

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1187

- 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						
Expenditures						
Appropriations						

- 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			
Cities			
School Districts			
Townships			

- 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).*

House Bill 1187 moves the administrator of abandoned property from the purview of the Land Commissioner and places it with the State Treasurer.

- 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.*

HB 1187 moves the duties of unclaimed property administration to the Office of State Treasurer. Assuming all FTEs and all the related office and technology resources currently devoted to the administration of unclaimed property are transferred accordingly, there would be no fiscal impact of this bill.

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.*

- 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.*

- 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.*

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Date Prepared: 01/09/2019

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

HB 1187

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1187
1/24/2019
31400

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to duties of the state treasurer; relating to abandoned property; relating to the administrator of abandoned property

Minutes:

Attachments 1, 2, 3

Chairman Kasper opened the hearing on HB 1187.

Rep. Keith Kempenich appeared in support. The purpose of this is to move unclaimed properties division under the land department to the treasurer's department. Two years ago we did an audit on the land department and found things about their operation. There were 19 audits on the unclaimed properties part of it. This is to reunite properties of citizens of the state.

Rep. Schauer: Why is it a better fit?

Rep. Kempenich: Most states have it in the treasurer's department.

Rep. Rohr: How many FTEs in the land department?

Rep. Kempenich: I know there is 1 or 1 ½ dedicated to it.

Rep. Schauer: Give me an example of an unclaimed property. Would these full-time employees go from one department to the other department?

Rep. Kempenich: Nobody would be added and nobody will lose their job. An example of unclaimed properties would be a deposit that a bank after so many years would have to clear their books. They file a form and send it to unclaimed properties. The interest earnings go into the common schools trust fund.

Kelly Schmidt, State Treasurer, appeared in support. Attachment 1. (11:00-16:34)

Rep. Laning: Do you know how long a bank would hold unclaimed property before they would transfer it to this fund?

Kelly Schmidt: It is my understanding it is three years. I know that is the time frame that we are required as a state to move the dollars to unclaimed property.

Rep. Louser: Will the process for the taxpayer change when this transfers to your office?

Kelly Schmidt: Only in a way I believe will be more effective because it will have more attention in my office rather than where it is now.

Rep. Louser: The real estate commission determined a couple years ago that any real estate deposits that were being held by a broker over three years were to be turned over to unclaimed property. My contention has always been when that deposit is held, it is because the contract was in dispute. It isn't unclaimed. It is claimed by more than one party, and yet, our industry is turning deposits over to the unclaimed property division. The process doesn't change. The dispute is still there. How does that get resolved in the treasurer's office when more than one person thinks they have a claim to that property?

Kelly Schmidt: My understanding is that would take legislative change relating to the rules that apply to that type of transaction and when the timing and occurrence are when it comes to unclaimed property. I believe there would need to be a legislative change to change the circumstances in which your case would be moved to unclaimed property if it was still in active litigation.

Rep. Rohr: Do you know how many FTEs you are assuming, and are you going to need more space?

Kelly Schmidt: We will not need more space. I have a vacant office from eliminating my deputy position. I have two cubicles that are available that all we need to do is move the computers from that department into our department. The cost associated with administering unclaimed property comes from unclaimed property, so it would not affect our general fund budget. In testimony given two years ago, it was mentioned that there were as many as 13 that have their fingers in unclaimed property, but there are only a few that are dedicated. We have room for 3 in our agency without making any purchases.

Chairman Kasper: You are stating no more FTEs other than the transferred ones that are already there. No increased cost to the state, and you are going to handle it better than it has been handled.

Kelly Schmidt: That is how I roll.

Opposition

Jodi Smith, Commissioner, ND Department of Trust Lands, appeared in opposition. Attachment 2. (20:51-37:04)

Rep. Laning: You mentioned transferring \$3.4 million to the treasurer's office. I assume that is what the trust fund is valued at right now.

Jodi Smith: Are you referring to the common schools trust fund?

Rep. Laning: No, the unclaimed properties.

Jodi Smith: We have about \$70 million in assets.

Rep. Laning: You also state approximately \$1 billion has been transferred to the schools. Apparently not all of that came from unclaimed properties.

Jodi Smith: She agreed.

Rep. Steiner: Previous testimony stated that you can take the unclaimed property and some of the money is used to pay for the work that is done on the unclaimed property. You can take the interest off of it to defray the cost. Could you give us the numbers on that.

Jodi Smith: The FTE account comes into my appropriations. I need to get back to you on that number.

Rep. Schauer: How long have you been the commissioner?

Jodi Smith: 14 months

Rep. Schauer: You were not around during this process in which 19 formal audit findings were moved forward?

Jodi Smith: That was the previous commissioner. Since I have been commissioner, we have gone through and we are out of the audit, so all those audit findings have come back through. When they do the performance audit, they come back and validate that you have met all the conditions that were placed on the department. We are no longer under that audit.

Rep. Schauer: Who was involved in running those 19 audits?

Jodi Smith: The previous commissioner was highly involved. We also had a deputy involved. My administrator worked through finding solutions to all of those problems. Some of those findings we know are sitting there because we need the new technology system. It is challenging to have controls in place when most of our IT systems were built in the 80s. Since I have been on board, we have enacted the administrative rules which came online January 1. We have redone all the department's policies. There are more than a couple of FTEs involved because of cash controls. Right now we have about 3.75 FTEs attributed to it.

Rep. Schauer: It sounds like your department did the heavy lift in cleaning it up, where the treasurer's office declined to do that two years ago. Now that it is cleaned up, in your opinion, the treasurer's office wants access to it. Is that your position?

Jodi Smith: Yes.

Chairman Kasper: Why would it have been the treasurer's responsibility to be involved in cleaning up the audit that was the land department's problem?

Jodi Smith: Any of you who are familiar with my department are familiar that there are more problems than just unclaimed property. It takes a lot to come into a department and had 54 audit findings that I needed to get cleared up. My job is to protect the assets of the trust, and in doing that, we want to manage the assets of the trust. We don't see any benefit of moving it. It is simply a matter of moving a division in our agency to another agency that is actually going to hamper the installment of a new software. The entire department worked on this. No one quit. I have high expectations of my staff and board.

Chairman Kasper: Why should the treasurer have been involved in cleaning up the mess?

Jodi Smith: I think it is more if you want something and decide you don't want it anymore because it failed some audit findings..

Chairman Kasper: Did you say that the treasurer should be involved in the cleanup of the department?

Jodi Smith: I think any of my board members should be involved in cleaning up the mess in the land department as they oversee the department.

Chairman Kasper: Isn't the board position totally different from the treasurer's office?

Jodi Smith: I don't understand the question. The audit findings were a reflection of my board just as they were of the department.

Chairman Kasper: The board is there to give direction to your department and to give you a yes or a no or a vision or a changed direction. In that respect are you suggesting that Treasurer Schmidt was not helping in a board capacity? I thought the implication was her department was supposed to be involved in helping clean up your mess. Are you saying that she did not adequately do her job from your perspective as a board member to help clean up your mess?

Jodi Smith: No.

Rep. Louser: Does the Kelmar software have a component in their solution that is public facing, or is the website that is being built separate?

Jodi Smith: It does have a component that is public facing.

Rep. Louser: What is going to be different in the process going forward with the new software?

Jodi Smith: For example on this new software you would be able to put in Smith, and it would list all the Smiths and Jodi Smiths, or you wouldn't have to make it a capital B in order to get Bismarck.

Rep. Louser: There was a news report on unclaimed property, and because of that there was a 400% increase. How is it that a news report can have such an impact on responses, and what could the department do to achieve that same success?

Jodi Smith: It is our responsibility to do that outreach. The goal is getting on that uniform platform that you will hear from the information technology department and cross promoting each other. Other websites are more than welcome to promote unclaimed property within the state of North Dakota. It doesn't have to be just our department. We regularly communicate through emails, letters, publications and newspapers, and this website base. We already have some press releases prepared and waiting when the new system turns on and the website goes live.

Rep. Rohr: Would that procurement officer mentioned on Page 5 be part of the 3.5 FTEs that would move over to the treasurer's office?

Jodi Smith: It would not. My business analyst is actually our level 4 procurement officer, and so she wouldn't transfer over to do that. We have 2 fully dedicated FTEs that strictly do unclaimed property. The rest of the 1.75 FTEs have their fingers in other things. The amount of the responsibilities that they have to other things would not allow me to transfer those FTEs out.

Chairman Kasper asked to have copies provided of the negative audit and the audit that gave the green light. Attachment 3.

Chairman Kasper closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1187
1/25/2019
31519

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to duties of the state treasurer; relating to abandoned property; relating to the administrator of abandoned property.

Minutes:

Chairman Kasper opened the meeting on HB 1187.

Rep. Karls made a motion for a DO NOT PASS.

Rep. Laning seconded the motion.

Rep. P. Anderson: How did this happen that they had to come to the legislature? I am going to support the do not pass.

Chairman Kasper: I think it is two agencies that have a difference in philosophy. The audit came out where there were 19 areas that the land department had to clean up which was under a different administration. Jodi has been there about 1 ½ years, and it appears she is a different type of person in running that department. It appears they are doing very well on cleaning things up. The treasurer sits on this board and felt her department could do a better job. I guess it is just a matter of if we want to make a change, do we do it?

Rep. Laning: Things have improved under this new commissioner. She deserves a chance to make it succeed.

Rep. P. Anderson: It sounds like there are no FTEs moving.

Chairman Kasper: I think the thought would be that there would be 3.5 FTEs that would move from the land department to the treasurer's department, but no additional ones.

Rep. P. Anderson: I got the feeling that she wasn't going to let any FTEs go.

Rep. Louser: As a consumer and as somebody under administrative rule that has to turn unclaimed property over, I have never advised anybody nor myself as to call the land

department or the treasurer's department. I am looking for unclaimed property. I don't really care who administers. There seems to be more to this than what we were told.

Vice Chair Steiner: I think the treasurer's office is a good spot because of all the transparent things she has done, so I am going to resist.

Rep. Rohr: I too am going to resist, because I think it is a better fit under the treasurer's department. They handle the money.

A roll call vote was taken. 8-6, 0 absent.

Rep. Laning will carry the bill.

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

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1187**

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. Karls Seconded By Rep. Laning

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) 8 No 6

Absent 0

Floor Assignment Rep. Laning

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

REPORT OF STANDING COMMITTEE

HB 1187: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
HB 1187 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1187



STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
KELLY L. SCHMIDT, STATE TREASURER

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Kelly Schmidt, State Treasurer

In support of HB 1187

House- Government & Veterans Affairs

Rep. Jim Kasper, Chair

Rep. Vicky Steiner, Vice Chair

January 24, 2019

The purpose of unclaimed property laws is to protect consumers by ensuring money owed to them is returned to them, rather than remaining permanently with financial institutions and other companies. The U.S. Supreme Court ruled in 1951 that while state governments are waiting for the funds to be returned to rightful owners, it is good public policy for the money to be used not only to fund general expenses but also special programs such as our Common Schools Trust Fund.

By **definition, unclaimed property** is any financial asset, usually intangible, being held for a person or entity that cannot be found. It is not real estate, abandoned personal **property**, or **lost** and found items. **Unclaimed Property** can include: Dormant Savings and Checking Accounts and Certificates of Deposit or safe deposit box items.

Mr. Chairman, members of the committee HB 1187 may be familiar to you as it was introduced last session as HB 1384 and passed the House 84-5. I remained neutral in the House Political Subdivision Committee

In the Senate, I opposed the bill. I did this because the Unclaimed Property Division of the North Dakota Land Department had 19 formal audit findings relating to Unclaimed Property. By transferring Unclaimed Property to the Office of State Treasurer then in its current form, my office would have been required to mend and repair these audit issues. I know all too well it takes time, talent, and often legislative or fiscal policy to remedy audit findings. Waiting would allow the agency head and those on the team, who lived through the audit, to remedy and implement the appropriate policies within a reasonable time period.

As a 15-year member of the Land Board, I can attest Unclaimed Property has not been a priority within the Department of Trust Lands. Unclaimed Property must be a focus to ensure property is returned to their rightful owner. My office will devote 100% of resources dedicated to Unclaimed Property to Unclaimed Property. There has been a lack of transparency and accountability to the Board when reporting on this subject.

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Quite frankly, the Department's focus is needed elsewhere. The Department website states "The primary responsibility of the Department of Trust Lands is to manage the permanent educational trust funds and assets under the Board of University and School Lands' control as outlined in the ND Constitution. State law also gives the Department the responsibility for managing several funds and mineral acres in addition to the trust assets, operating the state Unclaimed Property Division and the Energy Infrastructure and Impact Office."

Most state unclaimed property programs are administered by the state treasurer, 35 states. Oregon has a bill pending to move Unclaimed Property from the Land Department to the Office of State Treasurer.

There is a reason for this, State Treasurers have a ready-made platform to make citizens aware of unclaimed property. State treasurers inform people at civic clubs, county fairs, and business association meetings to not only search the state website for what is due them, but also increase compliance with the unclaimed property law. Companies, associations and municipalities have unclaimed property too!

The National Association of Unclaimed Property Administrators is an affiliate of the National Association of State Treasurers. As Past President of NAST, I am very familiar with both.

In the 62nd Legislative Assembly (2011) the Office of State Treasurer submitted HB 1088 requesting the additional duty of providing a yearly report to the Budget Section relating to all outstanding, stale dated checks issued by the State. The intent of this report was to shine a spotlight on the amount of taxpayer money tied up in outstanding checks. The goal was and continues to be an encourager to state agencies to put forth efforts to resolve issues, so the funds get to the intended recipient or returned to the state if payed in error. While state transactions have significantly increased, the transfer records and amount have been steady. Our intent has been accomplished. We will continue to work until there are no checks and no funds going to Unclaimed Property.

State Treasurer Distributions to Unclaimed Property

Date	# of items	Total \$
2018	4396	\$375,625.52
2017	3753	\$388,495.40
2016	3526	\$318,044.41
2015	3343	\$405,719.99
2014	2501	\$384,701.96
2013	2631	\$408,297.65
2012	2820	\$247,151.46

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Assets collected by Unclaimed Property are held separately and are used to pay all administrative expenses. Earnings from Unclaimed Property are credited to the Common School Trust Fund for the benefit of education. This would not change.

Should the Legislature transfer the administration of the Unclaimed Property program to the Office of State Treasurer, I will increase the profile of this program across the state. It will be a priority and a focus of the Office of State Treasurer. While it is the responsibility of each of us to maintain our own finances, I will work tirelessly to return this money to our citizens – to individuals, companies, associations and municipalities. This is NOT a gift or government grant; these assets do not belong to the state. We are only here as a safety net. This is the people's money.

Mr. Chairman, members of the committee I ask for your support of HB 1187.

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Jodi A. Smith, Commissioner

**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

House Bill 1187

House Government and Veterans Affairs Committee
January 24, 2019

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in opposition of House Bill 1187.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. One of the Department's responsibilities is managing the Common Schools Trust Fund (CSTF) and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

The Department administers the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), processes owners' claims and engages in holder compliance. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF. In order to understand the significant role that the Unclaimed Property Division (Division) plays within the Department, it is important to define the meaning of "unclaimed property," the processes involved, and its history across the nation and in North Dakota. In this context, the term "property" includes tangible assets such as the contents of a safe deposit box and intangible assets such as uncashed checks and abandoned bank accounts. When these assets have been inactive for a statutory dormancy period they become "unclaimed property" and are subject to unclaimed property statutes.

There are essentially two components of the Division: collections and claims. Each component plays a distinctly different, but equally critical, role in the Division.

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The collection component addresses holder compliance and education, including the collection, documentation, and holder's transfer of assets to the Division. N.D.C.C. § 47-30.1-01(7) defines a holder as "a person, wherever organized or domiciled, who is: a. In possession of property belonging to another; b. A trustee; or c. Indebted to another on an obligation." Annually, any business or entity conducting business in the state of North Dakota is statutorily mandated to review its financial records to verify it is not holding any assets that are unclaimed. If the business or entity discovers that it is in possession of such an asset, it is required to attempt to locate the rightful owner using the best information available to it as the holder. After the statutory dormancy period and unsuccessful attempts to reunite the owner with the property, the holder must transfer the asset and all the identifying information to the Division as part of its "holder report". Once the State has assumed custody of the asset, it is held in perpetuity by the Department, and the Division proceeds to attempt to reunite the unclaimed asset with its rightful owner or heir.

The claims component addresses the reuniting of inactive, lost, misplaced, or unclaimed assets with the rightful owner or heir. "Owner" is defined as "a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or that person's legal representative." N.D.C.C. § 47-30.1-01(12). Owners are required to submit documentation to the Division to establish ownership of the asset and verify the identity of the person filing the claim (the claimant).

In 1954, the Uniform Law Commission developed the first Uniform Unclaimed Property Act (Act) in the United States, motivated by the importance of reuniting property with its rightful owner. Since its inception in 1954, the Act has been amended in 1966, 1981, 1995, and 2016, and adopted in some variation in all 50 states, Washington D.C., Puerto Rico, and three Canadian provinces.

On January 7, 1975, Senate Bill 2079 was introduced relating to defining abandoned personal property, providing methods for the same to be taken into custody of the State: for its recovery by the rightful owner; for an Administrator; for a penalty; and relating to unclaimed funds. The original bill proposed unclaimed property be administered by the Attorney General's Office with the revenue generated benefiting the general fund. During committee deliberation on February 28, 1975, it was determined the "state land department" and the "state land commissioner" would be the "administrator" of the new unclaimed property office with the revenue from the interest earned benefiting the CSTF. The Forty-fourth Legislative Assembly passed Senate Bill 2079, creating North Dakota's Unclaimed Property Division with the "state land department" and "state land commissioner" as the Administrators of this office.

