REPORT

OF THE

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Pursuant to Chapter 54-35 of the North Dakota Century Code

SIXTY-SECOND LEGISLATIVE ASSEMBLY
2011

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January 4, 2011

Honorable Jack Dalrymple
Governor of North Dakota

Members, 62nd Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 23 interim committees, the Advisory Commission on Intergovernmental Relations, and the Commission on Alternatives to Incarceration.

Major recommendations include contracting for the implementation of changes to the classified state employee compensation system; continuing and expanding various alternatives to incarceration programs; streamlining the school approval process and reconfiguring the school accreditation process; creating a biodiesel plant production incentive; allowing oil and gas impact fund grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, and local services; establishing and operating a pilot voucher payment program for mental health and substance abuse services; allowing pharmacists to administer influenza shots or influenza mist to children; allowing the state to connect to a wide area network service for health information exchange in accordance with federal requirements; transferring responsibility from the counties to the state for providing legal services for those individuals who are indigent and who are the subject of sexually dangerous individual commitment proceedings; creating an infrastructure grant program for taxing districts affected by oil and gas development; requiring the State Department of Health to establish a statewide funding plan for emergency medical services; providing property tax relief by appropriating $341 million for the 2011 13 biennium for allocation to school districts to reduce school district property taxes; appropriating $5 million from the resources trust fund to the State Water Commission to design and construct a Devils Lake east end flood control structure; creating a vocational rehabilitation grant program to promote and provide necessary educational opportunities for injured employees; creating manufacturing income tax credits; providing for the centers of workforce excellence, centers of entrepreneurship excellence, and centers of research excellence; and creating a technology impact zone program.

The report also discusses committee findings and numerous other pieces of recommended legislation. In addition, the report contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

Representative Al Carlson
Chairman
North Dakota Legislative Management

AC/PG

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HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

HISTORY OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The LRC had a slow beginning during the first interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 legislative session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

NAME CHANGES

The name of the LRC was changed to the Legislative Council in 1969 to more accurately reflect the scope of its duties. Since 2009 Legislative Council refers specifically to the staff functioning as the legislative service agency while Legislative Management refers to the oversight committee of legislators. Although research is still an integral part of the functioning of the Legislative Council, it has become a comprehensive legislative service agency with various duties in addition to research.

THE NEED FOR A LEGISLATIVE SERVICE AGENCY

Nearly all states have a legislative council or its equivalent, although a few states use varying numbers of special committees.

Legislative service agencies provide legislators with the tools and resources that are essential if they are to fulfill the demands placed upon them. In contrast to other branches of government, the Legislative Assembly in the past had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Council has made it possible for the Legislative Assembly to meet the demands of today while remaining a part-time citizen legislature that meets for a limited number of days every other year.

LEGISLATIVE MANAGEMENT COMPOSITION

In 2009 the Legislative Assembly changed the name of the oversight committee for the Legislative Council to the Legislative Management. This committee by statute consists of 17 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The Speaker appoints six other representatives, three from the majority and three from the minority as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints four senators from the majority and two from the minority as recommended by the majority and minority leaders, respectively.

The Legislative Management is thus composed of 10 majority party members and 7 minority party members and is served by the Legislative Council staff of attorneys, accountants, and administrative support personnel who are hired and who serve on a strictly nonpartisan basis.

FUNCTIONS AND METHODS OF OPERATION OF THE LEGISLATIVE MANAGEMENT

Although the Legislative Management has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the work results from studies contained in resolutions and bills passed by both houses. The usual procedure is for the Legislative Management to designate committees to carry out the studies, although a few committees, including the Administrative Rules Committee, Employee Benefits Programs Committee, Information Technology Committee, and Legislative Audit and Fiscal Review Committee, are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Legislative Management appoints the members with the exception of a few members appointed as provided by statute. Nearly all committees consist entirely of legislators, although a few citizen members are sometimes selected to serve when it is determined they can provide special expertise or insight for a study.

The Legislative Management committees hold meetings throughout the interim at which members hear testimony; review information and materials provided by staff, other state agencies, and interested persons and organizations; and consider alternatives. Occasionally it is necessary for the Legislative Management to contract with universities, consulting firms, or outside professionals on specialized studies and projects.

However, the vast majority of studies are handled entirely by the Council staff.

Committees make their reports to the full Legislative Management in November preceding a regular legislative session. All current legislators are invited to attend the November meeting as are those newly elected legislators. The Legislative Management may accept, amend, or reject a committee's report. The Legislative Management then presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Council staff provides a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters and bill drafts to legislators and legislative committees. The Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Council reviews state agency rules and rulemaking procedures, legislative proposals affecting health and retirement programs for public employees, and information technology management of state agencies. The Council has on its staff the legislative budget analyst and auditor and assistants who provide technical assistance to Legislative Management committees and legislators, review audit reports for the Legislative Audit and Fiscal Review Committee, provide budget analysis, and assist the Legislative Assembly in developing the state's biennial budget. The Council provides information technology services to the legislative branch, including legislative publishing and bill drafting capabilities. The Council makes arrangements for legislative sessions and controls the use of the legislative chambers and use of space in the legislative wing of the State Capitol. The Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

MAJOR PAST PROJECTS OF THE COUNCIL

Nearly every facet of state government and statutes has been touched by one or more Legislative Management studies since 1945. Statutory revisions, including the rewriting of criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization has also occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, the creation of the Information Technology Department and the cabinet-level position of Chief Information Officer, the creation of the Department of Commerce, organization of the state's higher education system, and the creation of the Commission on Legal Counsel for Indigents, as well as studies of the feasibility of consolidating functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation were also subjects of studies.

The review and updating of uniform and model acts, such as the Uniform Probate Code and the Uniform Commercial Code, have also been included in past Legislative Management agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures that have been approved by the voters.

Pioneering in new and untried areas is one major function of interim committees. The regulation and taxation of natural resources, including oil and gas in the 1950s and coal in the 1970s, have been the highlights of several interim studies. The closing of the constitutional institution of higher education at Ellendale also fell upon an interim committee after a fire destroyed one of the major buildings on that campus. The expansion of the University of North Dakota School of Medicine and Health Sciences is another area that has been the subject of several interim studies.

The Legislative Management has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate. All legislators have notebook computers and many have a smartphone to assist them in performing their legislative duties. During the 2009-10 interim, the Legislative Council staff worked with a consultant and the Information Technology Department to develop an updated legislative enterprise system that replaces the mainframe system developed beginning in 1969. The new system will be server-based and provide for enhanced bill drafting and session processing. Since 1997, the Legislative Management has had the responsibility to study emerging technology and evaluate its impact on the state's system of information technology.

Perhaps of most value to citizen legislators are committees that permit members to keep up with rapidly changing developments in complex fields. Among these are the Budget Section, which receives the executive budget in December prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules. Other subjects that have been regularly studied include school finance, health care, property and oil taxes, and higher education.

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SUMMARY
BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES

The Legislative Management studied application by administrative agencies of standards from other than state or federal which have not been adopted as administrative rules. The Legislative Management makes no recommendation for changes regarding standards not adopted as administrative rules.

The Legislative Management studied imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule. The Legislative Management makes no recommendation for changes regarding imposition of penalties by administrative rules.

The Legislative Management recommends House Bill No. 1026 to make it optional, rather than mandatory, for an administrative agency to adopt and maintain an organizational rule.

The Legislative Management reviewed all state administrative rulemaking actions from January 2009 through October 2010, covering 2,011 pages of rules. The Legislative Management did not void any rules submitted by administrative agencies from January 2009 through October 2010.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations exercised its statutory authority to serve as a forum for the discussion and resolution of intergovernmental problems and to study issues relating to local government structure; fiscal and other powers and functions of local governments; relationships between and among local governments and the state or any other government; allocations of state and local resources; interstate issues involving local governments, including cooperation with the appropriate authorities of other states; and statutory changes required to implement commission recommendations.

The Legislative Management studied the state aid distribution funds; state assistance to counties for major trials; municipal judges and courts; and city park district creation, consolidation, and dissolution. The Legislative Management makes no recommendation as a result of these studies. The Legislative Management studied inmates' medical costs of correctional facilities. The Legislative Management recommends Senate Bill No. 2024 to limit a correctional facility's liability for inmates' medical care costs to rates paid under the federal Medicare program. The Legislative Management recommends Senate Bill No. 2028 to require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical or health care expenditures paid by that facility which exceed $10,000.

The Legislative Management studied solid waste management and state or regional siting of landfills. The Legislative Management makes no recommendation as a result of the study.

The Legislative Management studied public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. The Legislative Management recommends Senate Bill No. 2026 to centralize the public improvement construction threshold of $100,000 and to create separate sentences for bid and the use of a design professional threshold. The Legislative Management recommends Senate Bill No. 2027 to allow a governing body to specify certain materials in a request for bids for the remodeling or expansion of an existing building that contains the specified material. The Legislative Management recommends Senate Bill No. 2025 to increase the threshold for the requirement of bids for concessions from an amount of more than $500 to an amount of annual estimated gross sales of more than $25,000.

AGRICULTURE

The Legislative Management studied North Dakota Century Code provisions that relate to agriculture for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The Legislative Management recommends House Bill No. 1027 to rewrite the laws pertaining to the State Seed Department and House Concurrent Resolution No. 3001 to continue a Legislative Management study of North Dakota Century Code provisions that relate to agriculture. The Legislative Management also received a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research activities and expenditures and a report from the Advisory Committee on Sustainable Agriculture regarding the status of the committee's activities.

BUDGET SECTION

The Legislative Management received reports from the Office of Management and Budget (OMB) on the status of the general fund and the permanent oil tax trust fund, tobacco settlement proceeds, irregularities in the fiscal practices of the state, employee bonuses, the capital improvements preliminary planning revolving fund, the risk management workers' compensation program, and 2011-13 biennium budget form changes. The Budget Section did not recommend any changes to the budget data for the 2011 legislative session pursuant to Section 54-44.1-07. The Office of Management and Budget reported the current budgeting system has been upgraded to an Internet-based version, but there are no proposed changes to the 2011-13 biennium budget forms or data.

The Legislative Management received a report from the North Dakota University System regarding sources of local funds received for construction projects of entities under the State Board of Higher Education. The

Legislative Management authorized the expenditure of additional other funds for capital projects, as well as changes in the scope of capital projects at Dakota College at Bottineau, Dickinson State University, Mayville State University, Minot State University, North Dakota State University, State College of Science, University of North Dakota, Valley City State University, and Williston State College.

The Legislative Management received reports from the State Treasurer on weather-related cost-sharing funds; the State Board of Agricultural Research and Education on the status of board activities; the Tobacco Prevention and Control Committee on the implementation of the comprehensive tobacco prevention and control plan; the Highway Patrol on the status of implementation of the commercial vehicle information systems and networks; the Department of Transportation regarding the anticipated use of state, federal, emergency, and other highway funding; the Industrial Commission regarding the status of the Mill and Elevator study; the Public Service Commission on the status of the metrology laboratory; Job Service North Dakota on the status of the job insurance trust fund; and the Veterans' Home on the status of the Veterans' Home construction project and exterior finishing construction projects.

The Legislative Management received annual reports and approved a request to use contingent funds of $2,263,883 for a statewide longitudinal data system from the Information Technology Department. The Legislative Management also received reports from the Information Technology Department regarding the status of health information technology activities.

The Legislative Management received reports from the Adjutant General regarding the reintegration program, emergency disaster relief grants, 2009 flood disaster-related expenditures, 2009 emergency snow removal grants, and expenditures from the state disaster relief fund.

The Legislative Management received reports from the Department of Human Services on transfers the department made between line items and between subdivisions in excess of $50,000, the status of the Medicaid management information system (MMIS) project, and the status of Medicaid provider payments and approved a request to spend MMIS project contingency funds of $2,172,584.

The Legislative Management received reports from the Land Department on state agencies that have not submitted a claim for unclaimed property and approved a list of 10 agencies relinquishing their rights to recover the unclaimed property.

The Legislative Management received reports from the Department of Commerce on the annual audits of renaissance fund organizations and centers of excellence. The Legislative Management also received reports from the Department of Commerce on the centers of excellence fund, centers of excellence enhancement grants, grants and loans to early childhood facilities, the technology-based entrepreneurship grant program, and tax-exempt property by school district.

The Legislative Management approved two requests for centers of excellence funding awards submitted by the Centers of Excellence Commission. The Legislative Management approved a request from the Department of Agriculture to lease additional office space, approved four land acquisition requests from the Game and Fish Department, approved a request from the Land Department for approval to add one full-time equivalent (FTE) position relating to minerals management, and approved 39 agency requests for increased spending authority, transfers of spending authority, or increased FTE positions which were forwarded from the Emergency Commission.

The Legislative Management recommends House Concurrent Resolution No. 3002 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds during the 2011-12 interim.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Legislative Management studied sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other issues related to alternatives to incarceration.

The Legislative Management provided recommendations to the Governor for the Governor's consideration in preparation of the executive budget, including funding in an amount equal to the amount provided during the 2009-11 biennium for treatment at the Robinson Recovery Center, an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs, and an amount equal to the amount provided during the 2009-11 biennium for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The Legislative Management recommends House Bill No. 1028 to allow the Department of Corrections and Rehabilitation to authorize work release or education release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole.

The Legislative Management recommends Senate Concurrent Resolution No. 4001 to direct a Legislative Management study of the imposition of fees at sentencing and other fees that are imposed upon offenders.

The Legislative Management recommends Senate Bill No. 2029 to continue the short-term shelter care and assessment program that was initiated during the 2009-11 biennium, to appropriate $200,000 for that program, and to provide an additional $200,000 in funding to expand the program to another area of the state.

The Legislative Management expresses its support for the Read Right program; expresses its support for continuation of electronic detention and global

positioning system monitoring programs; expresses its continued support for the 24/7 sobriety program; expresses its continued support for expansion of drug courts within the state; and in recognition of the fact that many individuals incarcerated have underlying mental health issues, expresses continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

EDUCATION

The Legislative Management studied statutory criteria for the approval of public and nonpublic schools, regulatory criteria for the accreditation of schools, and the consequences to schools and school districts that fail to meet the criteria; school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic; Indian education issues; and educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery. The Legislative Management recommends House Bill No. 1029 to streamline the school approval process and reconfigure the school accreditation process. The Legislative Management also recommends House Bill No. 1030 to clarify that if a school or school district closes for only a portion of its regular schoolday, the hours during which the school or school district is closed may be added together to determine the number of additional full days of instruction that may be waived.

The Legislative Management received statutorily required reports from the Superintendent of Public Instruction regarding the financial condition of school districts, school district employee compensation, the use of new money for teacher compensation, requests for waivers of accreditation rules, requests for waivers of instructional unit time requirements, scores from tests aligned to the state content standards in reading and mathematics, school districts that had more than $50,000 excluded in the determination of their ending fund balance, and school districts that received one-time supplemental grants and the expenditures, obligations, or other commitments they incurred as a result of receiving the grants. The Legislative Management also received statutorily required reports from the Statewide Longitudinal Data System Committee, the North Dakota Early Childhood Education Council, the Superintendent of Public Instruction's Advisory Committee on Truancy, the Autism Spectrum Disorder Task Force, and the North Dakota Commission on Education Improvement.

EMPLOYEE BENEFITS PROGRAMS

The Legislative Management solicited and reviewed various proposals affecting retirement and health programs for public employees and obtained actuarial and fiscal information on each of these proposals and reported this information to each sponsor. The Legislative Management received periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions.

The Legislative Management studied the feasibility and desirability of an appropriation to OMB for a state employee tuition reimbursement pool program.

The Legislative Management studied the feasibility and desirability of an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency.

ENERGY DEVELOPMENT AND TRANSMISSION

The Legislative Management studied the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. The Legislative Management recommends Senate Bill No. 2030 to create a biodiesel plant production incentive. The Legislative Management recommends Senate Bill No. 2031 to remove the sunset on the sales tax exemption for wind facilities. The Legislative Management recommends Senate Bill No. 2032 to allow the Oil and Gas Research Council to promote innovation in safety, enhancement of environment, and an increase in education concerning the distribution of petroleum products and to allow the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and the petroleum marketing industry.

The Legislative Management recommends Senate Bill No. 2033 to allow oil and gas impact fund grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. The bill changes the administration of the fund by having the Board of University and School Lands make the grants instead of the director of the Energy Development Impact Office.

The Legislative Management recommends Senate Bill No. 2034 to treat green diesel the same as biodiesel with a clawback provision for the biofuels partnership in assisting community expansion grant upon a change in ownership within five years of the grant that negates the agricultural producer or resident ownership requirements.

The Legislative Management studied wind easements and wind energy leases, including a consideration of confidentiality clauses, liability for damages and taxes, insurance, and other concerns of property owners and wind developers. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management studied wind rights. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management studied wind resources and other natural resources in the same location. The

Legislative Management makes no recommendation as a result of this study.

GOVERNMENT SERVICES

The Legislative Management studied the classified state employee compensation system, including a review of the development and determination of pay grades and classifications. The Legislative Management recommends:

- The Legislative Management chairman contract with Hay Group for up to $198,000 for the initial implementation of the recommendations of the classified state employee compensation system study, subject to OMB's involvement in the project and the purchase by OMB of the necessary job evaluation management software.
- The 62nd Legislative Assembly appoint a joint committee during the 2011 legislative session to receive reports from Hay Group and OMB on the status of implementation of changes to the classified state employee compensation system.
- House Bill No. 1031 creating a new section to Chapter 54-44.3 to provide a compensation philosophy statement, providing directives to OMB for the implementation of Hay Group's recommendations, and requiring OMB to provide status reports on the implementation of the recommendations to a joint committee during the 2011 legislative session and to the Budget Section after the adjournment of the 2011 legislative session.

The Legislative Management studied the salaries of state elected officials, including a comparison of salaries, the number of FTE and temporary employees supervised by the elected official, and the complexity of each elected official's responsibilities. The study also included a comparison to similar positions in other states.

The Legislative Management studied the utilization of all facilities on the State Capitol grounds, including an evaluation of facility needs by state agencies and a review of the Capitol complex master plan, and received a report from OMB regarding the location, expenses, and square footage requirements of all facilities occupied by each state agency, including recommendations within the master plan for construction of buildings on the Capitol grounds.

The Legislative Management received reports from the Department of Veterans' Affairs regarding the number of county veterans' service officers accredited by the National Association of County Veterans Service Officers in accordance with Section 37-14-18, the agency or organization through which each officer has been accredited, and an accountability report regarding the use of funds appropriated to the Department of Veterans' Affairs for the purpose of arranging for accreditation training for all county veterans' service officers and received reports from boards of county commissioners regarding the status of each county's compliance with Section 37-14-18 relating to accreditation of county veterans' service officers through the National Association of County Veterans Service Officers.

HEALTH AND HUMAN SERVICES

The Legislative Management studied unmet health care needs in the state, including an assessment of the needs of underinsured and uninsured individuals and families and consideration of federal health care initiatives.

The Legislative Management studied voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services. The Legislative Management recommends House Bill No. 1032 directing the Department of Human Services to establish and operate a pilot voucher payment program to provide mental health and substance abuse services for the 2011-13 biennium.

The Legislative Management studied the state immunization program, including an assessment of pharmacists' or other providers' ability and interest in immunizing children and a review of the effect of the program on public health units, including billing, billing services, fee collections, and uncollectible accounts. The Legislative Management recommends Senate Bill No. 2035 to allow pharmacists to administer influenza shots or influenza mist to children at least 5 years of age and other immunizations to children at least 11 years of age.

The Legislative Management studied existing services for minors who are pregnant and whether additional education and social services would enhance the potential for a healthy child and a positive outcome for the minor.

The Legislative Management studied the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

The Legislative Management received a report from the Insurance Commissioner regarding cost-benefit analyses for bills mandating health insurance coverage during the 2009 legislative session. The Legislative Management accepted the Insurance Commissioner's recommendation to continue to contract with Milliman to conduct cost-benefit analyses during the 2011 legislative session.

The Legislative Management received reports from the Department of Human Services regarding enrollment statistics and costs associated with the children's health insurance program state plan and the status of the alternatives-to-abortion program; from the State Health Officer and the Regional Public Health Network Task Force regarding the development of the regional public health network; and from the North Dakota Fetal Alcohol Syndrome Center regarding the use of funds granted to the center by the State Department of Health.

The Legislative Management also received reports from the Department of Human Services regarding estimated costs to continue for the 2011-13 biennium and Medicaid eligibles, recipients, utilization rates, and average cost per recipient for fiscal years 2008, 2009,

and 2010 and from the Stroke System of Care Task Force regarding the heart disease and stroke program and funding, including the implementation of House Bill No. 1339 (2009) and an update on the status of the stroke registry.

HIGHER EDUCATION

The Legislative Management studied issues affecting higher education, including options for funding higher education institutions and the impact of tuition waivers on institutions. The Legislative Management recommends:

- House Bill No. 1033 to continue the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for an asset funding component through July 31, 2013.
- House Bill No. 1034 to continue the University System's authority to carry over at the end of the biennium unspent general fund appropriations through July 31, 2013.
- House Bill No. 1035 to extend the continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through June 30, 2013.
- House Bill No. 1036 to provide for a Legislative Management study during the 2011-12 interim of ways to alleviate developmental education, efforts to reduce developmental education, and the origin of students needing developmental education.

The Legislative Management received reports from the University of North Dakota School of Medicine and Health Sciences regarding the strategic plans, programs, and facilities of the School of Medicine and Health Sciences; from the chairman of the American Indian Language Preservation Committee regarding the work of the committee; from tribally controlled community colleges receiving a grant under Chapter 15-70 regarding the enrollment of students for which grant funding was received; and from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships, the compensation of higher education instructional personnel, the number of students enrolled in distance education classes, and the number of students enrolled in dual-credit courses.

INDUSTRY, BUSINESS, AND LABOR

The Legislative Management studied the factors impacting the cost of health insurance and health insurance company reserves and federal health care reform legislation, including its effect on North Dakota citizens and state government; the related costs and state funding requirements; related tax or fee increases; and the impact on the Medicaid program and costs, other state programs, and health insurance premiums, including the Public Employees Retirement System. The Legislative Management recommends House Concurrent Resolution No. 3003 to direct the Legislative Management to continue studying the impact of federal health care reform legislation during the next interim.

The Legislative Management studied the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection.

The Legislative Management received a report from the State Fire Marshal on the State Fire Marshal's findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes and a report from Workforce Safety and Insurance on recommendations based on the safety audit of the Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program. The Legislative Management recommends House Bill No. 1037 to remove the requirement that Workforce Safety and Insurance provide a report with recommendations based on the performance and safety audits to the Legislative Management no later than 30 days before the commencement of each regular session of the Legislative Assembly, unless either audit includes any recommendation for change.

INFORMATION TECHNOLOGY

The Legislative Management received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the prioritization of major computer software projects for the 2011-13 biennium; the department's business plan; the department's annual report; statewide information technology policies, standards, and guidelines; major information technology projects; health information technology activities; and the department's level of outsourcing information technology services. The Legislative Management also received reports from representatives of the University System regarding higher education information technology planning, services, and major projects.

The Legislative Management recommends:

- Senate Bill No. 2036 to provide that the Information Technology Department may connect to a wide area network service for health information exchange in accordance with federal requirements for health information exchange.
- Senate Bill No. 2037 to provide for the confidentiality of health information under the health information exchange, participation in the health information exchange, and responsibilities of the Health Information Technology Office.

JUDICIAL PROCESS

The Legislative Management studied the feasibility and desirability of transferring from the county to the state the responsibility for the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals under Chapter 25-03.3 and the feasibility and desirability of

transferring from the county to the state the responsibility for the cost of expert examinations and the cost and responsibility for providing legal counsel in mental health commitment cases. The Legislative Management recommends Senate Bill No. 2038 to transfer from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subject of sexually dangerous individual commitment proceedings. The bill includes an appropriation of $814,293 for the 2011-13 biennium.

The Legislative Management studied the involuntary mental health commitment procedures under Chapter 25-03.1. The Legislative Management recommends Senate Bill No. 2039 to provide that for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status. The Legislative Management recommends Senate Bill No. 2040 to amend Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order. The Legislative Management recommends Senate Bill No. 2041 to authorize the use of telemedicine technologies for court-ordered examinations under Chapter 25-03.1.

The Legislative Management studied the establishment of an ombudsman program for consumers of child and family services. It was the consensus of the Legislative Management that the Department of Human Services is strongly encouraged to work with the counties to address the issues that have been raised in this study. It was also the consensus of the Legislative Management that the Department of Human Services is expected to offer proposals for change to the Legislative Assembly during the next session.

The Legislative Management studied the Department of Human Services' child support enforcement program, the determination of income and child support obligations, the feasibility and desirability of the establishment of an ombudsman program, and coordination of services and resources for parents. The Legislative Management makes no recommendation regarding the child support issues study.

The Legislative Management received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

The Legislative Management received the annual report from the director of the Commission on Legal Counsel for Indigents regarding pertinent data on the indigent defense contract system and established public defender offices.

The Legislative Management received a report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services.

The Legislative Management received a report from the Department of Corrections and Rehabilitation regarding the short-term shelter and assessment pilot program for at-risk children and youth in the South Central Judicial District during the 2009-11 biennium.

JUDICIARY

The Legislative Management studied the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. This study was revised by Legislative Management directive to include the administration of pari-mutuel racing in the study. The Legislative Management recommends Senate Bill No. 2042 to provide for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and the consolidation of all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund.

The Legislative Management studied the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act. The Legislative Management recommends that the Legislative Management continue the study of the Revised Uniform Limited Liability Company Act during the 2011-12 interim.

The Legislative Management studied the feasibility and desirability of adopting the Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would impact existing state laws, and what issues other states have addressed in enacting the Act. The Legislative Management recommends House Bill No. 1038 to provide for the licensure and regulation of debt-settlement providers.

The Legislative Management studied whether penalties for felonies are suitable to the felonious behavior and the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in Chapter 12.1-23. The Legislative Management makes no recommendations as a result of these studies.

The Legislative Management reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws.

The Legislative Management received a report from the director of the Racing Commission pursuant to Section 53-06.2-04.

The Legislative Management received a report from the director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03.

The Legislative Management recommends House Bill No. 1039 to make technical corrections throughout the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Management received and accepted 165 audit reports prepared by the State Auditor's office and public accounting firms. Among the audit reports

accepted were three performance audits and evaluations--Department of Commerce, University System capital projects, and Medicaid provider and recipient fraud and abuse.

The Legislative Management studied the requirements for political subdivision audits. The committee received reports from the State Auditor's office regarding staffing needs, revenues, and costs relating to conducting political subdivision audits.

The Legislative Management received a performance audit report on the Retirement and Investment Office and an investment fee analysis of the State Investment Board.

The Legislative Management received information regarding Department of Human Services accounts receivable writeoffs; Public Employees Retirement System and Teachers' Fund for Retirement funds; uncollectible fines and fees; state liability for boards, commissions, and commodity groups; and the State Auditor's authority relating to audits and reviews of entities and component units of the University System.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Management approved arrangements for the 2011 legislative session. The Legislative Management approved various committee room renovations, including new committee room tables, new carpeting, new committee room message displays, and new information display panels on the ground floor and the information kiosk.

The Legislative Management recommends amendment of legislative rules to extend the deadline for reporting measures out of committee by one week and the crossover deadline by one week and to make changes reflecting legislative practices.

LONG-TERM CARE

The Legislative Management studied long-term care services, including a review of the long-term care payment systems, survey and inspection programs and processes, and state laws and administrative rules regulating basic care and assisted living facilities. The Legislative Management recommends House Bill No. 1040 to extend the moratorium on the state's licensed long-term care bed capacity and the state's licensed basic care bed capacity from July 31, 2011, to July 31, 2015.

The Legislative Management studied the impact of individuals with a traumatic brain injury, including veterans who are returning from wars, on the state's human services system.

The Legislative Management studied the registration of health care professionals, including certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examined the possibility of one registry and a potential location for that registry. The Legislative Management recommends House Bill No. 1041 to transfer registration of nurse aides, home health aides, and medication assistants I and II from the State Board of Nursing to the State Department of Health.

The Legislative Management received a report from the Department of Human Services regarding the outcomes of the dementia care services program.

The Legislative Management received a report from the Department of Human Services regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home and community-based service providers. The Legislative Management recommends Senate Bill No. 2043 to provide that the Department of Human Services implement a prospective payment system pilot project for developmental disabilities service providers during the 2011-13 biennium.

NATURAL RESOURCES

The Legislative Management studied the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services program. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management studied weed control programs of the Army Corps of Engineers on federal land under its control. The Legislative Management recommends Senate Concurrent Resolution No. 4002 to urge Congress to return to the riparian landowner land controlled by the Army Corps of Engineers which is not necessary for authorized purposes.

The Legislative Management studied the leasing of state lands. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management studied severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota. The Legislative Management makes no recommendation as a result of this study.

The Legislative Management received a report from the Parks and Recreation Department on the findings and recommendations of the study by the Parks and Recreation Department, State Historical Society, Game and Fish Department, and Tourism Division of the Department of Commerce on linking and improving a series of public sites along the Sibley and Sully historic trails for historic education, heritage tourism, and access for public hunting.

PUBLIC SAFETY AND TRANSPORTATION

The Legislative Management studied potential options for highway construction funding. The Legislative Management recommends:

- House Bill No. 1042 to require extraordinary road use fee collections to be deposited in the general fund of the county where the overweight vehicle violation occurred if the violation did not occur on a state or federal highway.
- Senate Bill No. 2044 to provide that a violation of an overweight vehicle permit issued under a county home rule ordinance is considered a violation of state law.
- Senate Bill No. 2045 to create an infrastructure grant program for taxing districts affected by oil and gas development and to provide a

$100 million appropriation from the permanent oil tax trust fund for grant distributions during the 2011-13, 2013-15, and 2015-17 bienniums.

- House Bill No. 1043 to provide that after June 30, 2011, motor vehicle excise tax collections, after distributions to the state aid distribution fund, are to be deposited in the highway tax distribution fund rather than the general fund.

The Legislative Management studied the emergency medical services funding system within this state, including state and local emergency medical services and ambulance service funding and the feasibility and desirability of transitioning to a statewide funding formula. The Legislative Management recommends House Bill No. 1044 to require the State Department of Health to establish a statewide funding plan for emergency medical services and to provide a $12 million appropriation from the insurance tax distribution fund to the State Department of Health to distribute in accordance with the funding plan.

The Legislative Management studied emergency communications in the state, including emergency communications services and infrastructure. The Legislative Management recommends:

- House Bill No. 1045 to provide for changes in emergency communications operating standards as recommended by the Emergency Services Communications Coordinating Committee.
- Senate Bill No. 2046 to provide a $110,302 general fund appropriation to the Department of Emergency Services for the operational costs of providing access to the state message switch for entities that utilize wireless access for mobile data systems; to provide for increases in fees charged for the law enforcement teletype system, and to provide a $5.5 million general fund appropriation to the Department of Emergency Services for the construction of up to 12 new State Radio towers and related equipment needed at State Radio headquarters.

The Legislative Management received reports from the Department of Transportation regarding the use of federal, emergency, and other highway funding and regarding transfers between the operating expenses and capital assets line items; from the Tax Commissioner regarding information provided annually by counties, cities, and townships on funding and expenditures related to transportation; from the State Department of Health regarding funding provided for grants to emergency medical services operations; from the Emergency Services Communications Coordinating Committee regarding the use of assessed fee revenue and recommendations for changes in emergency communications operating standards; and from the Department of Emergency Services regarding emergency snow removal grants and emergency disaster relief grants distributed to political subdivisions.

TAXATION

The Legislative Management studied mineral production impact and taxation issues. The Legislative Management recommends House Bill No. 1046 to establish a 4 percent tax on extraction of potash and potash byproducts. The bill provides that the tax is in lieu of property taxes on a potash processing plant, mining facility, or satellite facility. The bill provides that 20 percent of potash tax revenues is to be allocated to the producing county, and 80 percent is to be dedicated to state income tax reduction. The Legislative Management recommends Senate Bill No. 2047 to revise allocation of federal flood control lease revenues to eliminate dedicated shares for school districts and townships. The bill also requires the State Treasurer to report to the chairman of the Legislative Management by the 10th working day of each month the amount distributed in the preceding month to each political subdivision for oil and gas gross production tax allocation, federal flood control lease revenues, or any other oil and gas allocations made by the State Treasurer.

The Legislative Management studied property tax reform and relief. The Legislative Management recommends House Bill No. 1047 to provide property tax relief by appropriating $341 million for the 2011-13 biennium for allocation to school districts to reduce school district property taxes. The bill provides for reduction of up to 75 mills in school district property tax levies and replacement of the revenue to school districts through mill levy reduction grants. The Legislative Management recommends Senate Bill No. 2048 to prohibit a parcel of property from being located within a renaissance zone and a tax increment financing district. The Legislative Management recommends Senate Bill No. 2049 to provide that property is not used for charitable purposes if the property is a residential rental unit for which the owner receives a federal low-income housing income tax credit. The Legislative Management recommends Senate Bill No. 2050 to provide that agricultural property may not be incorporated in a tax increment financing district, to limit the duration of a tax increment financing district to 20 years, and to provide for a joint review board consisting of representatives of taxing districts for approval of a tax increment financing district. The Legislative Management recommends House Bill No. 1048 to provide that failure to implement soil surveys in agricultural assessments, when subjected to withholding from state aid distribution allocations, is to be made on a quarterly basis to match the statutory allocation times for those payments.

The Legislative Management studied extending a homestead credit for all North Dakota residential property owners and occupants.

The Legislative Management studied the 911 fee structure, fee collection methods, and current and future funding of emergency services communications in the state.

TRIBAL AND STATE RELATIONS

The Legislative Management conducted joint meetings with the Native American Tribal Citizens' Task Force.

The Legislative Management studied hate crimes, taxation, transportation, elementary and secondary education, higher education, human services, child

support enforcement, licensing of tribal addiction counselors, the Commission to Study Racial and Ethnic Bias in the Courts, economic development initiatives, employment, and the Heritage Center expansion.

The Legislative Management reviewed oil and gas tax and regulatory agreements with the Three Affiliated Tribes of the Fort Berthold Reservation.

The Legislative Management recommends Senate Bill No. 2051 to provide for enhanced penalties for conviction of discrimination in public places, aggravated assault, and harassment involving a hate crime.

The Legislative Management recommends Senate Bill No. 2052 to provide for an enhanced penalty for conviction of criminal mischief involving a hate crime.

The Legislative Management recommends House Bill No. 1049 to appropriate $100,000 from the general fund to the Superintendent of Public Instruction to conduct an Indian education issues study.

The Legislative Management recommends Senate Bill No. 2053 to make the Committee on Tribal and State Relations permanent.

The Legislative Management recommends House Concurrent Resolution No. 3004 to direct the Legislative Management to study Indian education issues, including a fair and equitable allocation of all state and federal educational funding.

WATER-RELATED TOPICS OVERVIEW

The Legislative Management reviewed the operations of the State Water Commission and State Engineer's office; specific water projects; State Water Commission expenditures for the 2007-09 biennium from the resources trust fund and expenditure of municipal, rural, and industrial water supply funds; the *2009 State Water Management Plan*; and the *North Dakota Sovereign Land Management Plan*.

The Legislative Management reviewed the Southwest Pipeline Project, Devils Lake flooding, the organization and operation of water resource districts in North Dakota, and the Red River Basin mapping initiative.

The Legislative Management recommends Senate Bill No. 2054 to appropriate $5 million from the resources trust fund to the State Water Commission to design and construct a Devils Lake east end flood control structure.

WORKERS' COMPENSATION REVIEW

The Legislative Management reviewed the workers' compensation cases of four injured employees to determine whether changes should be made to the state's workers' compensation laws.

The Legislative Management studied workers' compensation laws in this state and other states with respect to prior injuries, preexisting conditions, and degenerative conditions.

The Legislative Management received a biennial report from Workforce Safety and Insurance regarding compiled data relating to safety grants, an annual report from Workforce Safety and Insurance which includes reports on pilot programs to assess alternative methods of providing rehabilitation services, and a report from Workforce Safety and Insurance on the results of Workforce Safety and Insurance's study of postretirement benefits available to an individual whose disability benefits end at the time of Social Security retirement eligibility.

The Legislative Management recommends House Bill No. 1050 to create a vocational rehabilitation grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process.

The Legislative Management recommends House Bill No. 1051 to provide for up to two years of workers' compensation disability and rehabilitation benefits to an employee who is injured within the two years preceding the employee's presumed retirement age.

The Legislative Management recommends House Bill No. 1052 to provide that Workforce Safety and Insurance data regarding medical providers relating to medical prescriptions and patterns of treatment will be open to the public.

The Legislative Management recommends House Bill No. 1053 to limit workers' compensation coverage of prescription medication to the payment for a pharmaceutical treatment not to exceed the cost of the generic treatment if the generic is available, unless the use of the generic would create a life-threatening side effect.

The Legislative Management recommends House Bill No. 1054 to provide a protocol for workers' compensation coverage of pain therapy during the acute stage of an injury and for coverage of pain therapy relating to long-term therapy.

The Legislative Management recommends House Bill No. 1055 to provide for the transition from the fifth edition to the sixth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* and amends the workers' compensation permanent partial impairment multiplier schedule to provide for qualification of a permanent partial impairment award beginning at 14 percent whole body impairment.

The Legislative Management recommends House Bill No. 1056 to decrease the frequency of Workforce Safety and Insurance performance evaluations from once each biennium to once every four years.

WORKFORCE

The Legislative Management studied the state's system for addressing workforce needs through a workforce system initiative, including a review of the alignment of taxpayer investment with programs, coordination of programs, and the North Dakota workforce strategic plan.

The Legislative Management studied the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly.

The Legislative Management studied the establishment of a higher education student trust fund, including available funding sources.

The Legislative Management studied technology-based entrepreneurship and economic development best practices, including a review of best practices implemented by the Department of Commerce and the effectiveness of the North Dakota Economic Development Foundation.

The Legislative Management studied the means by which the University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs.

The Legislative Management studied the establishment and development of certified technology parks.

The Legislative Management received a report of the State Auditor's performance audit report of the Department of Commerce; from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system; from the Department of Commerce Division of Community Services on renaissance zone progress; from the North Dakota Youth Council regarding its list of issues and concerns pertinent to residents of this state under age 25 and any recommendations; by the Department of Commerce of filed compilations and summaries of state grantor reports and the reports of state agencies that award business incentives for the previous calendar year; and from the State Board of Higher Education on its study of the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state.

The Legislative Management recommends Senate Bill No. 2055 to create two new manufacturing income tax credits. The income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes is available to primary sector businesses and is equal to 20 percent of the expenses of the purchase. The income tax credit for qualified expenditures necessary for implementing lean manufacturing is available to primary sector businesses and is equal to 20 percent of the expenses. Each tax credit program is limited to $2 million per taxable year.

The Legislative Management recommends Senate Bill No. 2056 to amend the laws relating to TrainND, the new jobs training program, and Operation Intern; create an electronic portfolio (e-folio) pilot program and a student opportunity website; and provide the measure is an emergency measure. The new jobs training program and the TrainND program are amended to provide the TrainND community colleges are included under the definition of "community" under the new jobs training program, thereby allowing TrainND to issue new job training loans in the same way as local economic development corporations. The Operation Intern program law is amended to remove the provision that was added in 2009 to provide that employers are eligible for funding under the program only for new or expanded internship, apprenticeship, and work experience opportunities. A higher education e-folio system pilot program is created. The Department of Commerce Division of Workforce Development would administer the pilot program, and the Division of Workforce Development, the University System, Job Service North Dakota, and representatives of the institutions of higher education under the control of the State Board of Higher Education are directed to work together to establish the program. The e-folio product would be an online system that would be used to address the needs of higher education students and faculty as well as employers. A student opportunity website is created which would act as a single portal through which users can search for internship opportunities and scholarship opportunities available at or through the institutions of higher education under the control of the State Board of Higher Education.

The Legislative Management recommends House Bill No. 1057 to amend the angel fund investment tax credit to allow for transferability of the tax credit and to allow passthrough entities to claim the credit. The bill includes a Tax Commissioner report to the Legislative Management and the bill is applicable to the first four taxable years beginning after December 31, 2010, and is thereafter ineffective.

The Legislative Management recommends House Bill No. 1058 to create the innovation 2020 award program, which is administered by the Department of Commerce, and provide a $500,000 appropriation to the Department of Commerce for the program. The program provides proof of concept funding awards of up to $50,000 per qualified entrepreneur to help move a new technology from academia to the commercialization cycle. The entrepreneur is expected to repay the award.

The Legislative Management recommends House Bill No. 1059 to create a technology award grant program, which is administered by the North Dakota Development Fund, Inc., and provide a $500,000 appropriation to the North Dakota Development Fund, Inc., for the program. The program provides matching grants of up to $50,000 to technology-based businesses that are in the startup stage.

The Legislative Management recommends Senate Bill No. 2057 to provide for the centers of workforce excellence (CWE), centers of entrepreneurship excellence (CEE), and centers of research excellence (CRE); provide funding for CWE, CEE, and CRE; and provide funding for the Experimental Program to Stimulate Competitive Research (EPSCoR) program. The existing Workforce Enhancement Council grants are renamed CWE grants, and $2 million is appropriated for the CWE grants. The bill creates a CEE grant program administered by the Department of Commerce. The CEE program provides grants to department-certified entrepreneurial centers to be used to assist entrepreneurs in accessing capital, assisting entrepreneurs through providing marketing assistance, supporting building entrepreneur infrastructure, and developing entrepreneurial talent. An appropriation of $5 million is made for grants under the CEE program. The bill creates a CRE grant program administered by the Department of Commerce. The CRE grant program is based on the current centers of excellence program but is limited to research universities. The eminent researcher recruitment challenge grant program is included as part of the CRE program. Appropriations are made as follows: $10 million for the CRE grants and

$2 million for the eminent researcher recruitment challenge grant program. The bill provides for CRE infrastructure grants, based on the infrastructure grants created in 2009. The CRE infrastructure grants would be available to research universities and to nonprofit university-related foundations for use in infrastructure or enhancement of economic development and employment opportunities. The bill provides an appropriation of $4 million for these CRE infrastructure grants and appropriates $10 million to the University System for the purpose of funding the EPSCoR program.

The Legislative Management recommends House Bill No. 1060 to modify the centers of excellence postaward monitoring requirements. The bill allows for a postaward fiscal audit at the halfway point of the postaward monitoring period as well as at the completion of the postaward monitoring period and allows for an agreed-upon procedures engagement for all other years of the postaward monitoring period.

The Legislative Management recommends Senate Concurrent Resolution No. 4003 to support the Northern Tier Network Technology Initiative and the related activities of the Legislative Management's Information Technology Committee.

The Legislative Management recommends Senate Bill No. 2058 to provide legislative intent that the funding of higher education scholarships comes from the interest and other income transferred from the foundation aid stabilization aid fund to the state general fund.

The Legislative Management recommends Senate Concurrent Resolution No. 4004 to provide for the amendment of Article X, Section 24, of the Constitution of North Dakota relating to the distribution of income from the foundation aid stabilization fund for use in funding higher education scholarships.

The Legislative Management recommends Senate Bill No. 2059 to create a technology impact zone program administered by the Department of Commerce. The program allows a local government, or one or more local governments working together, to qualify for a specified amount of sales tax reimbursement. The reimbursement is for support of regional technology-based economic development efforts. Caps built into the program include a recipient's lifetime cap of $3 million as well as a limit of eight zones in the state. The program is effective through July 31, 2023, and after that date is ineffective.

The Legislative Management recommends House Bill No. 1061 to provide the State Auditor shall complete a performance audit within 90 days from the date of commencement of the performance audit.

ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, 28-32-17, 28-32-18, and 28-32-18.1. The committee is required to review administrative agency rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Management the amendment or repeal of the statutory authority for the rule. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

The Legislative Management delegated to the committee its authority under NDCC Section 28-32-10 to distribute administrative agency notices of proposed rulemaking and to establish standard procedures for agency compliance with notice requirements, its authority under Section 28-32-07 to approve extensions of time for administrative agencies to adopt rules, and its responsibility under Section 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

The committee is authorized under NDCC Sections 54-06-32 and 54-06-33 to approve rules adopted by Human Resource Management Services authorizing service awards and employer-paid costs of training to employees in the classified service.

In addition to its statutory duties, the Legislative Management assigned two studies to the committee. House Bill No. 1280 (2009) directed a study of application by administrative agencies of standards from other than state or federal law which have not been adopted as administrative rules. House Concurrent Resolution No. 3051 (2009) directed a study of imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule.

Committee members were Senators Jerry Klein (Chairman), John M. Andrist, Tom Fischer, Layton W. Freborg, Joan Heckaman, and Tracy Potter and Representatives Wesley R. Belter, Randy Boehning, Stacey Dahl, Chuck Damschen, Duane DeKrey, Mary Ekstrom, Jim Kasper, George J. Keiser, Kim Koppelman, Joe Kroeber, Jon Nelson, Blair Thoreson, Francis J. Wald, Lonny Winrich, and Dwight Wrangham.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

STUDY OF AGENCY APPLICATION OF STANDARDS NOT ADOPTED AS ADMINISTRATIVE RULES

Under NDCC Section 28-32-06, administrative rules adopted in compliance with NDCC Chapter 28-32--the Administrative Agencies Practice Act--have "the force and effect of law until amended or repealed by the agency." The significance of having the force and effect of law is that a valid administrative rule is binding on all persons and on the courts to the same extent as a statute.

The committee identified and obtained testimony from the most active administrative rulemaking agencies regarding the extent to which they require compliance with standards that have not been adopted as administrative rules. Of the agencies responding, only the Securities Commissioner imposes standards that are not contained in state or federal law or rules. The Securities Commissioner applies standards for the securities industry which are the standards adopted by the North American Securities Administrators Association (NASAA). It appears there is one standard of the NASAA applied by the Securities Commissioner which draws criticism. Under that standard, investors in a real estate investment trust (REIT) must have a minimum annual gross income of $70,000 and a net worth of $70,000 or a minimum net worth of $250,000 with no minimum income requirement. That standard drew criticism from several investment professionals who provided testimony to the committee. Those individuals said net worth or income is not an appropriate limitation because for small investors, investment in an REIT may be the best kind of investment in certain market conditions.

After determining that the study of application of standards from other than state or federal law or rules was essentially limited to concern with one standard applied by the Securities Commissioner, the committee recommended to concerned individuals that they seek introduction of legislation to obtain consideration of the issue by the full Legislative Assembly.

Conclusion

The committee makes no recommendation with regard to this study.

STUDY OF IMPOSITION OF PENALTIES BY ADMINISTRATIVE RULES

Most courts have concluded that delegation of legislative authority to administrative agencies is permissible to provide an administrative agency discretion as to implementation, administration, and enforcement of the law as long as the Legislative Assembly by statute provides sufficient standards to guide the agency. Imposition of penalties by an administrative agency under a statutory provision that clearly identifies proscribed conduct and the appropriate sanction avoids the issue of unlawful delegation of legislative authority. The issue of unlawful delegation of legislative authority comes into play when statutory authority leaves it to the discretion of an

administrative agency to determine what conduct subjects a person to sanctions and what sanctions will apply.

The committee examined the provisions of the North Dakota Administrative Code imposing criminal or civil penalties for violations. The committee invited each agency having penalty provisions in its rules to address the committee regarding those rules provisions.

With only one exception, agencies having penalty provisions in rules identified specific statutory authority for adoption of penalty provisions. The Game and Fish Department conceded that a rule provision providing that a violation of the prohibition of stocking fish or other organisms into waters of the state is a Class B misdemeanor does not have a statutory basis for imposition of a penalty. The Game and Fish Department stated its intention to move the provision to statute by introducing legislation in 2011.

The committee requested and received an Attorney General opinion on issues relating to imposition of penalties by administrative rules. The Attorney General opinion concluded that:

1. Administrative agencies do not have inherent authority to impose criminal or civil consequences for actions, but must obtain that authority through statute.
2. The Legislative Assembly may delegate authority to an administrative agency to define the terms or elements of an offense subject to statutory penalty.
3. When interpreting administrative rules, the courts consider procedural safeguards such as those contained in the Administrative Agencies Practice Act along with any standards provided by the statutory delegation, and courts consider whether the power is constitutionally delegable.
4. Courts generally have upheld criminal or civil penalties even when an administrative rule defined the offense or specified the penalty.

Conclusion

The committee makes no recommendation regarding the study of imposition of penalties by administrative rules. However, committee members suggested that the Legislative Assembly should act with more deliberation in the future with regard to statutory provisions delegating authority for administrative rules imposing penalties.

ORGANIZATIONAL RULES OF AGENCIES

North Dakota Century Code Section 28-32-02 requires each administrative agency to include in its rules an organizational rule. An organizational rule is nonsubstantive and intended to include a description of the organization and functions of the agency and the method of operations and how the public may obtain information or make submissions or requests.

The committee received a request from the State Historical Board to approve the repeal of its organizational rule on the grounds that the rule has become obsolete because it was not updated for many years. The committee approved the request. In consideration of the request, the committee determined that in many instances organizational rules of agencies are nonexistent or outdated. Committee members expressed the opinion that members of the public would be more likely to look at an agency website than the North Dakota Administrative Code to find information on the organization and functions of an agency. The committee consensus was that it should be optional for an agency to maintain an organizational rule in the North Dakota Administrative Code.

Committee Recommendation

The committee recommends House Bill No. 1026 to make it optional, rather than mandatory, for an administrative agency to adopt and maintain an organizational rule.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). A rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. Each rule adopted by an administrative agency must be filed with the Legislative Council office for publication in the North Dakota Administrative Code.

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules Committee to review administrative rules adopted under NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to address:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, the agency is requested to indicate whether the rules are mandated by federal law or to explain any options the agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to the rules. Each agency is asked to describe any such concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
6. The subject matter of the rules and the reasons for adopting the rules.
7. Whether a written request for a regulatory analysis was filed by the Governor or an agency,

whether the rules are expected to have an impact on the regulated community in excess of $50,000, and whether a regulatory analysis was issued. If a regulatory analysis was prepared, a copy is to be provided to the committee.

8. Whether a regulatory analysis or small entity economic impact statement was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
10. If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and a copy of the Governor's approval of the emergency status of the rules.

During committee review of the rules, agency testimony is required, and any interested party may submit oral or written comments.

CURRENT RULEMAKING STATISTICS

The committee reviewed 1,451 rules sections and 2,011 pages of rules that were changed from January 2009 through October 2010. The number of sections affected and the number of pages of rules were substantially more than the comparable numbers from the previous biennial period. Table A at the end of this report shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of North Dakota Administrative Code sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
November 1986-October 1988	2,681
November 1988-October 1990	2,325
November 1990-October 1992	3,079
November 1992-October 1994	3,235
November 1994-October 1996	2,762
November 1996-October 1998	2,789
November 1998-November 2000	2,074
December 2000-November 2002	1,417
December 2002-November 2004	2,306
December 2004-October 2006	1,353
January 2007-October 2008	1,194
January 2009-October 2010	1,451

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, with changes indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123
November 1998-November 2000	1,947
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920
January 2007-October 2008	1,663
January 2009-October 2010	2,011

Rule Review Schedule

Since September 2005, North Dakota Administrative Code supplements have been published on a calendar quarterly basis. Under Senate Bill No. 2026 (2009), filing date deadlines were advanced by approximately 15 days to allow more time for Legislative Council preparation and delivery of rules to Administrative Rules Committee members for their consideration prior to the committee meeting. The current deadlines and effective dates are as follows:

Filing Date	Committee Meeting Deadline	Effective Date
August 2-November 1	December 15	January 1
November 2-February 1	March 15	April 1
February 2-May 1	June 15	July 1
May 2-August 1	September 15	October 1

COMMITTEE ACTION ON RULES REVIEWED

Repealing Obsolete Rules

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing requirements relating to adoption of administrative rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

Voiding or Carrying Over Rules

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee not later than the 15th day of the month before the date of the North Dakota Administrative Code supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more

deliberately in rules decisions and allows agencies additional time to provide information or to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

1. An absence of statutory authority;
2. An emergency relating to public health, safety, or welfare;
3. A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
4. A conflict with state law;
5. Arbitrariness and capriciousness; or
6. A failure to make a written record of an agency's consideration of written and oral submissions respecting the rule under NDCC Section 28-32-11.

Within three business days after the committee finds a rule void, the Legislative Council office is required to provide written notice to the adopting agency and the chairman of the Legislative Management. Within 14 days after receipt of the notice, the agency may file a petition with the chairman of the Legislative Management for Legislative Management review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Management has not disapproved the finding of the committee, the rule is void.

