

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Monday, January 24, 2005  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Representative Francis J. Wald, Chairman, called the meeting to order at 3:05 p.m.

**Members present:** Representatives Francis J. Wald, Ole Aarsvold, Larry Bellew, Al Carlson, Jeff Delzer, RaeAnn G. Kelsch, Andrew Maragos, Bob Skarphol, Blair Thoreson; Senators John M. Andrist, Randel Christmann, Jerry Klein, Aaron Krauter

**Member absent:** Representative Mike Timm

**Others present:** See Appendix A

#### DEPARTMENT OF CORRECTIONS AND REHABILITATION PERFORMANCE AUDIT

Chairman Wald called on Mr. Gordy Smith, State Auditor's office, who presented the performance audit report of the Department of Corrections and Rehabilitation. He said the scope of the audit covered the period July 1, 2001, through June 30, 2004. He said the primary goals of the performance audit were:

1. Is management and the administrative structure of the Department of Corrections and Rehabilitation effective?
2. Is the current placement of adult offenders providing for the most efficient and effective use of resources?

Mr. Smith said a request for proposal that sought competitive bids from consultants with expertise in the area of corrections was sent to selected organizations. Based on proposals received, a contract was awarded to the consulting firm of Criminal Justice Institute, Inc., New Jersey.

Mr. George Camp, Criminal Justice Institute, Inc., presented the recommendations in the audit made by the institute which related to the following areas:

- Treatment programs.
- Medical costs and contracted medical services.
- Overcrowding at Department of Corrections and Rehabilitation facilities.
- Management and administration.

Mr. Smith said the performance audit report contains 51 audit recommendations. The listing of the recommendations included in the performance audit is attached as Appendix B.

In response to a question from Representative Wald, Mr. Camp said the audit report includes a recommendation that short-term inmates may be confined to local jails or community-based programs

to reduce Department of Corrections and Rehabilitation inmate populations. He said local jails probably do not have the necessary resources to provide programming and rehabilitation treatment services, but in many cases the individual's prison term may not be long enough to offer treatment options.

In response to a question from Representative Svedjan, Mr. Camp said a study could be conducted of the resources local jails currently have and what they would need to house short-term inmates. He said a reallocation of some funding to the local jails may provide a net overall savings to the state.

In response to a question from Representative Wald, Mr. Camp said it is difficult to establish a prison on a contract basis. He said the current independent contractors should be given a chance to operate the New England facility for two or three years before determination is made on their efficiency.

In response to a question from Senator Krauter, Mr. Smith said the audit report includes a recommendation that the Department of Corrections and Rehabilitation develop formal policies and procedures for identifying the daily cost rate at the three adult facilities. He said based on a review of information related to daily cost rates as of June 30, 2004, the daily rate for the New England facility was identified as approximately \$83.55. He said this amount is actually higher as all medical costs incurred at a local hospital during fiscal year 2004 were not included due to confusion between the hospital and the facility as to what was to be billed for services provided at the hospital.

In response to a question from Representative Delzer, Mr. Smith said medical costs for female inmates are generally greater than for male inmates.

Mr. Smith said the audit report includes a recommendation that the Department of Corrections and Rehabilitation pursue requests for additional funds for compensation packages and/or salary adjustments giving consideration to salary equity issues within the department and other entities. In response to a question from Representative Delzer, Mr. Smith said the comparison of salaries to other entities did not take into consideration employee benefits.

Mr. Smith said the audit report includes a recommendation that the Parole Board review its policies, meeting procedures, and parole release date calculations with the Attorney General's office and ensure

legal assistance is periodically being obtained to ensure the Parole Board is in compliance with state law.

Chairman Wald called on Mr. John Olson, Chairman, Parole Board, who said the Parole Board is a separate entity from the Department of Corrections and Rehabilitation. The paroling authority vested in the board lies solely with the board; therefore, the issues cited in the audit report regarding the paroling policy are inapplicable and outside the parameters of the audit authority.

In response to a question from Representative Skarphol, Mr. Olson said the Parole Board agrees that its policies and procedures should be reviewed by the Attorney General's office. He said Senate Bill No. 2125 (2005) proposes that the Parole Board may allow a parolee to earn performance-based parole reduction at the rate of up to five days per month in accordance with performance criteria established by the Parole Board. He said the bill provides that the Parole Board may terminate a parolee's supervision at any time earlier than the established date of release from parole if the Parole Board determines that early termination of supervision is warranted and termination of supervision is in the interest of justice.

In response to a question from Senator Krauter, Mr. Camp said that treatment services have proven to be effective when provided near the inmate's release date; however, it is important to have a balance and provide some treatment options to inmates who may not be released for many years.

In response to a question from Representative Wald, Mr. Camp said future consideration should be given by the Legislative Assembly to determine what efficiencies would be realized by having a single large centralized prison facility in North Dakota.

Chairman Wald called on Ms. Elaine Little, Director of Corrections, Department of Corrections and Rehabilitation, who presented the department's response to the performance audit. A copy of the information presented is on file in the Legislative Council office. Ms. Little said the Department of Corrections and Rehabilitation agrees with the majority of the recommendations made by the independent consultant, Criminal Justice Institute, Inc. She said the changes recommended by the State Auditor's office and Criminal Justice Institute, Inc., will improve the Department of Corrections and Rehabilitation and the department will implement the changes to the extent possible within resources available.

In response to a question from Senator Krauter, Mr. Dave Krabbenhoft, Director of Finance and Administration, Department of Corrections and Rehabilitation, said he will provide information on what effect the department's request for \$4.2 million in salary equity increases, if approved by the Legislative Assembly, would have on the daily cost rate for housing inmates.

