

AUDIT FOLLOW-UP REPORT

Of the Status of Recommendations from

Workforce Safety & Insurance

September 25, 2008

Report No. 3024.1

September 25, 2008

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 Workforce Safety & Insurance (report #3024) dated October 26, 2006. The objective of this follow-up audit was to determine the status of the 60 recommendations included in the performance audit report. We conducted this follow-up 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. The audit period for which information was collected and reviewed was January 1, 2007 through June 30, 2008 with subsequent information being reviewed to include information related to the Board of Directors.

As a result of the follow-up review, 19 recommendations were determined to be fully implemented, 36 were determined to be partially implemented, 3 were determined to be not implemented, and 2 were determined to be no longer applicable.

Sincerely,

Robert R. Peterson
State Auditor

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Performance Audit No. 3024
Workforce Safety & Insurance
Report Dated October 26, 2006

Transmittal Letter

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Appendix A

Recommendations Fully Implemented

Recommendation #1

We recommend Workforce Safety & Insurance ensure contracts are not paid until the services have been performed to the organization's satisfaction.

Original Condition

In review of contract payments, we identified Workforce Safety & Insurance (WSI) making four payments (totaling nearly \$50,000) to contractors which appeared to be pre-payments.

Action Taken

Invoices for payments of goods or services require approval of the Procurement Officer as well as representatives of the Finance Department prior to payment being made. In a limited review of information on 10 contracts, we identified no pre-payments being made and identified WSI was documenting their satisfaction of the services received prior to payments being made.

Result of Implementation

Ensuring services are performed to an organization's satisfaction prior to final payment provides for an efficient use of resources and protects the state's financial interest.

Recommendation #2

We recommend Workforce Safety & Insurance make improvements related to reimbursements to the Executive Director. The organization should, at a minimum:

- a) Require the Executive Director to use his business expense allowance;
- b) Ensure the person preparing the Executive Director's voucher is not the person approving the voucher and is not a person reporting directly to the Executive Director; and
- c) Ensure the person approving the reimbursements has sufficient knowledge of the Board of Directors' intent relating to the Executive Director's business expense allowance.

Original Condition

The Executive Director had a base salary amount as well as a housing/business expense allowance of \$18,000. We identified the Executive Director was reimbursed for items which a typical business expense allowance would appear to cover. The Executive Secretary prepared and approved most of the Executive Director's vouchers for reimbursement.

Action Taken

An expense allowance for the Executive Director no longer is included as part of the position's compensation package. On November 9, 2006, WSI's Board of Directors passed a motion to eliminate the expense allowance and included this amount in the Executive Director's base pay. In review of information related to reimbursements to the Executive Director, we identified the Finance Director is approving payments.

Result of Implementation

Appropriate processing and approval procedures are used for reimbursing the Executive Director for expenses.

Chapter 1
Recommendations Fully Implemented

Recommendation #3

We recommend Workforce Safety & Insurance comply with North Dakota Century Code Section 54-06-21 and ensure performance appraisal forms are signed by employees before placing them in personnel files.

Original Condition

We identified employee performance appraisals were not signed by employees prior to placing them in the employee's personnel file. This resulted in noncompliance with North Dakota Century Code (NDCC) Section 54-06-21 which requires such documents be signed by the employee.

Action Taken

WSI implemented an electronic Employee Performance Management Suite system to manage the performance appraisal functions for all WSI employees. WSI requires employee acknowledgement (via an electronic signature) prior to the performance appraisal being placed into the employee's personnel file. Based upon a limited review of WSI personnel files, it appears performance appraisals are signed by the employee prior to their placement in the personnel file.

Result of Implementation

WSI is in compliance with state law and requires appraisal forms be signed by employees before placing them in personnel files.

Recommendation #4

We recommend Workforce Safety & Insurance establish formal policies and procedures for the hiring process to provide clear guidance and enhance consistency in the process.

Original Condition

In a review of information related to the hiring of employees, we identified a number of concerns. WSI had not established formal policies related to the hiring process and we concluded WSI did not have a consistent, uniform process for hiring employees.

Action Taken

WSI established a hiring policy in December 2006 (revised in January 2008). The policy identifies a detailed listing of steps the organization is to take during the hiring process.

Result of Implementation

Formal hiring policies and procedures will enhance consistency in the process as well as compliance with hiring requirements.

Recommendation #5

We recommend Workforce Safety & Insurance comply with veterans' preference requirements in North Dakota Century Code Chapter 37-19.1. The organization should, at a minimum:

- a) Review veterans' preference requirements with the Office of the Attorney General and modify hiring procedures accordingly;**
- and**
- b) Use certified mail to notify veterans of their nonselection.**

Chapter 1
Recommendations Fully Implemented

<i>Original Condition</i>	North Dakota Century Code establishes a preference in public employment for veterans. In a review of the hiring process, we identified points were inappropriately being awarded by WSI and there was confusion regarding the application of veterans' preference.
<i>Action Taken</i>	WSI established a new hiring policy which identifies the procedures it uses to apply veterans' preference. In a limited review of hiring information, we identified WSI complied with veterans' preference requirements.
<i>Result of Implementation</i>	WSI is in compliance with state law requirements related to veterans' preference.

Recommendation #6 **We recommend Workforce Safety & Insurance ensure it complies with legislative intent related to employee compensation adjustments.**

Original Condition Legislative intent regarding state employee compensation adjustments for fiscal years 2006 and 2007 was included in Chapter 25 of the 2005 Session Laws. Permanent state employees were to receive compensation adjustments of 4% at the beginning of each fiscal year. We identified WSI had not provided the general increases to employees. We requested and received a formal Attorney General's Opinion. The opinion identified the 4% increases had to be provided to employees. WSI's first attempt at implementing the 4% increases was inconsistent with the intent of Session Law. WSI had to expend additional resources to again implement the 4% increases.

Action Taken Based on a review of information, WSI appears to have taken appropriate steps to make final payments to employees for the 4% general increases for the 2005-2007 biennium. The general salary increases provided to state agencies for the 2007-2009 biennium did not apply to WSI pursuant Chapter 47 of the 2007 Session Laws.

Result of Implementation WSI is in compliance with legislative intent related to employee compensation adjustments.

Recommendation #7 **We recommend Workforce Safety & Insurance periodically monitor and evaluate the classification and pay for performance systems to ensure they are operating effectively and are accomplishing what WSI intends.**

Original Condition We identified WSI had not adequately monitored either the classification system or the pay for performance system. Inequities and ineffective processes were allowed to continue without appropriate action being taken to make changes.

Chapter 1
Recommendations Fully Implemented

Action Taken WSI contracted with the same vendor used previously in establishing its classification system to analyze its salary structure based on market data. The vendor's report, dated April 5, 2007, identifies their analysis and recommendations. WSI implemented the recommendation regarding the new salary ranges and provided increases to employees who were below the new minimum of the salary range. WSI has established a yearly review process for pay grades and classifications.

Result of Implementation A periodic review of the classification and pay for performance systems will assist in identifying areas requiring improvement and enhance how effective the systems are.

Recommendation #8 We recommend Workforce Safety & Insurance ensure changes made to pay ranges within the classification system are based on a formal evaluation process.

Original Condition We identified the Executive Director had moved a position within the classification system to a higher pay grade resulting in this position having a higher pay range. The change occurred with no formal evaluation of the position.

Action Taken We reviewed documentation related to changes in pay ranges made to four positions. Formal evaluations of the positions took place prior to changes being made to the pay ranges.

Result of Implementation The effectiveness and integrity of the classification system is improved when changes are based on a formal analysis rather than being made arbitrarily.

Recommendation #9 We recommend Workforce Safety & Insurance review and re-evaluate the reasonableness of a 7.5% standard for absenteeism. The organization should, at a minimum:

- a) Ensure the absenteeism standard is not lower than the amount of annual leave employees are entitled to use in a year;
- b) Ensure the absenteeism standard includes consideration for a reasonable amount of sick leave; and
- c) Ensure leave taken under the Family Medical Leave Act or compensation earned under the Fair Labor Standards Act is not included in the calculation of the absenteeism rate.

Original Condition We identified a benchmark for absenteeism had been established for certain employees within WSI. Individuals employed with the state for an extended period of time may not have been able to take time off entitled to them and remain within the established rate.

Chapter 1
Recommendations Fully Implemented

Action Taken In review of personnel files and in discussions with WSI Human Resources representatives, we identified no standard for absenteeism rates being established. The Director of Human Resources stated they did not intend to establish or use such a standard for absenteeism.

Result of Implementation A standard for absenteeism which could have had a negative impact on the amount of leave taken by employees no longer exists.

Recommendation #10 **We recommend Workforce Safety & Insurance include relevant strategic planning information and the Board of Directors' Outcomes on their web site.**

Original Condition While WSI had included core values, vision, and mission information on their web site, other strategic planning information and the Board of Directors' Outcomes were not on the web site.

Action Taken WSI has placed their 2005-2007 strategic plan on their web site. In addition, information related to the Board of Directors Governance Policies is now on the organization's web site.

Result of Implementation Relevant information related to WSI is accessible to citizens of the state.

Recommendation #11 **We recommend Workforce Safety & Insurance ensure adequate planning, including consideration for impact on staff time and other resources, is conducted prior to changes and training on management philosophy is implemented.**

Original Condition WSI attempted to implement several changes to management philosophy within a relatively short timeframe. As a result, training and implementation was put on hold as there was too much information being provided and too much was going on within the organization.

Action Taken WSI implemented a Total Quality Management philosophy within the organization called "CSI" (Continuous Service Improvement). Based on our review, it appears the planning for the execution of training included consideration for minimizing staff disruption.

Result of Implementation Proper planning assisted in reducing the amount of staff disruption, provided clearer direction for the organization, and appears to have resulted in training being provided at a lower cost as compared to previous training.

Recommendation #12 **We recommend Workforce Safety & Insurance significantly increase their blanket bond coverage amount.**

Original Condition WSI had a blanket bond with coverage up to \$250,000. This was inadequate coverage for the organization.

Chapter 1

Recommendations Fully Implemented

Action Taken WSI has blanket bond coverage of \$2 million. This is the maximum amount of coverage to be obtained through the state.

Result of Implementation A more appropriate amount of insurance reduces the risk of financial loss.

Recommendation #13

We recommend Workforce Safety & Insurance correctly calculate premium dividend credits and take appropriate action to recover lost premium amounts.