Rules Carried Over or Amended by Committee Approval

The committee carried over consideration of all or part of rules submitted by the Agriculture Commissioner, State Water Commission, Superintendent of Public Instruction, State Gaming Commission, State Board of Examiners for Nursing Home Administrators, and Marriage and Family Therapy Licensure Board. In each instance, the committee received further information from the agency and took no further action regarding the rules.

The committee carried over consideration of rules of the State Department of Health relating to ambulance services. After receiving further information, the committee agreed with the department on an amendment to insert the cities of Mandan and West Fargo in the nine-minute response time category for ambulance services with the cities of Minot, Grand Forks, Bismarck, and Fargo.

At its final meeting before preparation of this report to the Legislative Management, the committee approved a motion to carry over consideration of Department of Human Services child care rules as a result of opposition expressed by child care providers to certain aspects of the rules. The committee will reconsider the rules at its meeting in December 2010.

Rules Voided by Committee

The committee did not void any rules submitted by administrative agencies from January 2009 through October 2010.

TABLE A

Statistical Summary of Rulemaking
January 2009 Through October 2010 - Supplements 331 Through 338

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
4	10 JUL 337	Office of Management and Budget	14	2					16
4.5	09 APR 332	Board of Addiction Counseling Examiners	6	1		1			8
7	09 JUL 333	Agriculture Commissioner	1						1
	09 OCT 334			18		1			19
	10 APR 336		1			1			2
10	09 APR 332	Attorney General	4						4
	10 APR 336		17	4					21
	10 JUL 337		5	4					9
13	09 JUL 333	Department of Financial Institutions	5	7					12
28	09 JUL 333	Board of Registration for Professional Engineers and Land Surveyors	1						1
	10 OCT 338		38	1	5				44
30	09 APR 332	Game and Fish Department	10	6					16
	10 OCT 338		19	9		2			30
33	09 JAN 331	State Department of Health	38	7				25	70
	09 APR 332		17						17
	09 JUL 333		1						1
	10 JAN 335		5	1		8			14
	10 JUL 337		52	30		2			84
37	09 JUL 333	Department of Transportation	4	1					5
43	09 JAN 331	Industrial Commission		87					87
	10 APR 336		16	21					37
45	09 JAN 331	Insurance Commissioner		6					6
	09 JUL 333		7	3					10
	10 APR 336		35	13		6			54
46	10 JAN 335	Labor Department		5					5
49	10 JUL 337	State Board of Massage	12	1					13
50	10 JAN 335	State Board of Medical Examiners	1	7					8
52	09 JAN 331	Motor Vehicles				74			74
55	10 JUL 337	State Board of Examiners for Nursing Home Administrators	10						10
61	09 JAN 331	State Board of Pharmacy	1	1					2
	10 JAN 335		2						2
	10 OCT 338			3					3
62	10 APR 336	State Plumbing Board	4			1			5
67	09 OCT 334	Department of Public Instruction		1					1
	10 JAN 335		47	3		13			63
	10 JUL 337		14						14
69	09 JAN 331	Public Service Commission	3						3
	10 JAN 335		1						1
	10 OCT 338		7	1		4			12
70	10 JUL 337	Real Estate Commission	7	1					8
71	10 JUL 337	Public Employees Retirement System	64	2					66
	10 JUL 337		35	4					39
75	09 JAN 331	Department of Human Services	57	5		30			92
	10 JAN 335		19						19
	10 APR 336		3	60					63
	10 JUL 337		5						5
	10 OCT 338		147	25		8			180
87	09 APR 332	Board of Veterinary Medical Examiners	7						7
89	09 APR 332	State Water Commission	18	6					24
	10 JAN 335		5	2					7
92	09 APR 332	Workforce Safety and Insurance	13	1					14
	10 JUL 337		27			2			29
93	10 JUL 337	Private Investigative and Security Board	4						4
96	10 JAN 335	Board of Clinical Laboratory Practice	1	2					3
99	10 JUL 337	State Gaming Commission	69	5		6			80
110	10 JUL 337	Criminal Justice Information Sharing Board		4					4
111	10 JUL 337	Marriage and Family Therapy Licensure Board		23					23
Sections affected			879	383	5	159	0	25	1,451
Grand total all sections									1,451

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations occupies a unique status among committees with legislative membership. The commission differs from usual Legislative Management interim committees in its membership, its permanent status, and its statutory authority to determine its own study priorities, in addition to assigned studies.

The powers and duties of the commission are provided in North Dakota Century Code Section 54-35.2-02. Under this section, the commission is free to establish its own study agenda and to accept suggestions from groups or individuals for study.

In conjunction with Section 54-35.2-02(4), Section 54-40.3-03 provides that a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to assist other political subdivisions in exploring cooperative arrangements.

The Legislative Management assigned to the commission the study provided by Section 1 of House Bill No. 1338 (2009), which directs a study of solid waste management and state or regional siting of landfills. In addition, the Legislative Management assigned to the commission the study provided by Section 1 of Senate Bill No. 2401 (2009), which directs a study of public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers.

Under Section 54-35.2-01(1), the commission consists of 12 members:

- The North Dakota League of Cities Executive Committee appoints two members.
- The North Dakota Association of Counties Executive Committee appoints two members.
- The North Dakota Township Officers Association Executive Board of Directors appoints one member.
- The North Dakota Recreation and Park Association Executive Board appoints one member.
- The North Dakota School Boards Association Board of Directors appoints one member.
- The Governor or the Governor's designee is a member.
- The Legislative Management appoints four members of the Legislative Assembly as members.

The Legislative Management designates the chairman of the commission. All members of the commission serve a term of two years.

The commission members were Senators Tracy Potter (Chairman) and Arden C. Anderson; Representatives Dan Ruby and Dwight Wrangham; North Dakota League of Cities representatives Don Frye and Shawn Kessel; North Dakota Association of Counties representatives Jane Amundson and Linda Svihovec; North Dakota Township Officers Association representative Ken Yantes; North Dakota Recreation and Park Association representative Randy Bina; North Dakota School Boards Association representative Jon Martinson; and Governor's designee Nick Hacker.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

2009-10 AREAS OF STUDY

In addition to the studies of solid waste and public improvement bidding, the commission focused on five areas of interest:

1. The state aid distribution fund.
2. State assistance to counties for major trials.
3. Municipal judges and courts.
4. City park district creation, consolidation, and dissolution.
5. Inmate medical costs.

The commission considered but did not focus on these areas of study:

1. State mandates to political subdivisions. Commission discussion included that there would need to be a list of true mandates. Because some mandates are tradeoffs and not true mandates, this list would be difficult to make.
2. Tax treatment of concentrated feedlots. Commission discussion included that feedlots are taxed as agricultural property and cause more damage to roads than traditional agricultural facilities. However, the study would fall under the heading of agricultural infrastructure impact funding that includes impacts from agricultural processing facilities, unit train facilities, ethanol plants, and other industries. This would be a major study relating to taxation which would be better addressed by another committee.
3. Social services financing. The commission was informed that $33 million per year goes to counties' social services. This is funded by property tax and the board of county commissioners does not have much control over social services expenses. This would be a major study related to taxation which would be better addressed by another committee.

Commission discussion included that the commission should not study any issue unless there is a particular need that is not addressed by another interim committee. Studies relating to taxation would be better left to an interim taxation committee.

STATE AID DISTRIBUTION FUND STUDY

The state aid distribution fund provides for allocation of a portion of sales, use, and motor vehicle excise tax

collections among political subdivisions (Section 57-39.2-26.1). The state aid distribution fund was created to combine preexisting state revenue sharing and personal property tax replacement programs.

History of the State Aid Distribution Fund

The 1987 legislation establishing the state aid distribution fund (effective beginning with the 1989-91 biennium) retained the separate statutory allocation formulas for state revenue sharing and personal property tax replacement. The legislation provided that 60 percent of revenue from one percentage point of state sales, use, and motor vehicle excise taxes would be allocated among political subdivisions, with equal amounts allocated under the state revenue sharing formula and the personal property tax replacement formula. The 1987 legislation also provided that state aid distribution fund allocations were subject to legislative appropriation. In 1997 significant changes were made to the state aid distribution fund. The amount allocated for distribution through the fund was reduced from 60 percent to 40 percent of revenue from one percentage point of state sales, use, and motor vehicle excise taxes, which is the equivalent of 8 percent of collections. The bill also eliminated the preexisting state revenue sharing and personal property tax replacement formulas and created a single formula for allocation of state aid distribution fund revenues among political subdivisions. The following table shows biennial amounts allocated from the state aid distribution fund and the predecessor personal property tax replacement and revenue sharing programs:

Biennium/ Funding Source	Personal Property Tax Replacement	Revenue Sharing	Counties	Cities	Total
1969-71/general fund	$18,900,000				$18,900,000
1971-73/general fund	$42,600,000				$42,600,000
1973-75/general fund	$18,170,000				$18,170,000
1975-77/general fund	$21,900,000				$21,900,000
1977-79/general fund	$24,300,000				$24,300,000
1979-81/general fund	$26,044,401	$17,403,838			$43,448,239
1981-83/general fund	$32,577,000	$21,840,000			$54,417,000
1983-85/general fund	$29,377,000	$22,000,000			$51,377,000
1985-87/general fund	$31,289,226	$28,654,079			$59,943,305
1987-89/general fund	$20,877,700	$20,877,700			$41,755,400
1989-91/state aid distribution fund	$27,104,150	$27,104,150			$54,208,300
1991-93/state aid distribution fund	$28,375,000	$28,375,000			$56,750,000
1993-95/state aid distribution fund	$25,750,000	$25,750,000			$51,500,000
1995-97/state aid distribution fund	$25,750,000	$25,750,000			$51,500,000
1997-99/state aid distribution fund			$28,968,508	$24,992,092	$53,978,600
1999-2001/state aid distribution fund			$33,940,222	$29,263,170	$63,203,392
2001-03/state aid distribution fund			$35,502,898	$30,610,328	$66,113,226
2003-05/state aid distribution fund			$39,489,898	$34,048,087	$73,537,985
2005-07/state aid distribution fund			$44,966,766	$38,770,228	$83,736,994
2007-09/state aid distribution fund			$49,266,528	$42,477,472	$90,968,250

The state aid distribution fund allocation divides revenues for allocation 53.7 percent to counties and 46.3 percent to cities. The distribution to the counties and cities is based on population categories. Each population category receives a percentage of the county or city share of the total and is then allocated to the counties or cities within the categories based on population. The following chart shows the allocation of the fund among county and city population categories prior to the 2000 federal census:

Population Category			
Counties	**Percentage**	**Cities**	**Percentage**
100,000 or more	10.4%	20,000 or more	53.9%
40,000 or more but less than 100,000	18.0%	10,000 or more but less than 20,000	16.0%
20,000 or more but less than 40,000	12.0%	5,000 or more but less than 10,000	4.9%
10,000 or more but less than 20,000	14.0%	1,000 or more but less than 5,000	13.1%
5,000 or more but less than 10,000	23.2%	500 or more but less than 1,000	6.4%
2,500 or more but less than 5,000	18.3%	200 or more but less than 500	3.5%
Less than 2,500	4.1%	Less than 200	2.2%
Total	100.0%	Total	100.0%

In 2003 the state aid distribution formula for cities and counties was revised to account for population changes resulting from the 2000 federal census. The total distribution percentages to cities and counties remained at current levels--53.7 percent to counties and 46.3 percent to cities. However, the allocation formula among counties and cities was changed to the following:

Population Category			
Counties	**Percentage**	**Cities (Based on Population)**	**Percentage**
17 counties with the largest population (allocated equally)	20.48%	80,000 or more	19.4%
17 counties with the largest population (allocated based on population)	43.52%	20,000 or more but less than 80,000	34.5%
Remaining counties (allocated equally)	14.40%	10,000 or more but less than 20,000	16.0%
Remaining counties (allocated based on population)	21.60%	5,000 or more but less than 10,000	4.9%
		1,000 or more but less than 5,000	13.1%
		500 or more but less than 1,000	6.1%
		200 or more but less than 500	3.4%
		Less than 200	2.6%
Total	100.0%	Total	100.0%

During the 2009 legislative session, House Bill No. 1366, which failed to pass the House, would have increased the amount allocated through the state aid distribution fund from 40 percent to 50 percent of the revenue from one percentage point of state sales, use, and motor vehicle excise taxes for the 2009-11 biennium and from 40 percent to 60 percent after that time. The fiscal note indicated that the bill would reduce general fund revenues by $28 million for the 2009-11 biennium and $56 million for the following biennium.

Testimony and Discussion

Commission members noted that most small cities have been limited in the property tax dollar amount since 1997, and the only increase in funding is from the state aid distribution fund. However, the commission members also noted that the state has taken over more responsibilities of county governments while there has been an increase in state aid distribution.

Conclusion

The commission makes no recommendation as a result of its study.

STATE ASSISTANCE TO COUNTIES FOR MAJOR TRIALS STUDY

Commission discussion included there should be statewide attorneys general that can be used by state's attorneys in big trials. Big trials can be a catastrophic expense and a major burden to state's attorneys who may have no expertise in the subject matter of the trial.

The commission was informed that present aid from the Attorney General's office to state's attorneys is critical. The state provides assistance to state's attorneys through direct financial support through the Attorney General's office for witness reimbursement fees. Generally, witness fees exceed the budgeted amount, and the Attorney General seeks additional funds from the Emergency Commission. In addition, the Attorney General's office provides nonfiscal support through supplying an assistant attorney general when requested by a state's attorney. This typically occurs when there is a significantly time-consuming trial where the assistant attorney general has some expertise. The Attorney General's office provides significant indirect support to state's attorneys by maintaining a State Crime Laboratory. The commission was informed that in the past there have been legislative proposals for an additional full-time employee for the Attorney General's office for a prosecutor of sexual offenses. The commission was informed that the issue is about funding and reimbursement.

Conclusion

The commission makes no recommendation as a result of its study.

MUNICIPAL JUDGES AND COURTS STUDY

The commission received testimony on the consolidation of municipal court services with other courts. The commission was informed that municipal courts are not courts of record and in cities under 5,000 in population, a municipal judge does not have to be law-trained. Of the 73 municipal judges in this state, 19 are law-trained. In addition, municipal courts have limited jurisdiction to traffic violations, first and second driving while under the influence offenses, and Class B misdemeanors. There is a right to appeal anew to district court from municipal court.

Conclusion

The commission makes no recommendation as a result of its study.

CITY PARK DISTRICT CREATION, CONSOLIDATION, AND DISSOLUTION STUDY

City park districts are created by the city in which the district is located. Under Section 40-49-02, any incorporated city by a two-thirds vote of its governing body may take advantage of the provisions of law relating to park districts. Section 40-49-05 requires that all of the powers of a city park district must be exercised by a board of park commissioners. Under Section 40-49-07.2, a city park district may be dissolved. However, to dissolve the city park district, a resolution approved by a majority of the board of park commissioners or a petition signed by 25 percent or more of the qualified electors of the city park district must be submitted to the governing body of the city. If either of those two requirements is met, the governing body of the city is required to submit the question of dissolution to the electors of the park district.

The main issue that would arise if a city park district is dissolved is that the taxing authority for the city park district would be dissolved as well. Under Section 57-15-12, the levy for a park district may not exceed the sum of the number of mills levied by the park district in the taxable year 2000 for the general fund. However, a park district may increase its general fund levy to any number of mills approved by the majority of

the electors of the park district up to a maximum levy of 35 mills. The July 2009 schedule of levy limitations and the 2008 property tax statistical report prepared by the Tax Commissioner show the property taxes levied in each county by the state and political subdivisions, including city park districts. The total amount collected for city park districts in 2008 was $37,330,933.64--fourth in amount behind school districts, counties, and cities. This amount reflects a 120.3 percent increase since 1995.

Although a city park district may combine with another city park district or a county park district, transfer power to the county, or enter a joint powers agreement, there is no procedure for a city park district to consolidate with the governing body of a city. Under Chapter 40-49.1, a city park district may combine with one or more city park districts or county park districts. Under Section 40-49.1-03, as a political subdivision, the combined city park district has the status of a city park district or the status of a county park district when combined. If applicable, all laws relating to the functions and powers of a city park district and the functions and powers of a county park district apply to the combined board. Chapter 54-40.5 is intended to allow political subdivisions to transfer powers to the county in which the political subdivision is located. Thus, a city park district could be transferred to county government. Under Chapter 54-40.3, political subdivisions may enter joint powers agreements. However, this chapter is meant more for cooperation than consolidation. The cooperation may result in some consolidation of administrative functions, but the entities in the joint powers agreement would still exist.

Conclusion

The commission makes no recommendation as a result of its study.

INMATE MEDICAL COSTS STUDY

Most of the people in jail are in jail for a violation of state law, the violation of which is at least a misdemeanor. It is the responsibility of the county to house and provide medical care for these convicts. If a person commits a felony, the person generally is sent to the State Penitentiary. The Penitentiary may contract with a county for housing of an inmate, but the state still is responsible for the costs of housing and medical care. Medical expenses at the Penitentiary are paid through the Department of Corrections and Rehabilitation budget. Because of the number of inmates at the Penitentiary, the Penitentiary has onsite medical staff. The state has a managed care system in which it hires physicians, dentists, and other medical personnel to provide medical care. Most jails do not have medical staff beyond a screening by a nurse.

The commission was informed that 3 jails may hold prisoners up to 96 hours; 7 jails may hold prisoners up to 30 days; and 16 jails, classified as Grade 1, may hold prisoners up to one year. Because of the size of most jails, it is difficult to maintain medical staff beyond nursing staff.

The commission received testimony on the inmate medical costs to counties. The commission was informed the county must pay for inmate medical care because the denial of medical care is a constitutional violation if a prison or jail deliberately is indifferent to a substantial risk of serious harm. For an injury to be considered sufficiently serious, the harm must significantly change the prisoner's quality of life. The commission was informed that these catastrophic expenses can ruin a county budget. The commission was informed that there were three situations last year in which the cost per inmate exceeded $10,000. In two of the situations, the cost was $20,000 to $30,000. In one situation the amount was much more. The commission reviewed an article in *The Forum* of an inmate costing the county in excess of the jail's entire medical budget of $300,000. However, most counties have not been hit by a catastrophic expense over $10,000. The costs of the majority of medical expenses are between $500 and $1,000.

One way of addressing catastrophic expenses is through insurance. The commission was informed that medical costs for counties attributable to inmates are approximately $1.5 million. The commission was informed that insurance for expenses over $10,000 per inmate have cost one county between 55 cents and 58 cents a day per inmate. At present the expected cost is 60 cents to 63 cents per inmate per day. This is a large sum to a small jail that may be paying only $500 per year for medical care. For catastrophic insurance to be economical, there needs to be 25 beds full in the jail at all times. Although jails could group together to purchase catastrophic insurance and receive better rates, it is difficult to find insurers. The commission was informed that there is only one provider of catastrophic medical insurance for inmates.

The commission was informed that to compound the matter, inmates are charged high rates by medical providers. For example, the Grand Forks jail purchased insurance that covered medical costs in excess of $10,000 per inmate. The insurance company then took charge of billing and negotiations with medical facilities and in reaction to the actions of the insurance company, the medical providers in Grand Forks agreed to offer the Medicare rate, if the jail directly billed expenses.

Commission discussion included that one area of health care for inmates that is an unfair cost for political subdivisions is dental care. It was argued that a person in jail should not get dental care for the first few months of confinement.

The commission was informed that dental care must be provided to inmates. If the dental problem causes serious pain and affects the ability to eat, not fixing the problem is cruel and unusual punishment. The costs for dental care are fairly small in relation to other medical expenses.

Commission discussion included that there are many complaints from prisoners in jail of chest pain. These complaints must be medically investigated, and the investigation is expensive.

Commission discussion included that political subdivision tax revenue primarily comes from the

property tax, while the state has a variety of taxing authority. Therefore, the state is in a better position to absorb catastrophic losses.

The commission received testimony on legislative proposals to address inmate medical costs. Two legislative proposals could have significant impact on inmate medical costs. The first would be a requirement that health care providers bill and accept rates identified for services under Medicare or Medicaid. The second would exclude those supervised through electronic monitoring or home detention from medical care. The commission was informed that many jails have this policy, but the issue is a point of contention between counties and medical facilities.

Commission discussion included that Medicare rates may work better than Medicaid rates for the amount provided; however, Medicare rates do not include dental care rates. In addition, there is difficulty in having providers take more Medicaid patients, especially as to dental services.

Commission members discussed two potential bill drafts. The first bill draft would have the state establish a risk pool with the risk shared between the state and jails. The second bill draft would have inmates be covered under the Public Employees Retirement System health insurance. It was argued that this idea would not work because all the inmates' care must be covered, and the Public Employees Retirement System plan covers only a percentage. Also, including inmates under the Public Employees Retirement System health insurance may have the unintended consequence of inflating costs for public employees.

Extraordinary Medical Expenses of Inmates Paid by State Bill Draft

The commission considered a bill draft that required the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical or health care expenditure paid by that facility which exceeds $10,000. The bill draft required the administrator of the correctional facility to provide appropriate information to the department. The goal of the bill draft was to place the state in the role of reinsurer for extraordinary medical expenses incurred by counties. The $10,000 threshold was chosen because of testimony that the amount was the level used by a private insurer.

The commission received testimony in opposition to the bill draft. The commission was informed that the bill draft was not practical in its current form because the bill draft merely shifted the problem of uncertainty as to medical costs from counties to the Department of Corrections and Rehabilitation. It was argued that the most important issue the bill draft should address is the uncertainty of medical costs and a fund that covered both the Department of Corrections and Rehabilitation and county extraordinary medical expenses would be best.

The commission received testimony on alternatives to the bill draft. One alternative was having a fund patterned after the probationer violation transportation fund under Section 12-65-08. This fund reimburses state or county costs for law enforcement to return a probationer who has been allowed to transfer or travel out of state. Another alternative was to have a fund patterned after the special operations team reimbursement fund under Section 54-12-23. This fund is used to reimburse the direct cost of training and dispatching tactical law enforcement teams throughout the state. The special operations team reimbursement fund is voluntary, and the contribution from counties ranges from $200 from Slope County to $1,000 from Richland County.

The commission was informed that a special fund for extraordinary inmate expenses appears more analogous to the probationer violation transportation fund than the special operations team reimbursement fund. It was suggested that the new fund could be administered by the Department of Corrections and Rehabilitation or the Risk Management Division of the Office of Management and Budget. It was argued if the administration cost were paid by the state, there would not be a need for a profit and the cost to jails would be less than the cost of insurance.

The commission received testimony in opposition to the Department of Corrections and Rehabilitation administering a special fund. The commission was informed that the administration of a special fund would require the review of medical billing and the department does not have this expertise. It was argued that the Risk Management Division would be more appropriate because the special fund would be similar to administering a risk pool or insurance fund.

The commission was informed that transferring a cost that is difficult for the counties to budget to the Department of Corrections and Rehabilitation makes the department's budgeting more difficult. It was argued that a special fund is better than an agency's budget as a source of funding for extraordinary inmate medical costs.

Commission discussion included that the bill draft appears to be a simple solution to unexpected costs that drive up property taxes, and creating a special fund creates complexity. The Department of Corrections and Rehabilitation would plan, as it already does, in its budget for these costs with the fallback provision of a deficiency appropriation.

The commission was informed that the fiscal impact of medical care for inmates is not known, and budgeting for it is very difficult. In the state prison system, less than 5 percent of prisoners consume over 90 percent of the payments to doctors and hospitals in the department's medical budget.

The commission was informed that the Department of Corrections and Rehabilitation does not purchase reinsurance for extraordinary medical expenses of prisoners. However, a state special fund for extraordinary inmate medical costs may need to purchase reinsurance.

Payments of Inmate Medical Care Limited to Medicare Rate Bill Draft

The commission considered a bill draft that prohibited a medical or health care provider from billing the cost of care at a rate that exceeds the federal Medicare

payment rate. In addition, the bill draft defined adequate medical care, clarified the definition of inmate, and removed the administrator's notice to the inmate of a withdrawal from the inmate's account. The general rule of the bill draft is that inmates are responsible for their own medical expenses, but the county must pay for necessary medical care, as a payer of last resort, at Medicare rates. The suggested changes came from the North Dakota Association of Counties.

Commission discussion included it may be an unintended consequence of limiting payment to Medicare rates that there would be fewer providers. However, other discussion included that Medicare rates were given a boost in recent federal health care legislation. As such, Medicare rates are not as low as Medicaid rates. Therefore, the present difficulty is in finding a provider for Medicaid patients, not Medicare patients.

The commission received testimony in support of the bill draft. The commission was informed that the present definition of inmate creates a conflict between medical and correctional facilities. For example, sometimes a person sentenced to home detention goes to a medical provider and directs the medical provider to bill the county. Although the county has never paid these bills, and the definition of inmate does not include home detention, it was argued that especially saying being an inmate does not include a person on home detention would provide an easy answer for the correctional facility administrator to provide the health care provider.

The commission was informed that medical and health care providers do not bill at the federal Medicare payment rate but bill their costs. To clarify the language, testimony suggested the bill draft be changed to read:

> If the inmate does not have health insurance coverage and it is determined that the inmate's medical costs are the responsibility of the correctional facility, that facility is not obligated to pay those medical costs at rates that exceed those paid under the federal Medicare program.

The commission was informed that inmate accounts are created if the inmate has a job in the facility, and the bill draft would continue to allow funds in these accounts to be used for medical care. However, this amount of money is not significant. The commission was informed that inmates might earn $2 a day, and generally inmates do not stay longer than a year in a local correctional facility. An additional source of payment for health care costs of inmates is if the inmate has health insurance. The commission was informed that most inmates do not have health insurance and if they do, they lose any health insurance they had after being in a correctional facility because they are not able to pay for it. In addition, Medicaid coverage is lost upon being placed in jail.

The commission was informed some coverage may go away upon arrest, so there may be a motive to not arrest an individual who is hospitalized. The commission did not find an instance of an arrested individual being released from custody at the hospital and rearrested at the time of release from the hospital to avoid county liability for medical expenses.

The commission reviewed statutes in other states, including Idaho, Maryland, and Oklahoma, that cap reimbursement rates at Medicaid reimbursement rates. Idaho provides that if the service is not on the Medicaid reimbursement schedule, the appropriate facility pays the reasonable value of the service.

Commission discussion included that it would be difficult to get reimbursement at Medicaid rates because some medical providers do not take Medicaid patients. However, there may be difficulties with the Medicare rates. For example, there are not any Medicare rates for things covered by Medicaid, for example, childbirth costs. As such, Medicaid may be the more appropriate fee schedule.

The commission was informed that the North Dakota Association of Counties, when considering the legislative proposal that was the basis of this bill draft, considered Medicaid and Medicare rates. Medicare rates were used because that is what Grand Forks County used with an agreement with local hospitals. Medicaid would save more money, but there would be more resistance from medical professionals. It was argued for expenses not on the Medicare schedule, it may be wise to provide for reasonable expenses.

Recommendations

The commission recommends Senate Bill No. 2028 to require the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical expenditures paid by the facility which exceed $10,000. No reimbursement is made for federal or out-of-state inmates being housed in corrections facilities.

The commission recommends Senate Bill No. 2024 to limit the correctional facility's liability for inmates' medical costs to Medicare rates.

SOLID WASTE MANAGEMENT STUDY

Section 1 of House Bill No. 1338 (2009) directed the Legislative Management to study solid waste management, with an emphasis on the siting and zoning of landfills on a statewide or regional level while allowing adequate protection for political subdivisions and property owners in the siting and zoning process. As described in the study directive, the study of solid waste management may be separated into four areas:

1. Regional and state siting of landfills.
2. Recycling programs.
3. Methane processing.
4. New solid waste sciences.

The focus on state or regional siting comes from House Bill No. 1338, as introduced. As introduced, the bill would have created a state landfill siting board with exclusive jurisdiction to site a landfill unless the landfill was operated by a political subdivision within the zoning jurisdiction of that political subdivision.

The legislative history reveals the major issues with the bill as introduced were eminent domain and the determination of acceptable sites and selection of a site from acceptable sites. The legislative history also reveals that the language on the study of recycling programs and methane processing is the same as the

language in Senate Bill No. 2417 (2009), which was not selected for study by the Legislative Management.

Present Law

Most of the law relating to solid waste is contained in Chapter 23-29 and related rules.

Section 23-29-03 defines solid waste as any garbage, refuse, sludge from a wastewater plant, water supply treatment plant, or air pollution control facility and other discarded material. The term does not include agricultural waste or domestic sewage. The section defines four types of solid waste--industrial waste, infectious waste, municipal waste, and special waste.

All of these wastes, if not hazardous, may end up in a municipal waste landfill, an inert waste landfill, a special waste landfill, or a small volume industrial waste landfill. In conformity with the legislative history, this study focused on municipal waste and inert waste landfills.

Under Section 23-29-05.1, a person must deposit solid waste in a landfill. This section prohibits littering and open burning unless in accordance with the rules adopted by the department. This section creates the criminal penalty of an infraction unless the litter is in excess of one cubic foot or is furniture or a major appliance, in which case the offense is a Class B misdemeanor. Under Section 23-29-05.2, some wastes cannot be placed in landfills. This waste includes untreated infectious waste, lead-acid batteries, used motor oil, and major appliances. The section requires lead-acid batteries to be accepted as trade-ins for new batteries.

Under Section 23-29-07, the State Department of Health may issue permits for solid waste management facilities. A facility is required to have a permit to dispose of solid waste. Upon receiving an application, the department must provide notice in the official newspaper of the county in which the facility is to be located. In addition, the department must notify the board of county commissioners in the county in which the facility is to be located. The board of county commissioners may call a special election to allow the qualified electors of the county to vote to approve or disapprove the facility. The special election must be held within 60 days after receiving notice, and if the electors vote to disapprove the facility, the department may not issue a permit and the facility may not be located in that county. This procedure does not apply to a solid waste management facility operated as part of an energy conversion facility or surface coal mining and reclamation operation.

Under Section 23-29-16, an operator of a landfill must be insured and each officer and director must be personally jointly and severally strictly liable for damages caused by solid waste to the environment. Under this section, to renew or modify a permit, a privately owned industrial waste or municipal waste landfill is subject to a vote of approval. The State Department of Health notifies the board of county commissioners of the renewal or modification, and the board must place the issue on the ballot at the next regularly scheduled election to allow the qualified electors of the county to vote to approve or disapprove the renewal or modification based on public interest and impact to the environment. If a majority of the qualified electors voting in the election disapprove the renewal or modification, the department may not renew or modify the permit.

In addition to state law, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., gives the United States Environmental Protection Agency authority to manage nonhazardous solid waste. The Resource Conservation and Recovery Act of 1976 and its amendments, including the Solid Waste Disposal Act Amendments of 1980 and the Hazardous and Solid Waste Amendments of 1984, place responsibility for solid waste management with the Environmental Protection Agency. Under the law, the administrator of the Environmental Protection Agency is required to adopt guidelines for state or regional solid waste plans adopted by states and regional authorities. The Act prescribes certain requirements for approval of state plans. One requirement is that the state plan provide for resource conservation and recovery and for disposal of solid waste in landfills in a manner that is environmentally sound.

The administrator also is required to adopt guidelines relating to landfills. Disposal facilities that fail to satisfy the criteria for sanitary landfills must be classified as open dumps. State solid waste management plans must provide for the closing or upgrading of all open dumps and must prohibit the establishment of open dumps. The Environmental Protection Agency has made rules under the Act relating to location restrictions, design criteria, operating criteria, ground water monitoring, corrective action, closure and postclosure care, and financial assurance criteria. The closure and postclosure care requirements require that postclosure care be conducted for 30 years. Due to these requirements, the state evaluated and reduced the number of landfills from a high of 111 permitted municipal solid waste landfills in the 1980s to the current number of 13 regional or multicounty landfills. Not including the recently sited Grand Forks landfill, the last new regional landfill to be successfully sited was in 1989.

Under Section 40-34-01, any municipality may individually or jointly acquire, construct, equip, extend, improve, operate, and maintain inside or outside of the city a plant or system for the disposal of garbage and issue bonds. Any municipality may acquire by gift, grant, purchase, or condemnation necessary lands either within or without the corporate limits of the municipality and within or without the state of North Dakota. The municipality may invoke eminent domain for purposes of acquiring land for the plant or system for the disposal of garbage.

Under Section 11-11-14, the board of county commissioners for a county may establish a garbage or trash collection system for all or part of the county. This system may include the operation and maintenance of landfill sites or other processing sites. The board may operate a system in cooperation with one or more other political subdivisions through a joint powers agreement.

Under Chapter 54-40.1, cities, counties, and organized townships may form regional councils that

coordinate planning and development within the region for all matters of regional concern, including among other things, solid waste. In addition, the regional council is required to develop a regional comprehensive plan. The regional council has membership from each of the participating units of general local government.

In addition to the siting permit required from the State Department of Health, which may be subject to a vote of the electors of the county, a landfill would need to have appropriate zoning to be constructed. Presently, in areas surrounding a city in which a city has not exercised jurisdiction, the county is the zoning authority, unless the township has exercised zoning authority.

Methane Processing

According to the Landfill Methane Outreach program of the Environmental Protection Agency, in North Dakota there are two operational methane gas energy projects and one candidate landfill. A candidate landfill is one that is accepting waste or has been closed for no more than five years and has at least one million tons of waste and does not have an operational or under construction project or is designated based on actual interest or planning. The two projects in this state are in the Fargo landfill and the candidate landfill is the City of Grand Forks landfill. In addition to operational projects and candidate landfills, there are potential landfills that do not meet the candidate definition; however, these landfills have potential for producing energy from methane gas based on site-specific needs or if data were complete. These landfills include the City of Minot landfill, Dakota landfill at Gwinner, and McDaniel landfill at Sawyer.

There is a state tax provision on methane gas processing from a landfill. Under Section 57-38-01.8, there is an income tax credit for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2015. A biomass energy device includes a system using landfill gas to produce fuel or electricity.

Testimony and Discussion

North Dakota has 13 municipal solid waste landfills that handle approximately 672,000 tons per year of municipal waste, including approximately 110,000 tons from Minnesota. The commission was informed that changes in federal law required small landfills to close, and only large cities have the resources to operate landfills. As a result, these landfills have become regional landfills. Ten of the 13 landfills in this state handle over 97 percent of the waste. It is not unusual for waste to be transported up to 125 miles for disposal. Yard trimmings, paper, and cardboard make up over 45 percent of the waste in a landfill, and plastics make up over 20 percent.

Although the goal in 1991 was a 10 percent reduction by 1995, at least a 25 percent reduction by 1997, and at least a 40 percent reduction by 2000, at this time there has been an 11 percent reduction in waste in municipal landfills. The national waste reduction level is 28 percent since 1991.

The commission was informed that space in municipal waste landfills is running out. The McDaniel landfill at Sawyer is expected to be full in 10 to 15 years, the Fargo landfill in 13 years, the Dakota landfill at Gwinner in 15 years, the Minot landfill in 15 to 20 years, and the Dickinson landfill in 25 to 30 years. Bismarck is studying the lifespan of its landfill. A few years ago the estimated lifespan was 50 years, but a study that is in progress will show there is approximately 25 years of lifespan.

The commission was informed that more waste may be coming into municipal landfills from rural areas. Some people in rural areas are still burning and burying trash. Because the burning of garbage in a barrel releases toxins because of the low heat, the commission was informed that it is expected this practice will be prohibited in the future. In addition, the commission was informed that there is a problem with people living outside a city placing garbage in commercial dumpsters inside a city. This problem is large enough that some small cities have padlocks on commercial dumpsters.

Regional and State Siting of Landfills

The solutions to handling more solid waste are siting more landfills, recycling, or using new solid waste sciences. The commission received testimony on the siting of a landfill in Grand Forks. The process began in 1991 when the State Department of Health reviewed 200 sites for the Grand Forks landfill. The two best sites were in Nelson County, but Nelson County did not want the landfill. The commission was informed of problems with a landfill in Nelson County. Although it looked like a favorable place for a landfill at that time, there were problems with the hauling distance. Other problems with the Nelson County landfill included aquifer and drainage systems located by locals after identifying the site as a possible regional landfill. Nelson County owned a facility and pulled out of the planning, and the State Department of Health did not have authority to place the landfill in Nelson County. In addition, at that time, the Grand Forks landfill sites had many positive factors. The site of the landfill in Grand Forks was chosen because of ease of transportation and geology. It was noted that Nelson County now sends its waste to the Grand Forks landfill.

The commission reviewed House Bill No. 1338 (2009), as introduced, which would have created a state landfill siting board. The greatest impediment to siting a landfill is zoning. Under House Bill No. 1338, if a city wanted a landfill, the city could place the landfill in an area over which the city has zoning jurisdiction or the city could place the landfill in an area that the city does not have zoning jurisdiction if the state landfill siting board approved a permit upon application. In the second instance, the board must issue the permit if the site is compatible, there is a need for the landfill, and there are proper mitigation measures.

The main issues with the bill were eminent domain and site selection. It was argued that the city should not be able to exercise eminent domain outside the jurisdiction of the city. Some argued that the city should not be able to choose the site. The sites could be chosen within the region using the state landfill siting board based on legal exclusion areas, transportation costs, mitigation efforts, and scientific and social

compatibility. One suggestion was to have the city choose three locations and the siting board choose the best. To the contrary, it was suggested that the process should begin with the state choosing the best locations and allowing the political subdivisions to choose one of the listed locations.

The commission received information from the primary sponsor of House Bill No. 1338. The bill was a result of the recent siting of a landfill in Grand Forks. It took 15 years to get a permit to site a landfill in Grand Forks. This amount of time resulted in millions of dollars being wasted because one entity has zoning authority and a different entity issues the permit. If the zoning authority does not lie with the city, but with a township, the zoning may be rejected by a small number of people in a township. It was suggested that the people using the landfill should decide on the landfill zoning. Because the decision to site a landfill happens once every 20 years, however, it was argued that a regional landfill commission may be too complex of an entity for such an infrequent decision. This is the reason the bill had a board at the state level made up of scientists and politically accountable members.

The commission was informed that the only reason Grand Forks has a landfill is because of its extraterritorial zoning authority. The commission was informed that there is not a township that would have a landfill because of the "not in my backyard" attitude. If a township can veto a good plan that is scientifically sound and addresses all of the concerns of the people living around the landfill, the city will have to place the landfill in a populated area within the city's zoning jurisdiction. Because a landfill has to go somewhere, science should determine its location, and there should be reasonable accommodations to address impacts.

The commission was informed that the State Department of Health has the knowledge to site landfills, but siting landfills may create a conflict of interest. The conflict would be because the State Department of Health is the regulator of landfills and if the department sited landfills, the department would be a proponent of the site and a regulator of the permit. However, this conflict could be addressed by having a logical barrier between the two functions.

Commission discussion included a concern with being proactive in the siting of landfills. The time it takes to site a landfill, using the contentious Grand Forks experience, is 15 years to 20 years. Because of this, work needs to be done well in advance of the need for the landfill. In addition, being proactive can lower the cost of mitigation measures because development can be limited around future landfill sites.

In the review of statewide siting, the commission received testimony on regional siting as a more appropriate level of siting. The commission was informed that the siting of landfills appears to be a regional issue. Regionalization would have the entire group that uses the landfill be involved in the siting of the landfill. This would be advantageous because one political subdivision or group could not arbitrarily stop a landfill. The commission was informed that the closest neighbor will most likely not want the landfill even though a well-run landfill is as good a neighbor as most land uses. Commission discussion included that landfills are not dumps and are not always bad neighbors. Landfills can be good neighbors, especially for industrial concerns, for example, Cargill in Fargo.

Recycling

The commission was informed that it is important to extend the life of landfills. Many states do not allow yard waste in landfills and some states place limits on cardboard in landfills and these changes might extend the life of a landfill for a significant time. It was argued that these prohibitions could be adopted in this state. In this state, the Legislative Assembly has prohibited appliances, oil, and batteries in landfills. There are markets for cardboard, and landfills have the capabilities to manage yard waste for compost. However, cardboard is a commodity, and the volatility of the market in cardboard can affect all businesses that recycle cardboard.

The commission was informed that the State Department of Health has no enticements or authority to promote recycling. Although there have been conditions on permits, there is nothing in state law that provides authority. The State Department of Health does not have any direct funding for recycling education or employees dedicated to promoting recycling. However, employees do provide presentations at events, and the department does have pamphlets.

The commission was informed that there is more recycling in the eastern part of the state partly because there are more recyclers in the eastern part of the state, e.g., there is a glass recycler in Fargo.

Commission discussion included that there are two costs in placing waste in a landfill. There is the cost of hauling the waste and the cost of properly disposing of the waste. A volume fee could reduce the use of landfills. Typically haulers charge on tonnage and landfills charge on space. Glass weighs a lot but does not take up much space, while cardboard does not weigh much but takes up a lot of space. Minot once had a yardage fee, but it is difficult to charge on volume because reporting to governmental entities is required by the ton.

In Bismarck, there has not been a big push to recycle glass because there is not enough quantity to use in roads. Bismarck has investigated using glass for decorative purposes, e.g., glass can be used for landscaping.

The commission was informed that recycled goods are sold by the load. Bismarck does not have to store loads because there are two vendors that take loads from Bismarck. Bismarck does more manual labor on the recycled goods than other suppliers so it is not difficult to contract with vendors. Bismarck has not worked with communities on the travel route to fill loads because Bismarck has enough recycled goods to fill loads. Bismarck has worked with small communities in bringing recyclables from the small communities to Bismarck.

Commission discussion included that there needs to be regional solutions for recycling. Small operators can

be driven out of business due to the volatility of the recycled products market. There needs to be a recognized savings for the entire community.

Methane Processing

Landfill gas typically contains 45 percent to 60 percent methane with the majority of the remainder being carbon dioxide. Methane is natural gas. Landfill gas is the single largest source of manmade methane emissions in the United States, contributing to almost 40 percent of methane emissions each year. Methane is 25 times more problematic than carbon dioxide with respect to climate change.

The commission was informed that the methane processing at the Fargo landfill has brought in money for other waste reduction and recycling efforts in Fargo. The landfill gas is sold to Cargill for thermal processes, used in the transfer station boilers for heating, and used for the generation of electricity. The methane processing solved an odor problem, and the Fargo landfill uses sewage sludge in addition to landfill waste to produce methane.

New Solid Waste Sciences

The commission received testimony on municipal solid waste disposal and an overview of emerging technologies. The commission was informed that current solid waste management practices include landfills, incineration, composting, and recycling.

There are four categories of new technologies, including thermal conversion, digestion, hydrolysis, and fiber recovery. The thermal conversion process includes gasification, pyrolysis, and plasma arc. Digestion is the reduction of solid waste materials through decomposition by microbes, accompanied by the evolution of liquids to gases. Digestion may occur anaerobically or aerobically. Hydrolysis is the conversion of the cellulosic fraction of municipal solid waste to ethanol or other chemicals. The creation of ethanol out of cellulosic waste may become economical in this state. Fiber recovery is the mechanical recovery of fiber used in papermaking. The life of a landfill may be extended through recycling, composting, and leachate recirculation, alternative daily cover, shredding, and compacting.

Conclusion

The commission makes no recommendation as a result of its study.

PUBLIC IMPROVEMENT PROJECT THRESHOLD FOR BIDDING AND PROFESSIONAL DESIGN

Section 1 of Senate Bill No. 2401 (2009) directed the Legislative Management to study public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. Senate Bill No. 2401, as introduced, would have increased the threshold from $100,000 to $200,000 for:

1. Public improvement contracts open to bidding and advertisements for bids.
2. Public improvement contracts that require an architect or engineer to provide plans and specifications.
3. Public improvement contracts that require a performance bond.

Historically, the threshold was $50,000 in 1995 and was increased to $100,000 in 1997. From information provided by surety companies, the thresholds for bonding, which generally track the same thresholds of the study, range from $0 to $200,000. The great majority range from $25,000 to $100,000. The reasons for each threshold may be different, and each threshold does not necessarily have to be based on a dollar amount.

Statutory Provisions

Senate Bill No. 2401 (2009), as introduced, addressed sections of the North Dakota Century Code relating to when a public entity must retain a design professional and to bidding threshold limits for public improvement projects.

Section 18-12-04 requires all plans and specifications for school construction in excess of $100,000 to be prepared and supervised by an architect or engineer registered in this state.

Section 43-19.1-28 requires the state and political subdivisions to use a professional engineer for the construction of public works that exceed $100,000 involving the practice of professional engineering.

Section 48-01.2-02 requires the governing body of a state entity or political subdivision to procure plans, drawings, and specifications for a public improvement in excess of $100,000 from an architect or engineer except in certain limited circumstances.

Section 48-01.2-01 defines public improvement as any improvement undertaken by a governing body of a state entity or a political subdivision for the good of the public and which is paid for with public funds and constructed on public land or within a public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds. "Public improvement" does not include county road construction and maintenance, a state highway, or a Public Service Commission project governed by Title 11 relating to counties, Title 24 relating to highways, or Title 38 relating to mining and gas or oil production. "Construction" or "constructed" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property, not including the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing not more than $100,000.

Section 48-01.2-06 requires multiple prime bids for the general, electrical, and mechanical portions of a public improvement project if the combination of contracts is in excess of $100,000. The section allows a multiple prime bid to be included within another prime contract if not more than $25,000. The section allows a governing body of a state entity or political subdivision to

accept the submission of a single prime bid if the bid is lower than the combined total of the lowest responsible multiple bids for the project.

Section 48-01.2-10 requires a governing body of the state entity or political subdivision to require a contractor to provide a bond for a public improvement in excess of $100,000. The bond must be equal to at least the price stated in the contract for the performance of all terms, conditions, and provisions of the contract and to pay all bills and claims on account of labor performed and supplies and material furnished in the performance of the contract.

History

Public improvement contracts were studied during the 2005-06 interim by the Legislative Management's Industry, Business, and Labor Committee. As part of that study the committee received testimony from representatives of a construction industry working group. This group--called the Construction Leaders Coalition--has continued to meet since that time and is meeting on the issues contained in this study. As a result of recommendations of the coalition, the Industry, Business, and Labor Committee recommended a bill that was approved during the 2007 legislative session. House Bill No. 1033 (2007) consolidated and clarified the laws on bidding and public improvement contracts and allowed state and local governments to use the construction management delivery method.

Testimony and Discussion

Public Bidding

It was argued that more projects should be able to be completed with a request for proposal. Although the request for proposal process allows the preselection of qualified bidders and more flexibility, the request for proposal process may benefit local or favorite contractors. However, it was argued that the possibility of favoritism in the request for proposal system is not that great in a larger community because of the adequate number of qualified contractors.

Commission discussion included that one of the reasons for public bidding is to avoid corruption and the appearance of impropriety. Public bidding is used so that there is a prudent use of tax dollars. In the private sector, the owner is spending the owner's money. In the public sector, the governing body is spending the public's money. Sometimes government entities want to choose the contractor with whom they have experience and not have public bidding, but that should not be allowed in the public sector. The main reason for professional design services is for safe public buildings. In private construction, building codes govern the construction and these codes are less restrictive than what is addressed in public projects, which want a high level of addressing health, safety, and welfare.

Commission discussion included that certain members did not like the perception of the private sector building to the minimum standard and the public sector building to the maximum standard.

Bonds

The commission received testimony on bonds used in construction. The commission was informed that there are three types of construction bonds:

1. Bid bonds.
2. Performance bonds.
3. Payment bonds.

The commission was informed that bonds are a form of consumer protection, and only five states have a threshold higher than $100,000. The commission was informed that since 2006 there has been an increased failure rate of 20 percent for contractors. Also, there has been a 5- to 10-fold increase in contractors that want to bid on public contracts and bonding prequalifies contractors for government contracts.

The commission focused on the bid bond. A bid bond is the surety saying the individual is prequalified to get a performance and payment bond. The bid bond is a first step to issuing a performance bond. Bid bonds are relatively inexpensive to contractors--$50 to $100. Surety companies look at the financials, ability, and experience of the contractor before issuing a bond. The commission was informed that a bid bond encourages serious bids and is good for large projects. The bid bond removes the fly-by-night contractors.

The commission was informed that contractors are reviewed for every bond, and the surety company looks at the capacity of the contractor. It is in the best interest of the surety to have contractors grow and not pay claims on bonds. The decision to issue a bond is not based on hard and fast rules but on the relationship between the surety company and the contractor. It was argued that if a bond is issued, it is proof of a responsible bidder. Bonds are protection to subcontractors, laborers, material suppliers, and taxpayers.

The commission was informed that although the thresholds for bidding and bonding are the same, bidding and bonding are two different things. The bid threshold could be changed without changing the bond threshold.

Design/Build Delivery Method

The commission reviewed three project delivery methods:

1. Design/bid/build.
2. Construction management.
3. Design/build.

The commission focused on the design/build method. The design/build method is a new method that is not used in this state but is being studied by the industry. North Dakota is the only state that does not allow the use of design/build and other states are not uniform in the requirements to use design/build for certain projects. Other states vary widely in the scope of projects that are allowed to use the design/build method. However, there are two pilot projects using design/build with the Department of Transportation. One of the projects is for a box culvert and one is for a signal light. The department will compare the use of the design/build method with similar projects previously completed with the design/bid/build method. The pilot projects are a box

culvert and a signal light because there can be near identical projects run through both methods. The pilot projects will not measure savings as much as be an evaluation of the process. The department is trying to find the right projects that are similar in nature. There most likely will be a comparison of methods for the box culvert by the 2011 legislative session.

In-House Engineer for City or County for Storage Building Bill Draft

It was argued that Section 48-01.2-02 should be amended to allow an engineer employed by a city or county to prepare the plans for a building in use or to be used by the city or county for the storage or housing of road materials or machinery, equipment, or tools. The commission was informed that most county engineers are civil engineers. A civil engineer must pass a series of tests and those tests should qualify the engineer to build a storage building. The commission was informed that the change was intended to include an employee engineer and not a consultant. The language was duplicative of language in the law relating to the Department of Transportation.

Commission discussion included that a local lumber company had made three very similar garages in the area for private entities but could not build the garage for the city because of design requirements. The public bidding and design service requirements would have added 24 percent to the cost of a garage. This is a significant amount of money for small communities with small budgets. Commission discussion included similar events in other communities. In one community the community raised money for a metal building, but the law required an architect and a plan. The metal building company did not qualify to make the plan.

The commission considered a bill draft that would have allowed a city or county to use a staff engineer for certain storage buildings.

Testimony in support of the bill draft pointed out that the bill draft would have allowed engineers of cities and counties to do what is done by the Department of Transportation. Under the bill draft, a city or county could still have hired a design professional if advisable. The commission was informed that most of the buildings that are used as storage buildings are preengineered buildings, and only 10 counties would be able to use the bill draft because of having a staff engineer. The number of cities would be quite low as well.

The commission was informed preengineered buildings raise an interesting issue because an engineer is not needed for the structure but is needed for the subgrade requirements, so preengineered buildings should be included within the requirement of a design professional.

The commission was informed that the provision of law was created when the Department of Transportation did not have any architects, and an architect was required for storage buildings. The commission was informed that there is no need for the exception for the Department of Transportation or this bill draft because the law allows for an engineer to make the plans, drawings, and specifications, and this engineer does not have to be a private engineer.

Commission consensus was that the bill draft merely allowed what already can be done.

Duration and Amount of Advertisement for Public Improvement Construction Bids Bill Draft

It was argued Section 48-01.2-04 should be amended to require the advertisement for bids through publishing for two consecutive weeks, instead of three consecutive weeks, if the first publication is at least 15 days, instead of 21 days, before the date of the opening of bids.

The commission considered a bill draft that would have reduced the duration and amount of advertising for public improvement construction bids. The bill draft would have reduced the advertising for bids from three weeks to two weeks and from 21 days before the opening of bids to 15 days before opening.

Testimony in support of the bill draft pointed out that other areas of law relating to the advertisement requirements for counties are two weeks and 15 days. These areas include road construction, county supplies, and erection of county buildings. It was argued the adoption of the bill draft promotes consistency. In addition, due to the short construction season, a 21-day delay can be longer due to meeting dates and can result in a large portion of the construction season being wasted on a rebid.

The commission considered applying the bill draft only to rebids but was informed that may be confusing.

Testimony in opposition to the bill draft pointed out that three weeks has worked well over time, and there is no reason to change that time period. Three weeks gives the public time to act and bidders time to get bid information together. This is especially true when specifications are not ready when an advertisement is published. It was argued an extra seven days for a $100,000 project is not that long a period of time, and a summer construction project should be bid well in advance of the construction season. The commission was informed that it takes 21 days in most situations to get a bid completed.

Commission discussion included that in one large city contractors rely on the local builder's exchange for projects on which to bid rather than the newspaper. The commission was informed allowing publication in a builder's exchange instead of in the newspaper would be a good idea from a cost perspective. However, advertisement gives notice to the public, and some contractors would not hear of the bids if only published in trade journals. In addition, there is a strong interest from local newspapers to provide the information and receive the income from the advertisements.

