

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Monday and Tuesday, May 22-23, 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, Andrew G. Maragos, Ronald Nichols, Jim Poolman, Lonny B. Winrich; Senators Dwight C. Cook, Jerome Kelsh, Ralph Kilzer, Jerry Klein, Duane Mutch, Ken Solberg

**Members absent:** Representatives Doug Lemieux, Mike Timm; Senator David O'Connell

**Others present:** See attached appendix

**It was moved by Representative Maragos, seconded by Senator Mutch, and carried on a voice vote that the minutes of the January 18, 2000, meeting of the Legislative Audit and Fiscal Review Committee be approved as distributed.**

#### AUDIT REPORTS

Chairman Wald called on Mr. Ed Nagel, Jr., State Auditor's office, who presented the audit report for the Governor's office for the years ended June 30, 1999 and 1998 (financial statement audit conducted using performance audit standards). He reviewed the auditor's responses to the committee's guidelines and the two audit findings included in the report.

Mr. Nagel presented the audit report for the Children's Services Coordinating Committee for the years ended June 30, 1999 and 1998 (financial statement audit conducted using performance audit standards). He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report. The audit finding relates to grant funds not always being distributed to regional and tribal children's services coordinating committees within five days after receiving the funds, as required by North Dakota Century Code (NDCC) Section 54-56-03.

Representative Nichols asked if the five-day requirement contained in NDCC Section 54-56-03 is too restrictive. Chairman Wald called on Lt. Governor Rosemarie Myrdal, Chairman, Children's Services Coordinating Committee, to respond to the question. Lt. Governor Myrdal said the Children's Services Coordinating Committee has only two staff persons involved in disbursing funds to regional and tribal children's services coordinating committees. She said if one of those staff persons is out of the office, there is

an unavoidable delay in distributing the grant funds. She said a 10-day limitation may be more reasonable.

Mr. Nagel presented the audit report for the Industrial Commission for the years ended June 30, 1999 and 1998 (financial statement audit conducted using performance audit standards). He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report.

Mr. Nagel presented the audit report for the Public Service Commission for the years ended June 30, 1999 and 1998 (financial statement audit conducted using performance audit standards). He reviewed the auditor's responses to the committee's guidelines and the operational efficiency recommendation included in the report.

Mr. Nagel presented the audit report for the Department of Economic Development and Finance for the years ended June 30, 1999 and 1998 (financial statement audit conducted using performance audit standards). He reviewed the auditor's responses to the committee's guidelines and the two audit findings included in the report. One of the audit findings indicates that in fiscal year 1998 the agency did not provide to a Legislative Council committee an annual report containing the information required pursuant to NDCC Section 54-34.3-04.

Chairman Wald called on Mr. Kevin J. Cramer, Director, Department of Economic Development and Finance, who commented on the audit finding. He said the Department of Economic Development and Finance does not agree with the auditor's finding that the agency did not provide the required annual report in 1998.

Representative Byerly asked if the information contained in the new audit report format under the section entitled *Discussion and Analysis* is prepared by the State Auditor's office or by the agency being audited. Mr. Nagel said in some cases the information in the *Discussion and Analysis* section is prepared by the State Auditor's office and in some cases is provided by the management of the agency being audited. He said in the case of the Department of Economic Development and Finance, the *Discussion and Analysis* section was prepared by the agency. Representative Byerly said due to the subjective nature of the information included in the *Discussion and Analysis* section, it may not be

appropriate for inclusion in an audit report. Mr. Nagel said the information in the *Discussion and Analysis* section is included to give the reader a better understanding of the agency's operations.

Representative Poolman said the information contained in the *Discussion and Analysis* section is useful information for Appropriations Committees members but agreed that, due to the subjective nature of the information, it may not be appropriate for inclusion in an audit report.