Original Condition In June 2005, the Board of Directors passed a resolution providing a 40% premium dividend credit for employers meeting certain criteria. The Board required the credit to not be applied to certain accounts and the dividend provided could not result in a premium due of less than \$125. Based on a limited review, we identified certain employers received a dividend credit of more than 40% and certain employers had a premium of less than \$125 after the dividend credit was applied.

Action Taken WSI identified what the proper dividend credit was to be for all accounts. Those accounts which remained active into the next year's premium calculation cycle had an adjustment to their premium amount and the proper amounts were collected. For those accounts which were no longer active or closed, WSI generated a list and attempted to collect the necessary amounts (totaled over \$28,000). We identified documentation related to collection efforts taken by WSI. Based on information provided by WSI, approximately half was collected. We conducted a limited review of WSI's calculation of the 50% premium dividend credit passed by the Board in 2007. It appears the calculations were properly done.

Result of Implementation WSI recovered over \$14,000 in amounts from closed accounts and has taken appropriate action to ensure dividend credits are calculated properly.

Recommendation #14

We recommend the Workforce Safety & Insurance Board of Directors obtain additional education and training on the Carver Policy Governance Model.

Original Condition Our review identified a number of areas in which the Board of Directors was in noncompliance with the principles of its adopted governance model. In our discussions with Board members, it was apparent members did not have adequate knowledge of the adopted policy governance model.

Action Taken A consultant was contracted with to provide training on policy governance as well as to assist in guiding the formation and implementation of the Board's new Governance Policies. It appears the Board has received sufficient training on policy governance.

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Recommendations Fully Implemented

Result of Implementation Appropriate training assisted in the Board implementing policy governance which should allow the Board to operate more effectively.

Recommendation #15 **We recommend the Workforce Safety & Insurance Board of Directors establish Outcomes that determine what good the organization is to accomplish, for whom, and at what cost or relative worth.**

Original Condition Under the adopted policy governance model, the Board was to determine what good the organization was to accomplish, for whom, and at what cost or relative worth. These Outcomes, or ends, statements were to describe the organization itself or activities and were not to be about the staff. We identified all six Outcome statements established by the Board were not complying with the criteria established under the policy governance model.

Action Taken The Board established new Ends statements on August 28, 2008 which appear to include the necessary elements under the policy governance model.

Result of Implementation The Board has established Ends statements which are in compliance with the policy governance model and will enhance the Board's ability to effectively govern.

Recommendation #16 **We recommend the Workforce Safety & Insurance Board of Directors Executive Performance Committee provide a salary recommendation for the Executive Director after evaluating the Executive Director's performance.**

Original Condition The Board's Bylaws required the Executive Performance Committee to provide a salary recommendation for the Executive Director. After completing the Executive Director's evaluation in 2004 and 2005, this committee did not provide a salary recommendation to the Board.

Action Taken In review of meeting minutes, we identified the committee had provided a salary recommendation to the Board following evaluations of performance.

Result of Implementation The Board was in compliance with its Bylaws (Executive Performance Committee no longer exists).

Recommendation #17 **We recommend the Workforce Safety & Insurance Board of Directors increase the amount of compensation Board members receive.**

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Recommendations Fully Implemented

<i>Original Condition</i>	In comparison to other boards, we identified the compensation amount for Board members was low (daily compensation rate was \$100 for each meeting attended or for other board related duties).
<i>Action Taken</i>	At the June 2008 Board meeting, the Board voted to increase the compensation amount (made the per diem amount the same as Legislators receive during the legislative session). Also, the Board added per diem payments for preparation time for meetings for all Board members and additional per diem amounts for preparation time of chairs of committees and the Chief Governance Officer (chair of the Board).
<i>Result of Implementation</i>	Increasing compensation will assist in obtaining interest from quality candidates for Board vacancies and provides a means for compensating Board members for their work prior to meetings.

Recommendation #18	We recommend the Workforce Safety & Insurance Board of Directors review guidance on audit committees and audit committee charters provided by the American Institute of Certified Public Accountants and The Institute of Internal Auditors and establish a charter for the Board Audit Committee.
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<i>Original Condition</i>	We identified there was no established charter for the Board's Audit Committee. As a result, the committee was determining what responsibilities and the processes to follow rather than having the Board appropriately establish such guidance.
<i>Action Taken</i>	Within the Board's Governance Policies, powers and related responsibilities of the Audit Committee have been established. This information is similar to an audit committee charter and follows the information provided by the American Institute of Certified Public Accountants for government organizations.
<i>Result of Implementation</i>	Formally establishing the role, responsibilities, and powers of the Audit Committee should increase the effectiveness of the committee.

Recommendation #19	We recommend the Workforce Safety & Insurance Board of Directors Audit Committee ensure all information obtained from the organization's internal employee Fraud Hotline is sent directly to Internal Audit.
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<i>Original Condition</i>	WSI had established an employee fraud hotline which provided WSI employees a phone number to call to report potential fraudulent activity. While calls to the fraud hotline went to an outside CPA firm, the issues were then reported to the Chief of Support Services and the Director of Human Resources.
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Recommendations Fully Implemented

Action Taken

Information obtained from the employee fraud hotline is now to be sent to WSI's Internal Audit Department. When this department did not have any employees, the information was then to be sent to the Board's Audit Committee chair.

Result of Implementation

Information from the employee fraud hotline is sent to an appropriate department within WSI.

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Recommendations Fully Implemented

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Recommendations Partially Implemented

Recommendation #20

We recommend Workforce Safety & Insurance make improvements with how public funds are used. The organization should, at a minimum:

- a) Ensure expenditures comply with constitutional provisions, North Dakota Century Code requirements, and OMB Policies; and
- b) Ensure expenditures are for necessary and reasonable purposes.

Original Condition

We identified certain expenditures which appeared to result in noncompliance with constitutional provisions, state law, and Office of Management and Budget policy. Examples included gift certificates/card, beverages, carnations, and balloons. Public funds may only be expended for public purposes.

Action Taken

In January 2007, an email was sent to all Workforce Safety & Insurance (WSI) employees identifying information related to certain purchases no longer being procured by WSI. In our review of expenditures, it appears WSI has ended the practice of purchasing items previously identified as being inappropriate. While this occurred, our review of information regarding a severance payment to the former Executive Director identified concerns regarding how public funds were used.

When the former Executive Director left WSI, the Board of Directors passed a motion at its December 6, 2007 meeting to offer a separation agreement. The settlement agreement entered into on December 21 identifies a payment amount of approximately \$128,000 which equated to paying nearly 9 months of salary and 7 months of a family health insurance premium amount. NDCC Section 54-14-04.3 establishes a definition of severance pay and the parameters under which it can be given. In our review of the settlement agreement, state law, correspondence, and discussions with WSI representatives, we identified a concern related to whether or not the payment made is in compliance with state law. Two areas of concern were identified.

1. Prior to the Board's meeting on December 6, 2007, a meeting was held between the Executive Director, the Chair of the Board, and the Vice Chair of the Board. According to an email received by WSI from the former Executive Director on August 11, 2008, the former Executive Director states he "verbally resigned to [the] Chair . . . on 12/06/07 with [the] Vice Chair . . . as a witness." The Vice Chair informed us this was the only meeting between the three on this date, thus it is apparent if the former Executive Director did resign, it occurred prior to the Board meeting. However, the Vice Chair is unclear whether the former Executive Director resigned in this meeting. If, in fact, the former Executive Director did resign prior to the Board meeting, it would appear no severance pay could be provided to him under provisions within NDCC Section 54-14-04.3 ("no state employee or officer is entitled to severance pay upon

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Recommendations Partially Implemented

termination of employment if the employee or officer quit employment voluntarily or resigned of the person's own accord . . ."). The former Executive Director's "Employee Status" form was modified in August 2008 by WSI to change a box marked "Other" to "Resignation." The effective date of change on this form is December 6, 2007.

2. If it is determined the former Executive Director did not resign prior to the Board meeting, we are unable to identify the requirements in state law for severance pay being met. State law identifies a "state agency may provide financial incentives to encourage an employee to retire or resign if the resulting departure will increase agency efficiencies or reduce expenses." We identified no information how such a large payment increased agency efficiencies or reduced expenses. We reviewed both the Board minutes and also listened to the recording of the meeting. While there is information discussed regarding liability issues, the final agreement does not absolve the state of all potential litigation (the former Board Chair allowed recovery of attorney fees). Comments related to the intent of providing a payment to the former Executive Director are a concern. Rather than discussing how the payment will increase agency efficiencies or reduce expenses during the Board meeting, there is discussion related to the time of the year it is, allowing the former Executive Director to find another job and get moved, etc. The meeting minutes identify the intent of the motion "is to do something right for [the former Executive Director], who has a family, and that has done nothing but give 100% to the people of this state."

It appears the approximately \$128,000 payment made to the former Executive Director may not meet the requirements of state law. If it would not meet the requirements of state law, we would identify this payment as a gift which would not be allowed. We requested a formal Attorney General's Opinion on September 22, 2008 regarding this area.

Management's Response and Future Action to be Taken

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

WSI recognizes the concerns raised by the auditor regarding payments made to the former Executive Director under the negotiated terms of his "Separation and Release Agreement" executed by the parties 12/21/07. However, the facts as WSI can confirm are substantially different than those asserted within the foregoing statement.

WSI has confirmed, through interviews, that it is neither the former Chairman nor the current Chairman's understanding that he resigned prior to the WSI Board meeting of 12/06/07. Other than the Executive Director, they were the only two participants in this meeting. This understanding is consistent with the former Chairman's actions and explanations at the 12/06/07 WSI Board meeting immediately following his meeting with the Executive Director. An email has also been

Chapter 2

Recommendations Partially Implemented

discovered which indicates that he continued to act and correspond with employees in his capacity as CEO, even two hours following the meeting where he allegedly resigned his position with WSI. See Appendix A for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI's response indicates they have facts which are substantially different from those asserted with our review of information. Rather than contact our office with this information, WSI withheld such information until they provided us their response to the draft report. In addition, WSI was requested to provide information regarding this area. Apparently, WSI "discovered" an email about this situation which was not provided to us. See Appendix A for the remainder of the State Auditor's concluding remarks.

Recommendation #21

We recommend Workforce Safety & Insurance use resources in an efficient and proper manner to ensure the use of resources does not result in abuse.

Original Condition

WSI employees were emailed information regarding the salaries of all employees within the organization. In response to this, the Executive Director investigated the mailing of such information. The Executive Director identified the resources used for the investigation were the Special Investigations Unit (SIU), Information Systems, General Counsel and himself. The use of additional resources beyond SIU to investigate who had sent the emails to WSI constitutes abuse as defined by Government Auditing Standards.

