

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET SECTION

Wednesday, June 26, 2002
Senate Chamber, State Capitol
Bismarck, North Dakota

Representative Ken Svedjan, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Ken Svedjan, Ole Aarsvold, Wesley R. Belter, LeRoy G. Bernstein, James Boehm, Merle Boucher, Rex R. Byerly, Ron Carlisle, Jeff Delzer, Eliot Glassheim, Pam Gulleon, Robert Huether, Keith Kempenich, James Kerzman, Kim Koppelman, Bob Martinson, David Monson, Bob Skarphol, Blair Thoreson, Mike Timm, Francis J. Wald, John M. Warner, Amy Warnke; Senators John M. Andrist, Bill Bowman, Randel Christmann, Tony Grindberg, Joel C. Heitkamp, Ray Holmberg, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Dave Nething, Larry J. Robinson, Randy A. Schobinger, Ken Solberg, Bob Stenehjem, Harvey Tallackson, Steven W. Tomac

Members absent: Representative Janet Wentz; Senator Russell T. Thane

Others present: See attached appendix

It was moved by Representative Wald, seconded by Senator Tallackson, and carried on a voice vote that minutes of the April 17, 2002, meeting of the Budget Section be approved as distributed.

STATUS OF THE STATE GENERAL FUND

At the request of Chairman Svedjan, Mr. Rod A. Backman, Director, Office of Management and Budget, presented a report on the status of the state general fund. A copy of the information presented is on file in the Legislative Council office. Mr. Backman said North Dakota's unemployment rate for April 2002 was 3.6 percent as compared to 3.9 percent in March 2002.

Mr. Backman said 2001-03 biennium general fund revenues through May 31, 2002, are .5 percent or \$3.9 million less than estimated in the December 2001 revised revenue forecast and 2.9 percent or \$20.2 million more than the revenues for the first 11 months of the 1999-2001 biennium.

Mr. Backman presented the following information on the status of the state general fund, based on actual revenue collections through the month of May 2002, and the revised revenue forecast for the remainder of the 2001-03 biennium:

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|---|------------------------|
| Unobligated general fund balance - July 1, 2001 | \$62,240,652 |
| Add | |
| General fund collections through May 31, 2001 | 727,629,088 |
| Forecasted general fund revenue for the remainder of the 2001-03 biennium (based on the December 2001 revised revenue forecast) | 959,962,223 |
| Total estimated general fund revenue for the 2001-03 biennium | \$1,749,831,963 |
| Less | |
| 2001-03 biennium general fund appropriations | 1,746,983,713 |
| Estimated general fund balance - June 30, 2003 (\$9,146,444 less than the 2001 legislative estimate of \$11,994,694) | \$2,848,250 |

Mr. Backman said individual income tax collections through May 2002 are 7.6 percent or \$15.6 million less than projected in the December 2001 revised revenue forecast due to larger than anticipated "capital losses" being incurred and recognized on individual tax returns and corporate income tax collections are 6.8 percent or \$2.6 million less than projected. He said insurance premium tax collections through May 2002 are 28.4 percent or \$4.9 million more than the December 2001 revised revenue forecast due to automobile and home insurance premium rate increases.

In response to a question from Senator Krauter, Mr. Backman said financial institution tax collections are 50.6 percent or \$1.2 million more than the December 2001 revised revenue forecast as of May 2002 due to the timing of collections. He said interest income is 32.3 percent or \$1.6 million less than the December 2001 revised revenue forecast as of May 2002 due to lower than anticipated interest rates.

In response to a question from Senator Andrist, Mr. Backman said various state agencies have taken steps internally to reduce costs as a result of the less than anticipated ending general fund balance. He said the Governor does not have authority to change state agency appropriations except through the use of allotments on a uniform percentage basis. He said the Office of Management and Budget is exploring areas in which the Governor could make suggestions to state agencies to reduce spending for the remainder of the 2001-03 biennium.

In response to a question from Representative Gulleason, Mr. Backman said as of May 2002, \$15 million of the \$60 million to be transferred from Bank of North Dakota reserves has been transferred to the general fund. He said an additional \$15 million will be transferred in June 2002 and the remaining \$30 million will be transferred during the second year of the 2001-03 biennium.

In response to a question from Senator Krauter, Mr. Backman said corporate income tax collections through May 2002 are 6.8 percent or \$2.6 million less than the December 2001 revised revenue forecast. He said for the first 11 months of the biennium the unaudited corporate income tax collections are less than projected and audited corporate income tax collections are greater than projected.

In response to a question from Senator Tallackson, Mr. Backman said the anticipated reduction in sales and use tax collections as the result of the used farm machinery and equipment sales tax exemption that is in effect on July 1, 2002, has been factored into the December 2001 revised revenue forecast.

