

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Revised
 Bill/Resolution No.: HB 1491

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$480,000	\$0	\$800,000	\$0
Appropriations	\$0	\$0	\$480,000	\$0	\$800,000	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Fiscal impact is the costs associated with four FTE that are needed to carry out the requirements of this bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenue would be generated as a result of this bill.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures estimated are for four FTE that are needed to carry out the requirements of this bill.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

All appropriations are anticipated to be from the general fund. In the 2019-2021 biennium the appropriation needed will be lower as the FTE are phased in during the biennium. The cost increase for the 2019-2021 are estimated in anticipation that all four FTE will be hired and employed for the entire biennium. Operating costs are to rent space for the additional staff and other cost (telephone, data processing, travel, training) associated with a employee. Costs are higher in the 2019-2021 biennium since additional furniture and equipment will be needed.

Breakdown by line for the 2019-2021 biennium:
Salaries and wages - \$400,000
Operating - \$80,000

Breakdown by line for the 2021-2023 biennium:
Salaries and wages - \$760,000
Operating - \$40,000

Operating costs in both the 2019-2021 and 2021-2023 biennium will need to be higher by \$100,000 if space can not be found within the State Capitol for the additional staff.

Name: Donald LaFleur

Agency: State Auditor

Telephone: 7013284744

Date Prepared: 01/22/2019

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Bill/Resolution No.: HB 1491

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$580,000	\$0	\$900,000	\$0
Appropriations	\$0	\$0	\$580,000	\$0	\$900,000	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
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Fiscal impact is the costs associated with four FTE that are needed to carry out the requirements of this bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenue would be generated as a result of this bill.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures estimated are for four FTE that are needed to carry out the requirements of this bill.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

All appropriations are anticipated to be from the general fund. In the 2019-2021 biennium the appropriation needed will be lower as the FTE are phased in during the biennium. The cost increase for the 2019-2021 are estimated in anticipation that all four FTE will be hired and employed for the entire biennium. Operating costs are to rent space for the additional staff and other cost (telephone, data processing, travel, training) associated with a employee. Costs are higher in the 2019-2021 biennium since additional furniture and equipment will be needed.

Breakdown by line for the 2019-2021 biennium:
Salaries and wages - \$400,000
Operating - \$180,000

Breakdown by line for the 2021-2023 biennium:
Salaries and wages - \$760,000
Operating - \$140,000

Operating costs in both the 2019-2021 and 2021-2023 biennium can be lowered by \$100,000 if space can be found within the State Capitol for the additional staff.

Name: Donald LaFleur

Agency: State Auditor

Telephone: 7013284744

Date Prepared: 01/15/2019

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1491

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1491
1/24/2019
31447

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the establishment by the state auditor of a federal program and governmental entity review division

Minutes:

Attachments 1, 2, 3

Chairman Kasper opened the hearing on HB 1491.

Rep. Rick Becker appeared in support of HB 1491. Attachment 1. (:34-11:45)

Rep. Schauer: Explain what a quick audit looks like.

Rep. Becker: What I am trying to do is indicate how I would try and describe a sunset review. These are reviews, not audits. The formal audit has all these other constraints.

Rep. Schauer: Once the sunset review is done, where does it go from there?

Rep. Becker: The auditor will do the review, come up with the findings and potential recommendations. The auditor will then submit those findings and recommendations to the body which requested the review. It is up to that body to do any actions that they may see fit.

Rep. Schauer: On what do you base the return on investment (ROI)?

Rep. Becker: It is a hope. I am looking at the opportunity for some really needed change. 4 FTEs in my book is a lot. However, we have two years in which to see if this type of program will work, and if the program doesn't work for a sunset review, we can pull those FTEs. The biggest risk and worst case scenario is that this provides no opportunity for finding efficiencies and we had 4 FTEs on for two years.

Rep. Schauer: It looks good on paper. I am concerned about you adding four people and say this is a two-year job, and if it doesn't work, you are out. What kind of person would take that kind of job that would be qualified?

Rep. Becker: I would submit to you that a person who believes in what they are doing and that they can actually help find efficiencies in government would take that job.

Rep. Rohr: Is it possible we could put sunset review on some of these?

Rep. Becker: That would be an option to say a sunset review would need to be in effect.

Chairman Kasper: We could put a sunset clause on here and this would sunset two years from now and we would need a report from the auditor's office on what he found?

Rep. Becker: Yes.

Rep. Laning: Would it be your vision that if this were to work out, eventually the auditor's office would review every federal program we are involved in?

Rep. Becker: I don't think that is unreasonable over time. What I like about the sunset review process is that it would be focused on those things that are timely. Having this type of situation available to us to make an occasion like the angel investor program not such a rarity when someone could find the time to look at one little program out of all of the programs we participate in or the multitude of boards and commissions that we have that we would be so much more effective in ferreting out this waste.

Neutral

Tom Bodine, Deputy Agriculture Commissioner, ND Department of Agriculture, appeared in a neutral position. Attachment 2. (17:50-23:44)

Rep. P. Anderson: Does your department put in grants for federal money and programs?