Commission discussion included a suggestion that cities and counties be required to place bids on an official website if the city or county has a website. The commission was informed that there are online resources and paper publications on a weekly basis that act as a clearinghouse for bid requests so that small contractors can be aware of what is available. The

commission was informed that the law requires that the bid be published in a trade publication. The commission received testimony in opposition to publication on the city or county website. Adding a website publication would be a problem because some cities have websites that are not active. However, it was argued that it may be a good idea for small cities to use the county website because every county has an active website.

Public Improvement Construction Threshold Bill Draft

It was argued that Section 48-01.2-02.1 should be created to centralize the threshold, tie the bidding threshold to the annual consumer price index for all urban consumers, and be set at $135,000 as a base amount. The commission was informed that the current threshold of $100,000 is an arbitrary number. The commission was informed that if the consumer price index were applied to $100,000 in 1997, the amount would be $133,698 today. The commission was informed that other agencies track the consumer price index. For example, the Department of Human Services uses the consumer price index for reimbursement to counties. The consumer price index is determined monthly and annually and is available on the web.

Commission discussion included that if tying the bidding threshold to the consumer price index is adopted, a governing body should figure out the consumer price index on a yearly basis and publish that index so it is consistently applied.

The commission considered a bill draft that would have increased the public improvement construction threshold to $135,000 and provided for an adjustment on an annual basis by the consumer price index for all urban consumers. The United States Department of Labor publishes the consumer price index, and the bill draft placed the burden on the Office of Management and Budget to publish the appropriate consumer price index applied to the threshold. The Office of Management and Budget does similar tracking and publishing with travel and publication rates.

Testimony in support of the bill draft pointed out that the bill draft would create a process for increasing the threshold so that the threshold would not have to be debated on a regular basis by the Legislative Assembly. It was argued that the bill draft gives those affected by the bill draft less to disagree about over time. Support for the bill draft included starting with a threshold of $100,000 increased by the consumer price index.

The commission was informed that the threshold could go down if there is deflation, and the consumer price index should adjust the threshold either way.

Testimony in opposition to the bill draft argued that although the threshold needs to be adjusted from time to time, the Legislative Assembly should make the change. It was argued that the formula could be confusing. The threshold is used by many units of government, and indexing it to the consumer price index would create confusing changes every year. Many units of government rarely do construction, and a changing threshold may be more confusing than a static number. It was argued that a static number would be easier to use.

Commission discussion included that if the number is tied to the consumer price index and there is a yearly increase, an educated guess as to the threshold will be easy to determine.

Commission discussion included the Legislative Assembly always retains the authority to change the amount, and the bill draft allows the change to occur if everything is working well.

The commission received testimony in support of amending Section 48-01.2-02 to separate thresholds for bids from those for design professionals and to make the latter dependent upon public health, safety, and welfare, instead of solely a dollar amount. It was argued that whether to have public bidding is based on economics and fiduciary issues. This proposal would have required a design professional if the cost of the public improvement is estimated to cost in excess of $150,000 or if public safety requires, based upon the type of the building and the size of the alteration. In short, the proposal created a higher monetary threshold but required a design professional at lesser dollar values if other criteria apply. The commission was informed that small changes may affect safety and costly changes, for example, new carpet, do not affect safety.

The commission was informed that there may be unique examples where a design professional is required under the proposal but is not needed, for example, a sidewalk. The commission was informed that the goal of the proposal was to keep it simple, but exclusions may be necessary. It was argued there is more danger in not having a design professional when needed than having a design professional when not needed. The danger in the former is a disaster, and the danger in the latter is an additional cost.

Commission discussion included it is contradictory to argue that the bidding threshold needs to be a fixed dollar amount so it is simple, but a threshold for design professionals which requires an understanding of the State Building Code to apply is okay, even though complex.

Testimony in opposition to the bill draft also argued that advertising for bids is good government because it informs the public and businesses of government action. The commission was informed that there have been recent projects at universities in which the projects were manipulated to be below the threshold. It was argued that increasing the threshold would make these problems worse.

It was argued that the consumer price index will add up quickly, like compounded interest, and the threshold will get quite high over time. However, the commission was informed that construction inflation has greatly exceeded the consumer price index.

Commission discussion included that there have been multiple extreme abuses of the bidding process. In addition, there was lack of support for tying the threshold to the consumer price index.

The commission received a revised bill draft that retained the threshold at the present level of $100,000 but consolidated the threshold into one section of law.

Testimony in support of the revised bill draft pointed out the bill draft is merely code revision with no substantive change. The commission was informed that the amendment should be modified to have two sentences--one for the public improvement bid threshold and one for the design professional threshold.

The commission received an amendment to the legislative proposal tying the standard for using a design professional to public health, safety, and welfare and not purely economic reasons. In short, the legislative proposal would require a design from a professional when needed for public health, safety, and welfare, if under the numerical $150,000 threshold. The recommended amendment removed most of the situations that require an architect or engineer and added the situation of when there is new building construction with an occupancy rating of 10 or more persons. Other situations include projects that are intended to serve as four or more properties, for example, sewer projects and other infrastructure for the community. It was argued that the amendment should only be adopted if the threshold is raised.

The commission received testimony in support of the proposal and amendments because there is a difference between bid and design professional thresholds. There was concern with the complexity of the proposal before this amendment.

Testimony in opposition to the bill draft supported the revision to retain the threshold at $100,000 and centralize the threshold. The commission was informed that raising the threshold would produce fewer bids and would not be good public policy, especially due to recent public improvement construction problems.

Commission discussion included support of the proposal to create a different standard for the design professional threshold, but it was argued that the ideas need more time to develop and the ideas must be clarified. It was argued that the threshold is good at this time; however, to the contrary it was argued that there should be an increase of the threshold to at least $135,000.

Commission discussion included that there may be changes to the threshold level and a split between bid and design professional thresholds during the legislative session. Commission discussion included that certain members were not averse to raising the threshold, but had not been convinced as to a certain amount.

Specifying Materials to Be Used in Any Public Improvement Bill Draft

It was argued that Section 48-01.2-03 should be amended to allow the specification of a brand in bidding when remodeling or expanding an existing building already containing the specified brand.

Commission discussion provided two examples of allowing specified brands being an advantageous choice. In one example, a city was building a new water plant next to the old water plant and was retrofitting the old plant. If there were two different systems, there would need to be seven spare parts required for each system. The cost of the seven parts was $200,000. It was argued that money could be saved if the systems were the same.

The commission was informed of another example in which a county had an issue with electronic door locks that had to be removed and new ones installed because of the inability of the locks to integrate with existing software. The commission was informed that it would be useful to be able to designate a type of trademarked product so that the electronics in the product will speak natively with existing products. However, if this were allowed, there may be an incentive to lowball the first bid to get subsequent bids.

It was argued there needs to be a few exceptions to the prohibition on specifying brands and patented articles, for example, fire systems, security systems, and air-handlers, because continuity and compatibility are of extreme importance for these types of items. It was also argued that operator or user preference should be given some weight. For example, the operators of road graders prefer a steering wheel to a joystick, and the preference of the operator needs to be addressed.

The commission considered a bill draft that would allow the specifying of materials in the requesting bids if remodeling or expanding an existing building.

Commission discussion included the bill draft appeared to be overly specific as to a particular brand and the bill draft related to remodeling or expanding an existing building, and this may be too broad, when what is desirable is compatibility. There was concern that some vendors say their product is compatible when it is not easily compatible. Commission discussion included the standard of highest responsible bidder may allow for choosing specific materials that are compatible. Commission discussion included that allowing requests for a trademarked product restricts innovation. Commission discussion included that there was concern that competitors be allowed to compete against a market leader, for example, as IBM was to computers in the early 1990s. It was argued that although the bill draft created some room for abuses by government, it solved some abuses by bidders. However, the bill draft allowed local people to make the best decision for the community. If there are abuses, the problem will be quickly brought to the attention of the public. It was argued that if a result is to reduce the number of keys used in locks in a city, it would be valuable.

Testimony in support of the bill draft pointed out that the bill draft allowed specificity, but did not require it, and the bill draft balanced competition and efficiency.

Recommendations

The commission recommends Senate Bill No. 2026 to centralize the public improvement threshold and to create separate sentences for the bid and design professional thresholds.

The commission recommends Senate Bill No. 2027 to allow specifying materials in bids for a public improvement.

CONCESSION BIDDING

Chapter 48-09 contains the bidding requirements for concessions. Under Section 48-09-01, any state entity

or political subdivision may grant a concession for any café, restaurant, or confectionary by leasing the concession to the highest bidder or best bidder or both.

Section 48-09-01 also provides that the lease may be for a reasonable rental per month for a period not to exceed eight years. The state entity or political subdivision may reject any and all bids for a concession. There are two exceptions from the bidding process--any North Dakota fair association or a board of county park commissioners. These entities may grant a concession without letting bids.

Under Section 48-09-02, when a concession is deemed worth more than $500, the concession must be advertised in a legal newspaper at or near the concession. The advertisement must be once each week for three consecutive weeks.

Under Section 48-09-03, the governing body of the state or political subdivision entity may require a deposit of security. All money received as security or for the lease must be deposited in the general fund of the entity.

Testimony and Discussion

The commission received testimony on concession bidding requirements. Representatives of park districts supported raising the threshold to $25,000, the same as for other park district contracts. It was argued that any increase would be an improvement. In addition, it was suggested that the advertisement should be for two weeks instead of three weeks so that it would match the advertising requirement for other park district contracts. The commission was informed that most of the contracts are seasonal, and if a contractor needs to be changed mid-season, three weeks is too long. Another issue with the statute is determining what is deemed to be $500. It is unclear whether this is gross sales, commission, contract price, or other value.

The commission was informed that most bids are for separate concessions and not for all or groups of concessions within a district because of different seasons for different concessions. Many concessions are open for a limited time for large events. Many concessions do not receive multiple bids. For example, the concessions for the golf course in Minot had only one bid the last two times it advertised for bids. Concessions are difficult to bid because there is not a steady stream of revenue. The commission was informed that in some park districts if the park district is unable to receive a bid, the park district allows user groups to run the concessions.

The commission received testimony on the Bismarck Parks and Recreation District. In Bismarck the park district calls for bids at various sites separately. The district tried grouping the sites, but it was too difficult to get vendors. At present, the district is fortunate to get two bids for a site.

Commission discussion included that the threshold is permissive, and a park district could ask for bidding if the amount were less than the threshold.

Commission discussion included that whether the advertising is for two weeks instead of three weeks is an issue that may be contentious with the North Dakota Newspaper Association. However, two weeks is consistent with the $25,000 bid threshold. It was argued that in most cases, the vendor is contacted by the district so there is no problem with a shorter advertisement time.

Commission discussion included that if the $25,000 were gross sales, then the term should be estimated gross sales. Although concessions are weather-dependent and sales change with the weather, the park district has a rough idea of estimated gross sales. There are current vendors that may do $120,000 of business but only make a couple thousand dollars.

Threshold and Advertisement for Concessions Bidding Bill Draft

The commission considered a bill draft that raised the threshold for concessions bidding to be advertised and bid from $500 to $25,000. The bill draft defined the $25,000 amount in terms of estimated gross sales. The bill draft would have reduced the advertising from one time per week for three weeks to one time per week for two weeks. The term highest or best bidder was changed to highest responsible bidder to be consistent with previous changes in the law relating to public improvements.

Commission discussion included that a jump in the threshold from $500 to $25,000 is a large step. However, most of those concessions are from Memorial Day to Labor Day, and the $25,000 reflects $800 per week. As such, commission discussion included that the amount of increase was fair.

The commission was informed that the phrase "is deemed worth more than $500" is confusing. It is unclear whether this means the net or gross, and the issue needs to be addressed. Commission discussion included that the previous threshold of $500 could have been interpreted to being $500 in profit. A business can do $50,000 or more of business without $500 profit.

Commission discussion included that the change in value of the threshold is the most important issue in the bill draft. The change from three weeks to two weeks is for consistency with the supplies bidding statute. The commission was informed that the only other statute that requires three weeks is the public improvement statute.

Testimony in opposition to the bill draft noted that the bill draft may prohibit competition by not allowing someone who wants to start a concessions business from being able to enter the market. It was argued that three weeks is a good length of time because it allows the public and concessionaires time to react. It was argued that an increase to $25,000 is too much and a lower threshold, e.g., $5,000, may be reasonable. To clarify the statute, the commission was informed that the phrase "in a legal newspaper published in the city at or near where the concession is located" should be changed to parrot the language used elsewhere in the law of "official newspaper of the political subdivision in which the public improvement is or will be located."

Commission discussion included the suspicion that many small towns do not bid concessions and violate the law. It was argued that the threshold should be set high to address only large profitable concessions.

The commission was informed that the law does not require the concessionaire to have open books;

however, a prudent political subdivision would require gross sales information. The $25,000 is based on an estimate at the time of letting the bid by the political subdivision and not on actual sales after the bid.

The commission was informed that part of the agreement in Bismarck with a vendor requires that the books are open to determine gross sales. Bismarck is paid on a commission based on gross sales and requires the gross sales to be provided to the park board. The park board provides a history of gross sales to potential bidders.

Commission discussion included that because the concession may be for a period not to exceed eight years, the $25,000 threshold should have a time element, for example, annually. The commission was informed that it appears that the $500 threshold is annual but is unclear because the word "annually" is not used. The commission amended the bill draft to add the term annually.

Commission discussion included that exceeding the $25,000 threshold in any one of the eight years should cause the concession to rebid. However, sometimes a one-time community event, for example, a centennial, may increase sales in one year, and if a reevaluation were required, the rebidding would be burdensome.

Recommendation

The commission recommends Senate Bill No. 2025 to raise the bid threshold for concession bidding to annual estimated gross sales of $25,000.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3001 (2009) directed a study of North Dakota Century Code provisions that relate to agriculture for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. Section 3 of House Bill No. 1322 (2009) directed a study of issues related to the development of livestock feeding facilities and the use of byproducts from biofuels production as a feedstock. House Concurrent Resolution No. 3048 (2009) directed a study of the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors, and ways to further reduce the financial risk of participants in the sale, purchase, handling, and processing of grain, including the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk. The committee also was directed to receive a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research activities and expenditures and a report from the Advisory Committee on Sustainable Agriculture regarding the status of the committee's activities.

Committee members were Representatives Phillip Mueller (Chairman), Mike Brandenburg, Mary Ekstrom, Rod Froelich, Curt Hofstad, Richard Holman, Dennis Johnson, Keith Kempenich, Joyce M. Kingsbury, Shirley Meyer, Gerry Uglem, Benjamin A. Vig, and John D. Wall and Senators Arthur H. Behm, Bill Bowman, Tim Flakoll, Terryl L. Jacobs, Curtis Olafson, Terry M. Wanzek, and John Warner. Senator Aaron Krauter was a member of the committee until his resignation from the Legislative Assembly in September 2009.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

NORTH DAKOTA CENTURY CODE PROVISIONS RELATING TO AGRICULTURE

Objectives and Scope of Committee's Efforts

The North Dakota Century Code contains more than 90 chapters that pertain to agriculture. Many of the sections within those chapters contain material that is irrelevant, duplicative, inconsistent, illogically arranged, or otherwise unclear in their intent and direction. Ultimately, neither the agencies charged with administering the laws nor the members of the public to whom the laws apply have due notice of the requirements and expectations placed upon them. Against this backdrop, in 2007 the Legislative Assembly called for a detailed examination of the state's agriculture laws, with the ultimate goal being to clean up, clarify, and consolidate the multitude of statutory directives within that topic area.

When the 2007-08 interim Agriculture Committee began its work, it determined that the nature and extent of the rewrite made amending current sections of the North Dakota Century Code virtually impossible. It therefore directed that the rewrite create a new title that could accommodate the vast array of agricultural subjects and concepts in an organized and comprehensible fashion. The 2007-08 interim Agriculture Committee focused its efforts on the state's noxious weed laws and the laws pertaining to the 12 agricultural commodity boards and commissions.

When the 2009-10 interim Agriculture Committee was formed, it included 11 of the 15 members who had participated in the first phase of the rewrite. With this level of experience, the committee members elected to approach the second phase of the rewrite in much the same way as they had the first. Their goal was not to change policies that had been put in place by previous legislative assemblies but rather to craft a bill that would clearly indicate rights, duties, obligations, and consequences and one that would accurately reflect the manner in which business was conducted. The committee opted to focus its efforts on a rewrite of the state's seed laws.

Omitted Provisions

During the study, the committee determined that a number of North Dakota Century Code sections were unnecessary or duplicative of other provisions. The committee consequently directed that those sections be omitted from the proposed new title. The following table lists the sections repealed by omission and the reason for that action:

Subject - Section	Rationale for Omission
Seed Laws	
4-09-03.1	Repealed in 2005
4-09-05	Unnecessary
4-09-05.1	Unnecessary
4-09-06.1	Unnecessary
4-09-10.1	Repealed in 2005
4-09-13.1	Expired in 2001
4-09-14.3	Repealed in 2005
Inspections and Grading of Agricultural Commodities	
4-09.1-01	Duplicative
4-09.1-03	Duplicative
4-09.1-04	Unnecessary
4-09.1-05	Duplicative
4-09.1-06	Unnecessary
Regulation of Wholesale Potato Dealers	
4-11-05	Repealed in 2003
4-11-10	Repealed in 2007
4-11-19	Unnecessary
4-11-24	Unnecessary
Seed Sales Regulations	
4-25-01	Duplicative
4-25-02	Unworkable
4-25-03	Unnecessary
4-25-05	Repealed in 1979
Seeds and Crops Inspection and Analysis	
4-42-01	Duplicative
4-42-02	Unnecessary
4-42-04	Unnecessary

Subject - Section	Rationale for Omission
4-42-05	Duplicative
4-42-06	Duplicative
4-42-08	Unnecessary
4-42-09	Duplicative
4-42-10	Duplicative
4-42-11	Duplicative

Cross-Reference Table - Seed Laws

The following table sets forth current North Dakota Century Code sections and their proposed placement in Title 4.1:

Current Section	Proposed Section
4-09-01	4.1-53-01
4-09-02	4.1-53-02
	4.1-53-08
	4.1-53-10
	4.1-53-11
4-09-02.1	New section to Chapter 11-08
	New section to Chapter 40-05
	New section to Chapter 58-03
4-09-03	4.1-53-04
	4.1-53-05
	4.1-53-06
	4.1-53-07
	4.1-53-08
	4.1-53-09
	4.1-53-11
4-09-04	4.1-53-03
4-09-06	4.1-53-10
	4.1-53-54
4-09-07	4.1-53-58
4-09-08	4.1-53-11
4-09-09	4.1-53-11
4-09-10	4.1-53-12
	4.1-53-13
	4.1-53-14
	4.1-53-15
	4.1-53-16
	4.1-53-17
	4.1-53-18
	4.1-53-19
4-09-11	4.1-53-21
	4.1-53-22
	4.1-53-23
	4.1-53-24
	4.1-53-25
	4.1-53-26
	4.1-53-27
4-09-11.1	4.1-53-28
	4.1-53-29
	4.1-53-30
	4.1-53-31
4-09-11.2	4.1-53-32
	4.1-53-33
	4.1-53-34
	4.1-53-35
	4.1-53-36
4-09-12	4.1-53-39
4-09-13	4.1-53-37
4-09-14	4.1-53-40
	4.1-53-51
	4.1-53-52
	4.1-53-53
4-09-14.1	4.1-53-38
4-09-14.2	4.1-53-38
4-09-14.4	4.1-53-38
4-09-15	4.1-53-53
	4.1-53-57
	4.1-53-61
4-09-16	4.1-53-42
	4.1-53-43
	4.1-53-44
	4.1-53-46
	4.1-53-47
4-09-17	4.1-53-45
4-09-17.1	4.1-53-48
4-09-18	4.1-53-42
4-09-19	4.1-53-10
4-09-20	4.1-53-10
	4.1-53-62
4-09-20.1	4.1-53-59
4-09-20.2	4.1-54-01
	4.1-54-02
	4.1-54-03
	4.1-54-04
	4.1-54-05
4-09-22	4.1-53-56
4-09-23	4.1-53-55
4-09-24	4.1-53-57
4-09-25	4.1-53-60
4-09.1-02	4.1-53-11
4-11-01	4.1-57-01
4-11-02	4.1-57-02
4-11-03	4.1-57-03
4-11-04	4.1-57-04
4-11-04.1	4.1-57-05
4-11-06	4.1-57-06
4-11-07	4.1-57-07
4-11-08	4.1-57-08
4-11-09	4.1-57-09
4-11-11	4.1-57-13
4-11-12	4.1-57-10
4-11-13	4.1-57-11
4-11-14	4.1-57-12
4-11-15	4.1-57-13
4-11-15.1	4.1-57-14
4-11-15.2	4.1-57-15
4-11-16	4.1-57-16
4-11-17	4.1-57-17
4-11-18	4.1-57-18
4-11-20	4.1-57-19
4-11-21	4.1-57-20
4-11-22	4.1-57-21
4-11-23	4.1-57-22
4-25-04	4.1-53-41
4-42-03	4.1-53-49
4-42-07	4.1-53-50

Cross-Reference Table for Proposed Sections - Seed Laws

The following table sets forth the sections in the proposed Title 4.1 and the Title 4 sections from which they were derived:

Proposed Section	Current Section
4.1-53-01	4-09-01
4.1-53-02	4-09-02
4.1-53-03	4-09-04
4.1-53-04	4-09-03
4.1-53-05	4-09-03
4.1-53-06	4-09-03
4.1-53-07	4-09-03
4.1-53-08	4-09-02
	4-09-03
4.1-53-09	4-09-03
4.1-53-10	4-09-02
	4-09-06
	4-09-19
	4-09-20
4.1-53-11	4-09-02
	4-09-03
	4-09-08
	4-09-09
	4-09.1-02
4.1-53-12	4-09-10
4.1-53-13	4-09-10
4.1-53-14	4-09-10
4.1-53-15	4-09-10
4.1-53-16	4-09-10
4.1-53-17	4-09-10
4.1-53-18	4-09-10

Proposed Section	Current Section
4.1-53-19	4-09-10
4.1-53-20	New section
4.1-53-21	4-09-11
4.1-53-22	4-09-11
4.1-53-23	4-09-11
4.1-53-24	4-09-11
4.1-53-25	4-09-11
4.1-53-26	4-09-11
4.1-53-27	4-09-11
4.1-53-28	4-09-11.1
4.1-53-29	4-09-11.1
4.1-53-30	4-09-11.1
4.1-53-31	4-09-11.1
4.1-53-32	4-09-11.2
4.1-53-33	4-09-11.2
4.1-53-34	4-09-11.2
4.1-53-35	4-09-11.2
4.1-53-36	4-09-11.2
4.1-53-37	4-09-13
4.1-53-38	4-09-14.1
	4-09-14.2
	4-09-14.4
4.1-53-39	4-09-12
4.1-53-40	4-09-14
4.1-53-41	4-25-04
4.1-53-42	4-09-16
	4-09-18
4.1-53-43	4-09-16
4.1-53-44	4-09-16
4.1-53-45	4-09-17
4.1-53-46	4-09-16
4.1-53-47	4-09-16
4.1-53-48	4-09-17.1
4.1-53-49	4-42-03
4.1-53-50	4-42-07
4.1-53-51	4-09-14
4.1-53-52	4-09-14
4.1-53-53	4-09-14
	4-09-15
4.1-53-54	4-09-06
4.1-53-55	4-09-23
4.1-53-56	4-09-22
4.1-53-57	4-09-15
	4-09-24
4.1-53-58	4-09-07
4.1-53-59	4-09-20.1
4.1-53-60	4-09-25
4.1-53-61	4-09-15
4.1-53-62	4-09-20
4.1-54-01	4-09-20.2
4.1-54-02	4-09-20.2
4.1-54-03	4-09-20.2
4.1-54-04	4-09-20.2
4.1-54-05	4-09-20.2
4.1-57-01	4-11-01
4.1-57-02	4-11-02
4.1-57-03	4-11-03
4.1-57-04	4-11-04
4.1-57-05	4-11-04.1
4.1-57-06	4-11-06
4.1-57-07	4-11-07
4.1-57-08	4-11-08
4.1-57-09	4-11-09
4.1-57-10	4-11-12
4.1-57-11	4-11-13
4.1-57-12	4-11-14
4.1-57-13	4-11-15
4.1-57-14	4-11-15.1
4.1-57-15	4-11-15.2
4.1-57-16	4-11-16
4.1-57-17	4-11-17
4.1-57-18	4-11-18
4.1-57-19	4-11-20
4.1-57-20	4-11-21
4.1-57-21	4-11-22
4.1-57-22	4-11-23

Recommendations

The committee recommends House Bill No. 1027 to rewrite those portions of the North Dakota Century Code that relate to the seed laws, including those that pertain to the State Seed Department, the State Seed Commission, and the Seed Commissioner.

The committee also recommends House Concurrent Resolution No. 3001 directing the Legislative Management to continue its study and rewrite of North Dakota Century Code sections that pertain to agriculture.

DEVELOPMENT OF LIVESTOCK FEEDING FACILITIES AND THE USE OF BYPRODUCTS FROM BIOFUELS PRODUCTION AS A FEEDSTOCK

Background

As this country continues to explore the possibilities of increasing domestically produced, environmentally friendly energy, North Dakota finds itself uniquely situated. North Dakota has abundant supplies of coal, oil, wind, and water. This particular combination of resources places North Dakota at the forefront of discussions pertaining to energy generation. In addition to the more traditional methods of generating energy, North Dakota also has ample opportunities to couple energy creation with its agricultural sector and create untold benefits through investment in energy-related agricultural industries.

According to the International Energy Agency, by the year 2030, 4 percent to 7 percent of all road fuel will be biofuels. "Biofuels" is a cover term for a wide variety of fuels that are in some fashion derived from biomass, i.e., living organisms or metabolic byproducts. In order to be considered a biofuel, the end product must contain more than 80 percent renewable materials.

In the United States, there are two commonly recognized biofuels--ethanol and biodiesel. Ethanol is an alcohol made by fermenting the sugar components of plant materials. It is most commonly made from sugar or starch crops. With the development of advanced technology, cellulosic biomass, such as trees and grasses, are also being used for ethanol production. Although ethanol can be used as a vehicular fuel in its pure form, it is generally combined with or added to gasoline to increase octane and reduce carbon emissions. Biodiesel is made from vegetable oils, animal fats, or recycled greases. It too can be used as a fuel for vehicles in its pure form but is usually used as a diesel additive to reduce levels of particulates, carbon monoxide, and hydrocarbons.

Each biofuel production facility creates an environmentally based energy source. Equally important for North Dakota agriculture, each biofuel production facility creates byproducts that can be used as supplemental livestock feed. Many of the byproducts are known to be high in protein and have both high fiber content and high mineral levels.

The symbiotic relationship between biofuels production and the livestock industry has been recognized in this country and abroad. A great deal of research is being undertaken to better understand the

value-added compounds that result from biofuels production and the best ways of efficiently and effectively incorporating them in the livestock production process. The research includes economic analyses regarding the performance of byproducts in animal feed and environmental analyses regarding the impact of biofuels and livestock production on the land and water.

North Dakota Superfeed Project

The Central Dakota Feeds Initiative was formed around the premise that byproducts from agricultural processing operations can be combined with select commodity grains to form a "superfeed" for livestock. Byproducts from such operations are still used sparingly, in part because they are hard to handle, they have a short shelf life, or their nutritional value is not widely understood. When mixed together in the right combination, however, the byproducts become a good source of protein. In the right combination, research is showing the byproducts can be formed into dense pellets or cakes that are easy to ship, store, and feed. The mixes are particularly well-suited to be used as cake for range beef cows, creep feed for calves, a protein source for growing bulls and lactating dairy cows, and as starter rations for very young calves, goats, sheep, and even swine.

The Central Dakota Feeds Initiative involves North Dakota State University, the North Dakota Department of Agriculture, the Carrington Economic Development Corporation, Forward Devils Lake, Otter Tail Power Company, Northern Plains Electric Cooperative, United States Department of Agriculture Rural Development, various commodity groups, and industry partners. To date, the groups have worked collectively to quantify the byproducts, identify byproduct combinations that work from a variety of perspectives, determine the efficacy of the superfeed, and evaluate market potential in terms of local, domestic, and international markets. The groups have also discussed the feasibility of specific sites and particularly, whether existing sites could be reconfigured or new sites would have to be constructed.

The Central Dakota Feeds Initiative hopes to have a viable business plan in place by the end of 2010.

Conclusion

Because testimony indicated that the Central Dakota Feeds Initiative was not yet at a developmental stage that allowed it to seek assistance from the Legislative Assembly, the committee supports and encourages this effort. The committee also suggests that members of the Legislative Assembly be kept apprised of progress over the coming months.

As for studying the actual development of livestock feeding facilities and the potential for utilizing byproducts from biofuels production as a feedstock, the committee realized that the issue is better-suited to an empirical study involving economic and agricultural research. Because such research was well beyond the scope of the committee's time and abilities, the committee did not pursue the broader issue and consequently makes no recommendation regarding the study.

BONDING REQUIREMENTS FOR GRAIN WAREHOUSES AND BUYERS

Background

Public warehouses were first defined in 1891 Session Laws Chapter 126 as all "buildings, elevators or warehouses in this State, erected and operated . . . by any person . . . for the purpose of buying, selling, storing, shipping or handling grain for profit . . . ." That same statute required the proprietor, lessee, or any manager of a public warehouse to file a bond with the Railroad Commissioners--the precursor to the North Dakota Public Service Commission. The bond, which was to be not less than $5,000 nor more than $75,000, was to be conditioned upon the faithful performance of duty as public warehousemen and upon compliance with the laws of this state.

The statute set forth the requirements for warehouse receipts, storage receipts, and basic provisions governing insolvency. It further provided that anyone who willfully neglected or refused to deliver the full amount of grain or the grade and market value of grain to which a person making proper demand was entitled would be guilty of larceny. The crime of larceny, as well as any other violation of the Act, which included cheating and falsely weighing wheat or other agricultural products, was deemed a misdemeanor. At the time, the penalty for a misdemeanor was a fine of not less than $200 nor more than $1,000 and, at the discretion of the court, one year in the State Penitentiary.

The final section of the statute stated that "whereas, an emergency exists in that there is at present no code of intelligible warehouse laws upon the statute books of North Dakota . . . this law shall be in force and effect from and after its passage and approval." A similar statute had been enacted by the Territorial Legislature four years earlier. The bonding requirements were, however, lower--not less than $2,000 nor more than $50,000.

Today, the law requires public warehousemen to file with the Public Service Commission a bond that is conditioned for the faithful performance of duties and compliance with the law and which is in a sum not less than $5,000. That same language is applicable to grain buyers. Section 60-02-01 defines a public warehouse as "any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation." A public warehouseman is defined as "the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state."

Section 60-02.1-01 defines a facility, a facility-based grain buyer, and a grain buyer as follows:

- Facility means a structure in which grain purchased by a grain buyer is received or held;
- Facility-based grain buyer means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received; and

- Grain buyer means any person, other than a public warehouseman as defined in Chapter 60-02, who purchases or otherwise merchandises grain for compensation.

Amount of Warehouse Bond Required

The Public Service Commission, by administrative rule, provides that the amount of a warehouse bond is determined by the total physical capacity identified by the licensee. The bond ranges from $50,000 for a physical capacity that does not exceed 100,000 bushels to $250,000 for a physical capacity not exceeding 500,000 bushels. If there is capacity in excess of 500,000 bushels, the bond amount increases by $5,000 for each additional 25,000 bushels or fraction thereof. Unless the Public Service Commission determines that an increase is necessary to accomplish the purpose of Chapter 60-02, the bond of a warehouseman may not exceed $1.5 million.

Amount of Grain Buyer Bond Required

In the case of a grain buyer, the bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer. If the grain buyer purchases less than 100,000 bushels, the bond amount is $50,000. For each additional 100,000 bushels or fraction thereof, up to 1 million bushels, the bond is raised by $20,000. For each additional 100,000 bushels or fraction thereof, in excess of 1 million, the bond is raised by an additional $5,000. If the grain buyer is a new licensee, the first year's bond is based on the projected purchase volume, and the second and third years' bonds are based on the average actual volume according to the stated schedule.

Unless the Public Service Commission determines that an increase is necessary to accomplish the purpose of Chapter 60-02.1, the bond of a facility-based grain buyer may not exceed $1 million and the bond of a non-facility-based grain buyer may not exceed $1.5 million.

Testimony

In recent years, commodity prices have risen substantially, thereby significantly increasing the value of the commodities being handled and stored. The question before the committee was whether the current warehouse and grain buyer bonds are sufficient to mitigate the financial risk of those who participate in the sale, purchase, handling, and processing of grain, and, in particular, whether ethanol plants and processors should be viewed in a separate risk category.

The committee was told that over the years there have been very few grain elevator insolvencies in which farmers lost money. Those that have occurred tended to be processor-type operations.

The largest processor in North Dakota is an ethanol facility with a licensed storage capacity of almost 10 million bushels and a bond in the maximum amount of $1.5 million. That particular facility purchases 40 million bushels of corn a year. Even at a price of $2.50 per bushel, it has $100 million in annual purchases. Divided by 12 months, that amounts to $8.3 million per month or $277,000 per day. While bonds are determined based on storage capacity, facilities such as this one frequently do not have storage capacity that reflects the amount of product at risk at any given time.

The committee was told that North Dakota already has higher bond requirements than many other states. Raising those bond levels would still not come close to covering the outstanding obligations incurred by many of the licensees operating in this state. In fact, the committee was told that increasing the bond levels would not only increase the cost of doing business for the licensees, the increased levels might very well cause some to terminate their businesses. In determining risk, bonding companies apply various stress tests and seek collateralization that is sufficient to cover their risk in the event of a facility's failure. Startup companies and even mature companies that have undergone significant upgrades and become highly leveraged in the process may be unable to meet higher collateral requirements.

In addition, the committee was told that bonds should not be confused with insurance. A standard insurance policy involves two parties--the insurance company and the insured. Losses are expected and premiums are set to actuarially reflect those losses. That is why the automobile insurance premium for a 20-year-old driver tends to be significantly higher than that for a 50-year-old driver.

Bonds, on the other hand, reflect a three-party relationship--the surety company, the elevator, and the Public Service Commission in its capacity as the representative of the elevator's customers. While the theory behind bonding is that the level of the bond should be high enough to ensure there will be no losses, the reality is that the accepted premium levels are geared more toward covering the underwriting costs, i.e., administrative costs, reinsurance costs, agency commissions, etc. The committee was told of one elevator that spends $75,000 for its property and casualty insurance each year and $2,800 for its bond. Another spends $280,000 for its property and casualty insurance and $6,000 for its bond.

In 2008 the Public Service Commission convened a working group of agricultural industry stakeholders and charged them with examining the manner in which the state currently licenses grain warehouses and facility-based grain buyers, as well as the level of protection provided to agricultural producers. In discussing these issues, the group identified the following eight possible options for consideration:

1. Retain, unchanged, the current system of bonding grain warehouses and facility-based grain buyers;
2. Establish separate licensing and bonding requirements for processors;
3. Base the bond level on volume handled rather than storage capacity;
4. Require licensees to file financial statements with the Public Service Commission and require that those statements be audited;
5. Replace the current bonding system with a broader indemnity pool;

6. Expand the pool of assets available in an insolvency to include oil, meal, and other products, rather than limiting the assets just to grain;
7. Require that the Bank of North Dakota function as a bonder of last resort for companies that are not able to obtain their bonds elsewhere; or
8. Expand the concept of private sector receivables insurance to grain warehouses and facility-based grain buyers.

The working group found that while each option had its proponents and opponents, no option had achieved a clear consensus.

Conclusion

The committee recognized that the Public Service Commission has the regulatory ability to adjust bonding levels and that as an agency the Public Service Commission has the statutory authority to introduce legislation in pursuit of any one or a combination of the options listed above. The committee also recognized that the Public Service Commission was putting forth a full-faith effort to explore the various options and attendant consequences with those agricultural industry representatives who have the greatest stake in the matter. The committee saw no role for itself at the current time and therefore makes no recommendation regarding its study.

MISCELLANEOUS

The committee received a report from the State Board of Agricultural Research and Education. In accordance with Section 4-05.1-19, the board examined adverse economic impacts on crops and livestock, developed ongoing strategies for the provision of research solutions and resources to negate such adverse economic impacts, and developed ongoing strategies for the dissemination of research information through the North Dakota State University Extension Service. The board also established the 2011 priorities for both the Agricultural Experiment Station and the Extension Service.

In accordance with Section 4-01-24, the committee also received a report from the Advisory Committee on Sustainable Agriculture regarding its activities.

BUDGET SECTION

The Legislative Management's Budget Section is referred to in various sections of the North Dakota Century Code and the Session Laws of North Dakota. Although there are statutory references to the Budget Section, it is not created by statute. The Budget Section is an interim committee appointed by the Legislative Management. By tradition, the membership of the Budget Section consists of the members of the Senate and House Appropriations Committees, the majority and minority leaders and their assistants, and the Speaker of the House.

Budget Section members were Senators Ray Holmberg (Chairman), Bill Bowman, Randel Christmann, Tom Fischer, Tony S. Grindberg, Ralph L. Kilzer, Karen K. Krebsbach, Elroy N. Lindaas, Tim Mathern, Carolyn Nelson, David O'Connell, Larry J. Robinson, Tom Seymour, Bob Stenehjem, Rich Wardner, and John Warner and Representatives Larry Bellew, Rick Berg, Merle Boucher, Al Carlson, Jeff Delzer, Mark A. Dosch, Mary Ekstrom, Eliot Glassheim, Kathy Hawken, Lee Kaldor, Keith Kempenich, James Kerzman, Matthew M. Klein, Gary Kreidt, Joe Kroeber, Bob Martinson, Ralph Metcalf, Shirley Meyer, David Monson, Jon Nelson, Kenton Onstad, Chet Pollert, Bob Skarphol, Ken Svedjan, Blair Thoreson, Don Vigesaa, Francis J. Wald, Alon C. Wieland, and Clark Williams. Senator Aaron Krauter was also a member of the Budget Section until his resignation from the Legislative Assembly in September 2009.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

The following duties assigned to the Budget Section by law were acted on during the 2009-10 interim:

1. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, that a status report is to be presented to the Budget Section.
2. **Higher education campus improvements and building construction (Section 15-10-12.1)** - This section requires the approval of the Budget Section or the Legislative Assembly for the construction of any building financed by donations, gifts, grants, and bequests on land under the control of the board. Campus improvements and building maintenance of more than $385,000 also require the approval of the Budget Section or Legislative Assembly. Budget Section approval can only be provided when the Legislative Assembly is not in session, excluding the six months prior to a regular legislative session. The Budget Section approval regarding the construction of buildings and campus improvements must include a specific dollar limit for each building, campus improvement, or maintenance project. If a request is to be considered by the Budget Section, the Legislative Council must notify each member of the Legislative Assembly and allow any member to present testimony to the Budget Section regarding the request. Campus improvements and building maintenance of $385,000 or less and the sale of real property received by gift or bequest may be authorized by the State Board of Higher Education.
3. **Sources of funds received for construction projects of entities under the State Board of Higher Education (Section 15-10-12.3)** - This section requires each institution under the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used to present a biennial report to the Budget Section detailing the source of all funds used in the project.
4. **Designation of a center of excellence (Section 15-69-02)** - This section provides that designation of a center of excellence occurs upon State Board of Higher Education, North Dakota Economic Development Foundation, Emergency Commission, and Budget Section approval of a Centers of Excellence Commission funding award recommendation. In considering whether to designate a center of excellence, the board, the foundation, and the Budget Section may not modify the commission recommendation, and the Budget Section may not take action on a commission funding award recommendation until the Emergency Commission reviews the commission recommendation and makes a recommendation to the Budget Section (effective July 1, 2005, through July 31, 2011).
5. **Annual audits from center of excellence-awarded funds under Chapter 15-69 (Section 15-69-05)** - This section requires that a center of excellence that is awarded funds under Chapter 15-69 provide an annual audit to the Budget Section on the funds distributed to the center until the completion of the commission's postaward monitoring of the center (effective July 1, 2005, through July 31, 2011).
6. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section provides that Budget Section approval is required for Game and Fish Department land acquisitions of more than 10 acres or $10,000.
7. **Annual audits of renaissance fund organizations (Section 40-63-07(9))** - This section requires the Department of Commerce Division of Community Services to provide annual reports to the Budget Section on the results of audits of renaissance fund organizations.
8. **Report identifying every state agency that has not submitted a claim for property belonging to that agency (Section 47-30.1-24.1)** - This

section requires the commissioner of University and School Lands to present a report to the Budget Section identifying every state agency that has not submitted a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification.

9. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides that each state agency that does not submit a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification relinquishes its right to recover the property upon approval of the Budget Section.
10. **Change or expand state building construction projects (Section 48-01.2-25)** - This section provides that a state agency or institution may not significantly change or expand a building construction project approved by the Legislative Assembly unless the change, expansion, or additional expenditure is approved by the Legislative Assembly or the Budget Section if the Legislative Assembly is not in session.
11. **Job insurance trust fund (Section 52-02-17)** - This section requires that Job Service North Dakota report to the Legislative Council before March 1 of each year the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years. The Legislative Management has assigned this responsibility to the Budget Section.
12. **Report on the number of employees receiving bonuses above the 25 percent limitation (Section 54-06-30 and Section 1 of 2009 House Bill No. 1030)** - This section provides agencies may pay bonuses to not more than 25 percent of the employees employed by the agency on July 1 of each state fiscal year. Human Resource Management Services may approve the payment of bonuses above the 25 percent limitation but is required to report any exceptions granted under this subsection to the Budget Section (effective August 1, 2009).
13. **Irregularities in the fiscal practices of the state (Section 54-14-03.1)** - This section requires the Office of the Budget to submit a written report to the Budget Section documenting:
    a. Any irregularities in the fiscal practices of the state.
    b. Areas where more uniform and improved fiscal procedures are desirable.
    c. Any expenditures or governmental activities contrary to law or legislative intent.
    d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.
14. **Acceptance and expenditure of more than $50,000 of federal funds which were not appropriated (Section 54-16-04.1).**
    a. **Acceptance of federal funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 of federal funds which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
    b. **Expenditure of federal funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than $50,000 of federal funds which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money.
15. **Acceptance and expenditure of more than $50,000 of other funds which were not appropriated (Section 54-16-04.2).**
    a. **Acceptance of other funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 from gifts, grants, donations, or other sources which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money or programs. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
    b. **Expenditure of other funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than $50,000 from gifts, grants, donations, or other sources which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money or programs.
16. **Consider authorization of additional full-time equivalent (FTE) positions (Section 54-16-04.3 and Section 2 of 2009 House Bill No. 1027)** - This section provides that on the advice of the Office of Management and Budget and the recommendation of the Emergency Commission the Budget Section may approve the employment by a state officer of FTE positions in addition to those authorized by the Legislative Assembly (effective July 1, 2009).
17. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a

transfer of more than $50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state. A total of $700,000 was provided for the 2009-11 biennium.

18. **Capital improvements preliminary planning revolving fund (Section 54-27-22)** - This section provides that before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the request (approximately $150,000 is available for the 2009-11 biennium).
19. **Tobacco settlement funds (Section 54-44-04(23))** - This section provides that the director of the Office of Management and Budget shall report to the Budget Section on the status of tobacco settlement funds and related information.
20. **Form of budget data (Section 54-44.1-07)** - This section requires the director of the budget to prepare budget data in the form prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. Drafts of proposed general and special appropriations Acts embodying the budget data and recommendations of the Governor for appropriations for the next biennium and drafts of such revenues and other Acts recommended by the Governor for putting into effect the proposed financial plan must be submitted to the Legislative Council within seven days after the day of adjournment of the organizational session. The Budget Section was assigned this responsibility.
21. **Report from the Information Technology Department (Section 54-59-19)** - This section requires the Information Technology Department to prepare and present an annual report to the Information Technology Committee and to present a summary of the report to the Budget Section.
22. **Status of the risk management workers' compensation program (Section 65-04-03.1(5))** - This section requires Workforce Safety and Insurance and the Risk Management Division of the Office of Management and Budget to periodically report to the Budget Section on the success of the risk management workers' compensation program.
23. **Report on the status of the metrology program (Section 3 of 2009 House Bill No. 1008)** - This section requires the Public Service Commission to report to the Budget Section during the 2009-10 interim on the status of the metrology program (effective July 1, 2009).
24. **Agriculture Commissioner request to lease additional office space (Section 8 of 2009 House Bill No. 1009)** - This section provides the Agriculture Commissioner may, subject to Budget Section approval, use funding to lease additional office space for department purposes (effective July 1, 2009).
25. **Report regarding any transfers between line items and between subdivisions in excess of $50,000 (Section 7 of 2009 House Bill No. 1012)** - This section requires the Department of Human Services to report to the Budget Section after June 30, 2010, on any transfers in excess of $50,000 made during the 2009-11 biennium between line items within each subdivision and between subdivisions (effective July 1, 2009).
26. **Quarterly reports regarding the implementation of the comprehensive tobacco prevention and control plan and outcomes achieved (Section 38 of 2009 House Bill No. 1015)** - This section requires the Tobacco Prevention and Control Executive Committee to report to the Budget Section quarterly on the implementation of the comprehensive tobacco prevention and control plan and outcomes achieved for the 2009-10 interim (effective July 1, 2009).
27. **Report regarding reintegration program expenditures and the program's impact on service members (Section 11 of 2009 House Bill No. 1016)** - This section requires the Adjutant General to provide a report to the Budget Section during the 2009-10 interim regarding reintegration program expenditures and the program's impact on service members (effective July 1, 2009).
28. **Reports regarding the status of the construction of the Great Plains Applied Energy Research Center (Section 2 of 2009 House Bill No. 1350)** - This section requires the Department of Commerce to provide a report to the Budget Section at its first meeting after September 1, 2009, and at its first meeting after March 1, 2010, regarding the status of the construction of a Great Plains Applied Energy Research Center, including the extent to which nonstate matching funds have been made available for the project (effective July 1, 2009).
29. **Authorize the spending of any additional federal funds that may be made available to this state under the American Recovery and Reinvestment Act of 2009 (ARRA) (Section 1 of 2009 House Bill No. 1487)** - This section provides any federal funds made available to this state under ARRA may be accepted but may be spent only pursuant to appropriation authority provided by the Legislative Assembly or the approval of the Emergency Commission and Budget Section under provisions of Chapter 54-16 for the 2009-11 biennium. The Emergency Commission and Budget Section may approve only the expenditure of ARRA competitive grant awards and other funds that the Legislative Assembly has not indicated an intent to reject (effective August 1, 2009). Expenditures of

federal funds made available to the state under ARRA approved by the Budget Section are included in the section of this report entitled **AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION** and identified in the section of this report entitled **AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION**.

30. **Quarterly written summary reports regarding the status of the Veterans' Home construction project (Section 8 of 2009 Senate Bill No. 2007)** - This section requires the Veterans' Home construction project manager to provide a quarterly written summary report to the Budget Section regarding the status of the Veterans' Home construction project during the 2009-10 interim (effective July 1, 2009).
31. **Semiannual reports regarding the status of implementation of the commercial vehicle information systems and networks (Section 7 of 2009 Senate Bill No. 2011)** - This section requires the Highway Patrol to report semiannually to the Budget Section regarding the status of implementation of the commercial vehicle information systems and networks and on the use of funds appropriated for the implementation (effective July 1, 2009).
32. **Department of Emergency Services request to spend funds for matching federal disaster relief (Sections 6 and 8 of 2009 Senate Bill No. 2012)** - Any grant expenditures exceeding a cumulative total of $13 million require Budget Section approval and any funds used to match federal disaster relief funds received for state purposes require Budget Section approval (effective May 1, 2009).
33. **Report regarding emergency snow removal grants distributed to counties, townships, and cities before June 30, 2009 (Section 7 of 2009 Senate Bill No. 2012)** - This section requires the Department of Emergency Services to distribute emergency snow removal grants prior to June 30, 2009, and report to the Budget Section regarding the grants awarded (effective May 1, 2009).
34. **Reports in the fourth quarter of 2009 and the third quarter of 2010 regarding emergency disaster relief grants awarded to political subdivisions (Section 8 of 2009 Senate Bill No. 2012)** - This section requires the Department of Emergency Services to report to the Budget Section on emergency disaster relief grants awarded to political subdivisions in the fourth quarter of calendar year 2009 and the third quarter of calendar year 2010 (effective May 1, 2009).
35. **Periodic reports regarding the use of state, federal, emergency, and other highway funding (Section 11 of 2009 Senate Bill No. 2012)** - This section requires the Department of Transportation to coordinate with the Department of Emergency Services to compile information regarding the use of state, federal, emergency, and other highway funding by the Department of Transportation, counties, cities, and townships and provide periodic reports to the Budget Section regarding the use of funds during the 2009-10 interim (effective July 1, 2009).
36. **Request for one FTE position relating to minerals management (Section 6 of 2009 Senate Bill No. 2013)** - This section provides one FTE position relating to minerals management may be filled by the commissioner of University and School Lands upon Budget Section approval (effective July 1, 2009).
37. **Summary report regarding the results of a consultant's evaluation of the Mill and Elevator (Section 11 of 2009 Senate Bill No. 2014)** - This section requires the Industrial Commission to obtain the services of a consultant to evaluate the State Mill and Elevator Association during the 2009-10 interim and provide a summary report, exclusive of proprietary information, to the Budget Section on the results of the evaluation (effective July 1, 2009).
38. **Report regarding the status of the technology-based entrepreneurship grant program (Section 13 of 2009 Senate Bill No. 2018)** - This section requires the Department of Commerce to report to the Budget Section in the third quarter of 2010 on the status of the technology-based entrepreneurship grant program, including an overview of the program and program expenditures (effective July 1, 2009).
39. **Report regarding tax-exempt property by school district (Section 14 of 2009 Senate Bill No. 2018)** - This section requires the Department of Commerce to compile information identifying tax-exempt property by school district, including information on the related value of the property based on soil survey, insured value, or other means, and a categorization of the property by whether it produces revenue based on its use during the 2009-10 interim and report the information compiled to the Budget Section during the third quarter of 2010 (effective July 1, 2009).
40. **Contingent appropriation request if federal funds are not available for costs associated with a statewide longitudinal data system (Section 3 of 2009 Senate Bill No. 2021)** - This section provides the Information Technology Department may spend funds from the general fund, subject to Budget Section approval, only to the extent that federal funds are not available to provide $2,263,883 for costs associated with a statewide longitudinal data system (effective July 1, 2009).
41. **Report regarding the status of the Veterans' Home exterior finishing construction projects (Section 4 of 2009 Senate Bill No. 2075)** - This section requires the Veterans' Home to report to the Budget Section regarding the Veterans' Home exterior finishing construction projects during the 2009-11 biennium. The report must be made at

the first Budget Section meeting scheduled after the exterior finishing construction projects are complete (effective April 27, 2009).

42. **Report regarding the status of financing and grants provided to early childhood facilities (Section 4 of 2009 Senate Bill No. 2225)** - This section requires the Department of Commerce to report to the Budget Section during the second quarter of calendar year 2010 on the status of financing and grants provided to early childhood facilities (effective July 1, 2009).
43. **Periodic reports regarding the status of health information technology activities (Section 7 of 2009 Senate Bill No. 2332)** - This section requires the Health Information Technology Office and Health Information Technology Advisory Committee to provide periodic reports to the Budget Section on the status of health information technology activities during the 2009-10 interim (effective May 19, 2009).
44. **Periodic reports regarding 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits (Section 5 of 2009 Senate Bill No. 2444)** - This section requires the Adjutant General to provide periodic reports to the Budget Section on 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits from April 9, 2009, through June 30, 2011 (effective April 9, 2009).
45. **Authorize the expenditure of additional federal stimulus or fiscal recovery funds in excess of funds appropriated for certain state agencies** - The following state agencies were authorized to seek Emergency Commission and Budget Section approval under Chapter 54-16 for authority to spend any additional federal funds received under ARRA in excess of the amounts appropriated for the 2009-11 biennium:

Agency	Bill Number	Section	Effective Date of Section
Governor's office	HB 1001	Section 2	May 19, 2009
		Section 3	July 1, 2009
Attorney General	HB 1003	Section 11	July 1, 2009
		Section 12 (includes two FTE positions)	July 1, 2009
Department of Human Services	HB 1012	Section 2	May 19, 2009
	HB 1418	Section 3	July 1, 2009
Superintendent of Public Instruction	HB 1013	Section 3	May 19, 2009
Office of Management and Budget	HB 1015	Section 2	May 11, 2009
Adjutant General	HB 1016	Section 2	May 19, 2009
State Historical Society	HB 1018	Section 5	May 5, 2009
Parks and Recreation Department	HB 1019	Section 9	April 22, 2009
State Water Commission	HB 1020	Section 3	May 19, 2009
North Dakota University System	SB 2003	Section 3	May 19, 2009
		Section 4	May 19, 2009
State Department of Health	SB 2004	Section 3	May 19, 2009
Veterans' Home	SB 2007	Section 3	July 1, 2009
Council on the Arts	SB 2010	Section 4	May 19, 2009
Department of Transportation	SB 2012	Section 2	May 1, 2009
Housing Finance Agency	SB 2014	Section 20	May 19, 2009
		Section 21	
Department of Corrections and Rehabilitation	SB 2015	Section 8	May 19, 2009
Job Service North Dakota	SB 2016	Section 2	May 4, 2009
Department of Commerce	SB 2018	Section 2	May 11, 2009
Department of Career and Technical Education	SB 2019	Section 3	May 19, 2009
Main Research Center	SB 2020	Section 5	July 1, 2009
Information Technology Department	SB 2021	Section 2	May 19, 2009

Expenditures of federal funds made available to the state under ARRA approved by the Budget Section are included in the section of this report entitled **AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION** and identified in the section of this report entitled **AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION**.

46. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2010 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

The following duties assigned to the Budget Section by law or by Legislative Management directive are scheduled to be addressed by the Budget Section at its December 2010 meeting:

1. **Report on specified commodities and services exempted from the procurement requirements of Section 54-44.4-02.2** - This section requires the director of the Office of Management and Budget to report to the Budget Section in December of even-numbered years on specified commodities and services exempted by written directive of the director from the procurement requirements of Chapter 54-44.4.
2. **Report regarding the status of the centers of excellence program and the centers of excellence fund (Section 28 of 2009 Senate Bill No. 2018)** - This section requires the Department of Commerce to report on the status of the centers of excellence program and the status of the centers of excellence fund to the Budget Section.
3. **Review and report on budget data (Legislative Management directive)** - Pursuant to Legislative Management directive, the Budget Section is to

review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the organizational session (December 2010).

4. **Report regarding the Housing Finance Agency financing pilot project (Section 17 of 2009 Senate Bill No. 2014)** - This section requires the Housing Finance Agency to report on the status of a pilot project to provide incentives for private sector investment in single-family residential dwelling units and multifamily housing facilities in difficult-to-develop areas of the state to the Budget Section.

The following duties assigned to the Budget Section by law or by Legislative Management directive did not require action by the Budget Section during the 2009-10 interim:

1. **Investment in real property by the Board of University and School Lands (Section 15-03-04)** - This section provides that Budget Section approval is required prior to the Board of University and School Lands purchasing, as sole owner, commercial or residential real property in North Dakota.
2. **Statement from ethanol plants in operation before July 1, 1995, that received production incentives (Section 17-02-01)** - This section requires any North Dakota ethanol plant in operation before July 1, 1995, receiving production incentives from the state to file with the Budget Section within 90 days after the conclusion of the plant's fiscal year a statement by a certified public accountant indicating whether the plant produced a profit during the preceding fiscal year, after deducting incentive payments received from the state.
3. **Reduction of the game and fish fund balance below $15 million (Section 20.1-02-16.1)** - This section provides that the Game and Fish Department can spend money in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below $15 million, unless otherwise authorized by the Budget Section.
4. **Provision of contract services by the Developmental Center at Westwood Park, Grafton (Section 25-04-02.2)** - This section provides that, subject to Budget Section approval, the Developmental Center at Westwood Park, Grafton, may provide services under contract with a governmental or nongovernmental person.
5. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides that state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.
6. **Termination of food stamp program (Section 50-06-05.1(17))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
7. **Termination of energy assistance program (Section 50-06-05.1(19))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the energy assistance program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.
8. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective for which funding was provided by the Legislative Assembly.
9. **Transfers exceeding $50,000 (Section 54-16-04(2))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from one fund or line item to another. Budget Section approval is not required if the transfer is necessary to comply with a court order, to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state.
10. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4))** - This section provides that, upon approval by the Emergency Commission and Budget Section, the state may accept any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session for deposit into a special fund until the Legislative Assembly appropriates the funds.
11. **New correctional programs which exceed $100,000 of cost during a biennium (Section 54-23.3-09)** - This section requires the director of the Department of Corrections and Rehabilitation to report to the Legislative Assembly or, if the Legislative Assembly is not in session, the Budget Section, prior to the implementation of any new program that serves adult or juvenile offenders, including alternatives to conventional

incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of $100,000 during the biennium.

12. **Cashflow financing (Section 54-27-23)** - This section provides that in order to meet the cashflow needs of the state, the Office of Management and Budget may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cashflow financing, subject to certain limitations, must be approved by the Budget Section.
13. **Budget stabilization fund (Section 54-27.2-03)** - This section provides that any transfers from the budget stabilization fund must be reported to the Budget Section.
14. **Purchases of "put" options (Section 54-44-16)** - This section requires the Office of Management and Budget to report any purchases of "put" options to the Budget Section.
15. **Objection to budget allotments or expenditures (Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
16. **Budget reduction due to initiative or referendum action (Section 54-44.1-13.1)** - This section provides that, subject to Budget Section approval, the director of the budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reductions caused by initiative or referendum action.
17. **Children's Services Coordinating Committee grants (Section 54-56-03)** - This section provides that Budget Section approval is required prior to the distribution by the Children's Services Coordinating Committee of any grants not specifically authorized by the Legislative Assembly.
18. **Requests by the Information Technology Department to finance the purchase of software, equipment, or implementation of services (Section 54-59-05(4))** - This section requires the Information Technology Department to receive Budget Section or Legislative Assembly approval before executing any proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million. The department may finance the purchase of software, equipment, or implementation of services only to the extent the purchase amount does not exceed 7.5 percent of the amount appropriated to the department during that biennium.
19. **Report on reductions made in homestead property income tax credit (Section 57-38-01.29)** - This section requires the Tax Commissioner to report to the Budget Section, for review, any adjustments in the homestead property income tax credit.
20. **Consider request to reduce the commercial property income tax credit (Section 57-38-01.30)** - This section provides that Budget Section approval is required for any adjustments made by the Tax Commissioner to the commercial property income tax credit.
21. **Extraterritorial workers' compensation insurance (Section 65-08.1-02)** - This section authorizes Workforce Safety and Insurance to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
22. **Federal block grant hearings (2009 Senate Concurrent Resolution No. 4001)** - This resolution authorizes the Budget Section, through September 30, 2011, to hold any **required** legislative hearings for federal block grants.
23. **Secretary of State request to borrow up to $3,400,698 from the Bank of North Dakota for implementation of the North Dakota business development engine computer project (Section 3 of 2009 House Bill No. 1002)** - This section provides that upon Budget Section approval the Secretary of State may borrow up to $3,400,698 from the Bank of North Dakota to implement the North Dakota business development engine computer project (effective July 1, 2009).
24. **Department of Human Services request to borrow $8.5 million from the Bank of North Dakota for medical assistance grants (Section 4 of 2009 House Bill No. 1012)** - This section provides that upon Budget Section approval the Department of Human Services may borrow up to $8.5 million from the Bank of North Dakota for providing the state matching share of additional medical assistance grants for medical, long-term care, or developmental disabilities services for the 2009-11 biennium (effective July 1, 2009).
25. **Consider request for annual tuition increase of more than 4 percent (Section 30 of 2009 Senate Bill No. 2003)** - This section provides that the State Board of Higher Education may seek Budget Section approval to increase annual tuition by more than 4 percent for each year for students attending institutions under the control of the board for the 2009-10 and 2010-11 academic years (effective July 1, 2009).
26. **Conduct budget tours and receive budget tour group reports** - The Budget Section has, at times, conducted budget tours of state facilities and institutions or assigned the budget tours to other interim committees and received reports from the committees on the budget tours conducted. The Budget Section did not conduct or receive budget tour group reports during the 2009-10 interim.

OFFICE OF MANAGEMENT AND BUDGET
Final 2007-09 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from the Office of Management and Budget on the final status of the general fund for the 2007-09 biennium:

Unobligated general fund balance - July 1, 2007		$295,541,176
Add		
General fund collections through June 30, 2009	$2,715,263,379	
Cash certifications and adjustments	42,793	
General fund balance obligated for authorized carryover from 2005-07	17,108,049	
Total general fund revenue for the 2007-09 biennium		$2,732,414,221
General fund turnback for the 2007-09 biennium		70,949,621
Total available		$3,098,905,018
Less		
2007-09 biennium general fund ongoing appropriations	($2,317,447,307)	
2007-09 biennium general fund one-time appropriations	(139,526,649)	
Contingent appropriation (Section 50 of SB 2200)	(5,000,000)	
Authorized carryover expenditures form 2005-07	(17,108,049)	
Emergency and supplemental appropriations	(127,156,319)	
Adjustments	80,750	
Total appropriations		($2,606,157,574)
Transfers and adjustments		
Adjustments	$119,034	
Nonappropriated transfers	(6,086,416)	
Transfer to the budget stabilization fund	(124,936,548)	
Total transfers and adjustments		($130,903,930)
Ending general fund balance - June 30, 2009		$361,843,514

Budget Stabilization Fund

The Legislative Assembly approved House Bill No. 1429 (2007), which provided, in lieu of other transfers, that $100,527,369 be transferred from the ending 2005-07 biennium general fund balance to the budget stabilization fund to provide for a total in the fund of $200 million for the biennium beginning July 1, 2007, and ending June 30, 2009. The transfer from the general fund to the budget stabilization fund was made at the end of the 2005-07 biennium. Pursuant to Section 54-27.2-01 and effective July 1, 2009, the maximum balance allowed in the budget stabilization fund was increased from 5 percent to 10 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly. The Office of Management and Budget reported a transfer of $124,936,548 from the general fund to the budget stabilization fund in July 2009 brought the balance in the budget stabilization fund to $324,936,548--the maximum allowed based on total 2009-11 biennium appropriations.

2007-09 Biennium General Fund Emergency and Supplemental Appropriations and General Fund Turnback

The Budget Section received a report from the Office of Management and Budget on the 2007-09 biennium agency emergency and supplemental appropriations amounts. Emergency and supplemental appropriations totaled $127.2 million, of which $81.9 million was spent by June 30, 2009, including $59.9 million provided for weather-related grants pursuant to Senate Bill No. 2012 (2009). The Office of Management and Budget reported $45.2 million of the 2007-09 biennium emergency and supplemental appropriations was continued into the 2009-11 biennium.

The Budget Section received a report from the Office of Management and Budget on the 2007-09 biennium agency unspent general fund appropriation amounts (turnback). Total turnback for the 2007-09 biennium totaled approximately $70.9 million. The Department of Human Services had the largest unspent amount of $54.4 million, of which $33.2 million was the result of additional funding received due to the increase in the federal medical assistance percentage (FMAP) and child support incentive matching funds pursuant to ARRA.

Status of the General Fund

At each Budget Section meeting, a representative of the Office of Management and Budget reviewed the status of the state general fund and revenue collections for the 2009-11 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2010, and reflecting the September 2010 revised revenue forecast for the remainder of the 2009-11 biennium:

Unobligated general fund balance - July 1, 2009		$361,843,514
Add		
General fund collections through August 2010	$1,730,730,218	
Forecasted general fund revenue for the remainder of the 2009-11 biennium (based on the September 2010 preliminary forecast)	1,233,994,519	
Total estimated general fund revenue for the 2009-11 biennium		$2,964,724,737
Estimated general fund turnback		0
Balance obligated for authorized carryover from the 2007-09 biennium		76,383,530
Estimated total available		$3,402,951,781
Less		
2009-11 biennium general fund ongoing appropriations	($2,970,380,754)	
2009-11 biennium general fund one-time appropriations	(278,984,727)	
Contingent appropriation for centers of excellence (2009 SB 2018)	(5,000,000)[1]	
Balance obligated for authorized carryover from the 2007-09 biennium	(76,383,530)	
Estimated deficiency requests	(6,101,902)[2]	

Total appropriations and estimated deficiency requests		($3,336,850,913)
Estimated general fund balance - June 30, 2011		$66,100,868[3]

[1]General fund revenues for the period beginning July 1, 2009, and ending December 1, 2009, exceeded legislative estimates by at least $5 million meeting the contingency conditions identified in Section 22 of 2009 Senate Bill No. 2018 and triggering a $5 million appropriation from the general fund to the centers of excellence fund.

[2]Estimated deficiency requests include:

Department of Public Instruction - Property tax relief	$4,233,000
Tax Commissioner	1,810,000
Valley City State University	58,902
Total	$6,101,902

[3]This amount does not reflect a potential transfer of $1.1 million from the estimated balance to the budget stabilization fund. Chapter 54-27.2 provides that any amount in the general fund at the end of a biennium in excess of $65 million must be transferred to the budget stabilization fund.

Preliminary Revenue Forecast

The Office of Management and Budget's September 2010 revised revenue forecast for the 2009-11 biennium anticipates general fund revenue will total $2.5 billion, $1.9 million more than the 2009 legislative forecast. The Office of Management and Budget's September 2010 preliminary 2011-13 biennium revenue forecast anticipates total general fund revenue of $2.7 billion for the 2011-13 biennium, $236 million more than the 2009-11 biennium revised forecast.

Status of the Permanent Oil Tax Trust Fund

At each Budget Section meeting, a representative of the Office of Management and Budget reviewed the status of the permanent oil tax trust fund and revenue collections for the 2009-11 biennium. The following is a summary of the status of the permanent oil tax trust fund, based on actual revenue collections through August 2010, and reflecting the September 2010 revised revenue forecast for the remainder of the 2009-11 biennium:

Beginning permanent oil tax trust fund balance - July 1, 2009	$489,727,017
Add	
Revenue collections through fiscal year 2010	311,333,857
Forecasted revenues for fiscal year 2011 (based on the September 2010 preliminary forecast)	574,928,000
Total estimated permanent oil tax trust funds available for the 2009-11 biennium	$1,375,988,874
Less expenditures and transfers	
Transfer to the general fund pursuant to 2009 HB 1015	($140,000,000)
Transfer to the general fund for the mill levy reduction program pursuant to 2009 SB 2199	(295,000,000)
Transfer to the property tax relief sustainability fund pursuant to 2009 SB 2199	(295,000,000)
Appropriations pursuant to 2009 HB 1015, 1305, and 1394 and SB 2003 and 2020	(16,175,100)
Estimated permanent oil tax trust fund balance - June 30, 2011	$629,813,774[1]

[1]The estimated permanent oil tax trust fund balance based on the September 2010 preliminary forecast is $578 million more than the $51.8 million balance projected by the 2009 Legislative Assembly.

The Office of Management and Budget's September 2010 revised revenue forecast anticipates transfers to the permanent oil tax trust fund to total $886.2 million during the 2009-11 biennium. In addition, the September 2010 preliminary 2011-13 biennium revenue forecast anticipates $1.31 billion will be available for deposit into the permanent oil tax trust fund during the 2011-13 biennium. In November 2010, North Dakota voters approved initiated measure No. 1 to establish a constitutional legacy fund. The initiated measure provides 30 percent of the total revenue derived from taxes on oil and gas production or extraction must be deposited in the legacy fund. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and a vote of two-thirds of the members of each house of the Legislative Assembly is required to spend the principal of the fund. The Office of Management and Budget anticipates transfers to the permanent oil tax trust fund to total $697.9 million and transfers to the legacy fund to total $612.9 million during the 2011-13 biennium.

Tobacco Settlement Proceeds

Pursuant to Section 54-44-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported that for the 2009-11 biennium to date through September 2010, approximately $72.2 million had been received by the state, and total payments received to date were $305.4 million. As directed in the initiated measure adopted by voters in November 2008, funds were deposited into the tobacco settlement trust fund and the tobacco prevention and control trust fund as follows:

	Tobacco Settlement Trust Fund (Amounts Shown in Millions)	Tobacco Prevention and Control Trust Fund (Amounts Shown in Millions)	Total (Amounts Shown in Millions)
April 2009	$25.0	$14.1	$39.1
April 2010	20.8	12.3	33.1
Total	$45.8	$26.4	$72.2

The proceeds deposited in the tobacco prevention and control trust fund are administered by the Tobacco Prevention and Control Executive Committee, and the proceeds deposited in the tobacco settlement trust fund have been allocated among the community health trust fund, common schools trust fund, and water development trust fund as follows pursuant to Section 54-27-25:

Tobacco settlement trust fund	
Community health trust fund (10 percent)	$4,583,110
Common schools trust fund (45 percent)	20,624,992
Water development trust fund (45 percent)	20,624,992
Total transfers from the tobacco settlement trust fund	$45,833,094
Tobacco prevention and control trust fund	26,412,404
Total tobacco settlement proceeds received during the 2009-10 interim	$72,245,498

The Office of Management and Budget reported revenues and expenditures in the trust funds from

December 1, 1999, through April 30, 2010, and balances of the trust funds were as follows:

Community health trust fund	
Revenue	$27,898,754
Expenditures	25,911,149
April 30, 2010, balance	$1,987,605
Water development trust fund	
Revenue	$125,544,391
Expenditures	102,690,799
April 30, 2010, balance	$22,853,592
Tobacco prevention and control trust fund	
Revenue (including interest)	$26,456,209
Expenditures	2,243,384
April 30, 2010, balance	$24,212,825

Fiscal Irregularities

Pursuant to Section 54-14-03.1, the Budget Section received reports from the Office of Management and Budget on irregularities in the fiscal practices of the state. Fiscal irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The Office of Management and Budget identified the following fiscal irregularities:

Agency	Amount	Reason
Aeronautics Commission	$5,088	Temporary increase for interim director of the agency
Department of Commerce	$1,625	Temporary additional workload for internship program
Department of Commerce	$8,092	Settlement agreement due to reduction in workforce
Department of Commerce	$715.50	Settlement agreement due to reduction in workforce, severance pay in March 2010
Department of Commerce	$625	Temporary additional workload
Department of Commerce	$1,575	Temporary additional workload for internship program
Council on the Arts	$5,400	Additional work performed by two employees related to a book on North Dakota folklore to be used as a textbook for various anthropology classes
Game and Fish Department	$1,200	Temporary additional work for two individuals to share game warden supervisor duties
State Department of Health	$13,782	Severance package
Department of Human Services	$34,000	Severance pay resulting from a settlement agreement
Office of Management and Budget	$600	Temporary work to perform duties of vacant receptionist position
Office of Management and Budget	$500	Additional workload relating to extra payrolls for activated National Guard members during spring flooding
Department of Public Instruction	$826	Temporary pay adjustment for increased responsibility
Secretary of State	$56,114	Services relating to an information technology project were provided by the contractor prior to the end of the 2007-09 biennium and exceed the amount appropriated for the biennium resulting in a reduced amount that will be paid in the 2009-11 biennium.
Secretary of State	$70,654	Services relating to an information technology project were provided by the contractor prior to the end of the 2007-09 biennium and exceed the amount appropriated for the biennium resulting in a reduced amount that will be paid in the 2009-11 biennium.
North Dakota Vision Services - School for the Blind	$7,553.91	Pay adjustment for additional work in June for three teachers which was in addition to the teachers' nine-month contract
North Dakota Vision Services - School for the Blind	$3,450	Additional work performed in June by two teachers at the School for the Blind outside of their nine-month teaching contracts

Employee Bonuses

The Office of Management and Budget reported to the Budget Section each September regarding the number of employees receiving bonuses above the 25 percent limitation pursuant to Section 54-06-30 and Section 1 of 2009 House Bill No. 1030. The Budget Section learned agencies may not give bonuses to more than 25 percent of their employees except in special circumstances approved by Human Resource Management Services. The Budget Section learned Human Resource Management Services is required to report exceptions to the Budget Section. The Office of Management and Budget reported that no agency exceeded the 25 percent limitation on the number of employees receiving bonuses.

Capital Improvements Preliminary Planning Revolving Fund

The Budget Section received from the Office of Management and Budget a request to use funds from the capital improvements preliminary planning revolving fund for prepayment of consulting and planning fees for proposed capital improvements projects pursuant to Section 54-27-22. The Budget Section learned the funds are available for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. The Office of Management and Budget reported agencies, institutions, and departments interested in obtaining planning funds must submit a written request to the Office of Management and Budget. The Office of Management and Budget evaluates the request and forwards it to the Budget Section with a recommendation. The Budget Section learned funds will be repaid to the capital improvements preliminary planning revolving fund when the project is approved and funds are appropriated for the project. Funds are not repaid for projects that are considered but not approved.

The Office of Management and Budget reported the balance of the capital improvements preliminary planning revolving fund was $203,000 in December 2009, and requests totaled $168,500 as follows:

Agency	Project	Estimated Cost of the Project	Preliminary Planning Request	Office of Management and Budget Approval Recommendation	Office of Management and Budget Recommended Funding Level
University of North Dakota	Information technology facility	$15,000,000	$93,500	Yes	$93,500
State College of Science	Old Main renovation	$5,500,000	$55,000	Yes	55,000
Parks and Recreation Department	Fort Stevenson Visitor Services and Administrative Offices Center	$800,000	$40,000	Yes	12,000
Parks and Recreation Department	Grahams Island Visitor Services and Administrative Offices Center	$800,000	$40,000	Yes	0[1]
Office of Management and Budget - Facility Management Division	Capitol grounds master signage plan	$550,000	$12,000	Yes	8,000
Total funding					$168,500

[1]Recommended funding is included in the Fort Stevenson project recommendation.

Pursuant to Section 54-27-22, the Budget Section approved the Office of Management and Budget request to use $168,500 from the capital improvements preliminary planning revolving fund for prepayment of consulting and planning fees for proposed capital improvements projects.

2011-13 Biennium Budget Form Changes

Pursuant to Section 54-44.1-07, the Office of Management and Budget reported the current budgeting system has been upgraded to an Internet-based version, but there are no proposed changes to the 2011-13 biennium budget forms or data. The Budget Section did not recommend any changes to the budget data for the 2011 legislative session pursuant to Section 54-44.1-07.

Status of the Risk Management Workers' Compensation Program

The Budget Section received from the Office of Management and Budget a report regarding the status of the risk management workers' compensation program pursuant to Section 65-04-03.1(5). The Legislative Assembly in 2001 House Bill No. 1015 established a single workers' compensation account for all state entities. The Risk Management Division of the Office of Management and Budget administers the program. The Office of Management and Budget reported for coverage periods beginning July 1, 2001, the Risk Management Division entered deductible contracts with Workforce Safety and Insurance for 143 consolidated accounts. The deductible amount selected was $100,000 per claim. Results for the nine coverage years from July 1, 2001, through June 30, 2010, are as follows:

Nonconsolidated guaranteed cost program premium and assessments		$41,328,764
Risk Management Division deductible premium paid to Workforce Safety and Insurance	$14,317,534	
Risk Management Division paid losses through June 30, 2009	12,528,995	
Risk Management Division pending losses (reserves)	1,733,334	
Risk Management Division combined deductible premium and losses		$28,579,863
Estimated savings for a nine-year period		$12,748,901

The Budget Section learned the Risk Management Division has implemented programs to reduce premium rates to agencies with effective risk management strategies.

HIGHER EDUCATION

Capital Projects

During the 2009-10 interim, the Budget Section received requests relating to the following University System capital projects:

Dakota College at Bottineau

- **Entrepreneurial Center for Horticulture** - Pursuant to Section 48-01.2-25 the Budget Section approved a reduction in scope of the Dakota College at Bottineau Entrepreneurial Center for Horticulture project from $2 million to $700,000 (June 2010).

Dickinson State University

- **Badlands Activities Center** - Pursuant to Section 15-10-12.3 the Budget Section approved a Dickinson State University request to change funding sources for the Badlands Activities Center from donations and gifts to donations, gifts, and student fee revenues (June 2010).

Mayville State University

- **Science Building and Byrnes Quanbeck Library** - Pursuant to Section 48-01.2-25 the Budget Section approved a Mayville State University request to increase the square footage of the Science Building and Byrnes Quanbeck Library renovation/addition project (December 2009).
- **Science/library renovation and education addition project** - Pursuant to Section 48-01.2-25 the Budget Section approved a Mayville State University request to increase the project authorization of the science/library renovation and education addition project by $180,003, from $4,958,325 to $5,138,328 (June 2010).

Minot State University

- **Health and Wellness Center** - Pursuant to Section 48-01.2-25 the Budget Section approved a Minot State University request to add a

basement to the scope of the Health and Wellness Center project at an estimated cost of $924,000 (March 2010).

- **Health and Wellness Center** - Pursuant to Sections 15-10-12.3 and 48-01.2-25 the Budget Section approved a Minot State University request to change the source of funding for the Health and Wellness Center project under Section 15-10-12.3 to include institutional funds and to change the scope of the project under Section 48-01.2-25 to include a skywalk, climbing wall, and additional fitness and office equipment (June 2010).
- **Phase 1 of a geothermal heating and cooling system** - Pursuant to Section 48-01.2-25 the Budget Section approved a change in scope of the boiler replacement project to include installation of a geothermal heating and cooling system project for $4.5 million from the general fund ($2.5 million) and Department of Commerce grants ($2 million). The project includes the installation of 450 wells and connection and conversion of four buildings, including Swain Hall, the G. B. Olson Library, the Dome, and the Wellness Center (September 2010).

North Dakota State University

- **President's house** - Pursuant to Section 48-01.2-25 the Budget Section **did not approve** a North Dakota State University request to increase the project authorization for the new president's house from $900,000 to $2,451,638 (December 2009).
- **Langdon Research Extension Center** - Pursuant to Section 48-01.2-25 the Budget Section approved a North Dakota State University request to increase the project authorization from $144,000 to $200,000 and change the project scope to include a geothermal system for the headquarters building heating and cooling system project at the Langdon Research Extension Center (March 2010).
- **Geosciences Hall** - Pursuant to Section 15-10-12.1 the Budget Section approved a North Dakota State University request to accept and spend $720,000 of federal funds and $30,000 of special funds for the first floor renovation of the Geosciences Hall at North Dakota State University (March 2010).
- **Greenhouse project at the Towner State Nursery** - Pursuant to Section 48-01.2-25 the Budget Section approved a North Dakota State University request to increase the project authorization of the North Dakota Forest Service greenhouse project at the Towner State Nursery by $91,000, from $300,000 to $391,000 (June 2010).
- **Research I facility** - Pursuant to Section 15-10-12.1 the Budget Section approved a North Dakota State University request of a $29,361,750 addition to the Research I facility, including $15,661,750 of grant and contract funds and $13.7 million of equipment from the Research II facility (June 2010).

State College of Science

- **Horton Hall** - Pursuant to Section 48-01.2-25 the Budget Section approved a State College of Science request to increase the project authorization for the renovation of Horton Hall from $5.7 million to $6.375 million (March 2010).

University of North Dakota

- **Harrington Hall** - Pursuant to Section 15-10-12.1 the Budget Section approved a University of North Dakota request to accept a $1.3 million addition to Harrington Hall (June 2009).
- **Northern Plains Center for Behavioral Research** - Pursuant to Section 48-01.2-25, the Budget Section approved a University of North Dakota request to increase the authorization for construction of the Northern Plains Center for Behavioral Research from $3.9 million to $3,913,697 (June 2009).
- **Alumni Center** - Pursuant to Section 15-10-12.1 the Budget Section approved a University of North Dakota request to accept a gift of $445,308 in infrastructure improvements, including site preparation, planning, utilities, and steamline, related to the construction of a University of North Dakota Alumni Center (December 2009).
- **National Center for Hydrogen Technology facility** - Pursuant to Section 15-10-12.1 the Budget Section approved a University of North Dakota request to accept and spend $4 million of federal funds from the United States Department of Energy to construct a "fuels of the future" addition to the National Center for Hydrogen Technology facility at the University of North Dakota (December 2009).
- **President's house** - Pursuant to Section 48-01.2-25 the Budget Section approved a University of North Dakota request to increase the project authorization for the new president's house from $900,000 to $1,262,705 (December 2009).
- **Education Building** - Pursuant to Section 48-01.2-25 the Budget Section approved a University of North Dakota request to increase the project authorization for the renovation/addition to the Education Building project from $11.2 million to $12.6 million (March 2010).
- **School of Law** - Pursuant to Section 15-10-12.1 the Budget Section approved a University of North Dakota request to accept and spend a gift of $500,000 for the renovation of existing classroom space within the University of North Dakota School of Law (March 2010).
- **Northern Plains Center for Behavioral Research** - Pursuant to Section 48-01.2-25 the Budget Section approved a University of North Dakota request to increase the project authorization and amend the project scope of the Northern Plains Center for Behavioral Research

project to include a skywalk at an estimated cost of $409,000 (June 2010).

- **Energy and Environmental Research Center** - Pursuant to Section 15-10-12.1 the Budget Section approved a University of North Dakota request to accept and spend $1.9 million for renovations to the Energy and Environmental Research Center, Building 184, with funding to consist of a private sector contract, federal funds, and local contract-generated facilities and administrative funds (June 2010).
- **O'Kelly Hall** - Pursuant to Section 15-10-12.3 the Budget Section **did not approve** a University of North Dakota request to use $220,000 of asbestos settlement funds as local matching funds for the O'Kelly Hall renovation project (June 2010) but did approve a University of North Dakota request to use $220,000 of unrestricted gift funds as local matching funds for the O'Kelly Hall renovation project (September 2010).

Valley City State University

- **Snoeyenbos Hall** - Pursuant to Section 15-10-12.3 the Budget Section approved a Valley City State University request to change funding sources for the renovation of Snoeyenbos Hall from $3.5 million of revenue bond funds to $3.43 million of recovery zone economic development bonds and $70,000 of institutional funds (June 2010).

Williston State College

- **Science laboratory project** - Pursuant to Section 48-01.2-25 the Budget Section approved a Williston State College request to expand the scope and increase the authorization of the science laboratory project from $1.61 million to $2.2 million (September 2009).
- **Residence hall** - Pursuant to Section 48-01.2-25 the Budget Section approved a Williston State College request to increase the authorization for construction of the residence hall project from $9,375,000 to $9,875,000 (December 2009).
- **Career and technical education project** - Pursuant to Section 48-01.2-25 the Budget Section approved a Williston State College request to use capital project funds of up to $200,000 from the residence hall project, the science laboratory renovation project, and the virtual center for career and technical education project authorized by the 2009 Legislative Assembly to contract for a construction project manager (December 2009).

Local Funds - Higher Education Construction Projects

The Budget Section received a report from the University System on the sources of local funds received for construction projects of entities under the State Board of Higher Education for the 2007-09 biennium pursuant to Section 15-10-12.3. The University System reported two state-funded projects were continued from the 2005-07 biennium requiring a local match, and four state-funded projects were authorized for the 2007-09 biennium requiring a local match. The 2005-07 biennium continued projects were located at the North Dakota State University Main Research Center and the North Central Grasslands Research Center. These projects were not completed in the 2005-07 biennium and were continued into the 2007-09 biennium. The 2007-09 biennium projects were located at Bismarck State College, the University of North Dakota, North Dakota State University, and Minot State University. The 2007-09 Schafer Hall renovation project at Bismarck State College and the 2005-07 agronomy laboratory and greenhouse carryover project at the North Central Research Center were completed during the 2007-09 biennium within the overall appropriation authority and within the local match requirements. The projects at the University of North Dakota, North Dakota State University, Minot State University, and North Dakota State University Main Research Center were not completed in the 2007-09 biennium and continued to the 2009-11 biennium.

ADJUTANT GENERAL

2009 Emergency Snow Removal Grants

The Budget Section received a report from the Adjutant General regarding emergency snow removal grants distributed to counties, townships, and cities pursuant to Section 7 of 2009 Senate Bill No. 2012. The Adjutant General reported grants were provided to those counties and cities that during the first quarter of 2009 spent more than 200 percent of their average cost for snow removal for the same period over the past five years.

The Adjutant General reported total emergency snow removal grants of $7.8 million were distributed to 123 cities, 40 counties, and 2 tribal regions. The funding was provided from the state disaster relief fund pursuant to Section 7 of 2009 Senate Bill No. 2012 ($5.4 million), from the general fund pursuant to 2009 House Bill No. 1023 ($1.4 million) and 2009 Senate Bill No. 2393 ($1 million), and from the state contingencies appropriation approved by the Emergency Commission on January 22, 2009 ($100,000). The Adjutant General reported 17 cities, 13 counties, and 2 tribal regions either did not request assistance or did not qualify.

2009 Flood Disaster-Related Expenditures

The Budget Section learned 2009 flood disaster-related costs include four components--emergency measures, public assistance, mitigation, and individual assistance. The Adjutant General reported the Federal Emergency Management Agency established $78.3 million as the federal cost requirement that when exceeded the federal match would increase from 75 percent to 90 percent. The Budget Section learned the federal cost requirement was met, and the federal match increased to 90 percent for most flood response and flood recovery costs. The Adjutant General reported through August 2010 estimated 2009 flood costs totaled $176 million and actual expenditures totaled $116.4 million, of which $12.3 million was from the general fund. Other federally disbursed funds that did not qualify as part of the federal cost requirement for federal participation included $13.2 million in Small Business

Administration loans and $13 million in national flood insurance program claims.

The Budget Section received periodic reports from the Adjutant General regarding 2009 flood disaster-related expenditures, transfers, reimburse-ments, and general fund deposits pursuant to Section 5 of 2009 Senate Bill No. 2444. The Budget Section learned the Legislative Assembly appropriated $12.5 million from the general fund to the Adjutant General for the purpose of defraying the expenses relating to the 2009 flood disaster in Senate Bill No. 2444. The Adjutant General informed the Budget Section that as of September 2010 $5 million was transferred to the National Guard emergency fund to pay for the National Guard response costs during the flood, and $7.41 million was spent for the state cost-share of the 2009 flood-related disaster. The Adjutant General reported an anticipated $5.4 million to be returned to the general fund by the end of the biennium--$2.5 million from the National Guard emergency fund and another approximately $2.9 million from an increase in the federal reimbursement from 75 percent to 90 percent. The Budget Section learned 2009 flood expenditures may not be finalized until the 2013-15 biennium.

Emergency Disaster Relief Grants

The Budget Section received from the Adjutant General a report regarding emergency disaster relief grants awarded to political subdivisions pursuant to Section 8 of 2009 Senate Bill No. 2012. The Adjutant General provided a report on 2009 flood disaster relief grants that provide 50 percent of the 6 percent local share (3 percent of the total cost). The report identified the estimated state share by grant applicant awarded pursuant to Senate Bill No. 2012. The Budget Section learned the obligated 3 percent local share of costs as of August 2010 was $3 million.

State Disaster Relief Fund

The Budget Section learned the state disaster relief fund was established by the 2009 Legislative Assembly providing for a $43 million transfer from the general fund to the state disaster relief fund in 2009 Senate Bill No. 2012. The bill appropriated $43 million from the state disaster relief fund, of which $20 million was available for emergency snow removal grants to counties, cities, and townships and $23 million was available for paying costs related to the 2009 flood disaster, snow removal damage to roads, and other disasters in accordance with Section 8 of Senate Bill No. 2012. Section 8 of Senate Bill No. 2012 provided that a political subdivision receiving federal emergency relief funding relating to disasters occurring from January 2009 through June 2009 may apply to the Department of Emergency Services for an emergency relief grant of up to 50 percent of the local match required to receive the federal emergency relief funding. Section 8 also provided that funds in the state disaster relief fund not distributed to political subdivisions may be used to match federal disaster relief funds received for state purposes. Pursuant to Sections 6 and 8 of Senate Bill No. 2012, any relief grant expenditures exceeding a cumulative total of $13 million require Budget Section approval, and any funds used to match federal disaster relief funds received for state purposes require Budget Section approval.

The Budget Section received the following requests from the Adjutant General relating to the use of the state disaster relief fund pursuant to Section 8 of 2009 Senate Bill No. 2012 and Budget Section action:

	Funding Request	Amount	Budget Section Action
1.	Request for funding to provide 10 percent match for the costs associated with the January 2010 ice storm	$2,336,250	Approved (March 2010)
2.	Request for 97 percent of the cost of repairing a parking lot damaged during staging for the 2009 flood event that did not qualify for Federal Emergency Management Agency reimbursement	21,909	[1,2]
3.	Request for 97 percent of the cost of raising the grade level of a county road to protect the road from rising flood waters and ensure continued public use. The expenditure did not qualify for Federal Emergency Management Agency reimbursement.	180,420	[1,2]
4.	Request for funding to provide the state match for costs associated with disasters prior to 2009 for which the department is still making payments	2,718,952	Approved (March 2010)
5.	Request for funding to repay the federal share of home buyouts made through the hazard mitigation grant program in 1998 that were later deemed ineligible by Federal Emergency Management Agency inspectors	192,486	[1,2]
6.	Request for funding to purchase flood materials in anticipation of a 2010 flood event and a presidential disaster declaration	500,000	[1,3]
7.	Request for funding to provide the state match for costs associated with 2010 spring flooding	2,781,250	Approved (June 2010)
8.	Request for funding to provide the state match for costs associated with the 2010 spring storm	2,000,000	Approved (June 2010)
	Total	$10,731,267	

[1]The Budget Section did not act on these requests. The Budget Section received a report from the Legislative Council staff regarding the Budget Section authority to approve the use of money in the state disaster relief fund. The Budget Section learned that based on the provisions of Senate Bill No. 2012, the Budget Section has authority to approve or disapprove requests to spend money from the fund to match federal disaster relief funds received for state purposes and for requests to approve or disapprove grants for state disaster relief that exceed $13 million during the biennium. The Budget Section learned the Adjutant General may distribute funds for other disaster-related purposes without Budget Section approval if the Adjutant General concludes that the grants are eligible for disaster payments from the state disaster relief fund under Section 37-17.1-27.

[2]The Adjutant General plans to use funding from the state disaster relief fund to pay for these costs.

[3]As of October 2010, the Adjutant General has determined that the flood materials are eligible for federal funds reimbursement of 75 percent. The Adjutant General plans to pay for the remaining 25 percent from the state disaster relief fund.

The Adjutant General reported that through August 2010 state disaster relief fund expenditures totaled $12 million, including $5.4 million for emergency snow removal grants ($20 million appropriated), $2.8 million for the April 2010 ice storm, $1.5 million for the January 2010 winter storm, $1.3 million for the 2009 flood disaster, $576,395 for the 2010 flood disaster, and $473,399 for the state match on disasters prior to 2009 ($23 million appropriated). The Budget Section learned projected expenditures for the remainder of the 2009-11 biennium include $5 million for the 2009 flood, $2.2 million for disasters prior to 2009, $800,000 for the April 2010 ice storm, $653,307 for the January 2010 winter snowstorm, and $112,377 for the 2010 flood. The Adjutant General reported the estimated June 30, 2011, balance in the state disaster relief fund is $22.3 million.

Reintegration Program

The Budget Section received a report from the Adjutant General on reintegration program expenditures and the program's impact on service members pursuant to Section 11 of 2009 House Bill No. 1016. The Budget Section learned the 2009 Legislative Assembly provided $1,377,409 from the general fund for the reintegration program and major expenditures include three FTE licensed social workers ($364,000), temporary employees to support the Military Outreach program ($484,000), and rent for the Military Service Center located in Bismarck ($220,000). The Budget Section learned that an additional $3.4 million in federal funds was available for this program during the two years prior to September 2010.

The Budget Section learned the North Dakota National Guard Service Member and Family Support program provides a variety of critical support elements for service members and their families who are at risk for issues resulting from deployments. The Service Member and Family Support program has assisted service members and their families with issues of mental health and posttraumatic stress disorder, as well as financial issues. The Service Member and Family Support program has established a stand-alone Military Service Center in Bismarck and a Military Outreach team that assists all veterans. The program provides support to all veterans, including Army, Navy, Air Force, and Marine veterans from every conflict since World War II. Since January 2009, team members have made contact with nearly 14,000 service members. Family members assisted account for 44 percent of the overall contacts.

STATE TREASURER

Weather-Related Cost-Sharing Funds

The Budget Section received a report from the State Treasurer regarding weather-related cost-sharing funds distributed to cities, counties, and townships pursuant to 2009 Senate Bill No. 2012. The State Treasurer reported a total of $59.9 million was distributed to political subdivisions in June 2009 as follows:

- $10 million to townships;
- $41.4 million to counties and cities;
- $7.5 million to the state highway fund; and
- $1 million to the public transportation fund.

The Budget Section learned cashflow issues and computer system changes delayed the distributions until June 2009.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION STATUS REPORT

The State Board of Agricultural Research and Education provided information to the Budget Section regarding the status of board activities pursuant to Section 4-05.1-19(10). The board reported receiving information from commodity groups, producers, and researchers which was summarized into soil health, crop quality, improved livestock production, and organic and sustainable agriculture areas. The Budget Section learned additional funding is needed for research technicians and facility updates.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to Section 54-59-19 the Budget Section received the Information Technology Department's 2008-09 and 2009-10 annual reports. The Information Technology Department reported the 2009 Legislative Assembly provided funding to upgrade Ethernet bandwidth at kindergarten through grade 12 school districts. The department reported a majority of school districts were connected and many invested in video equipment to take advantage of the increased bandwidth. The department reported it has been concentrating on customer service for the last three years, and the focus of its fiscal year 2010 report is on measuring outcomes. In fiscal year 2010 the department reported, based on customer surveys, the department is a trusted business partner 98.9 percent of the time compared to 94.9 percent in fiscal year 2008 and is the preferred information technology provider 94.6 percent of the time compared to 86.2 percent in fiscal year 2008. The Information Technology Department responded to 60,835 incidents during fiscal year 2010 and completed 3,639 service requests, of which 97 percent were on budget and 92 percent were on time. The department reported billings for fiscal year 2010 of $49.6 million, $3.1 million more than fiscal year 2009. The majority of revenue is generated from computer hosting and software development service fees. The department reported a turnover rate of 5 percent in fiscal year 2010. The department reported the majority of its service rates are competitive with surrounding states.

Request for Approval to Use Contingent Funds

Pursuant to Section 3 of 2009 Senate Bill No. 2021, the Budget Section received and approved a request from the Information Technology Department to spend the agency's contingent general fund appropriation of $2,263,883 for a statewide longitudinal data system. The Budget Section learned that the department applied for a federal grant in December 2009, and in May 2010

the department was notified that its application was not approved.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

Pursuant to Section 7 of 2009 House Bill No. 1012 the Budget Section learned through August 2010 the Department of Human Services had no transfers between line items and between subdivisions of House Bill No. 1012 in excess of $50,000.

Medicaid Management Information System Contingency Funds

The Budget Section received and approved a request from the Department of Human Services to spend $2,172,584 of Medicaid management information system (MMIS) project contingency funds, of which $512,550 was from the general fund and the remainder from federal funds pursuant to Section 4 of 2007 Senate Bill No. 2024. The department reported the 2005 Legislative Assembly in House Bill No. 1012 appropriated $29,188,859, of which $3,667,820 was state matching funds from the permanent oil tax trust fund, to the Department of Human Services to rewrite the MMIS. The 2007 Legislative Assembly in Senate Bill No. 2024 provided additional funding of $31,072,641, of which $3,643,133 was state matching funds from the general fund, for the project. The department did not spend all of the state matching funds during the 2005-07 biennium and was authorized to continue the unspent funds into the 2007-09 biennium for the project. As a result, the department used these funds to obtain additional federal matching funds of $2,267,871 for the project. Total funding available for the project is:

	State Match	Federal Funds	Total
2005-07 appropriation	$3,667,820	$25,521,039	$29,188,859
2007-09 appropriation	3,643,133	27,429,508	31,072,641
Additional federal matching funds		2,267,871	2,267,871
Total	$7,310,953	$55,218,418	$62,529,371

The Budget Section learned the original appropriation included a 10 percent contingency, or approximately $5.6 million. The Budget Section learned, based on the project's 90 percent match, the general fund portion of the 10 percent contingency is approximately $560,000. The Budget Section learned hardware and software for the project were purchased by the Information Technology Department with loan proceeds approved by the Budget Section in October 2007. The Budget Section learned the Information Technology Department loan will be repaid from collections of a hosting fee charged to the Department of Human Services. The department reported the hosting fee was initially budgeted as an operating expense; however, due to the delayed schedule, the fee must now be included in project costs. The Budget Section learned beginning in November 2009 the department must also pay the annual software maintenance fee for the purchased software.

Status of MMIS

The Budget Section received periodic reports from the Department of Human Services and Affiliated Computer Services Government Healthcare Solutions (ACS) regarding the status of the MMIS computer project. The Budget Section learned in February 2010 ACS--the software developer--merged with Xerox. The Budget Section learned the original estimated completion date for the MMIS was July 2009, but the completion date has been delayed to June 2012. The Budget Section learned ACS met the June 1, 2010, milestone of completing and testing specific base enterprise functions. ACS reported due to project complexity and adding work to the plan, the project timeline had to be revised from its previous estimated completion dates. ACS reported the first part of the new MMIS--provider enrollment--will be implemented on December 1, 2011, and the remainder of the new MMIS will be implemented six months later in June 2012. The Budget Section received the following project funding summary through August 2010:

Description	Budget	Spent Through August 2010	Remaining
General fund	$3,643,133	$2,651,027	$992,106
Federal funds	55,218,418	33,079,533	22,138,885
Other funds	3,667,820	1,828,252	1,839,568
Total project	$62,529,371	$37,558,812	$24,970,559

TOBACCO PREVENTION AND CONTROL COMMITTEE

The Center for Tobacco Prevention and Control Policy and the Tobacco Prevention and Control Committee presented information to the Budget Section quarterly regarding the implementation of the comprehensive tobacco prevention and control plan pursuant to 2009 House Bill No. 1015. The 2009-11 biennium appropriation for the Tobacco Prevention and Control Committee is $12.9 million. The Budget Section learned the Tobacco Prevention and Control Committee contracted with the State Department of Health to serve as the fiscal agent for the committee and leased office space at the North Dakota Agriculture Foundation Building in Bismarck. The Tobacco Prevention and Control Committee released the completed tobacco prevention and control state plan in July 2009. The Budget Section learned that through August 2010, the Tobacco Prevention and Control Committee spent $3.5 million of its appropriation, including $3.3 million for grants and professional fees provided to local communities to address tobacco use at the local level.

DEPARTMENT OF COMMERCE

Annual Audits of Renaissance Fund Organizations

The Department of Commerce reported on the annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). The department reported 49 renaissance zone cities, of which 7 have at least one renaissance fund organization. The Legislative Assembly approved the following maximum

aggregate tax credits for investments in a renaissance fund organization:

- $2.5 million - 1999 Legislative Assembly.
- $1 million - 2001 Legislative Assembly.
- $1.5 million - 2003 Legislative Assembly.
- $2.5 million - 2009 Legislative Assembly.

The Department of Commerce reported all of the $2.5 million in renaissance credits approved by the 1999 Legislative Assembly were allocated as of June 2, 2008. Of the $2.5 million in renaissance credits approved by the 2001 and 2003 Legislative Assemblies, remaining funds are still in the process of being used by investors. Of the $2.5 million in renaissance credits approved by the 2009 Legislative Assembly, funds have been allocated to cities with populations over 30,000. The Budget Section learned the independent auditor's reports of the renaissance fund organizations have been submitted to the Department of Commerce.

Centers of Excellence Fund

The Legislative Council staff reported the 2009 Legislative Assembly established a centers of excellence fund in Senate Bill No. 2018 (Section 15-69-06). Money in the centers of excellence fund is appropriated to the Department of Commerce on a continuing basis for implementing and administering the centers of excellence program, and interest earned on the fund remains in the fund. The Legislative Council staff reported for the 2009-11 biennium the 2009 Legislative Assembly appropriated $15 million from the general fund and provided a contingent general fund appropriation of $5 million for transfer to the centers of excellence fund. The Office of Management and Budget was permitted to transfer the contingent appropriation if actual general fund revenues for the period July 1, 2009, through December 1, 2009, exceeded estimated general fund revenues for that period by at least $5 million. Revenues were determined sufficient by the Office of Management and Budget, and the transfer was made in December 2009.

Centers of Excellence Enhancement Grants

The Budget Section learned that of the $20 million the 2009 Legislative Assembly appropriated for centers of excellence, Section 23 of 2009 Senate Bill No. 2018 requires $10 million to be made available for centers of excellence enhancement grants. Through April 2010 the Centers of Excellence Commission has awarded $7.75 million of the $10 million appropriated for centers of excellence enhancement grants to the following projects:

University of North Dakota	
Center of Excellence for Unmanned Aircraft Systems Research, Education, and Training	$2,754,000
North Dakota State University	
Research I expansion	4,000,000
Materials and Nanotechnology Center	1,000,000
Total	$7,754,000

2009-11 Centers of Excellence Applications

The Budget Section learned that of the $20 million the 2009 Legislative Assembly appropriated for centers of excellence, Section 23 of 2009 Senate Bill No. 2018 makes available $10 million for centers of excellence funding awards.

Pursuant to Section 15-69-02, the Budget Section considered applications for centers of excellence funding awards recommended by the Centers of Excellence Commission and the Emergency Commission. The Budget Section considered three requests for $7.2 million in total funding. The applications for centers of excellence were:

- North Dakota State University - Center for Sensors, Communications and Control - $2.8 million.
- North Dakota State University - Center for Advanced Technology Development and Commercialization - $3.9 million.
- Minot State University/Trinity Health - Geriatric Research Center - $500,000.

Centers of excellence projects totaling $6.7 million were approved in Round 1 of the application process in June 2010. The Budget Section did not approve the Minot State University Geriatric Research Center ($500,000) requested center of excellence project. As a result, $3.3 million of the $10 million made available for centers of excellence funding awards remains available for future applications.

Centers of Excellence Reports

The Budget Section received pursuant to Section 15-69-05(2) annual audit reports on 14 of 17 centers of excellence approved prior to the 2009-11 biennium and the centers of excellence monitoring report from the Department of Commerce. The following three centers of excellence had not received funding as of June 30, 2009, and, therefore, audits had not been conducted:

- North Dakota State University Center for Integrated Electronic Systems.
- University of North Dakota Research Foundation Center of Excellence for Passive Therapeutics.
- North Dakota State University Center for Biopharmaceutical Research and Production.

Annual Audit Reports

The Budget Section learned each center of excellence is required to conduct an annual audit and provide it to the State Board of Higher Education, the North Dakota Economic Development Foundation, and the Legislative Council. The department provided audits for the fiscal year ended June 30, 2009. Of the 14 centers audited, there were nine findings within 7 centers. The department reported all findings have been addressed and corrected or will be addressed and corrected if the items related to methodologies of the annual functional performance report. The department reported most findings were administrative in nature, and none of the findings significantly impact the scope or purpose of the project.

Monitoring Report

The Budget Section learned the 2007 Legislative Assembly provided for a mandatory monitoring period for

centers of excellence. The Department of Commerce reported the increased level of accountability of centers of excellence is accomplished by functional reviews and site visits conducted annually by the department. The Legislative Assembly also established requirements regarding the distribution of funds and matching funds availability. The Department of Commerce reported because of these accountability requirements, funding has been withheld on two approved centers of excellence. The University of North Dakota Center of Excellence for Biomedical Device Research, Development, and Commercialization and the Minot State University Great Plains Knowledge and Data Center have been unable to secure matching funds. The department reported the centers of excellence program has an estimated total economic impact on North Dakota's economy of $329.4 million. The department reported centers of excellence expenditures of $19.9 million as of June 30, 2009. The department reported the centers of excellence program has led to the creation of 2,060 total jobs and partnerships with 135 companies.

Great Plains Applied Energy Research Center

Pursuant to 2009 House Bill No. 1350 the Budget Section received reports from the Department of Commerce regarding the status of the construction of the Great Plains Applied Energy Research Center, including information on the extent to which nonstate matching funds have been made available for the project. The department reported the project is being coordinated by the City of Bismarck. Representatives from the City of Bismarck reported the Great Plains Applied Energy Research Center represents a link between energy research generated in the laboratory and the application of new energy concepts in the field. The Budget Section learned the center will test energy technology applications on a small scale so they may be more reliably implemented in the field. The City of Bismarck and project partners applied for and received a grant from the federal Economic Development Administration to complete a feasibility study. The study will address the feasibility and financial sustainability of the project concept and, if the project is deemed feasible, prepare a long-term business plan. The grant will provide $100,000 in federal funds to be matched by $100,000 from the City of Bismarck and six North Dakota energy companies. The Budget Section learned the city awarded the feasibility study contract to Deloitte Consulting. The City of Bismarck reported that the state funds will not be spent until the feasibility study and business plan are completed indicating the proof of concept and long-term sustainability of the proposed center.

