



# North Dakota Legislative Council

Prepared for the Legislative Audit and Fiscal Review Committee  
LC# 23.9098.01000  
August 2021

## LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE - STATUTORY DUTIES AND RESPONSIBILITIES FOR THE 2021-23 BIENNIUM

The Legislative Management by statute appoints a Legislative Audit and Fiscal Review Committee. Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created:

- For the purpose of studying and reviewing the financial transactions of the state.
- To assure the collection of revenues and the expenditure of money is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with formal, objective information on revenue collections and expenditures as a basis for legislative action to improve the fiscal structure and transactions of the state.

### STATUTORY DUTIES AND RESPONSIBILITIES

The committee is charged by statute or Legislative Management assignment with the following duties and responsibilities for the 2021-23 biennium:

1. **State Fair Association** - Receive annual audit reports from the State Fair Association pursuant to Section 4.1-45-17.
2. **Ethyl alcohol and methanol producers** - Receive annual audit reports from any corporation that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 10-19.1-152, and receive annual audit reports from any limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 45-10.2-115.
3. **Department of Human Services' accounts receivable** - Receive annual reports on the status of accounts receivable for the Department of Human Services and the Life Skills and Transition Center pursuant to Sections 25-04-17 and 50-06.3-08.
4. **Low-risk incentive fund** - Receive annual audit reports and economic impact reports from the North Dakota low-risk incentive fund. Section 26.1-50-05 provides for the audit report to be submitted to the Legislative Council. The Legislative Management has assigned the responsibility to this committee.
5. **North Dakota Stockmen's Association** - Receive a biennial audit report from the North Dakota Stockmen's Association. Section 4.1-72-08 provides for the audit report to be submitted electronically to the Legislative Council. The Legislative Management has assigned the responsibility to this committee.
6. **Job Service North Dakota** - Receive a performance audit report, upon the request of the committee, for Job Service North Dakota pursuant to Section 52-02-18.
7. **Performance audits** - The State Auditor is to conduct or provide for performance audits of state agencies as determined necessary by the Legislative Assembly, this committee, or the State Auditor. The State Auditor must obtain approval from this committee prior to charging an agency for the cost of hiring a consultant to assist with conducting a performance audit pursuant to Section 54-10-01.
8. **Frequency of audits** - Determine the frequency of audits or reviews of state agencies pursuant to Section 54-10-01.
9. **Political subdivisions** - Determine if the State Auditor is to perform audits of political subdivisions on a more frequent basis than once every 2 years pursuant to Section 54-10-13 and direct the State Auditor to audit or review the accounts of any political subdivision pursuant to Section 54-10-15.

10. **Study and review audit reports** - Pursuant to Section 54-35-02.2, the committee is charged with the following responsibilities:
  - a. To study and review audit reports selected by the committee from those submitted by the State Auditor.
  - b. Consider and approve contract services related to performing duties required by the federal government.
  - c. To confer with the State Auditor regarding the audit reports reviewed by the committee.
  - d. As necessary, to confer with representatives of state departments, agencies, and institutions audited in order to obtain information regarding fiscal transactions and governmental operations.
  - e. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within 2 bienniums, which the committee determines critically important, the committee may recommend the Legislative Assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium.
11. **Prescription drug coverage performance audits** - Receive reports from the State Auditor regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued pursuant to Section 6 of House Bill No. 1004 (2021).
12. **Preliminary audit report review period** - Receive preliminary audit reports and audited entity's response for a 7-day review period pursuant to Section 54-10-26. The preliminary audit report and response may not be provided to any other person except by the committee as necessary to perform the committee's duties and at the end of the 7-day period the audit report and response is deemed a final audit report and is considered an open record.
13. **Review updates to government auditing standards and develop guidelines** - Each biennium, the Legislative Audit and Fiscal Review Committee, in consultation with the State Auditor, shall review updates to government auditing standards and develop guidelines for the contents of state agency audit reports. The Legislative Audit and Fiscal Review Committee when developing guidelines shall consider applicable auditing standards, sound financial practices, compliance with laws and legislative intent, data analyses, and the opportunity to improve the efficient and effective operations of state agencies pursuant to Section 6 of House Bill No. 1453 (2021).

