors.

Audit and Commerce Background Information

Purpose and Authority of the Audit

The performance audit of aspects of the Department of Commerce (Commerce) was conducted by the Office of the State Auditor pursuant to authority within North Dakota Century Code (NDCC) Chapter 54-10.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of the Department of Commerce.

Background Information

Commerce was established by the 2001 Legislature and combined various state agencies into one department. Commerce is responsible for coordinating and focusing the state's economic development resources. Commerce's mission is to "lead North Dakota's efforts to attract, retain, and expand wealth."

Commerce is comprised of four divisions: Economic Development and Finance, Community Services, Workforce Development, and Tourism. Commerce strives to improve the quality of life of the people of North Dakota and targets five industries to broaden the state's economic base, create new wealth, and generate quality jobs for the state's people. The target industries are advanced manufacturing, tourism, energy, technology-based business, and value-added agriculture. Additional information on Commerce divisions and programs can be seen at Appendix C. Appropriation information is included in the following table.

Table 1			
Department of Commerce Appropriated Funds			
Biennium	General Funds	Other Funds	Total
2005-2007	\$19,137,553	\$57,189,994	\$76,327,547
2007-2009	\$26,278,544	\$55,761,293	\$82,039,837
2009-2011 ¹	\$58,476,303	\$138,261,105	\$196,737,408
¹ Includes adjustments and additional funds provided to Commerce not in the department's appropriation bill (\$68.6 million of federal fiscal stimulus funds are included).			

NDCC Chapter 15-69 establishes a Centers of Excellence program. Centers of Excellence projects are partnerships between colleges, universities, or related foundations (who receive the Centers of Excellence funds) and private sector companies to enhance economic development. This program is overseen by a six member Centers of Excellence Commission comprised of members from the North Dakota

Chapter 5

Audit and Commerce Background Information

Economic Development Foundation and the State Board of Higher Education. NDCC Section 15-69-04 states Commerce is responsible for managing the application process, reviews, and postaward monitoring at the request of the Commission.

The Centers of Excellence program received appropriation authority to award up to \$20 million in each of the 2005-2007, 2007-2009, and 2009-2011 bienniums.

Objectives of the Audit

The objectives of this performance audit are listed below:

"Does the application process and monitoring of the Centers of Excellence provide adequate accountability for the use of state funds?"

"Has an adequate system for monitoring operations of the Department of Commerce been established?"

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit field work was conducted from the middle of January 2009 to the middle of August 2009. The audit period for which information was collected and reviewed was July 1, 2005 through December 31, 2008. In certain cases, additional information was reviewed. This was done, in part, to obtain additional information on certain events and to take into consideration changes made during the 2009 Legislative Session. Specific methodologies are identified in the respective chapters of this report.

Employee Survey

Our office conducted an employee survey in November 2008 as part of the performance audit. Overall, the employee survey results identified a high positive response rate. For example, in response to the statement "Senior management communicates well with employees," 87% of respondents selected "Agree" or "Strongly Agree." In response to the statement "I am able to take issues to or can disagree with senior management without fear of consequences," 72% selected "Agree" or "Strongly Agree." Other positive response rates were identified in the areas of job satisfaction, favoritism not being an issue in raises and promotions, supervision, and the availability of necessary training and information systems.

Appendices

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Organization Chart with Programs and Functions	C1
Supplemental Response and Concluding Remarks	D1