The Forty-fourth Legislative Assembly intentionally placed the Division within the Department, with the earnings from the investment benefiting the CSTF. Distributions from the CSTF are based upon the growth in value of the trusts' financial assets over time, rather than on the amount of interest and income earned by each trust during the year. Biennial distributions from the permanent trust funds must be 10% of the five-year average value of trust assets, excluding the value of lands and minerals. Equal amounts are distributed during each year of the biennium. With the substantial growth in trust assets over the past 10 years, distributions to beneficiaries have significantly increased. With the inclusion of the 2019-21 contribution, the CSTF will have supplied nearly \$1 billion (\$991,480,000) to the schools in the last eight years.

Since 1975, the Division's primary focus has been to reunite unclaimed property with its rightful owner. Due to the nature of unclaimed property, the majority of the property is reported to the Division because of a breakdown in communication between the holder and the owner, incomplete owner information, or inaccurate information, such as invalid mailing addresses. It is estimated that 1 in 7 North Dakotans have

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unclaimed property. There has been a steady increase in the amount of funds and reports received from holders, claims paid, and amount of funds returned to owners. For example, during the 2013-2015 biennium 5,014 claims were paid compared to the 2015-2017 biennium in which 9,450 claims were paid, an increase of over 53%.

Additionally, the Division manages a total of \$3.4 million in securities, of which \$1.3 million are mutual funds and \$2.1 million are stocks, held at the Department's custodial bank Northern Trust.

Due to the size and volume of unclaimed property assets received, processed, and returned to the citizens of North Dakota, funds are held and maintained in separate accounts at both the Bank of North Dakota and Northern Trust. The symbiotic relationship between the Accounting, Investments, and Unclaimed Property Divisions housed within the Department allows for a close and nimble evaluation of funds held within these accounts. Section 16 of the Department's policies states, "any amounts over \$2.5 million will be invested in the Permanent Trust Fund investment pool." The ability of the Department's Divisions to work closely in monitoring the cash accounts ensures the Board is adhering to the Prudent Investor Rule and the CSTF receives the greatest return on investments. Any revenue earned on the investment of the Division's assets directly contributes additional funding to public education in North Dakota.

House Bill 1187 proposes the removal of the Division from the Commissioner of the University and School Lands to the North Dakota State Treasurer's Office (Treasurer's Office). The bill would not be a prudent use of financial resources. The Department was not asked to provide the fiscal note regarding the bill; however, the Department respectfully disagrees with the information provided in the Treasurer's Office fiscal note statement that "[T]here would be no fiscal impact of this bill." The Department has determined there will be a considerable fiscal impact as a result of moving the Division to the Treasurer's Office.

The majority of the fiscal impact of House Bill 1187 is rooted in the Department's investment in modernizing the Division. The Division began investing in the replacement of the information technology system in 2016 when a business process modeling contractor, Major Oak, was hired to identify and document processes and to recommend efficiencies. Major Oak helped document current state processes for all functional areas of the Division. This was followed by preparation of a model of future-state suggestions to further enhance controls, increase efficiencies, and boost productivity. Based upon Major Oak's recommendation, the Department sought necessary appropriations during the Sixty-fifth Legislative session to support the implementation of a new information technology system.

Since August 2017, the Department has been engaged in the procurement process necessary to identify the best solution for the Division. With significant investment on the part of the Department, the Office of Management and Budget, and the Information Technology Department, a solution was identified and a successful contract was negotiated.

On April 29, 2019, the Division will "Go Live" with Kelmar, a software company providing specialized services and solutions to assist governments with the management and administration of unclaimed property programs. With substantial knowledge of state governments, system tools, and process workflows, Kelmar has been helping unclaimed property departments across the United States since 2001. By dedicating its organization exclusively to matters of unclaimed property, Kelmar maintains the necessary subject matter expertise and reliability to serve as a partner in unclaimed property resources, and offer the next step in unclaimed property management. Not only will the Department partner with Kelmar on software, we will draw on Kelmar's unclaimed property experience to: increase the amount of unclaimed property returned and reunited with rightful owners; reduce risk associated with administering

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unclaimed property program operations; implement efficiencies and best practices to manage unclaimed property in safekeeping; and achieve program goals using dedicated and cost effective unclaimed property resources.

The Department's 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013. This includes the cost to implement a new information technology system for the Division. The Department has had to adjust available funding for the Financial Management and Accounting system and the Land Management system as a result of deductions made in order to purchase the Division's new software.

If the Division is transferred from the Department to the Treasurer's Office, there will be additional expenses incurred for Kelmar to reconfigure the system to properly ensure functionality with the Treasurer's Office. The Department is also in the process of redeveloping our website to ensure it is customer based and citizen-focused. This process has involved receiving waivers from the Information Technology Department to ensure we are in compliance with security protocols as it pertains to the interface between Kelmar and the Department's website. In addition, the transferring of the Division to the Treasurer's Office would not only increase the cost of the critical software update, but would likely create challenges in the timing of its implementation. The Division has invested \$16,445 in work exclusively related to the Division's upcoming software implementation, updating workflows, maximizing efficiencies, and creating a more agile and productive Division. Even after these improvements are implemented, the Division will continue to require Department staff be involved in the processes to ensure internal cash-controls are in place. Additionally, the Department and the Division are heavily investing in a week-long training in March 2019 to learn the Kelmar system and ensure proper new workflows have been established. Again, transferring the Division would require investment in training and the establishment of new workflows for the Treasurer's Office. Furthermore, Kelmar's software has required the Department to upgrade equipment in the Department's front office that will be utilized for additional functions benefiting various divisions. Therefore, this equipment cannot be transferred to the Treasurer's Office.

Additionally, either (1) the Treasurer's Office would need to assume custody and register over \$3.4 million in securities, or (2) the Department would need to retain FTE funding to assist in the management, sale, and transfer of securities on a quarterly basis. The Department has a significant relationship with Northern Trust as it is custodial bank for all of the assets under the Board's management, which results in a reduced management fee for the Division. It cannot be assumed that the Treasurer's Office would be able to secure the same reduced management fee.

On January 27, 2017, the Treasurer's Office testified to the House Political Subdivisions Committee in support for House Bill 1384. On March 10, 2017, the Treasurer's Office testified to the Senate Political Subdivisions Committee in opposition to House Bill 1384 reversing the position previously taken, stating:

The Unclaimed Property Division of the North Dakota Land Department has 19 formal audit findings from their current audit. By agreeing to transfer Unclaimed Property to the Office of the State Treasurer do you as a legislative body set a precedent, on the transfer of a division of a state agency, with a host of negative audit findings, to another agency, with no formal audit findings? Is it really the responsibility of one agency to so call "clean up" the errors of another state agency.

It is important to ask whether the Treasurer's Office is fully committed, prepared and has the necessary staffing to respond to the sizable adjustments necessary to manage the Division and ensure all the

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required controls are in place. If the Division is transferred, the Treasurer's Office would need to invest time, money, and resources into training Treasurer's Office staff, in addition to adjusting their workloads for the additional responsibilities that would come with assuming the Division. For example, the Department's Level 4 Procurement Officer annually issues contracts for third party auditors to assist the Division in auditing holders in North Dakota. These contracts have been issued and will remain active for a minimum of twelve months and all nine of these contracts would need to be immediately re-procured and reissued, which would further add to the cost of the transfer. There could be significant impacts to voiding contracts while audits are pending which could result in audit findings being null and void.

The Department has implemented Administrative Rules as a result of House Bill 1300, in which the Sixty-fifth Legislative Assembly directed the Board no longer be exempt from N.D.C.C. ch. 28-32. Those rules can be found at Title 85 of the North Dakota Administrative Code.

The Department created Article 85-03 of the North Dakota Administrative Code, containing three chapters titled Definitions, Reporting Abandoned Property, and Claiming Property. Those chapters contain 11 sections, as follows:

- 85-03-01-01 Definitions
- 85-03-02-01 Electronic Reporting of Abandoned Property
- 85-03-02-02 Information Contained in Reports
- 85-03-02-03 Due Diligence
- 85-03-02-04 Mineral Proceeds
- 85-03-02-05 Early Reporting
- 85-03-03-01 Claims
- 85-03-03-02 Required Documentation
- 85-03-03-03 Payment of Claim
- 85-03-03-04 Heir Finder Requests
- 85-03-03-05 Claims Submitted by Heir Finder

Transferring the Division to the Treasurer's Office would require the Treasurer's Office transfer Administrative Rules currently under the Board to the Treasurer's Office and adhere to the Act. Adhering to the Act requires resources necessary for rulemaking and adjudicative proceedings, legal costs, publication costs, and costs for contracted hearing officers.

Additionally, a mandatory component of the Division's duties is to engage in holder compliance, which requires the Division to systematically audit and when necessary, enforce penalties and fines on businesses of all sizes within North Dakota. Since 1975, business owners and citizens of the State of North Dakota and the Board have not had concerns regarding potential conflicts of interest when businesses are audited and penalized by the Department or the Division. It would be prudent and necessary to fully evaluate the impact of requiring an elected official to conduct these audits.

According to the *National Association of Unclaimed Property Administrators*, there are only 30 states in the nation where the unclaimed property division is held in the state treasurer's office. Of these 30 states, three of the treasurers are appointed by the governor, two are appointed by the legislature, and one is appointed by the governor and then confirmed by the senate. Of the remaining 24 state treasurers elected by their state's citizens through a general election, some have term limits, but all have duties not found in North Dakota's Treasurer's Office. Some of those duties include: functioning as the state's bank and managing college savings plans, worker's compensation, income and gross receipt of taxes, permanent funds, crime victim compensation programs, health plans, and child support payments and fees. In fact,

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19 of those 30 state treasurers manage their state's College Savings or State's 529 College Savings Plan fund, a duty that in North Dakota is managed by the Bank of North Dakota.

Furthermore, attempting to compare states unilaterally based on the management of the unclaimed property division is an incomplete comparison. Additional factors deserve consideration, such as: whether the funds are stored in the general fund or a special fund, whether the fund contributes to education or another entity, and if the fund does contribute to education, is it a partial or complete contribution to the state's education funding? North Dakota is one of four states in the nation that contributes all of the interest income from unclaimed property funds to benefit public education, the other three being Oregon, Wisconsin, and Virginia. Oregon, Wisconsin, and North Dakota's unclaimed property divisions are all held in agencies other than the State Treasurer's Office. Comparing North Dakota's Unclaimed Property Division to the 27 states who place their unclaimed property funds solely in the general fund and do not contribute to educational funding or comparing the Division to the 11 states that direct partial funding from unclaimed property toward education is an unrealistic comparison.

For these reasons I urge a "Do Not Pass" on House Bill 1187 and would be happy to answer any questions.

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www.land.nd.gov

Jodi A. Smith, Commissioner

To: Representative Jim Kasper, Chairman
cc: Government and Veterans Affairs Committee Members
From: Jodi Smith, Commissioner
Date: January 28, 2019
Re: House Bill 1187 Testimony

At the Committee's request, I am submitting the original audit findings for Unclaimed Property issued January 5, 2016, Performance Audit Report No. 3036(b).

On January 30, 2018, the State Auditor's Office issued an engagement letter to the Department of Trust Lands to conduct a follow-up audit on the 2016 findings to determine whether appropriate corrective actions were taken. A final Report, Performance Audit Follow-Up Report No. 3036.1, was issued on May 25, 2018 and presented to the Board of University and School Lands on May 31, 2018. On June 27, 2018, the State Auditor presented the final report to the Legislative Audit and Fiscal Review Committee. A copy of the State Auditor's final report and the minutes from the June 27, 2018 Legislative Audit and Fiscal Review Committee are attached.

PERFORMANCE AUDIT REPORT

Department of Trust Lands Unclaimed Property

Report No. 3036(b)
(Report 2 of 3)
January 5, 2016

STATE AUDITOR
ROBERT R. PETERSON



Phone (701)328-2241
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STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVENUE – DEPT 117
BISMARCK, NORTH DAKOTA 58505

January 5, 2016

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

Lance Gaebe, Commissioner, Department of Trust Lands

We are pleased to submit this performance audit report on aspects of the Department of Trust Lands. Specifically, this report contains the results of our review to determine whether Unclaimed Property is effectively administrated. The report is the second of three reports to be issued by our office in conjunction with the performance audit of the Department of Trust Lands.

The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. We conducted this audit under the authority granted within North Dakota Century Code Chapter 54-10. Included in the report are the objectives, scope, recommendations, and management responses.

Sincerely,

A handwritten signature in cursive script that reads "Bob Peterson".

Robert R. Peterson
State Auditor



OFFICE OF THE STATE AUDITOR

Performance Audit – Unclaimed Property Report Highlights

Purpose

Determine whether the Department of Trust Lands is effectively administering unclaimed property.

Audit Conclusion

We determined aspects of the unclaimed property program were operating ineffectively.

Audit Recommendations

Our audit resulted in 19 formal recommendations related to unclaimed property. The Department agreed with 13 of the 19 recommendations. The recommendations and management agreement/disagreement are identified in Appendix A of the report. There are 6 Office of the State Auditor concluding remarks in this report.

Background

When property has remained unclaimed by an owner for a specific time period, the property is presumed to be abandoned. Holders of abandoned property are required to submit the property to the Department of Trust Lands. The property is held in trust in perpetuity by the state and funds are deposited in the Common Schools Trust Fund. The Department is responsible for reuniting individuals with the unclaimed property.

Summary Information

- The Department's online search function intentionally excluded certain owners from being informed property was held by the Department. (page 2)
- A lack of audits of in-state holders resulted in limited, to no, assurance property presumed abandoned was turned over to the Department. (page 4)
- Incomplete and inaccurate information in the unclaimed property database adversely impacts the owners' ability to locate their property. (page 7)
- The unclaimed property inventory listing was not complete. (page 7)
- Property submitted to the Department may not be entered into the unclaimed property database for up to a year. (page 8)
- Improvements are needed to adequately safeguard sensitive information obtained and maintained by the Department. (page 10)
- The Department was in noncompliance with state law requirements related to unclaimed property listed in a state agency's name. Also, the Department inappropriately provided state agencies an option to donate property not belonging to the agency. (page 12)
- The Department has not had a sale of unclaimed property in over 20 years. (page 12)
- The Department has not fulfilled the mission of unclaimed property. (page 14)

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- Appendix A: List of Recommendations and Management Responses
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Unclaimed Property Division

Introduction

An objective of this performance audit was to answer the following question:

“Is Unclaimed Property effectively administered?”

We determined aspects of the program were operating ineffectively. Significant improvements for increasing the effectiveness of operations are included in this chapter. Improvements of less significance were communicated in a separate letter to management of the Department of Trust Lands. To conduct a review of the program, we:

- Reviewed applicable laws and policies.
- Reviewed a selection of safe deposit boxes and claims.
- Determined compliance with laws and policies.
- Interviewed selected personnel.

Background Information

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder’s business and has remained unclaimed by the owner for more than the established time frame for the type of property. Unclaimed property can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc. A holder can include banks, insurance companies, hospitals, utility companies, retailers, local governments, etc. An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law.

Since 1975, the Unclaimed Property Division of the Department of Trust Lands (Department) has been responsible for reuniting individuals with property presumed abandoned. The Administrator of the Division oversees the operations of unclaimed property. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the state and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the state in 1985.

See Appendix B for additional information related to the Unclaimed Property Program.

Making Improvements Related to Owners

We reviewed efforts made by the Department to reunite owners with their property. This included a review of outreach efforts conducted by the Department to locate owners and information provided on unclaimed property. This also included a review of the resources provided by the Department to be used by owners to search for unclaimed property. We conclude improvements are needed to increase property owners’ chances to be reunited with their property.

Chapter 1 Unclaimed Property Division

Improving Property Searches

A free search feature is available on the Department's website allowing individuals to search for unclaimed property. Individuals may search for unclaimed property by entering a last name, city, or zip code. Once an individual enters the search information, the website will display a list of results matching the search information or a message stating "No claims returned. Please try another search." If the individual locates themselves on the list, the matching property can be selected and the individual can proceed to start a claim for the property.

The Department's decision to limit the capabilities of the unclaimed property online search function adversely impacts reuniting owners with their property.

We identified a scenario when individuals using the online search function would not be provided accurate search results. Certain search results would not show a match although the Department was holding property for the individual. The error in the search result was created intentionally by the Department. The Department programmed the website search to not show property matches when the owner's address was not reported by the holder. We identified:

- Even if the Department had an owner's name, social security number, and other information, if the address was not provided by the holder, the owner's name may not be searchable.
- The Department promotes the use of the online search function. However, the Department does not identify the limitations of the search function.
- In addition to the online search function, individuals may call the Department to inquire if they have unclaimed property. Department representatives stated individuals calling would be informed of property held by the Department even if the address was not submitted by the holder. Therefore, individuals may receive a different result when searching for property depending on the search method used.
- When an address was not provided by a holder, the address field in the unclaimed property database may be left blank or "Unknown" would be entered. If the address was blank or "Unknown," the online search function may not show a match although the Department was holding property for the individual. However, if the word "Unknown" was misspelled (such as "Unkown"), we identified an individual using the online search function would show a match.

The decision to limit the capabilities of the online search has an adverse impact on reuniting owners with their property. It appears the Department's decision impacts over 10,000 properties valued at over \$7 million from being searchable.

We also identified additional scenarios preventing individuals from being able to find property using the website search function. Due to the following issues, individuals may not be appropriately made aware property is held by the Department.

- Owner names have been misspelled or entered incorrectly. For example, the last name of Staples was entered into the system as "Stapels."

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Unclaimed Property Division

- Cities are misspelled. For example, the city of Bismarck was entered into the system as “Bis” and “Bismarack.”
- Incomplete zip codes are entered. For example, the zip code of 58504 was entered into the system as “585.”