TOBACCO SETTLEMENT PROCEEDS

Mr. Backman presented information on the status of tobacco settlement proceeds received by North Dakota. A copy of the information presented is on file in the Legislative Council office. He said \$79.7 million has been received by the state of North Dakota as of June 26, 2002, as a result of the tobacco settlement and deposited in the tobacco settlement trust fund. He said the \$79.7 million was allocated among the community health trust fund, common schools trust fund, and water development trust fund, pursuant to North Dakota Century Code (NDCC) Section 54-27-25, as follows:

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|--|--------------|
| Tobacco settlement trust fund | |
| Community health trust fund (10%) | \$7,968,150 |
| Common schools trust fund (45%) | 35,856,673 |
| Water development trust fund (45%) | 35,856,673 |
| Total transfers from the tobacco settlement trust fund | \$79,681,496 |
| Community health trust fund | |
| Deposits | \$7,968,150 |
| Expenditures | 1,418,243 |
| June 25, 2002, balance | \$6,549,907 |
| Water development trust fund | |
| Deposits | \$35,856,673 |
| Expenditures | 6,660,188 |
| June 25, 2002, balance | \$29,196,485 |

HOMELAND SECURITY COSTS

Mr. Backman presented information on homeland security costs incurred by state agencies and institutions. A copy of the information presented is on file in the Legislative Council office. Mr. Backman said through June 25, 2002, state agencies and institutions have incurred or anticipate to incur a total of \$497,704

of state-funded costs for homeland security measures. He said this includes a \$100,000 increase in aviation insurance premiums anticipated by the University of North Dakota during the second year of the 2001-03 biennium.

COUNTRY OF ORIGIN LABELING

Chairman Svedjan called on Mr. Kenan Bullinger, Director, Food and Lodging Division, State Department of Health, who presented a report on the department's enforcement of NDCC Section 19-02.1-25 relating to the country of origin labeling and provisions in the United States Department of Agriculture 2002 farm bill relating to country of origin labels and its impact on North Dakota. A copy of the information presented is on file in the Legislative Council office. Mr. Bullinger said Section 19-02.1-25 requires retailers to indicate by label or other written identification the country of origin of the fresh beef, lamb, and pork available for sale to customers. He said enforcement of the labeling law is the responsibility of the State Department of Health; however, a significant number of the larger retail facilities are inspected by local health departments that regulate these facilities under memorandums of understanding with the State Department of Health.

Mr. Bullinger said current federal laws do not mandate country of origin labeling and any imported meat slaughtered or further processed in this country is considered domestic supply. He said retailers can identify the meat processor, but that does not mean the meat originated within this country. He said the State Department of Health has had difficulty enforcing the country of origin labeling law but is committed to doing its best in gaining compliance at the retail level.

Mr. Bullinger said the 2002 federal farm bill provides for voluntary country of origin labeling guidelines to be adopted by September 30, 2002. He said within two years mandatory federal country of origin labeling regulations are anticipated to be implemented. He said under the new farm bill, in order for a commodity to be labeled a product of the United States of America, it must be born, raised, and processed in the United States. He said this will make it easier for local retailers to identify where the meat they buy originated.

In response to a question from Representative Kempenich, Mr. Bullinger said the State Department of Health has not sent a letter to large out-of-state meatpacking companies informing them of North Dakota's country of origin labeling laws.

Senator Krauter said North Dakota's country of origin labeling law could be a model for the federal country of origin labeling law. He said when the country of origin cannot be identified, retailers and wholesalers could label the meat "country unknown."

Representative Boucher said federal regulations will make it easier for North Dakota and other states

to enforce country of origin labeling laws. He encouraged the State Department of Health to inform the large meatpacking companies about North Dakota's current country of origin labeling law.

Senator Solberg said a majority of North Dakota's meat is supplied from three major meatpacking companies. He said because of the small number of consumers in North Dakota, it will be extremely difficult to influence the major meatpackers to change practices to comply with North Dakota's law. He said it is impossible for retailers to identify the origin of processed meat.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Chairman Svedjan directed the committee to consider agency requests which have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to NDCC Sections 54-16-04, 54-16-04.1, and 54-16-04.2. The information relating to the requests was sent to the Budget Section members prior to the meeting and is on file in the Legislative Council office.

It was moved by Senator Andrist, seconded by Representative Kerzman, and carried on a voice vote that pursuant to NDCC Section 54-16-04.2, the Budget Section approve the following request which has been authorized by the Emergency Commission:

- **Securities Commissioner (Request #1403) - To increase other funds spending authority and the operating expenses line item by \$200,000 from funds in the investor restitution fund for repaying investors.**

It was moved by Senator Tallackson, seconded by Senator Robinson, and carried on a voice vote that pursuant to NDCC Section 54-16-04.1, the Budget Section approve the following request which has been authorized by the Emergency Commission:

- **Department of Human Services (Request #1404) - To increase other funds spending authority and the grants line item by \$457,000 to accept federal funds for the family nutrition program of the food stamp program to pass through to the NDSU Extension Service, which administers the family nutrition program.**

It was moved by Representative Wald, seconded by Senator Robinson, and carried on a voice vote that pursuant to NDCC Section 54-16-04(2), the Budget Section approve the following request which has been authorized by the Emergency Commission:

- **Aeronautics Commission (Request #1405) - To transfer \$562,000 of spending authority from the grants line item to the operating expenses line item for expenses**

associated with airport maintenance projects at 10 general aviation airports (\$112,000), security analyses at four air carrier airports (\$68,000), airport master plans at four commercial service airports (\$200,000), updating the state's air service report (\$106,000), and safety inspections at 85 general aviation airports (\$76,000).

