

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, January 27, 1999  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Representative Mike Timm, Chairman, called the meeting to order at 3:00 p.m.

**Members present:** Representatives Mike Timm, Ole Aarsvold, Rex R. Byerly, John Dorso, Andrew G. Maragos, Stacey L. Mickelson, Jim Poolman, Francis J. Wald; Senators Ken Solberg, Harvey D. Tallackson

**Member absent:** Senator Duane Mutch

**Others present:** See Appendix A

Mr. Robert Meidinger, Office of Management and Budget, presented the statewide Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 1998. He also presented an outline of the CAFR, a copy of which is on file in the Legislative Council office. He said the CAFR covers all the state's funds and account groups and financial transactions during the year. He said the CAFR is a general purpose report intended to meet the needs of a broad array of user groups. Mr. Meidinger reviewed the various sections of the CAFR and the notes to the financial statements. He also reviewed the budgetary report comparing actual expenditures to budget for the year ended June 30, 1998.

Without objection, the chairman accepted the Comprehensive Annual Financial Report for the year ended June 30, 1998.

Mr. Ed Nagel, State Auditor's office, said the report on significant audit findings and recommendations was distributed to committee members at an earlier date, and he did not intend to review the report today. He said if committee members have questions regarding the report, they should contact him.

Mr. Nagel distributed a copy of the management letter recommendations relating to the audit reports to be presented at this meeting. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Dorso, Ms. Peggy Lucke, University of North Dakota, distributed information regarding deficit fund balances greater than \$100,000 at the University of North Dakota. A copy of her handout is on file in the Legislative Council office. She said on June 30, 1997, the Center for Aerospace Sciences had deficit fund balances totaling \$3,957,196. She said this amount had been reduced to \$220,533 as of June 30, 1998. Ms. Lucke said in addition, the university had other fund deficits totaling \$2,080,656 as of June 30, 1997.

She said these deficit fund balances had increased to \$2,395,865 as of June 30, 1998. She said \$2,269,519 of the June 30, 1998, deficit fund balances was related to flood issues. Ms. Lucke said the total June 30, 1997, deficit fund balances were \$6,037,852 and had been reduced to \$2,616,398 as of June 30, 1998. She said of the \$2,616,398 of deficit fund balances on June 30, 1998, \$346,879 related to recharge centers and \$2,269,519 related to the flood.

Mr. Gordy Smith, State Auditor's office, presented the performance audit report of the State of North Dakota's Personnel Systems - North Dakota University System. A copy of the report is on file in the Legislative Council office. He said the performance audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. He said the report includes information on the North Dakota University System. He said a separate report was previously issued on the Central Personnel Division.

Mr. Smith said the goals of the performance audit were to assess whether the North Dakota University System's proposed broadbanding project alleviates problems associated with the current classification system and whether the North Dakota University System is in compliance with significant laws, regulations, policies, and procedures applicable to personnel issues. He reviewed the recommendations contained in the performance audit. A copy of the recommendations is attached as Appendix B.

In response to a question from Representative Byerly, Mr. Smith said the law dealing with veterans' preference issues requires a lot of interpretation. He said the problems identified in the performance audit were not widespread, but the University System needs to be made aware of these items and needs to have consistent application of the statutes.

Mr. Larry Isaak, North Dakota University System, commented on the performance audit report of the State of North Dakota's Personnel Systems - North Dakota University System. He said the University System appreciates the work of the State Auditor's office. He said it is also not unusual for an entity to disagree with portions of the recommendations. He said the broadbanding is the most significant personnel issue in the North Dakota University System and it is being accepted fairly well throughout

the University System. Mr. Isaak said he agrees that the University System can do better in complying with state laws.

Representative Dorso said he is concerned about the sharing of employees between foundations and campuses and that the University System's response in the audit report to this recommendation does not make him comfortable that this item will be thoroughly addressed. He said he understands that foundations have a purpose, but the board needs to develop clear policies regarding the handling of employees shared between foundations and universities.