Representative Aarsvold said some of the audits presented include a section entitled *Noteworthy Accomplishments*. He asked if the State Auditor's office or the agency being audited determines what is a "noteworthy accomplishment." Mr. Nagel said performance auditing standards provide that information such as noteworthy accomplishments be included to provide balance in the audit report that would otherwise include only "negative" findings. He said the noteworthy accomplishment information is prepared by the agency and reviewed by the State Auditor's office for reasonableness. Representative Aarsvold said the items listed in the *Noteworthy Accomplishments* section of the audit appear to be normal accomplishments associated with the agency's operations, not extraordinary accomplishments. He said it may not be appropriate for the State Auditor's office to highlight in an audit report normal agency accomplishments.

Representative Maragos asked if the State Auditor's office has edited the *Noteworthy Accomplishments* or the *Discussion and Analysis* information prepared by agencies to remove inappropriate information. Mr. Nagel said the State Auditor's office has recently changed to a new audit format utilizing performance standards. He said the audits being presented are the first ones to utilize the new format. He said the State Auditor's office has not yet removed any information submitted by agencies for inclusion in the new audit report format. Representative Maragos suggested that instead of editing the information or removing information submitted by an agency, the State Auditor's office include the agency-submitted information in its entirety, as well as a response prepared by the State Auditor's office.

In response to a question from Senator Kelsh, Mr. Nagel said the new audit approach being used by the State Auditor's office does not result in the completion of a performance audit. He said the audits are financial statement audits conducted using performance standards. Senator Kelsh asked what additional training auditors receive in order to conduct these audits and said additional auditor training may be required to ensure that auditors have an understanding of agency operations before making recommendations for improved operational efficiency. Mr. Ron Tolstad, State Auditor's office, said all State Auditor's office auditors are provided 80 hours of continuing education and training every two years.

Mr. Nagel presented the audit report for the Department of Public Instruction for the years ended June 30, 1999 and 1998. 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 Byerly, referring to the management letter recommendations for the Department of Public Instruction, asked for an explanation of the recommendation that the department not allow state property to be used for nonstate purposes.

Chairman Wald called on Ms. Bonnie Miller, Department of Public Instruction, who explained the auditor's recommendation. She said the recommendation relates to two computers listed in the department's fixed asset inventory but not located at the department. She said the department has clarified policies relating to employees checking out computers for work at home. She said both computers have been located and disposed of through the Central Services Division of the Office of Management and Budget.

Chairman Wald called on Dr. Wayne G. Sanstead, Superintendent of Public Instruction, to respond to questions relating to Dakota Nutrition, Inc. Dr. Sanstead said Dakota Nutrition, Inc., was an entity that distributed federal meal reimbursement funds to day care providers in the Minot area. He said the company did not keep adequate records to substantiate the distribution of funds. Dr. Sanstead said the department has been advised that the records cannot be recreated and the person involved cannot be located. He said procedures are in place to ensure the proper monitoring of meal reimbursement providers.

Mr. Nagel presented the audit report for the State Board for Vocational and Technical Education for the years ended June 30, 1999 and 1998. 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.

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

In response to a question from Representative Winrich, Mr. Grettum said the audit reports for the institutions of higher education indicate the percentage of local funds budgeted by each institution. Mr. Grettum said all local funds, with the exception of one-time revenues of a small amount, should be budgeted to provide a plan for the expenditure of the funds once they are received. Representative Winrich said it may not be possible to budget for all local funds, such as donations.

Mr. Grettum presented the audit report for Lake Region State College for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations.

Mr. Grettum presented the audit report for Williston State College for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the three audit findings included in the report.

Mr. Grettum presented the audit report for the University of North Dakota for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the three audit findings included in the report. The audit findings include:

- Budget Section approval was not obtained on construction projects financed with grants and donations, which is a violation of NDCC Section 15-10-12.1.
- The university did not retain adequate supporting documentation to validate student applications for resident status.

