Review of Certain Regulation and Licensing Department Financial Transactions
For Fiscal Years 1995 through 1999
July 16, 1999

EXECUTIVE SUMMARY

Pursuant to a request from the Legislative Finance Committee, the performance audit team conducted a review of the New Mexico Regulation and Licensing Department (RLD). This report is based on procedures performed from June 2, 1999 to July 16, 1999. The purpose of the review was to determine whether:

- Construction Industries Division (CID) appropriations were used in accordance with state law
- CID personnel received salary increases as required
- Expenditures were charged to the correct division and category
- Expenditures for travel by management were appropriate
- Reimbursements of expenditures were properly made

The review period included fiscal years 1995 through 1999 and pertained primarily to transactions relating to the Office of the Superintendent, the Administrative Services Division (ASD), and the Construction Industries Division. Limited review was made of activity relating to other RLD divisions and the boards and commissions (B&Cs).

Results of our audit follow:

- RLD transferred funds between divisions and the B&Cs in all fiscal years. RLD had **budget** authority for all transfers except one for $84,287 from the B&Cs in FY 96. The B&Cs are all individual special revenue funds established by state statutes to be used for carrying out special duties of the boards and commissions. Any transfer of funds from the B&Cs must be related to meeting their statutory responsibilities. When funds are transferred from the B&Cs, such transfers must be used for meeting the specific purposes of the board or commission from which the revenue was transferred. If a transfer is not directly related to a board or commission's duties and is not specifically authorized in the *Laws*, then such transfers should not be requested by RLD nor approved by DFA.

- Special appropriations for the **purchase of vehicles** for CID, the Manufactured Housing Division (MHD), and the Financial Institutions Division (FID) were used as intended by the Legislature. CID has an adequate number of vehicles to meet its needs.

- **Computer purchases** were paid for by all divisions and purchases were distributed throughout the RLD without regard to the source of payment. ASD's data processing bureau coordinated the system upgrade, planned purchases, and distributed computers to staff in order of highest identified need. In some instances, however, a BAR was executed to transfer funds to ASD and payment was then made by ASD. In FY 95, $145,032 was paid directly from CID for numerous computers, monitors, printers, and an $86,166 imaging system–a BAR was never executed. Of this equipment, $38,416 was distributed directly to CID and another $93,609 was intended to indirectly benefit CID. However, the ***imaging system was never used*** by the department. Forty seven thousand dollars ($47,000) of the FY 96 BAR transferring $84,287 from the B&Cs to ASD was also used to enhance RLD's computer system department-wide.

- **Remodeling** of RLD offices began sometime during calendar year 1995. The first phase was conducted under an approved GSD (General Services Department) lease amendment that required the lessor to make improvements that would be subsequently reimbursed by the RLD. DFA's legal counsel questioned the use of that provision, but approved payment to the lessor. FY 99 remodeling received prior approval from GSD's Property Control Division.

- CID and other RLD staff received **raises** as authorized by the Legislature and in accordance with the State's performance based plan. CID inspectors also received a classification upgrade in FY 99 resulting in an average pay increase of approximately 28%.

- Two **grievances** filed by one individual against the current and prior administration cost the state $302,377. RLD was charged with failure to make reasonable accommodation for the employee's disability as required by the *Americans With Disabilities Act* (ADA). RLD has been ordered to pay another employee four years back pay and benefits (estimated to be $141,900) for failure to impose progressive discipline procedures in terminating him for misconduct.

  There were a number of other smaller settlements for violations of civil rights which cost the state $31,910.

