

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, November 6, 2019
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 9:30 a.m.

Members present: Senators Jerry Klein, David A. Clemens, Jordan Kannianen, Gary A. Lee, Judy Lee, Jim P. Roers; Representatives Mary Adams, Patrick Hatlestad, Keith Kempenich, Gary Kreidt, Vernon Laning, Scott Louser, Mike Nathe, Marvin E. Nelson, Jim Schmidt, Luke Simons, Wayne A. Trottier

Members absent: Senator John Grabinger, Representative Mary Johnson

Others present: Senator Rich Wardner, Dickinson, member of the Legislative Management
See [Appendix A](#) for additional persons present.

It was moved by Representative Adams, seconded by Representative Laning, and carried on a voice vote that the minutes of the July 17, 2019, meeting be approved as distributed.

Chairman Klein reviewed the duties and responsibilities of the committee. He said the Legislative Council staff has been asked to prepare a summary of each audit, identifying areas of legislative interest.

At the request of Chairman Klein, the Legislative Council staff presented audit summaries entitled [Summary of Major Items in Audit Reports to be Presented at the November 6, 2019, Meeting](#).

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Mr. Joshua C. Gallion, State Auditor, presented a report entitled [Office of Administrative Hearings Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

In response to a question from Senator J. Lee, Mr. Gallion said his office does not include responses to the 14 questions requested by the Legislative Audit and Fiscal Review Committee (LAFRC) in audits prepared based on performance auditing standards but does include them in financial audits prepared by his office.

The Legislative Budget Analyst and Auditor explained that this is the first time 2-year audits presented to the committee have not included responses to the 14 questions requested by the committee.

In response to a question from Representative Kempenich, Mr. Gallion said most of the audits presented are 2-year operational audits that are performance based.

Representative Nathe said he believes responses to the 14 questions should be included with all audits as requested by LAFRC.

Mr. Gallion presented a report entitled [North Dakota Aeronautics Commission Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Senator J. Lee suggested the Legislative Council summary include the responsibilities and duties of each agency, board, or commission for which an audit report is being presented.

Mr. Gallion presented a report entitled [North Dakota Lottery Audit Report for the Years Ended June 30, 2019 and 2018](#). He said the audit did not have any findings.

In response to a question from Representative Kempenich, Mr. Gallion said because the State Auditor's office (SAO) prepares the financial statements for the agencies in which financial audits are conducted, additional staff time is needed for completing those audits.

In response to a question from Chairman Klein, Mr. Donald LaFleur, Audit Manager, State Auditor's office, said lottery revenue is deposited in the general fund; therefore, the SAO chose not to charge the North Dakota Lottery for the costs of the audit.

In response to a question from Representative Nathe, Mr. Gallion said the average hourly cost of audits varies because of the experience of the auditors on the project. He said each auditor's cost per hour varies.

Mr. Gallion presented a report entitled [North Dakota Racing Commission Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

In response to a question from Chairman Klein, Mr. Jack Schulz, Director, North Dakota Racing Commission, said attendance at North Dakota horse races has been good and both tracks have asked for more race dates in 2020 than were held in 2019. He said the Racing Commission has a promotion fund, breeders fund, and purse fund. He said 99 percent of the tax revenue is generated from account deposit wagering (ADW) companies from around the world. He said ADW companies conduct online pari-mutuel wagering and due to companies consolidating, the number of companies licensed in North Dakota has decreased. He said some countries are requiring ADW companies to register or license in that country rather than allowing the North Dakota license, leading to a smaller amount being bet through the North Dakota-licensed companies.

In response to a question from Representative Nelson, Mr. Schulz said the Fargo horse park has a significant outstanding special assessment balance.

Mr. Gallion presented a report entitled [Department of Labor and Human Rights Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

In response to a question from Chairman Klein, Ms. Erica Thunder, Commissioner, Department of Labor and Human Rights, said the agency is obligated to educate the public on issues related to labor and human rights and had \$10,000 in advertising expenses in fiscal year 2019 for that purpose.

Mr. Gallion presented a report entitled [North Dakota Insurance Department Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings, but the audit identified information related to insurance premium tax revenue allocated to fire departments and its effect on insurance premiums paid in North Dakota.

In response to a question from Chairman Klein, Representative Kempenich said the Legislative Assembly appropriates funding from premium tax collections to the Insurance Department for distribution to fire departments. He said the appropriation to the Insurance Department for distribution to the fire departments has varied depending on general fund budget priorities.

Mr. Jon Godfread, Insurance Commissioner, said the Legislative Assembly provided an appropriation for insurance tax payments to fire departments equal to the Insurance Department's estimate of the amount needed to equal 100 percent of the statutory formula for the 2019-21 biennium.