Chairman Wald called on Mr. Larry Isaak, Chancellor, North Dakota University System, who said the University System's audit committee reviewed the auditor's findings and discussed the issue of granting resident status to nonresident students. Mr. Isaak said the affidavit signed by a student requesting resident status states it is a crime to falsify information. He said implementing the State Auditor's recommendation would require copying and retaining various supporting documents, along with the student's application form, which would result in the need for additional time to process student applications and would create additional paperwork. He said the University System will consider implementing random checks to verify student claims for resident status.

In response to a question from Representative Byerly, Ms. Peggy Lucke, University of North Dakota, said once a student completes an application for resident status, the application is reviewed thoroughly by the business manager. She said in some cases the student is required to submit a copy of the parent's tax return. She said requests that are questionable are rejected.

Mr. Grettum presented the audit report for North Dakota State University for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the four audit findings included in the report. The audit findings included:

- Budget Section approval was not obtained on a construction project financed with donations, which is a violation of NDCC Section 15-10-12.1.
- The university did not retain adequate supporting documentation to validate student applications for resident status.

In response to a question from Representative Poolman, Mr. Grettum said NDCC Section 15-10-12.1 provides that the Budget Section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the Budget Section. He said the Budget Section has not established such guidelines and therefore Budget Section approval is required for all campus improvements and building projects financed with donations, gifts, and grants.

Representative Wald suggested the North Dakota University System provide recommendations to the 2001 Legislative Assembly regarding reasonable guidelines for Budget Section approval of building projects financed with gifts, grants, and donations.

Mr. Grettum presented the audit report for the State College of Science for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations.

Mr. Grettum presented the audit report for Dickinson State University for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the two audit findings included in the report.

Mr. Grettum presented the audit report for Mayville State University for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report.

Senator Klein said the management letter recommendations for Mayville State University include a recommendation that the university develop a form that each employee receives and completes, if necessary, concerning potential conflicts of interest with the institution. He asked if this recommendation relates to a particular conflict of interest discovered by the auditors. Mr. Grettum said no particular problem was identified in the course of the audit. He said the recommendation is included because no system is currently in place to prevent or identify potential conflicts of interest.

Mr. Grettum presented the audit report for Minot State University for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and said the report does not contain any findings or recommendations.

Mr. Grettum presented the audit report for Valley City State University for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines, the prior audit recommendations which were not implemented, and the two current audit findings included in the report.

Mr. Grettum presented the audit report for Minot State University - Bottineau for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report.

The audit report for the North Dakota University System for the year ended June 30, 1999, was

presented at the committee's last meeting, but no action was taken on the report at that time. Mr. Grettum responded to questions relating to the report.

In response to a question from Senator Solberg, Mr. Grettum said the unrestricted fund balances shown on the financial statements for each of the institutions of higher education are typically higher the second year of the biennium than the first year of the biennium. Mr. Grettum said because the Legislative Assembly allows institutions of higher education to carry over unexpended general appropriation authority, at the end of each biennium each institution receives as revenue from the general fund the amount of any unspent general fund appropriation authority.

Senator Solberg asked for a status report on audit finding number 99-9 relating to the University of North Dakota, which indicated that 61 equipment items with a combined cost of more than \$174,000 were apparently taken by two former professors. Ms. Lucke said the issue has been resolved. She said fair market value was established for each of the equipment items and payment was either received or the equipment item was returned.

The committee recessed for lunch at 12:10 p.m. and reconvened at 1:15 p.m.

Chairman Wald called on Mr. Nagel, who presented the audit report for the State Department of Health for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Department of Human Services for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding contained in the report. He said the report contains an unqualified opinion.

In response to a question from Representative Wald, Ms. Brenda Weisz, Department of Human Services, said the department concurs with the management letter recommendations of the State Auditor's office and has taken steps to implement each recommendation.

Mr. Nagel presented the audit report for the Office of Management and Budget for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the State Treasurer for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the two audit findings included in the report. He said the report contains an unqualified opinion.