Mr. Bodine: Yes, we do. A lot of the federal requirements that are needed especially when it comes to the production of food there are certain standards that have to be met, and a lot of time the cost shared to make sure that we oversee to make sure it is meeting standards.

Rep. P. Anderson: Are we going to get to the point where we have to somehow do something at the front end before you can even apply for those federal dollars?

Mr. Bodine: We always seek your authority any time we accept dollars to create a program. We say that is the review process to go through.

Rep. Schauer: Would you welcome HB 1491 and the sunset review, or do you believe it is redundant?

Mr. Bodine: The biggest thing I struggle with is what are we searching for? All of us are accountable for the job we are in.

Rep. Rohr: What percentage of your grant requests are non-regulatory and how many dollars does that represent?

Mr. Bodine: One of the biggest federal dollars in our department is _ grant program. This is dollars toward research for certain crops that qualify. The other one is the drug residue prevention program. As a federal requirement, it is coming down on our livestock industry, so we are able to take in dollars. Actually, we went in front of the emergency commission and asked for the ability to get the authority to accept those dollars. That program is designed to let the livestock industry know what regulations are coming. In that way they are better able to adapt to those regulations in the future. That is a short-term grant that will be used to educate our cattle producers out there and allow to meet those standards and understand them too.

Josh Gallion, State Auditor, appeared to answer a few questions.

Chairman Kasper: Do you think this bill might be beneficial to do your job better and where you might be able to find things that the legislature should know about?

Mr. Gallion: This legislation does not help me to do my job. This would be a resource that we could potentially provide better information for the legislature. This bill would allow a committee to identify a potential concern. We could look at that at a very narrow, focused scope. We could do things that potentially we would not be able to do during an operational audit such as compare one federal program versus a similar in another agency. Our mission is to provide informative audits. This would be one more tool we could use to provide that information.

Chairman Kasper: Are you suggesting you need 4 FTEs to do this?

Mr. Gallion: I think we can do with four.

Chairman Kasper: Why the big jump in the second biennium on the fiscal note?

Mr. Gallion: We believe it will take some time to stand this group up, to get these people hired, and start demonstrating that value. It will probably take 4-6 months to get a group fully staffed.

Chairman Kasper: Four FTEs are going to cost \$760,000 with benefits, etc.?

Mr. Gallion: That would be correct.

Chairman Kasper: What average salary would you have to pay to hire the right type of people?

Mr. Gallion: About \$4,600-\$5,000 a month range plus benefits, operating costs for each one of these employees, and technology costs.

Chairman Kasper closed the hearing.

Attachment 3 was provided by the auditor's office at the request of the chair.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1491
1/25/2019
31522

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the establishment by the state auditor of a federal program and governmental entity review division

Minutes:

Chairman Kasper opened the meeting on HB 1491.

Rep. Schauer made a motion for a **DO PASS** and rerefer to appropriations.

Vice Chair Steiner seconded the motion.

Rep. Louser: I chaired the interim government and administration committee. For two interims in a row we studied benefits that given agencies may receive from the federal government. Our committee gets together and look at all of the agencies. We picked three in two years in a row. We turn to our staff and said work with those agencies to do the research, and this type of streamlined audit would be exactly that type of research that this body has passed in two subsequent sessions. I think this is a good bill.

Rep. Laning: I agree with the concept there. My only hesitation was the 4 FTEs that have to be added.

Rep. P. Anderson: I am going to vote no. I liked the testimony of Tom Bodine. He indicated we didn't need this.

Rep. Schneider: I think this is an awful lot of money for the projected outcomes here.

Rep. Vetter: It is not just one legislator. It takes a committee or full legislature.

Rep. Louser: Mr. Bodine's department was one of the three chosen in the last interim.

Rep. Hoverson: I like the targeted approach to this. Rep. Koppelman, if we pass this, does this sort of accomplish the same thing as what the intention of yours was?

Rep. B. Koppelman: I think they are both targeting at transparency. This is more of a bill that is verifying programs and agencies have the result that is intended. My bill has more to do with transparency and how much extra money we are piling up and don't committed uses for.

Rep. Rohr: I think the 4 FTEs will pay for itself after they discover that some of the programs may not be needed.

A roll call vote was taken. 12-2, 0 absent.

Rep. Johnston will carry the bill.

Date: 1-25-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB/491**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Schauer Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider		X
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Johnston

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1491: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1491 was rereferred to the **Appropriations Committee**.

2019 HOUSE APPROPRIATIONS

HB 1491

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1491
2/13/2019
32651

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist by Desarae Bergquist

Explanation or reason for introduction of bill/resolution:

Establishment by the state auditor of a federal program and governmental entity review division.

Minutes:

Chairman Delzer: Introduces bill

Representative Kasper: This bill was put it in by Representative Becker. He did a little research and found there wasn't much auditor function by the auditor's office. With the fiscal note it may completely eliminate it or chose to expand the programs.

Chairman Delzer: Did you have any discussion about having it as a pilot project. The fiscal note is about hiring people; would your committee be okay with that idea?

