



North Dakota Legislative Council

Prepared for the Legislative Audit and Fiscal Review Committee
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LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE - STATUTORY DUTIES AND RESPONSIBILITIES FOR THE 2023-25 BIENNIUM

The Legislative Management by statute appoints a Legislative Audit and Fiscal Review Committee. Pursuant to North Dakota Century Code Section 54-35-02.1, 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.

STATUTORY DUTIES AND RESPONSIBILITIES

The committee is charged by statute or Legislative Management assignment with the following duties and responsibilities for the 2023-25 biennium:

1. **State Fair Association** - Receive annual audit reports from the State Fair Association pursuant to Section 4.1-45-17.
2. **Ethyl alcohol and methanol producers** - Receive annual audit reports from any corporation that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 10-19.1-152, and receive annual audit reports from any limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state pursuant to Section 45-10.2-115.
3. **Department of Health and Human Services' accounts receivable** - Receive annual reports on the status of accounts receivable for the Department of Health and Human Services and the Life Skills and Transition Center pursuant to Sections 25-04-17 and 50-06.3-08.
4. **Low-risk incentive fund** - Receive annual audit reports and economic impact reports from the North Dakota low-risk incentive fund. Section 26.1-50-05 provides for the audit report to be submitted to the Legislative Council. The Legislative Management has assigned the responsibility to this committee.
5. **North Dakota Stockmen's Association** - Receive a biennial audit report from the North Dakota Stockmen's Association. Section 4.1-72-08 provides for the audit report to be submitted electronically to the Legislative Council. The Legislative Management has assigned the responsibility to this committee.
6. **Job Service North Dakota** - Receive a performance audit report, upon the request of the committee, for Job Service North Dakota pursuant to Section 52-02-18.
7. **Performance audits** - The State Auditor is to conduct or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by the Legislative Assembly or this committee. When determining the necessity of a performance audit, the committee shall consider:
 - a. The potential cost-savings or efficiencies that may be gained as a result of the performance audit;
 - b. The staff resources of the State Auditor's office and the state agency being audited which will be required to conduct the audit;
 - c. The potential for discovery of noncompliance with state law or legislative intent regarding the program or agency; and
 - d. The potential for the performance audit to identify opportunities for program improvements.

8. **Frequency of audits** - Determine the frequency of audits or reviews of state agencies pursuant to Section 54-10-01.
9. **Political subdivisions** - Determine if the State Auditor is to perform audits of political subdivisions on a more frequent basis than once every 2 years pursuant to Section 54-10-13 and direct the State Auditor to audit or review the accounts of any political subdivision pursuant to Section 54-10-15.
10. **Study and review audit reports** - Pursuant to Section 54-35-02.2, the committee is charged with the following responsibilities:
 - a. To study and review audit reports selected by the committee from those submitted by the State Auditor.
 - b. Consider and approve contract services related to performing duties required by the federal government.
 - c. To confer with the State Auditor regarding the audit reports reviewed by the committee.
 - d. As necessary, to confer with representatives of state departments, agencies, and institutions audited in order to obtain information regarding fiscal transactions and governmental operations.
 - e. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within 2 bienniums, which the committee determines critically important, the committee may recommend the Legislative Assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium.
11. **Review updates to government auditing standards and develop guidelines** - Each biennium, pursuant to Section 54-35-02.10, the committee, in consultation with the State Auditor, shall review updates to government auditing standards and develop guidelines for the contents of state agency audit reports. The committee when developing guidelines shall consider applicable auditing standards, sound financial practices, compliance with laws and legislative intent, data analyses, and the opportunity to improve the efficient and effective operations of state agencies.
12. **Audit report distribution policies and practices** - Receive a biennial report from the State Auditor regarding final report distribution policies and practices and any final audit reports released to the public prior to distribution of the final audit report to all individuals charged with the governance of the audit client pursuant to Section 4 of Senate Bill No. 2004 (2023).
13. **Audit communication and processes** - Receive a quarterly report from the State Auditor regarding communication processes with audited entities and any changes to the processes; billing practices and procedures, including the use of cost estimates for audits, an itemized invoicing methodology, and a defined change order process for audits that exceed the original estimate; information on audits completed, including the name of the audited organization, organization type, audit type, audit period, estimated and actual hours and costs, and total audit costs and cost as a percentage of the audited organization's operating budget; and audit schedules, including audits performed by private firms and audits performed by the State Auditor's office pursuant to House Bill No. 1508 (2023).

