

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2023

2007 SENATE APPROPRIATIONS

SB 2023

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01/05/07

Recorder Job Number: 656

Committee Clerk Signature

Alice Rulzer

Minutes:

Chairman Holmberg opened the hearing on Senate Bill #2023 in the Harvest Room on 01-05-07 at 8:30 a.m. Roll call was taken.

Dr. Wayne G. Sanstead, State Superintendent of North Dakota Department of Public

Instruction (DPI) presented written testimony (1) regarding their first time deficiency appropriation request. He stated that only three of DPI's thirteen units are 100% State funded. The other units are funded with both state and federal dollars. The budget presentation to the Senate Appropriations Committee is scheduled for January 18, 2007.

Chairman Holmberg asked if this request included staff expenses, requested the impact of the Legislative session, the estimated costs regarding travel expenses for the Governor's Commission on Education, and if these expenses are paid by DPI.

Several questions were raised; can a shortfall of funds be reconciled and is it hard to estimate?

Senator Christmann asked if the amount requested would cover expenses of employees for the extra work they do during the Legislation process?

Chairman Holmberg stated it is hard to get exact projections unless incidental amounts are covered. He also indicated some agencies will request to transfer money from operating

expenses to salary and salary to operating. That is a function the Legislature is involved in and the agency cannot spend money on that. He also asked does ITD report accounts receivables if the Legislature did nothing and there would be short funds to ITD.

Kathy Roll, Financial Administrator, Office of Attorney General (AG) presented handouts (2) to the Committee and gave testimony regarding Litigation Fees including expert witness fees, deposition and transcription costs and other out-of-pocket expenses associated with litigation in which the Office of AG is involved.

Chairman Holmberg requested an explanation of School finance Litigation. He also indicated if the Legislature was not meeting when the statement was agreed upon the AG would appear before the Legislature looking at the OMB budget because OMB is the last bill. DPI will come before this Committee for the next biennium to request funds.

Kathy Roll introduced discussion on reimbursement for district court criminal and juvenile court cases regarding witness fees and expenses She stated that her office eventually receives bills from the Court and holds them until additional monies are provided.

Questions were raised about lawsuits and whether the AG office completes the legal work or does external out of state expertise get hired to handle the work load, trials, etc;

Senator Christmann asked why there is an increase in Prosecution Witness fees, and why the school finance litigation costs,

Senator Holmberg indicated to the new committee members, that historically there is a contingency fund with the Emergency Commission to take care of emergencies. Most of that money has been spent from this biennium and this is one of the expenses.

Major General David A. Sprynczynatyk, Adjutant General distributed written testimony (3) and presented testimony in reference to the Department of Emergency Services, requesting deficiency appropriations to repay state disaster response and recovery costs, as well as loans

from the Bank of North Dakota. He stated there are 13 present disaster declarations we have open in his handout going back to the flood of 1997. Most recent declarations include the flood of June of 2006.

Questions were raised as to whether this is the last payment of the 1997 flood or will there be more payments, does section 2 allow you to use the other funds, and is there a need to amend the amount?

. **Roger Johnson, Department of Agriculture** introduced Jeff Weispenning, Deputy of the Department of Agriculture and he handles the budget in the office. Written testimony (4) was given requesting funds regarding the current FY06 federal allocations for state cooperative meat and poultry inspections programs. Mr. Weispenning stated that funding for the project was provided by a federal grant but there is a shortfall and the funds will be depleted by June 2007. The Department of Agriculture has to pick up the balance for the remainder of the biennium. The federal grant year runs from October 1 to September 30th. He indicated there is a considerable shortfall. This office is working with the Federal Government regarding these funds, however, there may be no extra money allocated by the Federal government for our Department. The Governor's budget treats our program very well and provides for additional inspectors around the state.

Senator Robinson Questions were raised as to whether federal funds not being available, means that some of the operations that just got started would be shut down;

if a federal inspector could be obtained, if there is an option of federal or state inspector, if the budget is short in our program to help our inspectors, is the federal budget short for the federal inspectors also, about the actual amount of deficiency and if there is a breakdown as far as the salaries and operating expenses?

Senator Grindberg asked the Legislative Council if we have a list of all agencies in any potential turn back.

Alice Brekke, Budget Director UND distributed written testimony (5) regarding the deficiency appropriation request in reference to the 1997 flood. They are awaiting resolution from FEMA. Appeals have been filed and all our avenues to receive money have been exhausted. There are 3 categories, the first is interest on the bank loan with the Bank of ND; the second is the amount that was added into the request made by action taken by FEMA and that is ineligible costs related to the steamline. The 3rd is litigation costs associated with Lunseth Plumbing and Heating Company and the appeal. There is additional costs pending resolution of FEMA appeals, resulting in either payment by FEMA or an additional deficiency request.

Questions asked included has every appeal been exhausted before you come and ask the state to pay it's share, if the dollar amount installed is uncertain and does this represent a 10% state committed to the 90% of costs, help in understanding the steamline issue, and what the other projects are because they should have been completed, what the department is managing under project managing?

John Adams, Vice President of Finance NDSU did not have handout at time of testimony but later provided the committee with the State Deficiency Appropriation for Biennium 2005-2007 Estimate (8) requesting funds in regards to the costs incurred as the result of the flood of 2006. Introduced fellow staff members Bruce Franz, Director of Facilities and Gary Wawers, Controller in the Accounting Department at NDSU.

Questions were raised about the expenses incurred during this current biennium and where we anticipate going on into the future, if UND comes to us after all the avenues are exhausted and

there is nothing left except to pay the bills and is there a total dollar of the existing loan and the total indebtedness on the flood?

Larry Kotchman, State Forester of North Dakota Forest Service Written testimony (6) was provided, which ND Forest Service is seeking a deficiency appropriation to defray 2006 emergency wildland fire suppression expenditures.

Senator Krauter asked about the 3 modern type 6 wildland engines, if they contracted for these engines and where they are physically located?

Larry Kotchman indicated with the advent of the federally funded national fire plan of 2000 the agency began to develop a strike team of engines. A strike team is 5 engines of which we have 3 engines. He further explained about the engines, where they are manufactured and the fact they are located in Bismarck, Fort Mandan and Bottineau. We preposition those units based on severity of green fire season. We expect to have a total of 5 engines in the future.

Dave Krabbenhoft, DOCR presented written testimony (7) of the estimated 2005-2007 deficiency. He gave testimony regarding the female housing in New England and county jails; male contract housing, parole and transition program, halfway houses. There is a shortfall in halfway houses and North Central Correction Rehabilitation Center in Rugby is also over budget.

Senator Krauter asked if Rugby guaranteed a daily rate.

Senator Grindberg asked whether rates change if we fund a certain amount and how do we address corrections in the budget this time so we don't have this problem two years from now? How can you give us assurance that this won't happen again?

Dave Krabbenhoft 1st – when we came into the budget last biennium New England was unable to get us any financial information as actual costs. We put in an estimate of 10% higher. When a rate came in, it was during the crossover, was never addressed to budget, but

just estimated by the Department. #2 There is no negotiating power, only one facility able to house 126 female inmates and they underestimated their costs. They have been operating at cost. They are not taking advantage of that relationship. I have all the confidence in the world in their staff and management in New England and the budget they submit.

Senator Christmann questioned the Rugby portion and was assured that the closer we get to the end we will be more accurate in our budget requests.

Senator Mathern, Senator Wardner, Senator Robinson All agreed that we needed to back Dave up. New England was in transition during last session. There was also a question concerning the male population.

Dave Krabbenhoft Good things are happening in the Department of Corrections. Male population is stabilizing. However, field service numbers are climbing, caseload on officers is increasing. Also reported regarding medical, cost of meals and sex offender supervision. FTE salaries were in the budget.

Senator Holmberg closed the meeting.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2023

Senate Appropriations

Check here for Conference Committee

Hearing Date: 01-11-07

Recorder Job Number 915

Committee Clerk Signature



Minutes:

Chairman Holmberg brought before the committee questions regarding SB 2023, even though this time was not a hearing for this bill. He stated that subcommittee members have not been assigned to date on SB 2023 and asked if this committee would like a subcommittee assigned or if the bill should just be amended and sent out.

Senator Mathern asked if the amendments have been drafted by the Legislative Council.

Chairman Holmberg requested the Legislative Council to draft the amendments. Discussion regarding SB 2023 ended.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2023

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01-26-07

Recorder Job Number: 2000

Committee Clerk Signature

Alice Welzer

Minutes:

Chairman Holmberg opened the hearing on SB 2023 regarding the Deficiency Appropriation.

He stated we do have amendments to this bill. The Department of Agriculture wanted a change, the University system, and the Adjutant General. This amendment, Roxanne, covers all of those points and these are to pay bills that kind of have been paid. And we're still not done with the UND one.

Senator Robinson made a motion for the amendment. Senator Mathern seconded.

Chairman Holmberg asked for discussion. All in favor of the amendment say aye.

Senator Grindberg did a DO PASS AS AMENDED, Senator Mathern seconded. A roll call was taken on a DO PASS AS AMENDED resulting in 11 yeas, 0 no, 3 absent. The motion carried. Senator Robinson will carry the bill.

The hearing on SB 2023 closed.

Date: 1-26-07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023 -

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number As amended

Action Taken do pass as amended

Motion Made By Robinson ^{amendment} Grindberg ^{do pass as amended} Seconded By Mather

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm			Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mather	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Robinson

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

REPORT OF STANDING COMMITTEE

SB 2023: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2023 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "4,300,000" with "4,100,000"

Page 1, line 23, replace "4,300,000" with "4,100,000"

Page 2, line 2, replace "83,422" with "42,538"

Page 2, line 3, replace "30,578" with "15,592"

Page 2, line 4, replace "114,000" with "58,130"

Page 2, line 7, replace "560,476" with "2,069,727"

Page 2, line 8, replace "560,476" with "2,069,727"

Page 2, line 22, replace "10,569,893" with "11,823,274"

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment decreases the deficiency appropriation for the Office of Adjutant General from \$4.3 million to \$4.1 million, decreases the deficiency appropriation for the Department of Agriculture from \$114,000 to \$58,130, and increases the deficiency appropriation for the University of North Dakota from \$560,476 to \$2,069,727. The total general fund appropriation is increased by \$1,253,381, from \$10,569,893 to \$11,823,274.

2007 HOUSE APPROPRIATIONS

SB 2023

2007 HOUSE STANDING COMMITTEE MINUTES

.Bill/Resolution No. SB 2023

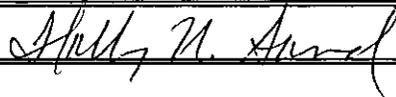
House Appropriations Committee

Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3813

Committee Clerk Signature



Minutes:

Ch. Svedjan opened the hearing on SB 2023 – the Deficiency Appropriation bill.

Dr. Wayne Sanstead, State Superintendent, North Dakota Department of Public

Instruction, distributed and reviewed testimony (Attachment A). There were no questions

following Dr. Sanstead's testimony.

Kathy Roll, Financial Administrator, Office of Attorney General, distributed and reviewed testimony (Attachment B).

Rep. Skarphol: Is it typical for deficiency appropriations for witness fees to come in?

Ms. Roll: Yes.

Rep. Carlisle: Why couldn't these items be in their respective budgets? What about carryover?

Chm. Svedjan: This involves appropriations that affect the current biennium, that's why the emergency clause is on it. Carryover has always come up as a part of these discussions but can't recall a time when carryover has been made part of the request. Kathy, does your agency plan to turn money back to the general fund in 05-07?

Ms. Roll: No.

Rep. Wald: Re: corporate farming litigation – what transpired there?

Ms. Roll: I'd be glad to get you information on that. I'm not familiar with the details.

Rep. Skarphol: (question for Dr. Sanstead, DPI) Your testimony says that the "2005 Legislative Assembly transferred general funds from the operating line to the grant line." Later in your testimony you stated that in this executive budget recommendation they took some action. Did they put the same amount of money back as was taken out? (Ref. 21:07).

Dr. Sanstead: Those were items designated through flow-through accounts. A number of flow-through items were taken out of our operating line.