Mr. Gallion presented a report entitled [Department of Commerce Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included four findings:

- Finding 19-01 - Circumventing procurement guidelines
- Finding 19-02 - Violation of appropriation law
- Finding 19-03 - Noncompliance with contract requirements
- Finding 19-04 - Lack of internal control surrounding appropriations

He said four recommendations were made:

- Finding 19-01 - The SAO recommended the Department of Commerce properly follow the Office of Management and Budget's (OMB) procurement requirements when making purchases of services.
- Finding 19-02 - The SAO recommended the Department of Commerce comply with all appropriation laws and the OMB policies.
- Finding 19-03 - The SAO recommended the Department of Commerce ensure all contract requirements are performed and supported prior to issuing contract payments.
- Finding 19-04 - The SAO recommended the Department of Commerce strengthen internal controls to ensure expenditures are charged to the proper biennial appropriations.

Mr. Gallion presented a letter ([Appendix B](#)) and said the audit of the Department of Commerce has been submitted to the Attorney General's office pursuant to North Dakota Century Code Section 44-08-05.1. He said the audit identified an actual or possible violation and, pursuant to Section 44-08-05.1, he is required to inform the Attorney General.

Ms. Michelle Kommer, Commissioner, Department of Commerce, presented information ([Appendix C](#)) related to the agency's response to the findings in the audit of the agency. She said the department does not agree with finding 19-01, that the department violated state law by circumventing procurement requirements related to the "Be Legendary" logo and overall brand refresh. She said the project was done in two separate work streams, the first work stream was to create the website design and the second was to develop the content for the website, which required additional resources. She said there was no overlap with the original contract between the state and a Minnesota company and the second work stream which involved employing two individuals on a temporary basis. These individuals had worked for the previously contracted company, and were employed to complete the content portion of the website and overall brand refresh.

In response to a question from Representative Kempenich, Ms. Kommer said she believes the department properly classified the temporary employees as employees and not as contractors in accordance with federal tax laws.

In response to a question from Representative Nelson, Ms. Kommer said the two temporary employees were paid from the salaries and wages line item. She said the company contracted for the first work stream was paid from the department's marketing budget.

Ms. Kommer said the department agrees with finding 19-02 and the related recommendation. She acknowledged that these expenditures should have been charged to the 2019-21 biennium rather than the 2017-19 biennium. She said the department will strengthen its internal controls and implement procedures to ensure future expenditures are properly allocated to the correct biennium. She said the department made the correct payment to the correct party but at the incorrect time.

In response to a question from Chairman Klein, the Legislative Budget Analyst and Auditor said agencies may request authority to continue an appropriation into the next biennium, which could be approved by the Legislative Assembly or by the Capital Construction Carryover Committee. He said the agency did not seek carryover authority under either of these options.

In response to a question from Representative Nathe, Mr. Gallion said the violation of Section 44-08-05.1 does not only apply to the finding for lack of internal control surrounding appropriations, which is the recording of an expenditure in the incorrect biennium, it also pertains to the violation of appropriation law. He said the final payment made to Grand Forks County under the enhanced lease grant program exceeded the reimbursement request by \$458,801 for work that had not been completed. He said the grant agreement specifically prohibited advance payments by the state, and the Department of Commerce could not provide documentation for the request of the \$458,801.

In response to a question from Chairman Klein, Mr. Gallion said the SAO does not determine an employee's intent. He said the SAO identified an actual or possible violation of Section 44-08-05.1, which requires the information be given to the Attorney General's office.

In response to a question from Representative Nathe, Mr. Gallion said the SAO works with the Attorney General's office on nearly every audit and the SAO has a legal representative from the Attorney General's office. He said at the end of the audit a possible violation of Section 44-08-05.1 was identified and based on Section 44-08-05.1, the audit was given to the Attorney General's office for further investigation.

Senator Clemens expressed concern regarding the committee members questioning the State Auditor's actions. He said the auditors discovered expenditures recorded in the incorrect period, which is a violation. He said the Department of Commerce agrees with the finding and recommendation.

Chairman Klein said the committee is concerned with state employees having to retain a legal representative to defend an honest mistake. He said in the past, the State Auditor presented the findings to the committee and both the committee and the State Auditor would decide how to proceed.

In response to a question from Representative Nathe, Ms. Kommer said the department believes the appropriate documentation for the payment was given to the SAO. She said she believes the issue is the invoice said "work contracted for" and that was not specific enough for the SAO. She said after reviewing this transaction,

the department is improving its documentation process. She said she would agree the payment was for work not completed, but she does not agree documentation does not exist.

In response to a question from Senator Roers, Ms. Kommer said the department has a signed contract for the work, which was eventually completed. She said the work was not completed by June 30, 2019. She said the department thought that by extending the grant agreement, the department could charge the amount to the 2017-19 biennium.