Recommendation 1-1

We recommend the Department of Trust Lands ensure complete and accurate resources are available to those searching for unclaimed property.

Management’s Response

The Department agrees with this recommendation. Department has recently created additional reports to better identify properties suited to web posting and plans to automate processes to help ensure that only property without identifying information is excluded from internet searches. The Department will review additional options in order to publish more unclaimed property information.

Increasing Efforts to Locate Owners

We conclude the Department was allocating a minimal amount of resources to locate owners of unclaimed property. Beyond the state law requirement to advertise twice a year in the newspaper, limited other outreach efforts were identified during the audit time period.

We identified the Department provided preferential treatment to stock owners by attempting to find current addresses of the owners of stock turned over to the Department the previous year. If a current address was identified, the Department would send a letter to the stock owner notifying the owner of the property. Until June 2015, the Department did not appear to take similar steps for owners of other types of unclaimed property.

Recommendation 1-2

We recommend the Department of Trust Lands:

- a) Increase efforts to locate owners of unclaimed property.
- b) Ensure efforts to locate owners are done in a fair and consistent manner.

Management’s Response

The Department agrees with this recommendation. In 2014 additional staff was hired and support staff reassigned to full-time unclaimed property responsibilities and the Department continues to strive for improvement in this area. The number of properties paid in calendar year 2015 increased by 37% over 2014. Enhanced efforts will continue.

Making Improvements with Holders

Holders are required by state law to annually submit a report with the abandoned property sent to the Department. The report is to contain certain information regarding the abandoned property. As part of this performance audit, we reviewed efforts made by the Department to ensure property deemed abandoned had been submitted to the Department. Also, we reviewed the Department’s handling and tracking of reports received from holders. We identified improvements were

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needed to ensure abandoned property was submitted to the Department as required by state law.

Conducting Audits of Holders

There is limited, to no, assurance property presumed abandoned has been turned over to the Department.

State law authorizes the Department to conduct audits to determine if holders have complied with requirements of the unclaimed property law. The Department had not performed audits of North Dakota holders since 2007. Thus, the Department had limited, to no, assurance property required to be submitted had, in fact, been turned over to the Department. In addition, the Department had limited, to no, assurance holders were conducting due diligence efforts to notify owners the holder was in possession of abandoned property. The lack of performing audits negatively impacts an owner's ability to be reunited with their property. In addition, the Department was not monitoring or tracking reports being received from holders. By not tracking holder reporting, indications of potential noncompliance are not being properly identified.

A recommendation related to audits of holders was included in the Department's financial audit as of June 30, 2014. The private CPA firm recommended the Department find a way to implement the audit function to ensure all unclaimed property was received and properly assess and collect penalties from businesses not in compliance. The Department's response was, "In response to legislation adopted in 2013 to allow third-party auditors to conduct in-state unclaimed property audits; existing vendor contracts were amended to permit the review of in-state holders. Future vendor contracts will also permit audits of in-state as well as out-of-state organizations." We identified no amendments were made to existing contracts as the Department had stated.

Recommendation 1-3

We recommend the Department of Trust Lands:

- a) Monitor abandoned property reporting information from entities in the state.
- b) Have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the Department.

Management's Response

The Department agrees with this recommendation. Compliance efforts will continue to expand. The Department requested additional unclaimed property audit staff in each of the past three budget cycles and the 2015 Legislature approved an FTE for shared compliance oversight with Department's oil and gas royalty collection responsibilities.

In 2013 the Department successfully requested legislative changes which removed language that prohibited third party auditors to audit North Dakota based businesses; to date no audits of North Dakota businesses have been conducted. Formal amendments of contract auditor agreements was released by the State Procurement Office in December 2015.

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Unclaimed Property Division**

Providing Guidance to Holders

Providing guidance and training to entities could increase reporting compliance.

Providing proper guidance and training to entities related to requirements for reporting abandoned property to the Department could increase holders' reporting compliance. We identified the Department's guidance and training could be improved. For example:

- In the last four years, the Department had sent educational letters to three industry groups. We conclude the three industry groups do not appear to be high risk industries for noncompliance with unclaimed property requirements. For example, the Department sent letters to veterinarians in the state. We do not consider veterinarians as a high risk industry group.
- The National Association of Unclaimed Property Administrators had an online webinar training session related to unclaimed property. The Department sent an email to North Dakota holders who had an email address in the unclaimed property database. However, only holders reporting information to the Department are included in the database. In addition, less than 20% of the in-state holders in the database had email addresses. Thus, the majority of holders in the state were not made aware of the training.
- The Department received a report periodically from the Secretary of State listing entities registered in North Dakota. However, the Department had not been using the reports to periodically contact entities. In June 2015, the Department used information provided by the Secretary of State to send letters to entities registered in 2007. The entities registered in 2007 may not have been aware of abandoned property requirements for an extended period of time.

Recommendation 1-4

We recommend the Department of Trust Lands provide proper guidance and training on unclaimed property requirements to North Dakota entities.

Management's Response

The Department agrees with this recommendation. In addition to additional internet exposure and possible interaction with other state agencies in describing holder responsibilities, the Department will evaluate tools, including those used by other states, to determine which industry sectors have low compliance and will use this information to target trade groups with educational materials and instruction.

Making Changes with Negative Reports

State law requires holders to annually submit a report with the abandoned property sent to the Department. If a holder does not have property presumed abandoned, a negative report may be submitted (a form certifying no abandoned property exists). However, the law does not require holders to submit a negative report. Holders were provided contradicting information regarding negative reporting on the Department's website. The main unclaimed property web page stated, "Annual reporting is required whether or not the business has any funds to remit." However, the Holder Reporting Instructions included on the Department's website stated "If you have nothing to report, we recommend filing a negative report..." Also, within the holder frequently asked questions web page the Department's answer to the question "Is

Chapter 1 Unclaimed Property Division

a negative report required?” was “Technically, no. However, we highly recommend the practice since it helps to create & maintain a filing history for your business.”

Based on discussions with Department representatives, it appears the Department performs no reviews of negative reports. The Department does not appear to use negative reports to appropriately track compliance. It appears very minimal, if any, action is taken by the Department with negative reports submitted.

Recommendation 1-5

We recommend the Department of Trust Lands eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.

Management’s Response

The Department disagrees with this recommendation. State law is permissive with respect to negative reporting. The Department will continue to encourage voluntary submission of negative reports which may help indicate that holders are aware of the responsibility to report unclaimed property to the State.

State Auditor’s Concluding Remarks

We conclude there is no value added to the unclaimed property program with voluntary submission of a negative report. First, the Department has no valid basis to use the reports for analysis purposes or to draw conclusions regarding a holders’ compliance. Second, the Department may inappropriately use the lack of submission of a voluntary report as an indication a holder may not be in compliance with laws. Lastly, we conclude requesting information from holders the Department does not monitor, or appropriately use, can be a waste of holder and government resources.

Improving Early Acceptance of Property

State law allows a holder, with written consent from the Administrator of the Unclaimed Property Division, to submit property before the property is presumed abandoned. We identified the Department was receiving property before it was presumed abandoned. However, no written consent was given to the holder.

The Department is in noncompliance with state law requirements regarding acceptance of property not presumed abandoned.

State law requires the Department to hold property submitted prior to it being presumed abandoned until the proper time has passed for the property to be presumed abandoned. We identified, once the Department receives property not yet presumed abandoned, the Department does not hold the property until the proper time has passed for the property to be presumed abandoned. The Department does not distinguish between actual abandoned property received and property submitted prior to it being presumed abandoned. We identified the Department delivered property to an individual when the property had yet to meet the requirements to be abandoned.

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Recommendation 1-6

We recommend the Department of Trust Lands comply with state law requirements and:

- a) Provide written consent to holders if property is to be submitted to the Department prior to the property being presumed abandoned.
- b) Ensure property is held until the proper time has passed for property to be presumed abandoned.

Management’s Response

The Department agrees with this recommendation. State law has not been followed as it relates to the submission of early reported property which has been published and made available for owners to claim as soon as the property is received. The Department will investigate law changes to permit the Department to publish, and the owner to claim, property that is reported ahead of the abandonment date.

**Making
Improvements with
Property Held by the
Department**

Tangible property submitted to the Department is inventoried and entered into the Department’s database once a year. Intangible property submitted to the Department is entered into the Department’s database immediately. In a review of the processes to receipt, inventory, and safeguard property submitted to the Department, we identified improvements were needed.

Improving Data Integrity

Errors in data adversely impact an owner’s ability to locate their property.

Our review of information within the unclaimed property database identified incomplete and inaccurate information. For example, we identified multiple individuals with the same social security number. Other instances of inaccurate information included owners’ names and cities being misspelled, incomplete zip codes, etc. Information submitted electronically by holders was uploaded into the database with no review performed by the Department. The Department manually enters information into the database from reports not submitted electronically. We identified data integrity issues related to both electronic information uploaded and information manually inputted by the Department. Data integrity issues adversely impact an owner’s ability to locate their property. For example, names entered incorrectly into the database impacted the online search feature.

Recommendation 1-7

We recommend the Department of Trust Lands ensure unclaimed property data is complete, accurate, and consistently entered.

Management’s Response

The Department agrees with this recommendation. The Department has implemented processes to further review the data received by holders in an effort to increase the likelihood an owner would find property and will make additional efforts to work with holders to obtain more accurate data.

*Improving Receiving and
Maintaining Processes*

State law requires holders to send contents of safe deposit boxes and safekeeping repositories to the Department. In review of information related to the receiving, inventorying, and maintaining of tangible property, we identified improvements were needed. For example, the

**Chapter 1
Unclaimed Property Division**

The unclaimed property inventory listing was not complete.

Department did not properly compare the holder report identifying all tangible property submitted to what was actually submitted. The Department did not properly include all items on the inventory listing or itemize coins and other property with a commercial value and used specific descriptions such as gold, silver, and diamond rather than generic terms such as clear stone or gold colored. The Department had no basis to use specific descriptions such as gold, silver, and diamond as property was not appraised. We identified the Department may separate contents of a safe deposit box into multiple envelopes. This practice increases the risk of items being misplaced. In our review of information for 17 safe deposit boxes, the Department provided the contents of the safe deposit box incorrectly for three boxes. The Department was able to eventually provide the correct contents.

Recommendation 1-8

We recommend the Department of Trust Lands consistently and appropriately receipt and maintain a complete list of unclaimed property.

Management's Response

The Department agrees with this recommendation. The Department will implement additional steps to further validate that contents reported by financial institutions are verified as inventoried by the holder.

*Performing Timely
Inventorying of Property*

The Department may take no action on property submitted for up to a year.

The Department receives contents of safe deposit boxes from holders throughout the year. Rather than inventorying and entering information into the database when contents were received, the Department waits until approximately June of each year. As a result, tangible property is in the custody of the Department for an extended period of time without being properly inventoried and entered into the unclaimed property database. This impacts an owners' ability to locate their property. We also identified the Department is in noncompliance with annual advertisement requirements within state law. Since the tangible property was not being timely entered into the unclaimed property database, the Department did not properly include owners in the annual published list of names in the newspaper.

Recommendation 1-9

We recommend the Department of Trust Lands ensure unclaimed tangible property received is inventoried/accounted for timely and comply with requirements for publishing notice in the newspaper.

Management's Response

The Department agrees with this recommendation. Tangible property received as of January 12, 2016 has been processed and will be included in the 2016 newspaper publication.

*Making Changes with
Property Valued at Less than
\$50*

State law allows holders to report properties valued at less than \$50 in the aggregate. Holders are not required to perform due diligence or report the owner's name, address, or any other identifying information for abandoned property valued at less than \$50. Also, the Department is not required to publish the names of owners who are reported with property under \$50 in the required annual newspaper notice. Over the

Chapter 1 Unclaimed Property Division

last four years more than \$1.9 million has been entered as aggregate into the Department's unclaimed property database.

When the Department changes an owner name to "Aggregate," the ability of the owner to be reunited with their property is diminished.

When aggregate is used for owner names the likelihood of the property being claimed is diminished. We identified holders submitting name, address, and other identifying information on property valued under \$50. However, owner information may not have been entered into the database. This would be due to the Department changing the reported owner name to "Aggregate." If holders provide identifying information, it is in the owners' best interest for the identifiable information to be entered into the database.

In review of aggregate reporting information from eight selected states, we identified one state does not appear to allow aggregate reporting. Four states appear to allow certain searches of properties reported under the aggregate threshold if the holders submitted owner information. Our discussions with representatives in two states identified each was in the process of lowering the aggregate amount (from \$50 to \$10 and from \$100 to \$25).

Recommendation 1-10

We recommend the Department of Trust Lands:

- a) Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value.
- b) Take appropriate action to lower the aggregate reporting amount.

Management's Response

The Department disagrees with the recommendation. The Department is following state law related to handling aggregate property.

State Auditor's Concluding Remarks

We do not agree the Department is, in fact, following state law. We identify no state law authorizing the Department to change an owner name to "Aggregate" when the holder has reported the name. State law authorizes holders, not the Department, to determine if property is reported in the aggregate.

Protecting Property

Holders send contents of safe deposit boxes and safekeeping repositories to the Department. In a review of the tangible property received by the Department, we conclude items were not adequately safeguarded. Due to the sensitive nature of safeguarding tangible property, no additional information is provided.

Recommendation 1-11

We recommend the Department of Trust Lands adequately safeguard unclaimed property submitted to the Department.

Management's Response

The Department agrees with this recommendation.

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Safeguarding Sensitive Information

Holders submit owner information to the Department as required by state law. The information may contain social security numbers. In addition, when owners submit claims for property the information submitted may include social security numbers, copies of driver's licenses, etc.

Improvements are needed to adequately safeguard sensitive information.

Sensitive information should be adequately stored and secured to safeguard against unauthorized acquisition, use, or disposition. We identified sensitive information, stored electronically, was accessible by employees who had no business related purpose to access such information. In addition, records containing sensitive information were not adequately safeguarded.

Recommendation 1-12

We recommend the Department of Trust Lands adequately safeguard confidential and sensitive information obtained and maintained by the Department.

Management's Response

The Department agrees with this recommendation. The Department has, and will take additional steps to safeguard against unauthorized access to confidential information.

Improving the Claims Process

When an owner becomes aware unclaimed property may be held by the Department, a claim for the property can be submitted. The documentation required to be sent to the Department with a claim form varies depending on the information the Department received from the holder and the type of property being claimed. The owner may need to send a copy of their driver's license, social security card, proof of address submitted from the holder, or proof of association with the holder. The Department approves or denies the claim based on the claim documentation. We identified improvements were needed with claims processing.

Increasing the Consistency of the Claims Process

Improvements are needed to process claims timely and consistently.

In a review of a selection of 43 claim numbers (40 approved and 3 not approved), we identified inconsistencies existed in how the Department processed claim requests. For example, an online resource was available to the Department to verify address information of claimants. The Department used the resource for certain claims and did not use the resource for others. Also, we identified the Department was inconsistent on how a claim was processed if additional information was necessary to process the claim. A claim requiring additional information could result in a denial letter, the Department contacting the claimant, or the Department mailing back all documents received with a letter requesting additional documentation. The claims process should ensure all claimants are treated in a fair and consistent manner.

Our review of claim information also identified the Department was in noncompliance with state law requirements related to processing claim requests. For example, the Department is required to provide written notice to a claimant within 90 days of the claim being submitted. We

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Unclaimed Property Division

identified 4 instances (28 applicable claims) of submitted claims not being provided written notice within 90 days.

Recommendation 1-13

We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.

Management's Response

The Department agrees in part and disagrees in part with this recommendation. See Appendix C for the Department's complete response.

State Auditor's Concluding Remarks

See Appendix C for State Auditor's concluding remarks.

Eliminating the Fee to Obtain Property

When securities (stocks, bonds, mutual funds, and other intangible ownership interests in business associations) are presumed abandoned, the holder changes the name to the Department of Trust Lands. Holders may transfer the securities to the Department or retain the securities at the holder's location. Once a year, the Department will liquidate securities received during a specified time period. The net proceeds of the liquidation are held for the owner.

When an owner makes a claim for their securities prior to the Department's annual liquidation, the owner can either have the Department sell the securities or have the securities turned over. If the securities are sold, a commission (approximately 3 cents per share) is charged and the net proceeds are paid to the owner. If the securities are to be turned over, the owner is required to pay a \$50 fee. We identified no authority for the Department to charge a fee to an owner to receive property yet to be sold. We identified no other fees charged by the Department for an owner to receive unclaimed property yet to be liquidated or sold. In addition, the Department does not charge fees to, or recover locating costs from, owners for unclaimed property located in other states by third-party auditors and submitted to the Department. For example, the Department paid a contract auditor over \$10,000 for locating and submitting abandoned property being held by an out-of-state holder belonging to North Dakota owners. The Department would not attempt to recover the costs by charging owners a fee when the property was claimed.

Recommendation 1-14

We recommend the Department of Trust Lands not require owners to pay a fee to receive their unclaimed property which has not been sold or liquidated by the Department.

Management's Response

The Department does not agree with the recommendation. The Department will seek a legal clarification of NDCC 47-30.1-24 which states in part that the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator. The Department will follow the advice offered by Attorney General counsel.

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Unclaimed Property Division

State Auditor's Concluding Remarks

Regardless of whether the Department legally can charge a fee for property not sold, we conclude the Department should not be requiring only certain owners to pay a fee.

Making Changes with State Agency Properties

The Department receives unclaimed property belonging to state agencies. State law requires the Administrator to send a certified letter to the agency regarding the unclaimed property. The Department is required to provide the Budget Section a report of agencies not claiming the property within one year of the certified letter.

