

Financial-Related Audit

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**Board of Public Defense**  
**July 1, 1998, through June 30, 2001**



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## Financial Audit Division

The Office of the Legislative Auditor (OLA) is a professional, nonpartisan office in the legislative branch of Minnesota State government. Its principal responsibility is to audit and evaluate the agencies and programs of state government (the State Auditor audits local governments).

OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately fifty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

Consistent with OLA's mission, the Financial Audit Division works to:

- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

Through its Program Evaluation Division, OLA conducts several evaluations each year and one best practices review.

OLA is under the direction of the Legislative Auditor, who is appointed for a six-year term by the Legislative Audit Commission (LAC). The LAC is a bipartisan commission of Representatives and Senators. It annually selects topics for the Program Evaluation Division, but is generally not involved in scheduling financial audits.

All findings, conclusions, and recommendations in reports issued by the Office of the Legislative Auditor are solely the responsibility of the office and may not reflect the views of the LAC, its individual members, or other members of the Minnesota Legislature.

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If you have comments about our work, or you want to suggest an audit, investigation, evaluation, or best practices review, please contact us at 651-296-4708 or by e-mail at [auditor@state.mn.us](mailto:auditor@state.mn.us)



Senator Ann H. Rest, Chair  
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. R. Peter Madel, Jr., Chair  
Board of Public Defense

Members of the Board of Public Defense

Mr. John M. Stuart  
State Public Defender

We have audited the financial activities of the Board of Public Defense for the period July 1, 1998, through June 30, 2001, as further explained in this report. Our audit scope focused on payroll, grants, and other administrative expenditures. The following Report Summary highlights the audit objectives and conclusions. We discuss these areas more fully in the individual chapters of this report.

We conducted our audit in accordance with *Government Auditing Standards*, as issued by the Comptroller General of the United States. The standards require that we design the audit to provide reasonable assurance that the Board of Public Defense complied with provisions of laws, regulations, contracts, and grants that are significant to the objectives of the audit. The management of the Board of Public Defense is responsible for establishing and maintaining the internal control structure and complying with applicable laws, regulations, contracts, and grants.

This report is intended for the information of the Legislative Audit Commission and the management of the Board of Public Defense. This restriction is not intended to limit the distribution of this report, which was released as a public document on June 13, 2002.

*/s/ James R. Nobles*

James R. Nobles  
Legislative Auditor

*/s/ Claudia J. Gudvangen*

Claudia J. Gudvangen, CPA  
Deputy Legislative Auditor

End of Fieldwork: April 12, 2002

Report Signed On: June 10, 2002

## Board of Public Defense

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#### **Audit Participation**

The following members of the Office of the Legislative Auditor prepared this report:

Claudia Gudvangen, CPA	Deputy Legislative Auditor
Cecile Ferkul, CPA, CISA	Audit Manager
Susan Rumpca, CPA	Auditor-in-Charge
April Snyder	Auditor
Ching-Huei Chen	Auditor

#### **Exit Conference**

We discussed our findings and recommendations with the following representatives of the Board of Public Defense at an exit conference held on May 22, 2002:

Richard Scherman	Chief Administrator
Kevin Kajer	Fiscal Director

# Board of Public Defense

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## Report Summary

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Generally, the Board of Public Defense accurately reported payroll and grant expenditures in the accounting records and complied with applicable legal provisions and management's authorizations. As noted below, the board could make some improvements in its grant administration practices and in its processing and recording of other administrative expenditures.

### Key Findings and Recommendations

The board could improve its grant administration. It was unable to obtain written grant agreements with Hennepin County for fiscal years 1999 through 2001. The board's grant agreements with other grantees did not contain certain standard clauses. Also, the board did not always make grant payments in compliance with applicable legal or grant agreement requirements. We recommended that the board establish a written grant agreement with Hennepin County, ensure that grant agreements contain standard provisions, and pay grantees in accordance with applicable grant agreement and legal provisions. (Finding 1, page X)

The board's accounting records for its administrative expenditures did not always reflect accurate financial activity. The board did not ensure that it paid obligations from the proper fiscal year's funds, or that it correctly classified expenditure transactions on the accounting system. We recommended that the board properly classify and record transactions on the accounting system. (Finding 2, page X)

The board needs to improve its purchasing and payment processes. The board did not follow its purchasing policy, which limits the use of field purchase orders and blanket purchase orders. The board did not always formally document payment approval before paying for goods and services and did not always have a contract in place before a contractor began providing services. The board did not pay some contractors in accordance with the contracts. Finally, the board did not make timely payments to vendors. We recommended that the board improve its purchasing and payment processes to avoid these types of errors. (Finding 3, page X)

The board did not adequately safeguard assets. The board did not accurately record fixed assets on the inventory system or perform a periodic physical inventory count. The board also did not adequately safeguard receipts. We recommended that the board record accurate and complete asset information on the inventory system and perform a periodic physical inventory count of fixed assets, and that the board promptly deposit receipts and place undeposited checks in a secure location. (Finding 4, page X)

### Background

The Board of Public Defense is a Judicial Branch agency that provides criminal defense services to indigent defendants in Minnesota. The Public Defender System is organized into three areas: the Board of Public Defense, the State Public Defender, and the District Public Defense. The Public Defense Board is primarily responsible for overseeing the state's public defender system. The board is also responsible for allocating funds to the state public defender, the ten district public defender operations, and five public defense corporations. Mr. John M. Stuart is the State Public Defender.