Mr. Nagel presented the audit report for the Attorney General's office for the years ended June 30, 1999 and 1998. 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.

Senator Solberg asked which funds included in the audit report for the Attorney General have continuing appropriation authority. Mr. Nagel said the horse racing fund, the asset forfeiture fund, the Attorney General refund fund, and the statewide insurance recoveries fund all have continuing appropriation authority. He said all other activities of the agency were encompassed with appropriations of specific amounts.

Mr. Nagel presented the audit report for the Tax Department for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Insurance Department for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the judicial branch for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Division of Emergency Management for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Department of Corrections and Rehabilitation for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report. He said the report contains an unqualified opinion.

Mr. Nagel presented the audit report for the Parks and Recreation Department for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report. He said the report contains an unqualified opinion. The audit finding relates to the agency overspending special fund appropriation authority for the snowmobile fund by \$31,446 and for the trail tax transfer fund by \$11,148 for the 1997-99 biennium.

In response to a question from Senator Solberg, Mr. Doug Prchal, Director, Parks and Recreation Department, said the agency erroneously assumed that because sufficient special fund appropriation

authority existed to cover the expenditures, it would not be a violation of state law to spend more than the amount specified in the appropriation bill from the snowmobile fund and the trail tax transfer fund. He said the agency agrees with the auditor's finding and will monitor expenditures in the future.

Mr. Nagel presented the audit report for the Game and Fish Department for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Water Commission for the years ended June 30, 1999 and 1998. 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. Nagel presented the audit report for the Department of Transportation for the years ended June 30, 1999 and 1998. 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.

Chairman Wald called on Mr. Alton A. Nitschke, Eide Bailly LLP, Certified Public Accountants, who presented the audit report for the State Fair Association for the years ended September 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the audit report. He said the report contains an unqualified opinion.

Chairman Wald called on Mr. Al Klein, Eide Bailly LLP, Certified Public Accountants, who presented the audit report for the Real Estate Commission for the years ended June 30, 1999 and 1998. He reviewed the auditor's responses to the committee's guidelines and the audit finding included in the report. He said the report contains an unqualified opinion.

At the request of Chairman Wald, a letter from the North Dakota Real Estate Commission was distributed to members of the committee. The letter provided a written response to the audit finding contained in the report. A copy of the letter is on file in the Legislative Council office.

Chairman Wald called on Mr. Greg Honl, Eide Bailly LLP, Certified Public Accountants, Fargo, who presented the audit report for the Bank of North Dakota for the years ended December 31, 1999 and 1998. 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. Honl presented the audit report for the beginning farmer revolving loan fund for the years ended December 31, 1999 and 1998. 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.

**It was moved by Representative Poolman, seconded by Representative Aarsvold, and carried on a roll call vote that pursuant to NDCC Section 54-35-02.2, the committee accept the following reports which were presented to the committee:**

- **Governor's office (June 30, 1999 and 1998)**
- **Children's Services Coordinating Committee (June 30, 1999 and 1998)**
- **Industrial Commission (June 30, 1999 and 1998)**
- **Public Service Commission (June 30, 1999 and 1998)**
- **Department of Economic Development and Finance (June 30, 1999 and 1998)**
- **Department of Public Instruction (June 30, 1999 and 1998)**
- **State Board for Vocational and Technical Education (June 30, 1999 and 1998)**
- **Bismarck State College (June 30, 1999 and 1998)**
- **Lake Region State College (June 30, 1999 and 1998)**
- **Williston State College (June 30, 1999 and 1998)**
- **University of North Dakota (June 30, 1999 and 1998)**
- **North Dakota State University (June 30, 1999 and 1998)**
- **State College of Science (June 30, 1999 and 1998)**
- **Dickinson State University (June 30, 1999 and 1998)**
- **Mayville State University (June 30, 1999 and 1998)**
- **Minot State University (June 30, 1999 and 1998)**
- **Valley City State University (June 30, 1999 and 1998)**
- **Minot State University - Bottineau (June 30, 1999 and 1998)**
- **North Dakota University System (June 30, 1999)**
- **State Department of Health (June 30, 1999 and 1998)**
- **Department of Human Services (June 30, 1999 and 1998)**
- **Office of Management and Budget (June 30, 1999 and 1998)**
- **State Treasurer (June 30, 1999 and 1998)**
- **Attorney General (June 30, 1999 and 1998)**
- **Tax Department (June 30, 1999 and 1998)**
- **Insurance Department (June 30, 1999 and 1998)**
- **Judicial branch (June 30, 1999 and 1998)**
- **Division of Emergency Management (June 30, 1999 and 1998)**