Mr. Isaak said the reason the University System only partially agreed with the auditor's recommendation is because he thinks a board policy would need to be tailored to the various types of foundations. He said the performance audit implies that the board should develop a single broad policy to address all issues relating to personnel shared between foundations and campuses. He said he does not think this would be possible and that the board needs to look into policies that would be more specific as to the needs of the various campuses and foundations.

Without objection, the chairman accepted the performance audit report of the State of North Dakota's Personnel Systems - North Dakota University System.

Mr. John Grettum, State Auditor's office, presented the North Dakota University System financial statement audit for the year ended June 30, 1998. He said the report contains a qualified opinion due to year 2000 issues and the uncertainty of local fund amounts reported in the audit. He reviewed the auditor's responses to the committee's guidelines and said the report contains five findings and related recommendations. He said the first finding relates to the appropriation of local funds. He said the recommendation is that each institution's general ledger should be used to calculate and report local fund expenditures and that local fund expenditures should be equal to total unrestricted funds less State Treasurer funds.

Mr. Grettum said the second finding relates to the Klinefelter Hall building project at Dickinson State University. He said the recommendation is that all new building projects and major improvements stay within the amount appropriated by the Legislative Assembly. He said the Klinefelter Hall project at Dickinson State University exceeded its authorized appropriation by approximately \$733,000.

Mr. Grettum said the third finding relates to clearing account transfers. He said it was determined that North Dakota State University made direct wire transfers out of a clearing account into other banks and financial institutions around the world, including banks in the Ukraine and Germany, a federal bank account on the East Coast, and for payments to international vendors. He said the recommendation is that North Dakota State University comply with North Dakota Century Code (NDCC) Section 54-06-08.1

relating to clearing accounts maintained by state agencies. He said that section states that any check written on a clearing account may only be used to transfer funds to the Bank of North Dakota or the State Treasurer.

Mr. Grettum said the fourth finding relates to the operating agreement between the University of North Dakota and the University of North Dakota Aerospace Foundation. He said the operating agreement calls for quarterly settlements. He said currently monthly payments are made between the University of North Dakota and the University of North Dakota Aerospace Foundation, with a final settlement being made once a year instead of quarterly. He said the recommendation is that quarterly settlements be made between the University of North Dakota and the University of North Dakota Aerospace Foundation.

Mr. Grettum said the fifth finding relates to depositing of institutional collections. He said the recommendation is that the University of North Dakota comply with NDCC Section 15-10-12 and remit \$598,254, which is currently being accounted for as local funds, to the State Treasurer as institutional collections during fiscal year 1999.

Mr. Grettum said in addition there is a prior finding and recommendation related to the accounting for systemwide projects which has not been fully implemented. He said the State Auditor's office recommended that the University System:

- Properly record and classify activity for systemwide projects.
- Transfer moneys into agency funds as expenditures are incurred to avoid large amounts of unspent cash.
- Budget the expenditures associated with systemwide projects within the North Dakota University System office and applicable college and university budgets.

Representative Poolman said the audit report indicates that Northwest Airlines intends to terminate a lease agreement it has for space on the University of North Dakota campus. He said the report indicates that this termination would put at risk approximately \$1.7 million in lease receivables as of June 30, 1998. He asked what will happen if this event actually takes place. Ms. Lucke said the University of North Dakota's attorneys have reviewed the case and feel confident that the university will prevail on this issue. She said if the university does not prevail, it would need to continue making the building payments without the lease revenues being received from Northwest Airlines.

In response to a question from Representative Wald, Ms. Lucke said the flight and academic training program within the university is doing very well and has a strong enrollment. She said the University of North Dakota Aerospace Foundation is in the process of looking at its future and the role it will play in the

future of aerospace training at the University of North Dakota.

In response to a question from Representative Dorso, Dr. Kendall Baker, President, University of North Dakota, said the university has established a task group to look into the future of the University of North Dakota Aerospace Foundation. He said the university is also concerned about making sure that the state does not lose any money in relation to the University of North Dakota Aerospace Foundation. He said he expects the task group to have recommendations concerning these issues available in early summer and that this issue will be one of the first items to be addressed by his replacement in early July.