It was moved by Representative Koppelman, seconded by Representative Byerly, and carried on a voice vote that pursuant to NDCC Section 54-16-04.1, the Budget Section approve the following request which has been authorized by the Emergency Commission:

- **Division of Emergency Management (Request #1408) - To increase other funds spending authority by \$2,794,000 for salaries and wages (\$207,500), operating expenses (\$66,500), and grants (\$2,520,000) to accept federal funds from the United States Department of Justice state domestic preparedness program for equipment grants to be distributed primarily to local government units and other state agencies.**

INFORMATION TECHNOLOGY DEPARTMENT PERFORMANCE MEASURES

Chairman Svedjan called on Mr. Mike Ressler, Director of Operations, Information Technology Department, who presented a report regarding the development of performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the Information Technology Department, pursuant to Section 9 of 2001 Senate Bill No. 2043. A copy of the information presented is on file in the Legislative Council office. Mr. Ressler said the details of the performance measures will be presented at the October Budget Section meeting reflecting fiscal year 2002 activity. He said the Information Technology Department's performance measures will be based on the following four business drivers:

1. Provide value to our customers.
2. Statewide direction and leadership.
3. Customer relationships and satisfaction.
4. Learning and growth.

Representative Skarphol said the Legislative Assembly needs to receive more and better information regarding information technology projects, including staff reductions realized from implementation of information technology projects. Representative Svedjan said additional staff cost avoidance information has been presented to the Legislative Assembly in the past; however, he would also like to receive information relating to staff reductions realized as a result of information technology projects.

In response to a question from Senator Nething, Mr. Ressler said the state's information technology network is available to state government as well as city and county government. He said Dakota Carrier Network can provide network services to private entities; however, for security reasons private entities cannot access the state portion of the network. Representative Koppelman said state and local government should be proactive in providing information to private entities as to how to access the private portion of the network.

Representative Byerly suggested information be made available to the Legislative Assembly relating to technology costs incurred by citizens and businesses of North Dakota in order to comply with new state agency technology systems. He said such costs include purchasing new versions of software or hardware.

In response to a question from Representative Wald, Mr. Ressler said the State of North Dakota operates a "trusted network," which means an individual within the network can access any other server in the network with the exception of the Bank of North Dakota. He said there is a firewall within the "trusted network" that prevents default access to the Bank of North Dakota's network.

In response to a question from Representative Delzer, Mr. Ressler said the state agency information technology service rate change analysis has been conducted for the 2003-05 biennium. He said based on the volume of services provided to state agencies during the 2001-03 biennium, the Information Technology Department will receive \$3 million less from state agencies for the 2003-05 biennium. He said, however, historically the volume of services provided has increased each biennium. He said higher volume tends to decrease the per unit charge to the state agencies.

In response to a question from Representative Delzer, Mr. Ressler said the Information Technology Department is anticipating approximately 100 schools to use broadband video in the fall of 2002.

In response to a question from Representative Skarphol, Mr. Ressler said once broadband video is implemented within the state, the Information Technology Department will be providing "quality of assurance," guaranteeing video sessions will have sufficient bandwidth. He said the State of North Dakota pays Dakota Carrier Network a per T1 line fee. He said the Legislative Assembly has funded one T1 line to every school in North Dakota and any additional T1 lines are the financial responsibility of the school district. He said Dakota Carrier Network has sufficient transmission capabilities to handle all the videoconferencing needs of the state.

In response to a question from Representative Koppelman, Mr. Ressler said the 2001 Legislative Assembly provided funding for the electronic data management system project, which will allow

agencies to implement the electronic transferring of forms and recognition of electronic signatures.

TRANSFERS TO THE STATE TUITION FUND

Chairman Svedjan called on Ms. Bonnie Miller, Fiscal Director, Department of Public Instruction, who presented a report on duplicative payments received for administrative expenses and on any related transfers to the state tuition fund, pursuant to NDCC Section 15.1-02-14. She said the Department of Public Instruction has not received any federal or other money for which a general fund appropriation has been provided. She said federal grants received by the department are used to supplement existing funds and do not replace general fund money.

ATTORNEY GENERAL'S OPINION RELATING TO THE STATE TREASURER'S USE OF ELECTRONIC CHECK SIGNATURE SERVICES

Chairman Svedjan called on Ms. Sandi Tabor, Deputy Attorney General, Attorney General's office, who presented the Attorney General's opinion regarding whether the State Treasurer's use of electronic check signature services provided by the Information Technology Department is in compliance with NDCC Section 54-27-08. She said the Attorney General's office examined whether the use of an electronic signature would constitutionally challenge the State Treasurer's ability to receive all public money and disburse funds when received. She said according to case law the transfer of the administrative function of putting a signature on a warrant from a constitutional office can be accomplished without disrupting the constitutional duty of the office. She said the State Treasurer may require the Information Technology Department to provide safeguards and security assurances and procedures over the check-signing process. She said based on the Attorney General's office conversations with the Information Technology Department, it was determined that procedures could be implemented to reasonably protect the State Treasurer's constitutional oversight responsibilities.

In response to a question from Representative Wald, Ms. Tabor said the Attorney General's opinion will be given to the State Treasurer's office. She said the State Treasurer has the right to question whether a statute infringes on the constitutional duty of the office. She said the Legislative Assembly will have to assume there will be a good-faith effort by both the State Treasurer's office and the Information Technology Department to implement electronic check signature services.

