

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Tuesday, October 7, 1997  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Mike Timm, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Mike Timm, Ole Aarsvold, Rex R. Byerly, Tony Clark, John Dorso, Gereld F. Gerntholz, Richard Kunkel, Andrew G. Maragos, Stacey L. Mickelson, Jim Poolman, Bob Skarphol, Francis J. Wald, Gerry L. Wilkie; Senators Evan E. Lips, Duane Mutch, Ken Solberg, Harvey D. Tallackson

**Member absent:** Senator Dan Wogsland

**Others present:** See Appendix A

**It was moved by Senator Lips, seconded by Representative Aarsvold, and carried on a voice vote that the minutes of the previous meeting be approved as mailed.**

Chairman Timm said all committee members should have received information from the North Dakota Development Fund, Inc., and Technology Transfer, Inc. He said the information was requested at the last meeting and was sent to committee members in accordance with the request. Chairman Timm asked if committee members were interested in having representatives from North Dakota Development Fund, Inc., and Technology Transfer, Inc., come to the next meeting and review the information with the committee.

**It was moved by Representative Byerly, seconded by Representative Wald, and carried on a voice vote that representatives of Technology Transfer, Inc., and North Dakota Development Fund, Inc., be asked to come to the next meeting to present updated information on the investments held by North Dakota Development Fund, Inc., and Technology Transfer, Inc.**

Mr. Ed Nagel, State Auditor's office, presented the School for the Blind audit report for the two-year period ended June 30, 1996. He reviewed the auditor's responses to the committee's guidelines and said the report contains two findings and related recommendations. He said the first finding relates to the overexpenditure of line items and the second finding relates to the lack of controls surrounding revenues and fixed assets.

Without objection, the chairman accepted the School for the Blind audit report for the two-year period ended June 30, 1996.

Mr. Nagel presented the Potato Council audit report for the two years ended June 30, 1996. He reviewed the auditor's responses to the committee's guidelines and said the report contains a current finding and related recommendation regarding noncompliance with North Dakota Century Code Section 4-10.1-16 relating to penalties for late filings. He said the same finding and related recommendation was also included in the prior audit report.

Mr. Chester E. Nelson, Jr., Legislative Budget Analyst and Auditor, Legislative Council, said the Potato Council director called and indicated that she could not attend the meeting and that a representative from the Agriculture Department would be available to answer any questions the committee may have.

Representative Timm asked what will happen if the agency does not comply with this finding and it is included in the next audit report. Mr. Nagel said it is the opinion of the State Auditor's office that the committee agrees with the recommendations contained in the reports by accepting the audit reports. He said if reports continue to show the same findings and recommendations, it would be his opinion that the committee would eventually take stronger action than approving the report containing the recommendation.

Representative Dorso asked if the commodity group audit reports are presented to the Agriculture Committees during the legislative session. Mr. Nagel said the audit reports presented to this committee are not the same as the reports presented to the standing committees.

Senator Solberg said the reports presented to the standing committees are internal reports prepared by the commodity groups.

**It was moved by Representative Dorso, seconded by Senator Solberg, and carried that the Legislative Audit and Fiscal Review Committee recommend that the State Auditor's office present any commodity group audit report containing findings and**

**recommendations to the Agriculture Committees and Appropriations Committees of the next legislative session.** Voting "aye" were Representatives Timm, Aarsvold, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, Solberg, and Tallackson. No negative votes were cast.

Representative Dorso asked if North Dakota Century Code Section 4-24-10, which requires all commodity groups except the Beekeepers Association and the Turkey Federation to include a State Auditor's report on the single page uniform statement of revenues and expenditures in the report presented to the Legislative Assembly, is being complied with. Mr. Nagel said that section of the Century Code was complied with, but the report presented to the Legislative Assembly is not the same as the report presented to this committee.