Rep. Skarphol: Are they actually grants?

Dr. Sanstead: Yes. They're department grants.

Chm. Svedjan: Why would they have been budgeted as operating expenses in the first place?

Dr. Sanstead: These were increases above and beyond as a result of legislative action what was requested, so they're all increases.

Rep. Skarphol: So in reality, it was not a decrease to your operating line, because they were going to be used as grants out of operating anyway. And had that change not been made, **would you have not made those grants and kept the money to pay your ITD fees?**

Dr. Sanstead: We would have had the funds if they had not been transferred into the six grant programs.

Rep. Nelson: Re: Connect ND charges, consistent with what the budget shows?

Bonnie Miller, Fiscal Director, Dept. of Public Instruction: We budgeted for Connect ND charge. When the \$275,000 was moved from our operating line to the grant line, it left us short. The flow-throughs were funded in the Governor's recommendation for this biennium. When that budget came before the House, those monies were removed. When the Senate heard it, they took the \$275,000 from the operating line and moved it to the grant line and funded those

flow-through entities and we in turn provided grants to each of those entities. The bottom line in the budget never changed.

Chm. Svedjan: If those funds were taken out of operating and put in the grant line item, it sounds like those funds were obligated for a specific purpose and that's why they were moved. Had they been left there, you could have used that money for other things.

Ms. Miller: That's correct.

Rep. Skarphol: Did the Executive recommendation for the upcoming biennium increase your operating line by \$275,000 again?

Ms. Miller: We had asked for \$350,000 and the Governor's recommendation did include \$350,000.

Lt. Col. David Thiele, Staff Judge Advocate for ND National Guard, distributed and reviewed testimony (Attachment C) in support of SB 2023 for the Department of Emergency Services. Lt. Col Thiele spoke in Major General David Sprynczynatyk's absence.

Rep. Skarphol: Will we ever be done with the disaster of '97?

Lt. Col. Thiele: 2010, best guess.

Rep. Skarphol: Any idea what's out there? Can you give us an analysis?

Lt. Col. Thiele: We'll prepare that for you.

Rep. Ekstrom: What is FEMA's share in the future?

Greg Wills, Homeland Security Division Director for the Department of Emergency

Services: What we're seeing from FEMA now is based on the standard formula – 75% -- and we anticipate that in the future.

Chm. Svedjan: Your loan authority is at \$5.4 million? And have you actually borrowed that amount of money?

Lt. Col. Thiele: Loan authority is \$5.4 million. We've borrowed \$4.271 million.

Chm. Svedjan: So the deficiency appropriation is to pay off part of what you've borrowed plus the interest?

Lt. Col. Thiele: That's correct.

Jeff Weispenning, Deputy Agriculture Commissioner, ND Department of Agriculture, distributed and reviewed testimony in support of SB 2023 (Attachment D). Distributed and reviewed "North Dakota State Meat & Poultry Inspection Program" (Attachment E) (Ref. 33:42).

Rep. Nelson: Why are the cattle/hog inspections down?

Mr. Weispenning: I don't have a good answer. I will have to get back to you on that.

Rep. Aarsvold: Why would an outlet pursue state inspections versus federal inspections?

Mr. Weispenning: The inspection personnel help plants come in compliance with federal requirements. If a plant is able to meet state inspection requirements, they are equal to or greater than federal requirements.

Rep. Skarphol: Has the level of federal funding available been consistently in the 50 percent area?

Mr. Weispenning: The calculations we use in building budgets are 52 percent state and 48 percent federal to account for non-amenable species. We are a growing program and we need an increase in federal funding from one year to the next.

Rep. Skarphol: Do you have a plan in the event federal funding goes away?

Mr. Weispenning: We would have to cut back services.

Chm. Svedjan: Right now, you have a continuing resolution at the federal level?

Mr. Weispenning: Yes, we're under the continuing resolution which suggests that funds will be flat. However, we have been told by Senator Conrad's office that there are additional funds coming.

Rep. Monson: Are facilities charged when you go out to do inspections?

Mr. Weispenning: The fees are modest. The federal government limits on what we can charge.

Rep. Monson: How do your fees compare to federal inspections? Why would facilities rather have a state inspection instead of the federal inspections?

Mr. Weispenning: We do not have the mechanism to charge plants, so we are a good deal for the plants. Our inspectors are perceived by the plants as providing more of an education role rather than a strict regulatory role. This is why the plants like the program.

Rep. Wald: Could you supply our Committee with the licensing fees revenue document and what neighboring states charge?

Mr. Weispenning: Yes. We'll provide that.

Chm. Svedjan: Do you anticipate any carryover?

Mr. Weispenning: We're projecting \$1,000.

Alice Brekke, Budget Director, University of North Dakota, distributed and reviewed testimony in support of SB 2023 (Attachment F) (Ref. 49:10). Ms. Brekke explained that the flood of '97 repairs are complete and what continues are the closeout and appeals process with FEMA. Page 1 of Attachment F shows an estimate of \$4.2 million for costs pending resolution of FEMA appeals.

Rep. Aarsvold: To whom are litigation costs paid?

Ms. Brekke: Outside attorneys (p. 4, litigation).

Rep. Aarsvold: Did you pursue representation from the Attorney General's office?

Ms. Brekke: It's my understanding that we have to go through that process of pursuing what support is available through the state before we are allowed to go external.

Rep. Carlson: Are there any pending insurance claims?

Ms. Brekke: All claims are settled.

Chm. Svedjan: When you talk about "FEMA ineligible," does that mean that the \$4.2 million is ineligible? (Ref. 55:09)

Ms. Brekke: There are some examples of what FEMA considers ineligible. Costs are incurred to repair and replace according to bids and specs put together before you get into the project. With the steam line, for example, it could not be reconstructed to the standards from 50 years ago when it was first put in. We found that FEMA will not give you a read ahead of time as to what they will allow. Because the steam line had to be brought up to the current standards of safe usage, FEMA determined that the costs of necessary changes were ineligible because they termed them "improvements" to what was originally there.

According to its regulations, FEMA has 90 days to respond to an appeal. FEMA is not keeping within that time frame, so we don't know when this will be brought to closure.

Re: Project Management and Engineering, Project Management is a separate report and UND has yet to receive a final closeout DSR. Therefore, there is a potential for revision to the \$4.2 million that is pending.

Rep. Wald: Does FEMA bring in new people and do you have to bring them up to speed?

Ms. Brekke: FEMA has very high turnover and their record keeping on their end is not strong. The Office of Inspector General audit discussed on p. 2 of Attachment F relates to an audit of FEMA that questions FEMA's record keeping.

Rep. Wald: Can you bill for additional time you have to expend?

Ms. Brekke: That is not provided for in the regulations.

Chm. Svedjan: Do you anticipate any carryover into the next biennium?

Ms. Brekke: Not for UND's general fund. There may be dollars in question for the system level services that run through UND.

Chm. Svedjan: Understanding that the University System has carryover authority, are you anticipating from the system level any carryover, and if so, how much?

Laura Glatt, Vice Chancellor for Administrative Affairs, ND University System: There are some system activities that run through some of the campus budgets because they are administered at the campus level. Are those the activities you are talking about?

Chm. Svedjan: Any funds that were appropriated last time that don't have a restriction on them.

Ms. Glatt: We did complete a carryover form for your subcommittee when HB 1003 was before the Education Committee, and if my memory serves me correctly, very few if any campuses were anticipating any general fund carryover with the exception of capital improvements.

Gary Wawers, Controller, North Dakota State University (Ref: 68:16) presented testimony in support of SB 2023. NDSU's request is for \$289,000 and relates to the flood of June 2000. Approximately \$18 million worth of damages resulted from that flood. In past bienniums, the legislature has supported NDSU's request to a total of \$3.4 million and the expenses that were reimbursed were for the ten percent state match to the 90 percent federal, interest and legal expenses.

The \$289,000 being requested this biennium is for interest – primarily on the line of credit at the BND and interest with the contractors.

Rep. Carlson: Between NDSU, the city of Fargo and some insurance settlements – what's the status of all that?

Mr. Wawers: The insurance settlements are all done.

Rep. Carlson: What about with the city of Fargo? There were some discussion about whose fault it was for the flooding and the damages.

Mr. Wawers: To my knowledge, that is all settled.

Rep. Carlson: And this is in excess of all settlements with the insurance companies and with the city?

Mr. Wawers: Yes. NDSU will not profit or have excess income from these damages.

Rep. Monson: NDSU has total flexibility, other than moving money from capital projects. Are you going to have money available in your operating line item? Are you running so tight in your operating that \$289,000 can't be squeezed out somehow? (Ref: 72:12)

Mr. Wawers: This request is not as large as some of the others you've seen, but the damages as a result of the flood and any other related expenses have not been budgeted by NDSU. It's an emergency that arose. We have not included those in our budget.

Rep. Monson: It sounds like you may have other money you could use, but you're thinking that the state is supposed to pick up this amount. A university the size of NDSU must have some way to move a few dollars back and forth. I'm struggling with the fact that with a budget the size that you have, isn't there someplace in the budget you can pay this?

Mr. Wawers: All I can add is that the budgets are tight.

Rep. Aarsvold: Regarding the adversarial relationship between the city and NDSU regarding the flood, is there any mitigation being offered to resolve the problem that seemed to cause the damage? (Ref. 75:19)

Mr. Wawers: I would be happy to get some information to supply to the committee on that issue. There were some bad feelings, I believe, and I would say that is not the case at this point.

Ms. Glatt: Re: Rep. Monson's question about availability of money to help pay for this – In the current biennium's budget, only 96 percent for the campus' request for parity was funded. The budgets were under funded.

Larry Kotchman, State Forester, North Dakota Forest Service, distributed and reviewed testimony (Attachment G) in support of SB 2023. (Ref. 77:51). Mr. Kotchman requested a deficiency appropriation to defray 2006 emergency wildland fire suppression expenditures estimated at \$55,500. The North Dakota Forest Service does not anticipate any carryover.

Rep. Wieland: What is the typical number of fires?

Mr. Kotchman: 11,000 acres – 600 fires. The forecasts do not look good.

Dave Krabbenhoft, Fiscal Director, Department of Corrections and Rehabilitation, distributed and reviewed "DOCR Adult Services Estimated 2005-2007 Efficiency" report (Attachment H). Mr. Krabbenhoft is requesting a reduction in their request from \$4.8 million to \$4.1 million. The projection in the bill was based on September data and the information has been updated as of January. The reduction is mainly due to changes in the prison population.

Rep. Carlisle: What is the maximum that Rugby can handle? (Ref: 86:19)

Mr. Krabbenhoft: Not sure, but I think around 30.

Rep. Carlisle: Can you add people if you want to?

Mr. Krabbenhoft: Yes.

Rep. Monson: I'm assuming Appleton is the most expensive place to put prisoners. What is the county cost per day?

Mr. Krabbenhoft: Appleton, for the males, was the most expensive at \$54.70 per day. There are places around the state that are \$50 per day.

Mr. Krabbenhoft said the total estimated Adult Services deficiency request is just under \$4.1 million. I would request on the bill we have it split out between two lines. On the Field Services line, I'd request the \$957,860 be changed to \$612,067 and the Prisons Division line be changed from \$3,850,795 to \$3,457,765 (Ref. 90:20). Legislative Council acknowledged that they got the new numbers and would draft an amendment as such.

Rep. Monson: What does the \$2.75 million represent?

Mr. Krabbenhoft: The total amount we'll be paying to Appleton and county jails.

Rep. Carlson: Is there a way to accurately identify the turn back? (Ref: 94:21) When you build your budget assuming there's \$10 million of turn back – and I don't see it being there, especially after hearing what was done today.

Chm. Svedjan: I agree. There is disparity with what OMB is projecting for turn back and what Legislative Council has identified. I'm going to ask OMB to prepare for us the total expected turn back by agency so we can have that available when we finally take up SB 2023.