### **REQUESTS AND RECOMMENDATIONS DURING PREVIOUS INTERIMS**

The committee has made various recommendations and requests during past interims, including:

1. **Discussion of audit findings prior to presentation of the report** - The State Auditor should consider discussing audit findings with appropriate boards or commissions prior to the audit report being presented to the committee.
2. **Actions taken by audited agency** - Audited agencies, boards, and commissions should report to the committee at the time the audit report is presented regarding actions taken as a result of audit findings contained in the report.
3. **Responses to recommendations** - Each audit report prepared by the State Auditor should include a summary of audit recommendations along with the audited agency's written response to the recommendations. The summary is to be in recommendation-response format.
4. **Acceptance of audit reports** - The committee receives audit reports as presented by the State Auditor's office and other independent auditors and, by motion, accepts the reports. The motion is not a directive for the adoption of the audit recommendations. A representative of the State Auditor's office will follow up on any previous audit findings and recommendations at the time of the next audit. If the agency has not taken steps to address the recommendation or cannot document a justifiable reason for not implementing the recommendation at the time of the next audit, it will be again included as an audit finding and recommendation.
5. **Committee followup with agencies that have not complied with audit recommendations** - The committee, by motion, may direct the Legislative Council staff to send correspondence to an agency that has not complied with previous audit recommendations requesting the agency to appear before the committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations.
6. **Prior audit findings** - Pursuant to Section 54-35-02.2, whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within 2 bienniums, which the

committee determines critically important, the committee may recommend the Legislative Assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium.

7. **Implementation of recommendations** - Each state agency and institution should comply with and implement, within the limits of the law, recommendations contained in audit reports prepared by the State Auditor's office. Such compliance and implementation should be viewed toward improvement of government operations, including fiscal operations and to full execution of the law.
8. **Six-month review** - The State Auditor's office should determine whether agencies have complied with the auditor's recommendations within 6 months after a report has been accepted by this committee. The State Auditor should report to this committee, or another appropriate legislative committee, regarding any recommendations not implemented.
9. **Copies of management letters** - The State Auditor should provide copies of management letters to committee members.
10. **Use of salaries and wages funding** - The State Auditor should consider including in audit reports information on the amount of salaries and wages funding spent on filled full-time equivalent (FTE) positions and the amount relating to vacant FTE positions which is spent for other purposes.
11. **Presentation of evidence to the Attorney General** - Pursuant to Section 54-35-02.2, whenever the committee determines or has reason to believe there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee is to present such evidence or information to the Attorney General. Upon receipt of the information, the Attorney General is to immediately commence an investigation. If the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the Attorney General is to prosecute the state official or employee as provided by law.
12. **Report on significant findings and recommendations** - The State Auditor should consider providing a report to the House and Senate Appropriations Committees and each member of the Legislative Audit and Fiscal Review Committee at the beginning of each legislative session regarding significant audit findings and recommendations contained in the financial and performance audit reports presented to the Legislative Audit and Fiscal Review Committee during the previous interim. Prior to the 2021 session, the State Auditor's office has prepared summaries of significant audit findings and recommendations from audit reports presented to the Legislative Audit and Fiscal Review Committee and presented, upon request, these summaries to the Legislative Council or the Appropriations Committees at the start of legislative sessions.

### AUDIT GUIDELINES

During the 2005-06 interim, the Legislative Audit and Fiscal Review Committee received suggested changes from the State Auditor's office to revise the 12 audit guidelines as some of the guidelines were no longer applicable to state agencies. The six new questions as proposed by the State Auditor's office to be addressed would highlight key areas and issues of interest to committee members and provide similar information to those made by auditors to an "audit committee." The Legislative Audit and Fiscal Review Committee also received input and approval from representatives of Eide Bailly LLP and Brady, Martz & Associates PC regarding the six new questions.

The committee also considered other areas the auditors could address before the committee, such as significant changes in accounting policies, accounting estimates, audit adjustments, disagreements with management, consultation with other independent auditors, major issues discussed with management prior to the auditors' retention, difficulties encountered in performing the audits, and high-risk information technology systems critical to an agency's operations.

The committee approved replacement of the 12 audit guidelines with 6 audit questions and 8 other issues to be communicated by the auditors to the committee. For audit periods covering fiscal years ending June 30, 2006, and thereafter, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?
2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?

6. Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.

The eight issues to be communicated to the committee identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditor's satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

### **AUDIT APPROACH**

During the 1999-2000 interim, the committee received testimony from a representative of the State Auditor's office regarding the agency's plan to change the audit approach used in conducting 2-year audits of state agencies and institutions. For 2-year audits of state agencies and institutions conducted by the State Auditor's office, the State Auditor determined governmental auditing standards for performance audits are more applicable than governmental auditing standards for financial audits. A report on an audit conducted using performance auditing standards includes audited financial statements but does not include an opinion on those financial statements because the audit will not determine if the financial statements are prepared in accordance with generally accepted accounting principles. The State Auditor provided a sample audit report identifying the information that would continue to be provided in the audit reports, including background information; noteworthy accomplishments; management's discussion and analysis; comparison of current to prior year's results; analysis of significant changes in operations; analysis of significant budgeted to actual variances; statement of assets, liabilities, and fund equity; statement of revenues and expenditures; and statement of appropriations. The committee supported the proposal presented by the State Auditor's office to begin conducting 2-year audits of state agencies and institutions using governmental auditing standards for performance audits.

The State Auditor's office began to use the new audit approach during the 2001-02 interim. Two-year audits conducted by public accounting firms continue to utilize governmental auditing standards for financial audits.

During the 2017-18 interim, the State Auditor's office developed and the committee began receiving a one-page summary report for the 2-year audits of state agencies. The summary report highlights the objective of the audit, including areas of internal control reviewed, findings relating to legislative intent, suggested areas of operational improvement, and key financial information.

### **AUDIT REQUIREMENTS FOR THE STATE AUDITOR'S OFFICE**

Section 54-10-04 requires the Legislative Assembly to provide for a financial statement audit of the State Auditor's office. A copy of the audit report must be filed with the Governor and with each house of the Legislative Assembly. The State Auditor's office audit report for the fiscal years ended June 30, 2019 and 2018, was completed by Eide Bailly LLP. This audit report was reviewed and approved by the committee during the July 7, 2020, meeting.

The National State Auditors Association requires state auditor's offices to be subject to an external quality control review every 3 years. The system of quality control encompasses the office's organizational structure and policies adopted and procedures established to provide reasonable assurance of conforming to governmental auditing standards. The quality control review of the State Auditor's office for the period April 1, 2019, to March 31, 2020, was received by the committee in October 2020.

The next quality control review of the State Auditor's office is anticipated to be completed sometime in 2024.

## PERFORMANCE AUDITS

During the 2019-20 interim, the committee received performance audit reports of the North Dakota University System open educational resources, online education, and nonresident tuition; the North Dakota State College of Science (NDSOS) Division of Workforce Affairs; the Dakota College at Bottineau emergency preparedness; and state agency special funds.

The following table lists performance audits presented to the committee during the 1997-99 through 2019-21 bienniums:

Performance Audit	Date
<b>1997-99 biennium</b>	
State procurement practices	October 7, 1997, and January 21, 1998
State employee classification system	October 6, 1998, and January 27, 1999
Workers' Compensation Bureau (performance review)	October 6, 1998
Job Service North Dakota	October 6, 1998
<b>1999-2001 biennium</b>	
Contracts for services	May 22-23, 2000
Child support enforcement program (Department of Human Services)	October 16-17, 2000
Workers' Compensation Bureau (performance review)	October 16-17, 2000
Job Service North Dakota	October 16-17, 2000
<b>2001-03 biennium</b>	
Aging Services, service payments for elderly and disabled, and expanded service payments for elderly and disabled programs (Department of Human Services)	November 26, 2001
Veterans' Home	October 2, 2002, and January 22, 2003
Workers' Compensation Bureau (performance review)	October 2, 2002
Job Service North Dakota	October 2, 2002
<b>2003-05 biennium</b>	
Driver and Vehicle Services (Department of Transportation)	September 3-4, 2003
Administrative Committee on Veterans Affairs (ACOVA) and the Department of Veterans' Affairs	August 10, 2004
Workforce Safety and Insurance (performance review)	October 27, 2004
Job Service North Dakota	October 27, 2004
Department of Corrections and Rehabilitation	January 24, 2005
<b>2005-07 biennium</b>	
Division of Emergency Management	January 10, 2006
Collection and use of 911 fees (Division of Emergency Management)	January 10, 2006, and June 19, 2006
Workforce Safety and Insurance (performance audit)	November 29, 2006
Workforce Safety and Insurance (performance review)	November 29, 2006
<b>2007-09 biennium</b>	
University of North Dakota (UND) School of Medicine and Health Sciences	November 19, 2007
Wildlife Services program	July 8, 2008
Workforce Safety and Insurance (performance review)	October 20, 2008
<b>2009-11 biennium</b>	
Department of Commerce	September 30, 2009
University System capital projects	May 12, 2010
Medicaid provider and recipient fraud and abuse	October 21, 2010
<b>2011-13 biennium</b>	
Dickinson State University	March 27, 2012
Use of state-supplied vaccines by a provider (State Department of Health)	March 27, 2012
State Department of Health Family Health Division	June 21, 2012
Fees charged at North Dakota State University (NDSU) and UND	July 26, 2012
State Water Commission's regulation of industrial water use in the state	January 24, 2013
University System office	March 12, 2013
<b>2013-15 biennium</b>	
State Water Commission's water use permitting process	July 29, 2013
Game and Fish Department	July 16, 2014
University System institutions tuition waivers and student stipends	April 21, 2015
<b>2015-17 biennium</b>	
Department of Trust Lands	April 21, 2016
Space utilization study	March 6, 2017
<b>2017-19 biennium</b>	
University foundations	Deferred until further notice
University System institutions purchasing card program	August 30, 2016
University System institutions reports of the emergency preparedness at various institutions of higher education	October 2016
NDSU Parking and Transportation Services department	February 23, 2017
UND continuity of operations planning	September 11, 2017

Performance Audit	Date
Veterans' Home	February 10, 2018
ACOVA oversight structure	March 28, 2018
Department of Veterans' Affairs	March 28, 2018
Governor's office travel and use of state resources	May 18, 2018
<b>2019-21 biennium</b>	
Dakota College at Bottineau emergency preparedness	June 7, 2018
Special funds	June 30, 2018
University System open educational resources	September 4, 2018
University System online education	November 9, 2018
NDSCS Division of Workforce Affairs	March 26, 2019
University System nonresident tuition	December 31, 2019

A summary of the 2019-21 biennium performance audits can be found beginning on page 243 of the 2019-20 interim Legislative Audit and Fiscal Review Committee report to the Legislative Management at the following link: <https://www.legis.nd.gov/files/resource/66-2019/legislative-management-final-reports/2021finalreport.pdf>.

### PROPOSED ACTION PLAN

The following is a proposed action plan the committee may wish to consider in fulfilling its statutory duties:

1. In consultation with the State Auditor, review updates to government auditing standards and develop guidelines for the contents of state agency audit reports, including consideration of changes to the audit-related questions and communications.
2. Receive input from private accounting firms regarding suggestions to improve audits and the audit-related questions and communications.
3. Receive 2-year audit reports prepared by the State Auditor's office and independent auditors.
4. Receive performance audit followup reports of audits conducted in previous bienniums.
5. Receive the State Auditor's plan for conducting performance audits and consider the need for any other performance audits.
6. Consider and approve any State Auditor requests to charge an agency for the cost of a contract relating to a performance audit.
7. Receive performance audit reports.
8. Receive information technology audit reports, including an Information Technology Department system audit report and a North Dakota network and security audit report.
9. Request a performance audit be conducted, as deemed necessary by this committee, for Job Service North Dakota pursuant to Section 52-02-18.
10. Direct the Legislative Council staff to send correspondence, as deemed necessary, to each agency that has not complied with previous audit recommendations requesting the agency to appear before the committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations.
11. Receive annual reports on the status of accounts receivable for the Department of Human Services and the Life Skills and Transition Center.
12. Receive annual audit reports from any corporation, limited partnership, or limited liability company that produces ethyl alcohol or methanol in this state and which receives a production subsidy from the state.
13. Receive reports from the State Auditor regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued.
14. Develop recommendations and related bill drafts.
15. Prepare the final report for submission to the Legislative Management.