Action Taken

In review of information, we identified an area where it appears the use of resources constitutes abuse as identified in Government Auditing Standards. When the former Executive Director was placed on administrative leave in April 2007, a significant amount of information was provided by WSI to the individual. In a review of emails and other documents, the apparent reason for providing such information was to assist in the former Executive Director's personal defense of criminal charges. WSI provided all information (copies of materials, spreadsheets generated by WSI, audio files, etc.) free of charge. This was provided free of charge as the former Executive Director, while on administrative leave, was still considered to be an employee of WSI. WSI identifies the Office of the Attorney General was consulted during this process and had received copies of correspondence.

Based on a review of correspondence and other documents, the information provided by WSI was significant. A significant amount of time would have been expended by the organization fulfilling the requests. WSI did not track or document expenditures. WSI was uncertain as to who made the decision to provide the information free of charge.

Chapter 2

Recommendations Partially Implemented

WSI appears to have determined the numerous requests for information were covered under the state's open records laws and thus, were required to be fulfilled. However, when WSI fulfilled the requests, they did not do so under open records laws as the information provided was not redacted. It is the state entity's determination to charge or not charge for a request under the open records laws.

Abuse, as defined by Government Auditing Standards, includes misuse of authority or position for personal financial interests. Even though the former Executive Director was on administrative leave at the time of the requests, WSI representatives identified it was an unusual situation as WSI representatives believed the former Executive Director would be coming back to the organization. The requests made by this individual were for a personal financial interest and we conclude the information provided to the former Executive constitutes abuse as defined by Government Auditing Standards.

Management's Response and Future Action to be Taken

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

As a state agency, the organization is obligated to provide requested information. The former Executive Director made a request for information, and he was entitled to do so. In a detailed letter to him dated May 2, 2007, WSI outlines how it would handle his requests under this unique set of circumstances—he was still a WSI employee, but on administrative leave due to criminal charges brought against him. WSI worked with the Attorney General's office on this request, and documentation shows this approach was reviewed and approved by the Attorney General's office—impliedly the arbiter of reasonableness for records requests. See Appendix A for the remainder of WSI's response.

State Auditor's Concluding Remarks

WSI states it worked with the Office of the Attorney General who reviewed and approved the approach it used. Whether the Office of the Attorney General approved this approach or not is irrelevant. We are not identifying an issue regarding compliance or noncompliance with law. We are identifying WSI is in noncompliance with an auditing standard regarding abuse. Resources were not used in an efficient and proper manner as defined by auditing standards. See Appendix A for the remainder of the State Auditor's concluding remarks.

Recommendation #22

We recommend Workforce Safety & Insurance comply with contractual provisions and ensure the Department of Transportation's driver's license image program is accessed for official use only.

Chapter 2

Recommendations Partially Implemented

Original Condition

In the process of investigating who emailed public information to WSI, SIU accessed the Department of Transportation's (DOT's) driver's license image program. The use of the driver's license program to access photos was inappropriate and violated the contract WSI had with DOT as well as state law requirements.

Action Taken

The contract for access to DOT's driver's license image program has been amended. WSI has also developed a policy to limit access to such information. However, in a limited review of access to the image program, we identified improvements were still required to ensure the program is accessed for official use only. DOT provided us an access log for June 2008. In comparison to an access log maintained by SIU, we identified three instances in which DOT's access log identified the system being accessed and WSI's access log had no listing. In all three instances, WSI could not identify the purpose for the access.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI continues to modify its new policies to ensure the contract with the Department of Transportation (DOT) will not be breached. DOT has indicated that its own audit department will be reviewing WSI's access to this database during 2008 to check contract compliance. WSI is in discussions with DOT to possibly provide regular reports of access to review against WSI's access log. WSI will be refining the written policies and possibly adopting new policies after expected discussions with DOT.

Recommendation #23

We recommend Workforce Safety & Insurance comply with legislative intent and ensure the Special Investigations Unit's resources are used appropriately.

Original Condition

To investigate who emailed public information to WSI, the Executive Director identified the resources used for the investigation were the Special Investigations Unit (SIU), Information Systems, General Counsel and himself. SIU was specifically requested to conduct an investigation in order to find out who sent the information, what they could find on this person, and whether or not a law was broken. The use of SIU to attempt to track down an individual who emailed public information to WSI results in noncompliance with legislative intent as this unit was not established for this purpose.

Action Taken

We identified policies and procedures for the operations of SIU have been developed. However, we identified certain employees of SIU have not signed all policies and the policies are in need of revision. While we did not identify resources being used inappropriately, improvements must still be made with the policies and procedures.

Chapter 2

Recommendations Partially Implemented

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

See response to #22. In addition, all relevant staff members have now signed the appropriate policies. SIU resources are being used appropriately.

Recommendation #24

We recommend Workforce Safety & Insurance take appropriate action to formally establish an adequate procurement system. The organization should, at a minimum:

- a) Ensure purchasing policies are thoroughly documented, communicated to appropriate employees, and implemented;**
- b) Centralize recordkeeping of procurement information; and**
- c) Establish an adequate monitoring process to monitor compliance with laws, Office of Management and Budget guidelines, and the organization's policies.**

In establishing a formal procurement system, the organization should ensure changes are made to address all areas identified in the report as requiring improvement, including compliance issues.

Original Condition

In a review of 53 contracts, we identified a number of noncompliance issues with procurement laws, rules, and policies. WSI had not consistently adhered to procurement requirements, criteria, or guidelines.

Action Taken

WSI has made changes to establish a formal procurement system. A new purchasing policy was established, training has been provided to employees, and recordkeeping of procurement information has been centralized. However, in a limited review of 10 contracts, we identified improvements were still required to ensure the system established by WSI is adhered to by employees. For example, when WSI procured services for administrative hearing officers, the Legal Department concluded these services were exempt from state procurement requirements. This was an incorrect conclusion which led to WSI failing to follow state procurement guidelines for these services as required (WSI had estimated the cost of services to be \$450,000).

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI agrees it has established a formal procurement system, established a revised purchasing policy, trained employees, and centralized recordkeeping of procurement information pertaining to the over one hundred forty contracts in place in a given year.

Although we have improved the procurement system significantly, WSI further agrees improvements can still be made to the system to make it even better. WSI regards the procurement system as a "work in progress" and will continue to work diligently to further enhance it. WSI works closely with the ND State Procurement Office and is appreciative

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of their assistance and advice on the implementation of procurement policies.

WSI had already identified and addressed the situation referenced by the SAO prior to their follow-up audit. The State Procurement Officer was made fully aware of the situation and personally came to WSI in early 2008 to review and discuss the extensive competitive process utilized by WSI to procure hearing officer services, and to determine if any follow-up activity was necessary. Although an RFP was not formally issued, a sizeable competitive selection process was utilized by WSI to procure hearing officer services. This process included state-wide advertisements, and a uniform scoring and interviewing process. We also recommended additional procurement training to enhance staff knowledge in the procurement area.

State Auditor's Concluding Remarks

WSI states the process to procure hearing officer services included state-wide advertisement and a uniform scoring and interview process. This statement does not identify all relevant facts. Even though WSI followed such a process, state procurement requirements required a different process to be used including the use of formal sealed proposals and using an approved bidders list which was not done. In addition, a month and a half after WSI entered into contracts with hearing officers, it then entered into a contract for another hearing officer. This contracting process followed no state-wide advertisement indicating WSI was going to enter into additional contracts. This procurement process again resulted in noncompliance with state procurement guidelines (no formal sealed proposals used, approved bidders list not used, etc.).

Recommendation #25

We recommend the Workforce Safety & Insurance Procurement Office be involved at the beginning of all competitive, limited competitive, noncompetitive, and negotiated purchases.

Original Condition

We identified certain contracts had not properly involve WSI's Procurement Office from the beginning of the process. When the Procurement Office was not involved, we identified problems with the processes used.

Action Taken

WSI made changes to establish a formal procurement system which includes involving the Procurement Office at the beginning of the procurement process. In a limited review of contracts, we identified the Procurement Office was not properly included when WSI procured the services of administrative hearing officers. This procurement process resulted in noncompliance with state procurement requirements.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.
See Response to Recommendation 24.

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Recommendation #26

We recommend Workforce Safety & Insurance use the established evaluation and selection methodology to ensure fairness in awarding contracts.

Original Condition

In a review of the process used for awarding a contract in excess of \$500,000, we identified WSI changed the evaluation methodology after proposals were received. WSI removed the high and low evaluation scores and then averaged the remaining scores.

Action Taken

In our review of WSI's procurement system, we identified the system includes a process to establish committees and criteria for evaluating bids/proposals prior to opening bids/proposals. In a review of 10 contracts, we identified an instance in which an evaluation of a proposal was not conducted. WSI received one proposal after a Request for Proposal (RFP) had closed. The committee established to evaluate the proposal had a meeting and determined to award the contract to the vendor. No evaluation forms are completed by the committee and it appears knowledge of the vendor assisted in determining the vendor met the requirements of the RFP (vendor had been contracted with WSI previously).

Management's Response and Future Action to be Taken

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

SAO identified one of the ten contracts tested as lacking a formal evaluation form completed by the evaluating committee. In this instance, only one proposal was received after the RFP was issued. This lone proposal was submitted by the current vendor who has had extensive experience with WSI. The evaluating committee met and discussion centered on the proposal and how well the vendor responded to the RFP. Contract evaluations from this vendor's past performance were on file. These evaluations were reviewed and discussed. The evaluating committee agreed the vendor had adequate knowledge and understanding to fulfill the requirements of the RFP. After lengthy and complex negotiations were finalized, the contract was awarded to the one responsive bidder.

WSI's Procurement Officer works with employees when RFP proposals are evaluated. Typically, the Procurement Officer meets with the evaluating committee, disbursing the proposals and discussing the process. Often the Procurement Office will direct the entire process, depending on the circumstances and the level of procurement knowledge and experience of the evaluation committee members.

To imply that a single exception to the process results in partial implementation is not a reasonable conclusion.

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State Auditor's Concluding Remarks

WSI provides information regarding an apparent informal review taking place with an evaluation committee. No documentation exists regarding a formal evaluation being performed. WSI's own Procurement Officer stated to us such an evaluation should have been completed.