Mr. Joe Morrisette, Director, Office of Management and Budget, said OMB does not believe there is a violation of appropriation law as the transaction did not exceed any authorized appropriation limits and the funding was spent for the purpose the Legislative Assembly intended. He said OMB's fiscal policy number 200, as referenced in the audit report, discusses end-of-biennium closing and allows for prepayments if the contract allows such prepayments. He said in this case the prepayment is not necessarily a violation of fiscal policy, but may be a breach of contract as the contract specifically restricted prepayments, which were made by the department.

Representative Nathe said the concern with forwarding audit reports to the Attorney General is the appearance of criminality or accusation of criminality when mistakes are made. He said honest mistakes should not be criminal. He said a discussion between the SAO and this committee should occur before audits are forwarded to the Attorney General for investigation.

In response to a question from Senator Clemens, Mr. Morrisette said it is not uncommon for agencies to ask questions regarding end-of-biennium transactions and the appropriate recording of those transactions.

In response to a question from Senator J. Lee, Ms. Kommer said the department employee responsible for recording these expenditures was not aware of the options available to continue appropriation authority at the end of the biennium. She said the department is using this as a learning opportunity.

Ms. Kommer said the department does not agree with finding 19-03 that the department did not monitor contract deliverables and that contract payments were made to unapproved subcontractors. She said the department provided approval for subcontracts; however, this approval occurred verbally, as verified by the previous contract manager and vendor. She said the department has implemented contract monitoring procedures to ensure appropriate documentation is secured in advance of payment for all future contracts. She said the department has documentation in the form of an invoice that specifies "Contract obligated work." She said that invoice was provided to the SAO.

Ms. Kommer said the department engaged a contractor to further develop entrepreneurial opportunities in North Dakota. She said the contractor provided communities with training, materials, and resources to support entrepreneurial growth and to expand offerings. She said this contractor subcontracted with five organizations statewide to broaden the impact. She said the audit report indicated the department did not approve those subcontracts, but the department had approved them verbally. She said North Dakota does not require the written approval of contracts and the contract did not require approval in writing. She said the department believes written approval of a contract is preferable to a verbal communication and has taken steps to ensure documentation will exist for future approvals.

Representative Nathe asked the Department of Commerce to provide a copy of the invoice that included the language "work contracted for" which was provided to the SAO as documentation for the excess payment.

In response to a question from Representative Nathe, Ms. Kommer said neither the Attorney General's office nor the SAO have identified the possible criminal offenses. She said she has retained an attorney. She said the state does not provide legal representatives for the employees of the Department of Commerce involved in this investigation.

At the request of Chairman Klein, Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, said the Attorney General's office received a letter on October 15, 2019, from the SAO ([Appendix B](#)) regarding possible violations of Century Code. He said under Section 44-08-05.1 the Attorney General's office is required to investigate the possible violation. He said because of potential conflicts of interest, the Attorney General asked the South Dakota Division of Criminal Investigation to conduct the investigation.

In response to a question from Representative Nathe, Mr. Seibel said the Attorney General's office is prohibited from providing legal representation for state employees since the employee, by violating the law, was acting outside of the employee's scope of work. He said an employee can be reimbursed by the state for legal fees if the employee is not charged or found not guilty of the violation.

In response to a question from Senator Clemens, Mr. Seibel said the State Auditor did not circumvent the LAFRC process as Section 44-08-05.1 requires any public official or employee to submit violations or possible violations of that section to the Attorney General's office.

In response to a question from Representative Adams, Mr. Seibel said the Attorney General's office does not have the authority to conduct audits to provide a second opinion on what the SAO has found during its audit. He said the Attorney General could contract to have a forensic audit conducted for the purpose of a criminal investigation.

In response to a question from Senator Kannianen, Mr. Seibel said the allegation that an employee is acting outside the scope of employment is the starting point of an investigation. He said at that point, the Attorney General's office cannot provide legal representation to the employee. He said in the case of the Department of Commerce, the agency is not under investigation, the investigation is to determine whether individuals made unlawful expenditures of public funds. He said the statute specifically states the individuals are personally liable and it is not the responsibility of the state taxpayers to provide legal representation to the employees.

In response to a question from Senator G. Lee, Mr. Seibel said the decision of an item being a violation or possible violation lies with the public official submitting the finding to the Attorney General. He said the Attorney General's office did not discuss with the State Auditor whether this audit should be submitted for investigation.

In response to a question from Representative Hatlestad, Mr. Seibel said during the course of an audit conducted by the SAO, the Attorney General's office provides legal advice to both the SAO and the agency being audited.

Mr. Gallion presented a report entitled [ND Mill and Elevator Association Grand Forks, North Dakota Audit Report for the Years Ended June 30, 2019 and 2018](#). He said the audit did not have any findings.

In response to a question from Chairman Klein, Mr. Ed Barchenger, Chief Financial Officer, Mill and Elevator, said overall operations at the mill are positive. However, he said, wet grain crops are causing some challenges this fall.