- Department of Corrections and Rehabilitation (June 30, 1999 and 1998)
- Bank of North Dakota (December 31, 1999 and 1998)
- Beginning farmer revolving loan fund (December 31, 1999 and 1998)
- State Fair Association (September 30, 1999 and 1998)
- Real Estate Commission (June 30, 1999 and 1998)
- Game and Fish Department (June 30, 1999 and 1998)
- Parks and Recreation Department (June 30, 1999 and 1998)
- Water Commission (June 30, 1999 and 1998)
- Department of Transportation (June 30, 1999 and 1998)

Representatives Wald, Aarsvold, Belter, Byerly, Kelsch, Maragos, Nichols, Poolman, and Winrich and Senators Cook, Kelsh, Kilzer, and Solberg voted "aye." No negative votes were cast.

It was moved by Representative Poolman, seconded by Representative Kelsch, and carried on a voice vote that the committee delay action on the following audit reports and that they be presented at the committee's next meeting:

- International Peace Garden (December 31, 1998 and 1997)
- Council on the Arts (June 30, 1999 and 1998)
- Board of Podiatry Examiners (December 31, 1998 and 1997)
- State Bar Board (two years ended June 30, 1999)
- Education Standards and Practices Board (June 30, 1999 and 1998)

It was moved by Representative Poolman, seconded by Representative Kelsch, and carried on a voice vote that pursuant to NDCC Section 54-35-02.2, the committee accept the following reports which were not selected for presentation to the committee:

- Office of Administrative Hearings June 30, 1999 and 1998
- Indian Affairs Commission (June 30, 1998)
- Labor Department (June 30, 1999 and 1998)
- Aeronautics Commission (June 30, 1999 and 1998)
- Securities Commission (June 30, 1998)
- Municipal Bond Bank (December 31, 1999 and 1998)
- Highway Patrol (June 30, 1999 and 1998)
- Developmentally disabled facility loan program (December 31, 1999 and 1998)
- Community water facility loan fund (December 31, 1999 and 1998)
- Board of Addiction Counseling Examiners (June 30, 1999 and 1998)

- Board of Chiropractic Examiners (December 31, 1999)
- Board of Dental Examiners (June 30, 1999 and 1998)
- Board of Cosmetology (June 30, 1999)
- Board of Pharmacy (June 30, 1999 and 1998)
- Board of Psychologist Examiners (June 30, 1999 and 1998)
- Board of Social Work Examiners (June 30, 1999 and 1998)
- Board of Examiners on Audiology and Speech-Language Pathology (June 30, 1999 and 1998)
- North Dakota Stockmen's Association (December 31, 1999 and 1998)
- Board of Veterinary Medical Examiners (June 30, 1998 and 1997)
- Private Investigative and Security Board (June 30, 1998 and 1997)
- Board of Occupational Therapy Practice (June 30, 1999)

### **REPORT REQUESTED FROM THE STATE BOARD OF REFLEXOLOGY**

At the request of Chairman Wald, a letter from Mr. Nagel was distributed to the committee. The letter indicates that the State Auditor's office has been unable to obtain an audit report for the State Board of Reflexology although the board is required to submit one pursuant to NDCC Section 54-10-01. The State Board of Reflexology has indicated to the State Auditor's office that because the board receives a small amount of revenue, less than \$2,000 annually, the board cannot justify the cost of an audit.

