

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Tuesday, January 18, 2000  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Francis J. Wald, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Francis J. Wald, Ole Aarsvold, Wesley R. Belter, Rex R. Byerly, RaeAnn G. Kelsch, Doug Lemieux, Andrew G. Maragos, Ronald Nichols, Mike Timm, Lonny B. Winrich; Senators Dwight C. Cook, Jerome Kelsh, Ralph Kilzer, Jerry Klein, Duane Mutch, David O'Connell, Ken Solberg

**Member absent:** Representative Jim Poolman

**Others present:** See attached appendix

**It was moved by Representative Aarsvold, seconded by Senator Cook, and carried on a voice vote that the minutes of the October 5, 1999, meeting of the Legislative Audit and Fiscal Review Committee be approved as distributed.**

#### NORTH DAKOTA COMPREHENSIVE ANNUAL FINANCIAL REPORT

Chairman Wald called on Ms. Eileen Holwegner, Office of Management and Budget, who presented the Comprehensive Annual Financial Report (CAFR) for the state of North Dakota for the year ended June 30, 1999. Ms. Holwegner also distributed a report entitled *1997-99 Biennium Budget and Actual Detail for the Biennium Ended June 30, 1999*.

Chairman Wald requested that in the future the Office of Management and Budget mail copies of the CAFR and the budget and actual detail report to the committee members prior to the meeting date to allow an opportunity to review the reports prior to their being presented. Ms. Holwegner said the reports are available two weeks prior to the meeting date, and in

the future the Office of Management and Budget will comply with the chairman's request.

#### AUDIT REPORTS

Chairman Wald called on Mr. John Grettum, State Auditor's office, Fargo, who presented the Veterans Home audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Senator Klein asked if the Veterans Home has experienced an increase in the number of vacant beds. Mr. Ken Anderson, Commandant, Veterans Home, said the home is operating at or near capacity.

In response to a question from Senator Solberg, Mr. Anderson said the Veterans Home has implemented a successful safety program, which has resulted in a decrease in workers' compensation premium rates.

Mr. Grettum presented the North Dakota University System audit report for the year ended June 30, 1999. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion regarding the general purpose financial statements but contains a qualified opinion regarding the accompanying financial information. He said the qualification relates to the reporting of local funds on the combined and individual statements of appropriation. He said the report contains one prior audit finding which has not been implemented and 11 new audit findings, including the following:

	Finding	Recommendation
Prior audit finding	Unreconciled differences exist between the amount reported as local fund expenditures and the amount recorded as local fund expenditures in the general ledger.	Each institution's general ledger should be used to calculate and report local fund expenditures.
Finding No. 99-3	The State Board of Higher Education does not have a clear and distinct policy on budget preparation, revision, reporting, and monitoring.	The State Board of Higher Education should develop written policies and procedures for budget preparation, revision, reporting, and monitoring and compare actual revenue and expenditure data to budgeted data for the institutions of higher education and the University System office on at least a quarterly basis.
Finding No. 99-6	The settlement of joint personnel costs between the University of North Dakota (UND) and the	The University of North Dakota and the UND Aerospace Foundation should comply with the

Finding No. 99-7	<p>UND Aerospace Foundation took place only once during fiscal year 1999, rather than monthly as required by the operating agreement between the two entities and was not based on proper supporting documentation.</p>	<p>operating agreement between the two entities by properly documenting personnel time allocation and processing settlements monthly.</p>
Finding No. 99-9	<p>To reduce an excess balance in the UND workers' compensation fund, the university improperly transferred approximately \$164,000 to pay salaries, travel, and office expenses of the occupational safety health nurse program.</p>	<p>The University of North Dakota should reduce the net amount of collections for workers' compensation to meet its target balance in the workers' compensation fund and should return \$164,000 to the fund to reverse the transfer.</p>
	<p>At UND, 61 equipment items with a combined cost of more than \$174,000 were apparently taken by two former professors.</p>	<p>The University of North Dakota should draft, disseminate, and monitor appropriate policies and procedures to prevent further equipment losses; comply with all applicable state and federal statutes and regulations concerning the disposition of equipment items; take appropriate action to recover the equipment; and determine if additional action is required.</p>

Referring to audit finding No. 99-9 relating to equipment items apparently taken by two former professors, Senator Kilzer said the university should have policies in place to address the issue of specialized research equipment and whether or not that equipment should follow the researcher.