Chm. Svedjan closed the hearing on SB 2023.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2023**

House Appropriations Committee

Check here for Conference Committee

Hearing Date: 3-9-07

Recorder Job Number: 4775

Committee Clerk Signature

Wanda Horne

Minutes:

Chairman Svedjan: We held on the deficiency appropriation bill because we needed an amendment to address the reduction in the request from the Department of Corrections. You should all have amendment .0201

Rep Carlisle: I move the amendment .0201

Rep Kreidt: I second it.

Chairman Svedjan: You'll recall that when the Department of Corrections was in here they indicated that they would need \$738,823 less then was in the bill, so this amendment makes the adjustment. Any discussion on the amendment?

Voice Vote to adopt the amendment .0201 to SB 2023 Adopted

Chairman Svedjan: We now have the amended bill before us.

Rep Skarphol: I make a motion for a DO PASS AS AMENDED

Rep Kerzman: I second it.

Roll Call Vote Yes 20 No 2 Absent 2 Carrier Rep Skarphol

Date: 3/9/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2023

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 78047.0201

Action Taken Adopt. 0201

Motion Made By Carlisle Seconded By Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleon		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voie Vote - carries

Date: 3/9/07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2023

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 78047.0201

Action Taken No Pass as amended by .0201

Motion Made By Skarphol Seconded By Kempner

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	—	
Representative Thoreson		✓			
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew		✓	Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	—	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 20 No 2

Absent 2

Floor Assignment Skarphol

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

REPORT OF STANDING COMMITTEE

SB 2023, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (20 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2023 was placed on the Sixth order on the calendar.

Page 2, line 19, replace "957,860" with "612,067"

Page 2, line 20, replace "3,850,795" with "3,457,765"

Page 2, line 21, replace "4,808,655" with "4,069,832"

Page 2, line 22, replace "11,823,274" with "11,084,451"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment decreases the deficiency appropriation for the Department of Corrections and Rehabilitation by \$738,823, from \$4,808,655 to \$4,069,832 and the total general fund deficiency fund by \$738,823, from \$11,823,274 to \$11,084,451. The following is a summary of the general fund deficiency appropriations as provided for in Senate Bill No. 2023:

AGENCY	SENATE BILL NO. 2023 AS INTRODUCED (EXECUTIVE BUDGET VERSION)	ENGROSSED SENATE BILL NO. 2023 (SENATE VERSION)	ENGROSSED SENATE BILL NO. 2023 WITH PROPOSED AMENDMENTS
Department of Public Instruction	\$275,000	\$275,000	\$275,000
Attorney General	167,170	167,170	167,170
Adjutant General	4,300,000	4,100,000	4,100,000
Department of Agriculture	114,000	58,130	58,130
University of North Dakota	560,476	2,069,727	2,069,727
North Dakota State University	289,092	289,092	289,092
Forest Service	55,500	55,500	55,500
Department of Corrections and Rehabilitation	4,808,655	4,808,655	4,069,832
Total	\$10,569,893	\$11,823,274	\$11,084,451

2007 TESTIMONY

SB 2023

TESTIMONY ON SB 2023
SENATE APPROPRIATIONS COMMITTEE
January 5, 2007
by Dr. Wayne G. Sanstead, State Superintendent
(701) 328-4570
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Dr. Wayne G. Sanstead and I am the State Superintendent for the Department of Public Instruction. I am here to provide information to the committee regarding our deficiency appropriation request for the 2005-2007 biennium.

Fiscal Impact

DPI completed a review of its general fund expenditures for the first year of the 2005-2007 biennium in August 2006. Based on the first year expenditures, and taking into account additional expenditures that historically occur during the second year of the biennium, DPI projects a general fund budget shortfall.

The 2005 Legislative Assembly appropriated \$2,221,336 for general fund operating expenditures, but spending is projected at \$2,496,336. Therefore, a deficiency appropriation of \$275,000 is necessary to provide funding for liabilities occurring in the second year of the 2005-2007 biennium for which no general fund appropriation currently exists. Of the \$2,221,336 appropriated, \$1,492,928 was earmarked for state testing. As of November 30, 2006, \$152,444 was available for routine general fund expenditures such as postage, printing, insurance, audits, telephone, data processing, etc.) for the remainder of the biennium.

Circumstances

Several factors contributed to the current budget shortfall:

- The 2005 Legislative Assembly transferred general funds from the operating line to the grant line. This transfer, along with transfers and reductions that occurred in prior legislative sessions, significantly impact DPI's ability to meet its essential obligations. However, DPI has managed its budgets well and this is the first time we have requested a deficiency appropriation.

- ITD fees totaled \$374,858 for the first year of the current biennium including Connect North Dakota and Liquid Office hosting fees. The state portion was \$209,158 and the federal/other funds portion was \$165,700.
- The Governor's Commission on Education Improvement impacted staff travel and other correlating general fund expenditures.
- Increased school district annexations, dissolutions and reorganizations impact general fund expenditures.

Alternative Courses of Action

DPI's Management Council considered the following courses of action to alleviate the budget shortfall:

- 1) There are no general funds to transfer from the salary line as the department expended 50% of its salary appropriation in the first year of the current biennium.
- 2) DPI adjusted the operating budgets of all units that receive general funds. This action provides funding only for routine expenditures. Three of DPI's 13 units are 100% state funded. The other units are funded with both state and federal dollars. The funding for DPI's operational budget consists of state dollars (17%) and federal dollars (83%).
- 3) Continued general funding of the units is required in order to meet maintenance of effort, state match or state-mandated activities. For example, the US Department of Agriculture regulations require a state maintenance of effort for the federal administrative dollars granted to North Dakota. The annual matching amount is \$72,591. These state funds match \$595,000 in federal administrative dollars. Failure of the state to maintain this level of funding will result in the total withdrawal of the federal dollars.

After analyzing all of the operating expenditures and adjusting the unit budgets, it became apparent that the only other option was to defer payment of the general fund portion of the FY 2007 IT data processing fee. This item is the largest of DPI's monthly expenditures. As previously mentioned, the state portion of the FY 2006 fee was \$209,158.

On September 19, 2006, DPI's Management Council met with a representative of the Office of Management and Budget to notify that agency of the budgeting problem as required by NDCC Chapter 54-44.1. Representatives of the Legislative Council and the Information Technology Department also attended that meeting.

DPI asked the Information Technology Department for their cooperation in deferring the payment of the general funded portion of the FY 2007 IT data processing fee. ITD concurred. DPI began deferring that portion of the payment with the August billing which was payable in September 2006 . Based on the average monthly expenditure, it is projected DPI will owe the Information Technology Department approximately \$180,464 in state funds for FY 2007. DPI has continued to pay the federal portion of the monthly IT data processing fees.

Beyond the Current Biennium

The funding challenges for the 2005-2007 biennium also have implications for the 2007-2009 biennium. DPI's optional budget includes a request for a \$350,000 increase to its operating line. The Executive Budget Recommendation provides for this increase to offset transfers and reductions incurred in prior bienniums and to address inflationary increases and increased IT costs in the 2007-09 biennium. DPI will provide further clarification during its January 18, 2007, budget presentation to the Senate Appropriations Committee.

Mr. Chairman, this concludes my testimony. Either I or Bonnie Miller, DPI fiscal officer, will respond to questions from committee members.

TESTIMONY ON SB 2023
HOUSE APPROPRIATIONS COMMITTEE
February 26, 2007
by Dr. Wayne G. Sanstead, State Superintendent
(701) 328-4570
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Dr. Wayne G. Sanstead and I am the State Superintendent for the Department of Public Instruction. I am here to provide information to the committee regarding our deficiency appropriation request included in SB 2023 for the 2005-2007 biennium.

Fiscal Impact

DPI completed a review of its general fund expenditures for the first year of the 2005-2007 biennium in August 2006. Based on the first year expenditures, and taking into account additional expenditures that historically occur during the second year of the biennium, DPI projects a general fund budget shortfall.

The 2005 Legislative Assembly appropriated \$2,221,336 for general fund operating expenditures, but spending is projected at \$2,496,336. Therefore, a deficiency appropriation of \$275,000 is necessary to provide funding for liabilities occurring in the second year of the 2005-2007 biennium for which no general fund appropriation currently exists. Of the \$2,221,336 appropriated, \$1,492,928 was specifically earmarked for state testing. As of January 31, 2007, \$85,537 was available for routine general fund expenditures (such as postage, printing, insurance, audits, telephone, data processing, etc.) for the remainder of the biennium.

Circumstances

Several factors contributed to the current budget shortfall:

- The 2005 Legislative Assembly transferred general funds from the operating line to the grant line. This transfer, along with transfers and reductions that occurred in prior legislative sessions, significantly impact DPI's ability to meet

its essential obligations. However, DPI has managed its budgets well and I know Bonnie Miller my chief fiscal officer and her staff diligently monitor our expenditures on a monthly basis. This is the first time in my twenty two year's experience that DPI has been forced to request a deficiency appropriation to pay our bills.

- ITD fees totaled \$374,858 for the first year of the current biennium including Connect North Dakota and Liquid Office hosting fees. Even though the Department does not utilize the Liquid Office software, the monthly fee of \$360 must be paid. The state portion of the ITD fees for the first year of the biennium was \$209,158 and the federal/other funds portion was \$165,700. In addition, the monthly Connect North Dakota charge alone is over \$7,000 per month and is expected to increase by \$1,500 per month next biennium.
- Executive order establishing the Governor's Commission on Education Improvement in January 2006 impacted staff travel and other correlating general fund expenditures used to support the Commissions information requests.
- We have experienced a host of increased school district annexations, dissolutions and reorganizations which impact general fund expenditures. By state law, we are required to pay the costs associated with these county reorganization efforts. These expanded local school district actions, in turn, also increased state expenditures associated with meetings of the State Board of Public School Education which is responsible for approval or denial of district reorganization requests.

Alternative Courses of Action

DPI's Management Council considered the following courses of action to alleviate the budget shortfall:

There are no general funds to transfer from the salary line as the department expended 50% of its salary appropriation in the first year of the current biennium.

DPI adjusted the operating budgets of all units that receive general funds. This action provides funding only for routine expenditures. Only three of DPI's 13 units are 100% state funded. The other units are funded with both state and federal dollars. The funding for DPI's operational budget consists of state dollars (17%) and federal dollars (83%).

Continued general funding of the units is required in order to meet maintenance of effort, state match or state-mandated activities. For example, the US Department of Agriculture regulations require a state maintenance of effort for the federal administrative dollars granted to North Dakota. The annual matching amount is \$72,591. These state funds match \$598,000 in federal administrative dollars. Failure of the state to maintain this level of funding will result in the total withdrawal of the federal dollars.

After analyzing all of the operating expenditures and adjusting the unit budgets, it became apparent that the only other option available was to defer payment of the general fund portion of the FY 2007 IT data processing fee. This item is now the largest of DPI's monthly expenditures. As previously mentioned, the state portion of the FY 2006 fee was \$209,158.

On September 19, 2006, DPI's Management Council met with a representative of the Office of Management and Budget to notify that agency of the budgeting problem as required by NDCC Chapter 54-44.1. Representatives of the Legislative Council and the Information Technology Department also attended that meeting.

DPI asked the Information Technology Department for their cooperation in deferring the payment of the general funded portion of the FY 2007 IT data processing fee. ITD concurred. DPI began deferring that portion of the payment with the August billing which was payable in September 2006. Based on the average monthly expenditure, it is projected DPI will owe the Information Technology Department approximately \$180,464 in state funds for FY 2007. DPI has continued to pay the federal portion of the monthly IT data processing fees.

Beyond the Current Biennium

The funding challenges we've experienced for the 2005-2007 biennium also have implications for the 2007-2009 biennium. DPI's optional budget included a request for a \$350,000 increase to its operating line. The Executive Budget Recommendation provides for this increase to offset transfers and reductions incurred in prior bienniums and to address inflationary increases and increased IT costs in the 2007-09 biennium.

Mr. Chairman, this concludes my testimony. Either I or Bonnie Miller, DPI's chief fiscal officer, will respond to any questions from committee members.