The Administrative Services Office provides administrative support to all three component areas. It has responsibility for the payroll and disbursement functions for the board, the State Public Defender's Office, and the district public defense offices.

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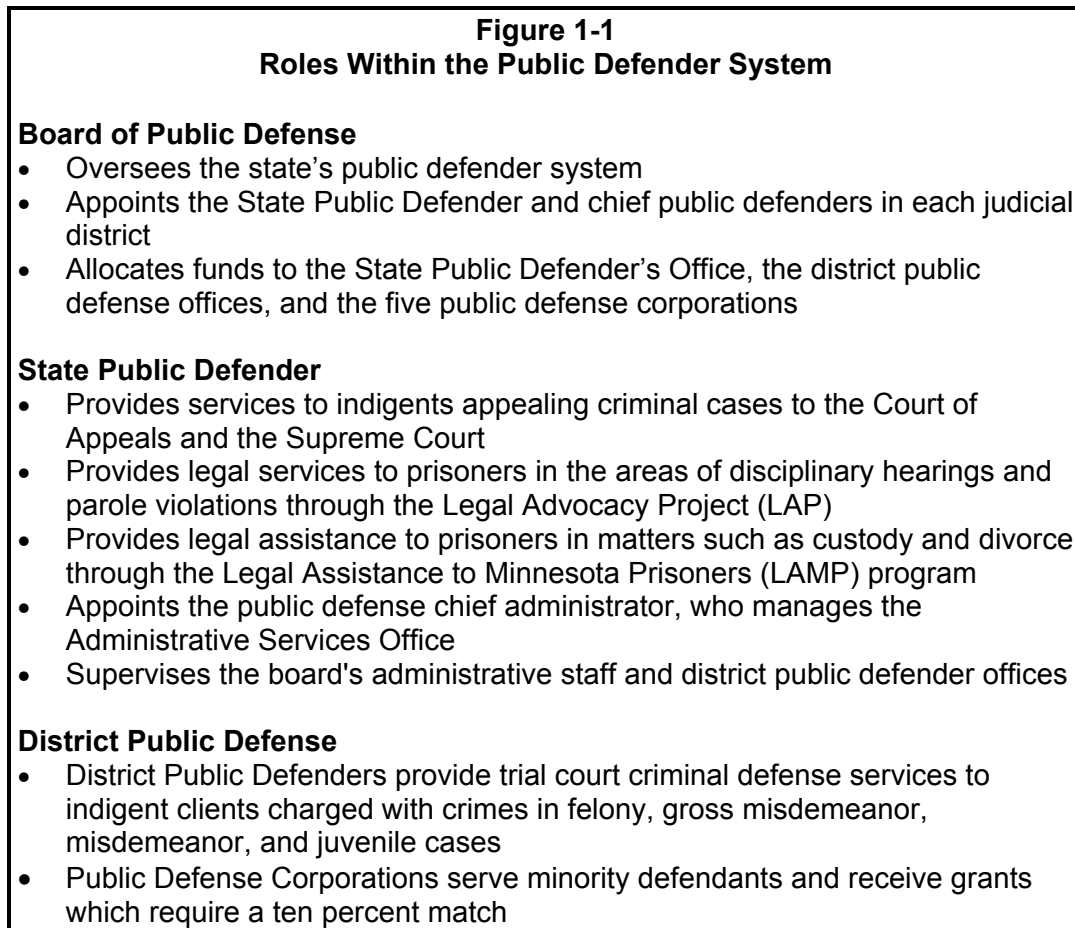
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## Chapter 1. Introduction

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The Board of Public Defense is a judicial branch agency whose purpose is to provide criminal defense services to indigent defendants in Minnesota. As required by statute, the state has organized its public defender system into three areas: the Board of Public Defense, the State Public Defender, and the District Public Defense. Figure 1-1 shows the roles of each of these areas within the public defender system.



The Board of Public Defense is primarily responsible for overseeing the state's public defender system. The board membership consists of seven appointees. The Supreme Court appoints four attorneys as members, and the Governor appoints three public members. The Board of Public Defense appoints the State Public Defender. Mr. John M. Stuart has served as the State Public Defender since 1990. The board's Administrative Services Office provides administrative support to all three areas. It has responsibility for the payroll and disbursement functions for the board, the State Public Defender's Office, and the district public defense offices.

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The board appoints the chief public defenders in each of the ten judicial districts. All but two judicial districts cover multiple counties. The second judicial district serves Ramsey County and the fourth judicial district serves Hennepin County.

Effective July 1, 1990, the state, through the board, assumed primary financial responsibility for district public defender operations. All employees in the eight multi-county districts became state employees. The second and fourth judicial district public defense offices (Ramsey and Hennepin counties) continued to function under their county government structure; however, all employees hired on or after January 1, 1999, became state employees. Employees hired before this date remained employees of the counties.

As a judicial branch agency, the board is exempt from state rules and regulations guiding state executive branch agencies. However, many of the board's financial policies are patterned after similar state policies.