In response to a question from Representative Monson, Ms. Tabor said according to the Attorney General's opinion the State Treasurer needs to

comply with the provisions of NDCC Section 54-27-08.

HIGHER EDUCATION

University of North Dakota

Chairman Svedjan called on Mr. Robert Gallagher, Vice President for Finance and Operations, University of North Dakota, who presented a status report on the development and construction of the Hilton Garden Inn. Mr. Gallagher said the University of North Dakota was approached by a developer in December 2001 to build a University of North Dakota Hilton Garden Inn on the west campus. He said the land lease for the hotel is based on fair market value and was approved by the State Board of Higher Education. He said the hotel is to be completed in November 2002. He said lease provisions allow for:

- University of North Dakota approval of the interior and exterior design of the building.
- The right of first refusal for the university if the property is placed for sale.
- University of North Dakota approval required for the lease to be assigned.
- Rent to be paid to the university while the hotel is being built.
- The property must be constructed by 2004.

In response to a question from Representative Warner, Mr. Gallagher said the developer will be subject to special assessments and property taxes based on the value of improvements to the land. He said hotel construction will cost \$10 million.

Mr. Gallagher provided copies of the lease agreement for the Hilton Garden Inn to committee members. A copy of the lease agreement is on file in the Legislative Council office.

In response to a question from Representative Delzer, Mr. Gallagher said the lease does not contain a provision for taxes on the value of the land to be collected by the university or submitted by the university to the City of Grand Forks. He said real estate taxes will not be assessed on the value of the land unless it is agreed to between the developer and the City of Grand Forks. He said the lease on the land is for a 40-year period with two 10-year option periods at the discretion of the lessee. He said the base rent is \$0.14 per square foot per year or \$21,359 per year. He said the leased area covers 152,563 square feet.

Senator Grindberg said a hotel is not considered a primary sector or a new wealth generator, thus would probably not qualify for property tax abatement.

In response to a question from Senator Schobinger, Mr. Gallagher said he has not been contacted by any local hotel owners concerned about the new property.

In response to a question from Representative Skarphol, Mr. Gallagher said he would provide a list of the investors in the Hilton Garden Inn to the Legislative Council staff for distribution to committee members.

North Dakota State University

Chairman Svedjan called on Dr. Joseph A. Chapman, President, North Dakota State University, who presented information relating to the establishment of a Division I athletic program, development of the Research and Technology Park, and the university's flood damage from June 2002 storms. A copy of the information presented is on file in the Legislative Council office. Dr. Chapman said the Research and Technology Park allows North Dakota State University to leverage its resources through strategic partnerships with North Dakota, national, and global businesses. He said North Dakota State University's decision to move from Division II to Division I athletics will be based on financial feasibility.

In response to a question from Representative Skarphol, Dr. Chapman said North Dakota State University received approximately \$65 million in research grants during the 2001-02 fiscal year. He said the research funding is used to support doctoral programs. He said the university offered 15 doctoral programs three years ago, compared to 34 or 35 programs currently. He said North Dakota State University will continue to bring forth doctoral programs as needed. The Legislative Council staff distributed a memorandum entitled *North Dakota University System - Doctoral Programs*.

In response to a question from Representative Timm, Dr. Chapman said North Dakota State University believes that 20 percent of its enrollment should be graduate students. He said the goal in offering graduate programs is to retain and attract graduate students to North Dakota and not to compete with other state institutions. He said North Dakota State University offers doctoral programs that it considers necessary to be a large research institution.

In response to a question from Representative Wald, Dr. Chapman said North Dakota State University and South Dakota State University are the only two land grant institutions in the lower 48 states who do not have Division I athletics. Representative Wald said he believes North Dakota State University should devote its energies to its strengths in research and academics and leave athletics at the Division II level.

In response to a question from Representative Belter, Dr. Philip Boudjouk, Vice President for Research, Creative Activities, and Technology Transfer, North Dakota State University, said approximately 80 to 85 percent of North Dakota State University's research funding is federal funds, primarily from the Department of Defense. He said approximately 95 percent of the federal grants received for research require no federal matching dollars.

In response to a question from Representative Timm, Dr. Chapman said based upon athletic department budgets and enrollments, the North Central Conference universities more closely resemble Division I-AA schools than the remaining Division II schools.

Chairman Svedjan called on Mr. Gene Taylor, Athletic Director, North Dakota State University, who presented an update regarding establishing a Division I athletic program at North Dakota State University. A copy of the information presented is on file in the Legislative Council office. Mr. Taylor said no state-appropriated funds will be used to implement the move to Division I athletics. He said North Dakota State University is currently waiting for a market assessment which will provide the amount of financial support that will be generated if a move to Division I athletics is made.

In response to a question from Representative Svedjan, Mr. Taylor said the market assessment will be completed by the end of July 2002. He said upon review of the assessment, he and his staff will make a recommendation to Dr. Chapman by early August 2002 on whether to move North Dakota State University to Division I athletics.

In response to a question from Senator Heitkamp, Mr. Taylor said the North Central Conference currently has nine members, including the University of Northern Colorado. He said if the University of Northern Colorado moves to Division I athletics, the North Central Conference will remain at eight members. He said if North Dakota State University also leaves the North Central Conference for Division I, the conference will consider adding another university such as the University of Minnesota - Duluth.