2007 ENGROSSED SENATE BILL NO. 2023, SUBDIVISION 2
DEFICIENCY APPROPRIATION INFORMATION
OFFICE OF ATTORNEY GENERAL
KATHY ROLL, FINANCIAL ADMINISTRATOR

Same given to House

LITIGATION FEES

- ❖ The Litigation Fees special line item is used for the costs of litigation including expert witness fees, deposition and transcription costs, and other out-of-pocket expenses associated with litigation in which the Office of Attorney General is involved.
- ❖ During the 2005-07 biennium, the Office has been involved in litigation involving Racing Services Inc., Missouri River, and corporate farming litigation, which have resulted in higher than normal litigation expenses.
- ❖ The Litigation Fees appropriation of \$50,000 was depleted in September 2006. The Emergency Commission approved \$15,000 from its contingency fund for these additional estimated expenses.
- ❖ An additional \$21,140 in general fund expenses, (in addition to the amount provided by the Emergency Commission) is anticipated to be incurred this biennium, for a total of \$86,140 in expenditures.
- ❖ Previous biennia Litigation Fees expenses and appropriations totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
2003-05	\$ 36,601	\$ 50,000
2001-03	\$ 6,899	\$ 50,000
1999-01	\$ 7,154	\$ 50,000
1997-99	\$125,444	\$139,024
1995-97	\$ 8,906	\$143,324

SCHOOL FINANCE LITIGATION

- In late 2003 litigation was commenced against the State of North Dakota challenging the constitutionality of North Dakota's statutory system for financing public schools.
- In January 2006, the parties entered an Agreement to Stay Litigation which stayed the lawsuit until the close of the 2007 legislative session. The agreement includes two conditions which must be met to end the lawsuit. The two conditions are:
 - the 2007 Legislative Assembly appropriate an additional amount of state funds that results in at least a \$60 million net gain for elementary and secondary education over the amount authorized by the 2005 Legislative Assembly, and
 - the 2007 Legislative Assembly pass a resolution adopting the North Dakota Commission on Education Improvement as a vehicle for

proposing improvements in the system of delivering and financing public elementary and secondary education.

- If these conditions are not met, the school lawsuit will continue. It is likely the case will go to trial during the 2007-2009 biennium. The office will incur significant costs to defend the lawsuit, including discovery costs (travel, transcripts, etc.), expert witness costs (time to update previously prepared reports, possible depositions, travel and give testimony), and the costs of a three-week trial in Williston (hotel, per diem, etc.)
- The School Finance Litigation began in the 2003-05 biennium, with the bulk of the litigation and costs being incurred in the 2005-07 biennium.
- The \$103,030 general fund deficiency appropriation request is to pay some unanticipated legal services invoices received after the Office received a \$97,000 Emergency Commission contingency fund appropriation.
- Prior and current biennia School Finance Litigation expenses and appropriations totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
2003-05	195,106	\$240,000
2005-07	440,030	\$240,000

PROSECUTION WITNESS FEES

- Prosecution witness fees and expenses are reimbursed for district court criminal and juvenile court cases.
- For the 2005-07 biennium \$100,000 was appropriated to the Office of Attorney General for this purpose which was depleted in September 2006.
- Based on average usage, an additional \$43,000 in general fund monies are estimated to be needed to reimburse prosecution witness fees for the remainder of the 2005-07 biennium.
- The Office of Attorney General 2005-07 biennium appropriation bill contains \$100,000 for prosecution witness fees reimbursement.

Previous biennia prosecution witness fees expenses totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
	\$157,654	\$100,000
	\$146,791	\$100,000
	\$121,356	\$100,000
	\$166,501	\$195,445
	\$175,422	\$210,000

#3

TESTIMONY OF
MAJOR GENERAL DAVID A. SPRYNCZYNATYK
THE ADJUTANT GENERAL
BEFORE THE
SENATE APPROPRIATIONS COMMITTEE
JANUARY 5, 2007
SENATE BILL 2023

Mr. Chairman and Members of the Committee;

The Department of Emergency Services, a department of the Office of the Adjutant General, has requested a deficiency appropriation of \$4,300,000 to repay state disaster response and recovery loans from the Bank of North Dakota as provided in NDCC 37-17.1-23. This is the normal process used to address disaster response expenses incurred by the state.

Our current Bank of North Dakota loan authority, as approved by the Emergency Commission and Budget Section, is \$5,390,411. Presidential Disaster Declarations provide the authority for FEMA disaster programs, which require non-federal cost sharing. The Public Assistance (PA) program provides for 75% federal share, 15% local share, and 10% state share. The Hazard Mitigation Grant Program has the same share percentages. Because federal funds are typically expended first, state cost shares during 2005-07 range from the 1997 Grand Forks flood, to the November 2005 western North Dakota blizzard, to the June 2006 flooding in eastern North Dakota. Attached is a complete listing of the various declared disasters in which state funds were paid out.

To date we have borrowed \$4,271,405 and paid out \$2,875,810.66. The current balance in the Emergency Management Fund (375) is \$1,521,694.63 (includes prior beginning balance). Our estimated payment of state share costs between now and 6/30/07 is \$993,628.00. This is the cost share for disasters that have already been declared and does not include any potential cost-share required for declared disasters between now and July 1, 2007. This leaves a current available balance of \$528,066.63 in our Emergency Management Fund which can either be used to pay back the loan or applied to declarations occurring in the future. Our overall projections show that our actual deficiency will be approximately \$4,100,000 by June 30, 2007.

I would be pleased to respond to any questions, Mr. Chairman.

Disaster Declarations Impacting DES Deficiency Appropriation

FEMA-DR-1645-ND - 2006

Severe storms, flooding, and ground saturation led to a Presidential disaster declaration on June 5, 2006 for Cass, Cavalier, Grand Forks, Pembina, Ransom, Richland, Rolette, Sargent, Towner, Traill and Walsh Counties and the Turtle Mountain Band of Chippewa Reservation. The declaration was for public assistance.

FEMA-DR-1621-ND - 2006

Cass, Ransom, Richland and Sargent Counties received a Presidential disaster declaration on January 4, 2006 for a severe winter storm. The declaration was for public assistance.

FEMA-DR-3247-ND - 2005

On September 13, 2005, North Dakota received a statewide emergency declaration due to emergency conditions resulting from the influx of evacuees from areas impacted by Hurricane Katrina. The declaration was needed to provide assistance to the state in providing sheltering operations to hurricane evacuees.

FEMA-DR-1616-ND - 2005

On November 21, 2005, 22 counties and one reservation received a Presidential disaster declaration for severe winter storms and near record snow. The counties of Benson, Billings, Bottineau, Bowman, Burke, Dunn, Golden Valley, McHenry, McKenzie, McLean, Mercer, Oliver, Pierce, Renville, Rolette, Sheridan, Stark, Towner, Ward, and the Fort Berthold Reservation were all declared for Public Assistance. Jurisdictions declared for Category B (snow removal and emergency protective measures) include the counties of Billings, Bowman, Burke, Dunn, Golden Valley, McKenzie, Morton, Mountrail, Stark, Ward, and Williams. On January 13, 2006, Slope County was declared for both public assistance and category B.

FEMA-DR-1597-ND - 2005

On July 22, 2005, 20 counties and 2 reservations received a major disaster declaration for severe summer storms, flooding and ground saturation. The declared jurisdictions included the counties of Benson, Bottineau, Cavalier, Dickey, Grand Forks, Griggs, Kidder, LaMoure, McHenry, Nelson, Pierce, Ramsey, Richland, Sargent, Sioux, Traill, Walsh, Ward and the Turtle Mountain and Standing Rock Sioux Indian Reservations. On August 3, 2005 6 more counties and a reservation were added onto the declaration. These included the counties of Mountrail, Pembina, Ransom, Renville, Rolette, Towner and the Three Affiliated Tribes reservation. The public assistance program was made available for these jurisdictions and the Hazard Mitigation Grant Program was made available to all counties and reservations in North Dakota.

FEMA-DR-1515-ND - 2004

Heavy 2004 spring snowfalls and rain on frozen and saturated ground in north central and north eastern North Dakota formed the basis for flooding. On March 29, 2004, Governor John Hoeven issued a flood emergency declaration for 10 North Dakota counties and the Spirit Lake Indian Reservation. The declaration was upgraded to a disaster declaration on April 20, 2004, when Governor Hoeven requested President Bush issue a Major Presidential Disaster Declaration for North Dakota. On May 5, 2004, President Bush declared 10 North Dakota counties and the Spirit Lake Indian Reservation a major disaster as a result of severe storms and flooding beginning March 26. Counties included as part of the initial disaster declaration are Benson, Cavalier, Grand Forks, Griggs, Nelson, Pembina, Ramsey, Steele, Traill and Walsh. On June 9, the disaster declaration was amended to include Bottineau, Burke, Mountrail, Renville, Towner, and Ward counties, making them eligible to apply for federal public assistance. These counties experienced widespread damage to rural electric cooperatives, as well as impacts to roads, bridges and culverts.

FEMA-DR-1483-ND - 2003

On August 1, 2003 North Dakota received a Major Presidential Disaster Declaration for damage due to severe storms and high winds that occurred June 24-25, 2003. This declaration made available Public Assistance Program funds to rural electric cooperatives in Barnes County. Hazard Mitigation Grant Program (HMGP) funds were made available for all North Dakota counties and reservations.

FEMA-DR-1431-ND - 2002

On September 10, 2002, President Bush signed a declaration of major disaster for five counties and one Indian reservation. The declaration was the result of heavy rains, high winds, hail, and tornado activity that caused damage to roads, culverts, water and septic systems, and other public infrastructure from June 8, 2002 to August 11, 2002. The Public Assistance Program became available in Grand Forks, Pembina, Stutsman, Traill, and Walsh Counties and the Three Affiliated Tribes of Fort Berthold Indian Reservation. All the counties and Indian Reservations in the State were eligible for Hazard Mitigation Grant Program assistance.

FEMA-DR-1376-ND - 2001

President Bush signed a declaration of major disaster in the State of North Dakota on May 28, 2001. Severe storm activity with associated flooding, ground saturation and damaging winds that caused damage from March 1, 2002 through August 9, 2001 resulted in 36 counties and two Indian reservations being designated for the Public Assistance Program. The Hazard Mitigation Grant Program was made available for all counties and reservations within the State.

FEMA-DR-1334-ND - 2000

On June 28, 2000, within one day of a request by Governor Edward T. Schäfer, the President issued a Major Presidential Disaster Declaration for North Dakota for severe storms, flooding and ground saturation. Beginning in early April, high winds and heavy rainfall in excess of 10 inches caused flooding in central and northeastern North Dakota. High water tables, resulting from eight consecutive years of flooding, continued to exacerbate safety- and health-related problems in some areas of eastern and central North Dakota. This declaration made available Public Assistance and Individual Assistance to 26 counties and three Indian reservations. Thirteen contiguous counties were also eligible for Individual Assistance. All North Dakota counties and reservations were eligible to apply for Hazard Mitigation funds.

FEMA-DR-1279-ND - 1999

North Dakota received a Major Presidential Disaster Declaration on June 8, 1999, for severe storms, flooding, snow and ice, ground saturation, landslides and mudslides and tornadoes. This declaration made available Individual Assistance and Public Assistance for three reservations and 39 counties. All North Dakota counties and reservations were eligible to apply for Hazard Mitigation funds.

FEMA-DR-1220-ND - 1998

On June 14, Governor Schafer received word from the White House that President Clinton approved his request for a Major Presidential Disaster Declaration for flooding in 13 counties and two Indian reservations, Spirit Lake Tribe and Turtle Mountain Band of Chippewa. That declaration was later expanded to include three additional eastern North Dakota counties. The request was based on excessive precipitation on lands already saturated by six years of disastrous flooding. In addition, land-locked Devils Lake continued its historic rise, laying claim to agricultural and residential property. The presidential declaration made available the Public Assistance and Individual Assistance Programs for the 16 counties and two Indian Reservations. All North Dakota counties and reservations were eligible to apply for Hazard Mitigation funds.