Representative Dorso suggested that Dr. Baker inform the task group that it needs to consider the moral obligations that the University of North Dakota Aerospace Foundation has in regard to state funds, not only the legal obligations.

Representative Wald said a lot of the recent problems at the University of North Dakota relate to prior administrations and did not arise during Dr. Baker's tenure. He said he appreciates the fine job that Dr. Baker has done and that a lot of the controversy surrounding Dr. Baker's tenure was not justified. Dr. Baker thanked Representative Wald for his comments.

Representative Dorso said he agrees with Representative Wald and that if the Board of Higher Education had a better grasp on the activities of the foundations related to the various campuses, the majority of the issues surrounding Dr. Baker's presidency would not have been there for him to inherit. He said the board needs to get on top of these issues in order to prevent these problems from reoccurring at other campuses and with future college presidents.

Without objection, the chairman accepted the June 30, 1998, North Dakota University System financial statement audit.

Mr. Alex Schweitzer, North Dakota State Hospital, presented information on the Department of Human Services efforts regarding the collection of Indian Health Service writeoffs. A copy of his presentation is on file in the Legislative Council office. He said at the last meeting of this committee the department indicated that it would contact the state's Congressional Delegation and begin discussions regarding the Indian Health Service issue. He said the department received correspondence from Senator Dorgan and from Senator Conrad and that both senators indicated they will address the concern with Indian Health Service in an effort to resolve the issue.

Mr. Schweitzer said the total contract amount was \$3,217,923, and the department received payments under the contract totaling \$3,218,415. He summarized the total charges, dollars received, third-party collections, and discounts related to the contract as follows:

Total hospital charges during the contract period	\$8,897,427
Payments received by the State Hospital in accordance with the contract	(\$3,218,415)
Contract discounts	(\$5,679,012)
Third-party collections	(\$1,514,359)
Balance written off	\$4,164,653

Mr. Schweitzer said under the terms of the contract the State Hospital was allowed to keep the third-party payments as long as the contract amount plus the third-party payments did not exceed the cost of the total services provided. He said as shown by the numbers presented earlier, the payments did not exceed the total cost and the amount of the third-party collections. He said the department recently received an audit prepared by Gregg and Co., CPAs, Dallas, Texas, which was requested by the United States Department of Health and Human Services. He said the audit indicates a difference in the interpretation of the contract regarding third-party collections and alleges that the contract requires the State Hospital to return the third-party collections to Indian Health Service. He said under this interpretation the department would owe Indian Health Service \$1,514,359.

Mr. Schweitzer said since the expiration of the contract, the North Dakota State Hospital has utilized the medical purchase order system with Indian Health Service for services rendered to eligible American Indians. He said the system has worked well, and the State Hospital has received \$677,961 since the expiration of the contract. He said as of January 12, 1999, there is an outstanding balance of \$13,030 from Indian Health Service. He said the hospital is confident this amount will be collected.

Mr. Schweitzer said in regard to the repayment of third-party collections to Indian Health Service, the State Hospital has contacted the Attorney General's office for its opinion on the interpretation of the contract. He said while it is not an official written opinion, the Attorney General's office has agreed with the department's position.

Mr. Darrell Lingle, Eide Bailly, LLP, Certified Public Accountants and Consultants, presented the North Dakota Development Fund, Inc., audit report for the years ended June 30, 1998 and 1997. He reviewed the auditor's responses to the committee's guidelines and said the report contains one finding and related recommendation. He said the finding relates to a lack of proper documentation for the business purpose of all travel expenses claimed. He said in addition, the recommendation was that all expenses be reviewed and approved by an authorized representative of the company prior to payment. He said action had been taken to implement internal control procedures to address all findings and recommendations included in prior reports. He said the report contained an unqualified opinion.

In response to a question from Representative Dorso, Mr. Lingle said the amount of money relating to the potential litigation with the Lewis and Clark Regional Development Council is approximately \$12,000.