Representative Timm asked why the Potato Council has not complied with the recommendations contained in the previous audit reports. Mr. Leland Barth, Agriculture Department, said the Potato Council has had some problems in this area. He said the Potato Council has started to assess penalties in accordance with the provisions of the Century Code.

Senator Solberg asked what options the committee had regarding the nonapproval of an agency audit report. Mr. Nelson said the committee in the past has accepted reports subject to the implementation of recommendations contained in the report.

**It was moved by Representative Dorso, seconded by Representative Skarphol, and carried on a voice vote that the Legislative Audit and Fiscal Review Committee not accept the Potato Council audit report for the two years ended June 30, 1996, and that the report be presented at the next meeting and that representatives of the Potato Council be available at the next meeting to discuss the status of the implementation of the recommendations contained in the audit report.**

Mr. Nagel presented the Soybean Council audit report for the years ended June 30, 1997 and 1996. He reviewed the auditor's responses to the committee's guidelines and said the report contained one finding and related recommendation relating to not receiving proper approval on the renewal of an office lease agreement.

Without objection, the chairman accepted the Soybean Council audit report for the years ended June 30, 1997 and 1996.

Ms. Debra Johnson, Director, Soybean Council, said the council will be in compliance in the future. She said the Soybean Council was not on the Office of Management and Budget mailing list to receive memorandums reminding agencies of the law relating to the approval of lease agreements. She said lack of knowledge of the law is not an excuse for

noncompliance and that future leases will be sent to the Office of Management and Budget and the Attorney General's office for approval.

Ms. Johnson said in response to the previous inquiries regarding the auditing of handlers, the Soybean Council audits handlers for compliance with the checkoff requirements on a rotating basis and anticipates auditing between 20 to 25 sites next spring. She said so far the Soybean Council has been paid by all but one site.

Representative Dorso requested that the Legislative Council staff survey the commodity groups regarding their procedures for auditing handlers, collecting fees, and assessing penalties. He said he would also like the Council to provide information on the Century Code references to the commodity groups. Chairman Timm said that information would be included on the next meeting agenda.

Representative Wald asked Ms. Johnson if she had any recommendations on how to improve the commodity checkoff collection process. Ms. Johnson said a centralized collection unit which would collect all checkoff amounts and then distribute the appropriate proceeds to the commodity groups would streamline the process. She said South Dakota utilizes a similar process.

Mr. Donald R. Wolf, Donald R. Wolf and Associates, P.C., Certified Public Accountants, presented the North Dakota Stockmen's Association audit report for the years ended December 31, 1996 and 1995. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Without objection, the chairman accepted the North Dakota Stockmen's Association audit report for the years ended December 31, 1996 and 1995.

Mr. Wolf presented the Legislative Assembly audit report for the years ended June 30, 1997 and 1996. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations.

Mr. Wolf presented the Legislative Council audit report for the years ended June 30, 1997 and 1996. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations.

**It was moved by Representative Maragos, seconded by Senator Lips, and carried that the committee accept and approve for final payment the Legislative Council and Legislative Assembly audit reports for the years ended June 30, 1997 and 1996.**

Voting "aye" were Representatives Timm, Aarsvold, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, Solberg, and Tallackson. No negative votes were cast.

Mr. Alton Nitschke, Eide Helmeke PLLP, Certified Public Accountants and Consultants, presented the State Auditor's office audit report for the years ended June 30, 1997 and 1996. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Mr. Nitschke said the contract between the Legislative Council and Eide Helmeke provided for additional work to be done in the areas of performance review and audit procedures and practices of the State Auditor's office. He said all prior findings relating to the audit procedures and practices of the State Auditor's office have been resolved. He said the current report contains findings and recommendations relating to audit efficiency and proper documentation of passed audit adjustments.

**It was moved by Representative Wald, seconded by Representative Skarphol, and carried that the committee accept and approve for final payment the State Auditor's office audit report for the years ended June 30, 1997 and 1996.** Voting "aye" were Representatives Timm, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, Solberg, and Tallackson. No negative votes were cast.