Representative Kasper: That concept did not come up, I think it'd be wise to put that amendment in and see what they discover.

Chairman Delzer: We have this as one of our interim studies I don't know if the auditor is going to find much else.

Representative Kempenich: Was this more aimed at the amendments than the funds itself?

Representative Kasper: Are some of these programs really needed?

4:30 Representative Holman: This looks like a lot of what they do and how will this expand? Are they expanding into area they haven't been before?

Representative Kasper: I don't think from the state perspective it'll expand but it certainly does in the federal.

Representative J. Nelson: Was there any discussion about federal money being subject to the federal audit already?

Representative Kasper: As far as federal auditors I have no idea.

Chairman Delzer: They certainly audit the books.

Representative Kempenich: It's general accounting standers, do we still want to continue these programs? Since we don't have the budget should we pull the money out until we see the budget.

Chairman Delzer: You pass it wide open like this we could have requests for 10- 12 different audits.

Representative Meier: Did the bill sponsor state that he wanted all the federal programs audited?

Representative Kasper: Questions can be answered with reviews under federal programs. Runs through the questions.

Chairman Delzer: Did he ask you to put some of those things in here?

Representative Kasper: He does not ask for any invitations.

Representative Boe: What I am trying to figure out this, isn't to track the dollars this is to track the value of the dollars.

Representative Schmidt: Could they get by with 2 FTEs? We don't know what the work load is; it hasn't been identified what we are getting for our money.

Chairman Delzer: That's why I think if we are going to go forward we should be a limited number until we see results.

Representative Beadle: When they mention what kind of FTEs are; what are they looking for?

Representative Kasper: He did not go into any specifics.

Representative Beadle: All of them are auditors.

Chairman Delzer: If you read the rest of the fiscal note it goes up because they faze them as they need them.

Representative Kempenich: Usually they hire someone that actually knows what they are looking for. I think a pilot would be wise.

Representative Kasper: Getting back to line 9 on the 02 version its targeting more state entities.

14:00 Representative Nathe: Did the auditor testify on this at all?

Representative Kasper: Representative Becker was the only one that testified and no one opposition the bill.

Representative Mock: It says this would be higher if they need space.

Representative Kasper: I have no idea.

Representative Nathe: No contact with the auditors' office then how did they come with the 4 FTEs?

Chairman Delzer: It comes from the auditor's office.

Representative Boe: What would be an appetite to just offer a contract someone that already knows how to do this?

Chairman Delzer: I would guess that's what they would do if they would do that.

Representative Kasper: The feeling of the committee was that this is a worthy endeavor without the fiscal note.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1491
2/14/2019
32791

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist

Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman Delzer: We heard HB 1491 yesterday. It's the bill to make it that any committee could request a performance audit.

Representative J. Nelson: I'll make the motion for a **Do Not Pass**

Representative Howe: Second

Chairman Delzer: It's pretty broad reaching and you don't know what you'd get. The situation is as such that when you ask for a performance audit, is then the charge goes to the agency that is being audited and they have to pay for the charges is somebody else is hired. Is there any further discussion on the motion? Seeing now we will call the roll.

Further discussion? A Roll Call vote was taken. Yea: 17 Nay: 2 Absent: 2

Motion Carries, Representative J. Nelson will carry the bill

Chairman Delzer: With nothing more we will close this meeting.

Date: 2/14/2019
 Roll Call Vote #: /

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1491**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative J. Nelson Seconded By Representative Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	A				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew		X			
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	A				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz		X			
Representative Schmidt	X				

Total (Yes) 17 No 2

Absent 2

Floor Assignment Representative J. Nelson

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1491: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO NOT PASS** (17 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1491 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1491

#1
HB 1491
1-24-19

Background

2015 HB1083 - Study to review requirements associated with programs receiving federal funds. 2015 Interim - committee finds process difficult and frustrating.

Continuation in 2017 as HB1029. 2017 Interim - finding a solution.

HB1491

Allows for the auditor to conduct reviews (mini, streamlined audits) on:

Federal Programs

State Programs

State agencies, boards, commissions.

Who can ask?

The auditor, the legislature, legislative committees, interim committees, and LAFRC.

The requesting body is supplied with the report along with fiscal impact of recommendations.

Upside: significant savings to taxpayers, and efficiencies of government.

Downside: need to have minimum of 4 FTE's with no guarantee (except to pull them off next session if no ROI).

Why not just do more regular audits or use what we have in place?

Audit Scope ~ a lot more work has to go into audits under the Yellow Book (Generally Accepted Government Auditing Standards) than what one would do in a review. A review could have a much more narrow focus based on specific criteria.

Audit Focus ~ when auditing federal programs, the federal OMB

#1
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Uniform Guidance compliance requirements is followed, which doesn't look into such areas as program effectiveness, cost/benefit analysis or strings attached like the reviews could.

Audit Timing ~ the federal Single Audit & agency audits are only done once a biennium whereas reviews could be done at any point in time and so would be more timely.

Audit Clients ~ for the past federal Single Audit: 25 federal programs from 8 different state agencies per federal requirements, out of 645 federal programs over 35 state agencies but these reviews would open up the rest of those for scrutiny.