In response to a question from Representative Maragos, Mr. Grettum said the fiscal year 1999 audit report is the first report in which the State Auditor's office has included a finding relating to the equipment issue because it is the first time the State Auditor's office has become aware of it.

In response to a question from Senator Kelsh, Ms. Peggy Lucke, Interim Vice President, Finance and Operations, University of North Dakota, said some researchers employed by the university bring specialized equipment items with them when they come to the university. She said federal grant awards often stipulate that specialized equipment items must follow the researcher. She said the university has had a policy in place for several years to deal with this issue. She said the policy provides special provisions for the transfer of university-owned equipment acquired with federal grant and contract funds. She said the special provisions do not apply to equipment acquired with state-appropriated funds. She said the university discovered the problem, has identified the missing equipment, and is working with the institutions involved to recover the equipment or receive an appropriate payment.

In response to a request from Senator Solberg, copies of the UND policy relating to equipment acquired with federal funds were distributed to the committee. A copy of the policy is on file in the Legislative Council office.

In response to a question from Senator Solberg, Mr. Grettum said the missing equipment, which has a combined cost of approximately \$174,000, was purchased with approximately \$37,000 of state-appropriated funds and \$137,000 of unappropriated funds.

Senator Kelsh asked how the university reconciles federal grant provisions with the state surplus property law governing the disposition of state property. Ms. Lucke said in the past, the Office of Management and Budget has approved the transfer of research equipment purchased with federal grant or contract funds, exempting the transfer from state surplus property laws in accordance with the UND policy relating to such transfers. She said in this case the university's policies were not followed.

Senator Solberg suggested that in the future the University System audit report be mailed to committee members prior to the meeting date to allow committee members adequate time to review the report.

Chairman Wald called on Mr. Larry Isaak, Chancellor, North Dakota University System, who introduced Dr. Charles Kupchella, President, University of North Dakota. Dr. Kupchella introduced Dr. Bruce Smith, Dean, John D. Odegard School of Aerospace Sciences. Dr. Smith distributed copies of the UND Aerospace Foundation audit report for the years ended June 30, 1999 and 1998, provided to the committee for informational purposes.

Ms. Terri Clark, Director of Fiscal Affairs, John D. Odegard School of Aerospace Sciences and University of North Dakota Aerospace Foundation, presented the audit report to the committee.

In response to a question from Senator Solberg, Ms. Clark said the operating agreement between the university and the UND Aerospace Foundation, which was referred to in the North Dakota University System audit report, was originally written in 1991 and is currently under review by UND.

In response to a question from Representative Wald, Dr. Smith said the enrollment at the School of Aerospace Sciences is increasing and the outlook for the school is positive.

Mr. Grettum presented the Mill and Elevator Association audit report for the year ended June 30, 1999. He reviewed the auditor's responses to the committee's guidelines and said the report contains an

unqualified opinion. He said the report contains one finding relating to the establishment of proper password security on the agency's local area network.

Chairman Wald called on Mr. Ed Nagel, Jr., State Auditor's office, who presented the Tourism Department audit report for the year ended June 30, 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Nagel presented the State Historical Society audit report for the year ended June 30, 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Nagel presented the Department of Banking and Financial Institutions audit report for the year ended June 30, 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Chairman Wald called on Mr. Gordy Smith, State Auditor's office, who presented a report on the special audit of the Commission on the Future of Agriculture (COFA) expenditures relating to the American Cyanamid settlement. He said the state of North Dakota received \$100,000 as a result of the settlement of a multistate lawsuit against American Cyanamid. He said the settlement agreement required that the settlement moneys be used to benefit the agricultural community. He said the Attorney General awarded the settlement proceeds to COFA on December 17, 1997, and the funds were transferred to the North Dakota Farmers Union, which acted as COFA's fiscal agent. Through December 31, 1999, COFA also received donations of \$86,000. He said through December 1999, 42 percent of COFA's expenditures were payments to a consulting firm to develop a strategic plan and 37 percent were payments to a contracted individual to coordinate the efforts of the working group, solicit donations, develop legislation, and track bills during the 1999 legislative session. He said based on information reviewed by the State Auditor's office, it appears the expenditures by COFA fall within the guidelines set forth in the American Cyanamid settlement.