## NORTH DAKOTA UNIVERSITY SYSTEM AUDIT REPORT

Mr. John Grettum, State Auditor's office, presented the independent auditor's report on compliance and internal control for the North Dakota University System for the fiscal year ended June 30, 2004. He said the report contains three internal control and compliance findings related to the transfer of funds specifically designated to one or more institutions, proper preparation of schedules and statements on the PeopleSoft software, and maintaining the required amounts in the bond and sinking fund for the Mayville State University new fieldhouse renovation bond. He said the report identifies three prior audit recommendations which were not implemented. He said the management letter provides 16 additional recommendations that do not have a material effect on the financial statements, involve internal control weaknesses, and/or instances of noncompliance with laws and regulations. He said the finding related to PeopleSoft and reconciliations will potentially affect future statements if all institutions have the same problems as Mayville State University and Valley City State University.

### WHEAT COMMISSION LEGAL FEES

Chairman Wald called on Mr. John Fox, Assistant Attorney General, Attorney General's office, who reviewed the Attorney General opinion regarding the legality of legal fees incurred in excess of available resources by the Wheat Commission. Mr. Fox said it is the Attorney General's opinion that the Wheat Commission lacks the authority under North Dakota Century Code (NDCC) Chapter 4-28 to incur legal and consulting expenses for its ongoing trade case against the Canadian Wheat Board beyond the revenues generated by the wheat tax levy dedicated for this purpose in the current biennium. He said the problem could have been avoided by the agency following the *Contract Drafting and Review Manual* and inserting appropriate language into the agreement making it contingent on the availability of sufficient funds or appropriations.

In response to a question from Representative Skarphol, Mr. Fox said there are misdemeanor penalties for a state official exceeding spending authority. He said the Attorney General does not feel this instance is a good case for a criminal investigation. Representative Skarphol said the executive director of the Wheat Commission is a state employee.

In response to a question from Representative Skarphol, Mr. Fox said if a criminal investigation was pursued it would be conducted by a local law enforcement agency, which would provide the findings to the Burleigh County State's Attorney.

In response to a question from Representative Carlson, Mr. Fox said the state's liability in this case would most likely be limited to the amount that could

be collected by the Wheat Commission during a current biennium. He said the Wheat Commission is authorized to use the wheat tax levy for any lawful purpose. He said payment of the legal fees in the future would be permitted as long as it is a lawful expenditure.

In response to a question from Representative Maragos, Mr. Fox said generally if a public official incurs an unauthorized expenditure that public official may be held personally liable.

In response to a question from Representative Delzer, Mr. Fox said he is not aware if the Wheat Commission approved all expenditures before they were incurred.

In response to a question from Senator Christmann, Mr. Fox said if the wheat tax levy was removed by the Legislative Assembly, presumably the effect would be the attorneys in the trade case would not be paid for their services.

Mr. Harlan Klein, Chairman, Wheat Commission, presented information regarding the commission's involvement in the unfair Canadian wheat trade case against the Canadian Wheat Board. A copy of the information presented is on file in the Legislative Council office. Mr. Klein said the wheat trade case is difficult to manage in a limited funding environment and the case needed to proceed once started.

Senator Klein said the issues relating to the legal costs incurred by the Wheat Commission should have been presented to the Legislative Assembly during the 2003 session. Mr. Klein said at that time the Wheat Commission did not anticipate the legal costs would accumulate to such a significant amount.

In response to a question from Representative Delzer, Mr. Klein said the Attorney General's office was informed about the legal billings. He said the attorney who argued the case for the Wheat Commission was sworn in as an assistant attorney general.

In response to a question from Representative Carlson, a one-half cent increase in the wheat tax levy as proposed in House Bill No. 1518 (2005) should provide sufficient funding to pay all outstanding legal fees by the end of the 2005-07 biennium. He said consideration was given to allow for potential additional requests for refunds associated with an increase in the wheat tax levy.

Representative Skarphol asked that the Wheat Commission provide a timeline of when bills were incurred. Representative Maragos said he would like to know the timeline of all the details of the legal case. He said he wants to know if any information was withheld from the Legislative Assembly or auditors.

Mr. Neal Fisher, Administrator, Wheat Commission, said the commission and its staff had no ill intention with regard to pursuing the wheat trade case. He said there were dramatic political pressures to pursue the case. He said there would be a financial impact to North Dakota wheat growers if the case was suddenly stopped.

Representative Carlson said the Legislative Council prepared a memorandum entitled *Agricultural Commodity Organizations*. He distributed copies of the memorandum and said it provides information on other states' Legislative Assemblies' role in determining the assessment or "checkoff" rate charged and the expenditure of funds used by the state's agricultural commodity groups.

### COMMITTEE DISCUSSION AND STAFF DIRECTIVES

It was requested by Senators Andrist and Klein that the State Auditor's office consider conducting a performance audit of the University of North Dakota School of Medicine and Health Sciences.

**It was moved by Representative Kelsch, seconded by Senator Christmann, and carried on a voice vote that, pursuant to NDCC Section 54-35-02.2, the committee accept the following reports presented to the committee:**

- **Department of Corrections and Rehabilitation performance audit (November 24, 2004).**
- **North Dakota University System (June 30, 2004).**

The meeting was adjourned subject to the call of the chair at 5:25 p.m.

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Donald J. Wolf  
Senior Fiscal Analyst

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Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:2