REQUESTS AND RECOMMENDATIONS DURING PREVIOUS INTERIMS

The committee has made various recommendations and requests during past interims, including:

1. **Discussion of audit findings prior to presentation of the report** - The State Auditor should consider discussing audit findings with appropriate boards or commissions prior to the audit report being presented to the committee.
2. **Actions taken by audited agency** - Audited agencies, boards, and commissions should report to the committee at the time the audit report is presented regarding actions taken as a result of audit findings contained in the report.
3. **Responses to recommendations** - Each audit report prepared by the State Auditor should include a summary of audit recommendations along with the audited agency's written response to the recommendations. The summary is to be in recommendation-response format.
4. **Acceptance of audit reports** - The committee receives audit reports as presented by the State Auditor's office and other independent auditors and, by motion, accepts the reports. The motion is not a directive for the adoption of the audit recommendations. A representative of the State Auditor's office will follow up on any previous audit findings and recommendations at the time of the next audit. If the agency has not taken steps to address the recommendation or cannot document a justifiable reason for not implementing the

recommendation at the time of the next audit, it will be again included as an audit finding and recommendation.

5. **Committee followup with agencies that have not complied with audit recommendations** - The committee, by motion, may direct the Legislative Council staff to send correspondence to an agency that has not complied with previous audit recommendations requesting the agency to appear before the committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations.
6. **Prior audit findings** - Pursuant to Section 54-35-02.2, whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within 2 bienniums, which the committee determines critically important, the committee may recommend the Legislative Assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium.
7. **Implementation of recommendations** - Each state agency and institution should comply with and implement, within the limits of the law, recommendations contained in audit reports prepared by the State Auditor's office. Such compliance and implementation should be viewed toward improvement of government operations, including fiscal operations and to full execution of the law.
8. **Six-month review** - The State Auditor's office should determine whether agencies have complied with the auditor's recommendations within 6 months after a report has been accepted by this committee. The State Auditor should report to this committee, or another appropriate legislative committee, regarding any recommendations not implemented.
9. **Copies of management letters** - The State Auditor should provide copies of management letters to committee members.
10. **Use of salaries and wages funding** - The State Auditor should consider including in audit reports information on the amount of salaries and wages funding spent on filled full-time equivalent (FTE) positions and the amount relating to vacant FTE positions which is spent for other purposes.
11. **Presentation of evidence to the Attorney General** - Pursuant to Section 54-35-02.2, whenever the committee determines or has reason to believe there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee is to present such evidence or information to the Attorney General. Upon receipt of the information, the Attorney General is to immediately commence an investigation. If the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the Attorney General is to prosecute the state official or employee as provided by law.
12. **Preliminary audit report review period** - The committee shall receive preliminary audit reports and audited entity's response for a 7-day review period pursuant to Section 54-10-26. The preliminary audit report and response may not be provided to any other person except by the committee as necessary to perform the committee's duties and at the end of the 7-day period the audit report and response is deemed a final audit report and is considered an open record.

AUDIT GUIDELINES

During the 2005-06 interim, the committee received suggested changes from the State Auditor's office to revise the 12 audit guidelines as some of the guidelines were no longer applicable to state agencies. The six new questions as proposed by the State Auditor's office to be addressed would highlight key areas and issues of interest to committee members and provide similar information to those made by auditors to an "audit committee." The committee also received input and approval from representatives of Eide Bailly LLP and Brady, Martz & Associates PC regarding the six new questions.

The committee also considered other areas the auditors could address before the committee, such as significant changes in accounting policies, accounting estimates, audit adjustments, disagreements with management, consultation with other independent auditors, major issues discussed with management prior to the auditors' retention, difficulties encountered in performing the audits, and high-risk information technology systems critical to an agency's operations.

The committee approved replacement of the 12 audit guidelines with 6 audit questions and 8 other issues to be communicated by the auditors to the committee. For audit periods covering fiscal years ending June 30, 2006, and thereafter, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?