In addition, the definition of governmental entities opens up many more agencies that we don't currently audit in any capacity.

Questions we can answer with Reviews:

Federal Programs ~

How do we know if the federal program is Effective? Should we be accepting the federal dollars?

Could the same program be done without federal funds?

What's the cost/benefit analysis?

How do we know if the federal program is achieving expected Results?

Is it effective & operating well in a changing world?

What are other states doing with/without this program?

How do we know if there are Strings attached to the federal dollars?

Limitations, restrictions, funding constraints, or spending caps?

Federal rules & regulations?

How do we know what the true Costs of accepting the federal dollars are?

Matching or earmarking requirements requiring general fund

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1-24-19

monies?

Excess federal administrative percentage?

Boards/Committees/Commissions ~

How do we know that the continued Existence of these entities is still warranted?

Conflicting roles in similar areas? Duplication of efforts?

Vying for same funding?

Still needed & how well is it operating in a changing world?

How do we know if there is proper Oversight for these entities?

Regulating their own & those outside the fence?

Protecting the public? Or fox watching the henhouse?

How do we know if these entities are achieving their legislative mandated Purpose?

Overlapping or similar duties with other such entities?

Licensing requirements keeping people out of the professions?

How do we know that the entities are being responsible with their Funding?

What are licensing fees based on?

Prioritization being done where funds limited?

STUDY OF STATUTORY AND REGULATORY REQUIREMENTS AS A CONDITION OF FEDERAL FUNDING - BACKGROUND MEMORANDUM

STUDY RESPONSIBILITIES

House Bill No. 1083 (2015) (Appendix A) provides for a study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding. The study must determine whether there are viable options to meet the needs of the state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs. The responsibility for this study was assigned to the Government Finance Committee by the Legislative Management.

BACKGROUND INFORMATION

Beginning with the 1987-88 interim, the Legislative Council has presented a memorandum identifying the federal funds appropriated and the estimated federal funds to be received each biennium by each agency. The memorandum for the 2013-15 and 2015-17 bienniums (Appendix B) was presented to the Budget Section in September 2014. The memorandum identifies the agency name, program name, federal funds appropriated, estimated federal funds to be received, variance, appropriated general fund matching funds, appropriated other funds matching funds, required general fund maintenance of effort, required other funds maintenance of effort, and estimated amount of indirect costs reimbursed.

State agencies with significant federal funds appropriations during the 2013-15 biennium, and those anticipating to receive significant federal funds during the 2015-17 biennium include:

Agency	Original 2013-15 Federal Funds Appropriation	Estimated 2015-17 Federal Funds to be Received
Department of Public Instruction	\$269,049,193	\$271,473,096
State Department of Health	120,309,143	116,763,623
Department of Human Services	1,700,732,059	2,030,831,027
Job Service North Dakota	77,206,472	55,342,571
North Dakota Housing Finance Agency	26,177,975	25,227,780
Adjutant General	231,625,343	147,452,483
Department of Commerce	64,138,514	49,196,968
Upper Great Plains Transportation Institute	19,007,683	11,700,195
Game and Fish Department	29,723,601	30,886,724
State Water Commission	37,080,441	11,375,000
Department of Transportation	691,500,000	617,500,000
Other state agencies	93,411,985	77,793,432
Total	\$3,359,962,409	\$3,445,542,899

STUDY PLAN

The following is a proposed study plan for the committee's consideration in its study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funds:

1. Receive information from the Legislative Council regarding federal funds received by state agencies.
2. Select North Dakota state government agencies receiving significant federal funds for further review.
3. Receive information from selected North Dakota state government agencies regarding statutory and regulatory requirements placed on the agencies by United States government agencies as a condition of the receipt of federal funds.
4. Receive information from selected North Dakota state government agencies regarding potential alternative funding sources for programs financed with federal funds.
5. Receive information from selected North Dakota state government agencies regarding the benefits and risks of ending programs financed with federal funds.
6. Receive testimony from interested persons regarding the study.
7. Develop recommendations and any bill drafts necessary to implement the recommendations.
8. Prepare a final report for submission to the Legislative Management.

STUDY OF STATUTORY AND REGULATORY REQUIREMENTS AS A CONDITION OF FEDERAL FUNDING - BACKGROUND MEMORANDUM

Rep Lower

STUDY RESPONSIBILITIES

House Bill No. 1029 (2017) (Appendix A) provides for a study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding. The study must determine whether there are viable options to meet the needs of the state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs. The responsibility for this study was assigned to the Government Administration Committee by the Legislative Management.

PREVIOUS LEGISLATIVE STUDIES

The 2015-16 Government Finance Committee studied statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding. The committee learned the State Auditor performs a "single audit" to review agency spending of federal funds on a biennial basis. The committee learned over 70 percent of the federal funds spent by state agencies in fiscal year 2014 were spent by three agencies, the Department of Human Services, the Department of Transportation, and the Department of Public Instruction (DPI). The committee learned the Department of Corrections and Rehabilitation administers four major federal grant programs--programs for crime victim's assistance, crime victim's compensation, state criminal alien assistance, and juvenile justice and delinquency prevention. The committee learned DPI anticipated receiving over \$129 million in federal funds for various grant programs for fiscal year 2016, of which approximately \$121 million would be provided to individual school districts. The committee learned certain federal programs administered by DPI do not require a local funding match and certain programs also provide support for the department's administrative costs.