Mr. Nagel said this is the first time the State Auditor's office has been unable to obtain an audit report from a state board or commission. He said there is no penalty provided in statute for noncompliance with NDCC Section 54-10-01.

In response to a question from Senator Kelsh, Mr. Nagel said the estimated cost of the audit is approximately \$600.

It was moved by Representative Byerly, seconded by Senator Solberg, and carried on a roll call vote that the Legislative Audit and Fiscal Review Committee request that a representative of the State Board of Reflexology either appear before the committee at its next meeting or provide correspondence to the State Auditor's office prior to the committee's next meeting indicating how the board intends to comply with NDCC Section 54-10-01. Representatives Wald, Aarsvold, Belter, Byerly, Maragos, Nichols, Poolman, and Winrich and Senators Cook, Kelsh, Kilzer, Klein, Mutch, and Solberg voted "aye." No negative votes were cast.

## ELECTRONIC BINGO CARD MARKING DEVICES

Representative Wald requested information be presented to the committee relating to action taken by the Gaming Commission to allow the use of electronic bingo card marking devices. Mr. Charles Keller, Gaming Division, Attorney General's office, discussed bingo card marking devices currently being used at five field test sites authorized by the Gaming Commission. He said the test began in October 1999 and concluded at the beginning of May 2000. He said the marking devices are hand-held electronic devices that allow a bingo player to play up to 72 cards at one time.

In response to a question from Representative Wald, Mr. Keller said the test sites were located in Bismarck, Minot, Fargo, and Devils Lake.

In response to a question from Representative Kelsch, Mr. Keller said the bingo card marking devices are rented to bingo players by bingo gaming facilities.

Representative Wald expressed concern that the use of the electronic bingo card marking devices is an expansion of electronic gaming in the state. Mr. Keller said the Gaming Commission has determined that as long as the bingo card marking device is only used as an aid to the player and the player still relies upon the numbers being called, the bingo card marking device is not a form of electronic gaming.

In response to a question from Senator Solberg, Mr. Keller said the Gaming Commission has proposed administrative rules relating to the use of bingo card marking devices and the rules will be presented to the Legislative Council's Administrative Rules Committee at its next meeting.

In response to a question from Senator Mutch, Mr. Keller said the bingo card marking devices are currently being used by Indian casinos conducting bingo.

**It was moved by Representative Poolman, seconded by Representative Belter, and carried on a voice vote that the Legislative Audit and Fiscal Review Committee ask the chairman of the Legislative Council to provide correspondence to the chairman of the Legislative Council's Administrative Rules Committee summarizing the information received by the Legislative Audit and Fiscal Review Committee and the committee discussion relating to the use of electronic bingo card marking devices in North Dakota.**

The committee recessed at 4:05 p.m. and reconvened at 9:05 a.m., Tuesday, May 23, 2000.

## ATTORNEY GENERAL'S OPINION RELATING TO THE USE OF MONEYS RECEIVED BY THE STATE AS A RESULT OF THE AMERICAN CYANAMID SETTLEMENT

Chairman Wald called on Mr. David Huey, Attorney General's office, who presented an Attorney General's opinion requested by the committee at its January 18, 2000, meeting relating to the Commission on the Future of Agriculture and the use of American Cyanamid settlement moneys. A copy of the Attorney General's opinion is on file in the Legislative Council office. The opinion states the use of moneys received by the state from the settlement of a federal multistate antitrust suit to fund the Commission on the Future of Agriculture is in compliance with both state law and the terms of the consent decree. The opinion also provides the consent decree did not prevent a state agency from acting as the fiscal agent in disbursing those funds.