List of Recommendations

- Recommendation 1-1** We recommend the Centers of Excellence Commission ensure compliance with North Dakota Century Code Section 15-69-04, Subsection 5 and determine whether Centers of Excellence are having the desired economic impact.
- Recommendation 1-2** We recommend the Department of Commerce ensure applications provided to the Centers of Excellence Commission contain budgeted expenditures which are in compliance with state law.
- Recommendation 1-3** We recommend the Centers of Excellence Commission establish formal policies and procedures for the application process. At a minimum, the policies should address:
- a) Definitions of key terms used in the application;
 - b) Submission of revised applications, budgets, and/or other information when recommending a lesser amount than is being requested;
 - c) Submission of information from Centers of Excellence previously receiving funding; and
 - d) Completed applications being forwarded to the Commission.
- Recommendation 1-4** We recommend the Centers of Excellence Commission establish formal policies and procedures for the evaluation of applications. At a minimum, the policies should address:
- a) A process incorporating all elements in North Dakota Century Code for consideration in approving and disapproving applications; and
 - b) Additional elements of consideration on applications from Centers of Excellence which were previously approved.
- Recommendation 1-5** We recommend the Centers of Excellence Commission establish criteria to be used for determining the approved funding amount in applications and analyze the effects of changing requested funding amounts of projects.
- Recommendation 1-6** We recommend the Centers of Excellence Commission establish formal policies and procedures for technical reviews of applications. At a minimum, the policies should address:
- a) A process for identifying proposals requiring a review;
 - b) Selection of a vendor to perform the review; and
 - c) Ensuring sufficient time exists to allow a review to be performed.
- Recommendation 1-7** We recommend the Centers of Excellence Commission review the due diligence requirements and either:
- a) Move the due diligence work to the beginning of the application process; or
 - b) Ensure an adequate amount of time is provided to allow the Department of Commerce to complete the due diligence work.

Appendix A

List of Recommendations

- Recommendation 1-8** We recommend the Centers of Excellence Commission enter into formal agreements with approved applicants. At a minimum, the agreements should address:
- a) Criteria for the use of state funds;
 - b) Documentation requirements for payroll expenses; and
 - c) Compliance with applicable purchasing policies.
- Recommendation 1-9** We recommend the Centers of Excellence Commission update the functional review to improve the efficiency and effectiveness of the monitoring and reporting process.
- Recommendation 1-10** We recommend the Centers of Excellence Commission establish formal policies and procedures for monitoring the Centers of Excellence. At a minimum, the policies should address:
- a) Establishing quarterly monitoring requirements;
 - b) Assessing job creation activities;
 - c) Assessing significant variations from the applications;
 - d) Establishing different reviews after the match has been met or after a specified period of time has expired; and
 - e) Establishing the frequency of updates to the Commission and/or holding meetings specifically for monitoring.
- Recommendation 1-11** We recommend the Centers of Excellence Commission monitor compliance with North Dakota Century Code Section 15-69-05, Subsection 2 and ensure annual audits are completed or take appropriate action to modify the requirement for annual audits of Centers of Excellence.
- Recommendation 1-12** We recommend the Centers of Excellence Commission require the Centers of Excellence to establish measurable goals and objectives at least annually.
- Recommendation 1-13** We recommend the Centers of Excellence Commission establish formal policies and procedures addressing actions to be taken when Centers of Excellence are in noncompliance with requirements and when Centers of Excellence are not meeting stated expectations.
- Recommendation 1-14** We recommend the Centers of Excellence Commission establish formal policies and procedures related to matching requirements. At a minimum, the policies should address:
- a) Required documentation to receive Centers of Excellence funds after an application is approved; and
 - b) Requirements for verifying match and leverage amounts are actually received.

Appendix A

List of Recommendations

- Recommendation 1-15** We recommend the Centers of Excellence Commission establish a formal orientation training process for its members. At a minimum, the process should include:
- a) Identifying all state law requirements of the Commission; and
 - b) Ensuring compliance with Code of Ethics requirements.
- Recommendation 2-1** We recommend the Department of Commerce establish an effective department-wide monitoring function emphasizing compliance, consolidation of processes and procedures, and efficient operations. If reallocating resources is not possible to establish such a function, the Department should take appropriate action to obtain additional full-time equivalent positions and/or other necessary resources.
- Recommendation 2-2** We recommend the Department of Commerce ensure administrative costs of local recipients paid with Community Development Block Grant funds are reasonable and adequately supported.
- Recommendation 2-3** We recommend the Department of Commerce make improvements to Community Development Block Grant program monitoring processes to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:
- a) Identify information to the grant administrators on their responsibilities and duties;
 - b) No longer accept and review supporting documentation on all Request for Funds; and
 - c) Periodically select various grants and loans to verify adequate support for expenditures is retained.
- Recommendation 2-4** We recommend the Department of Commerce make changes to the contracts entered into with the Regional Planning Councils for scoring and ranking Community Development Block Grant applications. At a minimum, the contracts should:
- a) Identify a maximum amount for subjective scores; and
 - b) Require a Conflict of Interest and/or Code of Conduct statement be developed and signed annually by individuals conducting the scoring and ranking of applications.
- Recommendation 2-5** We recommend the Department of Commerce make improvements to Operation Intern monitoring procedures to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:
- a) No longer require supporting documentation be submitted for all Requests for Funds;
 - b) Periodically select various employers to verify adequate support for expenditures is retained; and
 - c) Eliminate redundant monitoring processes.