General Fund appropriations were the board's main source of funding. The board also received limited amounts of federal and state grants as well as reimbursements from defendants, as further discussed in Chapter 2. Board expenditures during the audit period averaged about \$45.5 million each year, with its largest expenditure categories being payroll and grants. Table 1-1 summarizes the board's sources and uses of funds for fiscal years 1999 through 2001.

**Table 1-1**  
**Board of Public Defense**  
**Sources and Uses of Funds**  
**Fiscal Years 1999 through 2001**

	1999	2000	2001
<b>Sources:</b>			
State Appropriations	\$42,642,000	\$44,272,000	\$47,617,000
Balance Forward from Prior Fiscal Year	742,880	146,779	1,580,743
Receipts	85,023	701,047	144,452
Transfers In (1)	61,964	301,659	423,285
<b>Total Sources</b>	<b>\$43,531,867</b>	<b>\$45,421,485</b>	<b>\$49,765,480</b>
<b>Uses:</b>			
Payroll	\$23,628,745	25,223,404	28,600,764
Grants	15,048,397	14,201,902	14,799,364
Other	4,593,518	4,415,436	6,052,353
<b>Total Expenditures</b>	<b>\$43,270,660</b>	<b>\$43,840,742</b>	<b>\$49,452,481</b>
Appropriation Cancellation	114,428	0	163,955
Balance Forward to Next Fiscal Year	146,779	1,580,743	149,044
<b>Total Uses</b>	<b>\$43,531,867</b>	<b>\$45,421,485</b>	<b>\$49,765,480</b>

Note (1) Transfers In are reimbursements from defendants who paid for public defense services collected at the counties and transmitted to the board through the State Treasurer's Office.

Source: Minnesota Accounting and Procurement System.



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### Chapter 2. Payroll Expenditures

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#### *Chapter Conclusions*

*The Board of Public Defense accurately reported payroll expenditures in the accounting records. For the items tested, the board complied with applicable legal provisions and management's authorization. The board limited access to the personnel and payroll system to those employees who required it to perform job responsibilities and limited that access to only required areas.*

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The Board of Public Defense's payroll and fringe benefit expenditures for fiscal years 1999 through 2001 averaged about \$25.8 million and comprised 57 percent of the board's total expenditures during that period. The board adopted its own personnel and payroll policies, including compensation plans for managers and employees not covered by other agreements and plans. Assistant public defenders and support staff became union members during fiscal year 2000 and began coverage under labor agreements. In addition, Minnesota statutes guide the appointments and compensation for some of the board's employees. The board used the state's personnel and payroll system. An employee in the Administrative Services Office entered all personnel transactions into the system. Office managers at the district public defenders offices processed payroll transactions.

The board employed both full-time and part-time attorneys. Full-time attorneys submitted timesheets each pay period to document their hours worked. Full-time attorneys received full benefits.

Part-time attorneys worked from one-quarter time to three-quarter time for the board and received a set amount each pay period based on their experience level and an agreed-upon number of annual hours. Part-time attorneys received prorated benefits based on the number of hours they agreed to work. Part-time attorneys also received reimbursement for private office overhead costs incurred if they met guidelines set by the board. During fiscal years 1999 through 2001, the maximum annual overhead reimbursement was \$3,000 for three-quarter time attorneys. The board adjusted this amount for attorneys who worked less than three-quarter time. Finally, part-time attorneys could receive additional compensation if the represented defendant was able to pay a portion of the cost of the legal services. The defendant paid the courts, which passed the receipts to the board for allocation to the part-time attorneys.

During the audit period, two separate statutes set the State Public Defender's salary. First, Minn. Stat. Section 15A.083 stated, "The salary of the state public defender must be 95 percent of the salary of the attorney general." In addition, Minn. Stat. Section 611.23 stated, "The salary of the state public defender shall be fixed by the state board of public defense but must not exceed the salary of the chief deputy attorney general." These statutes were not consistent, so the board adopted a resolution on July 13, 2000, clarifying its position. The resolution specified that the

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board would set the salary at the higher of the two limits. It also stated that once the board approved the salary, a change of position or salary of the chief deputy attorney general would not decrease it. The board proposed statutory changes making the salary of a district court judge the maximum salary for the State Public Defender. The Legislature changed the statutes, making both provisions consistent effective July 1, 2001.

### **Audit Objectives and Methodology**

Our review of the Board of Public Defense's payroll expenditures focused on the following questions:

- Did the board accurately report payroll expenditures in the accounting records?
- Did the board comply with applicable legal provisions and management's authorization?
- Did the board limit access to the payroll and personnel system to those employees who required access to perform their job responsibilities? Did the board limit access to only required areas?

To meet these objectives, we interviewed board employees to learn about the payroll process. We analyzed payroll expenditures for unusual trends or variances. We also reviewed a sample of employee timesheets to ensure that the board properly authorized, calculated, and recorded this data. In addition, we reviewed a sample of pay rate changes to determine if the board complied with applicable legal provisions and management's authorization. Finally, we reviewed the personnel and payroll system access rights to determine appropriateness.

We did not review the salaries or payroll for county employees of the second and fourth judicial district public defense offices. The payroll costs for those offices are included in the grants to counties discussed in Chapter 3.