- In fiscal years 1997, 1998 and 1999 the legislature made separate appropriations to DFA for employee raises. DFA then estimated the amount of money needed by each agency and transferred it in a lump sum to the agency. The agency was left to decide how much to allocate to each division. Numerous **errors in RLD budget documents** resulted in underfunding of the base salary requirements in some divisions in some years. As a result, certain divisions received more of the appropriation than required to meet salary increases, while others received little or none. For example, CID received none of the money appropriated for raises in

FY97 and FY98, but received 55% of the funding in FY99. CID apparently was able to provide funding for raises in FY97 and FY98 from savings due to vacant positions but had fewer vacancies in FY 99. DFA should allocate money for employee raises by divisions rather than lump sum to ensure that appropriation are used as intended and that unused funds are reverted to the to the State general fund.

- The superintendent attended two conferences which appeared to be primarily political in nature for which she made a partial reimbursement of $409. RLD costs for these two conferences was $972.

- The superintendent's granting of administrative leave to the former CID director from April 9 through July 9, 1999 does not comply with the applicable State Personnel Board rule as required by the *Governor's Exempt Salary Plan Policies.*

BACKGROUND

The New Mexico Regulation and Licensing Department (RLD) was created July 1, 1983 by the *Regulation and Licensing Department Act* (Laws of 1983, chapter 297, sections 19 through 29). The Act provided for the administration of professional and occupational licensing functions of state government to be consolidated under the RLD upon executive order issued by the governor. Consolidation was completed during fiscal year 1987.

RLD's mission is to enforce applicable laws, rules, regulation and codes and administer them in a balanced approach to public safety, financial welfare and development of the regulated industries. The department consists of six divisions:

Administrative Services	(ASD)
Construction Industries	(CID)
Manufactured Housing	(MHD)
Financial Institutions	(FID)
Securities	(SED)
Alcohol & Gaming	(AGD)

The Construction Industries Division administers examination, licensing, certification, regulation, inspection and supervision of individuals and businesses in the contracting and construction industries. Section 60-13-1.1, 1978 NMSA requires the CID to "promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work". Section 60-13-7 further states that the "superintendent of regulation and licensing shall appoint the director of the division".

Financial activity of the Office of the Secretary is reported by the Administrative Services Division. There are also 27 boards and commissions (B&Cs) administered by the Administrative Services Division.

SCOPE

The review included financial transactions covering budget adjustment requests ("BARs") and expenditures for computer equipment (hardware and software), department vehicles, certain building rents and leasehold improvements, and travel by exempt personnel. We also examined documents relating to the funding and granting of raises for classified and exempt employees.

Our review of FY 95 transactions was limited in certain areas due to payment vouchers and other financial documents having been sent to the State Records Center and Archives (Archives) and subsequently destroyed in accordance with the three year retention policy.

REPORT DISTRIBUTION

This report is intended for the information of the Office of the Governor, Regulation and Licensing Department, Office of the State Auditor, and the Legislative Finance Committee. This restriction is not intended to limit the distribution of this report which is a matter of public record.

Manu Patel
Performance Audit Manager
Legislative Finance Committee

BUDGET ISSUES

All **budget transfers** made by RLD from FY 95 through FY 99 were authorized in the Laws except for one in FY96. Laws of 1994, 1995, and 1996 specifically authorized budget transfers between RLD divisions and the boards and commissions for fiscal years 1995, 1996, and 1997 except for one made in FY 96 for $84,287. Limited transfers were authorized for FY 98 and FY 99.

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RLD transferred expenditure budget between divisions several times during fiscal years 1995 through 1999 as summarized in Exhibit 1. Most notable among these transfers was:

$ 600,000 in FY 99 to purchase a Y2K compliant computerized licensing and permitting program and needed hardware as specifically authorized in Laws of 1998, chapter 15, section 5(D). Exhibit 2-1 provides a breakdown of amounts provided by each board and commission;

$ 113,400 in FY 97 to remodel the main offices of the RLD;

$ 180,000 in FY 96 to purchase computers for the enhancement of the department's data processing system as specifically authorized in Laws of 1995, chapter 30, section 7; and

$ 84,287 in FY 96 also used for the enhancement of RLD's data processing system ($55,000) and other ($29,287). This transfer was not authorized in the Laws of 1995. Exhibit 2-2 provides a breakdown of amounts provided by each board and commission.