Grants and Loans to Early Childhood Facilities

Pursuant to 2009 Senate Bill No. 2225 the Budget Section received a report from the Department of Commerce regarding grants and loans for child care providers for technical assistance, infrastructure, or business planning. The Budget Section learned funding for grants and loans for child care providers was provided to the Department of Commerce Division of Community Services ($520,300) and the North Dakota Development Fund, Inc. ($1,299,700). The Department of Commerce reported as of June 2010, the Division of Community Services completed first round grant distributions of $243,096 to 92 child care facilities and second round grant distributions of $209,459 to 65 child care facilities. The Department of Commerce reported funding of $47,445 is available for the remainder of the biennium for technical assistance and business plans. The Department of Commerce reported that the Development Fund approved six loan requests for a total of $293,041 to entities in Bismarck (2), Fargo (1), Minot (1), West Fargo (1), and Williston (1).

Technology-Based Entrepreneurship Grant Program

Pursuant to Section 13 of 2009 Senate Bill No. 2018 the Budget Section received a Department of Commerce report on the status of the technology-based entrepreneurship grant program and program expenditures. The department reported the goal of the technology-based entrepreneurship grant program is to grow technology-based entrepreneurship in North Dakota by providing grants in four areas--access to capital, marketing assistance, entrepreneur infrastructure, and entrepreneurial talent. The department reported an entrepreneur center must be certified by the Department of Commerce as providing business incubator services, such as mentors, shared services, relationships with educational institutions, marketing assistance, accounting or financial management, training, and regulatory compliance. The Budget Section learned as of September 2010 certified entrepreneur centers include the University of North Dakota Center for Innovation, the North Dakota State University Research and Technology Park, the I.D.E.A. Center in Bismarck, the Southern Valley Innovation Center in Wahpeton, the Dickinson State University Strom Center for Entrepreneurship and Innovation and the Severson Entrepreneurship Academy at Minot State University.

The Budget Section learned the Department of Commerce awarded technology-based entrepreneurship grants in four quarterly rounds. Grant applicants submitted an application detailing the project, how the funds will be expended, the expected short-term and long-term results, and the metrics used for measuring the results. In the first quarterly round of funding, the Department of Commerce provided a total of $200,000 in technology-based entrepreneurship grants. The department expects the $1 million appropriation to be committed prior to the end of the biennium. A summary of grant awards as of September 2010 is provided in the chart below:

Certified Entrepreneur Center	Funding Use	Grant Amount
North Dakota State University Research and Technology Park	Entrepreneurship services and programs administered by its technology incubator	$90,000
I.D.E.A. Center	Wolf Technologies to develop and execute a marketing plan for their Light Check product	10,000

Certified Entrepreneur Center	Funding Use	Grant Amount
Dickinson State University Strom Center for Entrepreneurship and Innovation	Business challenge program	50,000
University of North Dakota Center for Innovation	Federal and state technology partnership program to match a $100,000 Small Business Administration federal and state technology grant to be used in assisting companies in securing small business innovation research/small business technology transfer program federal grants	50,000
Total awards		$200,000

Tax-Exempt Property by School District

The Budget Section received a report from the Department of Commerce on tax-exempt property by school district pursuant to Section 14 of 2009 Senate Bill No. 2018. The Budget Section learned the Department of Commerce hired two interns to conduct the research from June through mid-August 2010. The department reported only 6 of the 53 counties were able to provide most of the requested data. The department reported counties either did not respond or due to the lack of consistency in collecting and reporting data on tax-exempt property could not produce the requested data. To complete the requested study, the department recommended counties be required to consistently collect and report information on school district code, taxpayer name, parcel number, tax class or code, acreage or square footage, the value of potential revenue lost due to exemption, and classification if property generates revenue.

HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

Pursuant to 2009 Senate Bill No. 2332 the Budget Section received periodic reports from the Information Technology Department regarding the status of health information technology activities. The Information Technology Department reported Senate Bill No. 2332 established a health information technology planning revolving loan fund to provide low-interest loans to health care entities to assist in improving health information technology infrastructure. The bill also provided for a $5 million contingency appropriation from the earnings and accumulated undivided profits of the Bank of North Dakota to the fund. The contingency was met when actual general fund revenues for the period July 1, 2009, through September 30, 2009, exceeded the estimated general fund revenues for the period by at least $22.5 million. The Budget Section learned that when the $5 million became available, criteria was established for loans to providers, hospitals, and multiprofessional entities.

The Information Technology Department reported 14 entities with project costs totaling approximately $16.9 million applied for loans totaling $7.2 million. The Health Information Technology Advisory Committee approved 12 applications--2 clinics and 10 critical access hospitals--totaling $5 million. As of September 2010, 11 of the 12 entities have completed the required readiness assessment, 5 of the 11 have completed and submitted the Bank of North Dakota loan application, and 2 of these have been approved by the Bank.

The Budget Section learned that in March 2010 $5.34 million was awarded to the state in federal grants to support the state in establishing health information exchange capacity among health care providers and hospitals. The Budget Section learned that as part of the agreement, a strategic and operational plan must be developed and submitted for approval to the Office of National Coordinator for Health Information Technology by September 27, 2010. The Information Technology Department reported that implementation of the statewide health information exchange is expected to begin in early 2011 once the strategic and operational plan is approved.

HIGHWAY PATROL

Commercial Vehicle Information Systems and Networks

Pursuant to 2009 Senate Bill No. 2011 the Budget Section received semiannual reports from the Highway Patrol regarding the status of implementation of the commercial vehicle information systems and networks and on the use of funds appropriated for the implementation. The Budget Section learned the commercial vehicle information systems and networks is a collection of information systems and communication networks that support commercial vehicle operations and is managed by the Federal Motor Carrier Safety Administration. The Budget Section learned the commercial vehicle information systems and networks program provides a framework that enables state and federal government agencies, the motor carrier industry, and other parties engaged in commercial vehicle operations safety assurance and regulation to exchange and use information to improve safety and security and to conduct business transactions electronically. The 2009 Legislative Assembly directed the Highway Patrol to proceed with the implementation of the commercial vehicle information exchange window system, including preparations necessary to allow for the automated issuance of highway permits and provided $100,000 from the general fund to complete the initial implementation process. The Highway Patrol reported McFarland Management in association with Iteris, Inc., was awarded the contract for the commercial vehicle information systems and networks study for $80,595. In addition, the Highway Patrol reported spending $6,092 on advertising for the project and $11,755 for grant application planning. The Highway Patrol does not anticipate spending the remaining $1,558.

DEPARTMENT OF TRANSPORTATION

Use of Highway Funding

Pursuant to Section 11 of 2009 Senate Bill No. 2012 the Budget Section received periodic reports from the Department of Transportation regarding the anticipated

use of state, federal, emergency, and other highway funding during the 2009-10 interim.

The Department of Transportation reported as of September 2009 the 2009 transportation programs included regular construction projects, ARRA projects, and emergency relief projects. The department reported the regular construction program included 199 projects at a cost of $260 million, including $69.4 million for urban road improvements and nearly $18 million for county road improvements, including the replacement of 11 county bridges. The Budget Section learned the department received an allocation of approximately $170.1 million for roads and bridges through ARRA. The Budget Section learned the department identified 99 projects totaling $90 million for 2009, including $60.6 million for state projects, $15.7 million for urban projects, and $13.7 million for county projects. The department reported the remaining $80.1 million of federal fiscal stimulus funds will be spent for projects in 2010. The Budget Section learned as of September 2009 the department estimated the total cost of statewide emergency relief projects, excluding the Devils Lake Basin area, was approximately $22 million.

The Department of Transportation reported as of September 2010 the following estimate of 2010 highway projects:

Funding Source	Projects	Estimated Project Costs (Amounts Shown in Millions)
ARRA	Stimulus projects	$80.00
Federal	Bid openings - May, June, and July	238.45
Emergency relief	Devils Lake Basin	71.04
	Various cities and counties	7.40
State	Preventative maintenance projects (2009 SB 2012)	40.34
Missile roads		6.06
Federal estimated 2010 Department of Transportation construction projects		$443.29

The Department of Transportation reported the 2010 ARRA projects include:

- Twenty-three state projects totaling $64 million;
- Twenty urban projects totaling $7 million;
- Seven county projects totaling $4 million; and
- Twenty transportation enhancement projects totaling $5 million.

INDUSTRIAL COMMISSION

Status of Mill and Elevator Study

Pursuant to Section 11 of 2009 Senate Bill No. 2014 the Industrial Commission presented information to the Budget Section regarding the status of the Mill and Elevator study. The Industrial Commission presented a report prepared by Eide Bailly LLP entitled *North Dakota Mill and Elevator Association Industry Comparison*. The Budget Section learned the industry comparison evaluation of the Mill and Elevator indicates, with the exception of the 2008 fiscal year, that the mill compares favorably to peer milling companies, especially relating to gross profit and operating expense efficiency ratios. The Budget Section learned the mill's operation in fiscal year 2008 was negatively affected by the increase in hard red spring wheat and durum commodity prices and hedging roll costs. Eide Bailly LLP reported its analysis indicated turnover and liquidity ratios differed negatively from industry comparatives due to competitive management practices implemented and more recent fixed asset investments by the mill.

PUBLIC SERVICE COMMISSION

Pursuant to Section 3 of 2009 House Bill No. 1008 the Budget Section received a report from the Public Service Commission regarding the status of the metrology laboratory. The Public Service Commission reported the metrology laboratory discontinued providing metrology services to the public on March 14, 2010, and that the commission is seeking an alternative metrology provider. The Public Service Commission reported Minnesota Valley Testing Laboratories, Inc., is in the process of constructing new laboratory facilities in Bismarck and may be interested in the metrology program. The Budget Section learned the Public Service Commission anticipates organizing a meeting with Minnesota Valley Testing Laboratories, Inc., the Department of Commerce, and the Bismarck-Mandan Development Association to discuss the possibility.

AGRICULTURE COMMISSIONER

Additional Office Space

The Budget Section received and approved a request from the Agriculture Department to lease additional office space pursuant to Section 8 of 2009 House Bill No. 1009. The Agriculture Department reported the 2009 Legislative Assembly provided $120,000 from the general fund to the Agriculture Commissioner for additional office space, subject to Budget Section approval. The Budget Section learned the department's current office space in the Capitol is overcrowded and lacks laboratory facilities. Under the proposal, two divisions and up to 12 FTE positions would be relocated into leased space with lease rates ranging from $13 to $18 per square foot.

VETERANS' HOME

The Budget Section received periodic written summary reports and presentations from the Veterans' Home regarding the status of the Veterans' Home construction project pursuant to Section 8 of 2009 Senate Bill No. 2007 and on the status of the Veterans' Home exterior finishing construction projects pursuant to Section 4 of 2009 Senate Bill No. 2075. The Veterans' Home reported backfill failures caused mechanical piping placed in building foundations to become flooded and damaged by rains in the fall of 2009. The flooding caused schedule delays and a dispute over responsibility. The Veterans' Home reported State Department of Health requirements, weather-related events in the fall of 2009, delays in the original contract from the backfill failure, and weather-related events in the spring of 2010 forced the Veterans' Home to adjust the original October 1, 2010, completion date to December 24, 2010. The Veterans' Home reported the project was approximately 80 percent

complete as of August 2010. The Veterans' Home reported that although the Veterans' Home construction project is scheduled for completion in December 2010, the expected occupancy date is unknown as weather conditions may not permit residents to move at that time. The Veterans' Home reported the construction project is on budget with total estimated construction costs of $35.3 million, leaving $269,752 remaining unspent.

The Veterans' Home reported on the status of the Veterans' Home exterior finishing construction projects pursuant to Section 4 of 2009 Senate Bill No. 2075. The Veterans' Home reported that the three-stall garage was moved to its new location; bids have been received for some of the mill and overlay work; construction on the maintenance shop is completed, but concrete aprons have yet to be poured; electric service needs to be installed; and streetlighting and landscape work remains to be completed.

GAME AND FISH DEPARTMENT

Land Acquisition Requests

Pursuant to Section 20.1-02-05.1 the Budget Section received requests from the Game and Fish Department for the approval of the following land acquisitions:

Morton County

The Budget Section received and approved a request from the Game and Fish Department to purchase 65.35 acres of land adjacent to and intermingled with the Oahe Wildlife Management Area in Morton County. The purchase price of $105,000 ($1,600 per acre) was based on an appraisal done by Allied Appraisals, Inc., of Bismarck. The Game and Fish Department reported the Morton County land acquisition ranked high on the department's list of potential land purchases and was identified in information provided to the Appropriations Committees of the 2009 Legislative Assembly.

Grand Forks County

The Budget Section received and approved a request from the Game and Fish Department to purchase 160 acres of land adjoined on three sides by the Prairie Chicken Wildlife Management Area in Grand Forks County. The Budget Section learned the land in an area locally known as the Alkali Flats is one of only two areas in the state that have viable populations of prairie chickens. The Game and Fish Department reported approximately 129 acres of the property is under a conservation reserve program contract until 2018. The owners offered to sell the property to the Game and Fish Department for $80,000 ($500 per acre) based on an appraisal done by Alerus Appraisals of Grand Forks. The Game and Fish Department reported the Grand Forks County land acquisition ranked high on the department's list of potential land purchases and was identified in information provided to the Appropriations Committees of the 2009 Legislative Assembly.

McKenzie County

The Budget Section received and approved a request from the Game and Fish Department to purchase 983 acres of land adjoining the Yellowstone River in McKenzie County. The Game and Fish Department reported the purchase price of $363,333 would be paid with $113,333 from the game and fish fund and $250,000 from a United States Fish and Wildlife Service grant.

LaMoure County

The Budget Section received and approved a request from the Game and Fish Department to purchase seven acres of land adjoining the James River on the outskirts of the city of LaMoure in LaMoure County. The Budget Section learned the property provides a recreation area and fishing access. The owners offered to sell the property to the Game and Fish Department for $36,000 ($5,143 per acre). The Game and Fish Department reported an appraisal completed by Mr. Raymond Thielges of LaMoure valued the land at $30,000.

LAND DEPARTMENT

FTE Approval

The Budget Section received and approved a request from the Land Department for approval to add one FTE position relating to minerals management pursuant to Section 6 of 2009 Senate Bill No. 2013. The 2009 Legislative Assembly approved three additional FTE positions for the Land Department to manage the increasing workload related to oil and gas mineral leasing and production activity, including one FTE position contingent upon Budget Section approval. The Budget Section learned that as of September 2010 the department was in the process of filling two of the positions--an information technology programming specialist responsible for maintaining computer systems and databases utilized to manage mineral assets and a minerals title specialist responsible for resolving title discrepancies and administering mineral leases, nominations, and minerals under sovereign land. The department requested Budget Section approval of a revenue compliance manager FTE position responsible for managing lease payments to ensure timely and accurate payment of royalty and lease payments due under oil and gas leases. The department reported the following oil and gas mineral leasing and production statistics:

- There are 147 oil rigs drilling as of September 2010, 57 involve state-owned minerals that the department actively manages.
- The department collected $295 million of lease bonuses during fiscal year 2010, approximately the amount collected during the previous 39 years combined.
- When the 2009 Legislative Assembly reviewed the Land Department budget, the department managed approximately $874 million in trust fund financial assets. In the 18 months since then, these assets have grown by 71 percent to $1.5 billion.
- The department currently oversees 1,200 producing wells, an increase of approximately 500 from four years ago.
- The department currently processes 3,000 royalty records each month, twice the number processed in 2006.

State Agency Unclaimed Property

The Budget Section received reports from the Land Department regarding state agencies that have not submitted a claim for unclaimed property belonging to that agency pursuant to Section 47-30.1-24.1. The Budget Section learned the North Dakota Uniform Unclaimed Property Act has been in effect since 1975, and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides that within one year of receipt of state agency property the administrator of unclaimed property shall notify the agency by certified mail. The commissioner of University and School Lands is to present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt, and upon approval of the Budget Section, the agency relinquishes its right to recover its property.

The Land Department reported that during the 2009-10 interim, its Unclaimed Property Division reviewed its database annually and identified six state agencies with unclaimed property as of June 2009 and four state agencies with unclaimed property as of June 2010. Certified letters were mailed to those agencies. All 10 state agencies confirmed receipt of the certified mailing but did not respond.

The Budget Section pursuant to Section 47-30.1-24.1 approved the lists of state agencies relinquishing their rights to recover unclaimed property in June 2009 and in June 2010.

JOB SERVICE NORTH DAKOTA

Status of the Job Insurance Trust Fund

Pursuant to Section 52-02-17 the Budget Section received a report on the status of the job insurance trust fund. As of December 31, 2009, Job Service North Dakota reported the trust fund balance was $85.5 million, exceeding the projected trust fund balance of $76.9 million. The target for reserve adequacy was $81.2 million. The Budget Section learned Job Service North Dakota has seen an increase in claims during 2009 and is anticipating increased claims in 2010 as layoffs continue. Job Service North Dakota reported the trust fund target is expected to increase over the next few years as the recent increase in claims affects the target formula provided in statute. Job Service North Dakota reported the increase in the trust fund target will be implemented incrementally as outlined in statute. The agency reported the targeted modified average high-cost multiplier is currently .9 percent.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings. The Budget Section learned the results of the survey revealed one block grant--the community services block grant administered by the Department of Commerce Division of Community Services--requires legislative hearings. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2011 legislative session.

Recommendation

The Budget Section recommended House Concurrent Resolution No. 3002 to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 62nd Legislative Assembly through September 30, 2013.

FEDERAL FUNDS

The Budget Section reviewed a report on federal funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2011, and June 30, 2013. Excluding federal fiscal stimulus funds, the report indicated for the 2009-11 biennium, state agencies and institutions anticipate receiving $3.15 billion of federal funds, approximately $163.5 million more than appropriated. For the 2011-13 biennium, state agencies and institutions anticipate receiving approximately $2.96 billion of federal funds, $191.3 million less than is estimated to be received during the 2009-11 biennium. If the estimated federal funds are appropriated, the 2011-13 biennium will require $794.2 million in general fund matching dollars, $278 million more than the 2009-11 biennium.

The Budget Section reviewed a report on ARRA funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2011, and June 30, 2013. The report indicated for the 2009-11 biennium, state agencies and institutions anticipate receiving $539.96 million of ARRA funds, approximately $122.8 million less than the amount appropriated. State agencies and institutions anticipate approximately $108.9 million of ARRA funds will continue into the 2011-13 biennium.

LEGISLATIVE COUNCIL STAFF REPORTS

The Budget Section received the following reports prepared by the Legislative Council staff:

- *61st Legislative Assembly Legislative Changes to the Governor's Recommended Appropriations for the 2009-11 Biennium*. The report provides information on legislative changes to the executive budget and is a compilation of the statements of purpose of amendment for action taken on appropriation bills during the session.
- *61st Legislative Assembly Analysis of Legislative Changes to the Executive Budget 2009-11 Biennium*. The report provides information on legislative changes to the executive budget, FTE positions, ongoing and one-time general fund appropriations, federal fiscal stimulus funding, one-time funding, major programs, and related legislation for each state agency. The report also

includes an analysis of major special funds and statistical information on state appropriations.

- *61st Legislative Assembly Budget Status Report for the 2009-11 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2011, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.
- *2009 and 2010 North Dakota Finance Facts.* The annual pocket brochure is prepared pursuant to 2009 House Concurrent Resolution No. 3036 and contains information on economic statistics, the state budget, kindergarten through grade 12 education, higher education, human services, corrections, economic development, and transportation.
- *Fort Berthold Reservation Oil Development Under 2007 Senate Bill No. 2419 and Subsequent State-Tribal Agreements.* The report provides information on Indian oil compacts and related revenues.
- *State Disaster Relief Fund Expenditures - Budget Section Approval.* The report provides information regarding the authority of the Budget Section to approve Adjutant General requests to spend funding from the state disaster relief fund.
- *Summary of 2009-11 Centers of Excellence Applications*. The report provides a listing of 2005-07 and 2007-09 approved applications and summaries of the 2009-11 Round 1 applications and workforce enhancement grant recipients.
- *2009-11 Biennium Report on Compliance With Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2009 Legislative Assembly for various agencies. The report contains information regarding the status of major state trust funds.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Pursuant to Sections 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-04.3, and 54-16-09 and Section 1 of 2009 House Bill No. 1487, the Budget Section considered agency requests that had been authorized by the Emergency Commission and forwarded to the Budget Section. From the June 23, 2009, meeting to the September 22, 2010, meeting, the Budget Section considered 39 requests, all of which were approved. The 39 Emergency Commission requests approved included expenditures of $270,332,169 of federal funds, including 14 requests for $50,701,861 of ARRA funds, and $8,380,000 of other funds, line item transfers totaling $25,000, contingency approval of $276,569, and authorization of 9.5 FTE positions for the remainder of the 2009-11 biennium. At the end of this report is a listing which provides a description of each agency request considered by the Budget Section.

Status of the State Contingencies Appropriation

The Emergency Commission authorized one expenditure from the state contingencies appropriation that required Budget Section approval. In June 2009 Valley City State University requested and the Budget Section approved a $276,596 expenditure from the 2007-09 state contingencies appropriation for repairs to the W. E. Osmon Fieldhouse. The Valley City State University request was for the entire remaining balance available in the 2007-09 state contingencies fund. As of September 2010, one expenditure for $18,421 was authorized by the Emergency Commission from the 2009-11 state contingencies appropriation, and the remaining balance of the state contingencies appropriation was $681,579. Because the expenditure was less than $50,000, Budget Section consideration was not required.

OTHER REPORTS

The Budget Section received other reports, including:

- Adjutant General - Information regarding an update on the cost of the January 2010 winter storm disaster.
- Adjutant General - Information on the total funding by funding source for each disaster being paid for during the 2009-11 biennium.
- Bank of North Dakota - Information regarding the estimated fiscal impact of discontinuing the issuance of federal student loans on July 1, 2010, as required by federal law.
- Department of Human Services - Periodic information on the status of Medicaid claims processing.
- Job Service North Dakota - Information regarding the use of ARRA funds available to the state.
- Office of Management and Budget - Information on ARRA, including an update of funding, funding provided directly to political subdivisions, funding available to the state that has not been accepted, the use of $1.2 million of funds retained by the Department of Commerce for the administration of the state energy program, funding provided for programs in the 2009-11 biennium that agencies may request funding from the general fund to continue in the 2011-13 biennium, and the number of state employees who have been employed using federal stimulus funding.
- Office of Management and Budget - Information on the state's economy, including information regarding economic sectors showing growth.
- Office of Management and Budget - Information on the status of the state's major trust funds, including information on each fund's current balance compared to two years ago and the effect of any investment gains or losses on each fund during the past two years.
- Office of Management and Budget - Information regarding federal fiscal stimulus funds retained by agencies for administration purposes.

- Office of Management and Budget - Information regarding the Veterans' Home July 1, 2009, special fund balance compared to the amount anticipated in the Veterans' Home 2009-11 budget.
- Office of Management and Budget - Information on 2007-09 capital construction and information technology project funding authorized by the Capital Construction Carryover Committee to continue to the 2009-11 biennium.
- Office of Management and Budget - Information on the 2009-11 biennium salary equity pool allocation, including information on how the salary equity pool allocations were determined and a summary of how salary equity pool increases were distributed among agencies.
- Office of Management and Budget - Information regarding a summary of general salary increase methods used by agencies to distribute salary increases among employees and the effect these distribution methods have had on salary compression issues of agencies.
- Office of Management and Budget - Information on selected agencies that have had pay and market equity concerns, including specific information on how salary equity increases have affected the salaries of the affected employees and how the general salary increase funds were distributed to these and other employees within the agency, including the range of percentage increases provided.
- Office of Management and Budget - Information on the accuracy of the cost estimates of projects that have received funding from the capital improvements preliminary planning revolving fund, including information regarding whether any of these projects have required additional funding after the projects were approved.
- Tax Department - Information regarding the estimated amount of sales tax collections resulting from oil-related activities.
- Tax Department - Information regarding current revenues distributed to political subdivisions as a result of the tribal oil agreement and an estimate of distributions to political subdivisions under the tribal oil agreement if the payments were computed based on total revenues rather than revenues allocated to the state.
- University System - Periodic information regarding an update on the status of major higher education capital construction projects.
- University of North Dakota and North Dakota State University foundations - Information on the use of University of North Dakota and North Dakota State University foundation funds, including funds used for salary enhancements, building projects, and scholarships, equipment, grants, and discretionary spending.
- University System - Information on the anticipated use of space that would be vacated if the information technology facility project at the University of North Dakota is approved.
- University System - Information on the status of the University of North Dakota School of Medicine and Health Sciences Bismarck Center for Family Medicine capital project.
- University System - Information on the definition of institutional and local funds and whether the definitions are consistent among University System institutions.

This report presents Budget Section activities through September 2010. Because one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at the beginning of the 62nd Legislative Assembly in January 2011.

AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION

Pursuant to Sections 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-04.3, and 54-16-09, and Section 1 of 2009 House Bill No. 1487, the Budget Section considered 39 agency requests that were authorized by the Emergency Commission. All requests were approved. The following is a list of agency requests approved from June 23, 2009, through September 22, 2010:

Adjutant General

- March 11, 2010 - To increase special funds spending authority by $63 million of federal funds from the Federal Emergency Management Agency for the 2009 flood disaster.
- March 11, 2010 - To increase spending authority by $17,521,875 of federal funds from the Federal Emergency Management Agency for the grants line item ($17,451,875), the salaries line item ($45,000), and the operating expenses line item ($25,000) relating to damage caused in 25 counties and 1 tribal jurisdiction by a severe winter storm during January 2010.
- June 22, 2010 - To increase spending authority by $20,859,375 of federal funds from the Federal Emergency Management Agency for costs relating to 2010 spring flooding.
- June 22, 2010 - To increase spending authority by $28,368,750 of federal funds from the Federal Emergency Management Agency for costs relating to damage caused by an April 2010 spring storm.
- September 22, 2010 - To increase spending authority by $1,668,750 of federal funds from the Federal Emergency Management Agency for costs relating to damage caused by an April 2010 storm.
- September 22, 2010* - To increase special funds spending authority by $400,000 of federal funds from ARRA, National Guard Bureau, for the federal stimulus funds line item ($400,000) for new high-efficiency furnaces and water heaters in four federally supported facilities at Camp Grafton.

- September 22, 2010 - To increase special funds spending authority by $405,000 of federal funds from the Department of Homeland Security emergency management performance grant program for the capital assets line item ($70,000) to purchase a mobile command and emergency operations trailer and for the Civil Air Patrol line item ($335,000) to purchase an infrared radar system for a Civil Air Patrol aircraft.

Department of Agriculture

- June 23, 2009 - To increase the grants line item by $1 million to accept federal funds ($750,000) and funding from the Office of Management and Budget ($250,000) to assist livestock producers affected by severe winter conditions and spring flooding.

Attorney General

- June 22, 2010 - To increase the capital assets line item by $269,877 of federal funds from the Department of Justice and the Office of National Drug Control Policy to purchase equipment for the State Crime Laboratory.

Department of Commerce

- September 15, 2009* - To increase special funds spending authority by $258,858 to accept federal funds from the ARRA enhanced government energy assurance and resiliency grant for the creation and testing of standardized energy assurance and resiliency plans to use during energy emergencies and supply disruptions.
- September 15, 2009* - To increase special funds spending authority by $615,000 to accept federal funds from the United States Department of Energy under ARRA to provide rebates for consumers purchasing Energy Star appliances.

Department of Corrections and Rehabilitation

- June 22, 2010 - To increase the juvenile services line item by $308,125 of federal funds available from the Department of Commerce for implementing energy conservation projects and improving environmental conditions at the Youth Correctional Center.
- June 22, 2010 - To increase the adult services line item by $122,656 of federal funds from Job Service North Dakota to implement a workforce training project.
- June 22, 2010 - To increase the adult services line item by $1.73 million of special funds from Roughrider Industries to allow Roughrider Industries to manage and operate the prison commissary.

Council on the Arts

- June 22, 2010 - To increase the grants line item by $209,029 of federal funds from the National Endowment for the Arts to be distributed for arts programming throughout the state.

Game and Fish Department

- June 22, 2010 - To increase the salaries and wages line item ($61,000), the capital assets line item ($20,000), and the grants line item ($1,062,500) for a total of $1,143,500 of federal funds from the United States Department of Agriculture and the United States Department of the Interior for various fishing-related projects, dam repairs and retrofitting, boat ramps, shoreline stabilization and fishing access projects, and monitoring of avian influenza and chronic wasting disease.

State Department of Health

- September 15, 2009 - To increase spending authority by $4.92 million to accept federal funds from the Centers for Disease Control and Prevention for the salaries and wages line item ($480,000), the operating expenses line item ($640,000), the capital assets line item ($200,000), and the grants line item ($3.6 million) for pandemic influenza preparedness and a vaccination campaign.
- December 15, 2009* - To increase spending authority by $7,076,990 of federal funds from ARRA for arsenic trioxide grants ($6.8 million), ambulatory surgical center surveys ($18,685), a temporary employee to coordinate and implement state health care-associated infection prevention efforts ($201,830), and a grant to the University of North Dakota School of Medicine and Health Sciences Center for Rural Health to increase the number of health care professionals in underserved areas of the state ($56,475).
- March 11, 2010* - To increase spending authority by $364,148 of federal funds available from ARRA for the salaries and wages line item ($75,744) and the operating expenses line item ($288,404). The funding will be used to reduce the negative health and economic consequences of tobacco use and promote nutrition and physical activity.
- September 22, 2010* - To increase spending authority by $548,470 of federal funds available from ARRA for contracts to enhance the interoperability between the North Dakota immunization information system and private provider electronic health records.

Department of Human Services

- September 15, 2009* - To increase special funds spending authority by $11,062,000 to accept federal funds from ARRA for grant funds for the temporary assistance for needy families (TANF) program increased caseload from 2007 to 2008 ($510,000), one-time funds for subsidized employment costs to assist individuals exiting the TANF program or to avoid entering the program ($10,345,000), and administrative funds for the supplemental nutrition assistance program ($207,000).
- December 15, 2009 - To increase special funds spending authority by $202,771 to accept federal funds from the United States Department of Health and Human Services Office of Administration on Aging for the salaries and wages line item ($19,579) and the operating expenses line item ($183,192) for implementation of an Aging and Disability Resource Center pilot project in the Bismarck region.

- September 22, 2010* - To increase special funds spending authority by $18.4 million of federal funds resulting from the extension of the ARRA-enhanced FMAP from December 2010 to June 2011.
- September 22, 2010* - To increase special funds spending authority by $795,000 to accept federal funds from ARRA for child support incentive matching funds.

Information Technology Department

- December 15, 2009 - To increase spending authority by $2 million of federal funds from the National Telecommunications and Information Administration for operating expenses for a comprehensive assessment of broadband availability and demand within the state.
- December 15, 2009 - To increase spending authority by $1 million of federal funds from the United States Department of Transportation and the United States Department of Commerce for the operating expenses line item ($500,000) and the capital assets line item ($500,000) for implementation of enhanced 911 services by the Emergency Services Communications Coordinating Committee.
- December 15, 2009* - To increase spending authority by $10 million of federal fiscal stimulus funds from the United States Department of Education Institute of Education Sciences for the Statewide Longitudinal Data System Initiative and authorize 9.5 FTE positions for the Statewide Longitudinal Data System Initiative.

Job Service North Dakota

- March 11, 2010* - To increase spending authority by $87,087 of federal funds from ARRA for administration of the emergency unemployment compensation program, which provides additional weeks of compensation to the unemployed.

State Library

- March 11, 2010 - To increase spending authority by $200,000 of federal funds from the Institute of Museum and Library Services in the grants line item to provide grants to public and school libraries.

Department of Public Instruction

- June 22, 2010* - To increase the salaries and wages line item ($67,958) and the operating expenses line item ($100,000) for a total of $167,958 of federal funds available from ARRA for the administration of the Title I - School Improvement Grant program.

Public Service Commission

- December 15, 2009* - To increase spending authority by $766,350 of federal funds from the United States Department of Energy under ARRA relating to the regulation and oversight of transmission and generation infrastructure, to provide training to agency personnel, and for three temporary positions.

Racing Commission

- June 22, 2010 - To increase the Racing Commission line item by $75,000 of special funds from the Racing Commission administrative fund for expenses associated with licensing of account wagering companies.

Secretary of State

- March 11, 2010 - To increase spending authority by $350,000 to accept federal funds from the United States Election Assistance Commission for the Help America Vote Act election reform fund.

Department of Transportation

- March 11, 2010 - To increase spending authority by $660,000 of federal funds from the federal Department of Homeland Security for the operating expenses line item ($250,000) and the capital assets line item ($410,000) to implement security enhancements at eight driver's license testing sites.
- March 11, 2010 - To increase spending authority by $170,600 of federal funds from the federal Department of Homeland Security made available to the Department of Emergency Services for the capital assets line item to assist in paying costs to upgrade the State Radio network from analog to digital service.
- March 11, 2010 - To increase spending authority by $81.75 million to accept Federal Highway Administration emergency relief funds of $75.5 million and provide matching funds from the state highway fund of $6.25 million for roadway projects in the Devils Lake area. The funds are to be used for the salaries and wages line item ($3 million), the operating expenses line item ($10 million), the capital assets line item ($64.25 million), and the grants line item ($4.5 million).
- March 11, 2010* - To increase spending authority by $160,000 of federal funds from ARRA for a highway project in Slope County on forest Highway 5.

Valley City State University

- June 23, 2009 - For $276,569 from the 2007-09 state contingencies appropriation to increase the capital assets line item for repairs to the W. E. Osmon Fieldhouse.

Veterans' Home

- June 23, 2009 - To transfer $25,000 from the capital assets line item to the operating expenses line item and to increase special funds spending authority in the operating expenses line item by $75,000.

*In addition to considering these requests pursuant to Chapter 54-16, Budget Section consideration to spend any additional federal funds received under ARRA in excess of the amounts appropriated for the 2009-11 biennium was also required pursuant to Section 1 of 2009 House Bill No. 1487 and agency appropriation bills as outlined in item No. 45 of the list of duties assigned to the Budget Section by law and acted on during the 2009-10 interim.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by House Bill No. 1473 (2005). The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Legislative Management chairman to select the chairman and vice chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The director of the Department of Corrections and Rehabilitation;
5. The director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

Commission members were Representatives Lisa Wolf (Chairman), Brenda Heller, and Lawrence R. Klemin; Senators Dick Dever, Stanley W. Lyson, and John Warner; Governor's appointees Edward Brownshield, Dr. Gary Rabe, and Keith Witt; Attorney General's designee Thomas L. Trenbeath; Chief Justice's appointees Justice Mary Muehlen Maring and Judge Gail Hagerty; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson; Attorney General's law enforcement officer appointee Paul D. Laney; North Dakota State's Attorneys Association appointee Bradley A. Cruff; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

BACKGROUND

A 2008 study conducted by the Pew Center on the States reported approximately 2.3 million adults were incarcerated in this country, which means more than 1 in every 100 adults in the country was incarcerated. A followup report in 2009 indicated the number of adults under community supervision also has increased dramatically to over 5 million. However, the report stated that the percentage of offenders under community supervision decreased slightly over the last 25 years, while the number of offenders incarcerated increased. The report indicated that in 1982, 28 percent of offenders were incarcerated and 72 percent were under community supervision. At the end of 2007, the percentage of total offenders under community supervision versus incarceration decreased to 69 percent. Combining the number of offenders incarcerated and the number under community supervision, the percentage of adults under the control of the correctional system in this country has risen to 3.2 percent, which is approximately 1 in every 31 adults.

The 2009 report prepared by the Pew Center on the States indicated that the number of adults under the control of the correctional system (state and federal) in North Dakota increased from 1 in 234 in 1982 to 1 in 63 at the end of 2007. The report also indicated that 35 percent of the correctional population was incarcerated in 2007, which ranked 27th nationally. According to the report, North Dakota ranks 47th nationally in the total number of adult offenders either incarcerated or under community supervision.

Department of Corrections and Rehabilitation

In the appropriation bill for the Department of Corrections and Rehabilitation--Senate Bill No. 2015 (2009), the Legislative Assembly appropriated $170,362,718 for the department for the 2009-11 biennium. Of that amount, $144,425,025 is from the general fund. The bill also appropriated $1,039,856 from American Recovery and Reinvestment Act of 2009 funds to the department. The appropriation for the department provided for an increase of 24 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 735.29. In addition, Senate Bill No. 2030 (2009) appropriated to the department $19,465,804 from the general fund and $44,534,196 from the State Penitentiary land fund for the purpose of completing the renovation and expansion of the State Penitentiary project. Senate Bill No. 2355 (2009) appropriated to the department $200,000 for contracting with a private nonprofit organization to

conduct a short-term shelter and assessment pilot project.

The appropriation to the department in Senate Bill No. 2015 included $27,928,227 for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The department received $8,638,154 to contract with the Dakota Women's Correctional and Rehabilitation Center to house female inmates. In addition, Senate Bill No. 2015 required the department to distribute in 24 equal payments the sum of $1,628,813 to the Heart of America Correctional and Treatment Center for inmate-related treatment services during the biennium. The bill included a provision that states that if the Heart of America Correctional and Treatment Center does not accept a sufficient number of inmates to occupy at least 96 percent of the average daily treatment program bed count provided for in the contract for the first 10 months of each year of the biennium, the department must reduce the monthly payments for the remaining two months of each year. However, the department is required to refer a sufficient number of inmates to the Heart of America Correctional and Treatment Center to allow for the average daily treatment program bed count provided for in the contract to be fulfilled.

Adult Services Division

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of September 2010, the State Penitentiary housed 530 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of September 2010, housed 412 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of September 2010, the Missouri River Correctional Center housed 149 inmates.

Parole and Probation Division

The department has offices across the state staffed by parole and probation officers who manage offenders sentenced to supervision by a court, released to parole by the State Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services. The division manages the Bismarck Transition Center, the Tompkins Rehabilitation and Corrections Unit, and the Last Chance Programs.

The Tompkins Rehabilitation and Correction Center--a combined program located on the campus of the State Hospital in Jamestown--houses both inmates and noninmates. The center provides a structured two-phased treatment program that generally lasts between 100 days and 120 days. The center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties are Stark, Slope, Billings, Bowman, Dunn, and Hettinger. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of facilities for minimum and higher security inmates and for administrative segregation. As of the end of September 2010, the Dakota Women's Correctional and Rehabilitation Center housed 118 state inmates.

Division of Juvenile Services and Youth Correctional Center

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior. Juvenile programming at the Youth Correctional Center includes drug and alcohol programming, child psychiatric and psychological services, sexual offender programming, a pretreatment program for juveniles who are difficult to manage, and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence.

2005-06 INTERIM STUDY AND 2007 LEGISLATION

During the 2005-06 interim, the commission made several recommendations, and the 2007 Legislative Assembly responded to most of the recommendations.

Electronic Monitoring

The commission recommended Senate Bill No. 2029 (2007), which provided that except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for certain adult and juvenile offenders. As enacted the bill authorized, subject to the

availability of funding, the court or with the approval of the court the Department of Corrections and Rehabilitation or a correctional facility to implement an electronic home detention and global positioning system monitoring program.

Executive Budget and Funding Issues

Faith-Based Treatment Program

The commission recommended the Governor include in the 2007-09 executive budget $300,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The Legislative Assembly included within the 2007-09 biennial budget for the Department of Corrections and Rehabilitation $500,000 for faith-based programming.

Drug Courts

The commission recommended the Governor include in the 2007-09 executive budget approximately $600,000 for the addition of two FTE positions for the Department of Corrections and Rehabilitation and four FTE positions for the Department of Human Services to assist in the expansion of drug courts.

The Legislative Assembly included funding and authorization for three FTE positions within the Department of Corrections and Rehabilitation for drug court parole and probation officers and for four additional FTE positions for addiction counselors at regional human service centers.

Robinson Recovery Center

The commission recommended the Governor include in the 2007-09 executive budget up to $1.2 million for the expansion of the Robinson Recovery Center.

In addition to the base funding of $500,000 and an inflationary increase of $134,000, the Legislative Assembly directed that $700,000 from the general fund within the budget for the Department of Human Services must be used for increasing the number of individuals receiving methamphetamine treatment services at the Robinson Recovery Center.

Community Service Programs

The commission recommended the Governor include in the 2007-09 executive budget $200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

The Legislative Assembly enacted Senate Bill No. 2243 (2007), which imposed a $50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided that the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated $125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use $100,000 of the funds appropriated in the field services line item in Section 3 of House Bill No. 1015 (2007) for the purpose of providing matching grants for community service supervision of offenders for the biennium.

Cass County Jail Intervention Coordinating Committee

The commission recommended the Governor include in the 2007-09 executive budget $582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

The Legislative Assembly did not provide funding to assist in the project.

Other Recommendations and Statements

The commission expressed its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program. The commission encouraged the Governor to assess the need to reduce caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards.

The Legislative Assembly provided funding in the 2007-09 budget for the Department of Human Services for 4 additional full-time case managers, 1 additional addiction counselor, and 1 sexual abuse therapist and provided funding in the budget for the Department of Corrections and Rehabilitation for up to an additional 11 parole and probation officers and 1 corrections agent.

The commission recommended the provision of adequate funding for mental health and substance abuse programs.

The Legislative Assembly included within the budget for the Department of Human Services approximately $2.8 million for the phasein of a community-based sexual offender treatment program.

The commission encouraged the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings.

The commission encouraged school districts to operate alternative schools to assist in keeping adolescents in school.

The commission encouraged the continued study of the effectiveness of substance abuse treatment programs. The Legislative Assembly amended Section 19-03.1-45 to continue the drug assessment and treatment diversion program and expanded the program from a three-county pilot program to a statewide program.

The commission encouraged state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The commission expressed support for the work of the Prevention Advisory Council on Drugs and Alcohol appointed by the Governor, including the identification of

methods for strengthening families and healthy communities.

The commission expressed support and encouragement for private initiatives, such as programs that provide mentors for children of incarcerated individuals.

2007-08 INTERIM STUDY AND 2009 LEGISLATION

During the 2007-08 interim, the commission made several recommendations, and the Governor and the 2009 Legislative Assembly responded to most of the recommendations.

Community Service Supervision Fee Bill

The commission recommended Senate Bill No. 2028 (2009) to repeal the $50 community service supervision fee that courts are required to impose on participants in community service programs. As enacted the bill retained the community service supervision fee but reduced the fee to $25.

Commission Extension Bill

The commission recommended Senate Bill No. 2029 (2009) to extend the existence of the commission until June 30, 2013. As enacted the bill extended the life of the commission until August 1, 2013.

Executive Budget and Funding Issues

Faith-Based Treatment Program

The commission recommended the Governor include $500,000 in the executive budget for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The Legislative Assembly increased funding for faith-based treatment programming to $800,000.

Community Service Programs

The commission recommended the Governor include $500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The Legislative Assembly provided an appropriation of $62,500 from the community service supervision fund to the department in Senate Bill No. 2015 (2009) and also provided an appropriation of $375,000 from the general fund to the Office of Management and Budget in Senate Bill No. 2178 (2009) for community service supervision grants.

Cass County Justice and Mental Health Collaboration Project

The commission recommended the Governor include $86,000 in the executive budget for the Cass County Justice and Mental Health Collaboration Project.

Crisis Intervention Training

The commission recommended the inclusion of $126,576 in the budget for the Attorney General to provide for crisis intervention training for law enforcement officials.

Juvenile Crisis Intervention Programs

The commission expressed its support for a request by the Department of Human Services for expanded state funding for juvenile crisis intervention programs around the state.

Senate Bill No. 2355 (2009) appropriated to the Department of Corrections and Rehabilitation $200,000 for a pilot project relating to providing a short-term shelter program for at-risk youth.

Other Recommendations and Statements

The commission encouraged the Governor and the Department of Human Services to allow the Robinson Recovery Center to address treatment needs for addictions other than the treatment of methamphetamine addiction.

The commission expressed its support for the efforts of the Department of Human Services and encouraged the department to provide broader residential treatment services for addictions and mental health issues on a statewide basis.

The commission expressed its support for legislation during the 2009 legislative session to clarify the role of the county sheriff in supervision of electronic home monitoring in misdemeanor cases. The Legislative Assembly adopted House Bill No. 1223 (2009), which provided that for those offenders who are sentenced to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility and provided that it is the responsibility of the administrator to determine whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

The commission expressed its support for the 24/7 sobriety program initiated by the Attorney General and the efforts of the Attorney General to work with the Department of Transportation to extend work permits for participants in the 24/7 sobriety program. The Legislative Assembly adopted House Bill No. 1306 (2009), which authorized the State Parole Board to participate in the 24/7 sobriety program as an intermediate sanction or condition of parole. The bill also authorized the Attorney General to establish a statewide 24/7 sobriety program and established program guidelines and fees. The bill authorized a district or municipal court to order an offender charged with a violation of driving under the influence of alcohol or drugs, domestic violence, abuse or neglect of a child, or other offense in which alcohol or controlled substances are involved to participate in the 24/7 sobriety program as a condition of bond. The bill created a 24/7 sobriety program fund and provided a continuing appropriation for the use of money in that fund. The bill appropriated $100,000 from the general fund to the Attorney General for the purpose of the 24/7 sobriety program.

TESTIMONY AND COMMISSION CONSIDERATIONS

Department of Corrections and Rehabilitation

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

Division of Juvenile Services and Youth Correctional Center

The commission toured the Youth Correctional Center and received testimony regarding the programs implemented at the center to bring about corrective actions in youth and to help keep troubled youth out of the adult justice system. Although the Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement, about 30 percent of the juveniles who are receiving services through the Division of Juvenile Services are under supervision at home.

The Division of Juvenile Services has implemented an assessment process through which risks may be reduced by addressing the criminalgenic needs, treatment needs, and academic needs of juveniles placed under the custody of the division. Under the assessment process, the division may make better-informed decisions about placement and treatment of juveniles and provide for specialization of staff, continuity of procedures for intake, and the development of staff expertise.

The Youth Correctional Center operates a state-approved and accredited school that provides core classes, elective courses, and vocational education. The school also provides classes for independent living skills, parenting, and special education. The Read Right program implemented at the center has demonstrated that of the nearly 270 students completing the program, 94 percent have tested over two grade levels higher than their starting point and 83 percent tested at a post-high school level on a reading comprehension test.

Prison Industry and Education Programs

Chapter 12-48 authorizes the director of the Department of Corrections and Rehabilitation to establish and operate prison industries and Chapter 12-48.1 authorizes the director to provide for work release and educational release programs for offenders under the custody of the department. In operating the prison industries, work release, and educational programs, the department has partnered with a number of private and public entities, including Job Service North Dakota, the Department of Commerce, the North Dakota University System, the Department of Public Instruction, and the Department of Human Services.

The commission received testimony indicating that a primary reason offenders reoffend after release from custody is the inability to find suitable employment due to a lack of education and appropriate skills. Because over 20 percent of the approximately 200 to 300 offenders placed under the custody of the Department of Corrections and Rehabilitation each year do not possess a high school diploma, the department requires any offender who does not have a high school diploma to participate in an education program to work to achieve a general educational development (GED) diploma. The commission was informed that over 90 percent of the offenders earn a GED. To assist offenders in achieving educational advancement, the department has instituted reading programs, including the Read Right program. The Read Right program, which was first instituted at the Youth Correctional Center and has been expanded to the adult correctional facilities, is proving to be successful in increasing the reading fluency of offenders.

In addition to addressing the basic educational needs of offenders, the department has implemented vocational education programs to help prepare offenders for employment upon release from custody. The commission received information indicating the prison industry program has over 50 skill-sets from which offenders may choose to participate. As well as providing offender training, the department works with private sector employers to help address workforce needs and with Job Service North Dakota to help place offenders in jobs upon release from custody. The commission also received testimony regarding the reentry programs implemented by the department to help offenders learn how to obtain housing, prepare resumes, prepare budgets, and complete job applications.

Because a significant number of offenders under the custody of the department have child support obligations, the department works with the Department of Human Services to temporarily reduce the child support obligations of offenders while incarcerated so that the child support burden does not overwhelm the offender upon release. Although the support obligation may be reduced, 50 percent of an offender's earnings from a prison industry program are used to meet the child support obligation.

Transition Programs and Work Release

The commission received testimony regarding transition programs implemented by the Department of Corrections and Rehabilitation. The department utilizes transitional facilities as a front-end alternative to incarceration and as a graduated release system for individuals being discharged from prison. In addition to providing parole and probation officers options in responding to violations from community offenders, transition programs are used to assist in maintaining continuity between the offender's reentry plan developed in prison and the offender's community reentry plan. The commission received testimony stating that evidence-based practices indicate lower risk offenders have improved outcomes if diverted to a less-restrictive environment and higher risk offenders have improved outcomes if released through a graduated, stepdown system. Transitional facilities also provide chemical dependency treatment; cognitive behavioral

programming; and conflict resolution, parenting, budgeting, and employment skills.

The commission received testimony indicating that if an offender has meaningful employment within the first two weeks after release from custody, the likelihood of the individual reoffending is significantly lower. Although transition programs are instrumental in helping offenders obtain meaningful employment, statutes imposing minimum mandatory sentences and requiring an offender to serve 85 percent of a sentence prevent some offenders from participating in education and work release programs.

The commission considered a bill draft to allow the Department of Corrections and Rehabilitation to authorize work release or education release for an offender not currently eligible to participate in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole.

Sexual Offender Monitoring and Electronic Monitoring of Offenders

The commission received testimony regarding efforts of the Department of Corrections and Rehabilitation to find housing for sexual offenders who are unable to find housing upon release from custody. Members of the commission expressed concern with the problem of sexual offenders becoming homeless after release from custody. In addition to being more difficult to monitor, homeless sexual offenders frequently violate sexual offender registration requirements due to being transient, which leads to further incarceration. During the 2009-11 biennium, the department budgeted $160,000 to address the issue of housing for sexual offenders. The department has placed a mobile home outside the fence at the State Penitentiary and has begun paying the Northlands Rescue Mission in Grand Forks to house sexual offenders.

The commission received testimony regarding ongoing efforts of the Department of Corrections and Rehabilitation to expand the use of electronic monitoring of selected offenders under appropriate conditions.

Department of Human Services

The commission received reports from representatives of the Department of Human Services regarding substance abuse treatment programs, the statewide community readiness survey, and mental health intervention programs provided by the department.

Robinson Recovery Center

The Department of Human Services continues to contract with the 40-bed Robinson Recovery Center in Fargo for residential treatment services for individuals with a primary methamphetamine addiction. The commission received testimony indicating that referrals to the center from the Fargo region accounted for about one-half of the total referrals. Of those admitted to the center for treatment, approximately 62 percent were males, and the average age of residents of the center is about 32. The average length of stay at the center in 2009 was 2.92 months, while the average length of stay for individuals successfully completing the program was 4.89 months. By expanding admissions to include treatment for addictions other than methamphetamine, the center has increased bed utilization to an average of 33 beds. At the time the commission visited the center in August 2010, 18 of the 33 individuals under treatment at the center were being treated for addictions other than methamphetamine.

Prevention Coordinators

The commission received information relating to the 12 substance abuse prevention coordinator positions funded by the Department of Human Services. The department contracts with the Rural Crime and Justice Center of Minot State University for eight regional prevention coordinators located in each of the human service regions. In addition, the department provides four tribal prevention coordinators. The purpose of the coordinators is to provide innovative, culturally appropriate substance abuse prevention strategies to local communities and offer resources and materials, education programs, and information on environmental strategies. The main goals of the prevention coordinators are to address the:

- Low awareness of substance abuse.
- High level of underage drinking and binge drinking.
- High level of adult binge drinking.
- High level of inhalant use among middle school students.
- High level of prescription drug use.

Community Readiness Survey

In 2008 the Department of Human Services funded a statewide community readiness survey to gauge the readiness of North Dakota citizens, professionals, and communities to take action regarding substance abuse issues. The commission received testimony indicating the results of the survey suggest a readiness to recognize that there is a concern, but there is little recognition that the substance abuse problems are occurring locally or that there may be a local concern but there is no immediate motivation to do anything about the problem.

Community Service Programs

A court is required to impose a $25 community service supervision fee upon each defendant who receives a sentence that includes community service. The community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The commission was informed that the community service fee is low on the hierarchy of fees that a court is required to impose, and defendants often do not have the financial resources to pay the fees imposed by courts. Therefore, many judges do not impose the fee or waive the fee when ordering a defendant to perform community service. The commission received testimony regarding the varied

level of funding of community service organizations by local governments and a lack of consistency in establishing adequate local participation fees to cover the costs of the programs.

The commission considered a bill draft that would have eliminated the community service supervision fee. Proponents of the bill draft contended that because the fee frequently was waived or not imposed, the fee should be repealed. Although commission members generally agreed that community service programs should continue to receive state support separate from the community service supervision fee, members of the commission were reluctant to eliminate the fee without further study of all the fees that may be imposed upon a defendant upon sentencing as well as other fees that may be imposed upon offenders. Thus, the commission considered a concurrent resolution draft to direct the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders.