### **Conclusions**

The Board of Public Defense accurately reported payroll expenditures in the accounting records. For the items tested, the board complied with applicable legal provisions and management's authorization. The board limited access to the personnel and payroll system to those employees who required it to perform their job responsibilities and limited that access to only required areas.

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### Chapter 3. Grants to Counties and Public Defense Corporations

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#### *Chapter Conclusions*

*The Board of Public Defense properly recorded grant activities in the state's accounting records, except for the miscodings discussed in Chapter 4, Finding 2. The board could improve its administration of grants by establishing a written agreement with Hennepin County, revising its grant agreements to include certain clauses, and paying grantees in accordance with applicable grant agreements and legal provisions.*

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The Board of Public Defense granted funds to the second and fourth judicial district public defense offices (Ramsey and Hennepin counties) and to five public defense corporations to provide defense services to indigent people. During fiscal years 1999 through 2001, the second and fourth judicial districts received about \$41 million, and the public defense corporations received about \$3 million. Grant expenditures were the second largest expenditure category during the audit period, comprising about 32 percent of total expenditures.

The board established procedures for the counties and public defense corporations to obtain funding. The board reviewed the requests and made funding level recommendations to the Legislature as part of its biennial budget request.

#### **Grants to Counties**

Hennepin County received over \$9 million and Ramsey County received over \$3 million annually during fiscal years 1999 through 2001 to provide defense services. Hennepin County contributed additional funds for defense services in that district. The board required monthly reports showing how each county used the funds.

At the beginning of each fiscal year, the board advanced that year's appropriation (less amounts withheld for salaries for employees paid by the state) to each of the counties. Employees of the Administrative Services Office believed that advancing the entire fiscal year's funding was beneficial. Each county invested the money and earned interest until it disbursed the funds as directed by the district's chief public defender. The interest earned by the counties helped to offset certain administrative costs incurred by the county that the state would otherwise be required to provide. However, the board had not determined the value of the lost investment income to the state or the value of unreimbursed costs at the county level to determine whether this is a good cash management practice for the state.

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### **Public Defense Corporations**

The public defense corporations included Legal Rights Center, Neighborhood Justice Center, White Earth Reservation, Leech Lake Indian Reservation, and Duluth Indian Legal Assistance. The annual amounts granted to the corporations during the audit period ranged from about \$100,000 to over \$300,000. Each corporation was required to provide a ten percent match of its state appropriation.

The board provided quarterly advances to each public defense corporation and required periodic reporting by the corporations. The reports showed case data as well as how the corporations provided matching funds and spent the grant funds.

### **Audit Objectives and Methodology**

Our review of the Board of Public Defense grants to counties and public defense corporations focused on the following questions:

- Did the board properly record grant activities in the state's accounting system?
- Did the board comply with significant finance-related legal provisions over the disbursement of aid to counties and public defense corporations?

To meet these objectives, we interviewed board employees to gain an understanding of the process for distributing grant funds. We tested grant expenditures to determine if the board properly recorded the activities on the state's accounting system and if these transactions were in compliance with legal provisions. We also determined if the board had written grant agreements with the counties and corporations. In addition, we reviewed the methods the board used to monitor the grantees' activities. Finally, we reviewed documentation from the public defense corporations to determine if the corporations complied with the matching requirements.

### **Conclusions**

The Board of Public Defense properly recorded grant activities in the state's accounting records, except for the miscodings discussed in Chapter 4, Finding 2. As explained in Finding 1, the board could improve its administration of grants by establishing a written grant agreement with Hennepin County, revising its grant agreements to include certain clauses, and paying grantees in accordance with applicable grant agreements and legal provisions.

#### **1. The Board of Public Defense could improve its grant administration.**

The board could improve its administration of grants in several ways. First, the board was unable to obtain written grant agreements with Hennepin County for fiscal years 1999 through 2001. (This was also cited in the prior audit, when the board was unable to obtain written agreements for fiscal years 1996 through 1998.) Each fiscal year, the board disbursed funds to Hennepin County without a written grant agreement. A grant agreement documents the terms that the parties agreed to, including the amount granted, financial reporting requirements,

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documentation requirements, and the disposition of funds remaining at the end of the grant period. The board did receive financial reports from the county showing how it spent the funds.

Second, the board's grant agreements with other grantees did not contain certain clauses included in the state's standard grant agreement template, such as terms and conditions of payment, liability, and audit requirements. Also, the board did not amend grant agreements if the grant amount changed. Comprehensive and clear grant agreements define the duties and responsibilities of both the grantor and the grantee.

In addition, the board did not make grant payments in compliance with applicable legal or grant agreement requirements. For instance, Minn. Stat. Section 611.216, Subd. 1 states, "Money may not be disbursed to a corporation in the Leech Lake Reservation area or the White Earth Reservation area without prior approval by the respective reservation tribal council." The board disbursed funds to the Leech Lake Indian Reservation before the tribal council approved the grant and before both parties signed a grant agreement. The board disbursed funds on July 1, 1999, but the Leech Lake Tribal Council did not approve the selection of the corporation and provision of matching funds until July 12, 1999. Also, both parties signed the grant agreement on July 23, 1999. For fiscal year 2001, the board disbursed funds on July 5, 2000, and the tribal council issued a resolution on July 20, 2000. The board was unable to provide us with a signed grant agreement, so it obtained one dated March 7, 2002. There were three other instances when the board disbursed funds to a public defense corporation shortly before it had a signed grant agreement in place.