In response to a question from Representative Byerly, Mr. Smith said the settlement moneys were deposited into the Farmers Union bank account but were accounted for separately from Farmers Union funds.

Senator Mutch questioned whether or not it was legal for the settlement moneys to be deposited with a private entity. Mr. Smith said the State Auditor's office did not address the legality of the settlement moneys being awarded to COFA or the North Dakota Farmers Union acting as its fiscal agent.

Senator Klein said the information presented by the State Auditor's office indicated that as of

December 31, 1999, approximately \$17,000 of the funds available to COFA had not been spent. He asked if COFA is continuing efforts to raise money to support its initiatives. Mr. Roger Johnson, Agriculture Commissioner, said COFA is continuing efforts to raise money to implement its initiatives. He said COFA has elected a new board and a new chairman.

Representative Belter said it is unusual for a private entity to administer public funds. He asked if the Agriculture Department considered administering the funds. Mr. Johnson said it was the judgment of the Attorney General that the settlement moneys belonged to the state's agricultural producers and were not state funds. He said consequently the Attorney General determined it was not proper for a state agency to administer the funds. He said because the settlement agreement provided that the funds must be used for the benefit of the agricultural community, it was determined that expenditures should be agreed upon by the state's two largest farm organizations, the North Dakota Farmers Union and the North Dakota Farm Bureau.

Representative Byerly said various programs of the Agriculture Department could have been considered as possible uses for the funds because they provide benefits to the agricultural community, as required by the settlement agreement. Mr. Johnson said the Agriculture Department developed several proposals for the use of the moneys, but it was not an Agriculture Department decision as to how the settlement moneys were distributed.

Chairman Wald requested that copies of the final report prepared by COFA be distributed to committee members. Pursuant to his request, copies of *Building the Future of North Dakota Agriculture*, the final report and action plan of COFA, were distributed to members of the committee. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Jerry Effertz, Chairman, Commission on the Future of Agriculture, said COFA represents 60 agricultural organizations. He said the activities of COFA will be considered "political" by some people because COFA will be working to further the agenda agreed upon by the 60 represented agricultural organizations, an agenda which will not be supported by everyone.

Representative Belter said his concern is not with the politics involved with COFA but with the procedures relating to the handling of the settlement moneys. He said he has two legal questions regarding the distribution of the settlement moneys:

- Was the distribution of the settlement moneys to COFA and the North Dakota Farmers Union in compliance with constitutional and statutory provisions?
- Could a state agency have served as the fiscal agent for the settlement moneys without violating the terms of the settlement agreement?

Representative Wald said based on the report presented by the State Auditor's office, the \$100,000

settlement was commingled with \$86,000 of donations to COFA. He said some of COFA's funds were used for lobbying purposes. He said because the funds were commingled, it is difficult to say that the \$100,000 settlement was not used for that purpose. Mr. Johnson said it was COFA's intent that the \$100,000 settlement money was the first money expended. He said the first phase of COFA's work was building consensus among the related groups and developing COFA's final report and action plan. He said the second phase of COFA's work was the implementation of COFA's initiatives. He said it was COFA's intention that the second phase involved the expenditure of moneys donated to COFA.

**It was moved by Representative Maragos, seconded by Senator Solberg, and carried on a roll call vote that the Legislative Audit and Fiscal Review Committee request an Attorney General's opinion on the following:**

- **Was the transfer of American Cyanamid settlement funds to the Commission on the Future of Agriculture and the North Dakota Farmers Union in compliance with constitutional and statutory provisions?**
- **Could a state agency have served as the fiscal agent for the settlement moneys without violating the terms of the settlement agreement?**

Representatives Wald, Belter, Byerly, Kelsch, Maragos, and Timm and Senators Cook, Kilzer, Klein, Mutch, and Solberg voted "aye." Representative Aarsvold, Lemieux, Nichols, and Winrich and Senators Kelsh and O'Connell voted "nay."

Chairman Wald called on Mr. Alton A. Nitschke, Eide Bailly LLP, Certified Public Accountants, who presented the State Auditor's office audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report contains two findings relating to:

- Following yellow book performance audit standards for reporting related to audits of state agencies.
- Limiting the scope of performance audits.