The Department is in noncompliance with requirements related to unclaimed property listed in a state agency's name.

The letter sent by the Administrator to state agencies provides the agencies two options - claim the property or, if the agency does not believe the property belongs to the agency, sign a box on the claim form. The letter states signing the box allows the property to stay in the Common Schools Trust Fund. We conclude the option provided to state agencies to allow property not even belonging to them to stay in the Common Schools Trust Fund (in effect donating the property) was inappropriate. We also identified the Department was in noncompliance with state law as state agencies not claiming property were not reported to the Budget Section.

State law requires the Administrator to not publish state agencies in the annual notice of persons appearing to be owners of abandoned property. We identified the 2014 and 2015 published notices included state agencies.

Recommendation 1-15

We recommend the Department of Trust Lands comply with state law requirements related to unclaimed property in a state agency's name and:

- a) Ensure Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified.
- b) Not provide state agencies the "donation" option.
- c) No longer publish state agencies in the annual notice of property.

Management's Response

The Department agrees with this recommendation. The Department is in the process of implementing data validation components related to identifying state agency property within the electronic reporting system. A similar review has also been conducted for manually entered properties and is scheduled for future automation. The Department will eliminate the donation option for state agencies and include all non-claiming agencies in the report to the Budget Section.

Conducting Property Sales

State law authorizes the Administrator, not less than three years after receipt of abandoned property, to sell the property to the highest bidder at a public sale. The Department has not had a sale of property in over 20 years. Our review of other states information identified states holding periodic sales of property.

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The Department has not held a sale of unclaimed property in over 20 years.

State law authorizes the Administrator to destroy property received if it is determined to have insubstantial commercial value. We identified the Department did not destroy or otherwise dispose of any tangible property received. Our review of other states information identified items of noncommercial value being destroyed when inventoried or after a specified time period (for example two years). Items of noncommercial value would include wills, receipts, titles, certificates, etc.

Recommendation 1-16

We recommend the Department of Trust Lands conduct periodic sales of unclaimed property and dispose of property with insubstantial commercial value.

Management's Response

The Department disagrees with this recommendation. Items such as wills, receipts, titles, certificates may have nonmonetary value to owners. Sale or disposition of the property would forever eliminate the possibility of the owner to reclaim the original contents. In the near-term, the Department does not plan to conduct a sale or dispose of property of unknown value.

State Auditor's Concluding Remarks

If the Legislature intended the Department to hold unclaimed property forever, it would not authorize the Administrator to hold a sale of the property. The longer the Department maintains property, the potential for loss due to various reasons (theft, disaster, etc.) increases. Department representatives stated after the first few years property is held, the chances of the property being claimed are slim.

Establishing Administrative Code

State law allows the Administrator to adopt necessary rules to carry out the unclaimed property laws. No North Dakota Administrative Code sections have been established for unclaimed property. Establishing administrative rules would allow for public input regarding the operations of the program along with proper vetting of the rules. The administrative rules would also have the full force of law. Our review of unclaimed property operations identified administrative rules could be established in a number of areas. For example, no guidance exists related to how holders are to submit or not submit certain items (firearms, drugs, hazardous materials, illicit photos, etc.). Administrative rules could also be established related to owners and certain Department operations. For example, rules could be established related to the Department's enforcement of penalties, time frame for liquidating securities, disposal of items, claims processing, transferring of military medals, etc.

Recommendation 1-17

We recommend the Department of Trust Lands take appropriate action to establish holder, owner, and Department requirements within Administrative Code for unclaimed property.

Management's Response

The Department agrees with the recommendation. The Department will research and implement the steps to codify policies and procedures as appropriate.

**Chapter 1
Unclaimed Property Division**

**Establishing
Adequate Record
Series**

State law requires agencies to maintain a continuing program for records management and establish standards, procedures, and techniques for effective management of records. Our review of unclaimed property operations and record series information identified improvements were needed with records management. Appropriate record series had not been established. Also, we identified established record series were outdated and contained inaccurate information. For example, a number of record series have been established for records containing confidential and sensitive information. Since the record series did not properly identify confidential and sensitive information, the disposal of the records is inappropriately listed as landfill.

Recommendation 1-18

We recommend the Department of Trust Lands ensure proper records management series and appropriate disposal of records exist for unclaimed property.

Management’s Response

The Department agrees with the recommendation. The Department will establish policy and procedures regarding records management as prescribed in the findings.

**Fulfilling the Mission
of Unclaimed
Property**

The mission of the Unclaimed Property Program is to collect and safeguard property submitted by holders and to return the unclaimed property to the rightful owners or their legal heirs. In the work performed in relation to the audit objective, we conclude the Department is not fulfilling the mission. As identified in this report, improvements are needed to increase the effectiveness of the unclaimed property operations, from ensuring abandoned property is received to how property is maintained and returned to the owner.

The Department has not fulfilled the mission of unclaimed property.

The primary mission of the Department of Trust Lands is to serve as a trustee for the benefit of the common schools (public grades K-12), various institutions of higher education, and certain other state institutions. One of the Department’s goals is to maximize distributable income and trust growth. All unclaimed property funds received are to be deposited in the state treasury to the credit of the Common Schools Trust Fund. We conclude operations of unclaimed property may be in conflict with the Department’s overall mission of serving as the trustee for the benefit of the common schools. For example, when an unclaimed property claim is paid, funds are removed from the Common Schools Trust Fund. The Department’s goal is to grow the Trust Fund. The payment of unclaimed property claims contradicts the goal of the Department. This may impact the effectiveness of the Unclaimed Property Program.

North Dakota is one of two states with unclaimed property functions performed by land department employees.

In a review of the National Association of Unclaimed Property Administrators’ website, every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Quebec, British Columbia, and Alberta have an Unclaimed Property Program. North Dakota is one of only two states (Oregon) where the Unclaimed Property Program is

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Unclaimed Property Division

located under a department related to trust/state lands. The Unclaimed Property Program is located under the Treasury Department in 31 states, Department of Revenue in 5 states, and the Office of the Comptroller in 4 states. The remaining states have the program under various departments.

Recommendation 1-19

We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.

Management's Response

The Department agrees in part and disagrees in part with this recommendation. See Appendix C for the Department's complete response.

State Auditor's Concluding Remarks

See Appendix C for State Auditor's concluding remarks.

Audit and Background Information

Purpose and Authority of the Audit

The performance audit of the Department of Trust Lands was conducted by the Office of the State Auditor, pursuant to a motion passed by the Legislative Audit and Fiscal Review Committee. The performance audit was conducted pursuant to authority within North Dakota Century Code Chapter 54-10.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of whether unclaimed property is effectively administered.

Background Information

In 1889, Congress passed the Enabling Act which provided land grants to the State of North Dakota for the support of the common schools as well as colleges, universities, the state capitol, and other public institutions. To manage the assets, Article IX of the North Dakota Constitution created the Board of University and School Lands, more commonly referred to as the Land Board. The Land Board is comprised of the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer.

The Department of Trust Lands serves as the administrative agency of the Land Board. The primary responsibility of the Department is to manage the permanent educational trust funds and assets under the Land Board's control as outlined in the North Dakota Constitution. State law also provides the Department the responsibility for managing the Unclaimed Property Division and the Energy Infrastructure and Impact Office, as well as overseeing sovereign mineral acres and several other statutory funds. See Appendix B for additional information related to unclaimed property.

Objective of the Audit

Three objectives were established for this performance audit. A separate audit report is being issued for each of the audit objectives. The objectives of this performance audit were:

“Is unclaimed property effectively administered?”

“Are Energy Infrastructure and Impact Office grants effectively administered?”

“Is the Department of Trust Lands obtaining, accounting for, and using resources efficiently and effectively?”

Chapter 2
Audit and Background Information

**Scope and
Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Audit field work related to unclaimed property was conducted from the beginning of June 2015 to the beginning of January 2016. The audit time period was July 1, 2011 to June 30, 2015. In certain instances, additional information was reviewed. For example, information received from holders prior to the audit time period was reviewed as the Department maintained property submitted.

As part of this audit, we evaluated controls surrounding compliance with significant laws, policies, and procedures. We gained an understanding of internal controls surrounding these areas. Deficiencies identified with internal controls determined to be significant are addressed in Chapter 1 of this audit report. Deficiencies of less significance were communicated in a separate letter to management of the Department of Trust Lands.

As part of completing the unclaimed property objective, we (total numbers reflect the population of items):

- Observed the inventorying of safe deposit box contents in July 2015.
- Reviewed the contents for 17 safe deposit boxes judgmentally selected (1,048 total).
- Contacted two holders who had sent safe deposit box contents to the Department. We requested the holders to send a copy of the inventory sheets sent to the Department for years 2011 to 2014. This amounted to 28 safe deposit box inventory sheets.
- Reviewed information related to 43 claim numbers judgmentally selected (9,186 total).
- Judgmentally selected 8 states to review information. We were able to contact and interview representatives from 6 states (Arizona, Colorado, Minnesota, South Dakota, Wisconsin, and Wyoming). We reviewed information on the web pages for the other two states (Montana and Oregon).

Appendix A

List of Recommendations and Management Responses

The following information identifies each recommendation and our conclusion as to whether the Department agreed or disagreed with the recommendation. Due to apparent contradictory information in certain management responses, we made a determination as to whether management agreed or disagreed with recommendations taking into consideration the entirety of the response.

	<u>Recommendation</u>	<u>Not</u>		
		<u>Agree</u>	<u>Agree</u>	<u>Mixed</u>
1-1	We recommend the Department of Trust Lands ensure complete and accurate resources are available to those searching for unclaimed property.	<u>X</u>	<u> </u>	<u> </u>
1-2	We recommend the Department of Trust Lands: a) Increase efforts to locate owners of unclaimed property. b) Ensure efforts to locate owners are done in a fair and consistent manner.	<u>X</u>	<u> </u>	<u> </u>
1-3	We recommend the Department of Trust Lands: a) Monitor abandoned property reporting information from entities in the state. b) Have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the Department.	<u>X</u>	<u> </u>	<u> </u>
1-4	We recommend the Department of Trust Lands provide proper guidance and training on unclaimed property requirements to North Dakota entities.	<u>X</u>	<u> </u>	<u> </u>
1-5	We recommend the Department of Trust Lands eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.	<u> </u>	<u>X</u>	<u> </u>
1-6	We recommend the Department of Trust Lands comply with state law requirements and: a) Provide written consent to holders if property is to be submitted to the Department prior to the property being presumed abandoned. b) Ensure property is held until the proper time has passed for property to be presumed abandoned.	<u>X</u>	<u> </u>	<u> </u>
1-7	We recommend the Department of Trust Lands ensure unclaimed property data is complete, accurate, and consistently entered.	<u>X</u>	<u> </u>	<u> </u>
1-8	We recommend the Department of Trust Lands consistently and appropriately receipt and maintain a complete list of unclaimed property.	<u>X</u>	<u> </u>	<u> </u>

**Appendix A
List of Recommendations and Management Responses**

<u>Recommendation</u>	<u>Agree</u>	<u>Not Agree</u>	<u>Mixed</u>
1-9 We recommend the Department of Trust Lands ensure unclaimed tangible property received is inventoried/accounted for timely and comply with requirements for publishing notice in the newspaper.	X		
1-10 We recommend the Department of Trust Lands: a) Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value. b) Take appropriate action to lower the aggregate reporting amount.		X	
1-11 We recommend the Department of Trust Lands adequately safeguard unclaimed property submitted to the Department.	X		
1-12 We recommend the Department of Trust Lands adequately safeguard confidential and sensitive information obtained and maintained by the Department.	X		
1-13 We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.		X	
1-14 We recommend the Department of Trust Lands not require owners to pay a fee to receive their unclaimed property which has not been sold or liquidated by the Department.		X	
1-15 We recommend the Department of Trust Lands comply with state law requirements related to unclaimed property in a state agency's name and: a) Ensure Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified. b) Not provide state agencies the "donation" option. c) No longer publish state agencies in the annual notice of property.	X		
1-16 We recommend the Department of Trust Lands conduct periodic sales of unclaimed property and dispose of property with insubstantial commercial value.		X	
1-17 We recommend the Department of Trust Lands take appropriate action to establish holder, owner, and Department requirements within Administrative Code for unclaimed property.	X		

Appendix A
List of Recommendations and Management Responses

<u>Recommendation</u>	<u>Agree</u>	<u>Not Agree</u>	<u>Mixed</u>
1-18 We recommend the Department of Trust Lands ensure proper records management series and appropriate disposal of records exist for unclaimed property.	<u> X </u>	<u> </u>	<u> </u>
1-19 We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.	<u> </u>	<u> X </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>
Total	<u> 13 </u>	<u> 6 </u>	

Appendix B

Unclaimed Property Information

Since 1975, the Unclaimed Property Division of the Department of Trust Lands (Department) has been responsible for reuniting individuals with property presumed abandoned. The Administrator of the Division oversees the operations of unclaimed property. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the state and invested in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act, created by the national Uniform Law Commission, was adopted by the state in 1985.

Definitions related to unclaimed property include:

- Unclaimed property includes intangible and tangible property held by a holder when contact with the owner has exceeded a time period set in law. Unclaimed property can include contents of safe deposit boxes, checks, deposits, dividends, income, security deposits, stocks, amounts due and payable under the terms of insurance policies, and amounts distributable from mineral interests in land. For purposes of this audit, abandoned property is the term typically used for property in the possession of the holder. Unclaimed property is used to reference property in the possession of the Unclaimed Property Division.
- A holder is a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee, or indebted to another on an obligation. Holders can include banks, insurance companies, hospitals, utility companies, retailers, local governments, etc.
- An owner is a depositor in the case of a deposit; a beneficiary in the case of a trust other than a deposit in trust; a creditor, claimant, or payee in the case of other intangible property; or a person having a legal or equitable interest in property subject to the unclaimed property law or a person's legal representative.

North Dakota Century Code Chapter 47-30.1 includes the requirements related to unclaimed property. Examples of property types and time periods established before the property is presumed abandoned are identified in the following table.

Examples of Property Types and Time Periods Established before Property is Presumed Abandoned (per NDCC Chapter 47-30.1)						
Property Type	Time Period					
	1 Year	2 Years	3 Years	5 Years	7 Years	15 Years
Checking & Savings Accounts				X		
Corporate Money Orders					X	
Life Insurance Policies/Benefits	X					
Mineral Proceeds			X			
Safe Deposit Boxes			X			
Security Deposits/Refunds	X					
Stock Shares			X			
Traveler's Checks						X
Uncashed Checks		X				
Wages		X				

Insurance companies are required to report abandoned property to the Department by May 1st each year for property presumed abandoned by the preceding December 31st. All other holders are required to report the abandoned property to the Department by November 1st for property presumed abandoned by the preceding June 30th. Holders are required to perform due diligence no more than 120 days prior to the date of the report. The due diligence requires holders to provide written notice to the apparent owner, using the owner's

**Appendix B
Unclaimed Property Information**

last known address, informing the owner the holder is in possession of property. Information submitted by a holder on an unclaimed property report contain the following (if applicable): a property code (describes the type of property), name, last known address, social security number, amount/quantity due, account number, check number, and date of last transaction or legal dormancy date.

According to NDCC Section 47-30.1-23, the Administrator of the Unclaimed Property Division is to promptly deposit in the state treasury, to the credit of the Common Schools Trust Fund, all funds received. The Department has a continuing appropriation for the amounts necessary to pay all expense deductions associated with unclaimed property. Annually, the Administrator publishes the names and last-known addresses of the owners who have been reported during the last reporting period in the newspaper of general circulation in the county of the owners' last-known address. The Department has a search function available on the Department's website for individuals to search for unclaimed property. The Administrator may have a public sale of unclaimed property not less than three years after receiving the property.

The Department and 44 other states allow in-state holders to report abandoned property to the Unclaimed Property Division. The Department will then forward the property and information to the entitled state (the state where property should be remitted based on the owner's last known address).

Owners or their heirs can submit a claim for property being held by the Department. The type of documentation required to be submitted by the owner along with the claim form is dependent upon the type of property being claimed and what information is submitted by the holder. Documentation required from the owner may include a copy of a driver's license, copy of a social security card, proof of address submitted by the holder, or proof of association with the holder.

According to the Department's 2013-2015 Biennial Report the following amounts were collected in unclaimed property and paid in claims (no audit work performed on the accuracy of the amounts):

Biennium	2007-09	2009-11	2011-13	2013-15
Collected	\$8.9 million	\$9.3 million	\$10.1 million	\$15.7 million
Claimed	\$3.6 million	\$3.3 million	\$4 million	\$4.9 million

Supplemental Responses & Concluding Remarks

Recommendation 1-13 We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.

Management's Response The Department agrees in part and disagrees in part with this recommendation. The Department agrees that claims should be processed "appropriately". The Department disagrees that claims can be processed "consistently".

The Department applies baseline standards of documentation to all claims; however it will continue to utilize different verification processes required for unique owner claims. There is significant variability in property types received, such as uncashed checks, closed bank accounts, stocks, bonds, or safe deposit box contents. Different property types require different kinds of documentation. Similarly, claimant status varies too, as owners may be living or deceased and claimants may be guardians, powers-of-attorney, executors, etc. Thus, the Department will continue to use professional experience in determining the techniques best suited to matching unique personal information reported by the holder with unique documentation provided by the owner. Additional information will continue to be requested if staff is unable to verify ownership based on the available documentation.

Contact with owners relating to claims is often verbal and the Department will work to improve the process of documenting contacts.