FEMA-DR-1174-ND - 1997

On April 7, 1997, the President issued a Major Presidential Disaster Declaration for North Dakota for the state's most catastrophic disaster. Floodwaters forced more than 50,000 North Dakotans from their homes and caused more than two billion dollars in damages. The Red River flooded 2,200 square miles in North Dakota, an area twice the size of Rhode Island. The declaration covered damages resulting from flooding, severe winter storms, high winds, heavy spring rain and ice jams. These conditions began on February 28, 1997. This declaration made available Public Assistance, Hazard Mitigation and Individual Assistance to all 53 counties in the state of North Dakota.

TESTIMONY OF
LIEUTENANT COLONEL DAVID THIELE
BEFORE THE
HOUSE APPROPRIATIONS COMMITTEE
FEBRUARY 26, 2007
ENGROSSED SENATE BILL 2023

Mr. Chairman and Members of the Committee:

I am here today on behalf of Major General David Sprynczynatyk, the Adjutant General, who is in Washington DC attending a senior leader conference.

The Department of Emergency Services, a department of the Office of the Adjutant General, is requesting a deficiency appropriation of \$4,100,000 to repay state disaster response and recovery loans from the Bank of North Dakota as provided in NDCC 37-17.1-23. This is the normal process used to address disaster response expenses incurred by the state.

Our current Bank of North Dakota loan authority, as approved by the Emergency Commission and Budget Section, is \$5,390,411. Presidential Disaster Declarations provide the authority for FEMA disaster programs, which require non-federal cost sharing. The Public Assistance (PA) program provides for 75% federal share, 15% local share, and 10% state share. The Hazard Mitigation Grant Program has the same share percentages. Because federal funds are typically expended first, state cost shares during 2005-07 range from the 1997 Grand Forks flood, to the November 2005 western North Dakota blizzard, to the June 2006 flooding in eastern North Dakota. Attached is a complete listing of the various declared disasters in which state funds were paid out.

To date, we have borrowed \$4,271,405 and paid out \$2,948,240. The current balance in the Emergency Management Fund (375) is \$1,449,265 (includes prior beginning balance). Our estimated payment of state share costs between now and 6/30/07 is \$932,834. This is the cost share for disasters that have already been declared and does not include any potential cost-share required for declared disasters between now and July 1, 2007. This leaves a current available balance of \$516,431 in our Emergency Management Fund which can either be used to pay back the loan or applied to declarations occurring in the future. Our overall projections show that our actual deficiency will be approximately \$4,100,000 by June 30, 2007.

I would be pleased to respond to any questions, Mr. Chairman.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



4c.
Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Jeff Weispfenning
Deputy Agriculture Commissioner
Senate Bill 2023
Senate Appropriations Committee
Harvest Room
January 5, 2007**

Chairman Holmberg and members of the Appropriations Committee, I am Deputy Agriculture Commissioner Jeff Weispfenning. I am here today in support of SB 2023, which provides a deficiency appropriation for the State Meat and Poultry Inspection Program (SMPIP).

The United States Department of Agriculture Food Safety and Inspection Service (USDA-FSIS) normally provides a fifty percent match in funding for all state programs that meet "equal to" criteria set by their agency. However, due to federal funding reductions, we anticipate a shortfall of funds of up to \$58,130. This amount differs from the request in SB 2023 due to reasons I will discuss shortly.

The SMPIP was created in 1999 to allow small and medium meat processors and livestock producers a better opportunity to market their product and to provide a better means for processing alternative or non-traditional livestock. The meat processing business has proven to be a thriving industry, especially in rural communities, and the SMPIP has proven to be a tool

that allows them to thrive. It is critical that the program secure and maintain adequate resources so we do not limit the potential of this industry.

Since its inception, the SMPIP has received approximately 48 percent of its financial support from FSIS. However, this was not the case for Federal Fiscal Year 2006 (FFY06), for which a budget request of \$262,193 was submitted. The final federal allocation, the amount which was not known until September, 2006, was \$206,310, an amount far short of our request and expenditures.

For Federal Fiscal Year 2007 (FFY07), we have submitted a request for \$331,312 of federal funds for the program. Although earlier in FFY07 we were optimistic that we may receive the funds, it seems likely this may not be the case. We have recently received information from FSIS' Financial Management Chief that FSIS is on a continuing resolution through February 15, 2007 and that there are indications that FSIS may be on a continuing resolution for the remainder of this FFY.

The budget shortfall would have many negative impacts on our state program. The most significant impacts relate to personnel and travel, which account for nearly 94 percent of program costs. The only effective way to cut costs is to significantly reduce or eliminate inspectors and/or travel to and from meat processing establishments. This will make it impossible to provide service to any new businesses, allow fewer inspections of existing establishments, and limit the volume of product made under inspection. This will be particularly hard on North Dakota's program since it is relatively young and still growing. Demand for state inspection service has

already been beyond what we are able to provide, and we expect it to continue increasing for the next several years.

The amount requested today for a deficiency appropriation is lower than that within SB 2023 due to the program reducing expenditures as much as possible after receiving the final federal allocation in September, 2006. One factor that helped save costs is due to two state plants closing their businesses during this same time frame (August and October). Unfortunately, both of these plants were very low volume and, by themselves, did not make a significant reduction in operating costs.

The deficiency appropriation requested today will only cover the shortfall expected during the 2005-2007 biennium. If the federal funding reductions continue as anticipated, there will also be a shortage of federal funds during the 2007-2009 biennium. The Department of Agriculture has requested a significant enhancement for the SMPPI within its budget bill, SB 2009 in order to continue to expand the program and provide state inspection service to additional plants. However, the requested enhancement cannot be used as intended until the shortage of funds for base program expenditures is first addressed. This issue will be discussed during the Department of Agriculture's presentation of SB 2009.

Chairman Holmberg and committee members, I urge a do pass on SB 2023. I would be happy to answer any questions you may have.

HA

May 1, 2006

Honorable Mike Johanns, Secretary
U.S. Department of Agriculture
14th Street & Independence Avenue, S.W.
Washington, D.C. 20250

Honorable Jerry Lewis, Chairman
House Appropriations Committee
H-218, The Capitol
Washington, D.C. 20515

Honorable Thad Cochran, Chairman
Senate Appropriations Committee
S-218, The Capitol
Washington, D.C. 20510

Dear Mr. Secretary, Chairman Lewis and Chairman Cochran:

I am writing on behalf of the National Association of State Departments of Agriculture (NASDA) to request your immediate attention and assistance on a serious situation regarding the current FY06 federal allocations for state cooperative meat and poultry inspection programs. NASDA represents the commissioners, secretaries and directors of agriculture in the fifty states and four territories.

As you know, USDA's Food Safety Inspection Service (FSIS) cooperates with the states in administering their meat and poultry inspection programs. Under the 1967 and 1968 federal Meat and Poultry Inspection Acts, FSIS provides up to 50 percent of the cost and other support for the cooperative state programs. These federal matching funds are imperative for basic state inspection activities such as salaries and training.

FSIS recently informed the states that their FY06 base funding allocation is being reduced. This is particularly alarming since FSIS only notified the states about the change in funding in mid-March—*after half of the current fiscal year has already passed*. The budget cuts range from approximately 4 to 25 percent with most of them in the 12 to 20 percent range. *How can this be justified?*

Although the law does allow FSIS to lower the 50 percent funding, the agency has provided funding at the 50 percent level for the past thirty years. This sudden and unexpected reduction in federal matching funds will have a devastating impact on state inspection programs. Some states will be forced to lay off inspectors, reduce daily inspection coverage, and curtail other food safety processing procedures, such as product sampling. This compromises our mission of public health and safety.



The National Association of State Departments of Agriculture
1156 15th Street, N.W., Suite 1020, Washington D.C. 20005
202-296-9680 e-mail nasda@nasda.org <http://www.nasda.org/>
President J. Carlton Courter, III, Virginia

We are also concerned that if USDA-FSIS does not provide adequate funding, states may be unable to maintain their "equal to" status with federal requirements as required by the Federal Meat Inspection Act. Some states may be forced to turn over their inspection programs to USDA. FSIS would then have to assume the state's portion for operating the inspection program (including the difference in salary/benefits that exists between state and federal personnel). This does not make budgetary sense and is certainly not a wise or efficient use of resources.

In addition to a reduction in food safety activities, the funding reduction will have a negative impact on food security/defense activities. USDA has placed a high priority on food security and last year issued eight new directives dealing with homeland security threat condition response. Although these new initiatives are necessary, the FSIS budget reduction will eliminate the resources necessary for states to support these efforts.

Since the states received this budget reduction notice so late in the fiscal year, our options to make adjustments are almost nonexistent. Most states do not have discretionary funds to make up the gap in federal funding. Since many states are nearing the end of their budget cycle, they are unable to return to their state legislatures to request an increase for their operating budget. We recently had a multi-state conference call with USDA Under Secretary for Food Safety Dr. Richard Raymond to discuss our concerns, but he was not able to offer a solution.

In this time of budget deficits and concerns, the states are certainly aware of the budget pressures facing USDA and Congress. At the same time, these last-minute budget cuts will have a devastating effect on food safety, food security, and small businesses.

We ask for your assistance in addressing this serious situation. We stand ready to work with you to ensure that states can carry out their inspection responsibilities.

Sincerely,

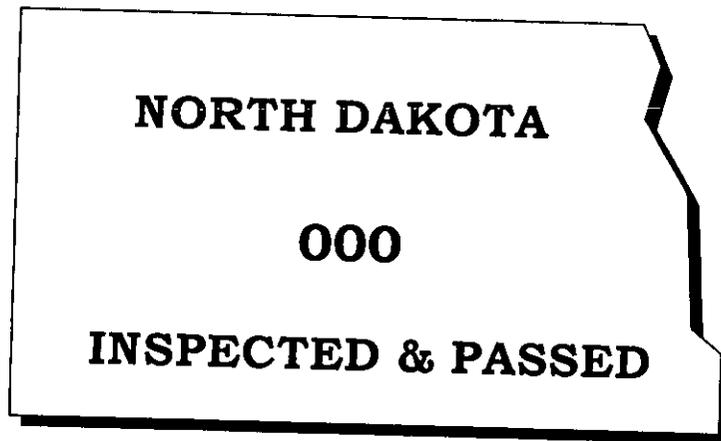


J. Carlton Courter III
NASDA President

Commissioner, Virginia Department of Agriculture & Consumer Services

NORTH

DAKOTA



STATE MEAT

&

POULTRY

INSPECTION PROGRAM

The State Meat Inspection Program was enacted by the 1999 Legislature to increase the opportunities for meat processors and livestock producers in the state of North Dakota. Prior to this enactment, federal inspection, or Food Safety and Inspection Service (FSIS), a division of USDA, regulated all meat processors in the state. The Federal Meat Inspection Act (FMIA) grants authority to an appropriate State agency to develop and administer a State meat inspection program. The program must have laws, regulations and procedures that are "at least equal to" the FMIA. Once a state is approved of by FSIS, they will receive federal funds of up to 50% of the total cost of the program. North Dakota gained approval from FSIS on October 19, 2000, and became the 26th state to have a program. In June, 2005, North Dakota gained approval to also provide state inspection service for poultry and became the State Meat *and Poultry* Inspection Program (SMPIP).

State programs are desirable to the industry and state government alike because they can focus on regulating small and medium-sized businesses. State inspection personnel are generally more accessible and more flexible than the USDA. The state programs also provide more practical information and technical assistance. North Dakota's program is designed to make it easier for the state's meat producers to sell their homegrown beef, pork and or other livestock directly to consumers in state.

The mission of the SMPIP is to provide consumers with a wholesome, unadulterated product that is properly labeled and safe. The Meat Inspection division's function is to ensure that meat and meat products slaughtered, processed and/or stored in North Dakota meet state and federal requirements. This function is accomplished through product and site inspections, registering, product labeling and laboratory testing done in cooperation with other state and federal agencies. Our staff consists of a director/veterinarian and a half-time administrative assistant, both located in Bismarck, a senior inspector in Dickinson, one compliance officer/field inspector in Fargo and six additional field inspectors located in Cooperstown, Jamestown, Langdon, Streeter, Dickinson and Grenora.