**It was moved by Senator Solberg, seconded by Representative Timm, and carried on a roll call vote that pursuant to North Dakota Century Code Section 54-35-02.2, the Legislative Audit and Fiscal Review Committee accept the State Auditor's office audit report for the years ended June 30, 1999 and 1998, and authorize final payment to Eide Bailly LLP.** Representatives Wald, Aarsvold, Belter, Byerly, Kelsch, Timm, and Winrich and Senators Cook, Kelsh, Kilzer, Klein, Mutch, and Solberg voted "aye." No negative votes were cast.

Mr. Nitschke presented the Board of University and School Lands audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the

report does not contain any findings or recommendations.

Mr. Nitschke presented the North Dakota Housing Finance Agency audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Nitschke presented the North Dakota Building Authority audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Chairman Wald called on Mr. Greg Honl, Eide Bailly LLP, Certified Public Accountants, Fargo, who presented the North Dakota student loan trust audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Honl presented the partnership in assisting community expansion (PACE) fund audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Honl presented the Ag PACE fund audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Nitschke presented the North Dakota Development Fund, Inc., audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

**It was moved by Representative Byerly, seconded by Senator Mutch, and carried on a roll call vote that the Legislative Audit and Fiscal Review Committee request the board of directors of the North Dakota Development Fund, Inc., to include in future audit reports of the North Dakota Development Fund, Inc., and Technology Transfer, Inc., a list of companies in which the funds hold an equity interest and that, unless prohibited by law, the list include the original value of the equity investment and the value of the investment at the time of the audit.** Representatives Wald, Belter, Byerly, Kelsch, Maragos, Nichols, Timm, and Winrich and Senators Cook, Kilzer, Klein, Mutch, O'Connell, and Solberg voted "aye." Representative Aarsvold and Senator Kelsh voted "nay."

Mr. Nitschke presented the Technology Transfer, Inc., audit report for the years ended June 30, 1999

and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

In response to a question from Representative Byerly, Mr. Nitschke said the prepaid computer usage asset shown on the combined balance sheet relates to a prepaid computer usage arrangement which was entered into on September 8, 1992, between the John D. Odegard School of Aerospace Sciences and Technology Transfer, Inc. He said as part of the agreement, Technology Transfer, Inc., extended \$135,000 to the School of Aerospace Sciences for the installation of a Cray supercomputer and in exchange for the funding, the School of Aerospace Sciences agreed to provide 337 hours of access to the computer on behalf of Technology Transfer, Inc.'s current and potential clients.

In response to a question from Representative Byerly, Mr. Nitschke said although no companies have made use of the prepaid computer usage arrangement, the computer access is still available and will continue to be maintained as an asset on Technology Transfer, Inc.'s balance sheet.

The committee recessed for lunch at 12:15 p.m. and reconvened at 1:15 p.m.

Chairman Wald called on Mr. Donald LaFleur, State Auditor's office, who presented the Information Technology Department general controls audit report for the year ended June 30, 1999. He said the report contains an unqualified opinion regarding the general controls of the Information Technology Department but contains 10 reportable conditions. Mr. LaFleur reviewed each of the reportable conditions as well as the State Auditor's office recommendation and the Information Technology Department response to each.

Chairman Wald called on Mr. John Mongeon, Brady, Martz & Associates, P.C., Certified Public Accountants, who presented the North Dakota Retirement and Investment Office audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Mongeon presented the North Dakota Public Employees Retirement System audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

Mr. Mongeon presented the Job Service North Dakota audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

In response to a question from Representative Wald, Ms. Jennifer Gladden, Executive Director, Job

Service North Dakota, said the disaster unemployment assistance program, which involved the distribution of Federal Emergency Management Agency funds, was completed in December 1999.

Senator Klein said the balance of the unemployment insurance trust fund has decreased from \$37.3 million on July 1, 1998, to \$31.1 million on June 30, 1999. He asked why the fund balance has decreased while the state has experienced historically low levels of unemployment. Ms. Gladden said the average weekly benefit amount paid by Job Service North Dakota has increased because of increases in the average weekly wage. She said in addition, employment has increased in seasonal activities, such as construction, which result in more layoffs and the payment of more unemployment insurance benefits during times of inactivity.

Mr. Mongeon presented the Workers Compensation Bureau audit report for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report contains an unqualified opinion. He said the report does not contain any findings or recommendations.

In response to a question from Representative Wald, Mr. Paul Kramer, Senior Vice President of Employer and Fiscal Services, Workers Compensation Bureau, said the bureau currently has no backlog of unlitigated cases. He said the backlog was approximately 1,400 unlitigated cases before the bureau began contracting for legal counsel.