Appendix A

List of Recommendations

- Recommendation 2-6** We recommend the Department of Commerce include requirements in the Operation Intern contracts to have employers:
- a) Verify student eligibility and maintain documentation confirming eligibility; and
 - b) Provide the midpoint and exit review materials to students at the appropriate time during the internships.
- Recommendation 2-7** We recommend the Department of Commerce make improvements to the Operation Intern program contracts. At a minimum, the Department of Commerce should:
- a) Develop a contract template using recommended language from the Office of the Attorney General's Contract Drafting and Review Manual;
 - b) Develop a contract amendment document;
 - c) Ensure the contract template and amendment are reviewed and approved by legal counsel; and
 - d) Ensure contracts with employers and applicable amendments are executed prior to students beginning work.
- Recommendation 2-8** We recommend the Department of Commerce comply with its policy when evaluating Tourism Infrastructure and Expansion Grant Applications to provide a fair system for all potential applicants.
- Recommendation 2-9** We recommend the Department of Commerce enter into formal agreements with Tourism Infrastructure and Expansion Grant recipients.
- Recommendation 2-10** We recommend the Department of Commerce periodically review applicable North Dakota Century Code sections and ensure compliance with requirements or take appropriate action to make changes.
- Recommendation 2-11** We recommend the Department of Commerce make improvements with the Value-Added Agriculture Promotion Board by either
- a) Ensuring compliance with state law requirements; or
 - b) Taking appropriate action to amend state law.
- Recommendation 2-12** We recommend the Department of Commerce ensure the Commerce Cabinet complies with state law requirements related to meetings of public entities or take appropriate action to modify state laws.
- Recommendation 2-13** We recommend the Department of Commerce ensure contractual payments are made after services have been performed to the department's satisfaction.
- Recommendation 2-14** We recommend the Department of Commerce make improvements to procurement processes to ensure compliance with laws and policies.

Appendix A

List of Recommendations

- Recommendation 2-15** We recommend the Department of Commerce make improvements with the monitoring of contracts. At a minimum, the Department of Commerce should:
- a) Centralize contract administration and record keeping; and
 - b) Ensure appropriate insurance certificates or endorsements are obtained.
- Recommendation 2-16** We recommend the Department of Commerce comply with legislative intent for use of line item appropriations and full-time equivalent positions.
- Recommendation 2-17** We recommend the Department of Commerce ensure employees are paid overtime and earn compensatory time only when hours actually worked exceed 40 in a week.
- Recommendation 2-18** We recommend the Department of Commerce establish a consistent and uniform process for hiring employees. At a minimum, the Department of Commerce should:
- a) Centralize the hiring process;
 - b) Establish a standardized scoring system; and
 - c) Ensure compliance with laws and policies.
- Recommendation 2-19** We recommend the Department of Commerce make changes to their cell phone policy. At a minimum, the policy should:
- a) Be consistent with Office of Management and Budget policy; and
 - b) Address the use of state issued cell phones for personal use.
- Recommendation 2-20** We recommend the Department of Commerce ensure programs and services have established policies and procedures which are reviewed and updated periodically.
- Recommendation 2-21** We recommend the Department of Commerce work with the Records Management Division of the Information Technology Department to make improvements to the records management program. At a minimum, actions should be taken to:
- a) Review all operations to identify appropriate records;
 - b) Ensure appropriate records series descriptions and retention periods are identified; and
 - c) Assign State Form Numbers to documents where appropriate.
- Recommendation 2-22** We recommend the Department of Commerce ensure confidential or sensitive information is obtained through secured websites.
- Recommendation 3-1** We recommend the North Dakota Development Fund, Inc. ensure compliance with policies for investments. In instances of exceptions or waivers of policies, reasons should be adequately documented.