In response to a question from Representative Kempenich, Mr. Barchenger said if grain does not meet certain grading requirements, the mill will not purchase it.

Mr. Gallion presented a report entitled [Public Service Commission Audit Report for the Biennium Ended June 30, 2019](#). He said the audit identified one finding relating to lack of blanket bond coverage.

In response to a question from Chairman Klein, Mr. Gallion said blanket bond coverage protects an agency if an employee commits fraud and the agency has a loss of funds as the result. He said the bond coverage will replace the loss of funds.

Mr. Gallion presented a report entitled [Industrial Commission Audit Report for the Year Ended June 30, 2018](#). He said the audit did not have any findings.

In response to a question from Representative Kempenich, Mr. Gallion said the SAO does perform a financial assessment in addition to the performance audit standards.

Mr. Gallion presented a report entitled [North Dakota School for the Deaf Audit Report for the Biennium Ended June 30, 2019](#). He said the audit identified one finding related to noncompliance with state procurement rules. He said the staff for the School for the Deaf are receiving additional training relating to procurement procedures.

In response to a question from Chairman Klein, Mr. Gallion said the SAO tests a sample of procurements to determine if the agency followed correct procurement practices.

In response to a question from Senator J. Lee, Mr. Michael Loff, Director of Business Administration, School for the Deaf, said there have been improvements to the school's physical plant attributable to increases in repairs and maintenance expenditures. He said most of the school's extra space is leased, resulting in increased revenue.

Mr. Gallion presented a report entitled [North Dakota State Library Audit Report for the Biennium Ended June 30, 2019](#). He said the audit included four findings:

- Finding 19-01 - Noncompliance with appropriation laws

- Finding 19-02 - Noncompliance with appropriation laws for grants to public libraries
- Finding 19-03 - Improper distribution of state aid to public libraries
- Finding 19-04 - Lack of city/county auditor certified applications

He said four recommendations were made:

- Finding 19-01 - The SAO recommended the State Library comply with appropriation laws by ensuring costs are charged to the proper appropriation lines.
- Finding 19-02 - The SAO recommended the State Library comply with the appropriation laws related to state aid to public libraries by ensuring accurate distribution.
- Finding 19-03 - The SAO recommended the State Library ensure eligibility is properly determined to calculate the state aid distribution.
- Finding 19-04 - The SAO recommended the State Library discontinue the practice of populating portions of the state financial aid applications for public libraries and ensure the applications are certified by the auditors of the city or county operating the library.

Ms. Cynthia Clairmont-Schmidt, Assistant State Librarian, State Library, said she had made an error in judgment by coding online database expenditures to the grants line item. She said the library considers the online database similar to a grant. She said the library is making improvements to the spreadsheets and procedures for its state aid process. She said the library is working with the Attorney General's office to develop a process so the city and county auditors can certify the final applications.

In response to a question from Chairman Klein, Ms. Clairmont-Schmidt said two libraries received mill levy grants at the same time as state aid funding. She said those two libraries should not have received the state aid funding. She said going forward the library will distribute the funding separately to ensure libraries are receiving the funding for which they are eligible.

In response to a question from Representative Kreidt, Ms. Clairmont-Schmidt said the State Library has not recovered the improper grants, but she will discuss how to proceed with the Attorney General's office.

In response to a question from Representative Nathe, Ms. Clairmont-Schmidt said the State Library has discussed ways to improve the issues discovered during the audit.

In response to a question from Representative Nathe, Mr. Seibel said the Attorney General's office will discuss how state reimbursement of personal legal expenses are handled with representatives of the Risk Management Division and provide the information to the committee.

In response to a question from Representative Schmidt, Mr. Seibel said traditionally when other states are asked to investigate, the investigating state does not charge because of reciprocity agreements between the states. He said the investigating state will be reimbursed for travel and per diem expenses, but the state would incur those during the investigation even if it conducted the investigation.

In response to a question from Senator J. Lee, Mr. Gallion provided a letter ([Appendix D](#)) regarding possible violations of Century Code and said regardless of the reason for a violation or possible violation, Section 44-08-05.1 requires the information to be reported to the Attorney General. He said it is not the responsibility of the SAO to determine intent, that is the duty of the Attorney General's investigation.

Representative Simons said LAFRC's duty is to receive these audits and learn of any findings. He said the State Auditor is elected to conduct the duties of the SAO. He expressed support for the State Auditor performing his statutory duties.

Mr. Gallion presented a report entitled [North Dakota Vision Services - School for the Blind Audit Report for the Biennium Ended June 30, 2019](#). He said the audit did not have any findings.

Mr. Gallion presented a report entitled [North Dakota Council on the Arts Audit Report for the Year Ended June 30, 2019](#). He said the audit did not have any findings.

Mr. Gallion presented a report entitled [North Dakota Beef Commission Audit Report for the Fiscal Years Ending June 30, 2019 and June 30, 2018](#). He said the audit did not have any findings and has an unmodified opinion.