In response to a question from Representative Lemieux, Mr. Kramer said the bureau's in-house attorneys do not represent the bureau in court but review cases prior to their being assigned to contract legal counsel.

Mr. Nagel presented the State Auditor's office *State Agency Audit Followup Report* for audit reports presented to the committee in July and October 1999. A copy of the report is on file in the Legislative Council office. He said the report addresses recommendations that have not been fully implemented. He said recommendations relating to two agencies, the State Seed Department and the North Dakota Potato Council, are included in the report. A report on management letter recommendations relating to the audit reports presented by the State Auditor's office was also distributed to the committee, a copy of which is on file in the Legislative Council office.

The committee delayed action on the following audit reports and requested they be presented at the next committee meeting:

- State Real Estate Commission (June 30, 1999 and 1998)
- State Fair Association (June 30, 1999 and 1998)
- Commission on the Future of Agriculture special audit (December 31, 1999)
- North Dakota University System (June 30, 1999)

**It was moved by Senator Solberg, seconded by Representative Timm, and carried on a roll call**

vote that pursuant to North Dakota Century Code Section 54-35-02.2, the committee accept the following reports:

- Reports presented to the committee:
  - Mill and Elevator Association (June 30, 1999)
  - Tourism Department (June 30, 1998)
  - Historical Society (June 30, 1998)
  - Department of Banking and Financial Institutions (June 30, 1998)
  - North Dakota Comprehensive Annual Financial Report (June 30, 1999)
  - Information Technology Department general controls audit (June 30, 1999)
  - Veterans Home (June 30, 1999 and 1998)
  - Board of University and School Lands (June 30, 1999 and 1998)
  - Housing Finance Agency (June 30, 1999 and 1998)
  - North Dakota Building Authority (June 30, 1999 and 1998)
  - North Dakota student loan trust (June 30, 1999 and 1998)
  - PACE fund (June 30, 1999 and 1998)
  - Ag PACE fund (June 30, 1999 and 1998)
  - North Dakota Development Fund, Inc. (June 30, 1999 and 1998)
  - Technology Transfer, Inc. (June 30, 1999 and 1998)
  - Retirement and Investment Office (June 30, 1999 and 1998)
  - Public Employees Retirement System (June 30, 1999 and 1998)
  - Job Service North Dakota (June 30, 1999 and 1998)
  - Workers Compensation Bureau (June 30, 1999 and 1998)
- Reports available but not selected for presentation to the committee:
  - Beef Commission (June 30, 1999 and 1998)
  - Soybean Council (June 30, 1999 and 1998)
  - Abstracters' Board of Examiners (August 31, 1999 and 1998)
  - State Electrical Board (June 30, 1999 and 1998)
  - State Board of Nursing (June 30, 1999 and 1998)
  - State Plumbing Board (June 30, 1999 and 1998)
  - Board of Examiners for Hearing Instrument Dispensers (June 30, 1999 and 1998)
  - State Board of Registration for Professional Engineers and Land Surveyors (June 30, 1999 and 1998)

Representatives Wald, Aarsvold, Byerly, Lemieux, Nichols, Timm, and Winrich and Senators Cook, Kelsh, Kilzer, Klein, Mutch, O'Connell, and Solberg voted "aye." No negative votes were cast.

### **REPORT ON LAWSUIT INVOLVING DAKOTA NUTRITION, INC.**

Chairman Wald called on Ms. Kathy Grafsgaard, Director, Child Nutrition and Food Distribution Programs, Department of Public Instruction, who presented a status report on the lawsuit involving Dakota Nutrition, Inc. Dakota Nutrition, Inc., is an entity that distributed federal meal reimbursement funds to day care providers in the Minot area. In December 1997 an auditing firm contracted by the Department of Public Instruction audited the records of Dakota Nutrition, Inc., and found approximately \$1.4 million of audit exceptions where documents were not available to support the proper distribution of funds. A copy of the information presented by Ms. Grafsgaard is on file in the Legislative Council office. She said the department maintains its assertion the executive director of Dakota Nutrition, Inc., was not stealing federal funds but that she simply did not meet the administrative requirements of the program. She said the department has improved administrative procedures to ensure that audits of meal reimbursement providers are completed in a timely manner. She said the department's monitoring process is complete and thorough.