WSI states to imply a single exception to the process results in partial implementation is not a reasonable conclusion. This information is irrelevant and demonstrates a lack of knowledge of the auditing environment. Auditing requires the use of sampling as not all transactions or events can be reviewed. WSI identified over 100 contracts which were subject to our review. Results from a sample of our review indicated this recommendation was not fully implemented. WSI should recall the reason this recommendation was made in 2006 was due to one contract being reviewed in which the established evaluation and selection methodology were changed in the process.

Recommendation #27

We recommend Workforce Safety & Insurance ensure contracts are in place before work commences or continues on an expired contract.

Original Condition

In review of contracts and payments made for services, we identified WSI had paid for services prior to contracts being finalized. We identified one of WSI's largest vendors was allowed to conduct work and be paid for services for one month without a contract being established.

Action Taken

WSI has implemented new policies and procedures related to contracts. However, in a limited review of contracts, we identified instances in which contracts were not entered into in a timely manner. WSI had a contract with a vendor which expired on January 1, 2008. A new contract with the vendor was established on March 1, 2008. We identified the vendor performed services in February for approximately \$6,500. Also, we identified the contracts for private investigation services had expired in November 2007 and WSI had not entered into new contracts until January 2008. Thus, services were performed for a month without a written contract (approximately \$3,500 paid).

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI has implemented policies and procedures to ensure contracts are in place before work commences. WSI will continue to improve monitoring and identifying contracts approaching expiration with the contract managers. Further explanation is provided under Recommendation #24.

Recommendation #28

We recommend Workforce Safety & Insurance formally analyze potential temporary employee relationships to ensure contractors are not hired as temporary employees.

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<i>Original Condition</i>	In review of information, temporary employees as identified by WSI appeared to be independent contractors.
<i>Action Taken</i>	WSI has established a policy related to hiring temporary employees and independent contractors. In a review of three temporary employees being hired, we identified two hires had no documentation of evaluating the employment relationship as required by WSI's policy.
<i>Management's Response and Future Action to be Taken</i>	WSI concurs with the status of this recommendation. WSI has a hiring policy in place. Steps have been taken to prevent future instances, such as the two instances identified by SAO.

Recommendation #29	We recommend Workforce Safety & Insurance make improvements with reimbursing employees for taxes already paid by employees. The organization should, at a minimum: <ul style="list-style-type: none">a) Ensure tax reimbursement payments are reasonable and done in accordance with established agreements;b) Attempt to recover the amounts improperly paid to employees; andc) Ensure requests made to the Chair of the Board of Directors are reasonable.
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<i>Original Condition</i>	When two WSI employees were hired, each received a letter from WSI identifying relevant employment information including reimbursements for moving expenses to be incurred. While the letter stated portions of the reimbursement may be taxable and reported on federal tax forms, the two employees received reimbursement for their tax liability.
<i>Action Taken</i>	In a limited review of payments to employees for 18 months (starting with January 1, 2007), we identified no payments for moving expenses for new employees or for reimbursing taxes. Based on a review of information from WSI, it appears no such payments have been made. We identified no work or efforts made by WSI to recover the amounts improperly paid to the two individuals (both are no longer employees of WSI).
<i>Management's Response and Future Action to be Taken</i>	WSI concurs with the status of this recommendation. Parts (a) and (c) have been fully implemented. No action has been taken on part (b) due to the fact that WSI did not concur with this portion of the original recommendation. No further action will be taken.

Recommendation #30	We recommend Workforce Safety & Insurance comply with legislative intent and apply expenditures to the appropriate biennium.
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Recommendations Partially Implemented

Original Condition

In review of expenditure information, we identified approximately \$24,600 was applied to the incorrect biennium. This resulted in noncompliance with legislative intent and OMB policy.

Action Taken

WSI has made changes to its processes for approving and paying for expenses. In a review of 35 vouchers, we identified two vouchers which were not applied to the appropriate biennium (total of approximately \$21,000)

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI agrees with the SAO that changes have been made to processes for approving and paying expenses. The SAO identified two expenditures from June and July 2007, as being appropriated in the wrong biennium.

WSI agrees it is important to comply with both legislative intent and OMB policy regarding the application of expenditures to the appropriate biennium. WSI will continue to monitor invoices for appropriate placement within the correct biennium.

Recommendation #31

We recommend Workforce Safety & Insurance improve the employee performance appraisal process and ensure the pay for performance system operates in an effective manner. The organization should, at a minimum:

- a) Ensure the performance appraisal process is adequately monitored for compliance with policies including appraisals being completed annually;**
- b) Establish the criteria to be used for measuring performance at the beginning of an appraisal period;**
- c) Update performance appraisal policies in a timely manner;**
- d) Have supervisors evaluated by those they supervise; and**
- e) Provide training to employees related to properly completing performance appraisals.**

Original Condition

In review of WSI's performance appraisal system, we identified a number of concerns related to compliance with WSI policies, confusion related to what forms were to be used, and establishing criteria for evaluations. Due to this, we concluded WSI's pay for performance system had not been operating effectively.

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Action Taken

WSI still requires an annual performance appraisal of employees and changed its process to have appraisals done in November. We identified training provided to employees on changes with the appraisal process. In a review of 15 employees, we identified employees were evaluated annually and had criteria for measuring performance established at the beginning of the appraisal period. However, we identified concerns with how employees receiving higher performance scores received lower salary increases compared to other employees. Also, we identified WSI has not updated their performance appraisal policies with the changes made to the process in 2006. WSI does not have supervisors evaluated by those they supervise.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI continues to enhance its pay for performance system and employee appraisal process. WSI will update the respective policies as necessary. WSI did not concur with part (d) in the original audit and this will remain in a non-implemented status.

Recommendation #32

We recommend Workforce Safety & Insurance establish a consistent and uniform process for hiring employees. The organization should, at a minimum:

- a) Ensure selected applicants meet minimum qualifications of the position;**
- b) Centralize the hiring process within the Human Resource Department;**
- c) Establish a formal screening process and standardized scoring system which is consistently applied to all applicants;**
- d) Ensure questions asked of applicants are relevant and pertain to the position's primary duties; and**
- e) Verify work experience and education for all individuals hired.**

Original Condition

In review of information related to the hiring of employees, we identified a number of concerns related to the hiring process. This included selecting individuals for employment who did not meet the minimum qualifications. WSI did not have a consistent, uniform process for hiring employees.

Action Taken

WSI established hiring policies providing specific guidance as to the steps and actions to be taken when a job opening exists. This included centralizing the process within the Human Resource Department and establishing a formal screening process. In a review of information for the hiring of 10 employees, we identified noncompliance issues with the hiring policies. We identified required forms were not completed, applicants were hired who did not appear to meet the minimum qualifications, and the required reference and education checks were not completed.

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Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI has implemented a consistent, uniform hiring process. The process ensures selected applicants meet minimum qualifications of the position, is centralized in the HR department, and ensures formalized screening process and standardized scoring system is consistently applied to all applicants. The process also ensures questions asked of applicants are relevant and pertain to the position's primary duties. The verification of education and experience is included in the current hiring process.

WSI acknowledges isolated instances relative to verification of experience and education and views this as an area for continued monitoring.

State Auditor's Concluding Remarks

WSI states it acknowledges isolated instances to verify experience and education is an area for continued monitoring. We did not identify isolated instances of noncompliance. In a review of information for the hiring of 10 employees, we identified only one hiring had the necessary reference, background, and education checks completed as required by WSI's policy (90% error rate)

Recommendation #33

We recommend Workforce Safety & Insurance use a competitive hiring process for all positions but document information as to how an appointment is being done on a nonpartisan, merit basis if the Executive Director makes an appointment without a competitive process.

Original Condition

According to North Dakota Century Code, the Executive Director may appoint the director of any division and this appointment must be on a nonpartisan, merit basis. When the Executive Director hired two individuals with no competitive process, we identified no documentation how the hiring of the individuals was done on a nonpartisan, merit basis.

Action Taken

WSI's hiring policies address how the Executive Director may make an appointment of a division director without using a competitive process. The policies require supporting documentation for the appointment addressing the appointee's qualifications and how the appointment is a match for the job. In our review of two appointments, supporting documentation was not included for one of the appointments.

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Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

The single instance mentioned by the SAO in their report has since been properly documented. The supporting documentation is now contained in that individual's personnel file.

State Auditor's Concluding Remarks

WSI states the single instance mentioned by SAO has been properly documented. We only reviewed two applicable appointments. A 50% error rate is significant and unacceptable in the auditing environment.

Recommendation #34

We recommend Workforce Safety & Insurance make improvements with how investigations of incidents involving employees are conducted. The organization should, at a minimum:

- a) **Ensure investigations are conducted by an independent source who is free of conflicts of interests;**
- b) **Ensure individuals conducting investigations receive proper training;**
- c) **Have interview sheets signed by the interviewee, specifically when interviews are conducted in a one-on-one setting; and**
- d) **Ensure final investigation reports are signed and dated**

Recommendation #35

We recommend Workforce Safety & Insurance make improvements with actions taken related to results and recommendations of investigations involving employees. The organization should, at a minimum:

- a) **Document actions taken or the justification for no actions taken in relation to recommendations from investigations;**
- b) **Improve the monitoring of actions to be taken;**
- c) **Document the reasons for changing conclusions or recommendations of investigations; and**
- d) **Have results of investigations provided to the Board of Directors Audit Committee when the investigation involves the Executive Director.**

Original Condition

Incidents involving harassment and noncompliance with WSI policies were conducted by WSI employees. We identified concerns with who conducted investigations and how certain investigations were conducted. For example, one of the Executive Director's department chiefs, a direct report of the Executive Director, conducted an investigation which directly involved the Executive Director. Also, we identified recommended actions from investigations were not always followed and results/recommendations of investigations were changed. For example, while an employee was required to surrender annual leave and make a payment for a monthly cell phone bill, no such action had taken place at the time of our review. Also, we identified the Executive Director recommended a lesser penalty for a contractor who had violated WSI's harassment policy.

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Action Taken

While WSI has written policies and procedures related to how investigations are to be performed and actions to be taken at conclusion of investigations, it appears they have not been established into a policy manual. Other than the individuals writing the policies and procedures (now all former employees), no other employees appear to have been aware of the policies and procedures. In review of 8 investigations performed by WSI, we identified improvements were made. However, additional improvements are still required including implementation of formal policies and procedures.

Management's Response and Future Action to be Taken

WSI concurs with the status of these recommendations.

WSI agrees progress has been made in this area. WSI has reviewed, refined, and incorporated the investigation policy into WSI's formal policies and procedures.