In FY 96, RLD requested and DFA erroneously approved the $84,287 transfer from the boards and commissions to ASD for additional enhancements to the department's computers ($55,000), paper ($6,404), remodeling ($13,100), and telephone ($9,783). The Boards and Commissions are all individual special revenue funds established by state statutes to be used for carrying out special duties. Any transfer of funds from the B&Cs must be related to meeting their statutory responsibilities which may include administration. However, if a transfer which is not directly related to a board or commision's duties and is not specifically authorized in the *Laws*, then such transfers should not be requested by RLD nor approved by DFA.

Small amounts were also transferred from CID to other divisions during the audit period to cover budgetary shortfalls for operations. Seventy two thousand, two hundred dollars ($72, 200) were transferred to ASD in FY 97 to finance remodeling of RLD offices and $41,125 was transferred in FY 96 to ASD ($30,000), MHD ($5,750) and the SED ($5,375). In the first half of FY 95, the prior administration transferred $40,400 from CID to ASD along with one position. (See comment headings *Computer Purchases* and

Building Rents and Leasehold Improvements.) Another BAR transferred $49,300 and a planner position from FID to the Office of the Superintendent in FY 97.

All Budget Adjustment Requests (BARs) were submitted to and approved by the Department of Finance and Administration (DFA) in accordance with Section 6-3-2, NMSA 1978 as amended.

There were two special appropriations in FY 98 and FY 97 for the **purchase of vehicles** by CID and other divisions. The FY 98 appropriation of $675,000 established a vehicle replacement fund (fund # 296). Twenty six (26) Dodge trucks were purchased for $17,499 each–17 for CID and 9 for MHD--and eleven (11) Ford Victorias for FID at $19,654 each. Tool boxes for the 26 trucks were separately purchased. CID purchased another 51 trucks from its general fund appropriation that year. CID had also received a $75,000 appropriation in FY 97 with which two Ford trucks and three Chevy Corsicas were bought. One of the Corsicas was wrecked by a CID inspector and sold for salvage in FY 99. The two remaining Corsicas were re-assigned in FY 99 for use by administrative staff of the Thanatopractice and Landscape Boards. However, there does not appear to be any adverse effect on the CID. As shown in Exhibit 3, the CID has a sufficient number of vehicles for all inspectors as well several extras which are being used by bureau chiefs and other CID staff as needed.

Recommendation:

RLD and the DFA should check for legal authorization before making transfers from the boards and commissions. Be sure that all such transfers are made for the benefit of the B&Cs.

Department Response:

See Exhibit 9.

COMPUTER PURCHASES

RLD upgraded its computer system in essentially two phases. The first began in FY 95 and involved replacing non-intelligent terminals ("dumb" terminals) with PCs. The data processing bureau, a part of the administrative services division, handled computer purchases for the entire department. As a result, there were several budget adjustment requests to transfer funds from one division to ASD as indicated above. In some instances, the RLD failed to plan for BARs and paid for certain **purchases directly out of divisions which had available budget**. However, we found that large cash outlays for computer purchases were generally made for the benefit of the department as a whole and distribution of the equipment was not limited to the division or boards which had funded it. It was alleged that $149,000 of CID FY 95 funds were used inappropriately for computer related purchases. We determined that CID directly paid $145,032 and ASD paid $4,193 for a total of $149,225. We also found that the B&Cs transferred $180,000 to ASD for computers in FY96. In the first instance computers were distributed to CID ($38,416) and other divisions ($24,643). Likewise, other divisions received computers from the purchase funded by the B&Cs. In both cases the purchases were used to support upgrading of the computer system to handle licensing and permitting functions of the entire department. Exhibit 4 lists the equipment purchased by CID and ASD jointly and its distribution within RLD in FY 95.