Juvenile Crisis Intervention

In 2009 the Legislative Assembly adopted Senate Bill No. 2355, which appropriated to the Department of Corrections and Rehabilitation $200,000 for a pilot project relating to providing a short-term shelter program for at-risk youth. The department awarded the funds to Youthworks to provide shelter care in the Bismarck area. The commission received a report from representatives of Youthworks which indicated that 147 short-term shelter care placements were made during the first year of the biennium. The report indicated that of the 78 juveniles who were assessed at intake as likely to require foster or group care placement, such placement was avoided for 33 of those juveniles which the report suggested resulted in an estimated cost-savings of $35,145 based upon the 165-day average length of placement at a cost of $213 per day.

The commission considered a bill draft to continue the shelter care program that was initiated under Senate Bill No. 2355 (2009) and provide an additional $200,000 in funding to expand the program. Proponents of the bill draft contended that the pilot project implemented under Senate Bill No. 2355 has proven to be successful during the first year of operation and should be expanded statewide. Although commission members generally expressed support for statewide expansion of the program, the members also agreed that expansion should be done incrementally with local support.

24/7 Sobriety Program

In 2007 the Legislative Assembly authorized the Attorney General to establish a pilot sobriety program in one or more judicial districts of the state during the 2007-09 biennium for the purpose of implementing procedures as alternatives to incarceration, including sobriety testing twice per day seven days per week or continuous monitoring, for offenders charged with or convicted of driving under the influence of alcohol or controlled substances or other offenses involving alcohol or controlled substances. In 2009 the Legislative Assembly authorized the Attorney General to expand the 24/7 sobriety program statewide. The program also was expanded to implement procedures for offenders charged with or convicted of domestic violence, abuse or neglect of a child, or for other offenses in which alcohol or controlled substances are involved and to include electronic monitoring and random drug testing by law enforcement. Because offenders often had difficulty in getting to the testing location due to a lack of a driver's license, the Department of Transportation worked with the Attorney General to authorize the granting of temporary restricted driver's permits to allow participants in the program to drive to and from a testing site.

The commission received reports indicating the statewide expansion of the 24/7 sobriety program was nearly complete and has been implemented and operated with minimal state funding. Because participants are required to pay the cost of testing, the program is able to operate in a self-sustaining manner. The commission received testimony from representatives of more populous counties which indicated that those counties may be able to hire part-time employees to administer the testing program with funds generated from the tests rather than have full-time sheriff department staff administer the tests. Statistics presented to the commission suggest that the threat of the immediate sanction of being jailed contributed to a passage rate of over 98 percent of the breath tests administered.

Housing for Faith-Based Treatment Program

The commission toured the Teen Challenge facility in Mandan. The Department of Corrections and Rehabilitation has contracted with Teen Challenge to provide funding for housing of program participants who are referred by the department. The funding provided by the department does not cover the program or counseling costs for department referrals, which amounts to approximately 50 percent of the total monthly cost of about $2,000.

Representatives of Teen Challenge stated that the program has been required to make cuts due to financial concerns. However, they reported survey results of graduates of the program indicate the program has been successful in helping participants remain sober, find housing, and obtain employment or seek further education.

Drug Courts

The commission attended an adult drug court session and participated in the graduation ceremony for drug court participants in Minot. The commission received a report regarding the expansion and status of drug courts in the state. The state drug courts have been administered as cooperative ventures among district judges, state's attorneys, the Department of Corrections and Rehabilitation, the Department of Human Services, and contracted private treatment providers. Juvenile drug courts are now in operation in Bismarck, Devils Lake, Fargo, Grand Forks, Minot, and Williston. There are adult drug courts in Bismarck, Fargo, Grand Forks, and Minot.

Cass County Justice and Mental Health Collaboration Project

The commission received reports regarding the progress of implementation and the operation of the Cass County Justice and Mental Health Collaboration Project. In 2007 Cass County was awarded a $250,000 grant to plan and implement a postbooking, jail-based program targeting offenders with a specific diagnosis and whose nonviolent offense is a product of a treatable mental illness. As the project has been implemented, the Cass County Jail has collaborated with the Southeast Human Service Center for mental health services and also has hired a full-time clinical mental health coordinator at the jail to conduct assessments, refer mentally ill offenders to treatment providers, and make referrals to prosecutors for consideration of dismissal of charges or a deferred or suspended sentence.

The commission received testimony regarding the activities of the project since its implementation in January 2009. Representatives of the project stated the assessment process and intervention by mental health professionals have been accepted well by law enforcement, prosecutors, and judges. Although the federal grant funding for the project will cease, representatives of Cass County informed the commission the Cass County Board of County Commissioners has agreed to provide funding for continuation of the project.

Other Reports

Students Against Destructive Decisions

The commission received a report regarding the Students Against Destructive Decisions program in Minot. The program, which began as Students Against Drunk Driving, has a policy that prohibits the use of illegal substances and the engaging in destructive behaviors by members who sign a contract promising to avoid destructive decisions.

Narcotics Anonymous

The commission received testimony from representatives of Narcotics Anonymous. Representatives of the program expressed concern that although the program has been allowed access to inmates at the Missouri River Correctional Center, access to inmates at the State Penitentiary and the Dakota Women's Correctional and Rehabilitation Center in New England has been denied.

HOPE Program

The commission received a report regarding the HOPE program, which is similar to drug court in that the program requires abstention from drugs and alcohol and requires probationers to call in to the program daily as a condition of probation. However, the program does not require daily drug and alcohol testing. The frequency of drug and alcohol testing is lessened over time with demonstration of success by the participant. The program was described as a low-cost alternative to drug court but as a program that also would require judicial involvement.

Victim Assistance Academy

The commission received a report regarding the Victim Assistance Academy of North Dakota. The purpose of the academy is to provide comprehensive training to develop, implement, and maintain a statewide structure to expand and enhance the level of skills and knowledge for those who interact with victims of crime. The academy has used federal grant funding to implement the education program and has partnered with Minot State University to house students participating in the academy. The academy is in its final year of federal funding and will need approximately $70,000 per year to continue to operate beyond 2010.

Second Chance Job Fair

The commission received a report regarding the Second Chance Job Fair, which was held in May 2010. The job fair was a collaborative effort involving the United States Probation and Pretrial Services Office, the Department of Corrections and Rehabilitation, Job Service North Dakota, the Department of Commerce, and other private and nonprofit entities. The job fair provided an opportunity for individuals who have criminal records and other job seekers to connect with employers. Over 200 individuals attended the job fair.

Mobile Employment and Education Transitions Unit

The commission received a report from a representative of the United States Probation and Pretrial Services Office regarding a mobile employment and education transitions unit. A mobile employment and education transitions unit is a small truck that includes workspace for individuals to access the Internet and other resources through which the individuals may obtain educational and workforce resources. The purpose of purchasing such a vehicle would be to bring the resources to rural areas of the state and assist residents of those areas in seeking employment and educational services that generally would not be accessible to them.

Heart of America Correctional and Treatment Center

The commission toured the Heart of America Correctional and Treatment Center in Rugby. The center has 132 beds, including 32 beds in a treatment unit. Twenty-five of the treatment unit beds are allocated for referrals from the Department of Corrections and Rehabilitation. The commission was informed that the 25 treatment beds allocated to the department are filled on an ongoing basis.

Other Commission Tours

The commission also toured the Dakota Boys and Girls Ranch in Minot, the Ward County Juvenile Detention Center in Minot, and the Cass County Jail and the Cass County Juvenile Detention Center in Fargo.

RECOMMENDATIONS

2011-13 Executive Budget

The commission recommends the Governor include in the executive budget funding in an amount equal to

the amount provided during the 2009-11 biennium for treatment at the Robinson Recovery Center.

The commission recommends the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs.

The commission recommends the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

Work and Education Release Bill

The commission recommends House Bill No. 1028 to allow the Department of Corrections and Rehabilitation to authorize work release or education release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole.

Community Service and Other Fees Study

The commission recommends Senate Concurrent Resolution No. 4001 to direct a Legislative Management study of the imposition of fees at sentencing and other fees that are imposed upon offenders.

Short-Term Shelter Care Bill

The commission recommends Senate Bill No. 2029 to continue the short-term shelter care and assessment program that was initiated during the 2009-11 biennium and provide an additional $200,000 in funding to expand the program to another area of the state.

Other Recommendations and Statements

The commission expresses its support for the Read Right program.

The commission expresses its support for continuation of electronic detention and global positioning system monitoring programs.

The commission expresses its continued support for the 24/7 sobriety program.

The commission expresses its continued support for expansion of drug courts within the state.

The commission, in recognition of the fact that many individuals incarcerated have underlying mental health issues, expresses continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

EDUCATION COMMITTEE

The Education Committee was assigned four studies. Section 61 of House Bill No. 1400 (2009) directed a study of the statutory criteria for the approval of public and nonpublic schools, regulatory criteria for the accreditation of schools, and the consequences to schools and school districts that fail to meet the criteria. Section 63 of House Bill No. 1400 (2009) directed a study of longer term elementary and high school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic. House Concurrent Resolution No. 3004 (2009) directed a study of Indian education issues. House Concurrent Resolution No. 3061 (2009) directed a study of educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery.

The Legislative Management also assigned to the committee the responsibility to receive periodic reports from the North Dakota Commission on Education Improvement and to receive reports regarding the financial condition of schools, school district employee compensation, student scores on recent statewide tests of reading and mathematics, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, the failure of any school board to meet the statutory threshold for increasing teacher compensation, the number of districts having more than $50,000 excluded in the determination of their general fund ending balance, the manner in which school districts used their one-time supplemental grants, the status of the statewide longitudinal data system plan, the activities of the North Dakota Early Childhood Education Council, the activities of the Autism Spectrum Disorder Task Force, and the findings and recommendations of the Superintendent of Public Instruction's Advisory Committee on Truancy.

Committee members were Representatives David Monson (Chairman), Rod Froelich, Lyle Hanson, Brenda Heller, Bob Hunskor, Dennis Johnson, Karen Karls, RaeAnn G. Kelsch, Jerry Kelsh, Lisa Meier, Corey Mock, Phillip Mueller, Lee Myxter, David S. Rust, and John D. Wall and Senators JoNell A. Bakke, Robert S. Erbele, Layton W. Freborg, and Dave Oehlke.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

SCHOOL APPROVAL AND ACCREDITATION

Background

Standards for schools in North Dakota predate statehood. In fact, at the first session of the Legislative Assembly of the territory of Dakota held in 1862, statutes were promulgated to establish standards and expectations for the common schools. These standards referenced the minimum length of time a common school must be in session, visits and advice by the county superintendent of public instruction, annual reports, teacher qualifications, required subjects, and the compilation of data for administrative purposes.

One hundred forty-eight years later, the laws of North Dakota still contain standards and expectations for schools and school districts. Some of the standards are statutory and must be met in order for a school to be "approved" by the Superintendent of Public Instruction and others are regulatory and enable a school to be "accredited" by the Superintendent of Public Instruction.

School Approval

North Dakota Century Code (NDCC) Section 15.1-06-06 requires each public and nonpublic school in this state to be approved by the Superintendent of Public Instruction. The Superintendent of Public Instruction may not approve a school unless:

1. Each classroom teacher is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under NDCC Section 15.1-09-57;
3. The students are offered all subjects required by law;
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by NDCC Section 12-60-24.

School Accreditation

Senate Bill No. 2269 (1979) authorized the Superintendent of Public Instruction to adopt standards for the accreditation of schools. Any public or private school that complied with the standards would be deemed an accredited school. Compliance with the standards was not, however, mandatory.

The standards adopted by the Superintendent of Public Instruction were compiled in a document entitled *North Dakota Accreditation Standards, Criteria and Procedures for the Classification of Elementary, Middle Level/Junior High, and Secondary Schools*. The document set forth standards and criteria that schools had to meet in order to be considered accredited and optional standards and criteria that were "designed to provide some flexibility to schools."

These standards and criteria addressed school improvement, administration, instructional personnel, instructional programs, student evaluations, student personnel services, library media services, and school policies.

Point values were assigned to each section and schools were expected to "accrue at least 85 percent of the total point values and achieve at least 50 percent of the point value assigned to each section." If a school failed to meet a required criterion, if a school failed to accrue at least 85 percent of the total points assigned to the optional standards and criteria, or if a school failed to accrue at least 50 percent of the point value assigned to any one section, the school was placed on an "accredited warned status." If the cited problems were not corrected by the next review cycle, the school was to be considered unaccredited. Required standards and criteria were to be reviewed annually and optional standards and criteria were to be reviewed biennially.

Although compliance with the accreditation standards was initially voluntary, House Bill No. 1472 (1989) imposed financial sanctions on school districts that operated unaccredited high schools. During the following legislative session, House Bill No. 1458 (1991) extended the financial sanctions to school districts that operated unaccredited elementary schools.

By the late 1990s, legislators became concerned that the accreditation process could be used to impose on schools and school districts requirements that were more stringent than legislators would or could support. In an attempt to ensure that there would be legislative oversight, the Legislative Assembly in 1999 enacted NDCC Section 15.1-02-11. This provision authorized the Superintendent of Public Instruction to adopt rules governing the accreditation of public and nonpublic schools. The companion Section 15.1-02-12 stated:

> Any rule adopted by the superintendent of public instruction in a manner other than that set forth in Chapter 28-32 is ineffective after October 31, 1999. For purposes of this section, "rule" includes any regulation, standard, guideline, statement, or policy that has the effect of law or which has either direct or indirect financial consequences for noncompliance.

Today, the rules governing the accreditation of schools are found in North Dakota Administrative Code Sections 67-19-01-01 through 67-19-01-43, and the financial penalties imposed upon districts having unaccredited schools are found in NDCC Sections 15.1-27-08 and 15.1-27-09.

Study

As the interim committee more closely examined both school approval and school accreditation, it took issue not with the individual requirements, but rather with the administration and application of each system.

The committee was told that school approval is the basic threshold--the bare minimum that must be met by any entity wishing to hold itself out as a school and provide educational services to North Dakota children. The committee also was told that certain schools do not meet the statutory standards for approval and, to the best of anyone's knowledge, no consequences have ever befallen such schools.

With respect to school accreditation, the committee was told that this system is based on the assignment of point values that are seemingly without justification. A detailed examination of the accreditation rules revealed inconsistencies among sections, disagreements as to interpretation, and administrative practices that bore no relationship to the words and phrases in the rules.

While the North Dakota Century Code clearly sets forth the financial penalties that are to be applied to any school district having an unaccredited school, the accreditation rules allowed for flexible point value assignments and if there were years during which schools were unable to meet the requirements, the regulations provided that those schools could be termed "accredited warned" rather than "unaccredited." Again, the committee was told, to the best of anyone's knowledge, no financial sanctions were ever imposed.

The committee's primary concern was with the amount of time it took Department of Public Instruction personnel to determine whether or not schools were approved or accredited. School districts submit the required information to the Superintendent of Public Instruction during the month of September. According to Department of Public Instruction rules, the letters of approval are to be mailed to the schools by December 31 and determinations regarding accreditation are to be mailed by March 31. Ongoing corrections and revisions often delay the final determinations well beyond the stated dates. One reason given for the time delays was that department personnel spend inordinate hours checking to ensure that there are no inconsistencies in the reporting, no coding errors, no spelling errors, or other forms of incorrect information. The committee was told that a simplified reporting process would allow personnel the time and the ability to provide schools and school districts with technical assistance and support schools in achieving their educational priorities.

Recommendation

The committee recommends House Bill No. 1029 to streamline the school approval process and reconfigure the school accreditation process. The bill would provide that in order to be certified as an approved school, the principal must submit to the Superintendent of Public Instruction a one-page compliance report verifying that:

1. Each classroom teacher is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received a statutory exception;
3. The school meets all statutory curricular requirements;
4. The school participates in and meets the requirements of a review process that is designed to improve student achievement;
5. The school has been inspected by the State Fire Marshal and either has no unremedied deficiencies or has deficiencies that have been addressed in a plan of correction that was approved by the State Fire Marshal; and

6. All individuals hired after July 31, 2011, have undergone a criminal history background check, unless they underwent such a check as part of their professional licensing.

The compliance report is to be signed not only by the school principal but also the school district superintendent and the president of the school board or their counterparts in the case of a nonpublic school. The report must be submitted before 5:00 p.m. on September 15, unless a two-week extension is requested. Failure to file the report in a timely manner will cause a prorated subtraction of state aid payments to the school district. In the case of a nonpublic school, failure to file the report in a timely manner will trigger parental notification regarding a potential violation of the state's compulsory attendance provisions. This notification may happen directly or through local media outlets.

Two concerns were expressed regarding the bill. The first was that the period of time for filing was not sufficiently extensive and the second was that the failure on the part of a principal to file a required report should not translate into any reduction in state aid. Proponents suggested that the verifications required by the compliance report amounted to the most basic and fundamental components of an educational system. Ideally, they should be in place on the first day of classes. Even September 15 places compliance at week three in most schools and at week five, if an extension is sought. Furthermore, it was argued that with the abundance of electronic course delivery options available to schools, no student in even the most remote school district should be without appropriate instruction by qualified teachers for any period beyond the filing deadline.

As for the second concern, proponents suggested that if a principal chooses to ignore the statutory filing requirement and as a result the district incurs a prorated reduction in state aid, there probably are additional performance issues that need to be addressed by the district and that in all likelihood, the built-in oversight provided by parents, school personnel, and even the school board members will cause those issues to be addressed swiftly.

The committee determined that by statutorily clarifying the approval requirements, the Superintendent of Public Instruction also would have an opportunity to create a regulatory system of school accreditation that would not only serve to identify truly outstanding schools but also provide meaningful measures of student achievement, with the ultimate goal of increasing student achievement.

CLOSURE OF SCHOOLS DUE TO WEATHER OR OTHER EMERGENCY CONDITIONS

Background

The North Dakota Century Code has relatively few sections addressing emergency preparedness by schools or school districts. Section 15.1-06-12 directs each school district superintendent to "implement fire, tornado, and other emergency or disaster drills," and Sections 15.1-06-09 and 15.1-06-10 require that the State Fire Marshal or the State Fire Marshal's designee inspect each public and nonpublic school at least once every three years. Section 15.1-06-11 requires that any door that could be used as an exit in the case of a fire or other emergency must remain free of all obstruction and free of any device or mechanism that may impede immediate egress. The Century Code is silent with respect to staff training, evacuation plans, and parental notification and provides no guidance with respect to weather or emergency-related school cancellations. The Century Code establishes no alternate means of education during emergencies and has no provision for reimbursing school districts that provide assistance to displaced students from neighboring districts.

The North Dakota Century Code does require school districts to provide for a school calendar of at least 181 days during the 2010-11 school year. One hundred seventy-four of those days must be used for instruction. During successive years, the school calendar is expanded to 182 days with 175 of those days for instruction. The seven noninstructional days are statutorily required for holidays, parent-teacher conferences or compensatory time for parent-teacher conferences held outside regular school hours, and professional development. The Century Code does not require that school districts build in "storm days," i.e., days on which classes will be held in the event that bad weather or unforeseen circumstances preclude normal operation. By tradition, most school districts include at least two storm days in their school calendars. George Washington's Birthday in February, a long weekend in March, and Easter Monday appear to be the most popular days from which two storm days are commonly selected.

If winter storms, spring floods, or boiler malfunctions occur later in the school year or if they occur with a frequency or a duration in excess of the built-in storm days, school districts request gubernatorial waivers so they can continue to receive state aid, even though they did not meet the statutorily required number of instructional days.

Instructional Days - Grace Day

North Dakota Century Code Section 15.1-06-04 defines an instructional day as being at least five and one-half hours for kindergarten and elementary students and at least six hours for high school students. If a school's normal day extends beyond this minimum requirement and if over the course of a school year this extension amounts to more than 84 hours, the school does not have to make up 6 hours of instructional time lost as a result of a weather-related closure. This is colloquially referred to as the "grace day." If a school is going to make up any lost instructional time over this amount, it must extend its normal schoolday by at least 30 minutes.

Waiver of Instructional Days

North Dakota Century Code Section 15.1-27-23 states that if as a result of severe weather or other

emergency conditions a school or school district must remain closed or if a school or school district provides less than a full day of instruction, the school or school district must make every effort to reschedule classes so that students receive at least 173 (sic) full days of instruction. If the rescheduling of classes would create "undue hardship" for a school or school district, the section allows the school or school district to request that for purposes of calculating state aid the Governor waive the rescheduling in whole or in part.

The Century Code does not define what constitutes "undue hardship" and does not indicate whether the directive to "make every effort to reschedule classes" anticipates anything other than using allotted storm days. The Century Code does state, however, that the "governor may not grant a waiver for less than a full day of instruction."

During the 2008-09 school year, the state experienced widespread severe winter weather and flooding. The Governor waived instructional days for 107 school districts. The number of waived instructional days ranged from 3 to 17. During a more normal school year, approximately 40 school districts request such waivers.

Study

The committee looked at three aspects of weather- or emergency-related school closures. The first was the financial impact that displaced students had on the neighboring districts in which they enrolled during challenging times. During the floods of 2009, questions were raised regarding enrollment calculations, state aid, attendance reporting, and the manner in which transportation funding would be provided for lost transportation days. The Department of Public Instruction asked school districts to report the number of displaced students they served, the number of days the displaced students were served, the districts from which the students came, and any incremental costs incurred by the receiving districts in providing educational services to the displaced students. Only 14 school districts responded to the request. One hundred forty-nine displaced students had been served and the total incremental costs were $2,200.

The committee was told that state aid is required to go to the district in which the student is actually enrolled and that transportation aid must be paid based on the number of miles actually driven and the number of students actually transported.

The second aspect of weather- or emergency-related school closures that the committee addressed was the academic impact of a significantly shortened instructional time period. Some students missed more than three weeks of school due to flooding. Transported rural students often miss significantly more instructional time because their buses are "late" or must leave before the end of the normal schoolday. Since large metropolitan areas rarely cancel school, their students receive more instructional time than many rural students. While the committee found this particularly troublesome, especially in light of recent legislative efforts to extend the number of instructional days, the committee was unable to suggest viable alternatives. Attempts to extend the normal school year would encounter personnel contract issues. Asking students to return after graduation and make up days was thought to be an unproductive request.

The third aspect of weather- or emergency-related school closures that the committee addressed was the actual waiving of the instructional days. The current law appears to preclude the Governor from waiving less than a full day of instruction. However, if a school district sends its buses home two hours early on a Monday, a Wednesday, and a Friday, the current practice has been to tally the three 2-hour periods, consider them to be an "instructional day," and provide a waiver of a full day. The committee found itself in the position of either articulating the intent that the law be read and applied literally or changing the law to reflect the common practice.

Recommendation

The committee recommends House Bill No. 1030 to clarify that if a school or school district closes for only a portion of its regular schoolday, the hours during which the school or school district is closed may be added together to determine the number of additional full days of instruction that may be waived. While the committee was mindful of the importance that instructional time has on students' overall educational experience and most reluctant to condone the shortening of such time, the committee also understood that the well-being and safety of the state's children must be a top priority. There was a tacit understanding that local school officials are in the best position to make decisions regarding the appropriateness of school closures and that they could be counted on to balance the safety of their students and employees with the need to maximize educational pursuits.

INDIAN EDUCATION

The committee was directed to study Indian education issues and educational delivery to Indian students with a focus on ways to address the unique challenges of that effort and the feasibility and desirability of utilizing contractual options for state-supported educational delivery. Because the latter study is a component of the former, the committee's efforts were consolidated within a single study.

History of Indian Education in the United States

Beginning in the latter half of the 1800s, the federal government's approach to Indian education was based on a goal of total assimilation into mainstream society. This was recognized as a difficult undertaking because it would involve a remolding of the Indian's system of values. However, the thought was that if it could be accomplished, the Indian would become "civilized," like the white man. Limited federal appropriations, unfilled treaty commitments, and conflicting attitudes about the success that efforts at civilization were likely to have meant that the bulk of Indian education was left in the hands of missionaries.

By the latter part of the 19th century, the public's attitude toward Indian education had begun to shift. Reports of the Nez Perce being forced to retreat from their home in western Oregon by the United States Army, the congressionally mandated removal of several northern tribes to Indian Territory (present day Oklahoma) and the subsequent unwillingness of the Ponca to comply, and the flight of the Northern Cheyenne, when coupled with the continued movement of white settlers into Indian Territory and the exposure of graft within the Indian Bureau, raised the specter of white injustice and concern in Congress.

Concurrently, a United States Army captain by the name of Richard Henry Pratt began experiments in the education of Indians. After a long and active military career in the Great Plains, Captain Pratt concluded that in order to save Indians from extinction, Indian youth must be removed to nonreservation settings and then inculcated into civilized ways. Captain Pratt founded the Carlisle Indian boarding school in Carlisle, Pennsylvania, and set forth to prove his theories using both academic and vocational education. Classes to be taken by his students included English, Christianity, art, guard duty, and craftsmanship. His students were prisoners who he had chosen from among those who had surrendered in the Indian Territory at the end of the Red River War. The success of the Carlisle school was acknowledged by a large congressional appropriation.

By the turn of the 20th century, 25 such boarding schools had been opened. At the same time, critics of nonreservation boarding schools began to question whether the training received by the students had any application to reservation life. They argued that these schools trained too few students at too great an expense and that too many "returned to the blanket." Proposed alternatives included reservation boarding schools and reservation day schools. These were far less expensive and were more acceptable to the students' parents. An equally vocal group began to suggest that if the goal of Indian education was ultimate assimilation, this should not be accomplished in isolation, but rather through the public school system.

Between 1900 and 1930, life in Indian country included malnutrition and starvation, increased disease and shortened life expectancies, an unrealistic school system, and an inefficient and ineffective Bureau of Indian Affairs. Suggestions for addressing the situation came in the form of independent studies commissioned by the federal government. As a result, the Bureau of Indian Affairs started encouraging public school enrollment and took steps to reorganize its own schools. However, few of the bureau's schools even had a high school curriculum and those that did still were considered to be far inferior to the public schools. Progress by the bureau was limited at best. Curricular initiatives that focused on providing students with an understanding of their Indian heritage encountered challenges when the bureau realized that very few white teachers were sufficiently versed in Indian culture to allow for its incorporation in the classroom.

While the postwar period saw a tremendous effort to place Indian children in schools, it also was a time of high dropout rates. The assumption was that Indian children were rejecting the education being made available to them. Summer school programs that focused on academics, as well as recreation and field trips, were offered. Even preschool efforts were in place by the early 1960s. Teacher quality and administrative training were examined, as was a "merit system" that allowed teachers of outstanding ability to earn higher salaries or more rapid advancement.

Discussions took place, presidential task forces were formed, studies were conducted by a variety of public and private entities, alternatives were suggested, and few changes were made. With this state of inaction as a background, advocacy groups began to take hold and became a potent force in promoting the concept of self-determination. Their efforts resulted in the 1975 passage of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). This legislation established procedures by which tribes could negotiate contracts with the Bureau of Indian Affairs to administer their own education and social service programs, and it provided direct grants to help tribes develop plans so they could assume responsibility for federal programs. The legislation also attempted to increase parental input in Indian education by guaranteeing the involvement of Indian parents on school boards.

Subsequent amendments to the Indian Self-Determination and Education Assistance Act adopted in the 1980s and 1990s launched self-governance. Under this program, tribes could receive block grants from the Indian Health Service and the Bureau of Indian Affairs to cover a number of programs. By 2000 approximately one-half of the bureau's total obligations to tribes took the form of self-determination contracts or block grants.

The other piece of federal legislation that impacts education in Indian country is the Tribally Controlled School Grants Act of 1988 (25 U.S.C. 2501 et seq.). With this Act, Congress recognized that the Indian Self-Determination and Education Assistance Act was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

Congress also declared that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children to:

- Compete and excel in areas of their choice; and
- Achieve the measure of self-determination essential to their social and economic well-being.

Finally, Congress affirmed that true self-determination in any society is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles; that Indian people have special and unique educational

needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and that those needs may best be met through a grant process.

Bureau of Indian Education-Operated Schools

While the Bureau of Indian Education funds 184 elementary and secondary schools throughout the country, the bureau directly operates only 59 of those schools. Bureau-operated schools have elected local Indian school boards that cooperate and consult with the affected tribes. The Secretary of the Interior is required to consult with the tribes in developing basic education standards, and the tribes are allowed to waive or revise any such standards that they believe to be ill-conceived or inappropriate, provided that they present alternative tribal standards.

Tribal Contract Schools and Tribal Grant Schools

The remaining 125 Bureau of Indian Education-funded schools fall into one of two categories--tribal contract schools or tribal grant schools. As early as the 1960s, tribes began to contract with the Secretary of the Interior to manage schools that had been operated by the bureau. This process became formalized with the Indian Self-Determination and Education Assistance Act of 1975. Schools operated under such contractual arrangements are referred to as "tribal contract schools."

Under the Tribally Controlled School Grants Act of 1988, Congress gave tribes the authority to apply for grants to operate and administer schools that in the past were operated by the Bureau of Indian Affairs or schools that in the past were tribal contract schools. Under the provisions of the Tribally Controlled School Grants Act, tribes may invest their grant funds and use the earned interest and investment income for school operations, support services, and education improvement.

Applicable North Dakota Century Code Provisions

The North Dakota Century Code provides for the payment of state aid to school districts in the state. Each such school district is a body corporate and governed by the provisions of Title 15.1. The laws of this state do not allow for the direct funding of elementary and secondary education-providing entities other than school districts. The laws of this state do authorize school boards to "contract with federal officials for the education of students in a federal school."

As first enacted in 1963, the relevant portion of the Century Code stated:

> The school board may make arrangements for the education of pupils in a federal Indian school and contract with the superintendent of the Indian agency for the payment of tuition for these pupils.

By 1969, however, the section had been amended to state that:

> The school board may make arrangements for the education of pupils in a federal school and contract with federal officials for such education. Such contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district.

This language has been interpreted to refer to schools "operated" by the Bureau of Indian Education.

Study

The committee was told that approximately 11 percent of all students enrolled in North Dakota schools are Indian. Eleven and one-half percent of all special education students in North Dakota are Indian, and the largest number of English language learners in North Dakota are Indian. Ninety percent of the schools in Indian country do not make adequate yearly progress. Schools in Indian country have the lowest graduation rates and the highest dropout rates. The reasons given for this state of affairs include poverty, cultural relevance, the inability to find highly qualified teachers, dysfunctional families, nontraditional families, and a certain lack of understanding about the importance of education in the lives of Indian youth.

The committee reviewed the 25 reservation schools in this state, the various types of funding each receives, and the various statutory and contractual arrangements for their governance. The committee was told that having schools controlled in whole or in part by the Bureau of Indian Education, tribal councils, and elected school boards creates an administrative morass that negatively impacts students.

Being aware of the many attempts by non-Indians over the years to remedy the challenges of providing education in Indian country, the committee asked to hear about the initial efforts of the newly formed North Dakota Indian Education Advisory Council. The council members were appointed by the Superintendent of Public Instruction in consultation with Indian tribes, Indian organizations, and educational organizations, including large school districts that serve Indian students. The council focused its discussion on teacher training and retention, including housing issues, the role of the tribally controlled community colleges, curricular development, and cultural changes, including sovereignty and jurisdiction.

Conclusion

While the committee makes no recommendations for legislation, the committee did recognize that improving educational delivery in Indian country will require continued collaboration and a concerted effort on the part of not only education providers, but also social service providers, health care providers, law enforcement, and parents.

OTHER REPORTS

The committee received statutorily required reports from the Superintendent of Public Instruction regarding the financial condition of school districts; school district employee compensation; the use of new money for teacher compensation; requests for waivers of

accreditation rules; requests for waivers of instructional unit time requirements; scores from tests aligned to the state content standards in reading and mathematics; school districts that had more than $50,000 excluded in the determination of their general fund ending balance; and school districts that received one-time supplemental grants and the expenditures, obligations, or other commitments they incurred as a result of receiving the grants.

The committee also received statutorily required reports from the Statewide Longitudinal Data System Committee, the North Dakota Early Childhood Education Council, the Superintendent of Public Instruction's Advisory Committee on Truancy, and the Autism Spectrum Disorder Task Force.

As required by NDCC Section 15.1-27-41, the Lieutenant Governor, who served as the chairman of the North Dakota Commission on Education Improvement, presented periodic reports. These reports addressed the work of the commission with respect to the delivery and financing of public elementary and secondary education, as well as the commission's recommendations for addressing educational adequacy, the equitable distribution of state education funds, and the allocation of funding responsibility between federal, state, and local sources. The reports also addressed the commission's examination of the state's high school graduation requirements, curricular standards, assessments, and initiatives to improve student performance and instructional quality.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid, and benefits provided under that legislation must be reduced to the level in effect before enactment. In addition, Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System (PERS) Retirement Board to comply with federal requirements. Section 15-39.1-10.11 requires the Teachers' Fund for Retirement (TFFR) Board of Trustees to provide to the committee an annual report regarding the annual actuarial test of the contribution rate for TFFR. Section 18-11-15 requires the committee to receive notice from a firefighters relief association concerning service benefits paid under a special schedule.

The Legislative Management assigned a study of the feasibility and desirability of an appropriation to the Office of Management and Budget (OMB) for a state employee tuition reimbursement pool program. The Legislative Management also assigned a study of the feasibility and desirability of an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency.

Pursuant to Section 54-06-31, the Legislative Management assigned the committee the responsibility to receive periodic reports from OMB Human Resource Management Services (HRMS) on the implementation, progress, and bonuses provided under state agency recruitment and retention bonus programs. Pursuant to Section 54-06-32, the Legislative Management assigned the committee the responsibility to receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service. Pursuant to Section 54-06-33, the Legislative Management assigned the committee the responsibility to receive a biennial report from OMB summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. Pursuant to Section 54-06-34, the Legislative Management assigned the committee the responsibility to receive a biennial report from OMB summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. Pursuant to 2009 S.L., ch. 509, § 1, the Legislative Management assigned the committee the responsibility to receive a report from HRMS on the outcome of its study and evaluation of steps the state could take to recruit and retain state employees in state government employment as those employees reach retirement.

Committee members were Representatives Bette B. Grande (Chairman), David Drovdal, Ralph Metcalf, Francis J. Wald, and Lisa Wolf and Senators Ray Holmberg, Ralph L. Kilzer, Karen K. Krebsbach, and Carolyn Nelson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2010, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents, retirement and health program administrators, interest groups, and other interested persons.

Under Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.

The committee referred every proposal submitted to it to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs and the services of Deloitte Consulting LLP in evaluating proposals that affected the public employees health insurance program. The TFFR Board of Trustees

used the actuarial services of Gabriel, Roeder, Smith and Company in evaluating proposals that affected TFFR.

The committee obtained written actuarial information on each proposal. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators, interest groups, and affected individuals; the impact on state general fund or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 62nd Legislative Assembly.

Teachers' Fund for Retirement

Former Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when TFFR was established with the enactment of Chapter 15-39.1. The plan is managed by the TFFR Board of Trustees.

The Teachers' Fund for Retirement became effective July 1, 1971. The State Investment Board is responsible for the investment of the trust assets in accordance with the asset allocation policy established by the TFFR Board of Trustees. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For Governmental Accounting Standards Board (GASB) purposes, it is a cost-sharing, multiple-employer public employee retirement system.

Every certified teacher of a public school in the state participates in TFFR. This includes teachers, supervisors, principals, and administrators. Noncertified employees, such as teacher's aides, janitors, secretaries, and drivers, are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

An active member contributes 7.75 percent of salary per year. The employer may "pick up" the member's assessments under Internal Revenue Code Section 414(h). The member's total earnings are used for salary purposes, including overtime, and including nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

The district or other employer that employs a member contributes a percentage of the member's salary. This percentage consists of a base percentage of 7.75 percent, plus, since July 1, 2008, additions. Effective July 1, 2008, the employer contribution rate became 8.25 percent, and effective July 1, 2010, the employer contribution rate became 8.75 percent. However, the contribution rate will revert to 7.75 percent once the funded ratio reaches 90.00 percent, measured using the actuarial value of assets. The contribution rate will not automatically increase back to 8.75 percent if the funded ratio later falls back below 90.00 percent. Employees receive credit for service while members. A member also may purchase credit for certain periods, such as time spent teaching at a public school in another state, by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

Members who joined TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. If a Tier 1 member terminates, takes a refund, and later joins TFFR after June 30, 2008, that member is in Tier 2 after being reemployed. Final average compensation is the average of the member's highest three plan year salaries for Tier 1 members or five plan year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount.

Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for three years of service, or if earlier, when the sum of the member's age and years of service is at least 85--the Rule of 85. A Tier 2 member is eligible for a normal service retirement benefit at age 65 with credit for five years of service, or if earlier, when the sum of the member's age and years of service is at least 90--the Rule of 90. The monthly retirement benefit is 2.00 percent of final average compensation (monthly) times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the member's contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A Tier 1 member may retire early after reaching age 55 with credit for three years of service, while a Tier 2 member may retire early after reaching age 55 with credit for five years of service. In this event, the monthly benefit is 2.00 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit 6.00 percent for each year from the earlier of age 65 or the age at which current service plus age equals 85 for Tier 1 members or 90 for Tier 2 members.

A member is eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is 2.00 percent of final average compensation times years of service with a minimum 20 years' of service. The disability commences immediately upon the member's retirement. Benefits cease upon recovery or reemployment. Disability benefits are payable as a monthly life annuity with a guarantee that, at the member's death, the sum of the member's contributions plus interest as of the date of retirement that is in excess of the sum of payments already received will be paid in a lump sum to the member's beneficiary. All alternative forms of payment (except for a nonlevel annuity designed to provide a level total income when combined with the member's Social Security benefit) and a partial lump sum option also are permitted in the case of disability retirement. Disability benefits are converted to a normal retirement benefit when the member reaches normal retirement age or age 65, whichever is earlier. A Tier 1 member with at least three years of service or a Tier 2

member with at least five years of service, who does not withdraw the member's contributions from the fund, is eligible for a deferred termination benefit. The deferred termination benefit is a monthly benefit of 2.00 percent of final average compensation times years of service. The final average compensation and service are determined at the time the member leaves active employment. Benefits may commence unreduced at age 65 or when the sum of the member's age and service is 85 for Tier 1 members or 90 for Tier 2 members. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. The form of payment is the same as for normal retirement. A member who dies after leaving active service but before retiring is entitled to receive a death benefit.

A Tier 1 member leaving covered employment with fewer than three years of service and a Tier 2 member leaving covered employment with fewer than five years of service are eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

To receive a death benefit, death must have occurred while an active or inactive, nonretired member. Upon the death of a nonvested member, a refund of the member's contributions and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit; payment for 60 months of the normal retirement benefit, based on final average compensation and service determined at the date of death; or a life annuity of the normal retirement benefit, "popping-up" to the original life annuity based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

There are optional forms of payment available on an actuarially equivalent basis. These include a life annuity payable while either the participant or the participant's beneficiary is alive, "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member while both the member and beneficiary are alive, reducing to 50.00 percent of this amount if the member predeceases the beneficiary, and "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member, with a guarantee that, should the member die before receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period; a life annuity payable to the member with a guarantee that, should the member die before receiving 240 payments, the payments will be continued to a beneficiary for the balance of the 20-year period; a life annuity payable to the member, with a guarantee that, should the member die before receiving 120 payments, the payments will be continued to the beneficiary for the balance of the 10-year period; or a nonlevel annuity payable to the member, designed to provide a level total income when combined with the member's Social Security benefit. The option to receive a life annuity payable to the member with a guarantee that should the member die before receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period is not available to employees who retire on or after August 1, 2003. Retirees who elected this option before that date are unaffected. In addition, members may elect a partial lump sum option at retirement. Under this option, a member receives an immediate lump sum equal to 12 times the monthly life annuity benefit and a reduced annuity. The reduction is determined actuarially. The member can then elect to receive the annuity benefit in one of the other optional forms, except that members who receive a partial lump sum option may not elect the level income option. The partial lump sum option is not available to disabled retirees or retirees who are not eligible for an unreduced retirement benefit. Actuarial equivalence is based on tables adopted by the TFFR Board of Trustees.

From time to time, TFFR statutes have been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

In 2009 the Legislative Assembly enacted a supplemental benefit for retirees. An individual who retired before January 1, 2009, and was receiving monthly benefits was entitled to receive a supplemental payment from the fund. The supplemental payment was equal to an amount determined by taking $20 multiplied by the member's number of years of service credit plus $15 multiplied by the number of years since the member's retirement as of January 1, 2009. The supplemental payment could not exceed the greater of 10 percent of the member's annual annuity or $750. The Teachers' Fund for Retirement made the supplemental payment in December 2009.

The latest available report of the consulting actuary was dated July 1, 2010. The primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of TFFR, and to analyze changes in TFFR's condition. In addition, the actuarial report provides information required by TFFR in connection with GASB Statement No. 25 and provides various summaries of the data. The valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year. The contribution rates are intended to be sufficient to pay TFFR's normal cost and to amortize TFFR's unfunded actuarial acquired liability over a period of 30 years from the valuation date, although at any given time the statutory rates may be insufficient. A 30-year period is the maximum amortization period allowed by GASB Statement No. 25 in computing the annual required contribution. The 30-year period is in common use for public sector plans and is considered reasonable by the actuary.

In order to determine the adequacy of the 8.75 percent statutory employer contribution rate, it is compared to the GASB Statement No. 25 annual required contribution. The annual required contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year period. For this calculation, payroll is assumed to increase 3.25 percent per year. As of

July 1, 2010, the annual required contribution is 12.79 percent, increased from 10.78 percent on July 1, 2009. This is greater than the 8.75 percent rate currently required by law. The shortfall--the negative margin--between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 30 years is -4.04 percent.

The funded ratio--the ratio of the actuarial value of assets to the actuarial accrued liability--decreased from July 1, 2009. The funded ratio on July 1, 2009, was 77.70 percent, while it was 69.80 percent as of July 1, 2010. Based on market values rather than actuarial values of assets, the funded ratio increased to 54.50 percent, compared to 53.50 percent on July 1, 2009.

The plan had a net asset loss of $404 million from previous years which has not yet been recognized in the actuarial value of assets because of the five-year smoothing mechanism. This unrecognized asset loss is due to large market losses during fiscal years 2008 and 2009. As the unrecognized loss is recognized over the next three years, the annual required contribution is expected to continue to increase and the funded ratio is expected to continue decreasing, assuming the plan earns 8.00 percent in the future, unless contribution rates or benefit rates or benefit provisions are changed.

The Teachers' Fund for Retirement is required to report in its Comprehensive Annual Financial Report for the current fiscal year ending June 30, 2010, that actual contributions received in fiscal year 2010 were less than the annual required contribution. The fiscal year 2010 8.25 percent statutory rate was 76.50 percent of the 10.78 percent annual required contribution determined by the last valuation. Next year, the Comprehensive Annual Financial Report for fiscal year 2011 will show that the 8.75 percent statutory rate is only 68.40 percent of the 12.79 percent annual required contribution. Because TFFR is a cost-sharing, multiple-employer retirement system, there are no other accounting consequences for the state or the other school districts that sponsor TFFR.

The actuarial valuation reflects the benefit and contribution provisions set forth in the North Dakota Century Code. The actuarial consultant noted the effect of two pieces of 2009 legislation. First, legislation enacted in 2009 called for a one-time payment to TFFR retirees in December 2009. A payment of $4.4 million was made due to this legislation. Second, legislation enacted in 2009 increased the employer contribution rate from 8.25 percent to 8.75 percent, effective July 1, 2010. Both of these changes were recognized in the July 1, 2010, valuation.

Actuarial assumptions and methods are set by the TFFR Board of Trustees, based upon recommendations made by the plan's actuary. On January 21, 2010, the Board of Trustees adopted new assumptions, effective for the July 1, 2010, valuation. These new assumptions were recommended by the actuary, following analysis of plan experience for the five-year period ending June 30, 2009. The actuarial consultant reported that it believes the assumptions are internally consistent and are reasonable, based on the actual experience of TFFR. These actuarial assumptions and methods comply with the parameters for disclosure in GASB Statement No. 25. The actuarial consultant noted that results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculation of contribution rates, and funding period.

The fund had 18,382 members on July 1, 2010. Of this total, 9,907 were active members; 6,672 were retirees and beneficiaries; 1,472 were inactive, vested members; and 331 were inactive nonvested members. The total payroll was $465 million. The average pay increased by 3.60 percent, from $45,327 on July 1, 2009, to $46,937 on July 1, 2010. This includes the impact of replacing more highly paid members who retire with new teachers. The average increase in salary for the 9,058 continuing members--members active in both the July 1, 2010, valuation and the July 1, 2009, valuation--was 6.50 percent. The average age of active members decreased from 44.5 years to 44.2 years, and their average service also decreased from 14.3 years to 14.0 years.

The assets at market value were $1,437.9 million with an actuarial value of $1,842.0 million. The return on the market value of assets was 13.90 percent for the period ending June 30, 2010. This compares to -27.00 percent for the period ending June 30, 2009. The return on the actuarial value of assets was -0.50 percent for the period ending June 30, 2010. This compares to 1.70 percent for the period ending June 30, 2009. The ratio of actuarial value to market value was 128.10 percent, and the external cashflow was -3.50 percent. The consulting actuary reported that the normal cost percentage is 10.57 percent, the unfunded actuarial accrued liability increased from $545.6 million to $795.2 million, and the funded ratio--actuarial assets divided by actuarial accrued liability--decreased from 77.70 percent to 69.80 percent. The funding period is infinite. The calculated contribution rate is 12.79 percent and thus the available margin is -4.04 percent (8.75% - 12.79% = -4.04%). The available margin on July 1, 2009, was -2.53 percent.

The following is a summary of the proposals affecting TFFR over which the committee took jurisdiction and the committee's action on the proposals:

Bill No. 2

Sponsor: Representative Francis J. Wald

Proposal: Closes the current defined benefit plan to new members effective July 31, 2011, and replaces the defined benefit plan with a defined contribution plan for all future members.

Actuarial Analysis: The consulting actuary reported that without additional funding or other changes, the current defined benefit plan is projected to eventually run out of funds. However, the defined benefit plan is projected to run out of money sooner under Bill No. 2--fiscal year 2030--than under current law, fiscal year 2040. Bill No. 2 leaves the defined benefit plan with a projected shortfall of $888 million with no funding source, more than double the $423 million shortfall without a funding source under the current plan. The elimination of liabilities for future members in the defined benefit plan is less than the reduction in contributions related to those future members,

leaving the defined benefit plan worse off. At the point the defined benefit plan runs out of funds, the plan's liabilities would still have to be met, and the member-plus-employer contributions needed to pay the benefits in that year would spike to over 47.00 percent of total pay under Bill No. 2 in fiscal year 2031. In contrast, under current law, after the defined benefit plan runs out of funds, the total contributions would jump to just over 30.00 percent of pay. It would require a larger increase in defined benefit contribution rates to adequately prefund the defined benefit plan under Bill No. 2--37.00 percent--than it would under the current open-group structure--26.00 percent. One financial benefit the defined contribution plan gives the state and employers is that it removes risk of employer contribution rate increases due to poor market performance or higher than expected salary increases or longer than anticipated life expectancy, but the bill does so only at a cost. Defined benefit plans tend to favor career employees more than defined contribution plans, so a switch like this would be better for some employees and worse for others. In addition, the defined benefit plan provides meaningful death and disability benefits, while the only death or disability benefit available under the defined contribution plan is a refund of the account balance. A switch to defined contribution moves investment risk and longevity risk for the pooled defined benefit plan and by extension, the employers, to the individual members. The risk is not eliminated. The Teachers' Fund for Retirement would need to provide additional education to its members, both on choosing appropriate investments while working and on managing the distribution of the assets to last for their lifetime.

Committee Report: No recommendation.

Bill No. 39

Sponsor: Representative David Drovdal

Proposal: Creates a third membership tier for TFFR with modified retirement eligibility rules. Members hired on or after July 1, 2011, would belong to the new tier. Tier 3 members would be eligible to retire with an unreduced retirement benefit only if they are vested and at least age 65. Reduced or early retirement benefits would be available to vested members after age 62. The reduction from the age 65 benefit would be based on a special schedule, which results in a reduction of approximately 15 percent plus 5.00 percent for each year younger than age 65.

The committee amended the bill at the request of the sponsor to delay the effective date until July 1, 2012.

Actuarial Analysis: The consulting actuary reported the actuarial cost as follows:

Item	Current Law	Bill No. 39	Difference
Normal cost rate	10.57%	9.34%	-1.23%
UAAL	$795.2 million	$850.6 million	$55.4 million
Funded ratio	69.8%	68.4%	11.4%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.26%	-0.53%
GASB ARC (dollars)	$63.1 million	$60.5 million	-$2.6 million

In summary, the total normal cost rate would decrease from 10.57 percent to 9.34 percent, the actuarial required contribution would decrease from 12.79 percent to 12.26 percent, and the funded status would decrease by 1.40 percent to 68.4 percent. However, even with the changes proposed in this legislation, the statutory contribution rate of 8.75 percent for fiscal year 2011 is still projected to be insufficient to ever fully fund the retirement system.

Committee Report: No recommendation.

Bill No. 40

Sponsor: Representative David Drovdal

Proposal: Reduces the multiplier for new members hired on or after July 1, 2011, to that in effect before the most recent multiplier increase--1.88 percent rather than 2.00 percent.

Actuarial Analysis: The consulting actuary reported the actuarial cost as follows:

Item	Current Law	Bill No. 40	Difference
Normal cost rate	10.57%	10.06%	-0.51%
UAAL	$795.2 million	$818.2 million	$23.0 million
Funded ratio	69.8%	69.2%	-0.6%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.57%	-0.22%
GASB ARC (dollars)	$63.1 million	$62.0 million	-$1.1 million

In summary, the total normal cost rate would decrease from 10.57 percent to 10.06 percent, the actuarial required contribution would decrease from 12.79 percent to 12.57 percent, and the funded status would decrease by 0.60 percent to 69.20 percent. However, even with the changes proposed in this legislation, the statutory contribution rate of 8.75 percent for fiscal year 2011 is still projected to be insufficient to ever fully fund the retirement system.

At the request of the committee, the consulting actuary also calculated the projected impact on cost that would result if both Bill Nos. 39 and 40 were enacted. This analysis is contained in the following schedule:

Item	Current Law	Bill Nos. 39 and 40 on a Combined Basis	Difference
Normal cost rate	10.57%	8.92%	-1.65%
UAAL	$795.2 million	$869.6 million	$74.4 million
Funded ratio	69.8%	67.9%	-1.9%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.08%	-0.71%
GASB ARC (dollars)	$63.1 million	$59.6 million	-$3.5 million

In summary, the total normal cost rate would decrease from 10.57 percent to 8.92 percent; the actuarial required contribution would decrease from 12.79 percent to 12.08 percent, saving 0.71 percent; and the funded status would decrease by 1.90 percent to 67.90 percent. Even with the changes proposed in this legislation, the statutory contribution rate of 8.75 percent is still projected to be insufficient to ever fully fund the retirement system.

Committee Report: The proposal was withdrawn at the request of the sponsor.

Bill No. 54

Sponsor: Board of Trustees

Proposal: Modifies benefits for most current and future members of TFFR, principally by increasing the eligibility requirements for an unreduced (normal) retirement and increasing required contributions for both employers and members. The bill increases both employer and member contribution rates a total of four percentage points in two steps of two percentage points. The employer contribution rate increases from

8.75 percent to 10.75 percent on July 1, 2012, and increases to 12.75 percent on July 1, 2014. The member contribution rate increases from 7.75 percent to 9.75 percent on July 1, 2012, and increases to 11.75 percent on July 1, 2014. The bill also changes the eligibility for an unreduced retirement benefit. Nongrandfathered Tier 1 members and all Tier 2 members would have to be at least age 60 and would have to meet the Rule of 90 to be eligible to retire with an unreduced benefit. A grandfathered member is eligible to retire with an unreduced benefit. A grandfathered member is a Tier 1 member who, on June 30, 2013, is vested, has three years of service, and is at least age 55 or the sum of the member's age and years of service is at least 65. The bill also modifies reduced (early) retirement benefits, makes changes to the disability benefit, and requires that reemployed retired teachers pay the member contribution to TFFR.

Actuarial Analysis: The consulting actuary reported the actuarial cost as follows:

Item	Current Law	Bill No. 54	Difference
Normal cost rate	10.57%	10.30%	-0.27%
UAAL	$795.2 million	$773.3 million	-$21.9 million
Funded ratio	69.8%	70.4%	1.6%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.25%	-0.54%

The table above shows the effect of the changes in the benefit provisions but does not illustrate the effect of the contribution increases. The overall effect of Bill No. 54 is illustrated below. While assets are projected to be exhausted before the year 2040 under the current provisions, the plan's funded status is projected to increase to 80 percent by 2040 under Bill No. 54.