State Auditor's Concluding Remarks We conclude consistency in how claims are processed can and should exist. The recommendation is related to processes used in approving or denying a claim and is not specifically regarding the types of documentation. We identified the Department was inconsistent in denying claims by issuing a denial letter in certain situations and in others, would return to the claimant all documentation submitted with no denial letter. Certain claim files reviewed did not include all information as was included in other claim files. One claim file selected for review was unable to be located by the Department. Also, claim forms printed online would contain less information than if a claim form was sent from the Department to an individual.

Recommendation 1-19 We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.

Management's Response The Department agrees in part and disagrees in part with this recommendation. The Department agrees that the unclaimed property program should be administered in an effective manner and that the mission of the program should be accomplished, but the Department disagrees that the mission is not being accomplished.

Appendix C
Supplemental Responses & Concluding Remarks

As trustees for the permanent trust funds, the Department staff and Land Board are keenly aware of their responsibility as a fiduciary for multiple beneficiaries. This applies to management of the permanent trusts and to the interests of abandoned and unclaimed property owners. We believe that the Legislature entrusted unclaimed property administration to the Department because of its responsibility to the Common Schools Trust Fund, not in spite of it.

The Department will continue to exceed legislative requirements to reconnect property with the rightful owners, while it continues to take steps to improve holder compliance and ensure the integrity of the data in the unclaimed property system. Since the year 2000, the Department has returned \$30 million of previously lost property to rightful owners; this represents 39% of the \$77.1 million of assets it has collected and holds on behalf of owners.

Unless directed to do so by the Board of University and School Lands, the Department will not initiate or seek legislative action to remove the unclaimed property functions from the Department of Trust Lands to another agency.

State Auditor's Concluding Remarks

Due to the number of necessary improvements recommended for the unclaimed property program, we identified sufficient evidence to conclude the mission was not being accomplished.

We never state the Department staff or the Land Board are not keenly aware of their fiduciary responsibility. We identify operations of unclaimed property may be in conflict with the Department's overall mission. This conflict could impact how priorities are established or decisions are made.

The Department's response related to continuing to exceed legislative requirements is misleading. We identify instances of the Department not following state law requirements. In addition, we identify instances impacting an owner's ability to be reunited with their property due to apparently only doing what the law requires.

The Department's response related to dollar amounts dating back to 2000 is misleading. While we did not audit the numbers provided in the response, we did identify the amounts match neither the amounts included in audited financial statements nor in the Department's biennial reports. Also, we conclude the \$77.1 million of assets collected and held on behalf of owners is not accurate as the Department would not be holding the entire amount collected.

Performance Audit Follow-Up

Status of Recommendations

North Dakota Department of Trust Lands

Report No. 3036.1

May 25, 2018

Joshua C. Gallion
State Auditor

Office of the State Auditor
Performance Audit

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May 25, 2018

Honorable Doug Burgum, Governor

Members of the North Dakota Legislative Assembly

Jodi Smith, Commissioner, Department of Trust Lands

The Office of the State Auditor conducted audit follow-ups from January 30, 2018 through May 25, 2018 on the performance audits of the Department of Trust Lands entitled:

- *Unclaimed Property* (report #3036(b) dated January 5, 2016)
- *Trust Assets and Department Resources* (report #3036(c) dated March 18, 2016)

No audit follow-up was conducted on the performance audit of the Department of Trust Lands entitled *Energy Infrastructure and Impact Office* (report #3036(a) dated November 6, 2015) since the only moneys appropriated to the program for the 2017-2019 biennium were earmarked by the Legislature for specific projects.

The decision was also made to not follow-up on certain recommendations and the remaining recommendations were grouped into more general areas. This report contains the results of our review to determine the progress made by the Department of Trust Lands in each of the general areas. Management's response to the actions taken are included in Appendix A.

Respectfully Submitted,

Joshua C. Gallion
State Auditor

Department of Trust Lands Follow-up Report

Finding Property Owners

In this section, the actions taken by the Department of Trust Lands to improve their effectiveness in finding and reuniting individuals with property presumed abandoned will be discussed. This section addresses the following recommendations included in the performance audit report (Report No. 3036(b)) related to unclaimed property.

- 1-1 On-line Search Results
- 1-2 Locate Owners of Property
- 1-7 Property Information Correct
- 1-10 Aggregate Reporting
- 1-13 Processing Claims
- 1-14 Claim Fees
- 1-15 Identifying State Agency Property

Summary

Overall, the Department of Trust Lands has made progress to improve their effectiveness in finding and reuniting individuals with property presumed abandoned. Follow-up work performed verified the Department (not all inclusive):

- Started processing all reports electronically.
- Implemented additional procedures to validate data entered into the system.
- Increased outreach efforts to locate owners.
- Processed claims within the 90-day requirement, identified claimants properly, and retained claim documentation.
- No longer charges a claim fee to register stock back in an owner's name.
- Provided lists of state agencies not submitting claims for property after a year of being notified to the Budget Section.
- No longer published state agencies in the annual notice of property.

However, data integrity issues still exist which negatively impacts an owner's ability to search or find their property.

The Department is also in the process of obtaining a new Unclaimed Property IT system to help resolve some of the data integrity issues. The Department is also working on Administrative Rules for Unclaimed Property which includes a section related to processing of claims. The Department plans to publish and make searchable property information for items received on or after January 1, 2019 when aggregate property is received and the holder provides identifying information.

Little, to no improvements were made related to property not believed to belong to state agencies. State agencies are still provided the option to allow property not belonging to them to stay in the Common Schools Trust Fund (in effect donating the property).

Department of Trust Lands Follow-up Report

Accepting and Maintaining Property

In this section, the actions taken by the Department of Trust Lands to improve their effectiveness in accepting and maintaining property presumed abandoned will be discussed. This section addresses the following recommendations included in the performance audit report (Report No. 3036(b)) related to unclaimed property.

- 1-6 Early Acceptance of Property
 - 1-8 Receiving and Maintaining Safe Deposit Box Contents
 - 1-9 Inventorying of Property
 - 1-11 Protecting Property
 - 1-12 Protecting Sensitive Information
 - 1-16 Conducting Property Sales
-

Summary

Overall, the Department of Trust Lands has made progress to improve their effectiveness in accepting and maintaining property presumed abandoned. Follow-up work performed verified the Department (not all inclusive):

- Implemented a process to verify safe deposit box contents received.
- Changed the annual inventory date so more property is included in the annually published lists.
- Added safeguards to protect property and sensitive information.
- Started to destroy property received with insubstantial commercial value.

However, the progress made has not eliminated the following concerns identified in the original audit:

- Safe deposit box contents are still separated into multiple envelopes, inconsistently described, and incorrectly listed in inventory.
- Tangible property can still be in the custody of the Department for an extended period without being properly inventoried and entered into the unclaimed property database.
- Sensitive information is still accessible by employees with no business purpose to do so.
- Pre-existing property with insubstantial commercial value has not been purged from inventory.

Little, to no improvements are planned to be made related to the early acceptance of property submitted prior to being presumed abandoned. The Department consulted with their Assistant Attorney General who indicated North Dakota Century Code Section 47-30.1-27 does not prohibit them from delivering unclaimed property to the rightful owner at any time. The Department also indicated they will accept property early without prior written consent.

Department of Trust Lands Follow-up Report

Compliance with Unclaimed Property Laws

In this section, the actions taken by the Department of Trust Lands to comply with unclaimed property laws will be discussed. This section addresses the following recommendations included in the performance audit report (Report No. 3036(b)) related to unclaimed property.

- 1-3 Audits of Property Holders
 - 1-4 Training and Information
 - 1-5 Negative Reporting
 - 1-17 Administrative Code
 - 1-18 Records Management
-

Summary

Overall, the Department of Trust Lands has made progress to comply with unclaimed property laws. Follow-up work performed verified the Department (not all inclusive):

- Increased outreach efforts on unclaimed property requirements to North Dakota entities.
- Attempted to increase monitoring of abandoned property reporting information.

However, the increased level of monitoring could not be sustained; and to date, only one audit has been conducted on an in-state entity by a third-party vendor.

The Department is also in the process of establishing administrative rules for unclaimed property, which are currently in draft form.

Little, to no action was taken related to records management. However, the Department plans to do so by the end of 2018. Little, to no action was also taken related to negative reporting. While the Department updated the Unclaimed Property website to remove contradictory language regarding negative reporting, negative reporting is still not required or used for holder compliance tracking. If North Dakota adopted the Uniform Unclaimed Property Act of 2016 then negative reports would be required under the Act.

Department of Trust Lands Follow-up Report

State Trust Land Records

In this section, the actions taken by the Department of Trust Lands to improve the state trust land records will be discussed. This section addresses the following recommendations included in the performance audit report titled Trust Assets and Department Resources (Report No. 3036(c)).

- 1-1 Tract Trust Assignment
- 1-2 Correct Decimal Interest
- 1-3 Royalty Payment Allocation
- 1-7 Monitoring Acreage
- 4-1 Information Technology System

Summary

Overall, the Department of Trust Lands has made progress to improve the trust land records including tract assignments, royalty payment allocation, etc. Follow-up work performed verified the department (not all inclusive):

- Conducted a review of trust assignments for all tracts located in oil and gas producing counties.
- Corrected tract assignment issues with the Youth Correctional Center and Ellendale trusts.
- Performed a comprehensive review of royalty revenue allocation payment codes for non-river tracts.
- Compared Department calculated decimal interests to the decimal interests reported by operators and implemented an ongoing review process.
- Implemented a process for monitoring changes in the mineral database.

However, the potential still exists for tracts to be assigned to the wrong trusts and royalty payments being allocated incorrectly. The Department's review of tract trust assignments was focused on the oil and gas producing counties and the review of payment codes did not include river tracts. The plan is to continue the trust assignment review for the remaining counties as time allows. The Department also plans on reviewing river tracts after the current litigation is resolved.

The Department has not implemented an effective information technology system. The Department has continued using the same outdated system that was a contributing factor in several of the original audit findings. The Department has plans to replace the current system with the funding appropriated by the 65th Legislative Assembly. The Department issued a formal request for proposal; however, the procurement process was unsuccessful. Instead of re-issuing, the Steering Committee voted to re-evaluate the request for proposal. The Steering Committee is at the very beginning of the re-evaluation phase.

The corrections in tract assignments for the Youth Correctional Center and Ellendale trusts resulted in the transfer of revenue and investment income totaling approximately \$7.5 million. The misallocation of the revenue and investment income impacted past distribution to the trust beneficiaries (approximately \$621,000). The 65th Legislative Assembly authorized one-time distribution adjustments for beneficiaries affected by the misallocations.

Department of Trust Lands Follow-up Report

Management of State Trust Lands and Royalty Collections

In this section, the actions taken by the Department of Trust Lands to improve the management of state trust lands and royalty collections will be discussed. This section addresses the following recommendations included in the performance audit report titled Trust Assets and Department Resources (Report No. 3036(c)).

- 1-4 Royalty Reporting
- 1-5 Interest on Late Payments
- 1-6 Assessing Penalties
- 1-8 Fair Market Value Lease of Land
- 1-9 On-line Mineral Auctions
- 1-10 Surface Tract Inspections
- 2-4 Allocating Expenses

Summary

Overall, the Department of Trust Lands has made progress to improve the management of state trust lands and royalty collections. Follow-up work performed verified the department (not all inclusive):

- Developed a standardized royalty reporting template which operators are required to submit electronically.
- Started conducting audits of oil and gas operators submitting royalty payments.
- Automated the process for assessing penalties on late oil and gas royalty payments.
- Changed to online mineral auctions.
- Added grazing association tracts to the surface inspection schedule.
- Implemented procedures to ensure direct and indirect costs are allocated correctly between trusts.

Little, to no changes have been made related to the fair market value. The Department contracted with a new vendor to provide survey data and plans to continue exploring potential options after new survey data is provided.

The Department continues to assess interest on late oil and gas royalty payments in the same manner. However, the Department is in the process of drafting administrative rules related to the assessment of interest.

Department of Trust Lands Follow-up Report

Management of the Department

In this section, the actions taken by the Department of Trust Lands to improve the overall management of the Department's operations will be discussed. This section addresses the following recommendations included in the performance audit report titled Trust Assets and Department Resources (Report No. 3036(c)).

- 3-1 Minimum Qualifications
- 3-2 Hiring Process Best Practices
- 3-3 Veterans' Preference
- 3-6 Performance Evaluations
- 3-7 Performance Management Program
- 4-2 Policy and Procedure Establishment and Periodic Review
- 4-3 Policy and Procedure Centralization and Employee Acknowledgement
- 4-4 Monitoring Internal Controls
- 4-5 Archiving State Records

Summary

Overall, the Department of Trust Lands has made progress to improve the management of the Department's operations including human resources, policies and procedures, monitoring, and archiving records. Follow-up work performed verified the department (not all inclusive):

- Started utilizing of Human Resource Management Services in the hiring process.
- Performed annual employee performance evaluations
- Enhanced the performance evaluation process.
- Conducted risk and control environment assessments.
- Implemented changes in internal controls surrounding the transfer of funds.
- Transferred records to State Archives.

The Department has also started the process of reviewing policies and procedures. This includes department-wide as well as division specific policies and procedures. According to the schedule, the process should be completed by August 2018. The Department is currently on track with the schedule and intends to review the policies and procedures of the remaining divisions (surface, minerals, and revenue compliance) in conjunction with the establishment of administrative rules.

Appendix A – Department of Trust Lands Response

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<https://1/and.nd.gov>



February 20, 2018

Dear Mr. Lafleur,

The Department of Trust Lands has completed an assessment in response to your request for a follow-up relating to two of the three reports issued in 2015-2016 to determine whether appropriate corrective actions have been taken.

Unclaimed Property

Every U.S. state, District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Quebec, British Columbia and Alberta in Canada, and the nation of Kenya have unclaimed property programs that actively and continuously find owners of lost and forgotten assets.

The purpose of unclaimed property laws is to protect consumers by ensuring money owed to them is returned to them, rather than remaining permanently with financial institutions, business associations, governments, and other entities. Prior to the enactment of unclaimed property laws and the establishment of state programs, there was no centralized means through which owners could seek to recover unclaimed assets. Most companies in possession of unclaimed property had no particular reason or incentive to attempt to locate missing owners entitled to property.

For decades, it has been recognized as the appropriate policy for unclaimed funds to be used for the public good, until such time as it is recovered by the rightful owner. Without impacting the obligation of the state to return unclaimed funds, collections are utilized to finance operations, including special programs for public schools and college scholarships. The U.S. Supreme Court stated in the 1951 *Standard Oil Co. v. New Jersey* case, 11 property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations.¹¹

Since 1975, the Unclaimed Property Division of North Dakota has resided in the Department of Trust Lands for the purposes of administering and enforcing the Uniform Unclaimed Property Act (N.D.C.C. ch. 47-30.1). The property is maintained to the credit of the Common Schools Trust with revenue earned on the investment of properties benefitting school funding.

In January 2016, the Office of the State Auditor issued the results of an extensive performance audit with the primary purpose to determine whether the Department of Trust Lands is effectively administering unclaimed property. The 19 formal recommendations can be categorized into three themes; (1) Finding Property Owners, (2) Accepting and Maintaining Property, and (3) Compliance with Unclaimed Property Laws.

Appendix A – Department of Trust Lands Response

Finding Property Owners

The Office of State Auditor reviewed the Department's efforts to reunite owners with their property. This included a review of outreach efforts conducted by the Department to locate owners and

information provided on unclaimed property. This also included a review of the resources provided by the Department to be used by owners to search for unclaimed property. The conclusion by the Office of State Auditor was that improvements were needed to increase property owners' chances to be reunited with their property.

The Department has developed many powerful and effective methods to locate owners including the use of our website, cross-checking public data, and working with the national database missingmoney.com. The Department has developed procedures and created IT based programs which assist in the integrity of the data. Consistent efforts in locating property owners have been ongoing, which have resulted in a significant increase in dollars returned to owners with \$4.9 million during the 2013-2015 biennium and \$9.3 million during the 2015-2017 biennium. This continued growth is attributed to the Department's outreach efforts of not only the newspaper advertisements which are required by law but also online property search tools, the purchasing of third party address mailings to owners, poster placement in public locations, articles to major employers and electronic-mail reminders sent for incomplete claims.

Regarding State Agency claims, the Department has implemented data validation components related to identifying state agency property within the electronic reporting system.

The Department is currently reviewing the Unclaimed Property Policies and will adopt policies in March 2018 which will address concerns regarding the "aggregate reporting" and "processing of claims". Currently, a draft of the Administrative Rules for Unclaimed Property contains a section regarding the processing of claims.

Accepting and Maintaining Property

The Department regularly receives property from holders prior to the two year minimum abandonment period having been met. More often than not, this property is submitted to the Department without prior Administrator permission being sought. Upon further review of the law, it was unclear if the Department was in compliance with state law requirements regarding acceptance of property that is not assumed abandoned. On October 3, 2016, in a memorandum from Assistant Attorney General David Garner he concluded: "the Administrator's actions in delivering unclaimed property to the rightful owner even before it was presumed abandoned were authorized under the Act. N.D.C.C. § 47-30.1-27 does not prohibit the Administrator from delivering unclaimed property to the rightful owner at any time and any interpretation to the contrary runs afoul of the plain language of the Act and its universally recognized purpose, and potentially renders N.D.C.C. § 47-30.1-27 unconstitutional. The plain language of N.D.C.C. § 47-30.1-27 is clear in that it affords the Administrator the opportunity to take custody of unclaimed property before it is presumed abandoned but does not impact an owner's right to reclaim it. As such, no provisions of the Act including, but not limited to, N.D.C.C. § 47-30.1-27 require any revisions based on Recommendation 1-6."