2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?
6. Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.

The eight issues to be communicated to the committee identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditor's satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

During the 2021-22 interim, the committee received information and testimony from the State Auditor and private accounting firms regarding suggested changes to guidelines for audits of state agencies, which include guidelines for financial statement audits and guidelines for operational audits using performance standards. The committee approved, for audit periods on or after June 30, 2022, except for audits currently under contract:

1. Auditors conducting financial statement audits of state agencies replace the six audit-related questions/responses and eight audit-related communications within the audit report with a separate audit summary that identifies the purpose of the audit, the type of audit opinion, finds and recommendations, status of prior recommendations, explanations of significant audit adjustments and misstatements, disagreements with management or difficulties encountered during the audit, other audit report highlights, and the costs of the audit compared to the prior audit.
2. The State Auditor conducting operational audits using performance auditing standards of state agencies discontinue including the six audit-related questions/responses and eight audit-related communications in the audit report and expand the audit summary to identify the areas reviewed and testing conducted even if there are no related findings or recommendations.

AUDIT APPROACH

During the 1999-2000 interim, the committee received testimony from a representative of the State Auditor's office regarding the agency's plan to change the audit approach used in conducting 2-year audits of state agencies and institutions. For 2-year audits of state agencies and institutions conducted by the State Auditor's office, the State Auditor determined governmental auditing standards for performance audits are more applicable than governmental auditing standards for financial audits. A report on an audit conducted using performance auditing standards includes audited financial statements but does not include an opinion on those financial statements because the audit will not determine if the financial statements are prepared in accordance with generally accepted accounting principles. The State Auditor provided a sample audit report identifying the information that would continue to be provided in the audit reports, including background information; noteworthy accomplishments; management's discussion and analysis; comparison of current to prior year's results; analysis of significant changes in operations; analysis of significant budgeted to actual variances; statement of assets, liabilities, and fund equity; statement of revenues and expenditures; and statement of appropriations. The committee supported the proposal

presented by the State Auditor's office to begin conducting 2-year audits of state agencies and institutions using governmental auditing standards for performance audits.

The State Auditor's office began to use the new audit approach during the 2001-02 interim. Two-year audits conducted by public accounting firms continue to utilize governmental auditing standards for financial audits.

During the 2017-18 interim, the State Auditor's office developed and the committee began receiving a one-page summary report for the 2-year audits of state agencies. The summary report highlights the objective of the audit, including areas of internal control reviewed, findings relating to legislative intent, suggested areas of operational improvement, and key financial information.

AUDIT REQUIREMENTS FOR THE STATE AUDITOR'S OFFICE

Section 54-10-04 requires the Legislative Assembly to provide for a financial statement audit of the State Auditor's office. A copy of the audit report must be filed with the Governor and with each house of the Legislative Assembly. The State Auditor's office audit report for the fiscal years ended June 30, 2019 and 2018, was completed by Eide Bailly LLP. This audit report was reviewed and approved by the committee during the July 7, 2020, meeting.

The National State Auditors Association requires state auditor's offices to be subject to an external quality control review every 3 years. The system of quality control encompasses the office's organizational structure and policies adopted and procedures established to provide reasonable assurance of conforming to governmental auditing standards. The quality control review of the State Auditor's office for the period April 1, 2019, to March 31, 2020, was received by the committee in October 2020.

The next quality control review of the State Auditor's office is anticipated to be completed sometime in 2024.

Section 6 of Senate Bill No. 2015 (2023) requires the Chairman of the Legislative Management to arrange for a performance audit of the State Auditor and receive the audit report. The performance audit must address the efficiency and effectiveness of the State Auditor's office relative to industry best practices. The performance audit must include a review of the appropriateness of the number of hours to complete audits; methods used to monitor staff time and allocate hours charged to audits; billing processes; quality assurance processes; the adequacy and timeliness of communications with audited entities, governing boards, and the public; and other areas as determined by the Chairman of the Legislative Management.