In response to a question from Representative Byerly, Mr. Taylor said North Dakota State University would be willing to play the University of North Dakota in athletics even if the University of North Dakota decides to stay at Division II. He said North Dakota State University currently has 16 sport sponsorships which is the minimum requirement for Division I athletics. He said North Dakota State University cannot drop any sport sponsorships if it wants to be a Division I school.

In response to a question from Senator Nething, Mr. Taylor said North Dakota State University would be Division I-AA in football and Division I for all other sports.

In response to a question from Representative Timm, Mr. Taylor said there is currently a five-year probationary period prior to a school becoming a Division I school.

In response to a question from Representative Wald, Mr. Taylor said if North Dakota State University moves to Division I-AA in football, it will allow more athletic scholarships to be offered to students, including North Dakota students.

In response to a question from Senator Heitkamp, Mr. Taylor said the National Collegiate Athletic Association does not allow a university to be Division I-AA for football and remain at Division II for all other sports.

Chairman Svedjan called on Mr. Dick Rayl, Vice President of Finance and Operations, North Dakota State University, who presented a report on North Dakota State University's flood damage from the June 2002 storms. A copy of the information presented is on file in the Legislative Council office. Mr. Rayl said on June 9, 2002, the Fargo/Moorhead area received three to four inches of rain in about two hours. He said the lower level of Memorial Union sustained extensive water damage as the result of muddy water coming into the building from uncapped holes located in the bottom of steamline trenches. He said the holes were left uncapped by steamline construction workers and a claim has been filed with the contractor's insurance for an estimated \$200,000 in damages to Memorial Union.

Mr. Rayl said water from the steamline construction trenches also entered Ceres Hall through uncapped construction pipes. He said damage from this exposure has not been fully determined. He said a claim has been filed with the contractor's insurance for any damages.

Mr. Rayl said Churchill Hall sustained damage from roof drain runoff. He said a preliminary estimate of damages is \$75,000 and a claim will be filed with the state fire and tornado fund.

In response to a question from Representative Wald, Mr. Rayl said a federal or state disaster was not proclaimed because of the storm; thus, Federal Emergency Management Agency (FEMA) coverage is not available.

Chairman Svedjan called on Senator Tony Grindberg, Executive Director, Research and Technology Park, North Dakota State University, who presented a report on the development of the Research and Technology Park. Senator Grindberg said the Research and Technology Park Board consists of 10 members, seven individuals from the private sector and three from North Dakota State University. He said the board is chaired by Dr. Joseph A. Chapman. He said the anchor tenant for the Research and Technology Park is Phoenix International, which designs and manufactures electronic control, display, and sensor products. He said the Research and Technology Park is a 501(c)3 corporation and funding for the current federal fiscal year is provided by the United States Department of Labor. He said two additional private sector companies have expressed interest in participating in the Research and Technology Park. He said a proposal has been presented by a California company to develop a nanotechnology research facility at the park. He said this company's proposal would include a \$10 million investment in the Research and Technology Park.

In response to a question from Senator Nething, Senator Grindberg said the companies involved with the Research and Technology Park have not indicated a preference whether the athletic program is Division I or Division II.

BUDGET TOUR REPORTS

Chairman Svedjan called on Representative Delzer to present a report on the budget tour of the West Central Human Service Center conducted by the Budget Committee on Government Services on April 16, 2002.

It was moved by Representative Delzer, seconded by Representative Kempenich, and carried on a voice vote that the Budget Section accept the report of the April 16, 2002, Budget Committee on Government Services tour group.

Chairman Svedjan called on Senator Nething to present a report on the budget tour conducted by the Higher Education Committee on April 23-24, 2002. The committee conducted budget tours of Minot State University - Bottineau, Forest Service, Minot State University, and the North Central Research Extension Center.

It was moved by Senator Nething, seconded by Representative Warner, and carried on a voice vote that the Budget Section accept the reports of the April 23-24, 2002, budget tours conducted by the Higher Education Committee.

Senator Nething presented a report on the budget tour conducted by the Higher Education Committee on May 6-7, 2002. The committee conducted budget tours of Williston State College, the Williston Research Extension Center, Dickinson State University, and the Dickinson Research Extension Center.

It was moved by Senator Nething, seconded by Senator Robinson, and carried on a voice vote that the Budget Section accept the reports on the May 6-7, 2002, budget tours conducted by the Higher Education Committee.

The Legislative Council staff distributed a report on the budget tour conducted by the Budget Committee on Government Administration on June 19, 2002. The committee conducted budget tours of the Southeast Human Service Center, Division of Independent Study, and Agronomy Seed Farm.

The committee recessed for lunch from 12:15 to 1:05 p.m.

STATUS OF THE STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

Chairman Svedjan called on Mr. Jerry Doan, Chairman, State Board of Agricultural Research and Education, who presented an update on the State Board of Agricultural Research and Education pursuant to Section 10 of 2001 Senate Bill No. 2021 and NDCC Section 4-05.1-19. A copy of the information presented is on file in the Legislative Council office. Mr. Doan said the State Board of Agricultural Research and Education has been in existence for five years. He announced that Dr. Ken Grafton has been appointed the Associate Dean of Research,

Main Research Center, North Dakota State University.