In response to a question from Chairman Klein, Ms. Nancy Jo Bateman, Executive Director, North Dakota Beef Commission, said the \$850,000 investment is made up of four certificates of deposit set up to be redeemable on a rotational basis.

Mr. Gallion presented a report entitled [North Dakota Soybean Council Fargo, North Dakota for the Fiscal Years Ended June 30, 2019 and 2018](#). He said the audit included two findings:

- Finding 19-1 - Preparation of financial statements
- Finding 19-2 - Noncompliance surrounding procurement

He said two recommendations were made:

- Finding 19-1 - The SAO recommended the Soybean Council is not staffed with personnel fully knowledgeable of generally accepted accounting principles (GAAP). However, it is important that they are aware of this weakness and that management accepts responsibility for the preparation and fair presentation of the financial statements in accordance with GAAP, even if the auditor assisted in drafting those financial statements.
- Finding 19-2 - The SAO recommended the Soybean Council review, understand, and adhere to the state procurement practices and work with OMB, as necessary, to properly procure commodities and services.

In response to a question from Chairman Klein, Mr. Gallion said this audit was not submitted to the Attorney General because it is an issue related to documentation and not a misappropriation of state funds.

Mr. Gallion presented a report entitled [Bismarck State College Bismarck, North Dakota Audit Report for the Year Ended June 30, 2018](#). He said the audit included three findings:

- Finding 18-01 - Evidence supporting tenure of faculty not maintained
- Finding 18-02 - Noncompliance with procurement policies
- Finding 18-03 - Noncompliance with travel meal reimbursement policies

He said three recommendations were made:

- Finding 18-01 - The SAO recommended that Bismarck State College (BSC) maintain supporting documentation for granting tenure to faculty.
- Finding 18-02 - The SAO recommended that BSC properly procure commodities and services in compliance with the State Board of Higher Education (SBHE) purchasing procedures manual.
- Finding 18-03 - The SAO recommended that BSC comply with travel meal reimbursement policies based on actual times the employee is traveling.

In response to a question from Chairman Klein, Mr. Gallion said the SAO just recently discovered the statutory requirement (Section 44-08-05.1) for state officials and employees to report violations or possible violations to the Attorney General. He said the SAO may need to review its prior audits and consider submitting those to the Attorney General if violations or possible violations occurred.

In response to a question from Senator Kannianen, Mr. Gallion said Section 44-08-05.1(1)(c) states "If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims." He said in the Department of Commerce audit, the payment made by the Department for Commerce to Grand Forks County was not for any work that had been completed; therefore, the payment meets the criteria of a false claim.

In response to a question from Chairman Klein, Mr. Gallion said the invoice referenced a contract amount; however, the state does not pay based on contract amount until the work is completed. He said the issue is a payment was made and no work was performed warranting the payment.

Mr. Gallion presented a report entitled [Dakota College at Bottineau Bottineau, North Dakota Audit Report for the Year Ended June 30, 2018](#). He said the audit included four findings:

- Finding 18-01 - Noncompliance surrounding faculty personnel files
- Finding 18-02 - Noncompliance with travel expenses
- Finding 18-03 - Noncompliance over student waivers
- Finding 18-04 - Inefficiency surrounding purchasing card (P-Card) transactions

He said four recommendations were made:

- Finding 18-01 - The SAO recommended that Dakota College at Bottineau (DCB) perform evaluations and maintain an official personnel file as required to ensure compliance with Century Code, SBHE policy, and DCB's employee handbook.
- Finding 18-02 - The SAO recommended that DCB ensure proper documentation is attached for team travel expenses and that only the allowable federal General Services Administration (GSA) rate for lodging is reimbursed.
- Finding 18-03 - The SAO recommended that DCB develop documented policies and retain adequate support for awarding student tuition waivers to ensure compliance with Century Code and SBHE policy.
- Finding 18-04 - The SAO recommended that DCB discontinue the additional paperwork and adhere to North Dakota University System procedures to properly and efficiently administer the P-Card program.

Mr. Gallion presented a report entitled [Dickinson State University Dickinson, North Dakota Audit Report for the Year Ended June 30, 2018](#). He said the audit included eight findings:

- Finding 18-01 - Student evaluations not performed
- Finding 18-02 - Lack of annual operating agreement with Edgewood Hawks Point
- Finding 18-03 - Noncompliance with contract requirements
- Finding 18-04 - Lack of blanket bond coverage
- Finding 18-05 - Improper sharing of P-Cards
- Finding 18-06 - Noncompliance with procurement requirements
- Finding 18-07 - Improper recording of retainage
- Finding 18-08 - Inadequate nepotism and conflict of interest policies

He said eight recommendations were made:

- Finding 18-01 - The SAO recommended that Dickinson State University (DSU) follow the policies in their faculty and adjunct faculty handbooks regarding the frequency of required student evaluations for adjunct faculty.
- Finding 18-02 - The SAO recommended that DSU negotiate an annual agreement with Edgewood Hawks Point to set forth the terms under which DSU will provide Edgewood Hawks Point residents with access to programs and services, and the payments that DSU and the DSU Heritage Foundation are to receive for providing this access.
- Finding 18-03 - The SAO recommended that DSU properly review contracts to ensure all required provisions are included and there have been no significant changes from the proposal.
- Finding 18-04 - The SAO recommended that DSU obtain blanket bond coverage and ensure that coverage is renewed on a biennial basis.
- Finding 18-05 - The SAO recommended that DSU follow University System procedure and not allow the sharing of P-Cards.
- Finding 18-06 - The SAO recommended that DSU properly procure commodities and services in compliance with Century Code, University System procedures, and DSU policies.
- Finding 18-07 - The SAO recommended that DSU properly record a retainage payable in PeopleSoft.
- Finding 18-08 - The SAO recommended that DSU develop and implement policies surrounding nepotism and conflicts of interest.

In response to a question from Representative Trottier, Representative Kempenich said LAFRC can recommend the next Legislative Assembly reduce an agency's funding if an agency does not address prior audit findings.

In response to a question from Representative Nelson, Mr. Gallion said the blanket bond coverage is administered by the Insurance Department to protect an agency against fraud and embezzlement. He said there is no cost to the agency, but the agency is required to submit a request for the coverage. He said the fund is set up to make the agency whole if it were to incur a loss of funds as the result of fraud or embezzlement. He said the SAO has conducted four or five fraud audits covered by the blanket bond coverage.

In response to a question from Representative Hatlestad, Ms. Tammy Dolan, Vice Chancellor for Administrative Affairs and Chief Financial Officer, North Dakota University System, said the University System office has a process in place and an employee who monitors audit findings and how institutions address the audit findings. She said each institution is responsible for correcting the findings. She said the University System office reviews the procedures it imposes and it has a compliance office with auditors that review how institutions are following policies.

In response to a question from Representative Nelson, Ms. Dolan said the chancellor is informed of audit report findings and everything is considered during the evaluation process for the president of each institution of higher education.

Mr. Gallion presented a report entitled [Minot State University Minot, North Dakota Audit Report for the Year Ended June 30, 2018](#). He said the audit included four findings:

- Finding 18-01 - Noncompliance with SBHE's immunization policy and related University System procedure
- Finding 18-02 - Limit access to release student health holds
- Finding 18-03 - Noncompliance with purchasing policies and procedures
- Finding 18-04 - Noncompliance with capital project bidding requirements

He said four recommendations were made:

- Finding 18-01 - The SAO recommended that Minot State University (MiSU) comply with SBHE's immunization policy and related University System procedure.
- Finding 18-02 - The SAO recommended that MiSU limit access to release student health holds to Student Health Division employees responsible for tracking students who are immunized and those who are not.
- Finding 18-03 - The SAO recommended that MiSU comply with SBHE's purchasing policy (803.1) and related University System procedure when purchasing commodities and services.
- Finding 18-04 - The SAO recommended that MiSU comply with bidding requirements related to capital projects.

In response to a question from Senator Roers, Ms. Dolan said MiSU has found the documentation relating to bidding requirements in finding 18-04 and submitted it to the SAO.

In response to a question from Representative Kempenich, Ms. Dolan said the University System office has been working with OMB to make purchasing procedures for institutions of higher education and other state agencies more uniform.

Mr. Gallion presented a report entitled [University of North Dakota Audit Report for the Year Ended June 30, 2018](#). He said the audit included two findings:

- Finding 18-01 - Noncompliance surrounding faculty personnel files
- Finding 18-02 - Inadequate controls surrounding flexplace

He said two recommendations were made:

- Finding 18-01 - The SAO recommended that the University of North Dakota (UND) maintain an official personnel file and perform annual evaluations as required to ensure compliance with Century Code, SBHE policy, and UND's faculty handbook.
- Finding 18-02 - The SAO recommended that UND implement controls to ensure all flexplace agreements and supporting documents are properly retained, approved, and tracked.

In response to a question from Chairman Klein, Ms. Dolan said a flexplace employee is an employee who works offsite, such as an instructor for an online course.

In response to a question from Chairman Klein, Mr. LaFleur said a component unit is another entity, but it is so closely tied to the management of the institution, it is considered one and the same. He said these entities are required to be combined when presenting financial statements.

Mr. Gallion presented a report entitled [North Dakota University System Office Bismarck, North Dakota Audit Report Two-Year Period Ended June 30, 2018](#). He said the audit included two findings:

- Finding 18-01 - Noncompliance surrounding procurement

- Finding 18-02 - Lack of approval of general ledger transactions

He said two recommendations were made:

- Finding 18-01 - The SAO recommended that Core Technology Services (CTS) properly procure commodities and services in compliance with Century Code and University System requirements.
- Finding 18-02 - The SAO recommended that CTS review and approve journal entries before they are posted to the general ledger.