The Meat Inspection division of the North Dakota Department of Agriculture (NDDA) currently regulates 110 slaughter and/or processing plants that are located throughout North Dakota. Fourteen of these plants are classified as "State Inspected" or "Official State Establishments". These are plants where livestock is slaughtered and/or processed under regulated inspection. To maintain 'equal to' requirements of USDA, the SMPIP is obligated to perform continuous inspection on inspected slaughter days (performing antemortem and postmortem examination on each animal) and be physically present at least once daily at plants on inspected processing days.

An inspector will perform duties at each establishment anywhere from two hours one day a week to 8 hours five days a week, depending on the amount of work the plant does. The final product carries the state mark of inspection, which is a stamp in the shape of North Dakota and reads, "North Dakota Inspected and Passed" along with the establishment number. The mark allows a meat processing business to wholesale their products to various retailers within the state, greatly expanding their market.

Official State Establishments are similar to "federally inspected" plants in regards to the facility requirements and how the plants operate. Most of the federal laws governing meat inspection were actually adopted by the state to help facilitate the "equal to federal" requirement. State programs are regularly monitored and audited by the federal government to ensure the program is continuing to maintain the requirements set forth in the FMIA.

The remainder of the plants (96) regulated by the meat inspection program are classified as Custom Exempt establishments and are inspected two to four times per year for sanitation and facility requirements. Requirements for custom plants must also be enforced by the state program in order to maintain "equal to" requirements.

A "Custom Operation" is one in which a person or entity offers slaughter and/or processing services to the public for a fee. The animal to be slaughtered or the meat to be processed belongs to the customer, not the establishment. After the services are rendered, all of the products derived from the custom operations must be returned to the owner of the animal.

Custom exempt plants may also carry retail exempt products for sale to the public. The owner/operator of the plant buys "boxed meat" from a federally or state inspected plant and further processes it for retail sale. Since the additional processing is not done under regulated inspection, the products may only be sold at the retail counter within the plant. Most grocery stores and/or meat markets in North Dakota operate under this retail exemption. The boxed meat is normally purchased from large packing plants, which is the most economical, and are not products from locally raised livestock.

While the laws and regulations of a state or federal program are very similar, there are many benefits in operating a state program. State programs are organized in a way that allows them to deal with small businesses more effectively and efficiently than can a large federal system such as USDA, which now caters almost exclusively to large processors. One major advantage of a state program is the ease of access for plants to obtain the "Grant of Inspection" status that allows them to expand their market base through wholesaling. Throughout the process of gaining a grant, a state program will offer much more technical support and guidance, making what could be a complicated process much easier. Any disputes are handled at the state and local level and elected state officials have a say in how the small business person is regulated.

Another tremendous benefit of state programs is in providing non-traditional livestock producers and processors more equal marketing opportunities. USDA classifies bison and elk as non-amenable, meaning these species or their products are not subject to the FMIA. Because they need not be inspected to be sold, these species are considered "voluntary" and any person slaughtering or processing these animals must pay an hourly fee. Although inspection is not required at the federal level, most states (including North Dakota) do require inspection. This means non-traditional producers/processors without a state program face an unfair marketing advantage. The SMPPIP does not charge for the

slaughter or processing of non-traditional livestock and therefore allows these individuals to once again compete in the market with cattle and hog growers or processors.

The SMPIP has grown significantly since its onset in 2000. In October of 2000, the NDDA assumed all regulatory responsibility for custom exempt plants in the state and provided information to all meat processors on how to become an official state establishment. Two plants met the requirements and obtained grants of inspection by January of 2001. These plants were Barton Meats in Carrington and Siouxland Buffalo in Grand Forks. Barton Meats was newly built in 2000 to meet federal facility requirements. With the advent of the state program they decided to come under state inspection because it suited their needs better. Siouxland Buffalo had operated for many years slaughtering and processing buffalo on their own because at the time inspection was not required for buffalo. However, in 1997 the Department of Health passed a law that required all wild game or non-traditional meat to be inspected in order to be sold. The plant was unable to afford USDA's hourly fees and had to cease their processing activities until the state program's inception.

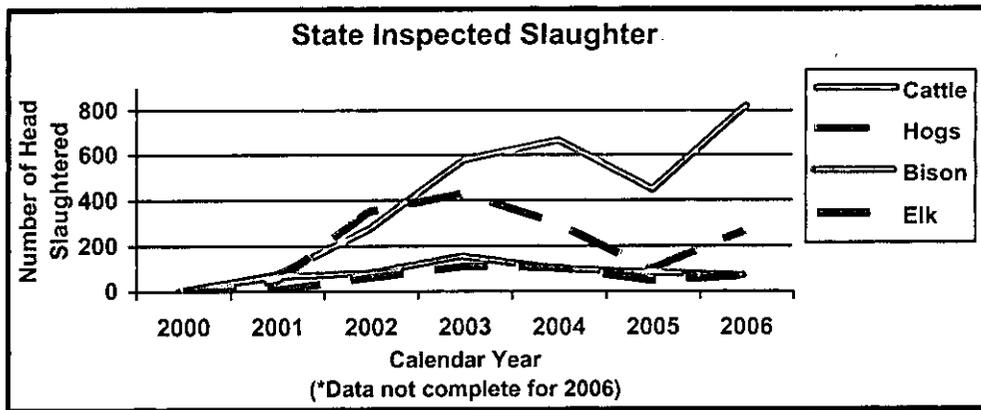
Since January of 2001, the program has issued an additional twelve grants of inspection to the following recipients;

- | | |
|--|------------------|
| ➤ Hickory Hut, Langdon | October 31, 2001 |
| ➤ Edgeley Meat Processing Plant, Edgeley | November 1, 2001 |
| ➤ Garrison Custom Meats, Garrison | March 21, 2002 |
| ➤ Butcher Block, Oakes | March 27, 2002 |
| ➤ Wildrose Grocery, Wildrose | June 6, 2002 |
| ➤ The Wurst Shop, Dickinson | June 19, 2002 |
| ➤ Devore Custom Meats, Steele | March 8, 2004 |
| ➤ L & M Meats, Grand Forks | May 20, 2004 |
| ➤ Bridgemart Meats, Wyndmere | June 6, 2005 |
| ➤ Erickson Meat Market, Bowman | October 24, 2005 |
| ➤ Maple Valley Locker, Enderlin | March 27, 2006 |
| ➤ Reister Meats, Streeter | May 18, 2006 |

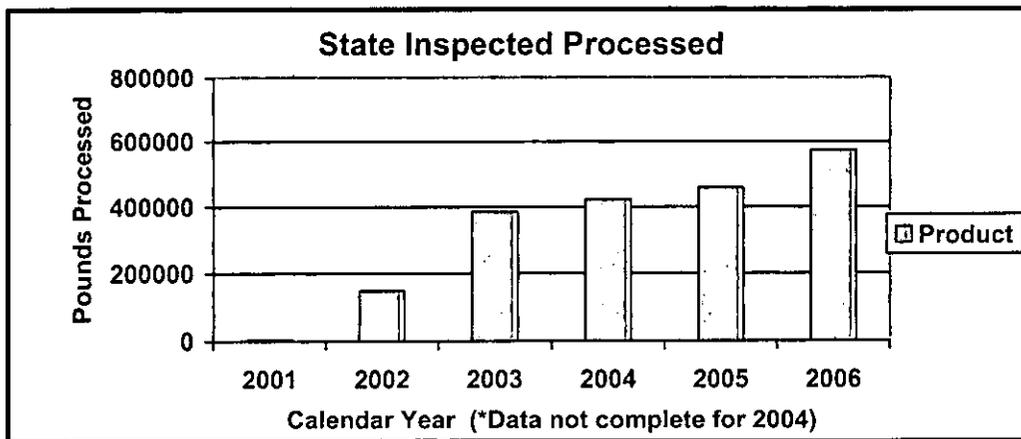
These plants have personally experienced the benefits of a state meat inspection program by being able to greatly expand their once limited market. Many livestock producers are also benefiting because they now have more outlets. They can either sell livestock to the plants or develop their own brand name and market their products directly to the consumers. The SMPIP is a great tool to boost the state's economy, especially in rural areas where most of the plants are located, because it makes it easier for small livestock

producers and processors to sell directly to the consumer and capture more of the consumer dollar.

The amount of livestock slaughtered and meat processed under state inspection demonstrates the growth and benefits of the state meat inspection program and is shown in the following charts;

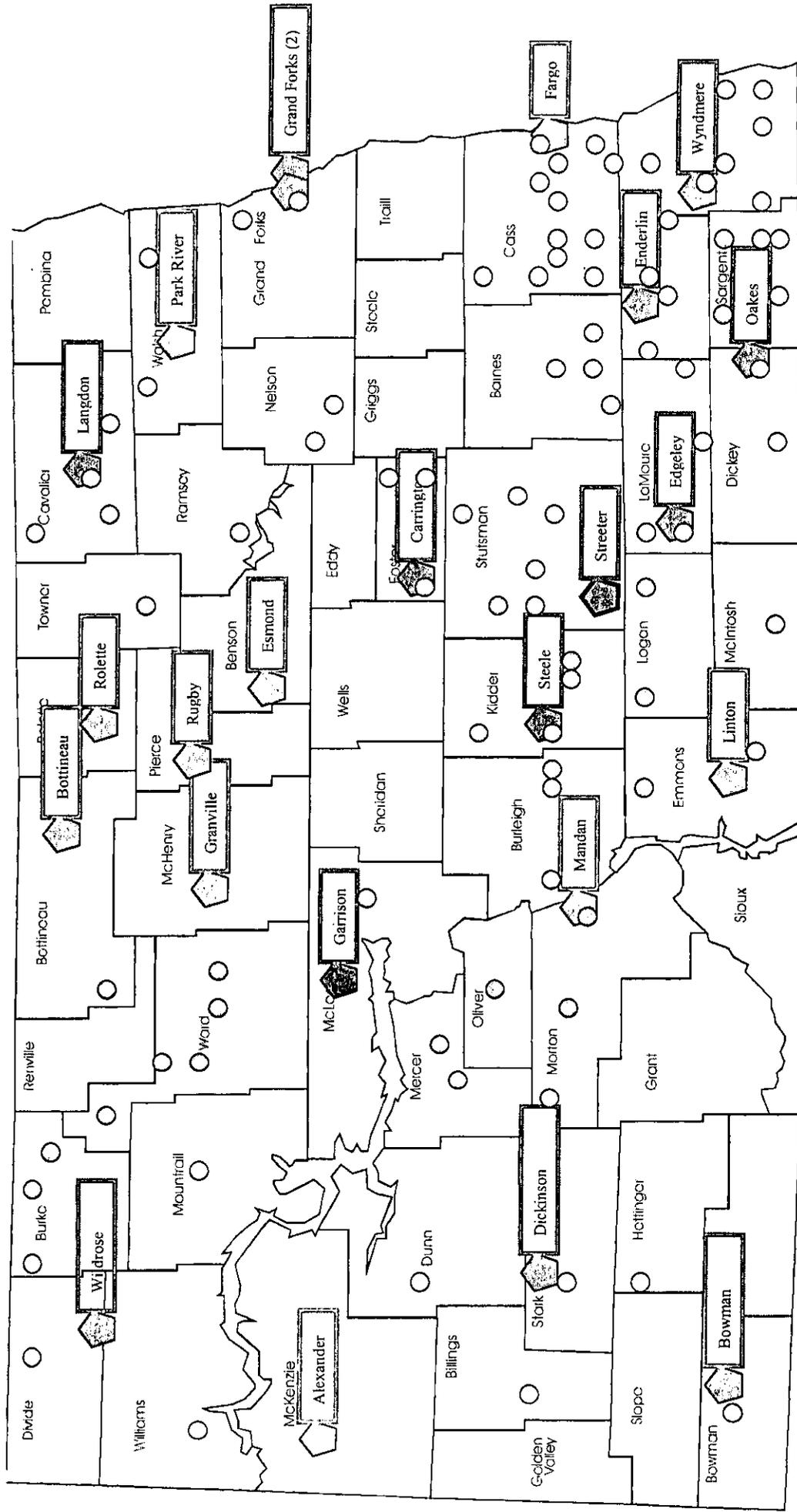


During the first year of state meat inspection (2001), there were a total of 181 animals slaughtered. This has increased to 1219 animals in 2006.