Mr. Doan reviewed the following items:

- Approximately 61 percent of the funding from the Attorney General refund fund has been received for land purchases at the Williston Research Extension Center and the North Central Research Extension Center.
- \$510,000 in cash and pledges have been obtained and construction is about to proceed for the Langdon Learning Center.
- The North Dakota State University Extension Service has established seven livestock marketing clubs in North Dakota.
- The Barley Granting Committee of the agricultural research fund is responsible for reviewing grant proposals and issuing grants totaling \$288,000 for malt barley research.
- The original bids for the Carrington feed mill and feedlot were higher than anticipated and the proposal will be adjusted and sent out for rebids. He said he is concerned that the \$300,000 in funding is not sufficient to develop a modern feed mill and feedlot.

Chairman Svedjan called on Mr. Ryan Brooks, Chairman, State Board of Agricultural Research and Education, Livestock Subcommittee, who presented information on State Board of Agricultural Research and Education livestock research, including the beefline initiative. He said all beefline projects have been done on a cooperative basis with the agricultural experiment stations and the agricultural research centers. He said \$445,000 of Dickinson oil revenues was appropriated by the 2001 Legislative Assembly for beefline projects, including \$150,000 for the beef quality assurance program and \$295,000 for cattle and feed related research.

Mr. Doan said revenue to the agricultural research fund is generated from withholding four cents per gallon from refunds of motor vehicle fuel taxes used for agricultural purposes. He said the 2001-02 allocations from the agricultural research fund based on 2000-01 fuel tax revenues and statutory allocations from the agricultural research fund are:

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|--|-----------|-----------|
| Administrative expenses (estimated) | | \$50,000 |
| Agricultural commodities research (70%) | \$397,310 | |
| Animal agriculture research (18%) | 102,165 | |
| New and emerging crops research (12%) | 68,110 | |
| Total grant allocations | | 567,585 |
| Total revenue (including \$5,170 of returned grant funds from fiscal year 2000-01) | | \$617,585 |

In response to a question from Representative Wald, Mr. Doan said the 2001 Legislative Assembly approved \$288,000 of funding which is to be allocated from the Main Research Center for the purpose of developing western North Dakota malt barleys. He said the Barley Granting Committee of the agricultural

research fund consists of North Dakota barley producers. He said the law requires that barley research be conducted in the Dickinson, Williston, Hettinger, and Main Research Centers. He said requests for proposals relating to the malt barley research funding were requested in order to allow the Barley Granting Committee to determine how, not where, the barley research funding was spent.

Chairman Svedjan called on Dr. Jim Venette, Interim Associate Dean of Research, Main Research Center, North Dakota State University, who presented the following information:

- The number of employees and expenditures for each research extension center and the Main Research Center.
- A report on cooperative projects undertaken by the agricultural research center, extension centers, and the Main Research Center.
- A report identifying the source of income at the research and extension centers, the use of those funds, and the extent the research projects are affected by each income source.
- A report on North Dakota agriculture becoming the trusted provider of the highest quality agricultural products in the world.

A copy of the information presented is on file in the Legislative Council office.

In response to a question from Senator Schobinger, Dr. Venette said North Dakota State University has obtained federal authorization and permits for conducting hemp research. He said the university needs to raise approximately \$50,000 for the required containment facilities to conduct hemp research.

In response to a question from Senator Bowman, Dr. Venette said North Dakota State University is conducting agricultural market research, including trade inequities, market economies, and the global economy for agriculture.

Chairman Svedjan called on Dr. Sharon Anderson, Director, North Dakota State University Extension Service, who presented the annual report of accomplishments and results of the North Dakota State University Extension Service. She said the report contained a summary of the dissemination of information regarding each agricultural experiment research project. A copy of the information presented is on file in the Legislative Council office.

STATUS OF ACTUAL MEDICAL ASSISTANCE EXPENDITURES

Chairman Svedjan called on Ms. Carol K. Olson, Executive Director, Department of Human Services, who reported, pursuant to Section 20 of 2001 House Bill No. 1012, on the status of actual medical assistance expenditures to date compared to projections and whether the actual expenditures for the biennium are anticipated to exceed the funding appropriated. A copy of the information presented is on file in the Legislative Council office. Ms. Olson said in order to

deal with the anticipated Medicaid budget shortfall, the Department of Human Services has issued a departmentwide travel "freeze" and expanded the review of vacant positions to all divisions within the department. She said the department is continuing to look at all business practices to achieve further efficiencies. She said these efficiencies will allow the department to realize approximately \$1 million in general fund savings.

In response to a question from Representative Byerly, Ms. Olson said the Department of Human Services has not terminated any employees; however, a voluntary early retirement program is being implemented and additional staff reductions have been achieved by leaving employee positions unfilled.

Mr. David Zentner, Director, Medical Services, Department of Human Services, said as of May 31, 2002, the Department of Human Services is projecting Medicaid expenditures to be \$28.7 million more than the 2001-03 legislative appropriation, \$13.9 million of which is from the general fund. Mr. Zentner said Congress has discussed a proposal which would provide a 1 percent increase in the federal medical assistance participation (FMAP) rate for an 18-month period and also during that period hold states harmless for reductions in FMAP. He said it is unknown at this time if Congress will provide Medicaid relief to states. He said if the bill passes, it would provide at least \$5.5 million to offset the department's general fund shortfall.