Mr. Nitschke presented the Board of Cosmetology audit report for the years ended June 30, 1996 and 1995. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Representative Wald said the Board of Cosmetology has coverage through the state fire and tornado fund and the state risk management fund. He inquired how the Board of Cosmetology obtained coverage through those funds if it is not a state agency. Ms. Bert Knell, Board of Cosmetology, said the board was told by the fund administrators that it was eligible to participate in the risk management fund, the state fire and tornado fund, and the Public Employees Retirement System.

Representative Dorso requested that the Legislative Council staff prepare a memorandum on the eligibility requirements for participation in the fire and tornado fund, state bonding fund, risk management fund, and Public Employees Retirement System. He said this question seems to come up often and it would be nice to know exactly what the requirements are for participation in these funds.

Without objection, the chairman accepted the Board of Cosmetology audit report for the years ended June 30, 1996 and 1995.

Mr. John Mongeon, Brady Martz and Associates, Certified Public Accountants, presented the Bank of

North Dakota audit report for the years ended December 31, 1996 and 1995. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Without objection, the chairman accepted the Bank of North Dakota audit report for the years ended December 31, 1996 and 1995.

Mr. Mongeon presented the beginning farmer revolving loan fund audit report for the years ended December 31, 1996 and 1995. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Representative Dorso asked why the fund has separate audited financial statements. Mr. Kirby Martz, Bank of North Dakota, said if the beginning farmer revolving loan fund was combined into the Bank of North Dakota financial statement, Bank revenues would be distorted because of the general fund appropriation made for the beginning farmer revolving loan fund.

**It was moved by Representative Dorso, seconded by Senator Mutch, and carried on a voice vote that the Bank of North Dakota prepare and present to the Legislative Audit and Fiscal Review Committee a proposal to transfer the assets and liabilities of the beginning farmer revolving loan fund to the Bank of North Dakota and thereby eliminate the separate fund status of the program and the need for separate audited financial statements.**

Without objection, the chairman accepted the beginning farmer revolving loan fund audit report for the years ended December 31, 1996 and 1995.

Mr. Mongeon presented the community water facility loan fund audit report for the years ended December 31, 1996 and 1995. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations. He said the report contains an unqualified opinion.

Without objection, the chairman accepted the community water facility loan fund audit report for the years ended December 31, 1996 and 1995.

**It was moved by Representative Wald, seconded by Representative Skarphol, and carried that the committee accept the following reports which were accepted without objection by the chairman:**

**Two years ended June 30, 1996:**

**School for the Blind**

**Years ended June 30, 1997 and 1996:**

**Soybean Council**

**Years ended December 31, 1996 and 1995:**

**North Dakota Stockmen's Association**

**Bank of North Dakota**

**Beginning farmer revolving loan fund  
Community water facility loan fund  
Years ended June 30, 1996 and 1995:  
Board of Cosmetology**

Voting "aye" were Representatives Timm, Aarsvold, Byerly, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, Solberg, and Tallackson. No negative votes were cast.

The committee recessed for lunch at 12:00 noon and reconvened at 1:00 p.m.

Mr. Sheldon Wolf, Department of Human Services, presented, pursuant to North Dakota Century Code Sections 25-04-17 and 50-06.3-08, a report on the State Hospital, Developmental Center, and human service centers accounts receivable writeoffs for the fiscal year ended June 30, 1997. A copy of his report is on file in the Legislative Council office. The amounts of accounts receivable writeoffs for fiscal year 1997 were:

State Hospital	\$4,881,407.40
Developmental Center	180,950.99
Human service centers	61,750.24
<b>Total</b>	<b>\$5,124,108.63</b>

In response to a question from Representative Dorso, Mr. Wolf said he is unable to say what portion of the accounts receivable writeoffs relate to Indian Health Service.