Included in Exhibit 4 is the purchase of an imaging system for $86,166 paid directly from CID funds which the department never used. In a telephone interview, a former deputy superintendent of RLD took responsibility for it indicating that he should have more thoroughly investigated the ability of RLD to use it at the time of its purchase. That system was recently donated to the Santa Fe School District.

The second phase began in the spring of 1998 when IBM informed RLD (and other state agencies) that it would require AS/400 users to pay the IBM $75,000 and convert all programming to a different language. RLD estimated that to cost at least $600,000 more. Although not in its IT Plan at that point, RLD data processing decided to scrap the entire AS/400 system and bid out a new permitting and licensing package for the entire department. In accordance with the State *Procurement Code* a $539,426 bid was selected from a company which had experience in other states with licensing and permitting. Additional encumbrances for $59,840 were also made. Laws of 1998 authorized transfer of $600,000 from the boards and commissions for the purchase. Exhibit 2 details amounts transferred from each board and commission. In FY 99, approximately $213,000 was expended to purchase the software license and certain other equipment. The remainder is encumbered at June 30, 1999. This purchase and the bid procedures appear to comply with state rules and regulations.

Recommendation:

Plan budgetary transfers and submit BARs to DFA accordingly. Do not purchase computer equipment which the department cannot use.

Department Response:

See Exhibit 9.

BUILDING RENTS AND LEASEHOLD IMPROVEMENTS

The RLD leases the *Crown Building* in Santa Fe from Colgate Properties. RLD has leased this property for the entire audit period (fiscal year 1995 through June 1999). The current lease term is from October 4, 1995 to October 4, 1999. Monthly rental was $40,214 from October 1995 through June 1997 and increased to $ 42,000 in July 1997. The lease requires leasehold improvements to be arranged for by the lessor (Colgate) and paid for by the lessee (RLD).

RLD has paid rents as follows:

Division	FY 1999	1998	1997	1996	1995 Occupancy Percentage
ASD	240,298	464,030	402,136	199,363	38%
CID	154,382	0	0	101,095	19%
MHD	0	0	0	26,611	5%
FID	41,220	0	0	55,792	11%
AGD	10,200	0	0	57,316	11%
SED	57,900	0	0	82,600	16%
B&Cs	*	39,970	*	*	*
	504,000	504,000	402,136	522,777	100%

*Included in amount charged to ASD.

For fiscal years 1995 and 1996, rent was allocated and paid by the divisions on the basis of percentage of space occupied as indicated in the FY 95 column. Because Archives had destroyed payment vouchers for FY 95, we were unable to precisely determine the amount of rent paid by each division for that year. In FY 97 and FY 98 both DFA and LFC fiscal analysts required rent for the Crown Building to be budgeted in ASD. In FY 99, the rents were required to be budgeted by division, however, the amount budgeted for each division does not appear to be based on space occupied. The Boards and Commissions also moved from the Crown Building to new offices in July 1998 (FY 99). As a result, rental charges to the ASD and CID were increased. ASD also assumed payments in FY 99 for MHD, FID, AGD and SED which did not have adequate budget.

RLD began remodeling of the Crown Building in calendar year 1995 which was completed in FY 99 to correct serious deficiencies which had been identified in August 1994 and make cosmetic improvements as well. Pursuant to the requirements of the lease, Colgate arranged for contractors and was paid as follows:

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Division	FY 1999	1998	1997*	1996	Total*	Percentage Payment	Percentage Occupancy
ASD	16,633	5,629	63,692	4,598	90,552	26%	38%
CID	91,441	0	51	29,214	120,706	34%	19%
MHD	17,285	0	14,600	590	32,475	9%	5%
FID	1,000	0	49,000	1,297	51,297	15%	11%
AGD	2,000	0	0	1,061	3,061	1%	11%
SED	1,025	0	49,800	1,886	52,711	15%	16%
	129,384	5,629	177,143	38,646	350,802	100%	100%

*Division totals include transfers to ASD of $14,600 from MHD, $49,000 from FID, and $49,800 from SED for remodeling in FY 97.