2023 LEGISLATIVE ACTIVITY

The 2023 Legislative Assembly approved the following legislation related to the activities of the State Auditor:

1. **Political subdivision audits** - Section 4 of Senate Bill No. 2004 amends the powers and duties of the State Auditor to allow the Department of Financial Institutions to contract with a certified public accountant for an audit, requires the State Auditor to provide reports to the committee regarding instances where the State Auditor did not distribute a final report to a client prior to public release, and exempts the institutions under the control of the State Board of Higher Education from certain audit fees.
2. **Department of Financial Institutions audit** - Section 6 of Senate Bill No. 2004 requires the State Banking Board to provide for an audit of the Department of Financial Institutions once every 2 years. The State Banking Board may request the State Auditor to conduct the audit. If the State Auditor agrees to conduct the audit, the State Auditor must deposit any fees assessed for completion of the audit in the State Auditor operating account.
3. **County auditor financial reports** - House Bill No. 1245 requires each county to provide a financial report to the State Auditor by March 1st of each year showing the ending balances of the county general fund and county road and bridge fund for the preceding calendar year.
4. **Soybean Council audit** - House Bill No. 1501 identifies the Soybean Council as a nongovernmental entity, removing the requirement for an audit conducted by the State Auditor, and requires the council to prepare and submit a report summarizing its activities to the State Auditor.
5. **Legislative Audit and Fiscal Review Committee report** - House Bill No. 1508 requires the State Auditor to report quarterly to the Legislative Audit and Fiscal Review Committee regarding communication with clients, billings, audits performed, and the audit schedule.
6. **Powers and duties of the State Auditor** - Senate Bill No. 2180 changes the requirement of state agencies to be audited every 2 years to once every 2 to 4 years, changes the threshold for political subdivisions that require an audit from \$750,000 to \$2 million, increases the rate the State Auditor may

charge political subdivisions for the review of audit reports submitted by independent firms from \$86 per hour to \$90 per hour, and removes the requirement that the State Auditor audit political subdivisions when ordered by the Governor or upon petition and provides the State Auditor may perform these audits.

7. **Agricultural commodity group audit fees** - Senate Bill No. 2259 limits charges of agricultural commodity groups to \$6,000 for an annual financial statement audit or \$4,000 for a 2-year, single-page financial statement audit performed during the biennium ending June 30, 2025, and limits increases to 5 percent on July 1 of each odd-numbered year thereafter.
8. **State Auditor performance audit** - Section 6 of Senate Bill No. 2015 requires the Chairman of the Legislative Management to arrange for a performance audit of the State Auditor's office.

PERFORMANCE AUDITS

The following table lists performance audits presented to the committee during the 1997-99 through 2021-23 bienniums:

Performance Audit	Date
1997-99 biennium	
State procurement practices	October 7, 1997, and January 21, 1998
State employee classification system	October 6, 1998, and January 27, 1999
Workers' Compensation Bureau (performance review)	October 6, 1998
Job Service North Dakota	October 6, 1998
1999-2001 biennium	
Contracts for services	May 22-23, 2000
Child support enforcement program (Department of Human Services)	October 16-17, 2000
Workers' Compensation Bureau (performance review)	October 16-17, 2000
Job Service North Dakota	October 16-17, 2000
2001-03 biennium	
Aging Services, service payments for elderly and disabled, and expanded service payments for elderly and disabled programs (Department of Human Services)	November 26, 2001
Veterans' Home	October 2, 2002, and January 22, 2003
Workers' Compensation Bureau (performance review)	October 2, 2002
Job Service North Dakota	October 2, 2002
2003-05 biennium	
Driver and Vehicle Services (Department of Transportation)	September 3-4, 2003
Administrative Committee on Veterans Affairs (ACOVA) and the Department of Veterans' Affairs	August 10, 2004
Workforce Safety and Insurance (performance review)	October 27, 2004
Job Service North Dakota	October 27, 2004
Department of Corrections and Rehabilitation	January 24, 2005
2005-07 biennium	
Division of Emergency Management	January 10, 2006
Collection and use of 911 fees (Division of Emergency Management)	January 10, 2006, and June 19, 2006
Workforce Safety and Insurance (performance audit)	November 29, 2006
Workforce Safety and Insurance (performance review)	November 29, 2006
2007-09 biennium	
University of North Dakota (UND) School of Medicine and Health Sciences	November 19, 2007
Wildlife Services program	July 8, 2008
Workforce Safety and Insurance (performance review)	October 20, 2008
2009-11 biennium	
Department of Commerce	September 30, 2009
North Dakota University System capital projects	May 12, 2010
Medicaid provider and recipient fraud and abuse	October 21, 2010
2011-13 biennium	
Dickinson State University	March 27, 2012
Use of state-supplied vaccines by a provider (State Department of Health)	March 27, 2012
State Department of Health Family Health Division	June 21, 2012
Fees charged at North Dakota State University (NDSU) and UND	July 26, 2012
State Water Commission's regulation of industrial water use in the state	January 24, 2013
University System office	March 12, 2013
2013-15 biennium	
State Water Commission's water use permitting process	July 29, 2013
Game and Fish Department	July 16, 2014
University System institutions tuition waivers and student stipends	April 21, 2015
2015-17 biennium	
Department of Trust Lands	April 21, 2016
Space utilization study	March 6, 2017