Appendix A

List of Recommendations

- Recommendation 3-2** We recommend the North Dakota Development Fund, Inc. make improvements with the policies established for investments. At a minimum, the Development Fund, Inc. should:
- a) Review and update current policies;
 - b) Update policies when changes occur to the investment program; and
 - c) Establish a periodic review process.
- Recommendation 3-3** We recommend the North Dakota Development Fund, Inc. ensure all relevant matters concerning investments, including monitoring activities and actions taken, are documented.
- Recommendation 3-4** We recommend the North Dakota Development Fund, Inc. formally establish the authority granted to the staff regarding changes to terms and conditions of investments.
- Recommendation 3-5** We recommend the North Dakota Development Fund, Inc. increase the dollar limit of investments the staff is authorized to approve.
- Recommendation 3-6** We recommend the North Dakota Development Fund, Inc. review, with assistance from the Office of the Attorney General, open meeting law requirements and make appropriate changes to comply with these requirements.
- Recommendation 3-7** We recommend the North Dakota Development Fund, Inc. establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.
- Recommendation 4-1** We recommend the Agricultural Products Utilization Commission make improvements with the monitoring of requirements in North Dakota Administrative Code Title 95. At a minimum, the Agricultural Products Utilization Commission should:
- a) Ensure compliance with requirements established in rules; and
 - b) Take appropriate action to ensure rules are updated as necessary.
- Recommendation 4-2** We recommend the Agricultural Products Utilization Commission retain scoring documentation for each member of the Board of Directors.
- Recommendation 4-3** We recommend the Agricultural Products Utilization Commission ensure compliance with established guidelines for the grant program.
- Recommendation 4-4** We recommend the Agricultural Products Utilization Commission make improvements with guidelines established for the grant program. At a minimum, the Agricultural Products Utilization Commission should:
- a) Review and update current guidelines;
 - b) Update guidelines when changes occur to the grant program; and
 - c) Establish a periodic review process.

Appendix A

List of Recommendations

Recommendation 4-5

We recommend the Agricultural Products Utilization Commission make improvements to expenditure monitoring procedures to increase efficiency and effectiveness. At a minimum, the Agricultural Products Utilization Commission should:

- a) No longer require supporting documentation be submitted for all reimbursement requests; and
- b) Periodically select various grantees to verify adequate support for expenditures is retained.

Recommendation 4-6

We recommend the Agricultural Products Utilization Commission establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.

List of Centers of Excellence

The table below lists all approved Centers of Excellence grouped by institution and including the date approved by the Budget Section, approved amount, and a brief description of the use of funds. Excluded from the list are the University of North Dakota's Center of Excellence for Biomedical Device Research, Development, and Commercialization; and Minot State University's Great Plains Knowledge and Data Center. These Centers were approved on 10/30/07 but did not meet the requirements to receive funding.

Name	Date	Amount	Description
<i>Bismarck State College</i>			
National Energy Center of Excellence	12/15/05	\$3,000,000	Construct an Energy Technology Center for energy workforce training and environmental research
<i>Dickinson State University</i>			
Center for Entrepreneurship and Rural Revitalization – Institute for Technology and Business	6/14/06	\$1,150,000	Promote economic development through entrepreneurial strategies to help technology-based businesses start or expand in rural communities
<i>Lake Region State College</i>			
Dakota Center for Technology-Optimized Agriculture	12/15/05	\$450,000	Develop technology-optimized products to improve North Dakota agriculture
Dakota Center for Technology-Optimized Agriculture (Phase II)	10/30/07	\$400,000	Expand initial grant by addressing the need to harness emerging control technologies for agronomic knowledge
<i>Minot State University – Bottineau</i>			
Entrepreneurial Center for Horticulture	9/25/08	\$400,000	Support entrepreneurship in the organic and specialty vegetable industry
<i>North Dakota State University</i>			
Center for Advanced Electronics Design and Manufacturing	12/15/05	\$3,000,000	Research design and development of highly marketable products involving advanced electronics
Center for Surface Protection	3/8/06	\$2,000,000	Conduct research and development and provide consulting services relating to surface protecting coatings
Center for Surface Protection II	10/30/07	\$2,000,000	Expand research from initial grant to conduct market research and development related to gun barrel coatings
Center of Excellence for Agbiotechnology	3/8/06	\$2,000,000	Develop soybean and canola varieties with higher oil content to expand uses
Center of Excellence for Agbiotechnology: Oilseed Development II	10/30/07	\$1,500,000	Expand research from initial grant to work on different strains of seeds
Center for Integrated Electronic Systems	9/25/08	\$2,050,000	Perform market research and development projects involving systems integration of electronics hardware and software