Because Archives also destroyed FY 95 payment records for remodeling, we were unable to determine what expenditures, if any, were made in that fiscal year. We understand from RLD and GSD personnel that, based upon the terms of the lease, the superintendent and then deputy superintendent commenced remodeling based upon a GSD approved November 1995 amendment to the lease without obtaining a separate approval from GSD's Property Control Division. A May 1997 letter from DFA's general counsel indicates that amounts requested for payment by DFA were "lawfully due Colgate" but "that the lease lacks the details that should be included concerning the scope of remodeling to be performed...and those missing details raise issues about whether the remodeling services were properly procured and priced".

We also found a letter from Colgate Properties indicating that the former CID director had given prior approval for the $29,214 of modifications to CID office space in FY 96. GSD specifically granted approval of subsequent phases of the project.

The Crown Building, originally a large discount store, had been one of the least desirable office facilities in Santa Fe. RLD employees advised us that the remodeling has greatly improved their working conditions. While not luxurious by any standard, the building now provides office conditions comparable to those of other state offices such as the Runnels and Montoya buildings (occupied by the NM Taxation and Revenue Department and the NM Health Department).

Recommendation:

Prior to commencing any future construction project, obtain concurrence from GSD/PCD to ensure their interpretation of lease terms and requirements for performing leasehold improvements and that remodeling services are properly procured and priced.

Furthermore, allocate rent and remodeling costs to all divisions based upon the occupancy rate.

Department Response:

See Exhibit 9.

EMPLOYEE RAISES & GRIEVANCES

The legislature authorized a 1.0% raise for classified employees in FY 95, 1.5% in FY 96, and 2% for FY 97. Things became more complicated in FY 98 with the adoption of the performance appraisal development (PAD) system. Employees became eligible for increases based upon their performance and the ratio of their current wage to the mid-point of their range. Performance evaluated as unsatisfactory would receive no increase. Thus, the following options were available:

	Min. Max	Appropriation for Average raise of
FY 98	0% to 4.5 %	2.5%
FY 99	0% to 6.5%	3.5%

The personnel action form (PAF) is used to document changes in a classified employee's status, including promotions, class reductions, and hourly rate of pay. We examined PAFs for all Construction Industries' employees from FY 96 through FY 99. Twenty five additional employees were also selected, five from each of the other divisions including the director and deputy director for each.

All classified employees who were eligible for raises received them as specified above and appeared to be fairly and equitably treated. However, we did find one lower level CID employee who had originally received an "exceeds expectations" by her immediate supervisor was downgraded to "meets expectations" by the superintendent for "poor judgment" relating to her work attire and having received a "DWI" citation when off-duty. The employee received a 4.0% rather than a 5.5% raise in FY 99, a difference of approximately 15 cents per hour. The State Personnel Office (SPO) director confirmed that an agency head had the authority to downgrade an employee's evaluation, but suggested that off-duty behavior might not be an appropriate reason. The employee has not filed a grievance.

Section 60-13-41, 1978 NMSA provides for the Construction Industries Commission (CIC) to "promulgate rules and regulations establishing a recertification incentive plan which provides for salary increases for state inspectors based on education and training and additional qualifications". On September 3, 1998, CID construction inspectors were upgraded under a plan approved by the SPO and the CIC in an effort to reduce turnover and hire qualified persons by making their pay competitive with other state and local governments. Forty-five (45) incumbents and eight (8) vacant positions were affected. Each incumbent received an average 28% increase in pay. Those who had an anniversary date prior to the upgrade also received a raise in FY 99. The upgrade re-set the anniversary date of the 45 incumbents to the date of the upgrade.