The Department has created a policy (to be adopted in March 2018) which will outline safeguards for property including the protecting of property in fire and water resistant file cabinets and the assurance that all sensitive information is secure through locked storage rooms, protected off-site storage and an encrypted database. The Department will keep a schedule of property review and will determine upon the time of inadequate storage if a sale of unclaimed property and the disposal of insubstantial commercial value property is necessary.

Appendix A – Department of Trust Lands Response

Compliance with Unclaimed Property Law

Unclaimed property laws have existed for decades. Until relatively recently, however, the Department has not devoted significant resources to enforcing these laws. Many states have now taken a variety of measures to promote compliance with unclaimed property laws, including increasing the number of audits, engaging third-party auditors, and offering voluntary disclosure programs (VDPs).

North Dakota requires holders of unclaimed property to conduct due diligence to contact the property's owners. Holders must generally send a letter to the owner, listing information sufficient to identify the unclaimed property and notifying the owner of its property rights. Holders must also file annual unclaimed property reports and escheat property to the Department if they cannot contact the owner.

Most holders are required to file unclaimed property reports in states outside where they hold the property, in part because of the priority of escheat laws established in *Texas v. New Jersey*, 379 U.S. 674 (1965). In that case, the U.S. Supreme Court established that the state of the owner's last known address (the primary state) has primary authority over the owner's unclaimed property. If the owner's address is not known or if the primary state does not have unclaimed property laws, then the state of the holder's incorporation (the secondary state) obtains authority over the unclaimed property.

While a wide variety of businesses are required to file unclaimed property reports, a surprisingly large number of those businesses have not heard of unclaimed property or escheat laws. In 2016, the Department began webinars to assist in the education of the importance of filing an unclaimed property report, including the importance and submission of a negative report. Concerted efforts have taken place to educate all North Dakota businesses through the development and distribution of a holder reporting manual, which is also on the Department's website.

Many states have recently increased the number of companies selected for unclaimed property audits. North Dakota state law authorizes the Department to conduct audits to determine if holders have complied with requirements of the law. The Office of the State Auditor recommended the Department monitor abandoned property reporting information from entities in the state and to complete audits of entities in the state to ensure abandoned property is appropriately turned over to the Department. To date, only one audit has been completed by a third-party vendor. This is an opportunity for improvement by the Department and internal practices will be evaluated.

Trust Assets and Department Resources

Since statehood, North Dakota's Constitution entrusts the management of acquired land and grant land to the "board of university and school lands" (Land Board). The Land Board has control of various grant and acquired lands, the minerals under sovereign lands (navigable rivers/lakes), and other statutory funds. The Department is responsible for the supervision of trusts and assets under the control of the Land Board. The land grant at statehood and the State Constitution both provide the Land Board manage the trust land and minerals and their proceeds, for the exclusive benefit of supporting the common schools and the institutions for which the lands were granted. In accordance with Article IX of the North Dakota Constitution, the trust funds must be managed to preserve purchasing power and to maintain stable distributions to trust beneficiaries. Revenues are generated through the prudent management of permanent trust assets, including land, minerals and investments. The surface acres are leased to ranchers and farmers, who assist in their care; mineral acres are leased for oil, gas, coal, and aggregate development. All revenues generated are deposited into the trust funds and are invested in a diversified portfolio of financial assets.

Appendix A – Department of Trust Lands Response

In March 2016, the Office of the State Auditor issued the results of an extensive performance audit with the primary purpose to determine whether the Department of Trust Lands is obtaining, accounting for, and using resources efficiently and effectively. The 29 formal recommendations can be categorized into three themes; (1) State Land Records, (2) Management of State Land and Royalty Collections, and (3) Management of the Department of Trust Lands.

State Land Records

Severe limitations in the current IT system, including redundant manual processes - many of which were highlighted in the 2016 performance audit, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts potential improvements. In 2016, as part of the plan for replacement of the IT system, a business process modeling contractor, Major Oak, was hired to identify and document processes and to recommend efficiencies for most operations. Major Oak helped document current State processes for all functional areas of the Department. This was followed by preparation of a model of future-State suggestions to further enhance controls, increase efficiencies, and boost productivity. Major Oak developed a list of problems/opportunities within each Division to address. In total 133 opportunities were presented with 92 (69%) of them being dependent upon the implementation of a new technology system. The Department ' s 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems. The Department is currently in the process of developing a Request for Proposal for a Land Management and Accounting system and, separately, an Unclaimed Property IT system with anticipated award dates in 2018.

It is the goal of the Department to work diligently to verify the integrity of the information entered into the new IT system. When the Department began developing and transitioning to electronic databases in the 1980s, information related to tracts and the assigned trusts was manually entered. Since the original input of the information, the Department operated with the understanding that all of the information is accurate. Through the performance review, the State Auditor was able to identify several inaccuracies in assignment of the tracts of land to the correct trust. As of January 2018, fourteen counties have been completed, all hydrocarbon producing, with nearly 800 hours spent on the project. Staff will continue to work to review the remaining 39 counties. As part of SB 2013 of the 65th Legislative Assembly of North Dakota, the board of university and school lands distributed one-time corrections resulting from the misallocation of prior mineral revenues, from the permanent funds managed for the benefit of certain State institutions.

The State Auditor also recommended the Department conduct a formal review of oil and gas royalty payments to ensure amounts received were based on the correct decimal interests. The Department compared the decimal interests reported by the operators in royalty reports to the decimal interests in the minerals database. The Department compiled a list of potential concerns as decimal interest numbers reported by operators were not the same as the decimal interest calculated by the Department. The Department's list required additional reviews be performed to determine whether or not there was an error with the decimal interest number used by the operator or by the Department. In the fall of 2015, the Department adjusted system requirements so mineral ownership is calculated to eight decimal places. The Department has also completed a review of oil and gas interests, comparing the trusts' documented decimal interest to the decimal interest paid by operators. This action will assure the accuracy and integrity of the information to be entered into the new IT system.

Appendix A – Department of Trust Lands Response

Since October 2015, the Department has required all oil and gas operators submit royalty information electronically via the Department's standardized form, to allow for adequate monitoring of acreage and leasing. The Department has worked through internal processes to ensure any data changes are monitored appropriately.

If there is any additional information the Department of Trust Lands may be able to provide to you prior to your arrival do not hesitate to contact me.

Management of State Land and Royalty Collections

Each oil and gas operator is required to submit a royalty report to the Department with its royalty payment. The Department's Revenue Compliance division is responsible for developing and implementing procedures to assure the timely and accurate accounting of all royalties, bonuses, rentals, and other revenue received by the Department. A significant amount of time is dedicated to evaluating the accounting and collection of oil and gas royalties.

In October 2015, an electronic reporting form was created and provided to operators for the submission of all oil and gas royalties, along with the expectation that all reports would be filed online by the end of the third quarter of FY 2016. The majority of oil and gas royalties are reported electronically, with only five of the 66 operators reporting manually as of June 30, 2017. These operators represent only \$250,000 or 0.13% of the total royalties received in FY 2017. Royalty data is reviewed for discrepancies in volume, ownership, valuation, and lease terms. These efforts have brought additional revenue to the trusts that may not have otherwise been collected. Reported volume data is compared with the NDIC's data to identify variances. Additionally, division orders and submitted royalty reports are reviewed to identify issues. Technology systems have been improved to highlight errors and discrepancies on monthly royalty reports and to automatically calculate potential penalties owed. The enhanced efforts have resulted in additional royalty collections over the prior four fiscal years.

Improvements have been made to the Department's penalty issuance process. Penalties are now automatically calculated. During the 2015-2017 biennium, 19 oil and gas audits were initiated. As of the close of the biennium, the audits were in various stages, but none were complete. During the initial audits, concerns were raised on appropriate treatment of deductions as payors were inconsistent in calculating royalties.

Due to the passage of HB 1300 during the 65th Legislative Session, the Department become subject to the Administrative Agencies Practice Act. The Department is currently drafting administrative rules to comply with HB 1300. Upon these rules being finalized, the Department will be reviewing all policies and will proceed with formalizing internal policies on interest rates and assessment of interest on late royalty payments.

The Department's Surface Management Division manages the surface acres owned by the various trust funds under the control of the Land Board. The major source of income from these lands comes from grazing and agricultural leases, with significant revenue generated from rights-of-way, surface damage agreements and construction aggregate mining.

The objective of surface management is to obtain a "fair market" return from the trust lands while maintaining or improving their condition and value. Private land rental rates are the basis for calculating the minimum opening bid on school trust lands. The fair market value method for establishing minimum

Appendix A – Department of Trust Lands Response

bids to ensure opening bids for pastureland which results in fair market return requires review of survey adjustments and analysis of reported values and response numbers. It is anticipated the survey data will be received in the fall of 2018. The rental market for grazing lands and cropland has remained strong, keeping pace with private land rental rates even though there has been a decrease in agricultural commodity prices. Private grassland rental market prices have been steadily increasing for over 25 years.

The Department's Surface Management Division has established a policy to perform on-site integrity inspections of each surface tract at least once every five years. The Department completed a project that will add all of the tracts that were not being inspected within the Grazing Association. Prior to the audit, trust land within grazing units in the National Grasslands has been annually inspected by the grazing associations and livestock use has been adjusted based upon weather and guidelines established by the Forest Service. There has not been a written agreement between the grazing associations and the Department, one was developed to document the relationship and reporting requirements. This project included equalizing the inspections over a five year period; 32 additional inspection stops per year will be added to the approximate 360 current statewide inspection stops.

The State Auditor's Office also completed a review of accounting information and identified the Department was not properly allocating certain expenses to the appropriate trusts, programs, and/or activities. The State Lands Maintenance Fund was created under N.D.C.C. § 15-03-01.1 to fund Department operations. It consists of fees charged for services, plus a portion of the trusts' financial assets. Due to the multi-functional nature of the Department, a review of the allocation of direct and indirect costs was completed. Effective July 2017, a direct cost allocation policy and process was implemented.

Management of Department of Trust Lands

The State Auditor identified significant improvements relating to human resources, policies and procedures, management monitoring and state archiving.

Human Resources Policies and Procedures are important as they provide structure, control, consistency, fairness and reasonableness amongst Department employees. They also ensure compliance with employment legislation and inform employees of their responsibilities and the Department's expectations. In addition, they also provide transparency in how recruitment processes will be managed, and should be easily accessible by all team leaders and employees alike. In January 2018, the Department adopted the majority of the OMB HRMS policy manual with a dozen internal policies slated for adoption in February 2018. Within the human resources policy manual, hiring practices (Chapter 4), HRMS best practices, veterans' preference (Chapter 4), and performance evaluations (Chapter 12) are addressed. Additionally, effective February 2018, the Department will no longer manage human resources internally but will be utilizing HRMS to manage all Department human resources needs.

The State Auditor identified the need for the Department to formally review policies and procedures and adopt a standardized format. The Department continues to have a mixture of various policy formats, emails and memos with a lack of periodic review. The Department acknowledges the importance of establishing a standardized format and is currently reviewing all policies. The Department adopted human resources and fiscal policies on January 26, 2018. Internal policies to supplement these policies will be reviewed and adopted on February 26, 2018. Unclaimed property policies will be reviewed in March 2018, with an expected adoption date of March 31, 2018. Information Technology and Investments will be reviewed and adoption of policies will occur by end of April 2018. Surface, Minerals and Revenue Compliance will complete a review of their policies once Administrative Rules have been approved for the divisions. Procedures for each division will be reviewed and approved with the implementation of new technology.

Appendix A – Department of Trust Lands Response

If the new technology systems will not impact the division then a review of those procedures will begin in May 2018.

As per the State Auditor, the Department needs to establish and operate monitoring activities to monitor the internal control system and evaluate the results. While the Department had established certain internal control procedures, limited monitoring was conducted. The Department completed a Control Environment and Information Technology Assessment Summary and a Fraud Risk Assessment in late 2016. The results of these assessments were issued to Commissioner Gaebe on May 19, 2017. The Department is currently reviewing the results of this assessment and implementing necessary controls and processes surrounding significant risks that were identified.

The Department maintains a large number of original documents and records related to land transactions. The Department recognizes that it is the custodian of records of unique historic value. The Records Coordinator transferred to State Archives all eligible archive material according to the State ITD Retention Schedule. Electronic records will not be managed by the same retention schedule until new IT systems are implemented across the Department.

Thank you,



Jodi Smith
Commissioner

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Wednesday, June 27, 2018
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 8:00 a.m.

Members present: Senators Jerry Klein, Dwight Cook, Judy Lee; Representatives Bert Anderson, Patrick Hatlestad, Mary Johnson, Keith Kempenich, Gary Kreidt, Andrew G. Maragos, Mike Nathe, Marvin E. Nelson

Members absent: Senator Richard Marcellais; Representatives Chet Pollert, Wayne A. Trottier

Others present: Senator Dick Dever, Bismarck and Representative Vernon Laning, Bismarck
 See [Appendix A](#) for additional persons present.

It was moved by Representative Nathe, seconded by Representative Maragos, and carried on a voice vote that the minutes of the January 10, 2018, meeting be approved as distributed.

COMMENTS BY THE CHAIRMAN

Chairman Klein reviewed of the duties and responsibilities of the Legislative Audit and Fiscal Review Committee. He said the Legislative Management appoints the members of the Legislative Audit and Fiscal Review Committee. Pursuant to North Dakota Century Code Section 54-35-02.1, he said, the committee is created:

- For the purpose of studying and reviewing the financial transactions of the state.
- To assure the collection of revenues and the expenditure of money is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with formal, objective information on revenue collections and expenditures as a basis for legislative action to improve the fiscal structure and transactions of the state.

COMMENTS BY THE STATE AUDITOR

Mr. Joshua C. Gallion, State Auditor, commented regarding the role of the State Auditor's office. He said the State Auditor's office is to protect the integrity of government to keep the public's faith and trust that their government and its officials are transparent and accountable to the people who elect them. He said the State Auditor's office has professional, independent, and objective staff who audit performance, financial transactions, operations, and adherence to laws, rules, and policies to ensure taxpayer resources are safeguarded from fraud, waste, and abuse; and to ensure resources are being used effectively in the most responsible manner.

GOVERNOR'S OFFICE - TRAVEL AND USE OF STATE RESOURCES

At the request of Chairman Klein, Mr. Gallion presented a performance audit entitled *Office of the Governor's Travel and Use of State Resources*. Mr. Gallion said the purposes of the audit include determining whether the Governor's office is using the state airplane in a prudent manner, whether the executive security provided by the Highway Patrol is a prudent use of state resources, and whether there are opportunities to improve the transparency regarding the use of state airplanes.

Mr. Gallion said the audit includes the following four recommendations:

1. The Governor's office discontinue the use of air transportation services for commuting to or from personal residences to official meetings or offices.
2. The Department of Transportation discontinue providing transportation services to nonstate employees without a business purpose.
3. The Department of Transportation ensure the state is not exposed to additional risk for nonstate employees traveling on state-owned airplanes.

19.5151.03000

4. The Department of Transportation require all agencies to submit a Request for Air Transportation form to establish a business purpose of the trip.

In response to a question from Representative Mary Johnson, Mr. Gallion said funding for the Governor's office use of the state airplane is appropriated to the Department of Transportation for the period of the audit. He said there are no generally accepted accounting principles requiring the funds to be appropriated to the Governor's office.

In response to a question from Representative Nathe, Mr. Gallion said he will provide the committee with the total costs to date for the Governor's use of the state airplane.

Representative Kempenich said the Legislative Assembly may need to consider clarifying in statute the appropriate uses of state airplanes.

In response to a question from Representative Marvin E. Nelson, Mr. Gallion said the State Auditor's office did not identify any office policies within the Governor's office relating to the appropriate staff use of the state airplane.

COMMENTS BY GOVERNOR'S OFFICE REPRESENTATIVES

At the request of Chairman Klein, Mr. Mike Nowatzki, Communications Director, Governor's office, presented information ([Appendix B](#)) regarding the performance audit of travel and use of state resources by the Governor's office. Mr. Nowatzki said performance audits are generally conducted to examine the effectiveness, economy, or efficiency of a government program or agency. He said objectives of a performance audit include comparing actual agency practices to laws or policies, seeking possible cost savings, and identifying outcomes achieved by programs or services. He said only reviewing compliance and inputs without reviewing outcomes or return on investment presents an incomplete analysis. He said the Governor's office operates within budget and complies with established rules and guidelines. He said the Governor's office disagrees with the recommendations to discontinue use of air transportation services for commuting to or from personal residences to official meetings or offices, and for the Department of Transportation to discontinue providing transportation services to nonstate employees without a business purpose. He said the Governor's office determined, with advisement from the Risk Management Division of the Office of Management and Budget, the recommendation for the Department of Transportation to ensure the state is not exposed to additional risk for nonstate employees traveling on state-owned airplanes is factually unsupported. He said the Governor's office agrees partially to the recommendation for the Department of Transportation to require all agencies to submit a Request for Air Transportation form to establish the business purpose of the trip.

In response to a question from Representative Marvin E. Nelson regarding staff use of the state airplane, Mr. Nowatzki said the majority of flights by staff members of the Governor's office are to accompany the Governor or Lieutenant Governor. He said a staff member would discuss with, and receive approval from, the Governor, Lieutenant Governor, or the Governor's Chief Administrative Officer, if there was a need for a staff member to use the state airplane.

In response to a question from Senator Cook, Mr. Nowatzki said the Governor's office provides the Department of Transportation a flight manifest before each flight, which includes passenger names. He said the Governor's office will begin providing the Department of Transportation with information regarding the business purpose of each flight.

In response to a question from Representative Kreidt, Mr. Nowatzki said the Governor's office attempts to use commercial travel for out-of-state travel whenever possible.