In response to a question from Senator Solberg, Mr. Huey said both the \$100,000 received by the state under Appendix A of the consent decree and the \$31,114 received by the state under Appendix B of the consent decree were initially deposited in the Attorney General refund fund.

In response to a question from Representative Byerly, Mr. Huey said the 1998 case of *State v. Hagerty* was cited in the opinion even though it occurred after the disbursement of the American Cyanamid settlement moneys because it contains a discussion under state law of the expressed and implied powers of the Attorney General.

Representative Byerly said the proceeds of future settlements may be handled differently due to the enactment of 1999 Senate Bill No. 2419, which provides that all funds recovered by the Attorney General as a result of negotiated settlements or court proceeding must be deposited in a special fund in the state treasury and may be appropriated only by the Legislative Assembly, except in the case of certain exceptions provided by law.

At the request of Chairman Wald, copies of the consent decree and final judgment issued in the American Cyanamid settlement were distributed to members of the committee and a copy is on file in the Legislative Council office.

Senator Solberg requested that the State Auditor's office examine the use of the \$31,114 received by the Attorney General's office under Appendix B of the consent decree to determine how it was used and if it was included in any amount required to be deposited in the general fund pursuant to NDCC Section 54-12-18. Mr. Nagel said the State Auditor's office will conduct the examination requested by Senator Solberg and present a report at the committee's next meeting.

## PERFORMANCE AUDIT RELATING TO CONTRACTS FOR SERVICES

Chairman Wald called on Mr. Gordy Smith, State Auditor's office, who presented the performance audit report relating to contracts for services entered into by state agencies and institutions of higher education during the period July 1, 1996, through June 30, 1999. He reviewed the 12 recommendations included in the audit report, including:

- The Office of Management and Budget (OMB) and the North Dakota University System should develop policies relating to the procurement of services and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget should introduce legislation to allow OMB to establish policies relating to the procurement of services and to establish master contracts for services.
- The Office of Management and Budget and the Attorney General should prepare a manual to be used by state agencies and institutions for contract drafting and review.
- The Office of Management and Budget should establish an on-line contract system accessible by all state agencies.
- The Office of Management and Budget and the North Dakota University System should establish policies relating to contract monitoring and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget and the North Dakota University System should determine if cooperative purchases of services would be beneficial.

Mr. G. Smith said an issue identified as requiring further study is the contractual relationship entered into between the University of North Dakota and Barnes and Noble, Inc. He said the university's cost-benefit analysis for the proposal may not have included the cost of constructing the new bookstore facility and the cost of providing free space to Barnes and Noble, Inc.

Senator Solberg requested that the Legislative Council staff obtain copies of the information presented by the University of North Dakota to the 1999 Legislative Assembly regarding the Barnes and Noble, Inc., bookstore project and that copies of the information be distributed to committee members at the next meeting.

In response to a question from Representative Kilzer, Mr. G. Smith said in 12 to 18 months, the State Auditor's office will conduct a followup review of the agencies included in the performance audit to determine their compliance with the State Auditor's recommendations. Senator Kilzer asked what action is taken by the State Auditor's office if, when conducting the followup review of agencies included in the

performance audit, it comes to the attention of the State Auditor's office that agencies have not complied with the recommendations. Mr. G. Smith said there are no penalties for noncompliance with the auditor's recommendations, but the noncompliance will be reported to the Legislative Audit and Fiscal Review Committee.

Representative Winrich asked if by accepting the State Auditor's office report, the Legislative Audit and Fiscal Review Committee is directing state agencies to implement the auditor's recommendations. Mr. Jim Smith, Legislative Budget Analyst and Auditor, Legislative Council, said that by accepting the audit report, the Legislative Audit and Fiscal Review Committee is accepting the recommendations contained in the report. He said the Budget Committee on Government Services is conducting a study of privatization and contracting for services by state agencies and will also receive a copy of the performance audit. He said that as part of the study responsibilities assigned to the Budget Committee on Government Services, that committee may address the statutory changes recommended in the report.