Recommendation #36

We recommend Workforce Safety & Insurance (WSI) make improvements with how turnover rates are calculated, presented, and reviewed. The organization should, at a minimum:

- a) Ensure a standard, consistent turnover rate is used;**
- b) Have only one department responsible for calculating and tracking turnover;**
- c) Properly identify turnover rate information if differences in calculations exist; and**
- d) Identify turnover rate information by department and review areas where significant increases are occurring.**

Original Condition

WSI had not established a standard calculation for determining a turnover rate which was being provided externally and used for internal purposes. Both the Human Resources Department and the Strategic Operations section were computing turnover information and were using different calculation methods.

Action Taken

The Human Resources Department is now the only department or section responsible for tracking WSI turnover information. While the turnover rate appears to be consistently calculated for the entire organization, we identified turnover data related to departments is incomplete.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI concurs the turnover rate is consistently calculated for the entire organization. WSI also concurs turnover data related to individual departments could be more complete. Further improvements have been made which do include automated reporting from the Human Resource Information System which displays turnover by department and agency on a monthly, quarterly and annual basis.

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Recommendation #37

We recommend Workforce Safety & Insurance establish a formal procedure to periodically review the Policy Handbook, make the necessary changes, and date changes accordingly.

Original Condition

In review of WSI's Policy Handbook, we identified a number of areas where formal policies were lacking and inconsistencies existed. We also identified WSI would change policies and back date the policy to make it appear effective sooner than it actually was.

Action Taken

While WSI has established procedures to periodically review the Policy Handbook, a limited review identified policies have not been updated to reflect changes made. For example, changes made to the performance appraisal process in 2006 have not been incorporated into the handbook.

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

WSI concurs with the status of this recommendation.

A policy review process has been created which provides for input at all levels of the agency. A policy matrix has been developed but has not been fully implemented at this time. The matrix provides a systematic methodology for policy review while the policy review process ascertains input and notification to all WSI employees.

Recommendation #38

We recommend Workforce Safety & Insurance end all incentive pay programs for their employees and ensure appropriate payment adjustments are made.

Original Condition

WSI identified nine employees were eligible for incentive (bonus) programs. WSI had an ergonomic consultant recommend the programs be discontinued and in training conducted by WSI, the organization identified state agencies should not have such programs.

Action Taken

Incentive payments were distributed one last time in November 2006 and the incentive programs were ended. A letter in January 2007 from the Human Resources Department identifies a review of salary information was conducted and it was determined no salary adjustments would be made to the individuals included in the former incentive programs.

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

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

All incentive pay programs have been discontinued, no further payments are due to employees.

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Recommendation #39 We recommend the Workforce Safety & Insurance Executive Director make improvements with actions taken in order to increase morale of the organization. While this will encompass a number of areas, the Executive Director should, at a minimum:

- a) Ensure actions taken are not resulting in preferential treatment and/or favoritism; and
- b) Follow through with commitments or promises, ensure unreasonable commitments are not made, and notify all applicable parties if promises or commitments are unable to be adhered to.

Recommendation #40 We recommend Workforce Safety & Insurance take appropriate action to have an effective open door policy under which employees can bring issues to management without actual retaliation or fear of retaliation.

Recommendation #41 We recommend Workforce Safety & Insurance make significant, timely improvements related to communication between executive management and other employees of the organization.

Original Condition

We identified a number of concerns related to low employee morale, problems with communication, and employees fearing retaliation. We identified the Executive Director had taken actions which resulted in apparent preferential treatment or favoritism. A significant number of employees identified favoritism as an issue within the organization. While WSI stated it had an open door policy, our review identified the open door policy was ineffective. Also, the Executive Director's own brief survey conducted in April 2006 confirmed employees were afraid to honestly speak out without being afraid of losing their job.

Action Taken

In March 2007, WSI hired a consultant to conduct an analysis of WSI employee morale. The morale analysis identified very similar concerns as were identified by our office. The report identified eight primary areas for growth including perception and trust of senior leadership, starting management initiatives too frequently, communication being ineffective, favoritism issues, and problems with the pay for performance system. The consultant developed an action plan to improve employee morale. We identified WSI established committees and changed certain procedures in an attempt to address the areas identified. In April 2008, the same consultant conducted a follow-up analysis to assess the effectiveness of the measures taken by WSI. The consultant identified results show more employees have favorable perceptions of the organization in 2008 than in 2007. The consultant did identify there is room for improvement.

In our review of the consultant's survey results from 2008, we identified relatively high unfavorable response rates still existed with certain questions. For example, in response to the question of policies and

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procedures being applied consistently across the organization, 59% responded unfavorably (compared to 73% in 2007). Also, in response to the question of personal favoritism or bias not related to performance being practiced, 48% responded unfavorably (compared to 63% in 2007).

In our survey of employees in August 2008, we identified certain favorable increases in responses. However, there still exist relatively high negative response rates in certain areas. Examples include:

- In response to the statement of "Favoritism is not an issue in raises or promotions," 38% selected "Strongly Disagree" or "Disagree" (compared to 50% in our survey of employees in 2006).
- In response to the statement of "I am able to take issues to or can disagree with senior management without fear of consequences," 33% selected "Strongly Disagree" or "Disagree" (compared to 44% in our survey of employees in 2006).

Our survey of employees in 2008 also requested employees who had been with the organization on or before January 1, 2006 to respond to certain statements. Results of these statements indicated improvement was still needed. Examples include:

- In response to the statement of "Employee morale has significantly improved in the last two and a half years," 38% selected "Strongly Disagree" or "Disagree."
- In response to the statement of "Communication between executive management and other employees of the organization has significant improved in the last two and a half years," 32% selected "Strongly Disagree" or "Disagree."

Management's Response and Future Action to be Taken

WSI concurs with the status of these recommendations.

WSI concurs with the status of these recommendations and is pleased with the noted improvements from both the independent April 2008 ICF assessment and the 2008 follow-up SAO survey. See Appendix A for the remainder of WSI's response.

Recommendation #42

We recommend Workforce Safety & Insurance take appropriate steps to ensure information it provides is accurate.

Original Condition

During our review of information, we identified a number of areas in which information provided by WSI appeared to be misleading, inaccurate, or did not properly include all relevant information. This related to information provided to us as well as information WSI provided to legislative committees, state entities, and other parties.

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Action Taken

In a limited review of information provided by WSI, we identified areas in which information provided by WSI employees to the Board of Directors appeared to be misleading and/or inaccurate. Examples include:

- During a presentation of WSI's 2007 financial statement audit, information is provided to the Board regarding an approximate \$72.5 million prior period adjustment. The Finance Director identifies to the Board their disagreement with the adjustment. This is stated by the Finance Director even though this individual signed the management letter taking responsibility for the financial statements, WSI's formal response in the financial audit states it agrees with the current accounting method, and numerous parties have agreed to the adjustment including WSI's actuary, the current CPA firm's actuary, and the CPA firm who had conducted the previous financial audit. This information created confusion with Board members as to which accounting method is correct.
- During a presentation of WSI's 2007 financial statement audit, information is provided to the Board regarding the amount of surplus maintained by WSI is \$174 million more than it should be. Information is provided by the Finance Director related to certain areas such as safety grants and unrealized gains on investments which could apparently offset the surplus amount. These amounts are not identified in state law as being allowable offsets to the fund surplus. The Board appears confused by the information and continues to discuss this issue in subsequent Board meetings.

Management's Response and Future Action to be Taken

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

See Appendix A for the remainder of WSI's response.

State Auditor's Concluding Remarks

See Appendix A for State Auditor's concluding remarks.

Recommendation #43

We recommend Workforce Safety & Insurance implement succession planning as an ongoing process to identify, assess, and develop talent to ensure leadership and management continuity throughout the organization.

Original Condition

We identified turnover within WSI increased in fiscal years 2006 and 2007. WSI had no plans to identify employees within departments who had knowledge and/or training to fill positions on a part time basis.

Action Taken

WSI has established a Key Personnel Succession Plan. In review of WSI's planning information, we identified WSI has determined the order of succession to fill the Chief Executive Officer position. This order should be determined by the Board of Directors, not the organization.

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Recommendations Partially Implemented

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI has removed the order of succession in the Key Personal Succession Plan for the Chief Executive Officer position. Two or more executives that are familiar with the board and CEO issues and processes are listed as potential candidates. However, the CEO successor is determined by the WSI Board of Directors.

Recommendation #44

We recommend Workforce Safety & Insurance conduct an in-depth review of the staffing level of Internal Audit and determine an adequate staffing level for Internal Audit to effectively fulfill its mission.

Original Condition

We identified the Board of Directors' Audit Committee removed an Internal Audit position and provided the position to the Executive Director without even knowing how the position was to be used by the Executive Director. This occurred with no analysis of the impact on Internal Audit's mission or the impact on the operations of Internal Audit.

Action Taken

WSI contracted with an outside vendor to, in part, conduct an analysis of the Internal Audit Department staffing level and expenses for fiscal year 2007. The Audit Committee has yet to determine an adequate staffing level for the Internal Audit Department.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

At the time of this review the Audit Committee had not completed an evaluation of the staffing needs for the Internal Audit Department. The new Internal Audit Manager started at WSI on September 8, 2008. WSI is currently conducting interviews to fill the Internal Auditor vacancy. Once the Internal Audit Manager has a better understanding of the workload for the Internal Audit department, the Audit Committee and Internal Audit Manager will discuss and determine what the appropriate staffing level is for the Internal Audit Department.

Recommendation #45

We recommend the Workforce Safety & Insurance Board of Directors comply with legislative intent and effectively govern the organization.

Original Condition

The Board of Directors was established as a governing board and our review of information identifies the Board was in noncompliance with this legislative intent. The Board had not ensured WSI operated efficiently or effectively. In addition, we identified the Board was meeting for a minimal amount of time and it was questionable as to whether the Board could effectively govern WSI in such a minimal amount of time.

