

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Tuesday, April 5, 2005
Brynhild Haugland Room, State Capitol
Bismarck, North Dakota

Representative Francis J. Wald, Chairman, called the meeting to order at 3:00 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, Mike Timm; Senators John M. Andrist, Randel Christmann, Jerry Klein, Aaron Krauter

Others present: See attached appendix

MEDICAID MANAGEMENT INFORMATION SYSTEM INFORMATION TECHNOLOGY AUDIT FOLLOWUP

Mr. Ed Nagel, State Auditor's office, presented the followup review on the information system audit of the Medicaid management information system (MMIS) issued March 6, 2003. He said as a result of the followup review, two prior recommendations were determined to be fully implemented and one recommendation was partially implemented. He said the recommendation that was partially implemented related to the Department of Human Services ensuring claims suspended for manual review are properly adjudicated.

SERVICE PAYMENTS FOR ELDERLY AND DISABLED AND EXPANDED SERVICE PAYMENTS FOR ELDERLY AND DISABLED PERFORMANCE AUDIT FOLLOWUP

Mr. Gordy Smith, State Auditor's office, presented the followup to the service payments for elderly and disabled (SPED) and expanded SPED performance audit. Mr. Smith said the original performance audit was issued October 26, 2001. He said as a result of the followup review, three prior recommendations were determined to be fully implemented, four recommendations were determined to be partially implemented, and six recommendations were determined not to be implemented.

In response to a question from Senator Christmann, Mr. Smith said that it is possible that the Department of Human Services may be delaying the implementation of some of the audit recommendations with the expectation that a new MMIS will be authorized in the next biennium.

NORTH DAKOTA RACING COMMISSION AUDIT

Chairman Wald called on Mr. Smith who presented the audit report of the North Dakota Racing Commission for the fiscal years ending June 30, 2004 and 2003. He reviewed the auditor's responses to the committee guidelines and said the audit report contains two findings relating to internal control weaknesses. He said the report indicates that the Racing Commission should ensure procedures are in place for someone independent of issuing licenses to verify that all licenses and live race license revenue are properly reported to the Racing Commission. He said the report recommends that the Racing Commission should consider what training, if any, is required for the Racing Commission auditor to be able to determine that all bets originating from a simulcast site in North Dakota are properly reported in the Racing Commission monthly reports.

Mr. Smith said the audit report contains one recommendation for operational improvement relating to streamlining the process of allocating money from the breeders' fund.

Mr. Smith said the audit report identifies two areas of interest relating to the ability of the Racing Commission to continue to provide the monetary support it currently provides to the North Dakota Horse Park and the status of the Racing Commission agency. He said 2005 Senate Bill No. 2340 removes the Racing Commission from under the Attorney General's office and establishes it as a separate state agency. He said the bill provides for the Racing Commission to be funded primarily from its special funds and partly from the state's general fund.

In response to a question from Representative Carlson, Mr. Smith said the balance sheet of the Racing Commission identifies taxes receivable of \$6,651,543 on June 30, 2004, which relate primarily to the amount due to the general fund and the special funds of the Racing Commission from Racing Services, Inc. He said most of this amount will be "written off" as uncollectible.

In response to a question from Representative Delzer, Mr. Smith said the investigation by the Federal Bureau of Investigation and the North Dakota Attorney General's office of Racing Services, Inc., for operating a nonlicensed simulcast site began in October or

November 2002 which is also the time when the individuals who were wagering large amounts left the state. He said these individuals were wagering up to \$170 million per year on simulcast racing through a North Dakota charity.

In response to a question from Representative Delzer, Mr. Smith said each year the Racing Commission determines the amount of money to be disbursed from the breeders' fund. He said the Racing Commission has recently set a policy of granting one-eighth of the breeders' fund balance each year. He said the total annual awards paid out from the breeders' fund are anticipated to be greater than the horse registration fees deposited into the fund.

Mr. Smith said in November 2000 the Racing Commission dedicated \$1 million from the promotion fund for building a new horse racing track in Fargo--the North Dakota Horse Park. In addition, he said, \$500,000 from the purse fund and \$500,000 from the promotion fund was pledged for keeping the North Dakota Horse Park running for five years. The \$500,000 pledges are being paid in five annual installments, of which two payments are yet to be paid.

In response to a question from Representative Carlson, Mr. Smith said a total of \$2.8 million has been given to date toward the construction of the North Dakota Horse Park from the Racing Commission promotion fund. He said this includes the initial \$1 million allocated at the beginning of the project, an additional \$1.5 million granted in April 2002 due to cost overruns, a final payment in October 2003 of \$231,430 for outstanding contract payments owed, and a last request by Horse Race North Dakota (a nonprofit organization serving interests of horsemen) for \$85,000 to construct a bathroom facility.

In response to a question from Representative Maragos, Mr. Smith said the total cost of Phase 1 of the North Dakota Horse Park to date is \$3,598,000 plus an additional \$1,122,487 in land value. He said Phase 1 of the project includes a 6-furlong (3/4-mile) track, parking for 400 cars, parking for horsemen, underground utilities, grandstand and facilities for parimutuel betting, restrooms, and additional barns for off-season use. He said the total book value of the park is \$4,720,487, of which \$511,287 belongs to Horse Race North Dakota and \$4,209,200 belongs to the North Dakota Horse Park Foundation. He said the North Dakota Horse Park Foundation has also received funding from the city of Fargo tax increment financing district (\$1 million), Cass County economic development loan (\$250,000), and Fargo-Moorhead Convention and Visitors Bureau (\$100,000).