Mr. Tim Porter, Chef Financial Officer, Bank of North Dakota, presented testimony ([Appendix E](#)) regarding a report entitled [College SAVE Basic Financial Statements December 31, 2018 and 2017 and Supplementary Information December 31, 2018](#). He said the audit was conducted by Landmark Certified Public Accountants. He said the audit expressed an unqualified opinion. He said the plan's assets decreased by \$14 million largely due to a drop in the equity markets in December 2018, but the market has improved since.

In response to a question from Representative Trottier, Mr. Porter said fund assets were \$469 million in 2017 and from 2018 to present, assets have fluctuated from \$455 million to \$510 million.

Chairman Klein called on Mr. Darrell J. Lingle, Eide Bailly LLP, Certified Public Accountants, who presented a report entitled [Financial Statements June 30, 2019 and 2018 Workforce Safety & Insurance](#). Mr. Lingle reviewed the auditor's responses to the committee guidelines and said no internal control deficiencies were identified.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 Addiction Counselor Internship Loan Program](#). He reviewed the auditor's responses to the committee guidelines and said no internal control deficiencies were identified.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 Ag PACE Fund](#). He reviewed the auditor's responses to the committee guidelines and said no internal control deficiencies were identified.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 North Dakota Student Loan Trust](#). He reviewed the auditor's responses to the committee guidelines and said no internal control deficiencies were identified.

In response to a question from Chairman Klein, Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, said the transfer of \$43,000 to the Industrial Commission is for administrative costs associated with the student loan trust fund incurred by the Industrial Commission.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 PACE Fund](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 Infrastructure Revolving Loan Fund](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

In response to a question from Representative Trottier, Mr. Porter said the infrastructure revolving loan fund provides loans at an interest rate of 2 percent.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 Medical Facility Infrastructure Loan Fund](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

In response to a question from Representative Nelson, Mr. Porter said the medical facility infrastructure loan fund issued approximately \$45 million in loans.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 Rebuilders Loan Program](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Lingle presented a report entitled [Financial Statements June 30, 2019 and 2018 School Construction Assistance Revolving Loan Fund](#). He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Lingle presented a report entitled [Financial Statements December 31, 2018 and 2017 Comprehensive Health Association of North Dakota](#). He reviewed the auditor's responses to the committee guidelines and said the report includes one finding for a significant deficiency in internal control over financial reporting because of improper segregation of information from the administrator surrounding the management of cash. He said there is one recommendation that the association request from the administrator that the premium billing process for the association be broken out from the business unit of the administrator moving forward.

Chairman Klein called on Ms. Mindy Piatz, Brady, Martz & Associates, PC, Certified Public Accountants, who presented a report entitled [North Dakota Housing Finance Agency Bismarck, North Dakota Audited Financial Statements for the Years Ended June 30, 2019 and 2018](#). Ms. Piatz reviewed the auditor's responses to the committee guidelines and said no internal control deficiencies were identified. She said the Housing Finance Agency did have a change in accounting principles and methods regarding accounting for bonds sold at a premium or discount to the effective interest method. She said this change does not modify the opinion with respect to this matter.

Ms. Piatz presented a report entitled [North Dakota Housing Incentive Fund Bismarck, North Dakota Audited Financial Statements for the Years Ended June 30, 2019 and 2018](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Piatz presented a report entitled [Financial Statements June 30, 2019 and 2018 North Dakota Building Authority](#). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

OTHER INFORMATION

Mr. Gallion presented information regarding the status of performance audits and an update on planned performance audits and future agency audits. He directed the committee to the audit schedules for calendar years 2019 and 2020 on the SAO website.

At the request of Chairman Klein, the Legislative Council staff presented a letter ([Appendix F](#)) from the Department of Trust Lands providing information regarding the performance audit followup report provided to the committee on June 27, 2018.

Dr. John Richman, President, North Dakota State College of Science, presented the institution's action plan in response to the SAO performance audit conducted in June 2019. A copy of the plan is on file in the Legislative Council office. He said the North Dakota State College of Science (NDSCS) is using the audit as an opportunity to improve its processes.

Senator J. Lee provided a letter regarding an investigation of the NDSCS performance audit of its Division of Workforce Affairs ([Appendix G](#)). She said the letter provides information regarding an investigation conducted after a referral was made by the SAO to the Cass County State's Attorney's office of the NDSCS president and two NDSCS vice presidents. She said no criminal charges will be filed.

In response to a question from Representative Nathe, Mr. Seibel said the investigation of the performance audit of the NDSCS Division of Workforce Affairs was the responsibility of the Cass County State's Attorney's office and that office asked the Bureau of Criminal Investigation to assist in the investigation.