The increase in the employee and employer contributions to the plan has the most significant effect on the projected improvement in the plan's funded status, adding 4.00 percent each to the contributions. Most of the savings from the revised benefit provisions, a 0.49 percent reduction in the annual required contribution, are due to the changes in retirement eligibility and the early retirement reduction factor. The disability changes (eligibility and benefit) reduced the annual required contribution by an additional 0.05 percent. The additional member contributions that will be required of retired members who are reemployed are equivalent to adding 0.12 percent of total pay in contributions to the system (based on the current 7.75 percent member rate).

Therefore, the combination of all these items--the additional contributions and the savings from benefit reductions--when fully phased in is equivalent to a total of 8.66 percent of payroll:

Item	Effect
Require member contributions from reemployed retirees	0.12%
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Change retirement eligibility and early retirement reduction	0.49%
Change disability provisions (eligibility and benefit)	0.05%
Total	8.66%

Comparison of Projected Information Under Current Law and Bill No. 54

Valuation as of July 1	Comparison of Current Plan Provisions				Bill No. 54			
	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2010	8.75%	7.75%	70%	Infinite	8.75%	7.75%	70%	Infinite
2011	8.75%	7.75%	64%	Infinite	8.75%	7.75%	64%	Infinite
2012	8.75%	7.75%	57%	Infinite	10.75%	9.75%	58%	Infinite
2013	8.75%	7.75%	53%	Infinite	10.75%	9.75%	54%	Infinite
2014	8.75%	7.75%	53%	Infinite	12.75%	11.75%	56%	44
2015	8.75%	7.75%	52%	Infinite	12.75%	11.75%	56%	43
2020	8.75%	7.75%	46%	Infinite	12.75%	11.75%	59%	37
2025	8.75%	7.75%	37%	Infinite	12.75%	11.75%	61%	29
2030	8.75%	7.75%	26%	Infinite	12.75%	11.75%	66%	22
2035	8.75%	7.75%	12%	Infinite	12.75%	11.75%	72%	16
2040	8.75%	7.75%	0%	Infinite	12.75%	11.75%	80%	10

Projections are based on July 1, 2010, actuarial valuation.
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.
Funded ratios are based upon actuarial values.

Comparison of Projected Contributions Under Current Law and Bill No. 54

Fiscal Year Beginning July 1	Projected Payroll	Comparison of Current Law Provisions			Bill No. 54			Total Increase
		Employer Contribution Rate	Employee Contributions	Total Contributions (3) + (4)	Employer Contributions	Employee Contributions	Total Contributions (6) + (7)	(8) - (5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2010	$493.5	$43.9	$38.2	$82.1	$43.9	$38.2	$82.1	$0.0
2011	$505.5	$44.9	$39.2	$84.1	$44.9	$39.2	$84.1	$0.0
2012	$519.2	$46.1	$40.2	$86.3	$56.7	$51.4	$108.1	$21.8
2013	$533.9	$47.4	$41.4	$88.8	$58.3	$52.9	$111.2	$22.4
2014	$549.9	$48.9	$42.6	$91.5	$71.2	$65.6	$136.8	$45.3
2015	$566.7	$50.4	$43.9	$94.3	$73.4	$67.6	$141.0	$46.7

Amounts shown in millions.
Projections are based on July 1, 2010, actuarial valuation.
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.
Contribution rates under current law for all years: employee 7.75 percent, employer 8.75 percent.
Contribution rates under Bill No. 54:
Fiscal years beginning July 1, 2012, and July 1, 2013: employee 9.75 percent, employer 10.75 percent.
Fiscal years beginning July 1, 2014, and thereafter: employee 11.75 percent, employer 12.75 percent.

Committee Report: Favorable recommendation.

Bill No. 55

Sponsor: Board of Trustees

Proposal: Modifies benefits for most current and future members of TFFR, principally by increasing the eligibility requirements for an unreduced (normal) retirement and increasing required contributions for both employers and members. The bill increases both employer and member contribution rates a total of four percentage points in two steps of two percentage points. The employer contribution rate increases from 8.75 percent to 10.75 percent on July 1, 2012, and increases to 12.75 percent on July 1, 2014. The member contribution rate increases from 7.75 percent to 9.75 percent on July 1, 2012, and increases to 11.75 percent on July 1, 2014. The bill also changes the eligibility for an unreduced retirement benefit. Nongrandfathered Tier 1 members and all Tier 2 members would have to be at least age 60 and would have to meet the Rule of 90 to be eligible to retire with an unreduced benefit. A grandfathered member is eligible to retire with an unreduced benefit. A grandfathered member is a Tier 1 member who, on June 30, 2013, is vested, has three years of service, and is at least age 55 or the sum of the member's age and years of service is at least 65. The bill also modifies reduced (early) retirement benefits, makes changes to the disability benefit, and requires that reemployed retired teachers pay the member contribution to TFFR.

The bill also contains a one-time general fund appropriation of $75 million to be paid to TFFR on June 30, 2012, and used to reduce the unfunded actuarial accrued liability of TFFR.

Actuarial Analysis: The consulting actuary reported the actuarial cost as follows:

Item	Current Law	Bill No. 55	Difference
Normal cost rate	10.57%	10.30%	-0.27%
UAAL	$795.2 million	$773.3 million	-$21.9 million
Funded ratio	69.8%	70.4%	1.6%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.25%	-0.54%

The table above shows the effect of the changes in the benefit provisions but does not illustrate the effect of the contribution increases or the one-time $75 million appropriation. The overall effect of Bill No. 55 is illustrated below. While assets are projected to be exhausted before the year 2040 under the current provisions, the plan's funded status is projected to increase to 89.00 percent by 2040 under Bill No. 55. The $75 million appropriation is projected to increase the plan's funded status by 2.70 percent when it is contributed in 2012, from 57.80 percent to 60.50 percent.

The increase in the employee and employer contributions to the plan has the most significant effect on the projected improvement in the plan's funded status, adding 4.00 percent each to the contributions. Most of the savings from the revised benefit provisions, a 0.49 percent reduction in the annual required contribution, is due to the changes in retirement eligibility and the early retirement reduction factor. The disability changes (eligibility and benefit) reduced the annual required contribution by an additional 0.05 percent. The $75 million appropriation is projected to produce a 0.92 percent reduction in the annual required contribution on July 1, 2012.

Therefore, the combination of all these items--the additional contributions and the savings from benefit reductions--when fully phased in is equivalent to a total of 8.66 percent of payroll:

Item	Effect
Require member contributions from reemployed retirees	0.12%
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
State appropriation of $75 million at June 30, 2012	0.92%
Change retirement eligibility and early retirement reduction	0.49%
Change disability provisions (eligibility and benefit)	0.05%
Total	9.58%

Comparison of Projected Information Under Current Law and Bill No. 55

Valuation as of July 1	Comparison of Current Plan Provisions				Bill No. 55			
	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2010	8.75%	7.75%	70%	Infinite	8.75%	7.75%	70%	Infinite
2011	8.75%	7.75%	64%	Infinite	8.75%	7.75%	64%	Infinite
2012	8.75%	7.75%	57%	Infinite	10.75%	9.75%	60%	Infinite
2013	8.75%	7.75%	53%	Infinite	10.75%	9.75%	57%	Infinite
2014	8.75%	7.75%	53%	Infinite	12.75%	11.75%	59%	36
2015	8.75%	7.75%	52%	Infinite	12.75%	11.75%	59%	35
2020	8.75%	7.75%	46%	Infinite	12.75%	11.75%	63%	30
2025	8.75%	7.75%	37%	Infinite	12.75%	11.75%	66%	23
2030	8.75%	7.75%	26%	Infinite	12.75%	11.75%	72%	16
2035	8.75%	7.75%	12%	Infinite	12.75%	11.75%	79%	11
2040	8.75%	7.75%	0%	Infinite	12.75%	11.75%	89%	5

Projections are based on July 1, 2010, actuarial valuation.
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.
Funded ratios are based upon actuarial values.

Comparison of Projected Contributions Under Current Law and Bill No. 55									
		Comparison of Current Law Provisions			Bill No. 55				
Fiscal Year Beginning July 1	Projected Payroll	Employer Contributions	Employee Contributions	Total Contributions (3) + (4)	State General Fund Appropriation	Employer Contributions	Employee Contributions	Total Contributions (6) + (7) + (8)	Total Increase (9) - (5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
2010	$493.5	$43.9	$38.2	$82.1	$0.0	$43.9	$38.2	$82.1	$0.0
2011	$505.5	$44.9	$39.2	$84.1	$75.0	$44.9	$39.2	$84.1	$75.0
2012	$519.2	$46.1	$40.2	$86.3	$0.0	$56.7	$51.4	$108.1	$21.8
2013	$533.9	$47.4	$41.4	$88.8	$0.0	$58.3	$52.9	$111.2	$22.4
2014	$549.9	$48.9	$42.6	$91.5	$0.0	$71.2	$65.6	$136.8	$45.3
2015	$566.7	$50.4	$43.9	$94.3	$0.0	$73.4	$67.6	$141.0	$46.7

Amounts shown in millions.
Projections are based on July 1, 2010, actuarial valuation.
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.
Contribution rates under current law for all years: employee 7.75 percent, employer 8.75 percent.
Contribution rates under Bill No. 55:
A one-time $75 million appropriation from the state's general fund will be made on June 30, 2012.
Fiscal years beginning July 1, 2012, and July 1, 2013: employee 9.75 percent, employer 10.75 percent.
Fiscal years beginning July 1, 2014, and thereafter: employee 11.75 percent, employer 12.75 percent.

Committee Report: Unfavorable recommendation.

Bill No. 56

Sponsor: Board of Trustees

Proposal: Makes a number of technical and administrative changes to TFFR, including the definitions of beneficiary and salary, minimum required distributions, maximum benefit limits, death benefits, and rollovers by beneficiaries.

Actuarial Analysis: The consulting actuary reported that none of the changes made by the bill impact the actuarial position of the fund. The change to the death benefits has no material impact on the liabilities or costs, and none of the other changes affect either the contributions or benefits structure of TFFR.

Committee Report: Favorable recommendation.

Bill No. 217

Sponsor: Representative Francis J. Wald

Proposal: Changes the procedure to calculate final average salary for an individual who is a teacher and then becomes an administrator by providing the administrator must complete eight years of service as an administrator before any years as an administrator may be included in the calculation of final average salary.

Actuarial Analysis: The consulting actuary reported that the bill would reduce the liability for the average affected member by $160,000 or less at the time of retirement. Over the last five years, the liability for newly retired members has averaged approximately $99 million per year. Since the consulting actuary assumed there will be one such case every other year, it concluded that the bill would reduce future retirement liabilities by no more than 0.08 percent [($160,000 x 0.5) ÷ $99,000,000]. The consulting actuary calculated that the GASB Statement No. 25 annual required contribution would be reduced by approximately 0.02 percent. That is, the annual required contribution would change from 12.79 percent to 12.77 percent. The impact on the funded ratio and funding period would be immaterial. The consulting actuary noted that while the bill could save as much as indicated, actual savings could be much smaller. The consulting actuary believes that rather than forfeit the use of their highest salaries many administrators will choose to continue in service until they have eight years of service as an administrator. This is especially likely for members who have been administrators for six years or seven years when they want to retire. There would still be some savings because they would have to delay their retirement date, but the savings would be much smaller than indicated.

Committee Report: No recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by Chapter 54-52 and includes the PERS main system, judges' retirement system, National Guard retirement system, law enforcement with prior main service, law enforcement without prior main service, and an optional defined contribution retirement plan; Highway Patrolmen's retirement system; Job Service North Dakota retirement plan; and retiree health benefits fund. The plan is supervised by the Retirement Board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court justices and district court judges are members of the plan but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the Retirement Board. Political subdivision employees are not eligible to participate in the defined contribution retirement plan. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and Chapter 27-17 judges' retirement programs. The Chapter 27-17 judges' retirement program is being phased out of existence except to the extent its continuance is necessary to make payments to retired judges and their surviving spouses and future payments to judges serving on July 1, 1973, and their surviving spouses as required by law.

Members of the main system and judges' retirement system are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85. Members of the National Guard retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service. Members of the law enforcement retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service or when age plus service is equal to at least 85. The retirement benefit for a member of the main system is 2.00 percent of final average salary multiplied by years of service. The retirement benefit for a member of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard and law enforcement retirement systems is 2.00 percent of final average salary multiplied by years of service. A member of the main system is eligible for an early service retirement at age 55 with three years of service, a member of the judges' retirement system is eligible for early service retirement at age 55 with five years of service, and members of the National Guard and law enforcement retirement systems are eligible for early service retirement at age 50 with three years of service. The retirement benefit for a member who elects early service retirement is the normal service retirement; however, a benefit that begins before age 65 or Rule of 85, if earlier, is reduced by one-half of 1.00 percent for each month before the earlier of age 65 or the age at which the Rule of 85 is met. The early service retirement benefit for a member of the judges' retirement system is the normal service retirement; however, a benefit that begins before age 65 or Rule of 85, if earlier, is reduced by one-half of 1.00 percent for each month before age 65. The early service retirement benefit for a member of the National Guard retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 is reduced by one-half of 1.00 percent for each month before age 55. The early service retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 or Rule of 85, if earlier, is reduced by one-half of 1.00 percent for each month before age 55 or the age at which the Rule of 85 is met.

A member of the main system, National Guard retirement system, or law enforcement retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 25.00 percent of the member's final average salary at disability with a minimum of $100 per month. A member of the judges' retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 70.00 percent of the member's final average salary at disability minus Social Security and workers' compensation benefits paid. A member of the main system, National Guard retirement system, or law enforcement retirement system is eligible for deferred vested retirement at three years of service, and a member of the judges' retirement system is eligible for deferred vested retirement at five years of service.

For a member of the main system or judges' retirement system, the deferred vested retirement benefit is the normal service retirement benefit payable at age 65 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 55. The deferred vested retirement benefit for a member of the National Guard retirement system is the normal service retirement benefit payable at age 55. Reduced early retirement benefits may be elected upon attainment of age 50. The deferred vested retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit payable at age 55 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attaining age 50.

The surviving spouse of a deceased member of the main system, the National Guard retirement system, or law enforcement retirement system who had accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contributions with interest; 50.00 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; a continuation portion of a 100.00 percent joint and survivor annuity, only available if the participant was eligible for normal retirement; or a partial lump sum payment in addition to one of the annuity options. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least five years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest or 100.00 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. For members who are not vested or have no surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

Terminated vested members who choose a refund and terminated nonvested members are entitled to a refund of member contributions. Member contributions through June 30, 1981, accumulate with interest at 5.00 percent; member contributions from July 1, 1981, through June 30, 1986, accumulate with interest at 6.00 percent; and member contributions after June 30, 1986, accumulate with interest at 0.50 percent less than the actuarial interest rate assumption.

The standard form of payment for members of the main, National Guard, and law enforcement systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50.00 percent payable to an eligible survivor. Optional forms of payment are life

annuity for judges, a 50.00 percent joint and survivor annuity with "pop-up" for members of the main, National Guard, and law enforcement systems; a 100.00 percent joint and survivor annuity with "pop-up" feature; a 20-year certain and life annuity; a 10-year certain and life annuity; Social Security level income annuity; partial lump sum payment in addition to one of the other annuity options; or effective March 1, 2011, an actuarially equivalent graduated benefit option with either a 1.00 percent or 2.00 percent increase to be applied January 1 of each year. The last option is not available for disability or early retirements or in combination with a partial lump sum option, a deferred normal retirement option, or a Social Security level income annuity. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 120 months of employment.

Except for the employer contribution rate for the National Guard and the law enforcement retirement systems, contribution rates are specified by statute. The contribution rate for a member of the main system is 4.00 percent, and the employer contribution is 4.12 percent. The employee contribution for the judges' retirement system is 5.00 percent, and the employer contribution is 14.52 percent. The contribution rate for a member of the National Guard retirement system is 4.00 percent, and the employer contribution is 6.50 percent. The contribution rate for a member of the law enforcement retirement system with prior main service is 4.00 percent, and the employer contribution is 8.31 percent. The contribution rate for a member of the law enforcement retirement system without prior main service is 4.00 percent, and the employer contribution is 6.43 percent. A part-time employee in the main system contributes 8.12 percent with no employer contribution. Effective January 1, 2000, a member's account balance includes vested employer contributions equal to the member's contributions to the deferred compensation program under Chapter 54-52.2. The vested employer contributions may not exceed $25 or 1.00 percent of the member's salary, whichever is greater, for months 1 through 12 of service credit; $25 or 2.00 percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; $25 or 3.00 percent of the member's monthly salary, whichever is greater, for months 25 through 36 of service credit; and $25 or 4.00 percent of the member's monthly salary, whichever is greater, for service exceeding 36 months. The vested employer contributions are credited monthly to the member's account balance. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit. For many employees, no deduction is made from pay for the employee's share. This is a result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

In 1989 the Legislative Assembly established a retiree health insurance credit fund account with the Bank of North Dakota with the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of PERS and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The employer contribution under PERS was reduced from 5.12 percent to 4.12 percent, under the judges' retirement system from 15.52 percent to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.07 percent to 16.07 percent or 1.00 percent of the monthly salaries or wages of participating members, including participating Supreme Court justices and district court judges, and the money was redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 2010. According to that report, the combined market value of net assets of PERS and the Highway Patrolmen's retirement system was $1,519,023,138, an increase of $158 million compared to $1,360,977,213 a year earlier. This year's combined market value represents an increase of 11.61 percent over the market value one year earlier. The rate of return on the market value basis for the PERS fund was 13.25 percent for the year ended June 30, 2010. The actuarial value of assets is determined by spreading market appreciation and depreciation over five years beginning with the years of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over five years. A characteristic of this asset valuation method is that, over time, it is more likely than not to produce an actuarial value of assets that is less than the market value of assets. This procedure is applied to the combined assets of PERS and the Highway Patrolmen's retirement system income funds to determine the combined actuarial value of the systems. The combined actuarial value was $1,671,048,709 as of June 30, 2008. There is approximately $152 million of depreciation that will be recognized in future years. For the 10-year period ending June 30, 2010, the combined investment results yielded earnings of $756,520,300 on an actuarial value basis representing an average annual return of 5.75 percent. For the 2009-10 year, the actuarial rate of return on the combined value of assets was 1.48 percent. The consulting actuary reported that the funded ratio for PERS declined from 85.1 percent on July 1, 2009, to 73.4 percent on July 1, 2010, and declined from 87.2 percent on July 1, 2009, to 79.8 percent on July 1, 2010, for the Highway Patrolmen's retirement system. The actuarial consultant reported that assets have increased consistently from year to year, although the amount of the increase has varied with fluctuations in investment income. Benefit payments have also increased consistently over that period. Benefit payments and expenses continue to exceed contributions. However, over the past 10 years, the investment income has offset this deficit and served to increase the assets of the system.

The Public Employees Retirement System had 20,668 active members on July 1, 2010. Of this total, 20,372 were active members of the main system,

47 were active members of the judges' retirement system, 30 were active members of the National Guard retirement system, 187 were active members of the law enforcement retirement system with prior main service, and 32 were active members of the law enforcement retirement system without prior main service. The total payroll was $769,710,108 and average salary was $37,242. There were 3,375 inactive members as of July 1, 2010, with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group was $362. There were also 35 members from the main system and 6 members from the National Guard retirement system on a leave of absence. For these groups, a liability is carried for their deferred retirement benefits. There were 2,142 inactive members that are due refunds.

The contribution requirements consist of the normal cost and an administrative expense allowance, plus the cost of amortizing the unfunded actuarial accrued liability over a scheduled period of years. The Retirement Board has adopted an open amortization schedule of 20 years with increasing payments. The statutory contribution rate is 4.12 percent of payroll. The actuarial consultant determined the total employer contribution requirement for the main system is 10.76 percent. Thus, statutory contributions are less than the actuarial contribution requirement by 6.64 percent of payroll. The statutory contribution rate for the judges' retirement system is 14.52 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 14.10 percent. Thus, statutory contributions exceed the actuarial contribution requirement by 0.42 percent of payroll. The contribution rate set by the Retirement Board for the National Guard retirement system is 6.50 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 7.00 percent. Thus, contributions are less than the actuarial contribution requirement by 0.50 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement with prior main service plan is 8.31 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 10.80 percent. Thus, contributions are less than the actuarial contribution requirement by 2.49 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement without prior main service is 6.43 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 7.53 percent. Thus, contributions are less than the actuarial contribution requirement by 1.10 percent of payroll.

A member of the Highway Patrolmen's retirement system is eligible for a normal service retirement at age 55 with at least 10 years of eligible employment or with age plus service equal to at least 80--the Rule of 80. The normal service retirement benefit is 3.60 percent of final average salary for the first 25 years of service and 1.75 percent of final average salary for service in excess of 25 years. A member is eligible for an early service retirement at age 50 with 10 years of eligible employment. The early service retirement benefit is the normal service retirement benefit reduced by one-half of 1.00 percent for each month before age 55. A member is eligible for a disability benefit at six months of service and an inability to engage in substantial gainful activity. The disability benefit is 70.00 percent of the member's final covered salary at disability less workers' compensation, with a minimum of $100 per month. A member is eligible for deferred retirement benefits upon 10 years of eligible employment. The deferred retirement benefit is the normal service retirement benefit payable at age 55 or the Rule of 80, if earlier. Vested benefits are indexed at a rate set by the Retirement Board based upon the increase in final average salary from the date of termination to the benefit commencement date. Reduced early retirement benefits may be elected upon attainment of age 50.

Preretirement death benefits are available to a surviving spouse of a deceased member of the Highway Patrolmen's retirement system who had accumulated at least 10 years of eligible employment. The preretirement death benefit is available as a lump sum payment of the member's accumulated contributions with interest; monthly payment of the member's accrued benefit for 60 months to the surviving spouse; or 50.00 percent of the member's accrued benefit, not reduced on account of age, for the surviving spouse's lifetime. If the deceased member had accumulated fewer than 10 years of service or if there is no surviving spouse, then the death benefit is a lump sum payment of the member's accumulated contributions with interest.

The normal form of benefit for the Highway Patrolmen's retirement system is a monthly benefit for life with 50.00 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are 100.00 percent joint and survivor annuity, a 20-year certain and life annuity, and a 10-year certain and life annuity; a partial lump sum payment in addition to one of these annuity options; or effective March 1, 2011, an actuarially equivalent graduated benefit option with either a 1.00 percent or 2.00 percent increase to be applied January 1 of each year. This last option is not available for disability or early retirements or in combination with a partial lump sum option or a deferred normal retirement option. The final average salary is the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment. Members contribute 10.30 percent of monthly salary, and the state contributes 16.70 percent of the monthly salary for each participating member. A member's contributions earn interest at an annual rate of 7.50 percent compounded monthly.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement system fund is dated July 1, 2010. According to that report, the Highway Patrolmen's retirement fund had net assets with a market value of $44,838,156. This compares to $40,973,620 as of July 1, 2009. The rate of return on the market value basis for the Highway Patrolmen's retirement system fund was 13.29 percent for the year ended June 30, 2010. The actuarial value of assets is determined by spreading the market appreciation and

depreciation over five years beginning with the year of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over a five-year period. A characteristic of this asset valuation method is that, over time, it is more likely than not to produce an actuarial value of assets that is less than the market value of assets. The actuarial value of assets as of July 1, 2010, was $49,325,610. The actuarial value of assets was $50,197,136 on July 1, 2009. Thus, on an actuarial basis, the rate of return on the Highway Patrolmen's retirement system fund was 1.23 percent for the year ended June 30, 2010. Total active membership was 139, and an employer contribution of 22.54 percent of payroll was necessary to meet the normal cost of the Highway Patrolmen's retirement system fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is -5.84 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2010. According to that report, the fund had net assets with a market value of $45,778,797 and an actuarial value of $48,723,475. The rate of return on the market value basis was 17.69 percent for the year ending June 30, 2010. On an actuarial basis, the rate of return was 1.99 percent for that year. Total active membership was 21,047--8,298 males and 12,749 females. The statutory contribution rate is 1.14 percent of payroll. An employer contribution of 0.89 percent of payroll is required to fund the plan. This results in an actuarial margin of 0.25 percent of payroll. The consulting actuary reported that the funded ratio increased from 43.9 percent on July 1, 2009, to 47.4 percent on July 1, 2010. Members are required to participate in the uniform group insurance program, and the current benefit amount is $5 times years of service.

The consulting actuary also reviewed the retirement plan for employees of Job Service North Dakota. The PERS Retirement Board assumed administration of this plan from Job Service North Dakota pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service North Dakota. As of July 1, 2010, the plan had 31 active participants with projected compensation of $1,611,216. There were four inactive employees as of July 1, 2010, with vested rights. There were 122 pensioners and beneficiaries as of July 1, 2010, and 89 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2010. Thus, there were 246 plan participants as of July 1, 2010. The scheduled contribution at the end of the year ending June 30, 2010, was zero, and thus the normal cost was zero. The July 1, 2010, actuarial valuation reported the actuarial value of assets at $73,458,863 with a market value of $77,661,493. The actuarial present value projected benefits is $70,986,876. Effective July 1, 1999, the scheduled contribution will be zero as long as the plan's actuarial value of assets exceeds the actuarial present value of projected benefits. If, in the future, the liabilities of the plan exceed its assets, a "scheduled contribution" will be determined based on the funding policy adopted by the employer.

The following is a summary of the proposals affecting PERS over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 1

Sponsor: Senator Tim Mathern

Proposal: Provides a monthly retiree health credit to former members of the Legislative Assembly, or their surviving spouses, who served at least four years in the Legislative Assembly equal to 50 percent of the monthly credit payable to other eligible members of the retiree health insurance credit fund. The monthly retiree health credit to members of the Legislative Assembly would be calculated at $2.50 multiplied by the member's years of service in the Legislative Assembly, not to exceed 25 years. The bill also requires the Legislative Assembly to contribute monthly to the retiree health insurance credit fund an amount determined by the board sufficient to actuarially fund participation by eligible members of the Legislative Assembly.

Actuarial Analysis: The consulting actuary reported the bill would have no significant actuarial cost impact on the retiree health insurance credit fund.

Committee Report: Unfavorable recommendation.

Bill No. 51

Sponsor: PERS Retirement Board

Proposal: Increases the member contribution rate mandated by statute in the Highway Patrolmen's retirement system, PERS main system for main and judges' members, and the defined contribution plan by 2.00 percent of the member's monthly salary beginning January 2012, plus an additional 2.00 percent increase in member contribution rates each calendar year thereafter through January 2015. The member contribution rates for peace officers and correctional officers in the hybrid plan employed by political subdivisions would increase 1.00 percent instead of 2.00 percent over the same period.

Actuarial Analysis: The consulting actuary reported the bill would not have an actuarial impact on the liabilities of either the hybrid plan or Highway Patrolmen's retirement system. As of July 1, 2010, the main plan had a funding deficit of 6.64 percent of covered payroll based upon a 20-year open amortization method. This means the statutory contributions are less than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the main plan will become insolvent in approximately 2040. Increasing the member contributions by 8.00 percent over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the main plan would no longer be expected to become insolvent in the next 30 years

under the assumed 8.00 percent investment return scenarios.

As of July 1, 2010, the Highway Patrolmen's retirement system plan had a funding deficit of 5.84 percent of covered payroll based upon a 20-year open amortization method. This means the amount of statutory contributions is less than the actuarially required contributions by that amount. This deficit is projected to increase over the next two years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the Highway Patrolmen's retirement system plan will not become insolvent in the next 30 years, but the funding ratio will drop from 80.00 percent to 48.00 percent. Increasing member contributions by 8.00 percent over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the Highway Patrolmen's retirement system plan would have an increase in the funded ratio from 80.00 percent to 94.00 percent over the next 30 years under the assumed 8.00 percent investment return scenarios.

Committee Report: Unfavorable recommendation.

Bill No. 52

Sponsor: PERS Retirement Board

Proposal: Increases the employer contribution rate mandated by statute in the Highway Patrolmen's retirement system, hybrid plan for main and judges' members, and defined contribution plan by 2.00 percent of the member's monthly salary beginning January 2012, plus an additional 2.00 percent increase in employer contribution rates each calendar year thereafter through January 2015. The board sets the rate for the law enforcement plans and has indicated that it would increase those rates in a manner consistent with the statutory rate changes. In addition, the proposed legislation would increase the member contribution rate mandated by statute only for temporary employees of the hybrid plan and defined contribution plan by 2.00 percent of the member's monthly salary beginning January 2012, plus an additional 2.00 percent increase in member contribution rates each calendar year thereafter through January 2015.

Actuarial Analysis: The consulting actuary reported the proposal would not have an actuarial impact on the liabilities of either the hybrid plan or the Highway Patrolmen's retirement system. As of July 1, 2010, the main plan had a funding deficit of 6.64 percent of covered payroll based upon a 20-year open amortization method. This method means the statutory contributions are less than the actuarially acquired contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the main plan will become insolvent in approximately 2040. Increasing the member contributions by 8 percent over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicated that the main plan would no longer be expected to become insolvent in the next 30 years under the assumed 8.0 percent investment return scenarios.

As of July 1, 2010, the Highway Patrolmen's retirement system plan had a funding deficit of 5.84 percent of covered payroll based upon a 20-year open amortization method. This means that the amount of statutory contributions is less than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the Highway Patrolmen's retirement system plan will not become insolvent in the next 30 years, but the funding ratio will drop from 80.00 percent to 48.00 percent. Increasing the member contributions by 8.00 percent over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the Highway Patrolmen's retirement system plan would have an increase in the funded ratio from 80.00 percent to 94.00 percent over the next 30 years under the assumed 8.00 percent investment return scenarios.

The bill also would increase the employer contributions for the judges' retirement system plan. The employer contributions for the law enforcement plans and National Guard plans are set by the PERS Board, and it has indicated that those contributions will rise as well based upon the legislative action for the other system.

Committee Report: Unfavorable recommendation.

Bill No. 53

Sponsor: PERS Retirement Board

Proposal: Increases both the employer contribution rates and the member contribution rates that are mandated by statute in the Highway Patrolmen's retirement system, hybrid plan for main and judges' members, and defined contribution plan by 1 percent of the member's monthly salary beginning January 2012, plus an additional 1.00 percent increase in both employer and member contribution rates each calendar year thereafter through January 2015. The proposal also would increase member contribution rates for peace officers and correctional officers in the hybrid plan employed by political subdivisions, for which the member contribution rate would increase by 0.50 percent annually, instead of 1.00 percent, over the same time period, and for temporary employees in the hybrid plan and defined contribution plan, for which the member contribution rate would increase by 2.00 percent annually, instead of 1.00 percent, over the same period.

Actuarial Analysis: The consulting actuary reported the proposal would not have an actuarial impact on the liabilities of either the hybrid plan or Highway Patrolmen's retirement system. As of July 1, 2010, the main plan had a funding deficit of 6.64 percent of covered payroll based upon a 20-year open amortization method. This means the statutory contributions are less

than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the main plan will become insolvent in approximately 2040. Increasing the member contributions by 8.00 percent over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicated the main plan would no longer be expected to become insolvent in the next 30 years under the assumed 8.00 percent investment return scenarios.

As of July 1, 2010, the Highway Patrolmen's retirement system plan had a funding deficit of 5.84 percent of covered payroll based upon a 20-year open amortization method. This means the amount of statutory contributions is less than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the actuarial value of assets. Projections of future funded status have indicated that unless this gap is addressed, the Highway Patrolmen's retirement system plan will not become insolvent in the next 30 years, but the funding ratio will drop from 80.00 percent to 48.00 percent. Increasing the member contributions by 8.00 percent over the period January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the Highway Patrolmen's retirement system plan would have an increase in the funded ratio from 80.00 percent to 94.00 percent over the next 30 years under the assumed 8.00 percent investment return scenarios.

The bill also would increase the employer contributions for the judges' retirement system plan. The employer contributions for the law enforcement plan and National Guard plan are set by the PERS Board, and it has indicated that those contributions will rise as well based upon the legislative action for the other systems.

Committee Report: Favorable recommendation.

Bill No. 59

Sponsor: PERS Retirement Board

Proposal: Clarifies that employees of the North Dakota University System who are members of PERS, including members of the defined contribution plan, and are entitled to participate in the alternate retirement programs, may make a special annuity purchase in such alternate retirement programs; eliminates the 60-month certain option as a form of payment for surviving spouses in the Highway Patrolmen's retirement system; calculates benefits for members of the Highway Patrolmen's retirement system who have membership in more than one retirement system using the highest salary received for 36 months, regardless of whether such months are consecutive, within the last 120 months of employment; changes the pool of candidates for a board member who is elected by retirees to exclude those individuals who are eligible for a deferred vested benefit but not yet retired; changes the normal retirement date for peace officers and correctional officers in the hybrid plan to age 55 and three years of employment in such officer positions, regardless of whether employment in such officer positions immediately precedes retirement; for purposes of payment of a member's account balance at death, clarifies that any surviving beneficiary who dies before receiving a distribution of such account balance is treated as predeceasing the member; permits conversion of sick leave to retirement credit under the hybrid plan at any time, rather than within 60 days of termination of employment only; clarifies that a surviving spouse of a retiree may continue to participate in the uniform group insurance program by paying the required premiums; updates federal compliance provisions of the hybrid plan and the Highway Patrolmen's retirement system; and updates the employer contribution pickup process.

Actuarial Analysis: The consulting actuary reported the proposal would not have a significant actuarial cost impact on the hybrid plan or the Highway Patrolmen's retirement system.

Committee Report: Favorable recommendation.

Bill No. 80

Sponsor: Representative Francis J. Wald

Proposal: Closes main employee participation in the PERS hybrid plan, which is a defined benefit plan, to new state employees first hired after July 31, 2011. New main system employees would participate in the defined contribution plan.

Actuarial Analysis: The consulting actuary reported the proposed legislation would affect the cost of PERS in a number of ways.

If the statutory contribution rate were to be adjusted to achieve full funding, the increase would be higher under the proposed legislation than it would be under the current plan. Based on the most recent available data, the rate to achieve full funding would increase from 17.41 percent to 23.91 percent for the main system (state only).

If the statutory contribution rate is not adjusted, the projected date that the main system's assets that are allocated to state employees will be exhausted is projected to be earlier under the proposed legislation (2031) than the current plan (2037).

When the plan's assets are exhausted, the plan's liabilities would still have to be met. Under Bill No. 80, the employer contributions needed to pay ongoing benefits are projected to rise to over 26.00 percent of payroll in the year that the funds are depleted. Under the current plan for the main system, the employer contributions needed to pay ongoing benefits are projected to rise to 23.00 percent of payroll in the year that the funds are depleted.

The proposed defined contribution plan does not provide the same level of spouse or disability benefits as the current plan. Also, the proposed defined compensation plan does not contain the portability enhancement provision that provides an incentive for supplemental retirement savings under the hybrid plan.

If the proposed legislation were adopted, then there will be further challenges to the current method of providing ad hoc adjustments to retiree benefits since contributions to the hybrid plan will be reduced.

Bill No. 80 shifts the investment risk from the employer to the individual members. Investment education will be needed to help the member with this added responsibility.

The proposed defined contribution plan is not sufficient to provide the same level of retirement security that current hybrid plan members receive. An increase to the defined contribution plan contribution to provide comparable retirement security would result in a large increase in the cost of the proposed legislation.

The current bill would close PERS to future state employees only. Since 48.00 percent of the active population is employed by political subdivisions, the defined benefit plan could be modeled as if it were an open plan. That is, if the bill were to pass, the plan would continue to add new entrants but at a slower rate than under the current plan. However, this would create an equity issue involving the contribution rate.

Since the plan is funded with contributions that are a percentage of active payroll, the political subdivisions, by continuing to add active members would assume a larger and larger share of the burden of paying off the unfunded actuarial accrued liability. Although the bill does not prevent the political subdivisions from adding new entrants, there is no reason to assume they would continue to do so if it meant they would be responsible for more than their fair share of the cost of the plan. These subdivisions could choose to stop adding new entrants and could withdraw from PERS at any time, in which case they would only be responsible for paying off the unfunded actuarial accrued liability for their own participants.

The only practical way the plan could continue as an open plan would be if the main system were divided so that state employees made up a single cost group. This would mean the state would be responsible for paying off the unfunded actuarial accrued liability associated with state employees. We have assumed that if the bill passed, state employees would make up a separate cost group as of July 1, 2011. By doing this, we can accurately reflect the state's funding obligation, which is independent from what the political subdivisions choose to do.

Impact on System's Assets

If the main system were closed to new state employees, the state employees' segment of the assets would be exhausted in 2031 if the current statutory contribution rate were left unchanged.

Closing the plan to new members reduces the plan's future liabilities but it also removes an important funding source. These do not counterbalance each other. Contributions to the defined benefit plan are reduced as soon as new members and their associated contributions are diverted to the defined contribution plan, but benefit payments from the defined benefit plan are not affected for many years. It will become increasingly difficult to make up the funding shortfall as the payroll of active members decreases.

Another way to look at this is as follows:

- Under Bill No. 80, the actuarial present value of all future benefits for main system state employees, determined as of July 1, 2010, is $2,779 million. This includes the actuarial present value of future benefits for current annuitants; current active members; current inactive, vested members; and all future members assuming the active population remains constant.
- The actuarial present value of future member contributions is $524 million, and the actuarial present value of future employer contributions is $540 million.
- The estimated market value of assets on July 1, 2010, is $1,001 million.
- Therefore, there is a net liability shortfall of $714 million without a funding source.

While the total value of all benefits to be earned in the future is smaller under the bill, there are two important points to note. First of all, under Bill No. 80 the defined benefit plan shortfall is nearly as big as it is under the current plan, but the defined benefit payroll is declining under Bill No. 80, so it may be more difficult to make up the shortfall.

Please note that the estimates in these charts are extremely sensitive to the projected valuation results and the actuarial assumptions used.

Impact on Contribution Requirements

One way to measure the effect of the bill on the cost of the plan is to calculate the contribution rate to fully fund the plan so that assets will be available to pay all benefits. Note that this rate is different from the actual contribution rate, which is set in statute and does not reflect the true cost of the plan. Relative to the current defined benefit plans, the proposed bill would increase the immediate cost of the plans. This is primarily due to the fact that the unfunded actuarial accrued liability could no longer be amortized over the future payroll that is expected to grow by 4.50 percent per year.

The following table shows the estimated total contribution requirements as of July 1, 2011. These estimates are based on the July 1, 2010, actuarial valuation results, including the asset information, participant data, and actuarial assumptions on which that valuation was based. The "current plan" uses amortization of the unfunded actuarial accrued liability over 20 years as a level percent of payroll, which is assumed to increase 4.50 percent per annum. The "closed plan" amortizes the unfunded actuarial accrued liability as a percentage of projected payroll of the group that is closed as of July 31, 2011.

Estimated Total* Contribution Requirements to Achieve Full Funding

	Current Plan		Closed Plan	
	Amount (000's)	Percentage of Payroll	Amount (000's)	Percentage of Payroll
Main system (state only)	$80,252	17.41%	$110,214	23.91%

*Employer plus member contributions.

Note that the costs of the defined benefit plans are projected to increase in the future for the following reasons:

- Closing the defined benefit plan will ultimately require changes in asset allocation that will likely produce lower investment returns. This will increase the unfunded actuarial accrued liability and the actuarial contribution requirement. Note that we have not taken any asset reallocation into account in this analysis and have instead used the same long-term expected return for the projection period.
- For the main system, the statutory contribution rate is currently less than the actuarially determined contribution rate, which leads to actuarial losses each year.

Since the state has a number of options in adjusting the funding policy to meet the obligation, we have assembled a number of charts to illustrate various options.

Impact on Reporting

Another effect of the bill worth noting deals with the requirements of the GASB. The Governmental Accounting Standards Board requires the determination of an annual required contribution. The Public Employees Retirement System is required to disclose in the supplemental schedule to its financial statement the actual amount of employer contributions received and what percentage the annual required contribution represents.

Governmental Accounting Standards Board Statement No. 25 sets certain parameters to be used in calculating the annual required contribution. Generally, the annual required contribution must include the normal cost, reduced for the share paid member contributions, and an additional charge to amortize the unfunded actuarial accrued liability. The amortization period may not exceed 30 years. A plan open to new members may determine the amortization charge as a level percentage of payroll, which is assumed to increase. The Public Employees Retirement System currently uses an amortization period of 20 years with assumed payroll increases of 4.50 percent per annum. When a plan is closed to future members, though, GASB Statement No. 25 requires that the amortization charge be computed as either a flat dollar amount or decreasing amount in line with expected decreases in covered payroll. The following table shows the employers' annual required contribution for the 2011-12 fiscal year using amortization charges that increase at 4.50 percent each year and level dollar amortization:

Plan	ARC Rate* (4.5 Percent Payroll Growth)	ARC Rate* (Level Dollar)	Statutory Employer Contribution Rate
Main system (state only)	12.8%	16.01%	4.12%

*Expressed as a percentage of covered payroll.

Committee Report: No recommendation.

Uniform Group Insurance Program

Bill No. 9

Sponsors: Senators Carolyn Nelson and Rich Wardner

Proposal: Modifies the uniform group insurance program by requiring the PERS Board to provide coverage for the diagnosis and treatment of an autism spectrum disorder in an eligible individual; defines an eligible individual as being under age 18, under age 26 and attending a postsecondary education institution, for over age 18 and in high school but diagnosed as having a developmental disability at age 8 or under; and provides coverage that is not subject to any limit on the number of visits but provides a limit on benefits to a maximum of $25,000 per year and a lifetime maximum of $75,000.

The committee amended the proposal at the request of the sponsors to delete the definition of eligible individual and the dollar limits on coverage.

Actuarial Analysis: The consulting actuary reported that PERS currently purchases health insurance on a fully insured basis from Blue Cross Blue Shield of North Dakota. Based on the November 2004 autism prevalence report from Fighting Autism, the consulting actuary estimated approximately 85 PERS members would receive treatment for autism spectrum disorder at a cost to the plan of $25,000 to $35,000. This equates to a per member per month cost of $3.08 to $4.31 or approximately $2,125,000 to $2,975,000 annually.

Committee Report: No recommendation.

Bill No. 36

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and other individuals as well as allowing agents to sell the group insurance program and receive commissions.

Actuarial Analysis: The consulting actuary reported the bill expands the uniform group insurance program, which is fully insured with Blue Cross Blue Shield of North Dakota for medical and hospital coverage. As outlined, the uniform group may be divided into separate subgroups at the discretion of the board. If the separate subgroups would be allowed to have stand-alone premiums based on their expected costs, the financial impact to the existing PERS plan would be limited to the additional administrative costs to oversee the plan, operate much like an insurance company, and any required changes to comply with the new legislation, e.g., loss of grandfathered status.

The board has the authority to have one subgroup for all private sector employee and private citizen group medical and hospital benefits coverage. Each of these distinct categories has unique underwriting and legal standards with regard to medical underwriting requirements and risk-adjusted premiums. This complexity will make it very difficult to combine all three categories into one subgroup for premiums and find an insurer willing to cover the risk.

Section 4 of the bill would allow private sector employers to extend the benefits of the uniform group

insurance program to a subset of its permanent employees who are at least aged 50 but have not reached the age of 65, with a minimum participation period of 60 months. The employer may determine the amount of the employer's monthly contribution, and the board may apply medical underwriting requirements and risk-adjusted premiums to an employer seeking to obtain coverage. The Health Insurance Portability and Accountability Act essentially eliminates the ability for a group health plan to use any individual underwriting for evaluating individual prospective plan participants. However, group underwriting and risk-adjusted premiums are permitted.

Section 5 of the bill would allow private sector employers to extend the benefits of the uniform group insurance program to a temporary employee who is at least age 50 but has not reached the age of 65. Temporary employees traditionally are excluded from group coverage due to the potential adverse selection. The temporary employee is responsible for premiums, and the board may deny coverage if the risk of the individual is undesirable for the program. The Health Insurance Portability and Accountability Act portability and nondiscrimination standards do not apply to individual coverage. However, insurance carriers can individually underwrite all applicants for underlying risk characteristics and evaluate individuals for acceptance into the program. This requirement would be labor-intensive and require the uniform group insurance program to operate much like a traditional insurance company.

Section 6 of the bill would allow an individual who is at least age 50 but has not reached the age of 65 to participate in the uniform group insurance program. The temporary employee is responsible for premiums, and the board may deny coverage if the risk of the individual is undesirable for the program. Once again, the Health Insurance Portability and Accountability Act portability and nondiscrimination standards do not apply to individual coverage. However, individual insurance carriers can individually underwrite all applicants for underlying risk characteristics and evaluate individuals for acceptance into the program. This requirement would be labor-intensive and require the uniform group insurance program to operate much like a traditional insurance company.

The bill did appropriate the sum of $300,000 and authorized three additional full-time equivalent positions to implement this Act. It should be noted that administrative costs for individual plans are significantly higher than for group plans. Without a study to determine if the additional funding and staff allocations would be adequate to cover the added administrative services required due to the expansion of the program, it is difficult to determine if this funding level is adequate. An additional study is suggested to estimate the administrative requirements to PERS if this bill progresses.

For the biennium beginning July 1, 2011, the PERS group health insurance plan intends to be a "grandfathered plan." Section 1251 of the Patient Protection and Affordable Care Act exempts from certain of the Patient Protection and Affordable Care Act's group health plan reforms any group health plan in existence on March 23, 2010 ("grandfathered plans"). Losing grandfathered status means losing the benefit of the exemption and subjecting the plan to additional requirements, such as mandatory coverage for certain preventive services, nondiscrimination rules for fully insured plans, and special claims procedure requirements.

Interim final regulations dated June 17, 2010, state that if the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

If PERS were to lose its grandfathered status, the following additional mandates may apply subject to final rules and regulations:

1. Meet the rules on deductible maximums and out-of-pocket maximums.

   We believe that this will have little or no impact since the maximums would most likely align with the levels associated with health savings account-qualified plans.
2. Required coverage of preventive services with no cost-sharing (Blue Cross Blue Shield of North Dakota has indicated that complying with this could cost between $10 to $14 per contract per month).

   As we understand it, the plan would need to cover additional amounts beyond the $200 limit currently in place for this benefit. We believe that this will have a cost impact. We do not have the level of claim detail that Blue Cross Blue Shield has to develop such an estimate at this time. We would be happy to review the information and cost development by Blue Cross Blue Shield.
3. Internal and external appeal process.

   We believe that this should be of minimal cost impact but would increase administrative costs for PERS.
4. No prior authorization for obstetrician and gynecologist visits.

   Based on our experience with clients that allow obstetrician and gynecologist visits without prior authorization, we suspect that this would have minimal cost impact.
5. Emergency care must have same payment in and out-of-network authorization.

   Again, we suspect that the cost impact will be minimal given that it is for emergency care only.
6. Nondiscrimination in both insured and self-insured plans.

   Should not be an issue for the PERS plan.
7. Coverage of treatment for those in clinical tests.

   We would expect that this would have some cost impact but depends upon the future guidance on clinical trial qualification and coverage levels.

Adverse risk selection is an issue that must be considered when changing eligibility requirements. Adverse risk selection results when individuals or employer groups choose to participate in a plan based upon the knowledge that their individual or group claims will be high. These claims, especially for older and temporary workers, are generally higher than that of the average covered PERS population. The adverse selection is further fueled when individuals or groups can enter and depart from the plan.

The proposed bill provides for a number of safeguards against adverse risk selection:

- Minimum requirements as established by the PERS Board.

  The board is permitted to establish minimum requirements to reduce the potential for adverse risk selection. These would likely follow established insurance practices, such as experience rating, medical underwriting, and the authority to deny coverage to private employers or individuals who exceed the risk profile of the existing PERS group.
- Minimum participation period of 60 months for private sector employer groups.

  Eligible employer groups would be expected to participate for a minimum of 60 months. However, if a group withdraws from the plan before completing the 60-month period, the employer would be liable for additional premium payments to cover expenses incurred by the program exceeding the premium income received. This safeguard will make the PERS plan financially "whole" for those employers attempting to leave in a "deficit" position. However, this safeguard does not protect the PERS plan from the risk of premature withdrawal by better-than-average cost employers. In other words, "healthy" employer groups could leave for lower premiums elsewhere.
- Health Insurance Portability and Accountability Act.

  We do not feel this bill will have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure the introduction of these additional members will not increase the overall risk profile of the existing plan. The bill as written states that employers, employees, and uninsured individuals may participate in the uniform group insurance program "subject to minimum requirements established by the board" and "apply medical underwriting requirements and risk-adjusted premiums."

  However, in 1996 the federal government passed the Health Insurance Portability and Accountability Act. In particular, the nondiscrimination rules severely restricted the use of medical underwriting and risk-adjusted premiums for group health care coverage. Therefore, the state needs to understand whether the Health Insurance Portability and Accountability Act prohibits PERS from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program.

Due to the participation requirement of aged 50 to 65 for private employees and private citizens, the risk status of the proposed new participants in the uniform group insurance program is likely to be significantly greater than the current program's risk status requiring higher premiums. Typically a 50- to 65-year-old employee will incur claims expenses 50 percent to 70 percent higher than an average employee. The result will be an increase in the total risk of the program, which translates into an increase in average claims costs and potentially higher administrative fees. In other words, it can be expected that premiums for this 50- to 65-year-old group will be 50 percent to 70 percent higher than the existing PERS premiums and could require a significant increase in administrative fees.

Committee Report: Unfavorable recommendation.

Bill No. 38

Sponsor: Senator Tim Mathern

Proposal: Authorizes the Department of Human Services to negotiate with state and federal entities to purchase PERS health insurance coverage for each Medicaid-eligible person in lieu of Medicaid coverage.

Actuarial Analysis: The consulting actuary reported the bill authorizes the Department of Human Services to consider purchasing PERS coverage for Medicaid. The bill does not provide any similar authorization to PERS to extend such coverage to Medicaid participants or set the parameters for such an offering. This has the following implications:

1. The Public Employees Retirement System statute would need to be modified to allow offering this coverage. Public Employees Retirement System Statute 54-52.1 would need to be altered as:
   a. The Public Employees Retirement System is designed around active employees, temporary employees, and retirees. This group would need to be identified as eligible in statute.
   b. The Public Employees Retirement System has specific subgroups for the above membership groups. Medicaid participants would need to be identified within the existing subgroups or identified separately.
   c. Eligibility processes would need to be set up in statute.
2. Currently, PERS only has one plan design, and it would not meet the federal cost-sharing requirements. Medicaid-eligible participants adopting the PERS benefit design would be subject to higher deductibles, copays, and coinsurances for the Medicaid-eligible members as compared with their current Medicaid plan design copays. It would require submission of a state plan amendment but more likely a waiver

as PERS plan design costs will clearly exceed 5 percent of income for many Medicaid enrollees (the statutory cap set by the Centers for Medicare and Medicaid Services). It is highly unlikely that a state amendment or waiver would be approved for this level of cost-sharing.

3. The Public Employees Retirement System purchases health insurance on a fully insured basis from Blue Cross Blue Shield of North Dakota. The Public Employees Retirement System is set up to charge premiums to the members through employers. This group would require a substantially different billing arrangement. Statutory procedures would need to be established within PERS and the Department of Human Services for payment and administrative services.

Medicaid plans are regulated by the Centers for Medicare and Medicaid Services and are extremely complex. Most states have a substantial staff dedicated to the administration of the program. Without a study to determine needed staffing by PERS and Blue Cross Blue Shield of North Dakota, it is difficult to estimate with any confidence the additional administrative costs to take on such a group of individuals.

For the biennium beginning July 1, 2011, the PERS group health insurance plan intends to maintain its status as a "grandfathered plan." Section 1251 of the Patient Protection and Affordable Care Act exempts from certain of the Patient Protection and Affordable Care Act's group health plan reforms any group health plan in existence on March 23, 2010 ("grandfathered plans"). Losing grandfathered status means losing the benefit of the exemption and subjecting the plan to additional requirements, such as mandatory coverage for certain preventive services, nondiscrimination rules for fully insured plans, and special claims procedure requirements.

Interim final regulations dated June 17, 2010, state that if the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan. If PERS were to lose its grandfathered status, the following additional mandates may apply subject to final rules and regulations:

1. Meet the rules on deductible maximums and out-of-pocket maximums.

   We believe this will have little or no impact since the maximums would most likely align with the levels associated with health savings account-qualified plans.

2. Required coverage of preventive services with no cost-sharing (Blue Cross Blue Shield of North Dakota has indicated that complying with this could cost between $10 to $14 per contract per month).