Appendix B
List of Centers of Excellence

Name	Date	Amount	Description
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North Dakota State University (continued)

Center for Biopharmaceutical Research and Production	9/25/08	\$2,000,000	Perform research and development of biopharmaceuticals
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University of North Dakota

Energy and Environmental Research Center (EERC) National Center for Hydrogen Technology	12/15/05	\$2,500,000	Construct a facility to conduct research on and demonstrate usability of hydrogen as an energy source
Unmanned Aerial Vehicle and Simulation Applications Center of Excellence	3/8/06	\$1,000,000	Promote commercialization of new unmanned-related products and services and help attract new unmanned-related business ventures
Unmanned Aircraft Systems Center of Excellence (Phase II)	10/30/07	\$1,500,000	Continue research from initial grant by focusing on the integration of unmanned aircraft systems and human factors in flight performance
SUNRISE BioProducts	9/25/08	\$2,950,000	Develop and commercialize crop oil-derived chemicals, polymers, and composites
Petroleum Research, Education, and Entrepreneurship Center of Excellence	9/25/08	\$3,000,000	Pursue commercialization of the development of oilfield thermal energy
Center of Excellence in Space Technology and Operations	9/25/08	\$1,000,000	Perform collaborative research with an aerospace company and operate a university-built sensor onboard the international space station

University of North Dakota Research Foundation

Center of Excellence in Life Science and Advanced Technology	3/8/06	\$3,500,000	Construct a biosafety secured facility for offices, laboratories, pilot manufacturing sites, and advanced technology research
Center for Passive Therapeutics	9/25/08	\$2,650,000	Develop and commercialize multiple passive therapeutic antibodies

Valley City State University

Enterprise Applications Model – Institute for Customized Business Solutions	3/8/06	\$1,000,000	Provide knowledge and skills to companies seeking intellectual products such as customized coursework and training programs
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Williston State College

Petroleum Safety and Technology Center	3/8/06	\$400,000	Develop and operate a training site for individuals in oilfield industry careers
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Organization Chart With Programs and Functions

Governor				
Department of Commerce Commissioner				
Economic Development and Finance	Tourism	Community Services	Workforce Development	Additional Offices and Administration
Economic Development and Finance <ul style="list-style-type: none">• Agricultural Commodity Processing Facility Investment Tax Credit• Agricultural Products Utilization Grants• Ambassador Program• Center for Technology and Business• Computer and Telecommunications Equipment Tax Credit• Database Center• Economic Developer's Toolkit• Income Tax Exemption• Micro Business Income Tax Credit• New Venture Capital Program• North Dakota Development Fund, Inc.• Research Expense Credit• Seed Capital Investment Credit		Workforce Development <ul style="list-style-type: none">• AmeriCorps• Community Labor Availability Studies• Industry Sector Workforce Needs and Skills Assessment Studies• Jobs for America's Graduates - ND• ND Works Career Promotion Program• North Dakota Talent Initiative• Operation Intern• Office of Faith-Based and Community Initiatives• State Commission on National and Community Service• Workforce Development Council• Workforce Enhancement Grants• Youth Development Council	Community Services <ul style="list-style-type: none">• Alternative Fuel Vehicles• Americans with Disabilities Act• Community Development Block Grant• Community Development Loan Fund• Community Services Block Grant• Community Strategic Planning• Consolidated Plan• Emergency Shelter Grants• Ethanol Production Incentive• Excel Energy Thermostat Rebates• Grants for local government energy improvements• HMIS• HOME Program• LIHEAP• Manufactured Home Installation Program• Modular Buildings: Third-Party Inspection• ND Census Data Center• Neighborhood Stabilization Program• Renaissance Zone• Shelter Plus Care• Single Point of Contact (Intergovernmental Review)• State Building Code• State Energy Program• State Facility Energy Improvement Program• Solar technology• Weatherization Assistance	Additional Offices and Administration <ul style="list-style-type: none">• American Indian Business Development Office• Centers of Excellence• Dakota Manufacturing Extension Partnership• Experience ND• Innovate ND• ND Trade Office• Partners in Marketing• Small Business Development Centers
	Tourism <ul style="list-style-type: none">• Events Matched Grants• Group Travel• International Travel• Learning-Based Vacations• Lewis and Clark Grants• Marketing Matched Grants• Media Assistance• Tourism Advertising and Marketing• Infrastructure and Expansion Grants• Tourism Literature Distribution• Tourism Research• Vacation Packages			