Mr. Zentner said the Department of Human Services is proposing Medicaid reimbursement changes that would have the least impact on the most vulnerable citizens. He said these changes would be implemented over the last 12 months of the 2001-03 biennium. He said the proposed changes to the Medicaid program operations are:

1. Medicaid providers received a 2.2 percent inflation increase in the first year of the biennium, but the second-year planned inflation increase will not be granted for providers except nursing facilities. Total savings \$2.2 million, general fund savings \$689,000.
2. Continue to review and institute utilization controls and limits for medical services. Total savings \$800,000, general fund savings \$250,000.
3. Change the policy for the payment of "bed hold" days in nursing facilities. Currently the Medicaid program pays the nursing facility for the days a resident is absent in order to ensure that the resident has a bed when they return to the facility. Payment is based on the classification of each individual. The proposed change would pay the facility at the lowest calculated daily rate. Total savings \$200,000, general fund savings \$60,000.

4. Change the payment policy for Part A Medicare crossover claims. The policy change would equalize the payment process in all situations where Medicaid is a secondary payer by limiting the total payment from Medicare and Medicaid to no more than the Medicaid allowed amount. Total savings \$1.3 million, general fund savings \$400,000.
5. Limit capital costs for hospitals to no more than \$275 per discharge. Total savings \$900,000, general fund savings \$300,000.
6. Establish a prospective per diem payment rate for inpatient hospital rehabilitation and psychiatric distinct part units. Total savings \$400,000, general fund savings \$130,000.
7. Change the prescription drug payment process from the average wholesale price minus 10 percent to the average wholesale price minus 12 percent. Total savings \$700,000, general fund savings \$200,000.
8. Institute a state maximum allowable cost program by October 1, 2002. When generic equivalent drugs are available in a particular drug class, a maximum allowable cost price is established based on the most appropriate price drug for that category of drugs. Unless a physician indicates in writing that a brand drug is necessary, the maximum allowable cost price is used to pay for the drug. Total savings \$900,000, general fund savings \$300,000.
9. Change the recipient liability offset provision. The proposed change would limit the offset to medical bills to a set amount of no more than \$100 per month. This limit will meet federal regulations regarding the treatment of recipient liability offsets. Total savings \$300,000, general fund savings \$100,000.
10. Establish a \$3 copayment on brand-name prescription drugs. Total savings \$1 million, general fund savings \$300,000.
11. Change the dental services that are available to adults participating in the Medicaid program. At the present time, adults have access to a wide range of dental services that in many instances exceed the services available through other state Medicaid programs. Adults would still have access to basic dental services, including examinations, x-rays, cleanings, and fillings. Total savings \$2 million, general fund savings \$525,000.

If the above changes are implemented, the estimated savings total about \$10.7 million, of which \$3.3 million is from the general fund. A copy of the information presented is on file in the Legislative Council office.

Mr. Zentner said the Department of Human Services anticipated receiving approximately \$11.8 million

from the intergovernmental transfer process. He said it appears the actual payments will be about \$19.6 million or an increase of \$7.8 million. He said the increase is a result of unanticipated increases in Medicare nursing facility rates. He said anticipated investment income from the intergovernmental transfer fund will be approximately \$2.7 million less than budgeted. He said the difference of \$5 million could be applied to the Medicaid program budget shortfall if approved by the 2003 Legislative Assembly. He said the possible increase in the federal FMAP (\$5.5 million), proposed Medicaid savings (\$3.3 million), and use of unanticipated intergovernmental transfer funds (\$5 million), would bring the total general fund savings to \$13.8 million.

In response to a question from Representative Svedjan, Mr. Zentner said the \$13.8 million in general fund savings does not include the \$1 million in other general fund savings through efficiencies within the Department of Human Services.

In response to a question from Senator Nething, Ms. Olson said the Department of Human Services is studying all possible ways to achieve departmentwide budget savings. She said Medicaid expenditures are the largest part of the department's budget. Senator Nething said the budget reductions are primarily affecting external providers and recipients and not administrative costs.

Representative Aarsvold said the change in the payment process for payment of prescription drugs from the average wholesale price minus 10 percent to the average wholesale price minus 12 percent will have a greater effect on small town pharmacies that do not have the same buying power as the large chain drugstores. Mr. Zentner said the average wholesale price minus 12 percent policy should allow most pharmacies to procure drugs without operating at a loss.

Representative Boucher said the proposed changes to the Medicaid program will not equally affect all providers and may force some businesses to close. He said pharmacies that have a high percentage of Medicaid customers will have significant revenue loss.

Senator Grindberg said the Department of Human Services and the Legislative Assembly should provide block grants to the developmental disabilities provider companies and let them determine employee salaries. He said the Legislative Assembly should not be regulating pay increases to private businesses.

In response to a question from Representative Svedjan, Mr. Zentner said the fees for all Medicaid providers will be frozen for the second year of the 2001-03 biennium, not just developmental disabilities providers.

Representative Svedjan said the Department of Human Services may want to study the possibility of placing a limit on the continued use of proton pump inhibitors. He said pharmacists have indicated to him

that extended use of these drugs do not provide additional benefits. He said by requiring physician approval for continued use of the drug, a substantial savings could be realized. He requested the Department of Human Services analyze the potential cost-savings as opposed to changing the payment process for prescription drugs.