Representative Dorso said in his opinion this level of writeoffs is unacceptable. He said this problem has been ongoing for at least five years and this committee has repeatedly told the Department of Human Services to make every effort to collect these amounts, to get the contracts with Indian Health Service written so it is required to pay, or not provide services to American Indian clients. Representative Dorso suggested the committee invite the new director of the Department of Human Services to the next committee meeting to explain how this problem can be resolved. He said the committee should also get an aged accounts receivable report on what Indian Health Service owes the Department of Human Services and a report on what has been done to collect from Indian Health Service. He said he has been told that federal law requires Indian Health Service to pay the state for services provided to American Indian residents.

In response to a question from Representative Dorso, Mr. Wolf said American Indians are also being served at the human service centers.

Representative Dorso asked what portion of the human service center writeoffs relate to American Indian clients and if the contract with Indian Health Service applies to services provided at the State

Hospital and the human service centers. Ms. Yvonne Smith, Department of Human Services, said she did not know the status of the contract but thought it only applied to services provided at the State Hospital.

Representative Dorso asked about a policy implemented by the previous director, which provided that American Indian clients would not be served unless there was an ability to receive payment for the services provided. Ms. Smith said a policy like that was put into place and then revoked shortly after its implementation.

Representative Dorso said by moving American Indian clients from the State Hospital to community-based services provided through the human service centers, the department appears to be circumventing the intent of the Legislative Assembly and thereby not addressing the problem. He said the Legislative Assembly wants the problem resolved and that includes receiving payment for services provided, not moving the clients from one service provider to another. Ms. Smith said there are different payment requirements for American Indians residing on the reservation than for those residing off the reservation.

Representative Byerly said Indian Health Service is responsible if the tribal court commits an enrolled member of the reservation to a state facility. He said if an American Indian lives off the reservation, Indian Health Service is not always responsible. Representative Byerly said the court case of *White v. Califano* provides guidelines in this area.

**It was moved by Representative Dorso, seconded by Representative Byerly, and carried on a voice vote that the Legislative Audit and Fiscal Review Committee delay action on the request of the Department of Human Services to approve its accounts receivable writeoffs and that the Department of Human Services present the request and the following information at the next Legislative Audit and Fiscal Review Committee meeting:**

- 1. An aging of the accounts receivable writeoffs related to Indian Health Service;**
- 2. A report on the collection efforts utilized on the amounts to be written off;**
- 3. Information on the agreement with Indian Health Service, including the Indian Health Service payment requirements for services provided; and**
- 4. Information on the department's policy regarding the provision of services when the ability to pay does not exist.**

Representative Wald requested that the Department of Human Services also present information on the *White v. Califano* court case. Chairman Timm said the department should also include that information in its next presentation.

Representative Dorso said the state of Minnesota established a centralized collection agency which

provides collection services to state agencies. He requested that the Legislative Council staff obtain a copy of the Minnesota law which created the centralized collection agency and provide a copy of the law to the committee at its next meeting. Chairman Timm said that would be included on the next meeting's agenda.

Mr. Nagel presented the Barley Council audit report for the two-year period ended June 30, 1996. He reviewed the auditor's responses to the committee's guidelines and said the report contains two prior recommendations that have not been implemented and three current recommendations. He said the prior recommendations not implemented and two of the current recommendations relate to not utilizing the State Purchasing Division and not levying penalties and interest on purchasers filing late reports. He said the other current recommendation relates to needed improvement in the management of fixed assets.

Representative Poolman asked why the recommendation regarding assessing penalties and interest on late filers has not been complied with. Mr. Dan Wiltse, Barley Council, said in order to maintain a good relationship with filers, the Barley Council was not assessing penalties and interest on late filers. He said most filers submit their commodity reports to the various commodity groups at the same time of the month. He said this causes a problem because the other commodity groups allow 30 days to file while the section of the law relating to the Barley Council allowed for 20 days. He said the law has since been changed to allow for 30 days to make the Barley Council the same as the other commodity groups.