Twenty five other CID employees did not receive raises for the following (allowable) reasons:

Terminated employment prior to anniversary date	14
Were at the maximum pay rate for their range	7
Other allowable reasons	4

Reorganization of the Construction Industries Division had begun in the spring of calendar year 1995. Several positions were downgraded in compliance with SPO procedures. One person received an annual cut in pay of $10,000 and retired eight months later. Several other people also voluntarily terminated their employment with the CID. Another classified employee who was terminated from a high level position filed a grievance with the State Personnel Board which he lost, but prevailed in Federal court. GSD's Risk Management Division (RMD) paid $15,178 to settle that case.

As indicated in Exhibit 6, most civil rights complaints were made by current and former CID employees. We also noted a high incidence of claims filed against the prior administration, but with smaller settlement amounts. However, the largest settlement was with an ASD employee under the *American's With Disabilities Act* (ADA). The original complaint was filed against the prior administration in 1994 for which settlement of $30,000 was made and another $5,691 in other costs were paid. In a second complaint filed in March 1995 , the court awarded $175,000 to the plaintiff and his attorney for RLD's failure to timely implement the accommodations ordered in the first complaint. RMD paid additional costs of $91,686.

There is a second case involving the dismissal of an employee without having been given due process and a chance to correct his behavior. The state appeals court has ruled in his favor; the exact amount of his settlement has not been determined, but is currently estimated to be $141,900 and reinstatement in another state agency.

We requested and provided RLD with spreadsheet data for the CID, but have not received an analysis of all RLD employee raises by ethnicity and gender. We understand that RLD staff are working on this analysis and intend to present it to the Committee separately from this report.

Recommendation:

Contact the State Personnel Office <u>before</u> terminating a classified employee or when downgrading an employee's performance evaluation without concurrence of the immediate supervisor to ensure that proper procedures are followed. Implement any future court rulings on timely basis.

Department Response: See Exhibit 9.

ALLOCATION of APPROPRIATIONS for EMPLOYEE RAISES

In fiscal years 1997, 1998 and 1999 the legislature made separate appropriations to the NM Department of Finance and Administration (DFA) for state employee raises. DFA's State Budget Division (SBD) then estimated the money needed by each agency using data supplied by GSD's Human Resources System (HRS) and transfers a lump sum of money to each agency. DFA allows the agencies to decide how much money to allocate to each division.

RLD allocated the money transferred from the DFA to its divisions based upon the ability of each division to fund raises (before allocation). Transfers were allocated as follows:

Division	FY	1999	1998	1997
ASD		19,300	47,700	23,600
CID		81,100	0	0
MHD		0	17,600	6,600
FID		12,200	2,900	15,400
AGD		20,600	400	28,900
SED		15,300	11,300	7,800
Total		148,500	79,900	82,300

It appears that some divisions received a larger allocation than seemed logical. In searching for a plausible explanation, we found numerous errors in the projected salary lists contained in the budget request for each division–individual salaries were usually understated. This could result in certain divisions, particularly those with less turnover, needing a larger allocation which results in using the *appropriation for employee raises* for shortages in the base budget.

Recommendation:

DFA should allocate money for employee raises by divisions rather than by lump sum to state agencies to ensure that appropriations are used for their intended purposes. Any funds not used by a division for the intended purpose should then be reverted to the State general fund.

Assign RLD staff to independently prepare salary estimates and compare them to those prepared by DFA. Modify DFA estimates as needed to ensure adequate funding and inform DFA of errors in its calculations. Do not use amounts appropriated for employee "raises" to make up shortages in the base budget.

Department Response: See Exhibit 9.

TRAVEL

Travel expenditures for division directors, the superintendent and deputy superintendents from July 1996 through June 1999 were examined. [We were unable to examine travel records for FY 95 as they had been destroyed by Archives.] The superintendent and former CID director appear to be the only individuals whose files we reviewed with any significant travel. Exhibit 7 details their travel as well as other exempt personnel for the four fiscal years.