The 2015-16 Government Finance Committee recommended House Bill No. 1029, which requires state agencies to perform an analysis prior to applying for or accepting federal funds. The bill also provides for the Legislative Management to continue, in the 2017-18 interim, the study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funds.

BACKGROUND INFORMATION

Beginning with the 1987-88 interim, the Legislative Council has presented a memorandum identifying the federal funds appropriated and the estimated federal funds to be received each biennium by each agency. The memorandum for the 2015-17 and 2017-19 bienniums (Appendix B) was presented to the Budget Section in September 2016. The memorandum identifies the agency name, program name, federal funds appropriated, estimated federal funds to be received, variance, appropriated general fund matching funds, appropriated other funds matching funds, required general fund maintenance of effort, required other funds maintenance of effort, and estimated amount of indirect costs reimbursed.

State agencies with significant federal funds appropriations during the 2015-17 biennium, and those anticipating to receive significant federal funds during the 2017-19 biennium include:

Agency	Original 2015-17 Federal Funds Appropriation	Estimated 2017-19 Federal Funds to be Received
Department of Public Instruction	\$284,948,800	\$270,060,734
State Department of Health	123,345,053	118,438,137
Department of Human Services	2,074,351,759	2,262,647,081
Job Service North Dakota	69,777,470	58,826,922
North Dakota Housing Finance Agency	25,227,780	31,244,828
Adjutant General	185,048,805	113,285,203
Department of Commerce	54,926,671	47,267,813
Upper Great Plains Transportation Institute	4,479,226	16,611,761
Game and Fish Department	32,735,500	37,775,000
State Water Commission	15,620,238	6,825,119
Department of Transportation	616,500,000	664,300,000
Other state agencies	104,286,663	103,433,981
Total	\$3,591,247,965	\$3,730,716,579

5

STUDY PLAN

The following is a proposed study plan for the committee's consideration in its study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funds:

1. Receive information from the Office of Management and Budget regarding federal funds received by state agencies and anticipated 2017-19 biennium federal funds by agency.
2. Receive information from the State Auditor on the audit of federal funds conducted as part of the statewide single audit.
3. Select state agencies receiving significant federal funds for further review.
4. Receive information from selected state agencies regarding statutory and regulatory requirements placed on the agencies by United States government agencies as a condition of the receipt of federal funds.
5. Receive information from selected state agencies regarding the analysis required by 2017 House Bill No. 1029.
6. Receive information from selected state agencies regarding potential alternative funding sources for programs financed with federal funds.
7. Receive information from selected state agencies regarding the benefits and risks of discontinuing programs financed with federal funds.
8. Receive testimony from interested persons regarding the study.
9. Develop recommendations and any bill drafts necessary to implement the recommendations.
10. Prepare a final report for submission to the Legislative Management.

ATTACH:2

#1
HB 1491
1-24-19

Introduced by

Representatives Becker, Blum, Boschee, Devlin, Lefor, Rohr, Schauer, Steiner, Vetter
Senators Dwyer, Meyer, Vedaa

1 A BILL for an Act to create and enact section 54-10-31 of the North Dakota Century Code,
2 relating to the establishment by the state auditor of a federal program and governmental entity
3 review division.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Section 54-10-31 of the North Dakota Century Code is created and enacted as
6 follows:

7 **54-10-31. Federal program - Government entity - Review.**

- 8 1. The state auditor shall establish a federal program and governmental entity review
9 division to review federal programs and governmental entities.
- 10 2. For purposes of this section, "entity" means an authority, board, commission,
11 committee, council, department, division, and when established by law, program and
12 activity.
- 13 3. Notwithstanding section 54-10-15, the federal program and governmental entity review
14 division shall conduct reviews at the direction of the state auditor, the legislative audit
15 and fiscal review committee or another committee of the legislative management, or
16 the legislative assembly.
- 17 4. **Federal program** reviews must consider whether the governmental entity is:
 - 18 a. Conducting authorized activities or programs in a manner consistent with
19 accomplishing the objectives set forth by law; and
 - 20 b. Using funds in a faithful, efficient, economical, and effective manner and the
21 extent to which the federal funds impose conditional requirements on the state.
- 22 5. **A governmental entity** review must consider the entity's efficiency, effectiveness, role
23 in protecting consumers, sufficiency of resources, accomplishment of legislative
24 objectives, and other areas as determined by the state auditor.