Supplemental Response and Concluding Remarks

Management's Response to Recommendation 2-16

Lewis & Clark Marketing

Commerce believes it complied with legislative intent and authority in regards to Lewis and Clark marketing. Examples of the cooperative nature of tourism marketing were provided to the Legislature during testimony in 2003 and 2005 as the marketing program was developed. Experiences along the Lewis and Clark Trail were used as the primary lure to attract visitors during the bicentennial years. Due to the nature of tourism marketing, other activities, attractions and events were marketed cooperatively and resources were leveraged to offer a complete package to visitors who, in many cases, traveled many miles to get to North Dakota.

Full-time Equivalent Positions

Commerce believes it complied with legislative authority and intent concerning the American Indian Business Development Office (AIBDO) and the associated FTE.

All new FTEs are provided in the context of Commerce's preexisting legal authority and duty to deploy limited resources, both human and financial, in the most efficient and effective way possible. This includes broad legislative authority and intent for Commerce to reclassify FTE positions when necessary to achieve this end. The 2005 appropriations bill did not contain anything contrary to this preexisting legal authority.

Also, as intended by the legislature, Commerce does not fall under the State Human Resource Management System. Under that system, if an agency desires to reclassify an FTE, it must seek approval and authority from the Office of Management and Budget. The Department of Commerce, on the other hand, was structured by the legislature to have more flexibility than this to reclassify positions, not less. If Commerce implemented a more restrictive view on FTEs it would not be able to adapt swiftly and responsively to changing needs in North Dakota's economy, communities, and workforce as the legislature otherwise intends.

During the 2005-07 biennium, Commerce determined that in order to achieve the results envisioned by the legislature, the AIBDO would be best handled by a vendor. This plan to contract with a vendor was detailed in testimony and in a written report to the interim Legislative Council Economic Development Committee. This interim committee was charged by Section 46 of Senate Bill 2018 to receive a report from Commerce on the AIBDO, including whether there were potential changes that could be made to enhance the support of American Indian businesses. At that time, Commerce was evaluating the first six months of the vendor's performance and kept the FTE open during this evaluation period. Toward the end of 2007, after being satisfied with the vendor's initial performance, Commerce began examining plans to reclassify the FTE as part of a reorganization plan for Commerce.

Appendix D
Supplemental Response and Concluding Remarks

During the 2007 session, Commerce testified during legislative hearings about its implicit authority to contract and introduced legislation, which was subsequently approved, to make AIBDO statutory language consistent with other offices out-sourced by Commerce. Thus, Commerce's decision and authority to contract out the AIBDO was appropriately communicated to legislators and ultimately ratified by the 2007 legislature.

In all appropriate documents and testimony from Commerce during the 2007 legislative session, Commerce outlined plans to either fill or reclassify open FTE positions. This was done in the context of requesting two additional FTEs. Commerce ultimately received four additional FTEs in its 2007 appropriations bill.