Both the superintendent and former CID director, attended Women Executives in State Government (WESG) conferences in August 1995, September 1997 and September 1998. The superintendent also attended other events coordinated by WESG. WESG is a national non-profit membership organization "committed to excellence in state government" and was formed in 1983. In reviewing the WESG website, we found elected and appointed public officials among its members and participants included the governor of Arizona, the chief of the Washington State Police, the secretary of the North Carolina Department of Revenue, and a former NM Legislative Finance Committee (LFC) director.

The superintendent also attended a February 1998 WESG seminar in Florida targeted to women aspiring to run for public office which was sponsored by Glaxo Wellcome, an international pharmaceutical company. Glaxo provided WESG a grant with which to reimburse participants for transportation and hotel accommodations. On March 19, 1998, WESG reimbursed the superintendent $803 for airfare ($409) and hotel ($394). RLD also reimbursed the superintendent approximately $585 for that trip--$409 for airfare and an additional $176 for meals, airport parking (Albuquerque), and limousine service to the hotel. Eleven months later, in February 1999, the superintendent reimbursed RLD $409 by paying a portion of a $745 bill for picture framing expenses incurred by the department for remodeling. The balance of $336 was charged to the Administrative Services Division (ASD), although framing appeared to have benefitted all divisions. However, we found no evidence that the best obtainable price had been solicited for the services as required by the State *Procurement Code,* section 13-1-125 NMSA 1978.

The superintendent's time sheet also reported eight regular hours worked and seventeen hours of comp time earned. It would have been more appropriate for the superintendent to use personal leave for trips that are not related to RLD business. Reimbursement of other costs should have been made promptly.

In November 1998, the superintendent reported sixteen regular hours worked and five hours of comp time earned for attending the Western Presidential Primary Task Force in Salt Lake City, Utah and was reimbursed $387 by RLD. This trip also appears to be political in nature and unrelated to RLD duties. Again, it would have been more appropriate for the superintendent to have used her personal leave to avoid the appearance of any impropriety and should not have charged any unrelated costs to RLD.

We also noted that the superintendent routinely charged travel expenses to other divisions with available budget. During FY98, the superintendent charged $1,567 to the Construction Industries Division, $463 to the Financial Institutions Division, and $709 to Alcohol and Gaming which was approximately eighty six percent of her total travel for that year. In FY99, $1578 was originally charged to the MHD but was moved to ASD on June 1, 1999.

The former CID director reimbursed the Department $279 by check in May 1999 for airfare related to a trip scheduled later in 1999 which she did not take due to having been placed on administrative leave. [See comment *Granting of Administrative Leave.*]

The superintendent also routinely submits affidavits of lost receipts in lieu of providing actual receipts when requesting reimbursement for travel. Of the superintendents thirty one travel vouchers we reviewed, twelve included affidavits of lost receipts totaling almost $1,000. Approximately half of this amount was for meals; tips to waiters and baggage handlers accounted for a large portion of the remainder. Charges for course registrations and transportation (taxis, shuttles, etc.) were also reimbursed via affidavit.

The purpose of having to submit receipts is to provide evidence of expenses incurred during travel. The affidavit serves as a mechanism for reimbursement in *rare* instances where receipts have actually been lost and will create a financial hardship on the officer or employee requesting reimbursement. DFA Rule 95-1, section 4.B.3, *Receipts Required*, states "the public officer or employee must submit receipts for the actual meal and lodging expenses incurred. Under circumstances where the loss of receipts would create a financial hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts".

Recommendation:

Do not use state funds to attend conferences and events unrelated to RLD business. Reimburse remaining department paid travel expenditures to RLD by check or money order for deposit with the State Treasurer. Charge travel expense to the proper organizational cost center and limit the use of *Affidavits for Lost Receipts*. Also, follow the State *Procurement Code* for purchasing all goods and services.

Department Response:

See Exhibit 9.