Senator Solberg said the Department of Human Services must proceed with the proposed changes to the Medicaid program because there will not be a sufficient June 30, 2003, general fund ending balance to provide a deficiency appropriation for the department.

In response to a question from Senator Nething, Ms. Brenda Weisz, Chief Financial Officer, Department of Human Services, said by not providing the developmental disabilities providers an inflationary increase for the second year of the 2001-03 biennium, \$600,000 in general fund savings will be realized. She said these savings are not a part of the Medicaid budget. She said the savings realized from not providing the increase will offset the anticipated \$600,000 shortfall in the developmental disabilities grant budget. She said the Department of Human Services is anticipating budget shortfalls in other programs besides Medicaid due in part to the anticipated October 1, 2002, FMAP reduction.

In response to a question from Senator Nething, Ms. Olson said the members of the Legislative Assembly will be notified in advance of all implemented Department of Human Services cost containments.

In response to a question from Senator Nething, Chairman Svedjan said the proposed Medicaid program changes are an executive branch decision to manage within the department's appropriation. He said the Department of Human Services is bringing the matter to the attention of the Budget Section for support and input regarding budget reductions and cost-saving measures.

In response to a question from Senator Robinson, Mr. Zentner said the increase in intergovernmental transfer funds is based upon calculations conducted by the Department of Human Services of Medicare nursing facility rates and is not determined by Congress. He said the proposed increases or hold harmless provisions in the FMAP rate has been debated by Congress for over a year and was a component of the original economic stimulus legislation. He said he does not know when or if the changes will be implemented by Congress. He said the changes to the Medicaid program will be implemented by the department as soon as possible. He said prior to implementing the changes, a medical care advisory committee meeting has to be conducted and the department needs to publish notices relating to the proposed administrative rule changes. He said the department did not conduct an open forum prior to developing the Medicaid program changes.

Chairman Svedjan said the proposed Medicaid program changes do not require Legislative Assembly approval to be implemented.

In response to a question from Representative Wald, Mr. Zentner said from January 2001 to May 2002 the number of eligible Medicaid recipients increased from 43,000 to almost 48,000 individuals. He said the Department of Human Services has attempted to make sure that all temporary assistance for needy families (TANF) program members are eligible for Medicaid. He said there have been increased outreach efforts to inform people who are eligible but have not applied for Medicaid. He said in addition, there is a one-year federally required Medicaid transitional period for TANF individuals.

In response to a question from Representative Koppelman, Mr. Zentner said he hopes that most of the proposed Medicaid program changes can be implemented by no later than August 1, 2002. Mr. Zentner said the maximum allowable cost drug program is not a prior authorization program. He said the Department of Human Services will identify equivalent generic drugs within a drug class, which will be used as the price allowed for the drug.

In response to a question from Representative Koppelman, Chairman Svedjan said PHARMA will be conducting a study of prescription services within the Department of Human Services Medicaid program.

In response to a question from Senator Christmann, Mr. Zentner said the Robert Wood Johnson Foundation grant is designed for outreach. He said the current grant is scheduled to expire in August 2002; however, the Dakota Medical Foundation has submitted a claim for additional funding. He said the Department of Human Services is not actively conducting outreach.

In response to a question from Senator Robinson, Ms. Olson said the Department of Human Services will present a 95 percent base budget to the 2003 Legislative Assembly. She said some of the proposed Medicaid program reductions will be included in the 2003-05 budget request.

Representative Kerzman said the Department of Human Services should reduce the number of programs offered and fully fund the remaining programs. Chairman Svedjan said a reduction in programs would require approval by the 2003 Legislative Assembly.

Senator Nething said the Legislative Assembly in the past has directed the Department of Human Services to make sure that the developmental disabilities providers are funded at an appropriate level. He said he is concerned with the Department of Human Services not funding the inflationary increase for the second year of the 2001-03 biennium for developmental disabilities providers.

Senator Andrist said he hopes the Department of Human Services will take into consideration the suggestions made by the members of the Budget

Section before implementing changes to the Medicaid program.

Representative Monson asked that the Department of Human Services reconsider reductions in the pharmacy reimbursement rates that will negatively impact smaller communities.

Representative Delzer said the 2001 Legislative Assembly increased the annual fund appropriation for the Medicaid program by \$23 million for the 2001-03 biennium as compared to the 1999-2001 biennium. He said if you include the anticipated \$14 million shortfall projected by the department, there is an increase of \$37 million that will have to be addressed by the 2003 Legislative Assembly. He said the 2003 Legislative Assembly will have to make some difficult decisions concerning all agency budgets. He said the legislators need to contact the congressional delegation to support restoring the FMAP funding.

Chairman Svedjan requested the Department of Human Services present an update at the next meeting of the Budget Section on the implementation of the plan to address the Department of Human Services Medicaid budget shortfall.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Representative Wald asked that the Workers Compensation Bureau present an update regarding the construction and proposed rental space in the new Workers Compensation Bureau building at the next meeting of the Budget Section.

It was moved by Representative Glassheim, seconded by Representative Thoreson, and carried on a voice vote that the Budget Section meeting be adjourned subject to the call of the chair. Chairman Svedjan adjourned the meeting at 3:40 p.m.

Donald J. Wolf
Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:1