In response to a question from Senator Mutch, Ms. Grafsgaard said the department believes payments made by Dakota Nutrition, Inc., were appropriately received by providers.

Representative Byerly said because records are not available to substantiate the distribution of the \$1.4 million, the department cannot verify the fact it was actually distributed appropriately.

In response to a question from Senator Cook, Ms. Maggie Anderson, Assistant Director, Child Nutrition and Food Distribution Programs, Department of Public Instruction, said Dakota Nutrition, Inc., was distributing payments to 121 providers when its contract was terminated. She said all 121 providers were verified as actual providers.

In response to questions from Representative Wald and Senator Cook, Ms. Anderson said there are seven other sponsoring organizations in the department's child nutrition and food distribution programs. She said all sponsoring organizations are required to be nonprofit entities and prove that they will serve at least 50 unserved day care providers.

Chairman Wald called on Mr. Doug Bahr, Director, Civil Litigation Division, Attorney General's office, who discussed the status of the lawsuit involving Dakota Nutrition, Inc. He said a default judgment was obtained against Dakota Nutrition, Inc., for \$12,438. He said the director of Dakota Nutrition, Inc., has moved out of state and has not responded to the lawsuit. He said the \$1.4 million claim may not be pursued based on the fact the state will likely be

unable to collect the \$12,438 amount and the Department of Public Instruction's assertion that the \$1.4 million amount was properly distributed.

In response to a question from Representative Aarsvold, Ms. Anderson said the department has records to substantiate the \$12,438 claim. She said the missing records relate to the \$1.4 million amount.

Representative Byerly expressed concern the United States Department of Agriculture, the federal agency in charge of the program, could take action against the state relating to the \$1.4 million amount because records are not available to substantiate its distribution.

Chairman Wald requested the Department of Public Instruction keep the State Auditor's office informed regarding the status of the lawsuit involving Dakota Nutrition, Inc., and any action taken by the United States Department of Agriculture.

### **REPORT ON ACTIONS OF THE LAKE AGASSIZ REGIONAL PLANNING COUNCIL**

Chairman Wald called on Ms. Beth Baumstark, Assistant Attorney General, Attorney General's office, who presented information regarding actions of the Lake Agassiz Regional Planning Council and its related nonprofit corporation. A copy of the information presented is on file in the Legislative Council office. Ms. Baumstark said the Lake Agassiz Regional Planning Council and the Lake Agassiz Regional Development Corporation are now two separate entities with separate boards of directors. She said the two entities still share office space and employ some of the same staff. She said this does not pose a problem as long as adequate records are kept. She said conflicts of interest could arise due to the fact the same person serves as executive director of both entities.

In response to a question from Senator Solberg, Ms. Baumstark said the Lake Agassiz Regional Planning Council is subject to audit by the State Auditor's office. She said the Lake Agassiz Regional Development Corporation is subject to audit by the State Auditor's office to the extent of its dealings with the state.

Mr. Smith said the State Auditor's office does not normally audit the Lake Agassiz Regional Planning Council unless requested to do so by the Legislative Audit and Fiscal Review Committee. He suggested if the committee requests the State Auditor's office to audit the Lake Agassiz Regional Planning Council, the committee may be interested in receiving information on the current value of the assets of each entity and the value of assets originally transferred from the Lake Agassiz Regional Planning Council to the Lake Agassiz Regional Development Corporation.

**It was moved by Representative Byerly, seconded by Representative Timm, and carried on a roll call vote that pursuant to North Dakota Century Code Section 54-35-02.2, the Legislative Audit and Fiscal Review Committee request that the State Auditor's office review transfers of assets originally made from the Lake Agassiz Regional Planning Council to the Lake Agassiz Regional Development Corporation and transfers subsequently made to the Lake Agassiz Regional Planning Council in order to comply with the committee's June 3, 1998, recommendations and present a report to the committee at its next meeting.** Representatives Wald, Aarsvold, Byerly, Nichols, Timm, and Winrich and Senators Cook, Kelsh, Kilzer, Klein, Mutch, O'Connell, and Solberg voted "aye." No negative votes were cast.

The meeting was adjourned at 3:30 p.m.

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Joe R. Morrisette  
Senior Fiscal Analyst

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Jim W. Smith  
Assistant Legislative  
Budget Analyst and Auditor

ATTACH:1