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Recommendations Partially Implemented

Action Taken

In review of information, we did identify certain improvements made by the Board which should improve how the Board operates. This included the Board receiving training and increasing the number of times it is scheduled to meet. However, we identified areas where the Board is in noncompliance and/or not governing as effectively as it should. Examples include:

- The Board has been in noncompliance with open meeting requirements (two formal Attorney General's Opinion confirm this).
- When a new member was appointed to the Board in February 2008, the member was to represent an employer with a premium category of less than \$10,000. This member's employer had a premium amount in excess of \$10,000. When the 50% dividend credit is applied to this premium, it is below \$10,000. According to WSI, it is unclear how the adjusted amount of premium was used. Due to this, WSI developed a policy for determining the premium amount for the appointment of Board members. The policy, signed on June 2, 2008, identifies dividends or safety discounts will not be taken into consideration of calculating the premium amount. It appears there was noncompliance with the Board member appointment in February 2008.
- North Dakota Century Code Section 65-02-03.3 requires the Board to present an annual report to the Legislative Audit and Fiscal Review Committee (LAFRC). The law requires the report to be presented by the Chair of the Board and the Executive Director of WSI. At the July 8, 2008 LAFRC meeting, the report provided by WSI was not an annual report and was not presented by the Chair of the Board as required.
- When the Board passed a motion in December 2007 to end the employment relationship with the Executive Director and offer a mutual separation agreement, the Board did not formally establish who would be responsible for the agreement. After the Executive Director states they will not agree to a provision within a draft agreement related to recovery of attorney fees (draft included a release of claims and would have required the Executive Director to release their claim for attorney fees), a change is made to the agreement to specifically allow the Executive Director the opportunity to seek reimbursement for attorney fees. This appears to have been a decision made by the Chair of the Board and did not involve other Board members.

We also identified the Board's implementation of policy governance was delayed. The hired consultant to provide training and assist in implementing policy governance had wanted the Board to go "live" in June 2007. At the June meeting, the consultant encouraged the Board to go "live" in August 2007. The Board went "live" with policy governance in March 2008. Without proper policy governance established in a timely manner, there were very little processes established by the Board to effectively govern the organization.

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Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI agrees that the WSI Board of Directors must comply with legislative intent and must effectively govern the organization. To that end, at its most recent meeting, the WSI Board of Directors received training from the Attorney General's Office on Open Records and Open Meetings issues.

WSI implemented a formal policy in June of 2008 when it became clear that the dissemination and accuracy of information regarding the premium level to determine prospective board member eligibility was unclear. With the implementation of this policy, the issue has been addressed for future board appointments.

Please refer to recommendation numbers 49 and 53 for WSI's response regarding the December 2007 separation agreement with the former Executive Director.

WSI interprets its obligation under the statute to present annually to the committee, not that a specific report must be presented. The LAFRC minutes reflect that the current Interim CEO gave WSI's annual report to the committee. WSI's Chief Governance Officer did not present at the committee meeting.

Out of the Woods Consulting recognized that the "transition to a fully operational Policy Governance® board would take about a year, but (they) were committed to doing it right. The transition is longer and fraught with more challenges when organizations are also in the midst of any kind of crisis." Out of the Woods Consulting first worked with the Board in February 2007. Considering the challenges that WSI has faced in its recent past, an eighteen month implementation of Policy Governance® is reasonably successful.

State Auditor's Concluding Remarks

WSI states it interprets statute to present annually to the committee, not that a specific report must be presented. We are unsure how this interpretation was derived and WSI communicated no such concerns to us regarding this until their responses to the draft report were provided. NDCC Section 65-02-03.3 states the Board shall "Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director." We are unsure how else state law could be written to require a "report" to be filed.

Recommendation #46

We recommend the Workforce Safety & Insurance Board of Directors comply with the Carver Policy Governance Model.

Chapter 2
Recommendations Partially Implemented

Recommendation #47 We recommend the Workforce Safety & Insurance Board of Directors establish detailed, measurable performance criteria within the Outcomes and Executive Limitations policies.

Recommendation #48 We recommend the Workforce Safety & Insurance Board of Directors establish a separate monitoring report for the purpose of determining whether board expectations, set in its Outcomes and Executive Limitations policies, are being fulfilled.

Original Condition The Board of Directors had adopted a policy governance model designed to empower boards to fulfill their obligation of accountability for the organization they govern. Our review identified a number of areas in which the Board was in noncompliance with the principles of the adopted policy governance model. The Board also had limited reports which related to monitoring the expectations set by the Board.

Action Taken The Board has received training on policy governance and in August 2008, established its Ends (or outcomes) statements. The Board has accepted monitoring reports addressing certain Executive Limitations the Board has established. However, with the recent establishment of the Ends statements, no monitoring reports have been developed addressing the statements.

While the Board appears to have established the necessary policies, these policies were not implemented for an extended period of time. In addition, in a limited review of established policies, we identified noncompliance issues with the policies. For example, one policy states the Board will govern lawfully. The Board has been in noncompliance with open meeting requirements. Also, a review conducted by our office related to the use of a county cell phone, identified the former Chair of the Board was in significant contact with WSI which appears to be noncompliance with policy governance principles.

Management's Response and Future Action to be Taken WSI concurs with the status of these recommendations.

The Board will set the monitoring schedule for the Ends Statements at the next board meeting. The CEO will respond with corresponding monitoring reports including measurable performance measures.

The Governance Process policies were adopted March 6, 2008. Since that time the Board has made great strides toward strictly adhering to the policies. In May 2008, the Board conducted a self-evaluation on GP- 3.1 Governing Style, GP-3.2 Board Job Products and GP-3.4 Chief Governance Officer's Role. This assessment will continue to be performed on an annual basis with Board discussion on opportunities for improving their performance.

Chapter 2
Recommendations Partially Implemented

Recommendation #49

We recommend the Workforce Safety & Insurance Board of Directors formally establish its role regarding when Board involvement and/or approval is required.

Original Condition

We identified when the Board passed motions establishing a policy or requirement, no additional documentation of the requirement was placed into Board policy. There was no formal documentation identifying all of the Board's statutory responsibilities and institutional memory had to be relied upon for ensuring compliance.

Action Taken

The Board has established policy governance policies addressing the Board's role and has also established a planning calendar detailing information to be received throughout the year. While the Board has established its role, we identified the Board failed to identify its role when it passed a motion in December 2007 related to the offer of a settlement agreement. We were unable to identify the Board authorizing the Chair to make decisions for the Board related to the agreement. When a significant change was made to the draft agreement, the Chair allowed the change to occur and it appears the Chair was not authorized to do so.

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

WSI does not concur with the status of this recommendation. WSI's position is this recommendation has been fully implemented.

WSI disagrees with the factual conclusion that (a) there was a significant change made to a draft agreement and (b) that the Board had not authorized the chairman to act on its behalf in the final negotiation of the contractual terms.

The reservation of rights allowing the former Executive Director to make a claim for the attorney fees expended in his criminal defense, was ultimately required by the former Executive Director. In order to reach an agreement on the terms of separation, WSI negotiated this reservation. WSI does not identify this alteration as significant.

The Board, by operation, authorized the Chairman to negotiate on its behalf. This has taken place with respect to negotiation for hiring and terminations in the past.

Chapter 2

Recommendations Partially Implemented

State Auditor's Concluding Remarks

WSI states in order to reach an agreement on the terms of separation, WSI negotiated this reservation. This is a misleading statement. The Executive Director demanded a change to the draft agreement and would not sign the agreement unless the change was made. We were informed by WSI representatives it was the former Chairman of the Board who made the determination to allow the agreement to be modified to allow a claim to be filed for attorney fees. We question whether the Chairman of the Board was authorized to make such a decision on their own as the Board provided no such authority to the Chairman.

WSI states it does not identify the alteration as significant. This statement concerns us. When the draft agreement is provided to the Executive Director, Chairman of the Board, and a representative of the Office of the Attorney General, WSI legal counsel specifically states the agreement will require the Executive Director to release his claim for attorney fees and this "requirement, I believe, makes the agreement stronger and as a result less subject to attack." If the alteration was not significant as WSI states, we question why such information was included by legal counsel when the draft was provided.

Recommendation #50

We recommend the Workforce Safety & Insurance Board of Directors periodically conduct an evaluation on the Board's and individual members' performance including each committee's and individual committee members' performance.

Original Condition

The Board did not have a formal plan established to regularly discuss its process and performance.

Action Taken

The Board has implemented a policy requiring a periodic self-evaluation of the Board as a whole and used a survey process in May 2008 to evaluate their performance. While we identified the Audit Committee has established a self-evaluation requirement in policies, the other committees have not established such a requirement. In addition, no policies were identified related to evaluating individual members' performance.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.
See Appendix A for the remainder of WSI's response.

Recommendation #51

We recommend the Workforce Safety & Insurance Board of Directors improve the governance process used once Outcomes are established or modified. The Board should, at a minimum:
a) Timely incorporate changes into policy; and
b) Adequately monitor the organization's progress in developing a plan to accomplish the Outcomes.

Chapter 2

Recommendations Partially Implemented

Original Condition

While the Board had established six new Outcomes in November 2004, changes were not made to policies until June 2006. In addition, WSI did not formulate strategies or identify a strategic plan based on these Outcomes until October 2005.

Action Taken

When the Board established its Ends (or outcome) statements in August 2008, we identified changes were made to policies in a timely manner. However, since these statements were recently established, there has not been an adequate amount of time to monitor the Executive Director's progress in developing monitoring reports.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

The WSI Board will set the Ends monitoring schedule at the next board meeting. The Ends form the foundation of the strategic plan and subsequent performance measures. Once the strategies are developed, interpretations drafted and metrics established, the CEO will present monitoring reports demonstrating the organizational progress toward reaching the Board-directed Ends.

Recommendation #52

We recommend the Workforce Safety & Insurance Board of Directors evaluate the Executive Director's performance solely on established criteria in Outcomes and Executive Limitations policies which measure the degree of organizational success.

Original Condition

We identified the Board had not conducted a proper evaluation of the Executive Director and was in noncompliance with the Board's policies related to how evaluations were to be conducted.

Action Taken

The Board has established policies related to evaluating performance of the Executive Director. The policies require performance to be monitored on the Ends (outcome) statements and Executive Limitation policies. The Board has received and accepted the interpretation and monitoring report related to four of the Executive Limitations (nine total). With the recent establishment of the Ends statements (August 2008), no interpretations or monitoring reports have been provided to the Board.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

The process of submitting monitoring reports to the Board is ongoing. Throughout the year, the Board will have received at least one monitoring report for each policy. These reports are the basis for the CEO performance evaluation. The Executive Limitation (EL) Policies were adopted on March 6, 2008 and the Ends Policies were adopted on August 29, 2008.

The Governance Process Policy # 3.3.5 states that CEO remuneration will be decided after a review of the monitoring reports received in the

Chapter 2

Recommendations Partially Implemented

last year during the month of December. The current CEO has not served in the CEO capacity through this designated date. However, at the December 2008 Board meeting, the Board will evaluate all scheduled monitoring reports presented to date and evaluate the CEO based on those results.