State Auditor's Concluding Remarks

Commerce states it believes it complied with legislative intent and authority in regards to Lewis and Clark marketing. Chapter 18 of the 2003 Session Laws provided Commerce with \$2.9 million "only for defraying the tourism division's expenses of marketing the Lewis and Clark bicentennial celebration." Also, a motion in a legislative committee during the 2003 Legislative Session to change the terminology of Lewis and Clark bicentennial to a more comprehensive tourism appropriation was defeated. Based on this information and discussions with a representative of the Office of the Attorney General, it is clear to us Lewis and Clark funds should not have been expended on non Lewis and Clark activities.

Commerce states it believes it complied with legislative authority and intent concerning the American Indian Business Development Office (AIBDO) and the associated FTE. The FTE position for this office was not included in Commerce's budget request. Rather, this position was included in Commerce's appropriation bill near the end of the 2005 Legislative Session. When this position was added to the appropriation bill, the Statement of Purpose of Amendment stated: "Funding and 1 FTE position are added for operating costs of the American Indian Business Development Office within the Department of Commerce." The intent for this position being provided was clearly identified. Commerce entered into a contract to operate AIBDO and subsequently used the FTE for another purpose.

Commerce states the plan to contract with a vendor was detailed in testimony and in a written report to an interim legislative committee. This is a misleading statement. At the time the report was presented to the legislative committee, Commerce had already entered into a contract with a vendor to operate AIBDO. This report did not specifically disclose the fact Commerce was provided an FTE position. The report merely identifies in the background information the fact a contractual relationship existed to operate AIBDO.

Commerce states the decision and authority to contract out AIBDO was appropriately communicated to legislators and ultimately ratified by the

Appendix D
Supplemental Response and Concluding Remarks

2007 legislature. This is a misleading and irrelevant statement. While Commerce communicated information regarding contracting for a service, Commerce did not communicate in this same information the fact they were given an FTE position to operate AIBDO. The fact the legislature ultimately ratified the contracting of the service is irrelevant as this occurred after the fact.

STATE AUDITORS OFFICE—SB2004 INFORMATION

1. General Fund operating expenses line turn back for the 2009-2011 biennium. Our estimate is we will turn back approximately \$25,000.
2. Actual audit hours for our performance audit of the North Dakota University Capital Project performance audit was 1,261. (During our budget presentation to the House subcommittee I erroneously guessed it was 1800 hours).
3. 2009 session laws passed related to Auditor's Office.
 - a) 2009 HB 1129. This bill raised the level at which a city has to have an audit. Previously cities with a population under 300 residents were able to fill out a form in-lieu of having a full audit done. This bill increased that level to cities with a population under 500 residents.
 - b) 2009 SB2142. This bill removed a requirement for ITD to file a report with our office involving wide area network service provided certain entities.
 - c) 2009 SB2144. This bill allows our office to bid out the conduct of fraud audits if any public employee or public official creates a liability against the state bonding fund if our office does not have the personnel to conduct these fraud audits.

State Auditor's Office
Proposed Salary Adjustments
2011-2013 Biennium

Level	Years of Service	Cert	Salary	Chart	Over/(Under)
Auditor IV	34.4		5,420	5,700	(280)
Manager	34.0	CPA	7,475	7,891	(416)
Manager	33.0	CPA	7,475	7,891	(416)
Audit Super.	31.4	CPA	5,525	5,900	(375)
Senior	29.6		6,390	6,800	(410)
Manager	28.8	CPA	7,415	7,891	(476)
Manager	23.5	CPA, Ma	7,415	7,850	(435)
Audit Super.	22.6	CPA, CM	6,385	6,725	(340)
Senior	21.6	CPA, CISA	5,995	6,450	(455)
Senior	20.9	CPA	5,630	5,900	(270)
Auditor IV	20.3	CPA	5,275	5,600	(325)
Senior	19.5		4,850	5,400	(550)
Manager	19.3	CPA, CISA	7,185	7,650	(465)
Senior	15.5	CPA	5,810	6,250	(440)
Senior	15.1	CPA	5,430	5,925	(495)
Auditor IV	13.1	CPA	5,120	5,700	(580)
Auditor IV	13.0	CPA	5,345	5,700	(355)
Auditor IV	12.5	MBA, M. Mgt	5,225	5,825	(600)
Auditor IV	11.5	CPA	5,130	5,475	(345)
Auditor IV	10.1		4,865	5,350	(485)
Auditor III	8.5		3,760	4,200	(440)
Auditor IV	6.5	CISA	4,525	4,875	(350)
Auditor IV	6.4	CPA	4,130	4,725	(595)
Auditor IV	6.1	MBA	4,065	4,625	(560)
Auditor IV	5.2	MBA	4,040	4,625	(585)
Auditor III	4.3		3,835	4,200	(365)
Auditor III	4.3		3,835	4,200	(365)
Auditor III	3.8	CPA	3,890	4,225	(335)
Auditor III	3.8		3,890	4,100	(210)