### *Recommendations*

- *The Board of Public Defense should establish a written agreement with Hennepin County specifying the terms and conditions of the grant.*
- *The board should revise its grant agreements to include the standard clauses found in the state's grant agreement template.*
- *The board should pay grantees in accordance with applicable grant agreement and legal provisions.*

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## Chapter 4. Other Administrative Expenditures

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### *Chapter Conclusions*

*The Board of Public Defense's accounting records did not always reflect accurate financial activity, and the board did not always comply with statutory appropriation restrictions. The board should improve its purchasing and payment processes. In some cases, the board did not maintain documentation supporting certain accounting transactions. Finally, the board did not adequately safeguard assets.*

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The Board of Public Defense's significant nonpayroll administrative expenditures consisted of rent, supplies and equipment, professional and technical services, and travel. Together they totaled over \$11 million and comprised about eight percent of the board's total expenditures.

#### **Rent**

For fiscal years 1999 through 2001, rent expenditures were about \$1.3 million annually. The Administrative Services Office negotiated lease agreements for 29 offices throughout the state. The districts received rent invoices from the lessors and forwarded them to the Administrative Services Office for payment. Since fiscal year 1998, the board standardized the terms of its lease agreements and clarified the financial responsibilities for various rent-related costs, such as lighting and cleaning.

#### **Supplies and Equipment**

Supplies and equipment expenditures for fiscal years 1999 through 2001 were nearly \$1 million annually. The districts and the Administrative Services Office initiated purchases of supplies and equipment. If a district office ordered the goods, the district received the invoice from the vendor. The district then forwarded the invoice to the Administrative Services Office, which processed all payments for supplies and equipment.

The board used a fixed asset inventory system to track equipment. The board's policy required districts to notify the Administrative Services Office of purchases and dispositions of assets as they occurred. The office then updated the fixed asset inventory system. Although the board had an inventory system, we noted weaknesses, which we discuss in Finding 5 in this chapter.

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### **Professional and Technical Services**

The districts negotiated contracts for professional and technical services, which included legal services, court reporters, transcribers, expert witnesses, and computer system development. During the three-year audit period, professional and technical service expenditures totaled over \$2 million. The Administrative Services Office entered the payments after the districts forwarded the invoices.

### **Travel Expenditures**

The board spent nearly \$700,000 during fiscal years 1999 through 2001 on travel, over half of which was for mileage reimbursements. The board based its travel policies on the Commissioner's Plan used by the executive branch for some of its employees. Employees completed expense reports when seeking reimbursement of travel costs. District office managers entered the data from the employee expense reports into the state's personnel and payroll system, which included the reimbursement on the employee's next payroll warrant.

### **Audit Objectives and Methodology**

Our review of the Board of Public Defense's administrative expenditures focused on the following questions:

- Did the board follow the appropriate purchasing requirements and comply with material finance-related legal provisions, including lease agreements?
- Did the board ensure it received goods and services before paying for those goods and services?
- Did the board properly authorize administrative expenditures and accurately record transactions in the accounting system?
- Did the board adequately safeguard assets?

To meet these objectives, we talked with board employees to gain an understanding of the process over administrative expenditures. We analyzed expenditure transactions to determine the reasonableness of the activity and to look for unusual trends or variances. We tested a sample of transactions to determine if the board followed the appropriate purchasing requirements, ensured that it received goods and services before paying for them, authorized the expenditures, properly recorded the transactions in the accounting system, and complied with material finance-related legal provisions. Finally, we determined if the board adequately safeguarded assets by reviewing the board's fixed asset inventory process.

### **Conclusions**

The Board of Public Defense's accounting records did not always reflect accurate financial activity, as discussed in Finding 2, and did not always comply with statutory appropriation



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restrictions. The board should improve its purchasing and payment processes, as noted in Finding 3. In some cases, the board did not maintain documentation supporting certain accounting transactions, as described in Finding 4. Finally, Finding 5 discusses how the board did not adequately safeguard assets.

### **2. PRIOR FINDING NOT RESOLVED: The board's accounting records did not always reflect accurate financial activity.**

The board's accounting records did not always reflect accurate financial activity. The board did not ensure that it paid obligations from the proper fiscal year's funds and did not comply with statutory appropriation restrictions. The board also did not always correctly classify expenditure transactions on the accounting system.

#### **Improper Fiscal Year Coding**

In anticipation of the potential state shutdown, the board used budget fiscal year 2001 funds to pay some 2002 obligations. The board paid July 2001 rent payments of \$121,868, fiscal year 2002 advances to the public defense corporations of \$94,000, and fiscal year 2002 grant payments of \$60,000 using budget fiscal year 2001 funds. The board did not initiate correcting transactions to move the expenditures to the proper funding year until March 5, 2002.

The board used \$29,000 of budget fiscal year 2001 funds to pay a fiscal year 2000 grant to a public defense corporation. The board delayed the payment until it received reports from the corporation showing funding uses. When it did make the payment, the board used funding from the incorrect year.