At the request of Chairman Klein, Mr. Tag Anderson, Director, Risk Management Division, Office of Management and Budget, presented information regarding the performance audit of travel and use of state resources by the Governor's office. Mr. Tag Anderson said pursuant to Section 32-12.2-01(8) the Risk Management Division uses the term unpaid volunteer state employee to determine whether an individual can be in a state fleet vehicle, or in limited circumstances, drive a state vehicle. He said the state has private commercial insurance for the operation of state airplanes. He said the liability coverage of the private commercial insurance is \$10 million. He said the state being exposed to additional liability for a nonstate employee being in a state airplane is remote.

In response to a question from Representative Marvin E. Nelson, Mr. Tag Anderson said a state employee driving a state fleet vehicle or riding in a state airplane is covered by Workforce Safety and Insurance.

In response to a question from Senator Cook, Mr. Tag Anderson submitted information ([Appendix C](#)) regarding the aviation insurance coverage for nonstate employees.

In response to a question from Representative Nathe, Mr. Mark Nelson, Deputy Director, Driver and Vehicle Services, Department of Transportation, said the Department of Transportation budget for air services is approximately \$2.1 million per biennium. He said he will provide the committee how much of the \$2.1 million is spent by the Governor's office.

In response to a question from Representative Kempenich, Mr. Mark Nelson said he will provide the committee with information regarding the total number of flight hours for each of the department's airplanes for the past 3 years.

In response to a question from Representative Kempenich, Mr. Mark Nelson said the costs are allocated to each agency if state employees from multiple agencies are flying on the state airplane.

VETERANS' HOME

At the request of Chairman Klein, Mr. Gallion presented a performance audit report entitled North Dakota Veterans Home. Mr. Gallion said the Veterans' Home is located in Lisbon and was established in 1891. He said the purpose of the Veterans' Home is to provide basic care and long-term care for all eligible veterans and all honorably discharged soldiers of the North Dakota National Guard who may become permanently disabled from any cause while in line and discharge of duty, and spouses and surviving spouses if they meet the requirements for admission. He said the purpose of the audit includes identifying opportunities to better position the Veterans' Home, and identifying opportunities to strengthen the monitoring activities of the Veterans' Home.

Mr. Gallion said the audit includes the following five recommendations:

1. Seek assistance to create and implement a strategic plan, and report on the status of the strategic plan to the Administrative Committee on Veterans' Affairs (ACOVA).
2. Ensure policies are documented in the appropriate level of detail to allow management to effectively monitor the control activities.
3. Strengthen monitoring activities to ensure policies and written plans are carried out.
4. Ensure performance evaluations are conducted at least annually.
5. Establish a process to periodically monitor the accuracy and completeness of mineral royalty income.

Senator Lee expressed concern that Veterans' Home responses to audit findings were not included in the report in their entirety. She suggested all comments from the audited entity be included in the performance audit reports or in appendices to the audit report. She also expressed concerns regarding information provided in the report relating to the facility's bed mix. She said many facilities in the state for seniors are experiencing a decline in demand. She said at the same time there is an increase in demand for assisted living and senior housing. She said it is important to recognize the changes in choices for individuals.

Representative Kempenich said the Veterans' Home generally costs more than a facility in a local community.

Representative Kreidt said recent changes to regulations at the federal level are allowing more veterans to have access to services locally.

COMMENTS BY VETERANS' HOME REPRESENTATIVES

At the request of Chairman Klein, Mr. Mark B. Johnson, Administrator, North Dakota Veterans' Home, provided comments (Appendix D) regarding the performance audit of the Veterans' Home. Mr. Mark Johnson said the Veterans' Home partially agrees with the recommendation to seek assistance to create and implement a strategic plan and report on the status of the strategic plan to ACOVA. He said although there has been a recent decline in basic-care bed occupancy, it is anticipated an increase in number of Vietnam Veterans will be needing these types of services in future years. He said the department agrees with the recommendation to ensure performance evaluations are conducted at least annually.

DEPARTMENT OF VETERANS' AFFAIRS

At the request of Chairman Klein, Mr. Gallion presented a performance audit report entitled North Dakota Department of Veterans Affairs. Mr. Gallion said the Department of Veterans' Affairs is established under the supervision and control of the Commissioner of Veterans' Affairs. He said duties of the Commissioner include coordinating agencies to render services and benefits to returning veterans; overseeing the implementation of programs and benefits authorized by statute; assisting veterans or their widows, administrators, executors, guardians, or heirs, with processing claims; advising veterans with utilizing the Servicemen's Readjustment Act of 1944, or any similar measures provided by the federal government; providing counties with training of county

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veterans' service officers; providing county veterans' service officers with educational materials; assisting county veterans' service officers with the performance of their duties; disseminating information; and other items necessary to carry out the intent and purposes of Chapter 37-18. He said the purpose of the audit includes identifying opportunities to improve the administration of the veterans aid loan program, identifying opportunities to improve the administration of the hardship assistance grants program, and identifying opportunities to enhance the use of federal funds awarded pursuant to the highly rural transportation grant program for administrative costs.

Mr. Gallion said the audit includes the following six recommendations:

1. Establish underwriting guidelines for determining an applicant's financial ability to repay the loan.
2. Adhere to ACOVA loan collection policies and procedures for delinquent loans.
3. Comply with Information Technology Department requirements for outsourcing.
4. Review policies for clarity, continued relevance, effectiveness in achieving the objectives of the hardship assistance grants program, and propose policy refinements to ACOVA for approval.
5. Obtain an effective information system to meet the objectives of the hardship assistance grants program.
6. Use state resources and expend private funds pursuant to state laws.

COMMENTS BY DEPARTMENT OF VETERANS' AFFAIRS REPRESENTATIVES

At the request of Chairman Klein, Mr. Lonnie Wangen, Commissioner, Department of Veterans' Affairs, provided comments ([Appendix E](#)) regarding the performance audit of the Department of Veterans' Affairs. Mr. Wangen said the department agrees with the recommendations provided in the audit report. He said the department does have underwriting guidelines for veteran loans, but will review those guidelines. He said the department will review its loan collection policies and procedures. He said the department will comply with the Information Technology Department's requirements for outsourcing. He said the department will review its policies regarding the hardship assistance grants program, and obtain an effective information system to meet the objectives of the program. He said the department will ensure compliance with use of state resources and private funds.

In response to a question from Representative Kreidt, Mr. Gallion said the Department of Veterans' Affairs is depositing funds received from the private, nonprofit Impact Foundation into the veterans' postwar trust fund. He said the fund has a continuing appropriation to allow the department to spend the interest earnings from the trust fund, but the trust fund does not have a continuing appropriation for the funds received from the Impact Foundation. He said the department anticipates proposing changes to Section 37-18-12 from the next Legislative Assembly to address the issue. He said the Impact Foundation funds pass through the department to assist veterans.

ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS - OVERSIGHT STRUCTURE

At the request of Chairman Klein, Mr. Gallion presented a performance audit report entitled North Dakota Veterans Affairs Oversight Structure. Mr. Gallion said the veterans' affairs oversight structure includes five veteran service nominating organizations, including Veterans of Foreign Wars, the American Legion, Disabled American Veterans, Veterans of World War II, Korea, and Vietnam and Vietnam Veterans of America. He said ACOVA is responsible for the organization, policy, and general administration of all veterans' affairs in the state. He said each nominating organization has three voting members on ACOVA. He said a nominating organization submits two nominations to the Governor for a 3-year appointment to ACOVA. He said ACOVA also includes advisory capacity members, including the Adjutant General, the Executive Director of Job Service North Dakota, and the Director of the United States Department of Veterans Affairs. He said ACOVA oversees the veterans' postwar trust fund, which is invested and maintained by the State Treasurer's office. He said ACOVA appoints a seven-member North Dakota Veterans' Governing Board. The board appoints the administrator for the Veterans' Home. He said ACOVA appoints the Commissioner of the Department of Veterans' Affairs.

Mr. Gallion said the audit report provides observations regarding nominating organizations, including aging membership and challenges of recruiting newer veterans, inconsistent nominating process and nominees lack of interest in serving, and other veterans service organizations not being eligible; Administrative Committee on Veterans Affairs, including sustainability concerns, the need to broaden veteran representation, and governing members and qualifications; State Treasurer's office, including investment strategy input for the veterans' postwar trust fund, third-party investment management fees, and strained working relationships; Department of Veterans' Affairs, including duplication of services, impact of budget reductions on ability to provide assistance, open records requests, timeliness, and accuracy of information being provided to legislators; county and tribal veterans service officers, including limited requirements, lack of oversight, and lack of cooperation; and overall lack of a unified message among stakeholders. He said the report does not include any findings or recommendations.

COMMENTS BY ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS REPRESENTATIVES

At the request of Chairman Klein, Mr. Dean Overby, Chairman, Administrative Committee on Veterans' Affairs, provided comments (Appendix F) regarding the performance audit of the administrative structure of ACOVA. Mr. Overby said the organizational structure of ACOVA has proven to be sustainable and has a history of evolving to represent the current veteran population. He said each organization sets its own methods for vetting nominees. He said any veteran can be appointed to ACOVA regardless of membership in a veteran service organization. He said ACOVA and the Department of Veterans' Affairs work with many local, state, and federal agencies to serve the veterans in the state. He said ACOVA also works with the Attorney General's office and the State Treasurer's office relating to the veterans' postwar trust fund. He said the committee maintains a good working relationship with both offices.

Mr. Overby said staff reductions at the Department of Veterans' Affairs has affected service to veterans.

Mr. Overby said ACOVA and the Department of Veterans' Affairs bring a unified message to the Legislative Assembly each session. He said there may be an appearance of a lack of a unified message because legislators may introduce bills relating to veterans without prior knowledge from ACOVA or the Department of Veterans' Affairs. In addition, he said, veterans and other citizens may testify on their own behalf regarding issues relating to veterans.

In response to a question from Senator Cook, Mr. Overby said a number of organizations offer veterans service officer accreditation. He said ACOVA works with county veterans service officers to be accredited by the National Association of County Veterans Service Officers.

In response to a question from Chairman Klein, Mr. Overby expressed concern the State Auditor's office did not seek input from members of ACOVA or from leadership of the veterans organizations operating in the state when conducting the performance audit.

Ms. Kelly L. Schmidt, State Treasurer, provided comments regarding the performance audit of the administrative structure of ACOVA. She expressed concern that the performance audit report identifies conflict between the State Treasurer's office and ACOVA and the Department of Veterans' Affairs. She said the State Treasurer's office works well with ACOVA and the Department of Veterans' Affairs and provides them with information and understanding regarding the veterans' postwar trust fund.

In response to a question from Representative Kreidt, Ms. Schmidt said the current balance of the veterans' postwar trust fund is approximately \$6.3 million. She said the State Treasurer's office provides a report to ACOVA at the end of each fiscal year regarding the fund earnings.

In response to a question from Representative Kempenich, Ms. Schmidt said the definition of earnings for the veterans' postwar trust fund is based on the Uniform Principal and Income Act. She said the total earnings for the 2015-17 biennium were \$435,372, of which \$218,369 was distributed to ACOVA. She said the remaining funds were retained as principal for the fund. She said the allocation of the fund is 60 percent equity and 40 percent fixed income. She said the fund earned 8.31 percent annual percentage rate of return for the 2015-17 biennium.

NORTH DAKOTA UNIVERSITY SYSTEM - EMERGENCY PREPAREDNESS

At the request of Chairman Klein, Mr. Craig Hashbarger, Audit Manager, State Auditor's office, presented performance audit reports entitled Emergency Preparedness at Bismarck State College, Emergency Preparedness at North Dakota State College of Science, Emergency Preparedness at North Dakota State University, and Emergency Preparedness at Williston State College. Mr. Hashbarger said the State Board of Higher Education adopted Policy No. 906 in May 2012. He said Policy No. 906 establishes the requirement for all North Dakota University System institutions to develop and implement comprehensive emergency management plans. He said, in addition to Policy No. 906, the State Auditor's office also reviewed outside sources for guidance on best practices for an emergency preparedness plan. He said the United States Department of Education and six other federal agencies developed *A Guide for Developing High Quality Emergency Operation Plans for Institutions of Higher Education* in 2013, which was also used for the audit. He said Policy No. 906 and the federal guide provide a process for identifying high-risk areas where emergencies could occur at an institution level, and information regarding ways to develop an emergency operations plan to address those high-risk areas.

Mr. Hashbarger said the goal of the *Emergency Preparedness at Bismarck State College* performance audit was to determine whether the Bismarck State College emergency operation plan is designed and implemented pursuant to State Board of Higher Education policies and best practices, and whether its continuity of operations plan is designed and implemented pursuant to best practices. He said the State Auditor's office determined Bismarck State

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College has developed an emergency operation plan; however, there was no effective continuity of operation plan developed or implemented and several opportunities for improvement were identified. He said the emergency preparedness performance audit report for Bismarck State College includes the following seven recommendations:

1. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards, and incorporate into the emergency operation plan.
2. Develop and include a comprehensive base plan in the emergency operation plan.
3. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
4. Develop and implement formalized training requirements for emergency response personnel and incorporate into the emergency operation plan.
5. Identify minimum exercise requirements relating to conducting and reviewing exercises in the emergency operations plan.
6. Implement formal policies for periodically reviewing and revising the emergency operations plan.
7. Implement a comprehensive continuity of operations plan.

Mr. Hashbarger said the goal of the *Emergency Preparedness at North Dakota State College of Science* performance audit was to determine whether the North Dakota State College of Science emergency operation plan is designed and implemented pursuant to State Board of Higher Education policies and best practices, and whether its continuity of operations plan is designed and implemented pursuant to best practices. He said the State Auditor's office determined North Dakota State College of Science has developed an emergency operation plan; however, there was no effective continuity of operation plan developed or implemented and several opportunities for improvement were identified. He said the emergency preparedness performance audit report for North Dakota State College of Science includes the following six recommendations:

1. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards, and incorporate into the emergency operation plan.
2. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
3. Incorporate training requirements, including assignment of training responsibilities to team members in its comprehensive emergency operation plan.
4. Expand the exercise requirements and assignment of responsibilities in its emergency operation plan based on potential threats determined to be high risk.
5. Implement a process for formal approval on revisions to its emergency operation plan.
6. Implement a comprehensive continuity of operations plan.

Mr. Hashbarger said the goal of the *Emergency Preparedness at North Dakota State University* performance audit was to determine whether North Dakota State University has an effective strategy regarding the development and implementation of an emergency operations plan, and whether it has an effective continuity of operations plan. He said the State Auditor's office determined North Dakota State University has developed an emergency operation plan; however, there was no effective continuity of operation plan developed or implemented and several opportunities for improvement were identified. He said the emergency preparedness performance audit report for North Dakota State University includes the following eight recommendations:

1. Establish a collaborative planning team consisting of a cross section of various stakeholders of the university and identify, assign, and document roles and responsibilities to members of the collaborative planning team.
2. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards and incorporate the identified threats and hazards in the formal risk assessment into the emergency operation plan.
3. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
4. Incorporate procedures for potential emergencies based on disaster-specific goals and objectives in the emergency operation plan.
5. Incorporate minimum training requirements into the comprehensive emergency operation plan pursuant to State Board of Higher Education Policy No. 906 and ensure all Incident Command System positions have documented minimum training requirements.
6. Identify minimum requirements related to conducting and reviewing exercises in the emergency operation plan pursuant to State Board of Higher Education Policy No. 906.

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7. Implement formal policies for periodically reviewing and revising the emergency operation plan involving the collaborative planning team.
8. Implement a comprehensive continuity of operations plan.

Mr. Hashbarger said the goal of the *Emergency Preparedness at Williston State College* performance audit was to determine whether Williston State College emergency operations and continuity of operations plans are designed and implemented pursuant to State Board of Higher Education policies and best practices. He said the State Auditor's office determined Williston State College has an emergency operations plan, but there are opportunities to improve the design and implementation of the plan to be consistent with State Board of Higher Education policy and best practices. He said the State Auditor's office also determined Williston State College does not have a comprehensive continuity of operations plan. He said the emergency preparedness performance audit report for Williston State College includes the following eight recommendations:

1. Identify and document the members of the collaborative planning team in the emergency operations plan and develop and implement roles and responsibilities for members of the collaborative planning team and document them in the emergency operations plan.
2. Implement a formal risk assessment process to periodically identify and evaluate potential threats and hazards and incorporate the identified threats and hazards identified in the formal risk assessment into the emergency operations plan.
3. Develop and include a comprehensive base plan in the emergency operations plan pursuant to *A Guide for Developing High Quality Emergency Operations Plans for Institutions of Higher Education* and the State Board of Higher Education Policy No. 906.
4. Establish formalized disaster-specific related goals and objectives for each significant emergency incident.
5. Develop and implement formalized training requirements for emergency response personnel and incorporate them into the emergency operations plan pursuant to State Board of Higher Education Policy No. 906.
6. Develop and implement formalized exercise requirements for responding to emergency threats and hazards.
7. Implement formal policies for periodically reviewing and revising the emergency operations plan regarding the collaborative planning team.
8. Implement a comprehensive continuity of operations plan.

COMMENTS BY UNIVERSITY SYSTEM REPRESENTATIVES

At the request of Chairman Klein, Mr. David Krebsbach, Director of Finance, North Dakota University System, provided comments ([Appendix G](#)) regarding the performance audit reports relating to the emergency preparedness at Bismarck State College, North Dakota State College of Science, North Dakota State University, and Williston State College. Mr. Krebsbach said the University System supports the responses provided by each institution regarding the recommendations made by the State Auditor's office. He said the University System is confident each institution will work to meet the goals established.

In response to a question from Representative Nathe, Mr. Krebsbach said he will provide the committee with information regarding whether the University System has collaborated with the state Department of Emergency Services relating to implementing an emergency operations plan.