There were 5,238 pounds of meat processing under state inspection during the first year of state meat inspection (2001). This increased to 573,455 pounds in 2006.

NORTH DAKOTA OFFICIAL STATE SLAUGHTER AND PROCESSING ESTABLISHMENTS



 **Current Official Establishment**

 **Existing plants or plants in construction that are or intend to pursue state-inspection**

 **Location of Outlets of State Inspected Products**

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Jeff Weispfenning
Deputy Agriculture Commissioner
Senate Bill 2023
House Appropriations Committee
Roughrider Room
February 26, 2007**

Chairman Svedjan and members of the Appropriations Committee, I am Deputy Agriculture Commissioner Jeff Weispfenning. I am here today in support of SB 2023, which provides a deficiency appropriation for the State Meat and Poultry Inspection Program (SMPIP).

The United States Department of Agriculture Food Safety and Inspection Service (USDA-FSIS) normally provides a fifty percent match in funding for all state programs that meet "equal to" criteria set by their agency. However, due to federal funding reductions, we anticipate a shortfall of funds of up to \$58,130.

The SMPIP was created in 1999 to allow small and medium meat processors and livestock producers a better opportunity to market their product and to provide a better means for processing alternative or non-traditional livestock. The meat processing business has proven to be a thriving industry, especially in rural communities, and the SMPIP has proven to be a tool that allows them to thrive. It is critical that the program secure and maintain adequate resources so we do not limit the potential of this industry.

Since its inception, the SMPIP has received approximately 48 percent of its financial support from FSIS. However, this was not the case for Federal Fiscal Year 2006 (FFY06), for which a budget request of \$262,193 was submitted to USDA. The final federal allocation, the amount which was not known until September, 2006, was \$206,310, an amount far short of our request and expenditures. \$52,650 of the funds requested are the result of this shortfall in FFY06.

For Federal Fiscal Year 2007 (FFY07), we have submitted a request for \$331,312 of federal funds for the program. Congress recently passed a continuing resolution for the rest of FFY07. We have some indication that we may receive more than flat funding under the continuing resolution, but we have not yet received our allocation. \$5,480 of the amount requested is from the projected shortfall due to flat federal funding in FFY07.

The budget shortfall would have many negative impacts on our state program. The most significant impacts relate to personnel and travel, which account for nearly 94 percent of program costs. The only effective way to cut costs is to significantly reduce or eliminate inspectors and/or travel to and from meat processing establishments. This will make it impossible to provide service to any new businesses, allow fewer inspections of existing establishments, and limit the volume of product made under inspection. This will be particularly hard on North Dakota's program since it is relatively young and still growing. Demand for state inspection service has already been beyond what we are able to provide, and we expect it to continue increasing for the next several years.

The amount requested today for a deficiency appropriation is lower than that within SB 2023 due to the program reducing expenditures as much as possible after receiving the final federal allocation in September, 2006. One factor that helped save costs is due to two state plants closing their businesses during this same time frame (August and October). Unfortunately, both of these plants were very low volume and, by themselves, did not make a significant reduction in operating costs.

Chairman Svedjan and committee members, I urge a do pass on SB 2023. I would be happy to answer any questions you may have.

Testimony on Senate Bill 2023
January 5, 2007

*Summa
given to
the House*

2005-2007 Deficiency Appropriation Request – 1997 Flood
Alice Brekke, Budget Director
University of North Dakota

Deficiency Appropriation Summary (Cumulative) through 2005-2007:

o 10% Cost Share and Insurance	\$4,453,504
o Interest on Bank Loan-previously reported	1,963,186
o Disaster Grants Management Consultant (DMG Maximus)	707,147
o Other FEMA Ineligible-previously reported	1,724,121
o Interest on Bank Loan-current	298,933
o Other FEMA Ineligible-Steam line	1,499,590
o Litigation Costs	<u>271,204</u>
1997 Flood Expenditures-Total Estimated Deficiency	\$10,917,685
Amount funded in 1997-99; 1999-2001; 2003-05	<u>8,847,958</u>
Net Estimated 2005-07 Deficiency	\$2,069,727

2005-2007 Deficiency Request

o Interest	\$298,933
o Other FEMA Ineligible-Steam line	1,499,590
o Litigation costs	<u>271,204</u>
	\$2,069,727

The following additional costs are pending resolution of FEMA appeals, resulting in either payment by FEMA or an additional deficiency request.

• FEMA ineligible - steam line	\$1,179,757
• Project management - steam line	1,836,658
• Project management - other projects	<u>1,169,165</u>
Total Costs Appealed	\$4,185,580

Deficiency Appropriation:

All flood related projects were completed in the prior biennium. Efforts over the past two years have been focused on the FEMA close out process, including appeals.

Steam Line Project:

In July 2002, UND submitted the cost analysis and request for final review of the steam line project to the ND Division of Emergency Management (NDDEM). UND received NDDEM's final inspection report in July 2004 and on July 7, 2004 sent a letter to NDDEM concurring with

reservation the steam line closeout DSR, noting that UND still had an outstanding arbitration issue. NDDEM forwarded the steam line closeout DSR to FEMA July 12, 2004.

In August 2005, UND received the final steam line closeout DSR from NDDEM. September 30, 2005, UND submitted an appeal of the steam line closeout DSR. UND had made multiple inquiries on the status of this appeal, but as of August 29, 2006 when the initial deficiency appropriation request was prepared, had not yet received a response from FEMA. UND received a response from FEMA on September 8, 2006. On November 9, 2006 UND submitted a second appeal for project closeout of the steam line replacement. In their transmittal letter to FEMA of UND's second appeal, NDDEM indicated they strongly supported UND's request.

In June 2006, UND received a letter from FEMA and a copy of an audit report from the Office of Inspector General (OIG) which recommended FEMA not reimburse UND for project management costs claimed on the steam line project because of inadequate supporting documentation from the project manager and lack of documentation to identify the method of procurement, the rationale for the procurement, or the selection of the contractor (project manager). UND obtained additional supporting documentation from the project manager, compiled documentation regarding the procurement of the project manager, and submitted an appeal on October 20, 2006 in addition to the appeal filed September 2005. In their transmittal letter to FEMA of the supplemental information UND provided, NDDEM requested FEMA allow the project management costs claimed as fair and reasonable.

According to its regulations, FEMA has 90 days to respond to an appeal. FEMA responses have not been provided within that time frame on appeals previously submitted by UND.

FEMA Ineligible – Steam line:

Because the steam line is a high pressure, high volume, heat distribution system it is inherently dangerous to operate and maintain. To minimize UND's exposure to liability and ensure employee safety, the new system was installed to current standards for safe usage. This included changes in manhole design and valve configuration that would allow service technicians to operate the steam line without entering areas of extreme risk should the line rupture. These are features that were not considered when the original system was installed over 50 years ago. These and other minor alterations were considered by FEMA to be improvements to the system and considered ineligible for reimbursement.

Under no circumstance was any work undertaken with a knowledge or belief that the work was in some way any more than the minimum requirements for creating a heating utility that could be operated in a safe and efficient manner. The steam line is basically 12 miles of pipe line buried within a 100 year old campus which contains over 8 miles of water mains, 5 miles of storm water systems, 7 miles of sanitary sewer, 4 miles of telecommunication wiring, 10 miles of high voltage electrical cable, and the abandoned 12 mile steam system it replaced all in the same general vicinity. The objective was to simply get the pipe in place to deliver the utility within current safety/access standards.

Following are the major categories of costs incurred in the replacement of the steam line that FEMA deemed ineligible and are included in the deficiency appropriation request:

Change orders: \$472,812.

This refers to additional work that was completed by the contractor at extra cost. FEMA ruled that the change orders were not required, should have been included in the base contract, or did more than simply replace in kind. As an example, FEMA disallowed the \$130,000 change order for construction of a structural slab roadway adjacent to the English Coulee Bridge. The structural slab was required (and documented by the engineer) to allow the roadway to cross over the steam line which was buried at a shallow depth. The structural slab protected the steam line from damage caused by vehicle traffic over the roadway which would flex and bend if constructed in a traditional manner. Although the steam line could not have been routed in a different direction, FEMA chose to ignore the explanation given by the engineer and instead disallowed the change order stating that the need for the structural slab was beyond the scope of work.

Contract(s) and force account labor: \$317,099.

This refers to costs for work that UND, through its construction manager, Barton Malow, completed by retaining specialty suppliers or utilized force account labor. The vendors included brick masons, electricians, pipe manufacturers and others who provide services outside of installing the steam pipe system. The work was required when unanticipated conditions necessitated special repairs. As an example, Nelson Masonry was retained to block up and seal a portion of the steam tunnel that contained asbestos material. This work was not identified clearly within the drawings because it was not known at the time of bid if the steam pipe would intercept the tunnel. FEMA interpreted the contract documents differently than the contractor, owner (UND), and construction manager who authorized the additional work. It is our understanding that FEMA did not rely on legal staff to interpret the contract (legal) documents, but instead used a mechanical engineer to determine what the scope of the agreement entailed.

Engineering: \$333,932

FEMA uses a sliding scale for evaluating engineering fees based on the type of work being completed. As an example, design fees for a laboratory building would be a greater percentage of total costs than that of designing a storage facility. Because the steam line is a buried utility, FEMA used a fee structure of 7% as eligible with the assumption that the design of a steam line would be no more complex than that of a storm water system. Because the steam line is a mechanically operating system it requires both civil and mechanical engineering disciplines for design. In addition, the required removal of asbestos containing materials requires an environmental engineer to establish safe procedures for working on an active steam line where the system must remain operational. UND negotiated an 8% fee for the engineering services. FEMA rejected this consideration and reimbursed design fees up to 7% of the project costs only.

Steam Line Project Summarized:

Costs incurred to restore the campus steam line were \$30,310,967.

FEMA reimbursable	\$22,769,562
State match	2,734,025
Insurance and other	126,041
FEMA ineligible – UND	165,334

FEMA ineligible – Defn Appn.	1,499,590
Pending appeal:	
Project management	1,836,658
Other steam line costs	1,179,757

Project Management and Engineering:

April 17, 2002, UND submitted the cost analysis and request for final review of project management and engineering costs (non-steam line) to NDDEM. As of January 4, 2007, UND had not yet received a final closeout DSR from FEMA for this project. The final closeout DSR reports FEMA's final disposition of the applicant's request, detailing what they have found eligible and ineligible. UND has made numerous requests for a final closeout DSR for this project. Absent the final closeout DSR, UND is not able to complete a reconciliation between the amount claimed and FEMA's disposition of that claim.

Total costs for project management and engineering were \$1,655,950.

The OIG's audit report recommended disallowance of \$1,169,165 in project management costs related to projects other than the steam line because of inadequate supporting documentation from the project manager and lack of documentation to identify the method of procurement, the rationale for the procurement, or the selection of the contractor (project manager). UND obtained additional supporting documentation from the project manager, compiled documentation regarding the procurement of the project manager and submitted an appeal on October 20, 2006. In their transmittal letter to FEMA of the supplemental information UND provided, NDDEM requested FEMA allow the project management costs claimed as fair and reasonable.

Bank of North Dakota Loan:

The current loan balance is \$2,610,854. The interest cost through June 30, 2006 is \$151,933.41. Interest accrues at approximately \$14,700 per month. An additional 10 months is included in the deficiency request for estimated interest through April 2007, and UND anticipates paying the interest as soon as the deficiency appropriation is available. The total estimated interest for 2005-07 is included in the deficiency request, at \$298,933.

Litigation:

Lunseth Plumbing and Heating Co. v. North Dakota State Board of Higher Education
On or about May 29, 2002, pursuant to a contract between the North Dakota State Board of Higher Education (on behalf of the University of North Dakota) and Lunseth Plumbing and Heating, Lunseth commenced an arbitration seeking payment for work performed as part of Phase I of UND's steam distribution system restoration project. Lunseth claimed an unpaid balance in excess of \$4,339,000. Lunseth subsequently included Phase II of the project.