Recommendation #53

We recommend the Workforce Safety & Insurance Board of Directors ensure necessary and pertinent information is provided to all Board members before voting on motions.

Original Condition

At the October 2003 Board meeting, the meeting began with a motion to sever the employment relationship with the Executive Director. The minutes of the meeting reflect certain members were confused and apparently did not have information other members had.

Action Taken

While most Board members we interviewed believed sufficient information was provided to the Board, we identified certain instances where it appears this has not occurred. For example, prior to the Board meeting in December 2007 where a motion is passed to end the employment relationship with the Executive Director and offer a mutual separation agreement, Board members did not appear to be aware the Executive Director had met with the Chair and Vice Chair of the Board prior to the Board meeting.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI continues to work toward providing all necessary and pertinent information to Board members prior to any votes. WSI struggles with the SAO's definition of pertinent. The fact that two Board members, the Chair and Vice Chair, met with the former Executive Director prior to his separation from employment, is not necessarily pertinent. If the relevant Board members had sought to inform others of their action, it would have potentially violated the North Dakota open meeting laws.

State Auditor's Concluding Remarks

WSI states it struggles with our definition of pertinent. We were never asked for clarification on what this term meant and it concerns us as to why WSI now brings this up as an issue. WSI insinuates if relevant Board members had sought to inform others of a meeting, it would have potentially violated open meeting laws. We never insinuate the Board should violate any state requirement. Obviously, if the Board members were to inform other Board members of information, it would be done at an open meeting. There was nothing precluding the Board members to present such information to the entire Board.

Chapter 2
Recommendations Partially Implemented

Recommendation #54

We recommend the Workforce Safety & Insurance Board of Directors establish a formal plan for actions it will take when the Executive Director position is vacant. The formal plan should, at a minimum:

- a) Identify the Board's role and functions during the transition;
- b) Establish appropriate Board committees in a timely manner;
- c) Identify the payment of applicant interview expenses including expenses for second interviews; and
- d) Identify how performance appraisals of employees reporting directly to the Executive Director position will be conducted.

Original Condition

The Board has no formal plan for actions it is to take when there is a vacancy in the Executive Director position. We identified the Board had not promptly established a Search Committee and the Board did not define the expectations of an appointed transition team.

Action Taken

The Board has established a policy requiring the Executive Director to have at least two members of the organization ready at all times to assume the Executive Director role should a vacancy occur. However, no other information has been identified by the Board related to vacancies in the Executive Director position. We identified after the Board had voted to end the employment relationship of the Executive Director in December 2007, it did not establish a committee to conduct a search for an Interim Executive Director until March 2008.

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

WSI concurs with the status of this recommendation.

The Board submits that the CEO succession planning policy is sufficient. An Interim Executive Director was immediately appointed upon the former Executive Director's departure in December 2007. After receiving the Conolly Report regarding WSI management in March 2008, WSI heeded the consultant's advice and began a competitive Interim Executive Director search process in March 2008 with a new Interim Director appointed in April 2008. This time-frame was quite reasonable under the circumstances.

**State Auditor's Concluding
Remarks**

WSI states the time-frame for appointing a new Executive Director was quite reasonable under the circumstances. This is contradictory to information we reviewed. At the Board meeting in December 2007, it was the Board's apparent intention to move quickly and to find a replacement as soon as possible. The Board established no committees or took other actions for three months. We identified no policies regarding payment of Executive Director applicant interview expenses as the recommendation addresses.

Chapter 2

Recommendations Partially Implemented

Recommendation #55

We recommend the Workforce Safety & Insurance Board of Directors Audit Committee comply with the Board's motion regarding performance related contracts or take appropriate action to have the Board pass a motion which clarifies the Audit Committee's role with performance related contracts.

Original Condition

While a motion was approved by the Board in November 2003 requiring the Audit Committee be informed of performance related contracts with an estimated cost of \$100,000 for the biennium, we identified the Audit Committee was approving such contracts and procurement processes.

Action Taken

At the October 2006 meeting, the Board decided to have the Audit Committee be aware of contracts in excess of \$100,000 per year. The Audit Committee was to not approve such contracts. During the May 2008 Board meeting, a discussion was held regarding contracts and the approval of contracts. Confusion still existed with the Board regarding the Board approving contracts over \$100,000.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

As stated by the SAO, a motion was approved by the Audit Committee in October 2006 to no longer approve contracts in excess of \$100,000. The Audit Committee, however, is still to be notified of these contracts by WSI. In an effort to try to reduce confusion when policies change, WSI will ensure better education of existing members, and orientation of new members.

In August 2008 the WSI Board implemented OurBoardroom Technologies; www.ourboardroom.com. With this new technology all Board members will receive an e-mail notification when changes to policies are made.

Chapter 2

Recommendations Partially Implemented

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Recommendations Not Implemented

Recommendation #56

We recommend Workforce Safety & Insurance promptly notify the state's Risk Management Division of issues where there is a potential for a claim to be filed against the state including all issues related to harassment.

Original Condition

In a review of information regarding investigations, we identified Workforce Safety & Insurance (WSI) had notified the state's Risk Management Division of certain incidents but not all incidents. Once it was determined there was a potential claim against the state, WSI was required to notify Risk Management of such incidents.

Action Taken

In a review of information regarding investigations, we again identified WSI had notified the state's Risk Management Division of certain incidents but not all incidents.

Management's Response and Future Action to be Taken

WSI does not concur with this recommendation. WSI's position is this recommendation is partially, if not fully, implemented.

WSI agrees that vigilance must be maintained to ensure any risk to the state is identified and reported promptly to the Division of Risk Management. To that end, WSI filed 33 reports with RMD from July 1, 2007 through the present date. This number reflects incidents filed with the Division of Risk Management including work injuries, auto liability and general liability. WSI also has the responsibility to exercise good judgment and prudence when filing incident reports. WSI has experienced staff that investigate and analyze all issues which may require the notification of Risk Management and agrees to continue to exercise the highest level of review when determining if an incident report should be filed with the Risk Management Division.

State Auditor's Concluding Remarks

WSI states it is their position the recommendation is partially if not fully implemented. We are unsure how WSI could conclude this recommendation is fully implemented when we again identified WSI had not notified Risk Management of all incidents it should have.

Recommendation #57

We recommend Workforce Safety & Insurance establish and implement its strategic plan in a timely manner, once the Board of Directors establishes revised outcomes. The organization should, at a minimum:

- a) Review and modify its mission;
- b) Reevaluate the purpose and other structural elements of the strategic plan;
- c) Ensure employee involvement is obtained when developing the plan; and
- d) Ensure information related to completion of strategies is accurate.

Chapter 3

Recommendations Not Implemented

Original Condition

After the Board of Directors established its Outcomes in November 2004, it was approximately a year later when WSI formulated strategies and identified a strategic plan for implementing the Board's Outcomes. We identified improvements were needed with the strategic plan and the mission statement was in need of review.

Action Taken

WSI's Board of Directors completed their Ends statements (outcomes) in August 2008. Since these statements were recently approved, the establishment and implementation of the strategic plan have not been completed. We did identify WSI has modified its mission statement.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

The Board adopted the Global Ends Statements at the August 28, 2008 Board meeting. These Ends Statements will form the foundation of WSI's strategic plan.

Recommendation #58

We recommend Workforce Safety & Insurance move the Quality Assurance Director's function of facilitating implementation of recommendations to Internal Audit.

Original Condition

A function of WSI's Quality Assurance Director was to facilitate implementation of recommendations from audits and reviews. We identified a potential conflict of interest and independence problems for this function based on the reporting structure within the organization.

Action Taken

While WSI has made changes for monitoring implementation of recommendations from audits and reviews, including using the Internal Audit Department to validate the status of recommendations fully implemented, the function of facilitating implementation of recommendations remains with the Quality Assurance Director.

Management's Response and Future Action to be Taken

WSI concurs with the status of this recommendation.

WSI did not concur with this recommendation in the original 2006 report and will not be implementing this recommendation.

The facilitation of the implementation of audit and evaluation recommendations remains with the Quality Assurance Director while the validation and testing of completed recommendations is conducted by the Internal Audit department. This separation of duties is preferable.

Recommendations No Longer Applicable

Recommendation #59

We recommend Workforce Safety & Insurance ensure payments made to employees comply with the bonus program requirements within North Dakota Century Code Chapter 54-06.

Original Condition

In review of payments to employees, we identified certain employees received increases which were retroactively applied (made effective to an earlier date). We identified certain retroactive payments included amounts which we concluded were bonuses. We identified the bonus payments were in noncompliance with requirements in statute.

Action Taken

Based on a limited review of payroll information and salary payments made to 41 employees, we identified no bonus payments made to employees from January 1, 2007 through June 30, 2008. It appears no bonus program currently exists at Workforce Safety & Insurance (WSI).

Recommendation #60

We recommend the Workforce Safety & Insurance Board of Directors formally document the types of expenses intended to be included in the Executive Director's expense allowance and clearly communicate this information to the Executive Director and the individual responsible for approving all Workforce Safety & Insurance expenditures.

Original Condition

The Executive Director of WSI had a "housing/business expense allowance of \$18,000" in addition to their base salary. No guidance was established for how the expense allowance amount was to be used. We identified expenditures were incurred by the Executive Director which were reimbursed by WSI and appeared to relate to expenses which a typical business expense allowance would cover.

Action Taken

An expense allowance for the Executive Director no longer is included as part of the position's compensation package. On November 9, 2006, WSI's Board of Directors passed a motion to eliminate the expense allowance and included this amount in the Executive Director's base pay. No expense allowance was included as part of the compensation package when the Interim Chief Executive Officer was hired in March 2008.

Chapter 4

Recommendations No Longer Applicable

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Supplemental Responses & Concluding Remarks

*Management's Response to
Recommendation #20*

Likewise, discussions by the WSI Board of Directors, in considering the possible terms of a separation agreement, did base their discussions on relevant and supportable considerations provided by law. These included discussions regarding the recognition that not necessarily due to his performance, his continued leadership was compromised and an orderly removal of him was necessary. Additionally, WSI would need to attract a quality replacement for his position which would be affected by the circumstances under which he left the organization. Both considerations identified within the meeting minutes directly support the governmental efficiency component of NDCC 54-14-04.3

Additionally, he waived numerous potential claims. He released WSI from all claims including but not limited to age discrimination and employment claims, Title VII claims, The North Dakota Human Rights Act Claims, Family Medical Leave Act Claims, The Americans with Disability's Act, Fair Labor Standards Act, The Employee Retirement Income Security Act, The North Dakota Whistleblower Act, including any and all claims for wrongful discharge, a breach of fiduciary duty, the laws of Contract and Tort, and violations of constitutional rights.