In response to a question from Representative Hatlestad, Mr. Krebsbach said each institution is in the process of implementing the recommendations provided in the performance audit reports.

At the request of Chairman Klein, Mr. Dave Clark, Executive Vice President, Bismarck State College, commented regarding the performance audit report relating to the emergency preparedness at Bismarck State College. Mr. Clark said Bismarck State College has a crisis management team that meets quarterly. He said Bismarck State College also conducts tabletop exercises and works with local fire departments and the Risk Management Division of the Office of Management and Budget regarding assessments.

At the request of Chairman Klein, Mr. Dennis Gladen, Vice President, Administrative Affairs, North Dakota State College of Science, commented regarding the performance audit report relating to the emergency preparedness at North Dakota State College of Science. Mr. Gladen said the North Dakota State College of Science conducts tabletop exercises and actual drills. He said the North Dakota State College of Science plans to better document its training exercises.

DEPARTMENT OF TRUST LANDS - PERFORMANCE AUDIT FOLLOWUP

Chairman Klein called on Mr. Don LaFleur, Performance Audit Manager, State Auditor's office, who presented a report entitled *Status of Recommendations North Dakota Department of Trust Lands*. Mr. LaFleur said the audit was a followup to the performance audit reports entitled *Department of Trust Lands - Energy Infrastructure and Impact Office (November 6, 2015)*; *Department of Trust Lands - Trust Assets and Department Resources (March 18, 2016)*; and *Department of Trust - Lands Unclaimed Property (January 5, 2016)*. He said the three performance audits have been consolidated into one performance audit followup report and the recommendations from the three reports have been consolidated into categories. He said overall the Department of Trust Lands has made significant improvements since the new commissioner began in November 2017. He said the three remaining barriers include changing administrative rules, implementing new information technology systems, and updating department policies and procedures.

In response to a question from Representative Kreidt, Mr. LaFleur said the State Auditor's office generally conducts one followup for a performance audit unless the committee requests the State Auditor's office to do more.

UNIVERSITY SYSTEM INSTITUTIONS TUITION WAIVERS AND STUDENT STIPENDS - PERFORMANCE AUDIT FOLLOWUP

At the request of Chairman Klein, Mr. LaFleur presented a report entitled *Status of Recommendations Tuition Waivers and Student Stipends*. Mr. LaFleur said the audit is a followup to the performance audit report entitled *Tuition Waivers and Student Stipends (March 20, 2015)*. He said the performance audit followup report identifies that of the 10 recommendations, four were fully implemented, four were partially implemented, and two were not implemented.

COMMENTS BY DEPARTMENT OF TRUST LANDS REPRESENTATIVES

At the request of Chairman Klein, Ms. Jodi Smith, Commissioner, Department of Trust Lands, provided comments ([Appendix H](#)) regarding the performance audit followup report of the Department of Trust Lands relating to the Energy Infrastructure and Impact Office, trust assets and department resources, and Unclaimed Property Division. Ms. Smith said the recommendations resulted in improved operations of the department and has contributed to improving the overall effectiveness and efficiency of the department. She said efforts have also strengthened staff recruitment, retention, morale, and the functioning of the department. She said the department will continue to address and complete the recommendations.

In response to a question from Representative Kreidt, Ms. Smith said the department is working with the Attorney General's office to draft administrative rule changes. She said department policies and procedures need to align with administrative rule changes. She said some of the department policies will be added to the administrative rules. She said the department has completed the notice of intent to award for the information technology system updates.

In response to a question from Representative Kempenich, Ms. Smith said the department does not anticipate the information technology system updates to exceed the amount appropriated for the project for the 2017-19 biennium.

In response to a question from Representative Marvin E. Nelson, Ms. Smith said it can be difficult to identify whether companies are submitting unclaimed property because the state does not require companies to submit a negative report.

In response to a question from Representative Marvin E. Nelson, Ms. Smith said approximately 92 percent of the royalties the department receives from sovereign minerals under the Missouri River and Lake Sakakawea area are from 20 organizations. She said the department is reviewing possible statutory or administrative rule changes. She said that although the department is receiving royalty payments from these organizations, it can be difficult to obtain documentation supporting the amount of the royalty payment. She said it is difficult for the department to ensure the payments are correct.

COMMENTS BY UNIVERSITY SYSTEM REPRESENTATIVES

At the request of Chairman Klein, Mr. Krebsbach commented ([Appendix I](#)) regarding the performance audit followup report of the University System institutions tuition waivers and student stipends. Mr. Krebsbach said the University System has made significant improvements in the reporting and monitoring of tuition waivers and student stipends. He said a new tuition model adopted by the State Board of Higher Education will be implemented by the fall of 2019. He said the new model will reduce the use of student fees. In addition, he said, the State Board of Higher Education revised its policies to now require all institutions to establish procedures for all waivers.

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In response to a question from Representative Kempenich, Mr. Krebsbach said the University System is reducing course and program fees instead of increasing tuition waivers. He said the change will provide better transparency.

In response to a question from Senator Lee, Mr. Krebsbach said the University System is in the process of creating a data form that each institution will complete regarding the institution's waivers and stipends. He said each institution will also be required to submit an annual form identifying any changes to current or new waivers or stipends. He said the new form will help standardize the process and provide consistent reporting by all institutions.

In response to a question from Representative Nathe, Mr. Krebsbach said he will provide the committee with information regarding the extent to which the University System has information available on students receiving a tuition waiver that remain in the state after graduation.

In response to a question from Representative Marvin E. Nelson, Mr. Krebsbach said he will provide the committee with information regarding agreements the University System has entered into with other states or countries.

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Chairman Klein called on Ms. Katie Williams, Certified Public Accountant, Eide Bailly LLP, who presented a report entitled Financial Statements December 31, 2017 and 2016 Beginning Farmer Revolving Loan Fund. Ms. Williams reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled Financial Statements December 31, 2017 and 2016 Community Water Facility Loan Fund. She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled Financial Statements September 30, 2017 and 2016 Guaranteed Student Loan Program. She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled Financial Statements December 31, 2017 and 2016 Public Finance Authority (An Agency of the State of North Dakota). She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Williams presented a report entitled Financial Statements December 31, 2017 and 2016 and Statement of Appropriated Expenditures Biennium Ended June 30, 2017 Bank of North Dakota. She reviewed the auditor's responses to the committee guidelines and said the report identified one noncompliance finding related to compliance with the federal Family Education Loan program.

Chairman Klein called on Mr. Tim Porter, Chief Financial Officer, Bank of North Dakota, to present information (Appendix J) regarding reports entitled College SAVE the Future (A Private Purpose Trust Fund of the State of North Dakota) Basic Financial Statements December 31, 2017 and 2016 and Supplementary Information December 31, 2017 (With Independent Auditor's Report Thereon), and a letter (Appendix K) from Thomas & Thomas LLP regarding the report. Mr. Porter said the Bank of North Dakota acts as trustee for the College SAVE plan. He said Ascensus Broker Dealer Services, Inc. is the plan manager and The Vanguard Group, Inc. is the investment manager. He said the College SAVE audit was conducted by Thomas & Thomas LLC. He said the report contains an unqualified opinion and does not include any findings or recommendations.

Chairman Klein called on Mr. Jason Ostroski, Audit Principal, CliftonLarsonAllen LLP, who presented a report entitled North Dakota Public Employees Retirement System Financial Statements Years Ended June 30, 2017 and 2016. Mr. Ostroski reviewed the auditor's responses to the committee guidelines and said the report includes one significant accounting policy change related to Governmental Accounting Standards Board (GASB) Statement No. 74.

Mr. Ostroski presented a report entitled North Dakota Public Employees Retirement System Schedules of Employer Allocations and Pension Amounts By Employer Year Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

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Mr. Ostroski presented a report entitled North Dakota Public Employees Retirement System Schedules of Employer Allocations and OPEB Amounts By Employer Year Ended June 30 2017. He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

In response to a question from Representative Johnson, Ms. Sharon Schiermeister, Chief Operating Officer, Public Employees Retirement System, said assumptions used by actuaries to calculate the pension liabilities are evaluated every 5 years.

Mr. Ostroski presented a report entitled North Dakota Retirement and Investment Office Financial Statements June 30, 2017 and 2016. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Ostroski presented a report entitled North Dakota Retirement and Investment Office - North Dakota Teachers' Fund for Retirement Bismarck, North Dakota Schedules of Employer Allocations and Pension Amounts by Employer June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report does not include any findings or recommendations.

In response to a question from Representative Hatlestead, Mr. David Hunter, Executive Director and Chief Investment Officer, Retirement and Investment Office, said the actual rate of return on investments is compared to projections on a regular basis. He said the actual long-term rate of return for the 30-years ended June 30, 2017, was 7.84 percent for the Public Employees Retirement System and 7.85 percent for the Teachers' Fund for Retirement. He said for the 5 years ended June 30, 2017, the rate of return was approximately 9.1 percent. He said the actual rate of return for the quarter ended March 31, 2018, was approximately 8 percent.

Chairman Klein called on Mr. Lowell Nelson, Certified Public Accountant, Overmoe & Nelson, Ltd., who presented by teleconference a report entitled North Dakota Private Investigation and Security Board Audited Financial Statements For the Years Ending December 31, 2016 and 2015. Mr. Lowell Nelson reviewed the auditor's responses to the committee guidelines and said the report identified three internal control findings relating to segregation of duties, inadequate design of internal control, and inadequate design of monitoring controls.

INTERNAL CONTROL AND COMPLIANCE REPORT

Chairman Klein called on Mr. Ronald I. Tolstad, Jr., Administrative Manager and Technical Specialist, State Auditor's office, who presented a report entitled Comprehensive Annual Financial Report State of North Dakota Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2017. Mr. Tolstad said the State Auditor's office has audited the general purpose financial statements for the state of North Dakota for the year ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report contains an unmodified opinion. He said the report identified several significant accounting policy changes relating to GASB Statement No. 74 regarding financial reporting for post-employment benefit plans other than pension plans; GASB Statement No. 77 regarding tax abatement disclosures; GASB Statement No. 78 regarding pensions provided through certain multiple-employer defined benefit pension plans; GASB Statement No. 79 regarding certain external investment pools and pool participants; GASB Statement No. 80 regarding blending requirements for certain component units; an amendment to GASB Statement Nos. 14 and 82 regarding pension issues; and amendments to GASB Statement Nos. 67, 68, and 73. He said opinions of the audit were not modified because of the implementation of the GASB pronouncements.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Ms. Rachel Kmetz, Accounting Manager, Office of Management and Budget, presented a report entitled Comprehensive Annual Financial Report State of North Dakota for the Fiscal Year Ended June 30 2017. She reviewed the information contained in the report and a supplemental report entitled 2015-17 Biennium Budget and Actual Detail (Budgetary Basis) State of North Dakota for the Biennium Ended June 30, 2017. Copies of both reports are on file in the Legislative Council office.

INTERNAL CONTROL AND COMPLIANCE REPORT

Chairman Klein called on Ms. Robin Hoffman, Audit Manager, State Auditor's office, who presented a report entitled North Dakota University System Governance Communication Including the Report on Internal Control, Compliance, and Other Matters for the Year Ended June 30, 2017. Ms. Hoffman reviewed the auditor's responses to the committee guidelines and said the report identified one prior period audit recommendation that was not implemented relating to review of affiliated organization operating agreements.

UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

Ms. Robin Putnam, Director of Financial Reporting, North Dakota University System, presented a report entitled North Dakota University System Annual Financial Report June 30, 2017. She said the report for the University System includes the 11 public colleges and universities, the University System office, Core Technology Services, and 10 foundations which are required by government accounting standards to be included as component units of the University System. She said an unmodified opinion was issued on the business-type activities and a qualified opinion was issued on the aggregate discretely presented component units in the University System's financial statements. As of June 30, 2017, she said the University System had total net assets of \$1.420 billion.

Ms. Putnam said total operating revenues of the University System increased 1 percent from fiscal year 2016 as a result of increases in tuition and fees and decreases in grants and contracts, sales and services of educational departments, and auxiliary enterprises. She said the annual degree credit headcount for the fall of 2016 was 47,236.

AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS

Ms. Hoffman presented a report entitled Bismarck State College Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Hoffman presented a report entitled North Dakota State College of Science Wahpeton, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report identified one internal control finding relating to monthly bank reconciliations.

Ms. Hoffman presented a report entitled Dickinson State University Dickinson, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report identified four internal control findings relating to inadequate journal entry approval, inadequate nepotism and conflicts of interest policies, noncompliance of procuring commodities and services, and inadequate controls for capital improvements.

Ms. Hoffman presented a report entitled Minot State University Minot, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report identified one significant audit adjustment relating to the impairment loss on the Beaver Lodges.

Ms. Hoffman presented a report entitled Valley City State University Valley City, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report identified three internal control findings relating to noncompliance of procuring commodities and services, construction management at risk for the heat plant replacement project, and lack of controls relating to the wellness center project. She said the report identified one significant audit adjustment relating to construction in progress for the heat plant.

Chairman Klein called on Ms. Allison Bader, Audit Manager, State Auditor's office, who presented a report entitled Department of Human Services Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report identified 16 current internal control findings and 11 prior audit recommendations that were not implemented.

Ms. Bader said the 11 prior audit recommendations not implemented relate to:

- Improvements to restrict payments for deceased or incarcerated individuals;
- Failure to suspend providers and notify parents;
- Inconsistent licensing procedures;
- Inconsistent procedures to verify records;
- Incomplete methods to verify health and safety requirements;
- Licenses becoming effective before background checks performed;
- Lack of unannounced child care program inspections;
- Child care providers not meeting licensing requirements;
- Lack of monitoring corrective orders and imposition of sanctions;
- Ineffective monitoring procedures for child care licensing; and
- Lack of online child care provider records.

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Ms. Bader said the report identifies 16 current audit recommendations relating to:

- Inadequate controls for the drug rebate system;
- Child care providers being licensed after confirmed child abuse and neglect;
- Improper procedures for memorandum of understanding agreements;
- Improper background checks for child care licensing;
- Lack of issuance, tracking, and resolution of correction orders;
- Inadequate verification of child records;
- Incomplete background checks;
- Lack of policy for foster care memorandum of understanding agreements;
- Lack of evaluation of financial stability for family foster care providers;
- Untimely response to reports of child abuse or neglect;
- Inaccurate child abuse and neglect index;
- Inconsistent analysis of child abuse or neglect;
- Lack of identification of nonsubject parents;
- Improper retention and use of child abuse and neglect records;
- Lack of data integrity of child abuse and neglect information; and
- Inconsistent monitoring of child protection services.

Chairman Klein called on Mr. Christopher D. Jones, Executive Director, Department of Human Services, who commented regarding the audit report of the Department of Human Services for the fiscal years ended June 30, 2017 and 2016. Mr. Jones said although he agrees with the recommendations in the audit, the department is in compliance with federal and state laws. He said the department also reviews other states programs when identifying best practices for its programs.

In response to a question from Representative Kreidt, Mr. Jones said the department is planning to streamline the child care licensing process.

In response to a question from Representative Kreidt, Mr. Dean Sturn, Foster Care Administrator, Children and Family Services Division, Department of Human Services, said the department evaluates the financial stability of a family foster care provider. He said a licensing worker also conducts three visitations into the home and obtains three personal references. He said the department also requires annual licensing. He said the department has never revoked a family foster care license because of the lack of financial means.

Chairman Klein called on Mr. Ed Nagel, Director, State Auditor's office, who presented a report entitled Judicial Branch Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. Mr. Nagel reviewed the auditor's responses to the committee guidelines and said the report identified one internal control finding relating to lack of controls for accounts receivable adjustments.

Chairman Klein called on Ms. Sally Holewa, State Court Administrator, Supreme Court, who provided comments regarding the audit report of the judicial branch for the fiscal years ended June 30, 2017 and 2016. Ms. Holewa said the audit did not identify any improper writeoffs. She said the judicial branch created a process that provides for administrators to review clerks' files because of the large number of writeoffs that occur each year. She said one of the counties did not follow the process in fiscal year 2016 because of staff reductions.

Mr. Nagel presented a report entitled Office of the Governor Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report identified one internal control finding relating to lack of blanket bond coverage.

Mr. Nagel presented a report entitled Office of Administrative Hearings Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled North Dakota Department of Health Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled Department of Commerce Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled Aeronautics Commission Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled North Dakota Lottery Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled North Dakota Parks and Recreation Department Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled North Dakota Racing Commission Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled Department of Labor and Human Rights Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Bader presented a report entitled Department of Agriculture Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Ms. Bader presented a report entitled North Dakota Council on the Arts Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. She reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled Industrial Commission Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report identified one internal control finding relating to untimely approval and no records retention of meeting minutes.

Mr. Nagel presented a report entitled Department of Public Instruction Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report identified one internal control finding relating to noncompliance with appropriation laws.

Mr. Nagel presented a report entitled Office of State Treasurer Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

Mr. Nagel presented a report entitled State Water Commission Bismarck, North Dakota Audit Report for the Biennium Ended June 30, 2017. He reviewed the auditor's responses to the committee guidelines and said the report does not include any findings or recommendations.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

The Legislative Council staff distributed a report (Appendix L) to the committee from the Department of Financial Institutions relating to the Bank of North Dakota.

The Legislative Council staff distributed a memorandum entitled Summary of Audit Reports Not Selected for Presentation.

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Representative Kreidt requested the audit report for the State Electrical Board for the fiscal years ended June 30, 2017 and 2016, be presented at the next committee meeting.

Chairman Klein said the committee will vote to accept the audit reports that were presented today at the next committee meeting.

It was moved by Representative Maragos, seconded by Representative Kreidt, and carried on a voice vote that the meeting be adjourned.

No further business appearing, Chairman Klein adjourned the meeting at 3:30 p.m.

Michael C. Johnson
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:12