The board used over \$8,700 of budget fiscal year 1999 funds to pay one vendor for services performed in fiscal year 1998. It used nearly \$7,000 of budget fiscal year 2000 funds to pay three vendors for services performed in 2001.

The board made some duplicate rent payments to vendors. Instead of obtaining refunds from the vendors, the board typically offset these duplicate payments by not paying a future rent invoice. However, sometimes the future invoice covered a month in the next fiscal year. The result was that the board used one fiscal year's funding to pay obligations for a different fiscal year. As one example, the board paid June 2001 rent of \$134 twice and used the duplicate payment to offset the August 2001 invoice, which is in a different funding year. In another instance, the board overpaid rent by approximately \$7,600 in February 2000. As of April 2002, the board was pursuing resolution of this overpayment, which it should deposit to the state's General Fund as a nondedicated receipt.

#### **Improper Expenditure Classification**

The board coded some rent and some grant payments as equipment expenditures, some computer consulting services as supplies and equipment, and equipment purchases as supplies. In addition, the board did not code all rental payments and cleaning fees consistently. The board coded

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rental payments for the same building as both state-owned rent and nonstate-owned rent. In addition, the board coded some cleaning fees as rent and some as purchased services.

The board incorrectly entered some correction transactions. The board entered two cash receipt transactions for expenditure refunds with the wrong vendor numbers. The board entered other correction transactions with object code classifications different than those used for the original transactions. In addition, the board could not find documentation for a change it made to the classification of an \$11,875 expenditure.

The board incorrectly entered some record dates on the accounting system. At times, the board allowed the record date to default to the current date. The record date should be the date the board received the goods or services. This date is important for financial reporting purposes.

Employees mainly used the state's accounting system as a payment mechanism and concentrated their efforts on paying the correct vendor the correct amount. Coding used for financial reporting and analysis purposes, such as object codes and record dates, was not given as much attention. Correctly classifying and recording transactions results in accounting information that is more meaningful for analysis, budget preparation, monitoring, and financial reporting.

### *Recommendation*

- *The board should properly classify and record transactions on the accounting system and in compliance with statutory appropriation restrictions.*

### **3. PRIOR FINDING NOT RESOLVED: The Board of Public Defense needs to improve its purchasing and payment processes.**

The Board of Public Defense had some deficiencies in its purchasing and payment processes. The board did not follow its purchasing policy that limits the use of field purchase orders to purchases under \$2,500 and blanket purchase orders to rent, copy machine leases, phone service, janitorial services, and contracted ongoing legal services. The board made 24 grant payments of \$2,500 each using a field purchase order to advance \$60,000 to a county. In addition, the board issued blanket purchase orders for some purchases of computers and projectors. The board should use direct purchase orders for nonroutine purchases of \$2,500 or more. Also, the board issued a blanket purchase order for consulting services of \$4,000 rather than entering into a professional and technical services contract. A contract ensures that both parties agreed to the payment terms and services provided by the vendor.

Next, the board did not always formally document payment approval before paying for goods and services. The district offices ordered goods and services from various vendors. The vendors delivered the goods and services to the district offices, which also received the invoices from the vendor. Although the districts routinely entered accounting data onto invoices, some districts did not formally document the receipt of goods or the approval to pay before forwarding the invoice to the Administrative Services Office for payment. Board policy requires that the district offices initial invoices prior to payment. For purchases between \$2,500 and \$25,000, board policy also

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requires documentation of the receipt of goods and services. Without this documentation, the board cannot ensure that the invoices agree with the terms of the underlying purchase order or contract. It also is unable to ensure that it only pays for goods and services it has received.

In addition, the board did not always have a contract in place before a contractor began providing services. In one case, the board allowed a contractor to continue to work under the terms of an expired contract. The board paid the contractor approximately \$124,000 for services provided from August 2000 through January 2002, when no contract was in place. In February 2002, the contractor signed a contract covering these services retroactively; however, the chief administrator had not signed the contract as of March 2002. A contract ensures that both parties agreed to the payment terms and the services provided by the vendor.

Also, the board did not pay some contractors an hourly rate as stated in the contract. Instead, the board paid four attorneys one-twelfth of the contract amount each month. The monthly invoices did not contain the number of hours worked, so it was impossible to determine if the board correctly paid the attorneys.

Finally, the board did not make timely payments to vendors for eight sample items. The board paid the vendors 45 to 150 days after the invoice date. While the board was not assessed a late charge for these sample items, it is a good business practice to timely pay invoices and avoid late charges.

### *Recommendation*

- *The Board of Public Defense should improve its purchasing process by:*
  - *using the proper purchase order type,*
  - *issuing contracts for professional and technical services,*
  - *formally documenting receipt of goods or services before paying,*
  - *executing contracts before the contractor performs services,*
  - *paying contractors according to the contract terms, and*
  - *timely paying invoices.*

#### **4. The Board of Public Defense did not adequately safeguard assets or receipts.**

The board did not accurately record fixed assets on the inventory system or perform a periodic physical inventory count. Although the board maintained a computerized inventory system, it included only a limited amount of information for each asset, making it difficult to trace an expenditure transaction to an asset in the inventory system. The board did not compare equipment expenditures recorded on the accounting system to the assets entered into the inventory system. This process would provide additional assurance that the board entered all assets into the inventory system. In addition, employees sometimes entered the same asset into the inventory system two or three times. Without accurate inventory records and a periodic physical inventory count, the board is unable to adequately track and safeguard assets.