Representative Aarsvold asked what Mr. Wiltse thought of the Soybean Council representatives' idea of a centralized collection unit for all commodity groups. Mr. Wiltse said the Barley Council would gladly have someone else be responsible for the collection of fees and then remit the collections to the Barley Council.

Representative Timm asked what the compliance rate is for barley handlers. Mr. Wiltse said approximately 99 percent comply with the filing requirements.

Representative Wilkie asked if individual elevators are regularly checked for compliance. Mr. Wiltse said the Barley Council does not review individual elevators unless a need arises but does compare annual production totals with the total amounts submitted on the filings. He said if questions arise individual elevators are reviewed.

Without objection, the chairman accepted the Barley Council audit report for the two-year period ended June 30, 1996.

Mr. Nelson presented an Attorney General's opinion, which had been requested at the July 9, 1997, Legislative Audit and Fiscal Review Committee meeting, regarding the allocation of indirect costs by the University of North Dakota to internal service funds. A copy of the opinion is on file in the Legislative Council office. He said the opinion states that it is not unlawful for the University of North Dakota to allocate indirect costs to internal service funds.

Representative Poolman asked what was meant by the State Auditor's office when it said the University of North Dakota had ulterior motives when it allocated indirect costs to internal service funds. Mr. John Grettum, State Auditor's office, said the opinion of the State Auditor's office was that the University of North Dakota was attempting to circumvent 1995 Senate Bill No. 2015. He said the university charged indirect costs to the internal service funds because excess funds were available in the internal service funds. Mr. Grettum said the State Auditor's office considered it abnormal that the indirect cost allocation was applied retroactively. He said discussions with the University of North Dakota staff had indicated that the allocation of indirect cost to internal service funds would be effective for fiscal year 1997, not fiscal year 1996.

Representative Dorso said the Legislative Assembly is trying to achieve accountability in higher education. He said he has visited with people from other states on the issue of accountability and it is his opinion that the issues of accountability and performance cannot be evaluated without looking at the total dollar picture for higher education.

**It was moved by Representative Dorso, seconded by Representative Skarphol, and carried that the Legislative Audit and Fiscal Review Committee request the Attorney General to provide the committee with any language needed to be added to the North Dakota Century Code in order to require the complete disclosure of all internal service funds to the Legislative Assembly and to disclose how the funds within the internal service funds are spent.**

Representative Dorso said the Legislative Assembly and the University System have been working toward the same goal in terms of internal service funds and a new accounting system for higher education. Mr. Larry Isaak, North Dakota University System, said the University System and the Legislative Assembly are uniform in their goal of working toward full disclosure of higher education funding. He said the University System presented a report to the Budget Section last interim regarding a reporting format for the disclosure of this information. He said the proposed report format was approved by the Budget Section.

Voting "aye" were Representatives Timm, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson,

Poolman, Skarphol, and Wald and Senators Mutch and Solberg. Voting "nay" were Representative Aarsvold and Senator Lips.

Ms. Laura Glatt, North Dakota University System, presented information on the charging of indirect costs to internal service funds. A copy of her presentation is on file in the Legislative Council office. She said the University System and the State Auditor's office have reached a potential solution which satisfies both sides. She said the agreement is contingent upon the approval of the federal government.

Ms. Glatt said the agreement provides for the University of North Dakota to continue charging a uniform indirect cost rate to internal service funds for fiscal year 1998. She said at the end of each quarter the university will identify the portion of the indirect cost recovery recovered from state-appropriated funds. She said a credit will then be recorded to reverse the portion of the charge recovered from state funds. Ms. Glatt said if federal approval is received, the charging of differential rates will begin on July 1, 1998, and if federal approval is not received, other options will be pursued, with the assistance of the State Auditor's office.

Representative Dorso asked if the approval being requested from the federal government is to get the federal government to accept the indirect cost allocation formulas and assumptions so that if a federal audit is performed indirect cost allocations will not be an issue. Mr. Grettum said the requested approval from the federal government relates to charging federal funds more than state funds for indirect cost allocations. He said the approval will also help to avoid future problems and liabilities if an audit is conducted.