- 1 6. The state auditor shall compile all information relating to the criteria used in each
2 review and any other information the state auditor, the legislative audit and fiscal
3 review committee or other committee of the legislative management committee, or the
4 legislative assembly deems necessary to complete a thorough review of the
5 governmental entity or federal program. The review must include a fiscal impact
6 statement relating to the recommendations included in the review.
- 7 7. Upon completion of a review under this section, the state auditor shall provide copies
8 of the review to the entity that requested the review.
- 9 8. Upon request of the legislative audit and fiscal review committee, another committee
10 of the legislative management, or the legislative assembly, the state auditor shall
11 complete an additional review of an entity or program to determine if deficiencies from
12 the prior review have been corrected and if the entity implemented the legislative
13 recommendations.
- 14 9. A review under this section does not replace a two-year audit under chapter 54-10 and
15 is not subject to the restrictions under that chapter.

FISCAL NOTE
 Requested by Legislative Council
 01/14/2019

#1
 HB 1491
 1-24-19

Revised
 Bill/Resolution No.: HB 1491

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$480,000	\$0	\$800,000	\$0
Appropriations	\$0	\$0	\$480,000	\$0	\$800,000	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Fiscal impact is the costs associated with four FTE that are needed to carry out the requirements of this bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenue would be generated as a result of this bill.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures estimated are for four FTE that are needed to carry out the requirements of this bill.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

All appropriations are anticipated to be from the general fund. In the 2019-2021 biennium the appropriation needed will be lower as the FTE are phased in during the biennium. The cost increase for the 2019-2021 are estimated in anticipation that all four FTE will be hired and employed for the entire biennium. Operating costs are to rent space for the additional staff and other cost (telephone, data processing, travel, training) associated with a employee. Costs are higher in the 2019-2021 biennium since additional furniture and equipment will be needed.

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Breakdown by line for the 2019-2021 biennium:
Salaries and wages - \$400,000
Operating - \$80,000

Breakdown by line for the 2021-2023 biennium:
Salaries and wages - \$760,000
Operating - \$40,000

Operating costs in both the 2019-2021 and 2021-2023 biennium will need to be higher by \$100,000 if space can not be found within the State Capitol for the additional staff.

Name: Donald LaFleur

Agency: State Auditor

Telephone: 7013284744

Date Prepared: 01/22/2019



SUNSET LEGISLATION IN THE STATES Balancing the Legislature and the Executive

Sunset review provisions are clauses embedded in legislation, usually at the state level, that allow a piece of legislation or a regulatory board to expire on a certain date unless the legislature takes action to renew the legislation or board. Sunset reviews are often advertised as good government policies, forcing governments to review and reconsider whether agencies and particular laws are still necessary.

A new study for the Mercatus Center at George Mason University shows that the sunset review process can also be seen as an effective bargaining tool for the legislature to minimize the executive branch's influence on a wide variety of state boards and agencies. It is a way for the legislature to make its veto power credible and to have influence over an agency's agenda, which is also influenced by special interests and the executive branch.

To read the study in its entirety and learn more about its authors, economists Brian Baugus and Feler Bose, see "Sunset Legislation in the States: Balancing the Legislature and the Executive."

BACKGROUND ON SUNSET PROVISIONS

Sunset reviews come in many varieties and may be used narrowly or broadly, depending on the state. A sunset provision typically includes a requirement that specific legislation or a regulatory board undergo a review, usually conducted by legislative staff or state auditors.

The length of time between enactment/renewal and the next sunset date varies from state to state but typically runs between four and twelve years under current state laws. The process normally involves data collection, interviews with key agency staff and interested parties, financial auditing, and records review. The process results in one of four outcomes: renewal, renewal with changes, consolidation with other entities, or termination of the statute or agency.

For more information, contact
Kate De Lanoy, 703-993-9677, kdelanoy@mercatus.gmu.edu
Mercatus Center at George Mason University
3434 Washington Boulevard, 4th Floor, Arlington, VA 22201

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Sunset reviews can be broken down into four categories:

- *Comprehensive.* States require all statutory agencies to undergo sunset review on a preset schedule.
- *Regulatory.* States require licensing and regulatory boards to undergo sunset review.
- *Selective.* States require only selected agencies to undergo a sunset review.
- *Discretionary.* The legislature may choose which agencies and statutes undergo a sunset review.

SUNSET REVIEWS HELP LEGISLATURES EXERCISE CONTROL OVER GOVERNMENT

In several states examined in the study, a majority of the statutes and agencies subject to a sunset review over the last few years were allowed to continue, although many were also modified in some way as part of the renewal process.

The study considers several theories about why state legislatures use the sunset review process and what they hope to achieve by it. Ultimately, the process is best understood as an effective bargaining method that allows a legislature to assert itself and increases its ability to influence agencies' agendas.

- *Legislative disadvantages.* Legislatures tend to be part-time, which contributes to their distinct information and power disadvantages relative to the executive branch. Moreover, special interest groups with access to the executive branch can alter the role and goals of specific agencies, diverting them from their original missions as intended by the legislature.
- *Legislative influence.* While the desire to implement good government practices may drive sunset legislation to some extent, the legislature has a more self-serving reason for using sunset reviews: increasing its own influence over government. Sunset reviews allow the legislature to guarantee that some of its preferred outcomes are achieved by exercising a credible veto over executive branch execution of the laws the legislature wrote.