Total Per Month (12,318)

Total Biennium (295,632)

Fringes (19%) (56,170)

Total (351,802)

Information given to Rep. Keith Kempenich 3/4/2011

* Determined by Auditor's Office management based on employees performance, responsibilities and years of service. These salary levels would make our salaries reasonable in relation to our competitors.

3/3/2011

ND State Auditor's Office
Detail of Information Technology Budget

General Funds

Computers

Desktop	16	\$ 631	4 Year Replacement	\$ 10,096
Laptop	10	\$ 983	3 Year Replacement	\$ 9,830
Computer Add-ons			Memory/Warranty	\$ 5,136
Microsoft Office	40	\$ 90	per year	\$ 7,200
Other Software				\$ 1,400
				<u>\$ 33,662</u>

TeamMate (50 Licenses)

Maintenance			Paid to TeamMate	\$ 50,000
Hosting	1	\$ 160	Paid to ITD per month	\$ 3,840
Support/Disk Storage			Paid to ITD	\$ 1,960
				<u>\$ 55,800</u>

Data Processing

Technology Fee	40	\$ 49	per month	\$ 47,040
ConnectND	1	\$ 583	per month	\$ 13,992
Fargo Network	1	\$ 445	per month	\$ 10,680
Programming			paid to ITD	\$ 10,990
File and Print	40	\$ 4	per month	\$ 3,600
Records Management	1	\$ 125	per month	\$ 3,000
Server Disk Storage	73	\$ 1	\$1 Per GB per month	\$ 1,752
Other				\$ 18,156
				<u>\$ 109,210</u>

Telephone Service

Phones	40	\$ 24		\$ 23,040
Phone Add-ons	40	\$ 10	Voice mail/Speaker phone	\$ 9,600
Fax Machines	3	\$ 20		\$ 1,440
Long Distance				\$ 1,000
Miscellaneous				\$ 1,920
				<u>\$ 37,000</u>

Total IT Request

\$ 235,672

2004.3.17.11.

ND State Auditor's Office

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2004

That the House recede from its amendments as printed on pages 1115 and 1116 of the Senate Journal and pages 1205 and 1206 of the House Journal and that Engrossed Senate Bill No. 2004 be amended as follows:

Page 2, line 8, remove "professionalism,"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2004 - Summary of Conference Committee Action

	Executive Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
State Auditor						
Total all funds	\$9,571,330	\$9,571,330	\$0	\$9,571,330	\$9,571,330	\$0
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,143,808	\$0	\$7,143,808	\$7,143,808	\$0
Legislative Council						
Total all funds	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Less estimated income	<u>0</u>	<u>0</u>	0	<u>0</u>	<u>0</u>	0
General fund	\$0	\$100,000	\$0	\$100,000	\$0	\$100,000
Bill total						
Total all funds	\$9,571,330	\$9,671,330	\$0	\$9,671,330	\$9,571,330	\$100,000
Less estimated income	<u>2,427,522</u>	<u>2,427,522</u>	0	<u>2,427,522</u>	<u>2,427,522</u>	0
General fund	\$7,143,808	\$7,243,808	\$0	\$7,243,808	\$7,143,808	\$100,000

Senate Bill No. 2004 - Legislative Council - Conference Committee Action

This amendment changes Section 3 to change the components of the performance review of the State Auditor's office.