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In addition, the board did not adequately safeguard receipts. For example, the board did not deposit some checks dated December 1998 until March 1999. Board employees placed the undeposited checks in a file folder on a desk rather than placing them in a secure area. While the board did not receive many checks, this practice increases the risk of theft or loss.

### *Recommendations*

- *The board should record accurate and complete asset information on the inventory system and perform a periodic physical inventory count.*
- *The board should promptly deposit checks and place undeposited checks in a secure location.*

## Board of Public Defense

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### Status of Prior Audit Issues As of April 12, 2002

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#### Most Recent Audit

**Legislative Audit Report 98-58**, covering the period from July 1, 1995, through June 30, 1998, was issued in October 1998. The report included five findings. The board implemented the first finding concerning the incorrect computation of hourly pay based on annual salaries. The second finding dealing with the lack of written agreements with Hennepin County continues to be an issue, as noted in Finding 1 in Chapter 3 of the current report. Findings 3 through 5 continue to be issues and are noted in Chapter 4 of the current report.

## **Board of Public Defense**

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**STATE OF MINNESOTA  
BOARD OF PUBLIC DEFENSE**

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June 4, 2002

Mr. James Noble  
Office of the Legislative Auditor  
State of Minnesota  
Room 140, Centennial Building  
658 Cedar Street  
St. Paul, Minnesota 55155-1603

Re: Board of Public Defense Audit  
July 1, 1998 – June 30, 2001

Dear Mr. Nobles,

The purpose of this correspondence is to provide a Board of Public Defense response to the Office of the Legislative Auditor's, financial review, covering the time period of July 1, 1998 through June 30, 2001.

First the Board of Public Defense would like to compliment your staff for the work that they did in completing this recent audit. The Administrative Services Office appreciated the open process in which the audit was conducted.

The Board of Public Defense budgeting and financial affairs are controlled primarily in a decentralized fashion. There is a Budgeting Director with two full-time support staff located in the Administrative Services Office. There are also ten Administrative Office Managers located in Judicial District Offices throughout Minnesota that assist the Administrative Services Office by performing budgeting and financial work in addition to their other duties. These personnel have the responsibility of all of the financial affairs of the Board, with its approximate 750 employees.

In reviewing your recent audit of our agency I am responding by identifying some areas that we feel warrant further explanation.

## **Report Summary**

I would like to point out for those reading this Summary, that the Board addresses some of the subjects identified in this section, in more detail below. In general this audit found that the Board of Public Defense accurately reported payroll and grant expenditures in its accounting records and complied with applicable legal provisions and management authorizations. This report also does not have any findings of major fiscal mismanagement, and for the most part indicates that most of the issues identified can be addressed through better training and monitoring by our agency.

## **Chapter 2, Payroll Expenditures**

Your agency found that the Board of Public Defense accurately reported payroll expenditures and complied with applicable legal provisions and management authorizations. These expenditures comprised 57 % of the Board's budget.

## **Chapter 3, Grants to Counties and Public Defense Corporations**

In regard to grants to Counties you point out that the Board made a conscious decision to advance a year's appropriation to Hennepin and Ramsey County to offset administrative costs incurred by them. When the State took over public defense services in these Counties there were many administrative and indirect costs related to payroll, accounting, equipment, and computer services that the Counties were never reimbursed for. These costs were not appropriated for in the original legislation. For the Board of Public Defense to have to incur those costs would have been prohibitive so an accommodation was reached in that the interest they received on the advancement would offset those administrative costs. As far as the state retaining the money and earning interest, that would be the General Fund, as you know, and would not benefit or reimburse the Board for having to pay for these expenses. We think we made a good financial decision in this matter and saved the state money in the long run.

Concerning whether the Board of Public Defense properly recorded grant activities in the state's accounting records, a review of this area reveals that the points in question relate to the fiscal crisis last year, when state government was almost shut down. At that time it was determined that it was not the intent of the legislature to cease funding to the Public Defense Corporations during that crisis in state government. Those Public Defense Corporations identified in your report are very small agencies or tribal reservations that do not have streamlined "approval processes" as we know them. While the Board recognizes that it may not have performed its correct fiduciary responsibility in waiting several weeks (i.e., [Board distributed funds to Leech Lake Indian Reservation on July 1, 1999, but Tribal Council did not approve until July 12, 1999], or "for fiscal year 2001, the board disbursed funds on July 5, 2000, and the tribal council issued a resolution on July 20, 2000."); several weeks does not seem major in attempting to provide continuity of services. An important point to note here is that if these Corporations should cease to operate, their cases would be assigned to our public defenders, which would then increase their caseloads....., without reimbursement. Also, failure to promptly fund these agencies in the past has resulted in some of them having to take out short term loans to ensure their payroll. When they have to do this all it does is increase costs for the future and decrease morale on the part of their employees and management. Our records show that



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we do monitor these agencies quite well, requiring data and financial reporting on a quarterly basis, and when not received in a timely manner, we have not forwarded them their next payment.