CONCLUSION

Sunset reviews provide an opportunity for part-time legislatures to have more control over the regulatory functions of the state and guarantee that regulations and enforcement agencies are not unduly influenced by the executive branch or special interests. Sunset reviews also provide the people of the state—through the legislature—with a voice in policies that have been unduly influenced by special interests and the executive branch.

COMMISSIONER
DOUG GOEHRING



#2
HTB 1491
ndda@nd.gov 1-24-19
www.nd.gov/ndda

**Testimony of Tom Bodine
Deputy Agriculture Commissioner
North Dakota Department of Agriculture
House Bill 1491
House Government and Veterans Affairs
Fort Union Room
January 24, 2019**

Chairman Kasper and members of the House Government and Veterans Affairs, I am Tom Bodine, Deputy Agriculture Commissioner, and I am representing Agriculture Commissioner Doug Goehring. I am here today to provide comments on House Bill 1491.

The Department of Agriculture understands the serious nature of accepting federal funds and takes this responsibility very seriously. We currently have an internal process where all new and existing federal grant requests go through an extensive review process. All federal grant requests are thoroughly reviewed and approved by Commissioner Goehring. If the grant is new, and greater than \$25,000, we are required to submit the request to the Office of Management and Budget, where it is finally presented to the Budget Section. The main point to this being, there are multiple layers of review before a state agency like ours is ever able to effectively roll out a federal program.

In addition, every two years, this legislative body reviews the effectiveness and necessity of all federal funding and have the ultimate authority in determining if it is necessary. I would also like to point out that the auditor's office currently audits our federal funds during the course of our standard biennial audit.

I'd like to reiterate that handling the people's money in a fiscally conservative manner is our duty as a state agency, and agree that we should not start federal programs that the state would be obligated to fund if the federal funding would go away.

Chairman Kasper and members of the committee, thank you for your time and I'd be happy to answer any questions.



Grant Request and Approval Process Checklist

#2
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1-24-19

1. **Grant Request and Approval SFN #60331:** this is the Division's request to the Deputy Commissioner and Fiscal Management for authorization to apply for a new/existing grant within 30 days prior to grant deadline.

The Grant Request and Approval Form must include:

- New/renewal grant or grant amendment
 - Name of granting agency.
 - A brief description and purpose of the grant.
 - Grant amount, estimated budget, and funding source.
 - Amount and percent of administrative costs included in the budget.
 - Match required, amount, and type of match required (i.e. in-kind, general fund salaries, or operating, and etc.)
 - Additional personnel requirements.
2. **OMB SFN 59976:** this is the request form to OMB for any new federal grants over \$25,000. This form needs to be completed prior to submitting a grant application. The form can be found at: <http://www.nd.gov/fiscal/docs/forms/agency-report-on-federal-grants-sfn-59976.pdf>. Fiscal Management will submit this form to OMB.
3. **Application Approval:** upon approval of the Grant Request and Approval Form from the Deputy Commissioner, the application process may be completed to apply for the grant from the granting agency. Each application must include; financial information, work plan, and any applicable supporting document(s). Once the application forms are completed; submit to Fiscal Management for final review. Fiscal Management will forward to the Deputy Commissioner for approval signature. Upon Deputy Commissioner's signature, Fiscal Management will route back all applicable documents to appropriate personnel to submit the grant application to the granting agency.
4. **Award Letter:** this is the notice of award letter stating the Department is awarded the grant from granting agency. Attach the notice of grant award letter to "Grant Request and Approval Form" along with any supporting documents to Fiscal Management for final review. Fiscal Management will forward to the Deputy Commissioner for final signature. Upon Deputy Commissioner's signature, Fiscal Management will route back all applicable documents to appropriate personnel.
5. **Final Step:** upon signature; the grant request and approval form, application, award, and supporting documentation, must be submitted to Fiscal Management for grant setup. Once this is complete, the allowed funds can be expensed. Flexibility may be granted for renewal grants upon proper notification from feds.



GRANT REQUEST AND APPROVAL
 NORTH DAKOTA DEPARTMENT OF AGRICULTURE
 FISCAL MANAGEMENT
 SFN 60331 (6-2014)

North Dakota Department of Agriculture
 600 E Boulevard Ave. Dept 602
 Bismarck, ND 58505-0020

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Type of Grant <input type="checkbox"/> New Grant <input type="checkbox"/> Renewal Grant <input type="checkbox"/> Amendment		
Name of Division	Name of Grant Manager	Name of Granting Agency
Description and Purpose of Grant		
OMB Requirement (from SFN 59976) <input type="checkbox"/> New and Over \$25,000 <input type="checkbox"/> N/A		Estimated Budget Attached <input type="checkbox"/> Yes <input type="checkbox"/> No
Federal Amount	State (Match) Amount	Total Amount
Match Funding Source	Grant Period From _____ Through _____	
Administrative Costs Included in Budget <input type="checkbox"/> Yes <input type="checkbox"/> No	Amount	Percentage
Clear understanding of allowable/nonallowable costs as defined per federal and state guidelines <input type="checkbox"/> Yes <input type="checkbox"/> No		
Explain		
Comments		