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GRANTING of ADMINISTRATIVE LEAVE

In an April 8, 1999 memorandum to the former CID director, the superintendent stated that "It was my intention, when bringing you to the department in 1995, to accommodate your desire to work through full retirement eligibility. Being that we have now reached that point, and to pursue the Governor's overall streamlining objectives, I have decided your service in the department will end effective immediately. Please remove your effects from your office between Friday evening and Sunday evening. You will, however, remain on leave and on the RLD payroll until your July 1st retirement date."

There apparently was a promise to provide a combination of compensatory time and administrative leave to carry the former director into July at which time she would be eligible for retirement. However, there was no written agreement to this effect nor had approval for administrative leave been requested from the secretary of DFA at that time. As of April 8, the former CID director did not have compensatory time sufficient to cover the salary paid to her.

It was not until June 3, 1999 that the superintendent made the first request to DFA for approval. DFA granted the request for administrative leave up to July 1 on June 11, 1999. On June 23, 1999 RLD requested additional administrative leave through July 31, 1999. See Exhibit 8-1. However, on July 7th the DFA secretary denied the request citing the lack of an agreement or valid purpose for such leave to be granted. See Exhibit 8-2.

According to the *Governor's Exempt Salary Plan Policies* (ESPP) ESPP no. 20.b *State Personnel Board Rule* 1 NMAC 7.7.14, granting of administrative leave shall be applicable to exempt employees. The state personnel rule indicates that an "agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have prior written approval of the Director or Authorized Agent except for administrative leave granted in accordance with the provisions of *1 NMAC 7.8.19.2.2* or *1 NMAC 7.8.18.4.2*". [According to ESPP policy no. 20.a, State Personnel Board rules governing absence and leave shall be applicable to exempt employees. References in the State Personnel Board rules to the "Director" shall mean the "Secretary of the Department of Finance and Administration" (DFA) when applied to exempt employees.]

The superintendent of RLD did not obtain approval from the secretary of DFA prior to granting an "administrative leave" in excess of consecutive five working days nor did she obtain a written agreement from the former CID director releasing the state from liability as consideration for paying the employee for not performing job related duties.

The RLD superintendent may have exceeded her authority in granting administrative leave from April 8,1999 through July 9, 1999. In essence, RLD has paid for services not rendered to meet eligibility requirement for retirement.

As of July 9, 1999 RLD has paid the former CID director three months salary for which services were not rendered to the department. The estimated cost of salary and benefits are approximately $24,000. These payments may constitute a violation of article IX, section 14 of the State Constitution (commonly referred to as the *anti-donation clause)* which prohibits the state from providing direct assistance an individual person.

Recommendation:

The *Governor's Exempt Salary Plan Policies* and/or DFA policies should be clarified to indicate the conditions under which a state agency may grant administrative leave. This would obviate against claims that administrative is granted in an arbitrary and capricious manner.

In the future, follow proper procedures for the granting of administrative leave to all employees and consult with the Attorney General to ensure that the state's interests are protected when making such arrangements.

Department Response:

See Exhibit 9.

GINGER–Do not put this page in report unless David, Dannette or Manu requests a list of the Boards and Commissions

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Exhibit 2-1

Exhibit 2-2

Boards and Commissions of the NM Regulation and Licensing Department

Construction Industries Commission
Athletic Commission
Board of Barbers and Cosmetologists
Board of Massage Therapy
Counseling and Therapy Practice Board
Board of Chiropractic Examiners
Board of Dental Health Care
Nutrition and Dietetics Practice Board
Board of Nursing Home Administrators
Board of Occupational Therapy Practice
Optometry Board
Board of Osteopathic Medical Examiners
Podiatry Board
Board of Psychologist Examiners
Physical Therapist Board
Thanatopractice Board
Interior Design Board
Private Investigators and Polygraphers
Board of Landscape Architects
Board of Pharmacy
Board of Public Accountancy
Real Estate Commission
Social Work Examiners
Acupuncture Board
Speech/Language Pathology and Audiology Board
Respiratory Care Board
Athletic Trainer Practice Board

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