The reservation of a single cause of action by him and acknowledgment by the WSI to allow him to seek reimbursement of attorney's fees is in no way fatal to the consideration underlying the contract for separation and release. Additional information is provided in WSI's response to the North Dakota Attorney General.

Finally, WSI would respectfully suggest this area of audit inquiry is statutorily precluded from the jurisdiction of the North Dakota State Auditors.

"It is not the duty of the state auditor or the auditor's staff to make audits of any political subdivisions, funds, commissions, associations, and bureaus, for the reason of severance from the service of such...of any officer, clerk, deputy, cashier, or other employee unless the head of such state office...named herein shall request such an audit in writing." NDCC 54-10-16.

WSI falls under its purview since "'fund' means workforce safety and insurance fund," by definition. NDCC 65-01-02(19). Likewise, the agency was formerly identified as the "bureau."

Currently, the organization is unaware of any written request for an audit into this matter. If no request has been made, it certainly appears to be an issue statutorily prohibited from the authority of the State Auditor's review. Any resulting exploration is, therefore, without any statutory basis and exceeds this audit's authority.

Appendix A**Supplemental Responses & Concluding Remarks**

State Auditor's Concluding Remarks

WSI states it based their discussions on relevant and supportable considerations provided by law. We disagree with this statement. In listening to the tape of the meeting, the Board discusses the time of the year (Christmas) several times and identifies they would like to do something for the Executive Director. We did not hear a discussion related to the phrase of an "orderly removal of him was necessary" as WSI's response states. WSI is attempting to provide information which is contrary to the actual intent of the motion made at the Board meeting which "is to do something right for [the former Executive Director], who has a family, and that has done nothing but give 100% to the people of this state."

WSI states the reservation of a single cause of action (allowing the former Executive Director to sue for attorney's fees) is in no way fatal to the consideration underlying the separation and release. When the state is entering into such agreements, the state should be attempting to purchase something of value (i.e. release of claims). When the former Chairman of the Board permitted a specific claim to be allowable, there was no adjustment made to the payment amount provided to the Executive Director. It is unclear why the amount of the agreement was not amended based on the change in what was being purchased. In correspondence between WSI and the former Executive Director, it is apparent WSI legal counsel wanted the release of claims to include attorney fees.

WSI states our review of the payment made to the former Executive Director exceeds our audit authority. Based on our prior experience with WSI's legal interpretations during the 2006 performance audit and the audit follow-up, we are confident WSI's statement is inaccurate and our interpretation of the State Auditor's statute is correct. WSI did not address this concern to us prior to providing their responses to the final report. If they had, we would have been willing to identify to them the error of their interpretation. The Office of the State Auditor had proper authority to include a review of the payment made to the former Executive Director as part of this performance audit.

Management's Response to Recommendation #21

How and why the former Executive Director requested this information is irrelevant. However, it was reasonable to expect his requests related to the criminal charges recently filed against him. WSI attempted to provide him with the requested information in as efficient and fair manner as the law would allow.

In an effort to streamline his request, the decision was made to provide information to him under a confidentiality agreement so WSI would not have to expend resources redacting confidential information. This was appropriate under the circumstances as he was still a WSI employee. In addition, much of the request simply required retrieving documents already in existence.

Appendix A

Supplemental Responses & Concluding Remarks

Quite reasonably, WSI did not track or document expenditures as he was not charged for this request. WSI has a policy in place not to charge its employees for document requests when it is able to do so.

Similarly, WSI spent numerous hours preparing and providing information to BCI, the Highway Patrol, and the Burleigh County State's Attorney's Office in its criminal investigations surrounding the Executive Director. WSI did not charge these entities for the voluminous documents disclosed pursuant to these requests.

In summary, Government Auditing Standard 4.19 states, "...a buse involves behavior that is deficient or improper when compared to the behavior that a prudent person would consider reasonable and necessary business practices given the facts and circumstances". WSI acted reasonably under the circumstances, prioritizing fairness and efficiency to all parties involved. To categorize this conduct as abuse is unfounded and unreasonable.

State Auditor's Concluding Remarks

WSI states to categorize their conduct as abuse is unfounded and unreasonable. This is a misleading and inflammatory statement. It is unclear why WSI is attempting to quote information from Chapter 4 of the Government Auditing Standards as this chapter relates to financial audits and this is a performance audit. The standard paragraph number WSI references does not even relate to abuse. The applicable standard for abuse does identify the information WSI lists. However, WSI's statement fails to identify the fact abuse also includes misuse of authority or position for personal financial interests. It is apparent the position of the former Executive Director allowed him to receive a significant amount of information free of charge.

Management's Response to Recommendations #39, #40 and #41

Excerpts from the April 2008 ICF Executive Summary and Conclusion indicated the following:

Overall, the results show that more employees have favorable perceptions of the organization in 2008 than in 2007, indicating that WSI is moving in the right direction. The areas that were most favorable in the previous year have remained favorable with the majority of the organization. All areas that had room for improvement have improved. Most notably is the dramatic improvement in the perception of senior leaders' honesty and integrity. Comparing WSI to other organizations shows that WSI is similar to other organizations, and more similar in 2008 than they were in 2007.

In sum, the results of the current assessment should be taken as good news for the organization. The results indicate that the implemented initiatives are moving the organization in the right direction and the changes that have occurred in the organization are having positive effects.

Appendix A

Supplemental Responses & Concluding Remarks

WSI is committed to improving employee morale and satisfaction. WSI believes annual independent employee satisfaction surveys assessing overall employee satisfaction and morale are an essential measurement tool. A follow-up assessment will be conducted in 2009.

WSI is not aware of any other state agency that conducts a similar assessment, thus making a comparative analysis difficult. WSI would encourage the LAFRC to have Legislative Council utilize a similar survey instrument to conduct an independent survey of a sample of other state agencies. Although ICF indicated WSI results were comparable to similar organizations, WSI is not aware of any data available that allows for comparison with other North Dakota state agencies.

Management's Response to Recommendation #42

WSI is a complex agency and at times material is complex and requires repeated discussion. The prior period adjustment for the dividend calculation, referred to by the SAO, is evidence of this complexity; as two independent auditing firms handled the same transaction in two different manners.

This matter was recently addressed by a third independent auditing firm resulting in a recommendation that the dividend be handled differently again. WSI had already implemented this change before receiving this most recent recommendation.

WSI has been consistent in the application with their understanding of NDCC 65-04-02 when amended in 2005. Legislative history from the 2005 legislative session supports the information presented by the Director of Finance to the Board. WSI's research of industry practice determined unrealized investment gains are often excluded from surplus when determining dividend calculations. NDCC 26.1-10-05.1 Dividends and other distribution (for regulated insurance companies) also disallows unrealized investment gains from the dividend calculation.

WSI takes its responsibility seriously. NDCC 65-04-02 sets the surplus levels and states WSI shall ensure solvency of the fund. On June 30, 2007, WSI's balance sheet reflected over \$73 million of unrealized investment gains. Thirteen months later, these gains have dwindled to \$6 million. WSI is not acting to circumvent statute but to safeguard the fund's assets until further clarification is received.

The State Auditor's Office requested an Attorney General's opinion relating to the surplus issue. The opinion is pending at this time. Furthermore, a legislative committee is pursuing legislative clarification of the surplus statute.

Appendix A
Supplemental Responses & Concluding Remarks

State Auditor's Concluding Remarks

WSI's response provides misleading and confusing information. Their response is indicative of why the recommendation to provide accurate information is not fully implemented. WSI needs to realize the financial statements are theirs, not the independent auditing firms. WSI states the independent auditing firms handled the same transaction in two different manners. This is inaccurate. A prior period adjustment was made as the wrong conclusion was made by a prior auditing firm. This prior auditing firm agreed the prior period adjustment needed to be made. WSI states the matter was recently addressed by a third independent auditing firm resulting in a different way to handle the dividend again. This is misleading information. This firm was not in any means acting as an independent auditing firm when it performed a performance evaluation of WSI. Also, the different way to handle the dividend resulted in an immaterial adjustment of less than a quarter of a percent.

WSI provides information related to a review of industry practice. The information WSI refers to is in relation to regulated insurance companies. Since WSI is not a regulated insurance company this information is not relevant.

While WSI states it takes its responsibility seriously, the organization's actions regarding the noncompliance with the surplus level contradicts this statement. The law was amended in 2005 and WSI's financial audit in 2006 disclosed the fact the organization was in noncompliance with the surplus amount. WSI did not take corrective action during the 2007 Legislative Session to modify or clarify the section of law even though the organization was \$225 million over the legally mandated amount. WSI did not take significant action to reduce the fund surplus. WSI's 2007 financial audit included a finding regarding their noncompliance with the fund surplus requirement. While WSI agreed with the finding, they continue to be in noncompliance with state law nearly a year after the financial audit. We are unsure how being in noncompliance with state law for over 3 years is taking one's responsibility seriously.

WSI discusses its losses regarding their unrealized investment gains. We did not perform any work to verify their amounts. However, even if there has been a loss of \$67 million, WSI would still be in noncompliance with state law.

Management's Response to Recommendation #50

While it is recognized that the individual committees (Governance and Ownership-Linkage) have not established a self-evaluation requirement in the policies, the Board did implement a periodic self-monitoring requirement in the Governance Process section, Policy GP-3.1.6 Board Self Monitoring on March 6, 2008. This provision covers all of the policies in the Governance Process and Board-Management Delegation quadrants which include the Governance Process Policy GP-3.5 through GP-3.5.6 Board Members' Code of Conduct.

Appendix A

Supplemental Responses & Concluding Remarks

Furthermore, the Board is in the process of developing a detailed long-range self-assessment that addresses performance concerns of individuals, committees and the Board as a whole. That long-term self-assessment plan has been discussed at the May 2008 Board meeting and will be presented at a future Board meeting.

For the sake of clarity, the Board will determine if it should remove references to self-evaluation from the Audit Committee's job products GP-3.7.6.10 Committee Self Assessment and base their self-assessment expectations on the policy language found in GP-3.1.6. In addition, the Board will determine if revisions are necessary to further clarify GP-3.1.6 and/or add policy to GP-3.6 Board Committee Principles.