Approved Denied

Deputy Commissioner's Signature	Date
---------------------------------	------

APPLICATION APPROVAL

<input type="checkbox"/> Application Forms	<input type="checkbox"/> Financial Forms	<input type="checkbox"/> Work Plan
--------------------------------------------	------------------------------------------	------------------------------------

Division Director's Approval	Date
Fiscal Management's Review	Date
Deputy Commissioner's Approval	Date

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PROJECT NAME
PEST DETECTION SURVEYS
PEST DETECTION SURVEYS
CAPS SURVEY
CAPS SURVEY
CYST NEMATODE SURVEY / FB
EXOTIC CYST NEMATODE SURVEY / FB
HONEY BEE PEST & DISEASE SURVEY / FB
KHAPRA BEETLE
KARNAL BUNT
MEDIATION SERVICES
MEDIATION SERVICES
USDA DAIRY PLANT INSPECTION
FDA MILK & SHELLFISH
MEAT INSPECTION - Base
MEAT INSPECTION - PHDCIS
MEAT INSPECTION - Base
MEAT INSPECTION - PHDCIS
COOL
SPECIALTY CROP GRANT - Overhead & Indirect
SPECIALTY CROP GRANT - Local Foods
SPECIALTY CROP GRANT - Direct / Deanna
SPECIALTY CROP GRANT - National Sunflower Association
SPECIALTY CROP GRANT - ND Trade Office
SPECIALTY CROP GRANT - NPSAS
SPECIALTY CROP GRANT - NDSU
SPECIALTY CROP GRANT - Overhead & Indirect
SPECIALTY CROP GRANT - Local Foods
SPECIALTY CROP GRANT - Direct / Deanna
SPECIALTY CROP GRANT - Burnt Creek Nursery
SPECIALTY CROP GRANT - DPRCD
SPECIALTY CROP GRANT - National Sunflower Association
SPECIALTY CROP GRANT - ND Trade Office
SPECIALTY CROP GRANT - Northern Pulse Growers Assoc
SPECIALTY CROP GRANT - NDSU
SPECIALTY CROP GRANT - Overhead & Indirect
SPECIALTY CROP GRANT - Local Foods
SPECIALTY CROP GRANT - Direct / Deanna
SPECIALTY CROP GRANT - Dakota College at Bottineau
SPECIALTY CROP GRANT - National Sunflower Association
SPECIALTY CROP GRANT - ND Trade Office
SPECIALTY CROP GRANT - NDSU
SPECIALTY CROP GRANT - Overhead & Indirect

PROJECT NAME
SPECIALTY CROP GRANT - Local Foods
SPECIALTY CROP GRANT - Direct / Deanna
SPECIALTY CROP GRANT - Japanese Beetle / Charles
SPECIALTY CROP GRANT - DPRCD
SPECIALTY CROP GRANT - National Agricultural Genotyping Center
SPECIALTY CROP GRANT - National Sunflower Association
SPECIALTY CROP GRANT - ND Trade Office
SPECIALTY CROP GRANT - Northern Pulse Growers Assoc
SPECIALTY CROP GRANT - NDSU
MEAT INSPECTION - CISP
MEAT INSPECTION - CISP
MEDICATED FEEDS
MEDICATED FEEDS
DRUG RESIDUE PREVENTION PROGRAM
MARKET NEWS
PESTICIDE PERFORMANCE
PESTICIDE PERFORMANCE - Pesticides Initiatives
LIVESTOCK POLLUTION PREVENTION PROGRAM - NRCS Funds
ND LIVESTOCK POLLUTION PREVENTION PROGRAM (LP3)
ND LIVESTOCK POLLUTION PREVENTION PROGRAM (LP3)
ND LIVESTOCK POLLUTION PREVENTION PROGRAM (LP3)
ORGANIC CERTIFICATION GRANT
ANIMAL DISEASE TRACE (ADT)
COOPERATIVE WEED MANAGEMENT
COOPERATIVE WEED MANAGEMENT
COOPERATIVE WEED MANAGEMENT
ANIMAL HEALTH UMBRELLA

*** Key ***

1000 = Administration
8100 = Animal Health Div
6000 = Marketing Division
5000 = Livestock
9000 = Pesticide Division
7000 = Plant Protection

#3

HB 1491

1-24-19



Office of the
State Auditor

TESTIMONY TO HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1491 - Information about the federal Single Audit by the Office of the State Auditor

Single Audit process

- The Statewide Single Audit covers federal funds expended by the State & has been completed since the Single Audit Act of 1984.
- A risk assessment process is completed to determine which programs will be audited as “major” federal programs.
- This risk assessment only takes into consideration those programs classified as “Type A” programs for which the threshold is > \$11 million.
- Additionally, a few “Type B” programs (> \$1 million), are also audited.
- The Federal government does not require us to audit any program < \$1 million.

Single Audit impact

- There are 46 different state agencies/colleges that expend federal funds out of about 72 total state agencies.
- In the most recently published Single Audit (2015-2016) there were 28 major federal programs audited out of approximately 645 total federal programs.