In response to a question from Senator Andrist, Mr. Smith said Phase 1 was originally estimated to cost \$2.1 million; however, based on current estimates, Phase 1 is estimated to cost \$5.92 million. He said the grants from the Racing Commission are being provided from three special revenue

funds--breeders' fund, purse fund, and promotion fund--and these funds are rapidly being depleted.

In response to a question from Representative Maragos, Mr. Smith said the equine facility constructed by the North Dakota University System Development Foundation is not an asset of the North Dakota Horse Park. He said Horse Race North Dakota has a 99-year lease on approximately 35 acres of land owned by the city of Fargo in which the grandstand, restrooms, parking lots, and temporary offices reside. An additional 65 acres of adjacent land was leased for 99 years by the city of Fargo to the North Dakota Horse Park Foundation.

In response to a question from Representative Delzer, Mr. Smith said he would provide the committee with information regarding the membership of the North Dakota Horse Park Foundation and Horse Race North Dakota Boards.

In response to a question from Representative Skarphol, Mr. Smith said he would ask the Attorney General's office to determine what authority the State Auditor's office would have to audit the North Dakota Horse Park.

In response to a question from Representative Maragos, Mr. Dean Meyer, Director, North Dakota Racing Commission, said all money given for the North Dakota Horse Park was supported by actual invoices that were approved by the project manager, the Racing Commission, and the Attorney General's office. He said motions were made and included in the minutes of the Racing Commission for approval of payment of the invoices.

In response to a question from Representative Timm, Mr. Smith said if the current level of expenditures from the three special funds continues, the funding in those funds will be depleted in approximately two to five years. He said because of the dependence on the Racing Commission for financial support, the North Dakota Horse Park will have financial difficulty if the support does not continue.

In response to a question from Senator Christmann, Mr. Smith said the "horse tracks" in Minneapolis and Winnipeg are used for other events in addition to horse racing.

Representative Kelsch said the Racing Commission made an irresponsible decision when it agreed to support building a racetrack in Fargo. She said support of the North Dakota Horse Park is a "waste" of Racing Commission funding.

In response to a question from Representative Delzer, Mr. Smith said the city of Fargo has the deed to the land in which the North Dakota Horse Park is located. He said he is not sure what would happen to the facilities if the North Dakota Horse Park closed.

Mr. Meyer said the current Racing Commission is very concerned about the ability of the North Dakota Horse Park to continue operating. He said there is a lot of competition for gaming funds in North Dakota. He said there has been no consideration by the

Racing Commission of requesting general fund money to support the North Dakota Horse Park.

In response to a question from Representative Carlson, Mr. Meyer said the general manager of the North Dakota Horse Park has "his work cut out for him."

Representative Carlson said \$1 million of funding was received by the North Dakota Horse Park Foundation from the city of Fargo tax increment financing district. He said this funding is typically required to be paid back with future revenues. Mr. Smith said he is not aware of payback terms but will provide that information to the committee at a later date.

In response to a question from Representative Wald, Mr. Smith said the Racing Commission most likely would not be liable for any debts of the North Dakota Horse Park in excess of the amount pledged; however, he would ask the Attorney General's office for its opinion.

In response to a question from Representative Skarphol, Mr. Smith said currently there is approximately \$1.6 million in the purse and breeders' fund and \$900,000 in the promotion fund.

Senator Krauter said the Racing Commission has no ownership or liability in the North Dakota Horse Park and is strictly a grantor of funds. He said the state should have no future liability.

In response to a question from Senator Christmann, Mr. Meyer said the Racing Commission is considering requiring matching funds from other sources for future contributions to the North Dakota Horse Park.

In response to a question from Representative Delzer, Mr. Smith said the Racing Commission does license the horse tracks located in Fargo and Belcourt, so there may be some liability relating to safety issues. Mr. Smith said he would confirm if the risk management fund would cover such incidents.

Chairman Wald said the Legislative Audit and Fiscal Review Committee will wait to consider accepting the audit of the Racing Commission until a future meeting. He said the State Auditor's office can provide responses to the various committee questions at the next meeting.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

It was moved by Representative Timm, seconded by Senator Christmann, and carried on a voice vote that, pursuant to North Dakota

Century Code (NDCC) Section 54-35-02.2, the committee accept the following reports presented to the committee:

- **Service payments for elderly and disabled (SPED) and expanded SPED performance audit followup (January 25, 2005).**
- **Medicaid management information system (MMIS) information technology audit followup (February 15, 2005).**

It was moved by Representative Carlson, seconded by Senator Andrist, and carried on a roll call vote that, pursuant to NDCC Section 54-10-01(4), the State Auditor's office be requested to conduct a performance audit of the University of North Dakota School of Medicine and Health Sciences. Representatives Wald, Bellew, Carlson, Delzer, Skarphol, Thoreson, and Timm and Senators Andrist, Christmann, and Klein voted "aye." Representative Aarsvold voted "nay."

Mr. Smith said the State Auditor's office would need the assistance of a consultant to conduct the audit. The cost of the consultant would be paid for by the University of North Dakota School of Medicine and Health Sciences.

The legislative budget analyst and auditor said pursuant to NDCC Section 54-10-01, the State Auditor may not hire a consultant to assist with conducting a performance audit of a state agency without prior approval of the Legislative Audit and Fiscal Review Committee. He said the State Auditor must also notify the agency of the need for a consultant prior to requesting approval by the Legislative Audit and Fiscal Review Committee. Chairman Wald said the committee will consider the request for a consultant during the next meeting.

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

Donald J. Wolf
Senior Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH: 1