On June 19, 2002, UND filed a response and asserted counterclaims based on untimely and defective work performed by Lunseth. UND also brought a motion to dismiss based on lack of jurisdiction.

In addition to these claims, Lunseth alleged negligence on the part of UND, its architect, EAPC, and its construction manager, Barton Malow, and demanded damages.

The arbitration was to begin on June 13, 2005. However, by Settlement Agreement and Release dated May 25, 2005, and Stipulation of Dismissal with Prejudice dated May 27, 2005, the matter has been resolved, and the arbitration and the case were closed.

Based on the Settlement Agreement and Release, UND has made a final payment to Lunseth of \$999,999. This amount was then submitted to FEMA for reimbursement. FEMA provided reimbursement of \$61,575 and declared the remaining \$938,424 ineligible. Of this total, \$695,384 is included above under the steam line project FEMA ineligible which is under appeal. The remaining \$236,198 is part of the steam line FEMA ineligible costs for which a deficiency appropriation is requested.

Other FEMA Ineligible

Through the process of damage assessment, repairs, costing, insurance claims, litigation and final close out of each DSR, decisions have been made by FEMA to assign costs to UND as ineligible for FEMA funding. In all instances UND has made a good faith effort to comply with FEMA regulations, pursue reasonable avenues of appeal and maximize cost recovery from other applicable sources.

8
Submitted after
hearing held

NDSU
State Deficiency Appropriation for Biennium 2005-07 Estimate
September 1, 2006

Summary of State Deficiency Appropriation Needs

10% State share of FEMA eligible flood costs (see below)	\$ 1,769,651
Interest on Bank of ND Letter of Credit (see below for actual & estimated amounts through 6/30/07)	\$ 1,067,478
Contractor's Interest through 2003-05 (caused by delayed FEMA approval of damages)	\$ 218,429
Contractor's Interest Estimate - 2005-07	\$ 50,000
Legal Expenses - actual to-date	\$ 402,136
Legal Expenses - forecasted	\$ 100,000
Other FEMA ineligible costs (included in 2003 approval)	\$ 53,526
Total needs from state: project life to June 30, 2007	\$ 3,661,220
2001 Legislative deficiency appropriation approved	\$ (1,609,200)
2003 Legislative deficiency appropriation approved	\$ (262,928)
2005 Legislative deficiency appropriation approved	\$ (1,500,000)
Net Estimated 2005-07 Deficiency	\$ 289,092

Summary of FEMA eligible costs

Facility Restoration & Content Replacement Costs-charged to FEMA funds	\$ 17,559,360
Contractor costs payable - waiting for determination of allowability	\$ 435,087
FEMA eligible costs- charged to 2001 & 2003 deficiency appropriations	\$ 1,038,569
Insurance deduction - original FEMA estimate	\$ (7,578,235)
Insurance deduction - restored by FEMA (tentative)	\$ 6,241,731
FEMA eligible flood costs - Grand Total	\$ 17,696,512
90% FEMA share	<u>\$ 15,926,861</u>
10% State share (see above)	<u>\$ 1,769,651</u>

Interest on Bank of ND Line of Credit (Not included in FEMA eligible costs)

FY01 - Actual	\$ 182,253
FY02 - Actual	\$ 138,969
FY03 - Actual	\$ 164,753
FY04 - Actual	\$ 140,759
FY05 - Actual	\$ 130,724
FY06 - Actual	\$ 140,020
FY07 - Estimate	\$ 170,000
Grand Total	\$ 1,067,478

#6

60TH LEGISLATIVE ASSEMBLY
Senate Appropriations Committee
Senate Bill 2023 - "Deficiency Appropriation"
January 5, 2007

Same given to House

Testimony Submitted by:
Larry Kotchman, State Forester
North Dakota Forest Service
307 First Street East, Bottineau, ND 58318

Purpose:

The **North Dakota University System** is seeking a deficiency appropriation for the North Dakota Forest Service to defray 2006 emergency wildland fire suppression expenditures. Estimated costs are \$55,500.

Background:

The North Dakota Forest Service is dedicated to protecting lives, property and natural resources through a coordinated wildfire response with local, state, tribal and federal partners. Authority is granted to the State Forester under North Dakota Century Code 4-19-01 and 18-02-07 to provide assistance in the prevention and suppression of wildland fires.

Wildland firefighting resources were deployed to assist North Dakota rural fire protection districts and other jurisdictions with more than 870 fires that have burned over 53,000 acres during the 2006 wildfire season. The North Dakota Forest Service (budget 244.0) needs an estimated \$55,500 to defray 2006 emergency wildland fire suppression expenditures for personnel, supplies and repairs associated with the operation of three modern Type 6 wildland engines and response coordination on ten large fire events in North Dakota during the 2006 wild fire season.

On June 28, 2006, Governor Hoeven declared a statewide fire emergency and an agricultural drought emergency for south central and southwestern North Dakota. In addition, Governor Hoeven ordered that all state departments and administrators maintain fire and agricultural drought response support resources and capabilities at high levels of readiness to execute responsibilities pursuant to the North Dakota State Emergency Operations Plan. Tasks assigned to the North Dakota Forest Service included:

1. Evaluate the need and pre-position state resources in critical areas and provide guidance to the State Operations Center.
2. Provide personnel, equipment and technical assistance support for prevention and suppression of wildland fires.
3. Prepare assets for quick relocation and operational capability in fire and drought impacted areas.
4. Coordinate firefighting resource requests with the North Dakota Dispatch Center under the terms of the Cooperative Fire Protection Agreement with the five federal land management agencies. The agreement provides the mechanism for accessing resources in the event a large wildfire is beyond the local and state response capability.

We respectfully urge your support for a deficiency appropriation for the North Dakota Forest Service to defray 2006 emergency wildland fire suppression expenditures.

#17

DOCR - Adult Services		
Estimated 2005 - 2007 Deficiency		
Contract Housing		
05-07 Female Inmate Housing Budget Amount		\$ 5,814,450
Current Cost Estimate:		
DWCRC: <i>Actual daily rate (\$89.41) greater than budgeted daily rate (\$79.65) by \$9.76.</i>		
<i>Current estimate of 05-07 average daily population (120) exceeds 05-07 budgeted daily population (100) by an average of 20</i>	7,778,692	
County Jail: <i>Current estimate of 05-07 average daily population housed in county jails (8) exceeds the budgeted average daily population (0) by an average of 8.</i>	243,852	
Total Current Estimate Female Inmate Housing Cost		8,022,545
Estimated Female Housing Shortfall		\$ (2,208,095)
05-07 Male Contract Housing Budget Amount		\$ 2,023,533
Current Cost Estimate:		
County Jail / Out-of-State (Appleton): <i>Current estimate of 05-07 average daily population housed in county jails and out-of-state (63) exceeds the budgeted average daily population (55) by an average of 8.</i>	2,306,352	
Half-Way House (Bismarck / Fargo): <i>Current estimate of 05-07 average daily population housed in a half-way housing setting exceeds the budgeted average daily population by 34.</i>	1,082,057	
NCCRC (Rugby): <i>Actual daily treatment rate (\$85.00) exceeds budget treatment rate (\$77.00) by \$12.00</i>		
<i>Current estimate of average daily population in treatment (37) exceeds budgeted average daily population (25) by an average of 12.</i>	331,840	
Total Current Estimate Male Housing Cost		3,720,249
Estimated Male Housing Shortfall		\$ (1,696,716)

Medical		
05-07 "Outside" Medical Budget Amount		\$ 4,929,873
Current Cost Estimate:		
<p><i>Current 05-07 estimated "outside" medical daily rate (\$5.13) exceeds budgeted "outside" medical rate (\$4.85) by \$.28.</i></p> <p><i>Current estimated average daily population for which DOCR is medically responsible (1,427) exceeds the budget average daily population for which DOCR is medically responsible (1,391) by 36.</i></p>		
Total Current Estimate "Outside" Medical Cost		5,504,911
Estimated "Outside" Medical Shortfall		\$ (575,038)
Meals		
05-07 Meal Budget Amount (Excluding NDSH Meals)		\$ 3,080,476
Current Cost Estimate:		
<p><i>Current 05-07 estimated number of meals served (2,761,590) exceeds the budget number of meals served (2,695,645) by 65,945</i></p> <p><i>Current 05-07 estimated cost per meal (\$1.18) exceeds the budgeted cost per meal (\$1.14) by \$.04</i></p>		
Total Current Estimate Meal Cost (Excluding NDSH Meals)		3,269,283
Estimated Meal Shortfall		\$ (188,807)
Sex Offender Supervision		
05-07 General Fund Budget		\$ -
Current Cost Estimate:		
<p><i>2 FTE Parole Officers - Sex Offender Specialist hired in FY07 to address sex offender supervision needs in Minot and Jamestown FTE authorized by 05 legislature</i></p>		
Total Current Estimate Sex Offender Specialists		140,000
Estimated Utility Shortfall		\$ (140,000)
Total Estimated Adult Services Deficiency		\$ (4,808,655)

DOCR - Adult Services
Estimated 2005 - 2007 Deficiency
REVISED - 1/31/07

Contract Housing		
05-07 Female Inmate Housing Budget Amount		\$ 5,814,450
Current Cost Estimate:		
DWCRC: <i>Actual daily rate (\$89.41) greater than budgeted daily rate (\$79.65) by \$9.76.</i>		
<i>Current estimate of 05-07 average daily population (117) exceeds 05-07 budgeted daily population (100) by an average of 17</i>	7,511,876	
County Jail: <i>Current estimate of 05-07 average daily population housed in county jails (3) exceeds the budgeted average daily population (0) by an average of 3.</i>	99,891	
Total Current Estimate Female Inmate Housing Cost		7,611,767
Estimated Female Housing Shortfall		\$ (1,797,317)
05-07 Male Contract Housing Budget Amount		
		\$ 3,007,908
Current Cost Estimate:		
County Jail / Out-of-State (Appleton): <i>Current estimate of 05-07 average daily population housed in county jails and out-of-state (75) exceeds the budgeted average daily population (55) by an average of 20.</i>	2,746,573	
Half-Way House (Bismarck / Fargo): <i>Current estimate of 05-07 average daily population housed in a half-way housing setting exceeds the budgeted average daily population by 32.</i>	1,028,623	
NCCRC (Rugby): <i>Actual daily treatment rate (\$85.00) exceeds budget treatment rate (\$77.00) by \$8.00</i>		
<i>Current estimate of average daily population in treatment (28) exceeds budgeted average daily population (25) by an average of 3.</i>	709,981	
Total Current Estimate Male Housing Cost		4,485,177
Estimated Male Housing Shortfall		\$ (1,477,269)

Medical		
05-07 "Outside" Medical Budget Amount		\$ 4,929,873
Current Cost Estimate:		
<i>Current 05-07 estimated "outside" medical daily rate (\$5.38) exceeds budgeted "outside" medical rate (\$4.85) by \$.53.</i>		
<i>Current estimated average daily population for which DOCR is medically responsible (1,402) exceeds the budget average daily population for which DOCR is medically responsible (1,391) by 11.</i>		
Total Current Estimate "Outside" Medical Cost		5,527,433
Estimated "Outside" Medical Shortfall		\$ (597,560)
Meals		
05-07 Meal Budget Amount (Excluding NDSH Meals)		\$ 3,080,476
Current Cost Estimate:		
<i>Current 05-07 estimated number of meals served (2,730,930) exceeds the budget number of meals served (2,695,645) by 35,285</i>		
<i>Current 05-07 estimated cost per meal (\$1.15) exceeds the budgeted cost per meal (\$1.14) by \$.01</i>		
Total Current Estimate Meal Cost (Excluding NDSH Meals)		3,138,162
Estimated Meal Shortfall		\$ (57,686)
Sex Offender Supervision		
05-07 General Fund Budget		\$ -
Current Cost Estimate:		
<i>2 FTE Parole Officers - Sex Offender Specialist hired in FY07 to address sex offender supervision needs in Minot and Jamestown FTE authorized by 05 legislature</i>		
Total Current Estimate Sex Offender Specialists		140,000
Estimated Utility Shortfall		\$ (140,000)
Total Estimated Adult Services Deficiency		\$ (4,069,832)