Mr. Bryan Dvirnak, former CEO, North Dakota Development Fund, Inc., commented on the litigation between the North Dakota Development Fund and the Lewis and Clark Regional Development Council. He said the issue relates to a contract for \$37,500 entered into between the Development Fund and the Lewis and Clark Regional Development Council. He said the agreement provided funds which could be used to match federal dollars on a three-to-one basis. He said prior to entering the contract, the Lewis and Clark Regional Development Council obligated funds from the contract for a loan to Noble Games. He said after the contract was signed, the Lewis and Clark Regional Development Council unsuccessfully attempted to renegotiate the terms of the contract. Mr. Dvirnak said it was clear that the contract provided for the North Dakota Development Fund to maintain control over the funds and required that amounts repaid on the loan be placed in an account at the Bank of North Dakota with both the names of the Lewis and Clark Regional Development Council and the Development Fund. He said an account was established, but the Development Fund's name was never included on the account. Mr. Dvirnak said after approximately \$12,000 had been repaid on the loan and deposited in this account, the Lewis and Clark Regional Development Council removed the funds from the Bank of North Dakota.

In response to a question from Representative Maragos, Mr. Dvirnak said the total dollar amount associated with the Lewis and Clark Regional Development Council contract is not that significant, but he said the Development Fund has also entered into a similar contract with the Roosevelt-Custer Regional Council in Dickinson. He said the contract with the Roosevelt-Custer Regional Council is for \$300,000, and in his opinion the outcome of the dispute with the Lewis and Clark Regional Development Council will directly impact the handling of the \$300,000 contract with the Roosevelt-Custer council in Dickinson.

Mr. Kevin Cramer, Department of Economic Development and Finance, said it is important to note that there are two separate agreements relating to this issue. He said the first was the loan to Noble Games and the second is the contract with the Lewis and Clark Regional Development Council. He said he is not concerned over the contract with the Roosevelt-Custer council in Dickinson because the Development Fund maintained veto power over any proposed projects funded through the Roosevelt-Custer contract. He said the issue is more that the Development Fund never agreed to the Noble Games loan as a part of the contract with the Lewis and Clark Regional Development Council.

Representative Maragos asked if Mr. Dvirnak's assessment of the Development Fund board's attitude as being one of not wanting to create controversy over the issue is accurate. Mr. Cramer said the board never advocated turning its back on the missing funds but did indicate that it would prefer to resolve the issue out of court. He said the board wants to be a team player with the local economic development organizations.

Representative Dorso said if regional planning councils are agencies of government, it should not be necessary for state agencies to protect themselves when dealing with the regional planning councils. Mr. Cramer said the state does not have to worry when it deals with regional planning councils and in his opinion the issue is that the state needs to be willing to relinquish a little control over these types of funds in order to access the three dollars of federal funding for every one dollar of state or local funding.

Without objection, the chairman accepted the North Dakota Development Fund, Inc., audit report for the years ended June 30, 1998 and 1997.

**It was moved by Representative Byerly, seconded by Senator Solberg, and carried that the Legislative Audit and Fiscal Review Committee request that the Legislative Council chairman urge state agencies to cease financial activity with the Lewis and Clark Regional Development Council until the issue regarding the Lewis and Clark Regional Development Council and the North Dakota Development Fund, Inc., is resolved.** Voting "aye" were Representatives Timm, Aarsvold, Byerly, Dorso, and Wald and Senator Solberg. No negative votes were cast.

**It was moved by Representative Byerly, seconded by Representative Wald, and carried that the committee accept the following reports:**

- **For the period dated January 7, 1999**
  - **Performance audit report of the State of North Dakota's Personnel Systems - North Dakota University System**
- **For the year ended June 30, 1998**
  - **Statewide Comprehensive Annual Financial Report**
  - **North Dakota University System Financial Statement Audit**
- **For the years ended June 30, 1998 and 1997**
  - **North Dakota Development Fund, Inc.**

Voting "aye" were Representatives Timm, Aarsvold, Byerly, Dorso, and Wald and Senator Solberg. No negative votes were cast.

The meeting was adjourned at 6:55 p.m.

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Paul R. Kramer  
Senior Fiscal Analyst

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Chester E. Nelson, Jr.  
Legislative Budget Analyst and Auditor

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