**It was moved by Senator Solberg, seconded by Senator Mutch, and carried on a roll call vote that pursuant to NDCC Section 54-35-02.2, the committee accept the performance audit report relating to contracts for services entered into by state agencies and institutions of higher education during the period of July 1, 1996, through June 30, 1999.** Representatives Wald, Aarsvold, Belter, Byerly, Nichols, and Winrich and Senators Kelsh, Kilzer, Klein, Mutch, and Solberg voted "aye." No negative votes were cast.

## REPORT ON TRANSFERS OF ASSETS BY THE LAKE AGASSIZ REGIONAL COUNCIL AND THE LAKE AGASSIZ REGIONAL DEVELOPMENT CORPORATION

Mr. G. Smith presented a report on transfers of assets between the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation, as requested by the Legislative Audit and Fiscal Review Committee at its last meeting. A copy of the report is on file in the Legislative Council office. The report indicates that two loan programs and a donated building comprise over 90 percent of the assets transferred to the corporation from the Lake Agassiz Regional Council. The report indicates the donated building should not be transferred back to the Lake Agassiz Regional Council, one of the loan programs should not be transferred back to the council for administrative reasons, and the other major loan program could be transferred back to the council because it could be administered by either the council or the corporation.

Chairman Wald called on Mr. Irvin Rustad, Director, Lake Agassiz Regional Council, who discussed

the reasons why the Lake Agassiz Regional Council formed a nonprofit corporation. Mr. Rustad also distributed information relating to the operations of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation. Copies of the information distributed are on file in the Legislative Council office. He said the Lake Agassiz Regional Council needs to be affiliated with a nonprofit organization (Lake Agassiz Regional Development Corporation) to compete nationally for economic development funding which governmental entities are not eligible to receive.

Senator Solberg said prior to today an explanation was never provided to the Legislative Audit and Fiscal Review Committee as to why the Lake Agassiz Regional Council formed a nonprofit corporation.

Representative Byerly said the initial transfer of assets from the Lake Agassiz Regional Council to the Lake Agassiz Regional Development Corporation gave the impression of impropriety. He said there has been a lack of communication between the Lake Agassiz Regional Council and the Legislative Audit and Fiscal Review Committee.

With the approval of Chairman Wald, Mr. Rustad called on various members of the boards of directors of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation, who testified regarding the need for the Lake Agassiz Regional Development Corporation and the effectiveness of the services provided by the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation.

In response to a question from Senator Solberg, Ms. Beth Baumstark, Attorney General's office, said the Attorney General's office has reviewed the organizational structure of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation and determined they are now separate entities. She said the state's attorneys in that area have indicated they are satisfied with the actions that have been taken to return assets to the proper entity.

Chairman Wald said the Legislative Audit and Fiscal Review Committee considers resolved the issues previously considered relating to the

organizational structure of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation and the transfers of assets between the two entities and that he will inform the Legislative Council chairman of this resolution of the committee's concerns.

### **AUDIT REPORT FROM ETHANOL PRODUCTION COMPANY RECEIVING STATE SUBSIDY**

The Legislative Council staff said NDCC Section 10-19.1-152 provides that any corporation that produces agricultural ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section, the audit report for Alchem, Ltd., for the years ended December 31, 1999 and 1998, was distributed to committee members. A copy of the audit report is on file in the Legislative Council office.

### **OTHER REPORTS**

With the approval of Chairman Wald, copies of the Office of Management and Budget report *Departmental Statements by Fund for the Fiscal Year Ended June 30, 1999*, were distributed to committee members. A copy of the report is on file in the Legislative Council office.

The meeting was adjourned at 12:20 p.m.

---

Joe R. Morrisette  
Senior Fiscal Analyst

---

Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:1