Without objection, the chairman accepted the North Dakota University System audit report for the year ended June 30, 1996.

Mr. Gordy Smith, State Auditor's office, presented the statewide single audit report for the years ended June 30, 1996 and 1995. He said the statewide single audit is the state's audit of all federal funds

received by state agencies and institutions during fiscal years 1996 and 1995. He reviewed the different sections of the report which include a schedule of federal assistance, report on internal control, and findings and questioned costs.

Without objection, the chairman accepted the statewide single audit report for the years ended June 30, 1996 and 1995.

Mr. Smith presented the Performance Audit Report of State Procurement Practices - Information Technology Projects. 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 audit consisted of surveying all executive agencies, the legislative branch, the judicial branch, and the University System entities in order to identify and report on information technology projects. Mr. Smith said the purpose of the report is to provide the Legislative Audit and Fiscal Review Committee with information on information technology projects. He said the results of the audit led to no findings or recommendations.

Mr. Smith said the information collected through the surveys was compared to the information included in the 1996 Legislative Council report of the Agriculture and Information Services Committee. He said at the time the survey was conducted for the Agriculture and Information Services Committee, it identified \$73,047,513 of information technology projects through the 2001-03 biennium. He said the survey done for the performance audit identifies \$129,163,833 of projects, an increase of \$56,116,320.

Mr. Smith said of the total project costs identified of \$129,163,833, \$5,987,920 is related to interest costs. He provided the following breakdown of principal and interest costs by entity for the projects being financed:

Financing Amounts				
Entity	Number of Projects	Principal	Interest	Total
Department of Human Services	3	\$12,384,567	\$1,993,784	\$14,378,351
Department of Transportation	1	2,269,892	489,863	2,759,755
Legislative Assembly	1	164,638	8,706	173,344
Legislative Council	1	70,489	4,480	74,969
North Dakota University System <sup>1</sup>	2	8,361,298	2,554,646	10,915,944
Office of Management and Budget Information Services Division	1	8,904,590	911,943	9,816,533
Office of Management and Budget State Radio Communications <sup>2</sup>	1	240,000	11,936	251,936
Workers Compensation Bureau	1	189,784	12,562	202,346
Total	11	\$32,585,258	\$5,987,920	\$38,573,178

<sup>1</sup> Includes information technology bonds of \$4,000,000 and related interest of \$1,225,305.

<sup>2</sup> Three-year loan which was paid off after the first year.

Representative Byerly asked if the \$56 million difference between the State Auditor's numbers and the Agriculture and Information Services Committee numbers relates to new projects or higher cost estimates on existing projects. Mr. Smith said it is a combination of both new projects and increased costs on projects previously reported.

In response to a question from Representative Dorso, Mr. Smith said the \$5,987,920 of interest is over the life of the contracts, not just the current biennium.

Mr. Smith said two issues needing further review are the financing of contracts by state agencies and institutions and the possibility of lawsuits against an agency or institution if it terminates a contract because of the nonappropriation of funds. He said the contracts contain a standard "out" clause which states the contract is subject to the continued appropriation of funds by the Legislative Assembly. He said if funds are not appropriated, the contract would become voidable.

In response to a question from Representative Maragos, Mr. Smith said all of the contracts reviewed during the performance audit contained the standard "out" clause.

Senator Solberg asked how the agencies could have made such poor cost estimates last interim and provided such inaccurate information to the Agriculture and Information Services Committee. Mr. Smith said a number of reasons could have contributed to that, some of which are that agencies possibly tried to narrow the scope of the survey conducted by the Legislative Council staff and some agencies may not have been sure of what to include and exclude when the survey was completed.