Mr. Scott J. Davis, Executive Director, Indian Affairs Commission, presented information ([Appendix H](#)) related to the findings included in the audit report of the Indian Affairs Commission for the years ended June 30, 2018 and 2017. He said the commission relied on approval from OMB to expend funds for promotional expenses. He said the commission has accepted responsibility for the findings in the audit report and has made changes to items purchased for the Youth Leadership Academy.

In response to a question from Representative Laning, Mr. Davis said the Youth Leadership Academy is for individuals with behavioral issues and the academy attempts to help correct those behavioral issues.

In response to a question from Senator J. Lee regarding donations received by state agencies, the Legislative Budget Analyst and Auditor said when funds are deposited in the state treasury, they become state funds and state funds have constitutional restrictions regarding how they may be spent.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

In response to a question from Chairman Klein, Mr. Gallion said most of the 14 questions requested by LAFRC are not relevant for performance audits which is why the questions are not included on the performance audits.

It was moved by Senator J. Lee, seconded by Representative Kreidt, and carried on a roll call vote that the State Auditor's office include responses to the 14 questions requested by LAFRC, to be included in audit reports since 2007, on all 2-year audit reports. Senators Klein, Clemens, Kannianen, G. Lee, J. Lee, and Roers and Representatives Adams, Hatlestad, Kreidt, Laning, Louser, Nelson, Schmidt, and Trottier voted "aye." Representative Simons voted "nay."

Senator Kannianen suggested LAFRC review Section 44-08-05.1 and consider if it should be revised to allow more discretion for state officials and employees who may become aware of a possible violation.

Senator Roers said the identity of the individuals being investigated should be protected until the investigation is complete to avoid the negative impact to individuals' reputations if the investigation determines a violation did not occur.

It was moved by Representative Kreidt, seconded by Representative Adams, and carried on a roll call vote that, pursuant to Section 54-35-02.2, the committee accept the following reports reviewed by the committee at its November 6, 2019, meeting:

1. Office of Administrative Hearings (June 30, 2019 and 2018)
2. Aeronautics Commission (June 30, 2019 and 2018)
3. North Dakota Lottery (June 30, 2019 and 2018)
4. North Dakota Racing Commission (June 30, 2019 and 2018)
5. Department of Labor and Human Rights (June 30, 2019 and 2018)
6. Insurance Department (June 30, 2019 and 2018)
7. Mill and Elevator Association (June 30, 2019 and 2018)
8. Industrial Commission (June 30, 2018)
9. Public Service Commission (June 30, 2019 and 2018)
10. School for the Deaf (June 30, 2019 and 2018)
11. North Dakota Vision Services - School for the Blind (June 30, 2019 and 2018)
12. North Dakota Council on the Arts (June 30, 2019)
13. North Dakota Beef Commission (June 30, 2019 and 2018)
14. North Dakota Soybean Council (June 30, 2019 and 2018)
15. Bismarck State College (June 30, 2018)
16. Dakota College at Bottineau (June 30, 2018)
17. Dickinson State University (June 30, 2018)
18. Minot State University (June 30, 2018)
19. University of North Dakota (June 30, 2018)
20. North Dakota University System office (June 30, 2018 and 2017)
21. College SAVE (December 31, 2018 and 2017)
22. Workforce Safety and Insurance (June 30, 2019 and 2018)
23. Addiction counselor internship loan program (June 30, 2019 and 2018)
24. Ag PACE fund (June 30, 2019 and 2018)
25. Student loan trust fund (June 30, 2019 and 2018)
26. PACE fund (June 30, 2019 and 2018)
27. Infrastructure revolving loan fund (June 30, 2019 and 2018)
28. Medical facility infrastructure loan fund (June 30, 2019 and 2018)
29. Rebuilders loan program (June 30, 2019 and 2018)
30. School construction assistance revolving loan fund (June 30, 2019 and 2018)

- 31. Comprehensive Health Association of North Dakota (December 31, 2018 and 2017)**
- 32. North Dakota Housing Finance Agency (June 30, 2019 and 2018)**
- 33. Housing incentive fund (June 30, 2019 and 2018)**
- 34. State Building Authority (June 30, 2019 and 2018)**

Senators Klein, Clemens, Kannianen, G. Lee, J. Lee, and Roers and Representatives Adams, Hatlestad, Kreidt, Laning, Louser, Nelson, Schmidt, Simons, and Trottier voted "aye." No negative votes were cast.

Chairman Klein said the committee will discuss further the audit of the Department of Commerce (June 30, 2019 and 2018) and the State Library (June 30, 2019 and 2018) at the next meeting to review the results of the investigations.

No further business appearing, Chairman Klein adjourned the meeting at 3:04 p.m.

Chris Kadrmaz
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:8