Performance Audit	Date
2017-19 biennium	
University foundations	Deferred until further notice
University System institutions purchasing card program	August 30, 2016
University System institutions reports of the emergency preparedness at various institutions of higher education	October 2016
NDSU Parking and Transportation Services department	February 23, 2017
UND continuity of operations planning	September 11, 2017
Veterans' Home	February 10, 2018
ACOVA oversight structure	March 28, 2018
Department of Veterans' Affairs	March 28, 2018
Governor's office travel and use of state resources	May 18, 2018
2019-21 biennium	
Dakota College at Bottineau emergency preparedness	June 7, 2018
Special funds	June 30, 2018
University System open educational resources	September 4, 2018
University System online education	November 9, 2018
North Dakota State College of Science Division of Workforce Affairs	March 26, 2019
University System nonresident tuition	December 31, 2019
2021-23 biennium	
None	

ATTORNEY GENERAL LEASED FACILITY INVESTIGATIVE REPORT

During the 2021-22 interim at the request of the Budget Section, the committee received background information regarding certain lease agreements entered by the Attorney General's office. The committee received information from representatives of the Attorney General, the Office of Management and Budget, Parkway Property Management, and the State Auditor. The committee was informed the Attorney General leased a new facility which included the cost to remodel the facility for its use, which incurred cost overruns. The committee asked the State Auditor to work with the Attorney General to gather and review documentation and other information related to the lease agreement and the remodeling and construction of facilities leased by the Attorney General located at 1720 Burlington Drive, Bismarck. The committee toured the facility and met with division directors from the Bureau of Criminal Investigation, Consumer Protection and Antitrust Division, and North Dakota Lottery. The committee received the State Auditor's investigative report, which indicated a violation of law relating to the expenditure of funds may have occurred. Major findings of the report included:

- Division directors were not involved in lease negotiations, leading to numerous changes throughout the remodeling process, which added to overall project cost;
- A number of invoices had minimal detail, leading to questionable contractor costs and possible double-billing for some expenses;
- Services may have been completed by a contractor without a contracting license; and
- The possibility of recovering deleted Attorney General emails.

The report identified cost overruns relating to the remodeling and construction associated with the leased facility of \$1,742,210. Of this amount, \$1,342,210 was paid from unspent appropriation authority available during the 2019-21 biennium and from continuing appropriations as follows:

Line Item/Program	Amount
Operating expenses	\$470,187
Law enforcement	197,900
Criminal justice information system	325,876
Lottery	348,247
Total	\$1,342,210

Of the \$1,342,210 paid during the 2019-21 biennium, \$602,185 was from the general fund and \$740,025 was from special funds.

The remaining \$400,000 related to the cost overruns was added to the lease payment to be paid by the Attorney General over the 5-year lease term.

The report identified \$2.4 million as the total cost of the Attorney General's relocation to the new leased facility and included:

Description of Expense	Amount
Facility cost overruns	\$1,742,210
Moving of heating, ventilation, and air conditioning	150,000
Engineer's original plan	5,000
Moving and other costs	496,359
Total	\$2,393,569

Pursuant to Section 54-35-02.2, the committee forwarded the State Auditor's report to the Attorney General for additional investigation and suggested the Attorney General contract with an independent organization to conduct the investigation of the lease agreement and remodeling and construction costs. The committee has not yet received the results of the investigation.