Mr. Nelson said the list of information technology projects compiled by the State Auditor's office is useful information and should be taken in the context of a starting point to be used to compare with future information. He said the basis for the Legislative Council survey conducted for the Agriculture and Information Services Committee was different in scope than the performance audit conducted by the State Auditor's office, therefore making the comparison questionable when using the differences to project future trends. He said the Agriculture and Information Services Committee's emphasis was on getting information on the major information technology projects for committee members to review. He said the new totals provided to this committee should be used to compare to what is actually taking place, not to compare back to the survey conducted

for the Agriculture and Information Services Committee.

Representative Dorso said 1995 House Bill No. 1054 addressed the issue of leasing. He said the bill required state agencies and institutions to document the leasing of assets and make that documentation available to the auditor during the audit. He said the bill also provided that the budget data prepared by the Office of Management and Budget was to include a list of every individual leased asset, excluding real estate, with a value of at least \$50,000 and every group of leased assets comprising a single system with a combined value of at least \$50,000. He said to the best of his knowledge this information was not included in the last budget presented to the Legislative Assembly.

In response to a question from Representative Dorso, Mr. Rod Backman, Office of Management and Budget, said the information should have been included in the budget documents presented to the Legislative Assembly.

Representative Maragos said if the Century Code requires agencies to document leases and make this available to the State Auditor's office and none of the agencies are doing this, then the State Auditor's office should note that in the reports presented to this committee. He said there is a specific question addressing compliance with law and all of the reports presented today indicated that the agencies were in compliance with the law.

Representative Maragos questioned why none of the audits indicated that the agencies were not complying with this section of the law. Mr. Smith agreed that some central agency should be monitoring this but indicated that most of the arrangements discussed today are not lease arrangements. He said they are purchase arrangements.

Representative Maragos asked if safeguards exist in the current budget and appropriation process to prevent these types of arrangements. Mr. Smith said the only safeguard is the requirement that all funds be appropriated. Mr. Backman said House Bill No. 1034, as passed by the 1997 Legislative Assembly, will help in the area of information technology projects.

Representative Dorso said the concern is more than just information technology projects. He said he assumes that House Bill No. 1034 will take care of the information technology project area, but he still questions all of the other arrangements of this nature.

**It was moved by Representative Dorso, seconded by Representative Wald, and carried that the Legislative Council staff work with the Office of**

**Management and Budget and the State Auditor's office on recommended changes to the budget process and the North Dakota Century Code to address the creative ways agencies and institutions use to acquire assets and services and make any recommendations necessary to address this issue to the Legislative Audit and Fiscal Review Committee and the Budget Section.** Voting "aye" were Representatives Timm, Aarsvold, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, and Solberg. No negative votes were cast.

Without objection, the chairman accepted the Performance Audit Report of State Procurement Practices - Information Technology Projects.

Mr. Smith presented the Performance Audit Report on State Procurement Practices. 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 a limited review was conducted to determine agency compliance with and the assessed adequacy of significant procurement laws, policies, and procedures.

Mr. Smith reviewed the recommendations contained in the performance audit. A copy of the recommendations is attached as Appendix B.

In a response to questions from Senator Solberg, Mr. Backman said the Office of Management and Budget has already started addressing the recommendations contained in the performance audit. He said he would let this committee review any proposed legislation to be introduced during the 1999 legislative session by the Office of Management and Budget, which addresses the recommendations contained in the performance audit. He also said he would update this committee on the status of the recommendations contained in the performance audit at a future meeting.

Mr. Backman said prior to the 1997 legislative session, the National Association of State Purchasing Officers conducted a review of the Central Services Division of the Office of Management and Budget. He said many of the recommendations contained in that report are also contained in the performance audit. Mr. Backman said the Central Services Division addressed some of the items during the 1997 legislative session, but not all items requiring statutory changes were addressed because the report was received so close to the session. Mr. Backman distributed a list of the recommendations contained in the National Association of State Purchasing Officers report. A copy of the recommendations is on file in the Legislative Council office.