In regard to Grant Agreements themselves the Board will move forward to develop such Agreements to include those clauses that your agency suggests. It should be noted, however, that the Agreement our agency presently uses is the same as has been used in two prior audits your agency did, and no finding was evident in those reports. Also, our present Agreements contains a clause that the grantee must abide “by all applicable state laws” which would cover your suggestions.

Finally, in regard to a lack of an Agreement with Hennepin County, the Board continues to work on developing such. There have been three Chief Public Defenders in the Fourth Judicial District in the past four years. There have been significant changes in the administration and County Commissioner make up in Hennepin County within the last several years. We continue to work on developing an Agreement, and take our responsibility very serious in this area. It should be noted that the Board gets regular data and financial reports identifying caseloads and expenditures of all awarded funds, as reported in your audit. These reports show no mismanagement of the fiscal grant to Hennepin County, nor was any found.

### **Chapter 4. Other Administrative Expenditures**

With a small administrative staff our agency has had to decentralize our administrative functions such as purchasing and accounts payable. While the decentralization has held down administrative costs, the trade off has been in the area of central monitoring of work products and work flow. Many of the payment and purchasing functions that you have identified in your report are just one of many functions in the employment responsibilities of the employees doing these tasks. I believe that a key finding here by your auditors is important to note, and that was; “employees mainly used the state’s accounting system as a payment mechanism and concentrated their efforts on paying the correct vendor the correct amount.” While correct coding for analysis is important to the State in preparing its financial statements, this segment of our budget is approximately 8 % of our total expenditures. Correct payment to the correct vendor is still the most important factor.

While there has been no accusation of fiscal mismanagement in regard to your findings relating to budgetary personnel using improper coding on some transactions or incorrectly entering some correction transactions, these issues continue to be bothersome. In regard to the \$11,875 expenditure in which your auditors could not find proper documentation, our review of this matter reveals that it was related to a Federal Grant program. The money for the services purchased was not received in a timely manner from the federal government. We had to pay for such services and then we went back and corrected the transaction. I have asked our Budget Director and Training Facilitator to develop a training program to address these issues and correct them.

Concerning budget personnel signing off on receiving goods and authorizing payment, this agency will train and instruct those personnel to achieve that goal.

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In regard to a Contractor that continued to work for this agency on technology items after that person's Agreement had expired, this matter was brought to my attention some time ago by the Board's Budget Director. I can state that I expressed my displeasure at the time with not extending that Agreement in a formal manner. In saying that, after a review of this matter at the time, I am also satisfied that services rendered and reimbursed were provided in a satisfactory manner; and were properly monitored and documented. This agency signs and implements many, many Agreements for a variety of services, and from my internal review this has rarely occurred.

As to the Contract in which four individual attorneys were paid a flat rate instead of an hourly rate, they all arose out of a single omission in which the wrong Contract was used by one of our personnel. In fact, they were paid correctly and their work product was documented, monitored and recorded.

Relating to your report that timely payments on eight sample items were not made, the Budget Director states that some of these items were not paid immediately because there was some question as to the validity of the billing. Further, and I believe relevant here, is that observing the State of Minnesota, Prompt Payment Report, shows that the Board of Public Defense consistently is one of the top state agencies in prompt payments.

Concerning the finding that the Board of Public Defense did not adequately safeguard state assets, the Board's Budget Director states that said assets are reported and that the "limited information" is related only to tying back the asset to a specific purchase order. This will be corrected with the redesign of the fixed asset inventory system. In addition, a physical inventory of assets has been done on a District by District basis. In a humorous vein, I am reminded of a story that a fellow public defense employee once told me. He and his family were at Itasca State Park and rented a state cabin there. During the night his family was awakened by a sharp sound. In the morning while investigating the sound heard the night before, the employee discovered a mousetrap that had been sprung. Picking it up to deposit the remains of the poor mouse outside, he found that the bottom of the mousetrap had a state asset sticker on it..... I am not sure that anything I may do will insure that this agency will ever be that good in safeguarding the state assets.

Concerning safeguarding receipts, the report references checks that the Board of Public Defense may receive. According to our review the Board may receive as many as four or five per month. Individual checks other than vendor reimbursements rarely exceed \$30.00. Comparing dates on checks and when they are cashed, as reported in your audit, may not always be a valid measurement. For example, the vendor may have issued a check on a certain date, then held it until some discrepancy was resolved (maybe months later). The date on the check in these cases then would have no relevancy to the date it was received in this office, or the date of deposit.

Concerning safeguarding a check when it comes to this office, the Board of Public Defense has implemented a procedure to secure such receipts until deposited.

**SUMMARY**

In summary of the above I would like to thank the Legislative Auditor's Office for their openness and willingness to share with us their findings. While the Board of Public Defense has a rather small administrative office, as compared to other similar state agencies, it has strived to comply with the same fiduciary standards that ensure good accounting of its appropriations. Over-all I am pleased with this recent audit. While it indicates certain areas that we must work on in the upcoming months, I am gratified that our financial and budgetary personnel are doing a relatively fine job.

Sincerely,

*/s/ Richard Scherman*

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Richard Scherman