Chairman Timm told the committee that the Office of Management and Budget would be included on a future meeting agenda to update the committee on

the status of the recommendations contained in the performance audit. He said in order to give the Office of Management and Budget time to address all of the issues contained in the report, it would not be included on the next agenda but at the meeting after that.

Without objection, the chairman accepted the performance audit report on state procurement practices.

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

Y **Reports accepted without objection by the chairman:**

**For the two-year period ended June 30, 1996:**

**Barley Council**

**For the year ended June 30, 1996:**

**North Dakota University System**

**For the years ended June 30, 1996 and 1995:**

**Statewide single audit**

**For the period dated August 18, 1997:**

**Performance Audit Report of State Procurement Practices**

**For the period dated September 12, 1997:**

**Performance Audit Report of State**

**Procurement Practices Information - Technology Project**

Y **Audit reports available but not selected for presentation to the committee:**

**Developmentally disabled facility loan program (December 31, 1996 and 1995)**

**State Board of Public Accountancy (June 30, 1997)**

**State Board of Medical Examiners (December 31, 1996 and 1995)**

**State Plumbing Board (June 30, 1997 and 1996)**

**Beef Commission (biennium ended June 30, 1997)**

Voting "aye" were Representatives Timm, Aarsvold, Byerly, Clark, Dorso, Gerntholz, Kunkel, Maragos, Mickelson, Poolman, Skarphol, Wald, and Wilkie and Senators Lips, Mutch, and Solberg. No negative votes were cast.

Senator Solberg asked about the status of the State Auditor's office report on the Lake Agassiz Regional Planning Council. Mr. Smith said an Attorney General's opinion has been requested by the planning council regarding certain aspects of the issue and that the State Auditor's office has incurred minor problems in the collection of information. He said the report should be ready by the committee's next meeting.

Representative Maragos asked if the Attorney General's opinion related to what the Legislative Audit and Fiscal Review Committee requested the State Auditor's office to review. Mr. Smith said the opinion was relevant to the work being done by the State Auditor's office. He said it stated that regional planning councils cannot form separate nonprofit corporations; however, the individuals working for a regional planning council can establish a nonprofit corporation and the regional council can then contract with that nonprofit corporation.

Representative Dorso requested that the State Auditor's office survey all of the regional planning councils for information on the regional planning councils' formation of nonprofit corporations. Chairman Timm indicated that the State Auditor's office should proceed with that as a formal request of the committee and include it with the report to be presented at the next committee meeting.

Representative Aarsvold asked who is paying for the investigation into the intentions of the regional planning councils. Mr. Smith said the funding is coming from the general fund dollars appropriated to the State Auditor's office.

**It was moved by Senator Solberg, seconded by Representative Poolman, and carried on a voice vote that the Legislative Council staff prepare and present at the next meeting a bill draft, modeled after the South Dakota law, that provides:**

- 1. That all commodity groups that are state controlled or sanctioned have a uniform collection form with a monthly check issued to the State Treasurer and that the State Treasurer would then issue separate checks to each commodity group;**
- 2. Establish a central office with auditing powers, the cost of which would be paid**

**proportionately by each commodity group; and**

- 3. Provide that commodity groups are exempted from Central Personnel and Central Purchasing.**

**It was moved by Representative Byerly, seconded by Representative Skarphol, and carried on a voice vote that the Legislative Council staff obtain information from the State Auditor's office on ways to inform the Appropriations Committees of reportable conditions contained in agency audit reports.**

Mr. Nelson said this has been done in the past through a report prepared by the State Auditor's office to the Appropriations Committees. He said this can be reviewed and suggestions can be brought to the next committee meeting.

Chairman Timm announced that the next meeting is scheduled for Wednesday, January 21, 1998.

**It was moved by Senator Lips, seconded by Senator Mutch, and carried on a voice vote that the meeting be adjourned.**

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Paul R. Kramer  
Senior Fiscal Analyst

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

ATTACH:2