   As we understand it, the plan would need to cover additional amounts beyond the $200 limit currently in place for this benefit. We believe that this will have a cost impact. We do not have the level of claim detail that Blue Cross Blue Shield has to develop such an estimate at this time. We would be happy to review the information and cost development by Blue Cross Blue Shield.

3. Internal and external appeal process.

   We believe that this should be of minimal cost impact but would increase administrative costs for PERS.

4. No prior authorization for obstetrician and gynecologist visits.

   Based on our experience with clients that allow obstetrician and gynecologist visits without prior authorization, we suspect that this would have minimal cost impact.

5. Emergency care must have same payment in and out-of-network authorization.

   Again, we suspect that the cost impact will be minimal given that it is for emergency care only.

6. Nondiscrimination in both insured and self-insured plans.

   Should not be an issue for the PERS plan.

7. Coverage of treatment for those in clinical tests.

   We would expect that this would have some cost impact but depends upon the future guidance on clinical trial qualification and coverage levels.

If the Medicaid-eligible individuals are included in the same experience pool as the existing PERS population and are considered in the PERS premium rate calculations, there will be a financial impact to the existing PERS group health plan. The size and impact of this change on PERS group health plan premium rates would require further detailed analysis but would likely significantly increase premium costs. Also, an assessment will need to be done if the PERS statute is modified that would be based upon these changes to determine the effect it would have on the GASB 45/OPEB liability for the state of North Dakota.

This will also have a general cost effect on the state since Medicaid provides reimbursement rates lower than commercial health insurance reimbursement. As PERS purchases insurance from Blue Cross Blue Shield of North Dakota, the change from the Medicaid fee schedule to a commercial fee schedule will increase costs to the state for the same services.

States that wish to adopt alternate cost-sharing allowed under Social Security Act Section 1916A must provide for public comment on the proposed state plan amendment before submitting it to the Centers for Medicare and Medicaid Services. If the amended state plan would allow a family's aggregate cost-sharing obligations to exceed 5 percent of income, the proposed state plan amendment must describe (1) the methodology the state will use to identify for providers the patients and/or services not subject to cost-sharing; (2) the methodology the state will use to track the cost-sharing paid by families so they do not exceed the 5 percent aggregate limit for the state's designated period of eligibility; and (3) how beneficiaries may

request a redetermination of their cost-sharing responsibility when their income is reduced or their assistance has been terminated for failure to pay premiums. The state plan amendment also must specify how providers will be able to determine whether a beneficiary may be required to pay cost-sharing before receiving services.

Because Medicaid is a joint federal-state program, the state of North Dakota receives matching funds from the federal government to subsidize the program. If the state purchases PERS health insurance coverage for these participants, it is possible the state will lose its federal Medicaid subsidy if viewed as no longer being enrolled in Medicaid.

Committee Report: Unfavorable recommendation.

Bill No. 60

Sponsor: PERS Retirement Board

Proposal: Modifies the uniform group insurance program to allow another low-cost coverage option for retired employees not eligible for Medicare, allows the board to receive separate bids for prescription drug coverage, allows the board to consider self-insurance of the health insurance benefits as well as part or all of the prescription drug coverage, and establishes a target range of contingency reserve funds and a timeline to meet the reserve requirement.

Actuarial Analysis: The consulting actuary reported the bill expands the options made available to the PERS Retirement Board and should not have any financial impact and will allow for exploration of plan and funding alternatives that could save costs in the future.

Committee Report: No recommendation.

Bill No. 68

Sponsor: Senator Tim Mathern

Proposal: Enables the establishment of member-run, nonprofit health insurance entities.

Actuarial Analysis: The Public Employees Retirement System purchases health insurance on a fully insured basis from Blue Cross Blue Shield of North Dakota. The bill does not directly affect PERS but could establish an alternative member-run, nonprofit entity that would be an additional alternative for PERS and its members to consider. The bill should have no financial impact as members would continue to receive coverage from the PERS uniform group insurance program.

Committee Report: The committee waived jurisdiction over the bill.

Bill No. 103

Sponsor: Representative Al Carlson

Proposal: Requires the PERS Board to implement and administer a consumer-directed health savings account option for eligible employees. The bill allows the board to adopt incentives to encourage participation by eligible employees in a consumer-directed health savings account option implemented by the board.

Actuarial Analysis: The consulting actuary reported that offering a high-deductible plan as described in the proposal will have a potential impact on the overall program's cost. Blue Cross Blue Shield of North Dakota evaluated a high-deductible health plan offering for the 2009-11 plan years. It found that one could have a cost-neutral plan if offered as full replacement. However, if offered as an optional plan, overall premiums increase 2.00 percent.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The PERS Board reported that no action by the committee was required under Section 54-52.1-08.2 to approve terminology adopted by the board to comply with the federal requirements. However, in a recent Internal Revenue Service review of PERS, the Internal Revenue Service recommended that PERS specifically identify which federal statutes it is in compliance with rather than general references to the Internal Revenue Code. These changes are contained in Employee Benefits Programs Committee Bill No. 59. The committee was not notified by a firefighters relief association pursuant to Section 18-11-15(5) that requires the Employee Benefits Programs Committee to be notified by the firefighters relief association if it implements an alternate schedule of monthly service pension benefits for members of the association.

Pursuant to Section 54-06-31, the committee received periodic reports from HRMS on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The following schedule is a summary of the information presented:

	July 1, 1999, to June 30, 2001				July 1, 2001, to June 30, 2003				July 1, 2003, to June 30, 2005			
	Recruitment		Retention		Recruitment		Retention		Recruitment		Retention	
Agency	#	$$	#	$$	#	$$	#	$$	#	$$	#	$$
Information Technology Department					9	$21,000			10	$15,550		
State Auditor												
Indigent defense												
Veterans' Home									1	4,000		
Department of Human Services			9	$20,000	8	9,251	3	$9,000	47	22,365.50	4	$10,800
Job Service North Dakota									1	2,000		
Department of Mineral Resources											20	20,000
Bank of North Dakota					1	2,808	14	30,353	2	2,404	20	41,400.34
Highway Patrol					10	3,500			5	2,250		
Department of Corrections and Rehabilitation					8	7,575			6	4,225		
Department of Transportation	11	$40,575			53	222,121.50			77	222,777.58		
Total	11	$40,575	9	$20,000	89	$266,256	17	$39,353	149	$275,572.08	44	$72,200.34

Agency	July 1, 2005, to June 30, 2007				July 1, 2007, to June 30, 2009				July 1, 2009, to June 30, 2010*			
	Recruitment		Retention		Recruitment		Retention		Recruitment		Retention	
	#	$$	#	$$	#	$$	#	$$	#	$$	#	$$
Information Technology Department	13	$17,900			28	$41,500	1	$2,000	4	$6,000		
State Auditor							20	43,500				
Indigent defense					2	3,400	2	4,000				
Veterans' Home												
Department of Human Services	204	64,556	5	$14,089	388	180,601.61	10	100,327.00	43	22,114.50	5	$36,837.00
Job Service North Dakota												
Department of Mineral Resources			43	35,925	2	4,800	124	404,375			42	93,600
Bank of North Dakota	6	8,408	30	66,699	1	2,500	30	123,411.13	3	5,377	4	16,366.71
Highway Patrol	6	3,500			1	500			4	2,000		
Department of Corrections and Rehabilitation	4	2,125			20	6,880			1	1,551		
Department of Transportation	69	165,519			106	298,608.75	82	181,378.75	46	117,315.25	60	132,292.50
Total	302	$262,008	78	$116,713	548	$538,790.36	269	$858,991.88	101	$154,357.75	111	$279,096.21

*First year of the 2009-11 biennium.

Section 54-06-32 provides that within 60 days after the close of each biennial period, each state agency, department, or institution providing an employee service award under rules approved by the Administrative Rules Committee shall file with OMB a report indicating the individuals receiving a service award, the amount paid, and a statement of the public purpose or benefit of the expenditures. Within 90 days after the close of each biennial period, OMB shall submit to the Legislative Management a report summarizing this information.

Section 54-06-33 provides that within 60 days after the close of each biennial period, each state agency, department, or institution providing employer-paid costs of training or educational courses, including tuition and fees, under rules approved by the Administrative Rules Committee, shall file with OMB a report indicating the individuals receiving employer-paid costs of training or educational courses, including tuition and fees, the amount paid, and a statement of the public purpose or benefit of the expenditure. Within 90 days after the close of each biennial period, OMB shall submit to the Legislative Management a report summarizing this information.

Section 54-06-34 provides that within 60 days after the close of each biennial period, each executive branch state agency, department, or institution, except an institution of higher education, providing employer-paid professional organization membership and service club dues shall file with OMB a report indicating the individuals receiving employer-paid professional organization membership and service club dues, the amount paid, and a statement of the public purpose or benefit of the expenditure. Within 90 days after the close of each biennial period, OMB shall submit to the Legislative Management a report summarizing this information.

Representatives of HRMS reported that HRMS had informed agencies of the requirements of these sections and will report as required following the close of the biennium.

Pursuant to 2009 S.L., ch. 509, § 1, the committee received a report from HRMS on the outcome of its study and evaluation of steps the state could take to recruit and retain state employees in state government employment as those state employees reach retirement. This chapter directed HRMS to determine perceived and actual barriers to retain state employees as those employees near retirement, consider other steps other public employers have taken to retain their workforce, and provide specific steps the state could take to retain employees nearing retirement.

The committee reviewed the methodology of the study. Four agencies were selected--the Tax Department, State Department of Health, State Historical Society, and the Department of Transportation. These four agencies were selected based on the total number of employees, the number of employees eligible for retirement, and the number of employees not eligible for retirement.

Pursuant to the study, HRMS reported it is not making any specific recommendations for legislation; however, all of the recommendations of the study fall within two key areas--pay and benefits and work environment. The committee learned employee recommendations included flexible work options, training and development, employee appreciation, and compensation and benefits. Concerning HRMS recommendations in the pay and benefits area, the two recommendations presented were that the balance of pay and benefits be monitored to ensure an overall competitive position in the market and that the results of the Hay Group study being conducted by the Government Services Committee be considered. Concerning work environment, HRMS reported it is recommending that flexible and alternative work arrangements be utilized, that jobs be redesigned as employees near retirement, that consideration be given to double-filling positions for succession planning, that employers offer development opportunities, and that employers participate in generational training. Human Resource Management Services reported the key to retention of employees is engagement, as a truly engaged employee regardless of whether that employee is newly hired, mid-career, or near retirement is most productive and less likely to be actively looking for opportunities to move on. Human Resource Management Services personnel reported that agencies have flexibility to implement many of these recommendations, and it is the responsibility of HRMS to inform agencies and to make them aware of programs available in this area.

TUITION REIMBURSEMENT POOL PROGRAM STUDY

Section 1 of House Bill No. 1341 (2009) authorized a study of the feasibility and desirability of an appropriation

to OMB for a state employee tuition reimbursement pool program. The committee learned the study was a result of concerns raised relating to smaller agencies that may not have sufficient funds or flexibility to provide tuition reimbursement programs for their employees. The committee reviewed agencies with fewer than 30 employees and agencies with 30 to 50 employees. There are 18 agencies with fewer than 30 employees and 8 agencies with fewer than 30 employees and 8 agencies with 30 to 50 employees.

Office of Management and Budget officials reported the agency had no position concerning the study.

Recommendation

The committee makes no recommendation concerning the study of the feasibility and desirability of an appropriation to OMB for a state employee tuition reimbursement pool program.

ADMINISTRATIVE LEAVE PROGRAM STUDY

Section 1 of House Bill No. 1562 (2009) authorized a study of the feasibility and desirability of an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. The committee learned the administrative leave program study was a result of House Bill No. 1562. This bill, as introduced, would have required OMB to provide up to 800 hours per year for administrative leave for use by executive branch agencies to allow employees who are members of a public employees organization to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency.

The executive director of the North Dakota Public Employees Association testified that the benefits of an administrative leave program would be numerous, and the cost of implementing a program would be minimal. The executive director testified that employers in the private sector may authorize their employees to testify before the Legislative Assembly or attend meetings that are beneficial to the organization or the employee. The executive director said there is no similar mechanism for public employees.

Human Resource Management Services officials took no position concerning this study.

Recommendation

The committee makes no recommendation concerning the administrative leave program study.

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee was created in 2007 by House Bill No. 1462 and was codified in North Dakota Century Code (NDCC) Section 54-35-18. The committee replaced the Electric Industry Competition Committee and has a broader scope of study. The committee must study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resources to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy and the taxation of shallow gas. The statute establishing the committee expires on August 1, 2011.

In addition to the statutory responsibilities, the Legislative Management assigned three studies relating to wind to this committee.

Section 2 of House Bill No. 1509 (2009) directed a study of wind easements and wind energy leases, including a consideration of confidentiality clauses, liability for damages and taxes, insurance, and other concerns of property owners and wind developers.

House Concurrent Resolution No. 3044 (2009) directed a study of wind rights. In particular, the resolution suggested defining wind rights by connecting wind rights to the surface estate and protecting adjacent property rights through setbacks.

Section 3 of House Bill No. 1449 (2009) required a study of wind resources and other natural resources in the same location. The study included a review of laws relating to the siting and decommissioning of a wind energy conversion facility, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation of wind energy conversion facilities to address the effects on water, soil, cultural resources, and future development of other natural resources.

The committee members were Senators Rich Wardner (Chairman), John M. Andrist, Jim Dotzenrod, Robert M. Horne, Joe Miller, and George Nodland and Representatives Tracy Boe, Mike Brandenburg, Lee Kaldor, Matthew M. Klein, Todd Porter, and Dave Weiler.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

WIND EASEMENT AND WIND ENERGY LEASE PROVISIONS STUDY

The study of wind easements and wind energy leases included:

1. Consideration of confidentiality clauses;
2. The liability of each party for damages and taxes;
3. Instrument provisions relating to insurance and the need for insurance; and
4. The concerns of property owners and wind developers.

A confidentiality clause is a section of a contract that requires secrecy as to other provisions of the contract. Liability for damages is determined by fault without other agreement. Usually, a person is liable or responsible for that person's negligent acts that cause damages. A person may manage that risk by entering a contract for another person to pay for the person's negligent acts or third-party acts in return for some consideration. This is done on a regular basis through insurance. In addition, a person may manage the risk in a contract with another party in the same way the person manages other expenses, for example, taxes.

Indemnity is the duty to make good on any loss, damage, or liability incurred by another, and an indemnity provision is a contractual obligation to make the other party whole in certain situations described by the contract. The purpose of insurance is to contractually obligate an insurance company to indemnify the customer from loss.

Subrogation is the substitution of one party for another whose debt the party pays. This gives the paying party the rights and remedies that would otherwise belong to the debtor. An insurance company that pays its customer for damage caused by another generally has the right of subrogation against that other person to collect the amount paid to the customer.

Without a waiver of subrogation, a negligent landowner may have to reimburse an insurance company that paid damages to the wind facility. Another solution to manage risk for a landowner is for the landowner to be named an additional insured on the contract for insurance between the wind facility and the insurance company. In this case, the insurance company would have the duty to indemnify the landowner as well as the wind facility.

North Dakota Century Code Section 17-04-06 provides for provisions in wind easements and wind energy leases. These provisions include:

1. A general warning as to the importance of the easement or lease.
2. Prohibiting execution for at least 10 days.
3. Prohibiting confidentiality unless in the final document.
4. Preserving the right of the property owner to continue conducting business operations as currently conducted and for the property owner to accommodate the wind energy facility.
5. Prohibiting making the property owner liable for property taxes associated with the wind energy facility.
6. Prohibiting making the property owner liable for damages caused by the wind energy facility.
7. Prohibiting making the property owner liable for violations of law by the developer, owner, or operator of a wind energy facility.
8. Allowing the property owner to terminate the agreement if the wind energy facility has not

operated for a period of at least three years unless the property owner receives the normal minimum lease payments.

9. Requiring a clear statement on when payments may be withheld from the property owner.
10. Requiring the owner of the wind energy facility to carry general liability insurance and allowing the wind energy facility to add the property owner as an additional insured.

In addition, NDCC Section 17-04-06 allows a court to reform the easement or lease in accordance with the previous requirements, void the easement or lease, or order any relief allowed by law if the terms of the easement or lease are not in accordance with the previous requirements.

Legislative History

As introduced, House Bill No. 1509 would have required the Public Service Commission to adopt rules establishing a code of conduct for wind lessees. The bill allowed a lessee to either follow or not follow the code of conduct. However, the lessee was required to notify in writing any person with whom the lessee discussed the lease of whether the lessee follows the code of conduct.

Wind easements and leases are long documents, e.g., 44 pages. Consequently, review of these documents requires significant expertise in the area of wind to know what the market is as it relates to the particular terms.

According to the testimony, the main focus was on the confidentiality clause. The concern was that property owners need time to decide and need information to negotiate terms of an easement or lease. Developers, however, generally do not want to release trade secrets contained in easements or leases.

A clause not addressed in the bill but addressed in the testimony is the Act of God clause. Generally, this clause states that if an overwhelming and unpreventable event caused exclusively by forces of nature prevents a party from performing under a contract, the failure to perform is excused. In a contract used in North Dakota, the Act of God clause includes changes in law or regulation. Consequently, the wind facility would be excused from performing a duty owed the landowner if changes in the law prevented the wind facility from performing its duty.

Legislation and Statutory Provisions

The law relating to wind easements had remained the same since before statehood until 2005. Senate Bill No. 2239 (2005) defined wind option agreement and wind easement. The bill voided a wind option agreement, wind easement, or wind energy lease if development to produce energy from wind power had not occurred within five years. House Bill No. 1462 (2007) moved all law particular to wind energy rights into the energy title--NDCC Title 17. In particular, Chapter 17-04 contains all law particular to wind energy rights through easements and leases. In addition, House Bill No. 1231 (2007) clarified that nothing prohibits or limits the right of a seller of real estate to retain any payments associated with an existing wind energy product even though an interest in the production of wind energy may not be severed from the surface estate. Senate Bill No. 2245 (2009) changed the time at which a wind option agreement, wind easement, or wind energy lease terminates due to inactivity from not any development within five years to if within five years a certificate of site compatibility or conditional use permit has not been issued, if required, and if within five years a transmission interconnection request is in process and not under suspension.

Testimony

Documents are available to landowners to evaluate wind energy contracts. Committee discussion included that these publicly available documents were well done and would be useful for a person signing a wind lease or even an oil lease. The main concern of landowners was the confidentiality clause. However, the committee was informed by wind developers that the main concerns for landowners in negotiating leases are:

1. The continuation of farming and using the land, including how roads are built and located and how these roads will affect moving and using equipment; and
2. The pricing terms and number of turbines.

The committee reviewed wind energy leases from five wind developers in this state. The leases or easements provided for terms ranging from 40 years to 99 years. Only one developer had a blanket confidentiality clause, and the other developers did not have any confidentiality clause or a confidentiality clause limited to wind monitoring and operation data. As such, it appeared that the confidentiality clause is an issue with only one developer. It was argued that as a good business practice the one developer should remove the confidentiality clause. The removal would create a better image and good will for the wind developer.

The committee received testimony in favor of confidentiality agreements. The committee was informed that confidentiality agreements are the most important contract clause. The committee was informed that negotiations between a wind developer and a landowner are one-on-one negotiations, and these negotiations take into account the particular needs and wants of the landowners and their families as to the use of the property. It was argued that each landowner has different concerns that should not be allowed to be shared with other landowners. In short, when an individual negotiates an agreement, the individual should be able to exclude another person from seeing the agreement because another person does not have the right to know what is in the agreement.

The committee was informed that generally large wind developers pay every owner in the same project the same amount, so the confidentiality clause is not so the developer can pay one price to one landowner and another price to another landowner. Landowners would learn of prices paid through informal conversation in coffee shops regardless of confidentiality clauses. Different prices would create enormous animosity and would be bad business.

The committee was informed that confidentiality clauses do not in practice prevent much information from being shared. There is very little secrecy in wind agreements. Large wind farms have public meetings and share most information. Landowners informally share information. As such, the confidentiality clauses do not have a negative impact on landowners.

The committee was informed that the one developer had a confidentiality clause to protect the economics in the project. Because the wind energy business is highly competitive and the confidentiality clause prevents wind developers from learning at no cost from other wind developers, it was argued that without confidentiality clauses there could be bidding wars.

The committee was informed that a wind developer has never sued any landowner in North Dakota for violation of a confidentiality clause. Wind developers did not have an example of when damages from violation of a confidentiality clause might result in a lawsuit. The decision to sue would be based upon the damages caused by the violation of the clause.

The committee was informed that the legislation last session was a compromise that allows a landowner to discuss the terms of the contract before signing the final agreement. Because the compromise seemed to be working, it was argued that the committee should be cautious in addressing the same issue so soon after a difficult compromise.

The committee received testimony against confidentiality clauses. The committee was informed that some landowners believe they cannot talk with the committee because of confidentiality clauses. It was argued that if the information kept secret by confidentiality clauses was made available this would allow the state to have the information to make policy determinations. Information for oil wells is quite specific and it was argued that the same information should be provided for wind towers. Committee discussion included that oil leases have changed the market payment over time from one-eighth to one-sixth to 18 percent to 20 percent. In the area of oil, none of this information is confidential and is good for the marketplace.

A closed market protects one person's interests over another and prevents landowners from making educated decisions. One of these decisions is whether to be paid with a flat rate or a percentage of the wind energy sold. If wind farms disclosed production, then people would have a basis to make a determination on whether to have royalty payments or fixed payments. The committee was informed most landowners choose the flat payment instead of the percentage of royalties. This is partly because financial institutions more easily accept the flat rate income as income to service a loan. The committee was informed that choosing the percentage of royalties is risky for landowners because there is a lack of availability of parts that can have a broken turbine down for up to nine months.

Although there has not been any instance in which a wind farm developer had taken legal action against a landowner for violation of a confidentiality clause, it was argued that wind developers have plenty of time to exercise confidentiality clauses because of the time length of the contracts. It was argued that if landowners are violating confidentiality agreements on a regular basis, perhaps the clauses should be regulated as to provide everyone with the information.

Discussion

The committee recognized that most companies do not put in a confidentiality clause. The committee also recognized the valid reason that companies want a confidentiality clause is if a payment is based on the percentage of energy produced, a competitor could figure out the power purchase agreement. It was argued that although there is not an issue, if there is no confidentiality when there is a payment of a flat rate, some companies and some landowners may have a personal preference for confidentiality. Some confidentiality is required in all business.

The committee recognized that no violation of a confidentiality agreement has ever resulted in a landowner being taken to court, and this mitigated any need to remove confidentiality clauses. To the contrary, committee discussion included that because a wind developer has never sued, probably never will sue, and probably would lose if it did sue, it does not make any sense to allow confidentiality clauses.

Committee discussion as to reports of heavy-handed negotiation included that there is a balance to these negotiations, and landowners need to do their due diligence. There is also a balance between allowing good companies to operate and keeping the poor companies out of the state. It was argued if the balance shifts to the side of landowners and there are too many protections for landowners, there will not be any development of wind. The committee was uncertain it wanted to be involved in a contract between a willing buyer and seller.

Committee discussion included that the state needs development of the industry but needs to take care of the people that will live here. Other committee discussion included that the issue is balancing whether to impede business or to impede free speech.

Conclusion

The committee makes no recommendation regarding wind easement and wind energy lease provisions, in particular, as to confidentiality clauses in easements or leases.

ALLOCATION OF WIND RIGHTS STUDY

House Concurrent Resolution No. 3044 directed a study of the allocation of wind rights. The resolution suggests studying the connection between wind rights and the surface estate, e.g., as in oil and gas, which are allocated in relation to the surface rights and not on a first-come, first-served basis. In addition, the resolution suggests addressing noise and visual disturbances, spacing, and setbacks as part of the fair allocation of wind resources.

The legislative history of the resolution shows that the impetus for the study came from the present uncertainty as to wind rights which could lead to litigation. Litigation

raises the risk and cost of development, and this could stifle wind development. The reason for the uncertainty comes from the fact that wind turbines have an impact that exceeds the physical tower. Wind turbines affect wind by creating a wind wake. The wind wake extends downwind up to 11 times the turbine rotor diameter. A downwind wake reduces the amount of energy that could be extracted by nearby downwind turbines. Because wind crosses property boundaries, the determination of who has priority rights to the energy in the wind becomes an issue.

Allocation Models

One way to address this issue is through setbacks. Setbacks are the distance that wind turbines are placed away from a property line or structure. Setbacks are a limitation on the spacing of wind turbines. Spacing is the placement of wind turbines in the most economical locations for the production of electricity. Spacing balances the cost of construction of the turbine, with the cost of the gathering system, against available wind resources.

Generally, setbacks are at a minimum the fall distance of a turbine. If meant to address wind wake, the industry standard for setbacks is five times the diameter of the turbine rotor in the direction of predominate winds and three rotor diameters for spacing in the nonpredominate wind direction. The problem with setback requirements is that the requirements make it difficult to develop wind projects in areas that do not involve extremely large landowners and contiguous holdings. Every property line creates a potential dead zone. In addition, wind towers must be located where the wind speed is highest, which must be based on topography, not property, to be economical.

If setbacks are long enough to mitigate any negative impact on the wind rights of others, allocating wind rights based solely on setbacks makes a 100 percent allocation to the landowner with the turbine. However, these setbacks limit the developer to using property on which the placement of a wind turbine does not have an effect on neighboring property. In this instance, setbacks are not an allocation method because there is nothing to allocate. The setbacks remove the impact of the wind turbine on the wind rights of others. With no impact to allocate, there is no right to allocate. This instance gives priority to the impact and negates the surface property right within the setback.

There are two possible models for the allocation of wind rights. One model is first-in-time, first-in-right and the other is unitization. The first-in-time, first-in-right model is based on how water rights were developed in western states. The unitization model is based on how oilfields are allocated.

First-in-Time Model

Generally, water law in western states allows the first user to develop water from a source and limits subsequent users to using the same source only to the extent the secondary user does not affect the earlier users' ability to use the source. This model could be applied to wind by giving first rights to the energy in the wind within a reasonable distance around the turbine. Subsequent wind users would need to maintain an adequate distance to avoid impacts on the earlier use. These distances can be based on rotor diameters. The advantage of this model is simplicity, and the disadvantage is that nearby landowners could be negatively affected without compensation. Allocating wind rights based solely on first-in-time, first-in-right makes a 100 percent allocation to the landowner with the turbine and allows the developer to place the turbine anywhere on the landowner's property, even if the turbine has an effect on neighboring property. This model gives priority to the surface property right and negates any other impact on wind rights of others.

Unitization Model

The unitization model is based on the allocation of the production of an oilfield proportionally to the surrounding mineral rights owners based on a predetermined impact. In the area of oil and gas, "unitization" means the joint operation of all or some part of a producing reservoir. The purpose of unitization is to permit the entire field, or a very substantial portion of it, to be operated as a single entity without regard to surface boundary lines. Both economic and property rights require the integration of a field in order for such operations as gas cycling, pressure maintenance, and secondary recovery to be conducted. Moreover, greater recovery at less cost can be achieved when the field is treated as an entity and wells located so that they maximize the use of reservoir energy. Unitization thus refers to the combination of most, if not all, of the separate tracts in the field into one tract so that the reservoir may be operated without regard to surface property lines. This model could be applied to wind. The allocation of wind lease payments would be allocated among landowners with an impact by a turbine. Those impacted could include:

- Landowners with a wind resource that is affected.
- Landowners with the surface property that is affected by turbines, roads, and cable easements.
- Landowners affected in other ways, for example, by the changed view, shadows, or sounds.

The advantage of this approach would be to distribute the benefits among a broader base of those affected, which would reduce inequities among landowners affected by the wind turbine. The disadvantage is the complexity and the potential for an unwilling landowner to be part of a project in which the landowner does not wish to participate. The success of this model would be tied to determining the appropriate allocation of payments to the various landowners.

Present Statutes

Current law relating to wind energy conversion siting is contained in NDCC Chapter 49-22, which relates to the siting of any energy conversion and transmission facility that meets the criteria of the chapter. Under Section 49-22-03, to be an energy conversion facility, the plant must be designed for or capable of generating more than 60 megawatts. Siting that is not within the jurisdiction of the Public Service Commission falls solely

within the zoning jurisdiction of counties and townships. Generally, the county has zoning jurisdiction unless there is an organized township with zoning regulations. If the Public Service Commission has siting jurisdiction, the county or township and the commission have joint jurisdiction with the more stringent regulation applicable to the wind facility.

Once the jurisdiction of the Public Service Commission is engaged under NDCC Chapter 49-22, a utility needs a certificate of site compatibility from the Public Service Commission under Section 49-22-07. The procedure to receive this certificate begins with a letter of intent from the utility to the commission followed by an application for a certificate under Section 49-22-08. The application requires information on the facility, including the environmental impact of the facility, the need for the facility, a comprehensive analysis supporting why the location is best-suited for this facility, mitigative measures for unforeseen adverse impacts, and other information. Under Section 49-22-09, the commission must consider these factors when evaluating and designating sites:

1. The effect of the site on public health and welfare, natural resources, and the environment.
2. The effects of new energy conversion technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from the proposed facility.
4. Adverse direct and indirect environmental effects which cannot be avoided.
5. Alternatives that minimize adverse impact.
6. Irreversible and irretrievable commitments of natural resources.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans for other developments in the vicinity of the site.
9. The effect of the proposed site on scenic areas, historic sites and structures, and paleontological and archaeological sites.
10. The effects of the site which are unique because of biological wealth or because of rare or endangered species.
11. Other problems raised by governmental entities.

Under NDCC Section 49-22-05.1, the commission is required to develop criteria to be used in identifying exclusion and avoidance areas and to guide the site evaluation and designation process. Under this section, the commission has developed rules contained in North Dakota Administrative Code (NDAC) Section 69-06-08-01 relating to energy conversion facility siting. Exclusion areas must include a buffer zone of reasonable width to protect the integrity of the area. In addition, exclusion areas include:

1. National parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
2. State parks; forests; forest management land; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
3. Political subdivision parks and recreational areas, hardwood draws, and enrolled woodlands.
4. Prime farmland or unique farmland unless the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be a negligible impact on agricultural production.
5. Irrigated land.
6. Areas critical to the life stages of threatened or endangered animals or plant species.
7. Areas where animal or plant species that are unique or rare to the state would be irreversibly damaged.

Avoidance areas are geographical areas that may not be used for siting unless the applicant shows there is no reasonable alternative. Again a buffer zone of reasonable width to protect the integrity of the area must be included. Avoidance areas include:

1. Historical resources not designated as exclusion areas.
2. Areas within city limits or the boundaries of a military installation.
3. Areas within the 100-year floodplain.
4. Areas that are geologically unstable.
5. Woodlands and wetlands.
6. Areas of recreational significance not designated as exclusion areas.

In addition to exclusion and avoidance areas, the commission must look at the following impacts, and the applicant must demonstrate that any significant adverse impact will be kept to an acceptable minimum. These impacts include:

1. The impact on agriculture.
2. The impact on governmental, health care, recreational, transportation, retail, and utility services.
3. The impact on local institutions, noise-sensitive land uses, rural residence and businesses, aquifers, human health and safety, animal health and safety, plant life, temporary and permanent housing, and temporary and permanent skilled and unskilled labor.
4. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

Public Service Commission Orders

The Public Service Commission issued two orders for site compatibility for a wind energy conversion facility on August 12, 2009--the PrairieWinds ND 1 project in Ward County and the Rough Rider Wind I project in Dickey County.

Based on information in these orders, the setback from an occupied residence is 1,400 feet. This distance is set based on acceptable sound and shadow flicker levels. Average noise levels at the residence should not

exceed 50 decibels at this range. Fifty decibels is between a refrigerator motor and a microwave or dishwasher running. The setback from a public right of way, existing transmission line, railroad track, and property boundary is approximately 400 feet or 1.1 times the turbine height from the base to the highest point of the rotor blade. Generally, facilities are located away from wetlands and woodlands to avoid effects on wildlife. The setback from United States Fish and Wildlife Service Waterfowl Production Areas is 1,320 feet. The setback for wetlands greater than 50 acres is 500 feet. The setback from United States Air Force missile sites is 5,280 feet.

After notice and a public hearing, the commission may designate a site for the proposed facility. Under NDCC Section 49-22-13, the commission must hold public hearings in the county in which any site is proposed to be located. Under Section 49-22-16, the issuance of a certification of site compatibility is the sole site approval required to be obtained by the utility. However, a certificate of site compatibility does not supersede or preempt any local land use, zoning, or building rules, and a site may not be designated which violates these rules. In addition, utilities subject to Chapter 49-22 must obtain state permits required to construct and operate energy conversion facilities and must follow the rules of any state agency.

2007-08 Study

During the 2007-08 interim, the Energy Development and Transmission Committee studied the siting and decommissioning of commercial wind farms. The study included the identification of key issues of public and industry concern, recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites, and decommissioning of wind farm sites. The committee was informed that problems exist whenever a new industry comes into the state, and it was argued that the state needs to set standards for wind tower siting, especially as to setbacks. The committee made no recommendation as a result of this study.

Public Health Impacts

One area of concern in the design of wind facilities and by individuals living close to a wind turbine is shadow flicker. A moving object that comes between the observer and a light source can cause a flicker effect. Three conditions must occur at the same time for there to be a shadow flicker. First, the sun must be shining and there must be no cloud cover. Second, the moving object must be between the observer and the sun. Finally, the observer must be close enough to the object to be in its shadow. In the case of wind turbines, another condition is required--the blades have to be facing toward or away from the sun.

For example, because the sun rises in the east and sets in the west, the wind would need to be blowing in the morning or evening, basically directly in line with the sun, on a day with few clouds for there to be a shadow flicker. The observer would need to be a certain distance from the tower to experience the shadow flicker. The shadow flicker would be for a limited duration because the shadow flicker would move toward the tower as the sun rose and away as it set. By examining weather and the sun, a wind developer should be able to minimize the shadow flicker even more by not placing a tower in a poor location in relation to a residence. In addition, other mitigative measures can be taken, for example, placing trees or other obstructions between the windows of the residence and the tower.

On May 22, 2009, the Minnesota Department of Health Environmental Health Division issued a report entitled *Public Health Impacts of Wind Turbines.* In briefly addressing shadow flicker, the report stated:

> Modeling conducted by the Minnesota Department of Health suggests that a receptor 300 meters perpendicular to, and in the shadow of the blades of a wind turbine, can be in the flicker shadow of the rotating blade for almost 1 ½ hour a day. At this distance a blade may completely obscure the sun each time it passes between the receptor and the sun. With current wind turbine designs, flicker should not be an issue at distances over 10 rotational diameters (~1000 meters or 1 km (0.6 mi) for most current wind turbines). This distance has been recommended by the Wind Energy Handbook (Burton et al., 2001) as a minimum setback distance in directions that flicker may occur.
>
> . . .
>
> Unlike low frequency noise, shadow flicker can affect individuals outdoors as well as indoors, and may be noticeable inside any building. Flicker can be eliminated by placement of wind turbines outside of the path of the sun as viewed from areas of concern, or by appropriate setbacks.

In addressing noise, the report stated:

> [The National Research Council of the National Academies (NRC)] notes that different people have different values and levels of sensitivity. Impacts noted by the NRC that may have the most effect on health include noise and low frequency vibration, and shadow flicker. While noise and vibration are the main focus of this paper, shadow flicker (casting of moving shadows on the ground as wind turbine blades rotate) will also be briefly discussed.
>
> Noise originates from mechanical equipment inside the nacelles of the turbines (gears, generators, etc.) and from interaction of turbine blades with wind. Newer wind turbines generate minimal noise from mechanical equipment. The most problematic wind turbine noise is a broadband "whooshing" sound produced by interaction of turbine blades with the wind. Newer turbines have upwind rotor blades, minimizing low frequency "infrasound" (i.e., air pressure changes at frequencies below 20-100 Hz that are inaudible). However, the NRC notes that during quiet conditions at night, low frequency modulation of higher frequency sounds, such as

are produced by turbine blades, is possible. The NRC also notes that effects of low frequency (infrasound) vibration (less than 20 Hz) on humans are not well understood, but have been asserted to disturb some people.

Finally, the NRC concludes that noise produced by wind turbines is generally not a major concern beyond a half mile.

In addressing the potential adverse reaction to sound, the report stated:

> Stress and annoyance from noise often do not correlate with loudness. This may suggest, in some circumstances, other factors impact an individual's reaction to noise. A number of reports, cited in Staples (1997), suggest that individuals with an interest in a project and individuals who have some control over an environmental noise are less likely to find a noise annoying or stressful.
>
> . . .
>
> Noise complaints are usually a reasonable measure of annoyance with low frequency environmental noise. Leventhall (2004) has reviewed noise complaints and offers the following conclusions:
>
> > "The problems arose in quiet rural or suburban environments.
> >
> > The noise was often close to inaudibility and heard by a minority of people.
> >
> > The noise was typically audible indoors and not outdoors.
> >
> > The noise was more audible at night than day.
> >
> > The noise had a throb or rumble characteristic.
> >
> > The main complaints came from the 55-70 years age group.
> >
> > The complainants had normal hearing.
> >
> > Medical examination excluded tinnitus.
> >
> > These are now recognized as classic descriptors of low frequency noise problems."
>
> Wind turbines generate a broad spectrum of low-intensity noise. At typical setback distances higher frequencies are attenuated. In addition, walls and windows of homes attenuate high frequencies, but their effect on low frequencies is limited. Low frequency noise is primarily a problem that may affect some people in their homes, especially at night. It is not generally a problem for businesses, public buildings, or for people outdoors.
>
> The most common complaint in various studies of wind turbine effects on people is annoyance or an impact on quality of life. Sleeplessness and headache are the most common health complaints and are highly correlated (but not perfectly correlated) with annoyance complaints. Complaints are more likely when turbines are visible or when shadow flicker occurs. Most available evidence suggests that reported health effects are related to audible low frequency noise. Complaints appear to rise with increasing outside noise levels above 35 dB(A).
>
> . . .
>
> Low frequency noise from a wind turbine is generally not easily perceived beyond ½ mile. However, if a turbine is subject to aerodynamic modulation because of shear caused by terrain (mountains, trees, buildings) or different wind conditions through the rotor plane, turbine noise may be heard at greater distances.

Testimony

The committee received testimony in support of a unitization model. It was argued that wind rights should not be based on water rights law because western water law is a fiasco. There should be formula compensation based on the wind footprint. As such, states would have nothing to say about the compensation but would make the formula for the distribution of compensation. The committee was informed that as wind turbines get larger and spread farther apart, there will be more people affected by wind turbines who do not receive compensation. A formula compensation addresses this problem and helps developers by not having to tell someone who is in the project area that person is not getting a turbine. The committee was informed that the problems created by not providing formula compensation will last for many generations.

The formula suggested 25 percent of the compensation go to the landowner with the turbine because the person with the turbine has a disproportionate burden. A formula based on the wind wake would come into play if there were a shared wind resource. In most cases, the person with the wind turbine will probably have most of the wind resources. For example, if a person with 320 acres had a turbine and the payment was $4,000, $1,000 would go to the landowner for the turbine. In addition, the landowner would receive a good portion of the $3,000 distributed under the formula.

The committee was informed that there are competitive pressures that make it a disincentive for landowners to want a unitization system. However, it was argued that a unitization system addresses turbulence and fairness. This system gives landowners with a wind resource within a wind farm but without a wind tower a share in the income for the loss of the resource that could have been developed if it was not in a wind farm.

The committee received testimony in favor of the present system of allocating wind rights. The committee was informed of the case *Romero v. Bernell*, 603 F.Supp.2d 1333 (D.N.M. 2009). In particular, the case states:

> Strictly speaking, the ownership of wind is a misnomer. Wind, in and of itself, does not appear to be susceptible of any ownership. It is not like oil and gas in place where there is a deposit of hydrocarbons which can be reduced to

possession by one or more mineral owners of the tracts under which the hydrocarbon deposit resides. Wind itself is more akin to a wild animal or percolating waters which must first be reduced to possession before they have value. To reduce wind to "possession" appears to require that it be focused on driving the fins of a windmill which turn a generator and ultimately generates electricity. Then and only then can wind a) be reduced to possession and b) have value.

It was argued that wind, oil, and water are significantly different and comparing wind to water and oil is inappropriate. It was argued the payment to landowners at present is the floor for which landowners are willing to have a wind tower and unitization would require additional money. As such, if there is unitization, then there will have to be another income source besides the developer to provide payments for impacts from wind farms. It was argued that once impacts other than those related to real property are considered, there is an opening of Pandora's box of people requesting income for other impacts.

The committee received testimony on a group of landowners that started a company that voluntarily combined property in a footprint and distributed income based on shares in the company. Everyone in the company voluntarily entered and received stock in the company. Some shareholders have turbines and some do not have turbines. The income is distributed to shareholders in an equitable manner from the power purchase agreement. Because the most controversial issue was who gets a turbine and who does not get a turbine, being a shareholder of the company to some extent mitigates not getting a tower.

The committee received testimony on siting and setbacks. There are two kinds of siting. In general terms, the Public Service Commission sites wind farms, which is determining where wind towers may not be located. Most of the areas that are not allowed to be sited for wind towers are within setbacks. The wind developer sites wind towers, which is the process of choosing the best spot for a wind tower. Wind developer siting involves choosing the best wind sites for economic reasons and balancing tower placement with landowner concerns. After exclusion areas and setbacks are mapped, the areas that may have a wind tower are greatly limited.

Wind developer siting is critical because a 15 percent increase in wind speed yields a 50 percent increase in production. Wind developer siting must take into regard the spacing of wind towers. The effects on adjacent turbines are less than 2 percent if within three rotor diameters for crosswind. For predominant wind, the separation would have to be approximately five rotor diameters to have less than a 2 percent effect. Wind developer siting is important because the cost to the project developer for a wind turbine is $3 million to $5 million and includes the transmission risk, two to three years of wind studies, engineering, permitting risks, operating risk, market risk, and tax risk. By comparison, the landowner risks one-quarter acre to one-half acre of land per turbine for $4,000 to $7,000 per turbine per year.

Setbacks affect siting and setbacks may be divided into setbacks for property lines and setbacks from residences. The committee was informed that the present property line setback creates a 3.2 rotor diameter dead zone at property lines. Under current law, the perfect section of land could have four to five turbines. With a property line setback of five rotor links, a section can have only one turbine. This would run up the cost because the project would be spread out over a large space. When a wind developer desires to place a wind tower within the setback, the committee was informed that certain developers can locate a wind tower in the setback area if the developer has the permission of the landowners. In these cases, some developers have offered to share the compensation between the two landowners as a means to receive the permission.

Most of the testimony on setbacks related to whether to extend the setback from residences. The committee was informed that the setback policy for wind towers has been developed by the Public Service Commission over time and in the beginning there were 1,000-foot setbacks from residences and now the setback is 1,400 feet or more. The committee was informed that the impetus for this change came from information on noise and keeping noise under 50 decibels. However, there is an occasional exception to the setbacks because a landowner may want an exception.

In addition, local jurisdictions have sole jurisdiction for small wind farms and dual jurisdiction for large wind farms and can create more restrictive residence setbacks through zoning. The committee was informed that zoning is a least-favorite option for siting because it is difficult for political subdivisions to have the resources and expertise to zone wind towers. In addition, different regulations by different political subdivisions create difficulties for wind development and may result in wind developers going to the jurisdiction of least resistance. It was argued that the policy should be created by the state, and certainty at the state level may result in more and better development. If regulation is not at the state level, it was argued by county officials that there should be a guide available of what political subdivisions should do in response to wind development.

The committee heard arguments for and against extending the setback from residences. For nearby landowners, the extension would decrease negative impacts. For wind developers, the extension would limit development and may make development infeasible or unprofitable.

The committee received testimony from landowners impacted by wind development. Generally, these landowners own a small amount of property on which they live. The property is chosen for solitude and aesthetic reasons. These landowners have invested in the land where they live and have businesses. These landowners find it not fair that a wind farm can severely impact their lives, especially when the landowners are North Dakota citizens and are unable to protect themselves from large out-of-state companies. Because of the size of these companies, it was argued that the

companies are not willing to work with individuals because it would set unwanted precedents. In addition, the landowners that testified said many others are afraid to speak out against wind farms because the neighbors may be offended and because of confidentiality clauses. The confidentiality clauses in the lease agreements prevent landowners with wind towers from complaining. It was argued another reason there are not many complaints made over the wind towers is due to North Dakota values.

The committee was informed of the following problems and negative impacts caused by wind development:

1. Certain wind developers do not work with landowners within the development who do not have wind towers. The committee was informed that landowner suggestions as to wind towers were ignored.
2. Wind farms are divisive in the community because of landowners who want the project and landowners who do not want the project.
3. The construction and operation of the wind farm has produced power outages, and the landowners are not notified of when the power outages will happen.
4. Certain wind developers agreed to make mitigative measures and then do not make these measures.
5. The noise created by the wind towers is disturbing. The committee was informed that the noise has a greater volume in the evening and night. This noise disturbs sleep so much so that some landowners wear earplugs at night or must sleep in the basement. The committee was informed that the sound is a rhythmic pulsing sound that changes all the time and sounds like living next to the ocean or idling semitrucks. It was argued that the sound is louder on some nights due to inversion layers caused by nighttime lows in the 30-degree to 40-degree range and highs during the day of 70 degrees. The committee was informed that although studies show there can be a 15-decibel increase at night, there is no scientific methodology to measure compliance because of the variables. It was argued that the best measurement is the human ear.
6. The Public Service Commission siting hearings have difficult procedures that prevent landowner participation and do not provide enough notice so there is time to prepare information. It was argued that many people are fearful to speak up against wind farms, and people are afraid of the negative feelings that will be created with neighbors with wind turbines.
7. Wind development destroys roads.
8. The shadow flicker is disturbing. The committee was informed by a landowner that the one tower making the flicker is 1,800 feet away from the landowner's home, and the flicker lasts 20 minutes to one and one-half hours per day. In this instance, the flicker began at about 8:00 a.m. and continued until around 9:30 a.m. The committee was informed that the landowner raises dogs, and the dogs are affected by the shadow flicker.
9. The wind towers are aesthetically displeasing.
10. The light on the wind tower is disturbing. One landowner had to purchase new drapes to block the lights and will have to build a berm and plant trees on it to block the view.

The landowners with complaints informed the committee that they did not know that the wind farm would have the effects it has had before construction and were providing testimony to raise awareness in addition to supporting changes in the law. Because changes in the law would not affect those already near wind farms, it was argued that the only thing wind developers could do to make these certain landowners whole is to relocate the landowners. However, if state policy is not changed, these landowners feared the same thing could happen to them in a new location.

The landowners supported wind developers providing more information upfront. The landowners supported a change in the law that would require greater setbacks from residences and suggested a one-mile setback from residences.

The committee received testimony from wind developers. The committee was informed that the complaints the committee heard were not normal. The landowners with complaints were limited to landowners with small acreages who are not farmers or ranchers and who are located near a wind farm, but do not have any wind towers.

The wind developers argued that they address the negative impacts to landowners and that increasing setbacks from residences is not needed. The committee was informed that wind farms are good neighbors. It was argued that if there were greater setbacks, a small landowner could stop larger landowners around the small landowner from developing wind resources, and that would not be fair to the other landowners.

One potential negative effect is lower property values as a result of a wind farm. The committee was informed that there have been studies done on values of homes inside and outside the view shed of a wind farm. Over time these studies have shown that there is no diminution of property values as a result of a wind farm. It was argued that some people like wind farms because they are progressive, and the people like the way they look.

Another potential negative impact is that of the sound on residents near wind towers. The committee received testimony on the effect of the sound of wind towers on siting. The committee was informed that wind developers model the entire site for night and for day. In modeling the site, that developer looks at the worst possible scenario and makes setbacks based on that scenario. The committee was informed that people hear the wind towers more clearly at night because there is no background noise masking the sound. For example, the sound from a wind tower would be 60 decibels to 70 decibels at a wind speed of 25 miles to 30 miles per hour. However, the wind would mask most of the sound.

The committee was informed that the perfect storm for the sound to be heard is if there is a house in a low area without any trees and with no insulation or poor insulation. However, just because a person can hear the sound does not mean the person is disturbed by the sound. Different people have different sensitivities to the sound.

Another potential negative impact is shadow flicker. The committee received testimony on shadow flicker and siting. The committee was informed that the standard for shadow flicker of less than 1 percent of daylight per year equals approximately 30 hours per year. It was argued shadow flicker is usually not a big issue because it is fairly infrequent.

Another potential negative impact is damage to roads caused by the heavy use of wind development. The committee was informed that the amount of property taxes is not enough to deal with the damage, especially considering the high price of road construction. It was argued if the Legislative Assembly reduces property taxes for wind energy facilities, the Legislative Assembly needs to replace that money so counties can fix roads. When the Legislative Assembly gives a property tax exemption, the Legislative Assembly takes local political subdivision funding sources. In the alternative, it was argued there should not be tax relief given to wind power developers if the wind power developers will come to this state regardless of the incentive. The committee received testimony in support of a wind impact fund.

The committee was informed roads are bad during the construction phase but get better after that phase of wind development is complete, and as a general rule wind developers maintain roads well. In one instance, a wind developer works with county road departments and has a $2.5 million bond on roads. The committee was informed that developers receive a call for every problem with roads around a wind farm and endeavor to address these concerns as part of an ongoing relationship with the community. However, sometimes roads are unable to be fixed immediately because of weather.

The committee was informed that wind developers have met with the individual complaining landowner and have offered mitigative measures and compensation. The negotiations between the wind developers and landowners are difficult because of the personal and emotional attachment of the landowners to their land.

Discussion

The committee members discussed the study of the allocation of wind rights. Discussion included that the main issue is whether everyone in the footprint should share in the payment or should the payment go to the landowner.

Committee discussion included support for the shared rights concept. There is not a problem if local groups get together to share the wind rights within a footprint. However, there is no consensus that the rights should be required to be shared. It was argued that the idea should be left as a voluntary matter. However, there was concern the state could not facilitate the concept on a voluntary basis. One suggestion was to create a model agreement that would be useful to local groups.

Although there had been testimony that a wind tower close to a property line can take the wind from nearby property, the most important issue in siting a wind farm is where each individual machine is located. Moving a tower a few feet makes a large difference. As such, it was argued that the spot on the land where the tower is located is the most important and should determine compensation. Where development ends is based on the terrain and, it was argued, should not be determined by the Legislative Assembly. As such, the present system should stay in place. It was argued if there are too many restrictions or administrative burdens, wind developers will look elsewhere to build wind farms.

Conclusion

The committee makes no recommendation regarding the allocation of wind rights.

DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES IN SAME LOCATION STUDY

Section 3 of House Bill No. 1449 directed a study of the development of wind resources and other natural resources in the same location, including a review of:

1. Laws relating to the siting and decommissioning of wind energy conversion facilities;
2. The desirability of an environmental assessment as a condition of siting; and
3. The desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources.

The legislative history reveals the main reason for the study was because present rules require the removal of foundations, buildings, and ancillary equipment to a depth of three feet under the ground. Testimony revealed that this could leave 6,800 cubic feet of cement underground per tower. A minor concern was the wires left underground for the gathering system. Generally, this was less of a concern because underground wires do not affect greatly future natural resource development. The rules require the removal of underground cables to a depth of two feet under the ground. Because these lines are not live, the lines are not able to be found under the one-call system.

Previous Legislation and Present Statutes

Current law relating to wind energy conversion siting by the Public Service Commission is discussed in the **ALLOCATION OF WIND RIGHTS STUDY** portion of this report.

Public Service Commission Rules

In 2007 a major piece of legislation affecting the decommissioning of commercial wind energy conversion facilities was enacted--House Bill No. 1317. House Bill No. 1317 allowed the Public Service Commission to adopt rules governing the decommissioning of a

commercial wind energy conversion facility. The bill provided that the rules may address:

1. The anticipated life of the project.
2. The established decommissioning cost in current dollars.
3. The method and schedule for updating the cost of decommissioning and restoration.
4. The method of ensuring that funds will be available for decommissioning and restoration.
5. The anticipated manner in which the projects will be decommissioned and the site restored.

House Bill No. 1449--the bill that directed this study--added a sixth area--present and future natural resource development. In short, the rules cover what will be done at the end of a useful life of a wind facility and how payment for decommissioning will be obtained.

Under the commission's present wind turbine decommissioning rules, contained in NDAC Chapter 69-09-09, a commercial wind energy conversion facility means a wind energy conversion facility of equal to or greater than 500 kilowatts in total nameplate generating capacity. This threshold includes most wind turbines not used for private electricity generation. Under Section 69-09-09-02, the owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning. Under Section 69-09-09-03, the useful life of a facility is presumed to end after 24 months of no generated electricity. Under Section 69-09-09-04, the owner or operator must begin decommissioning within 8 months after the time the facility reaches the end of its useful life and be completed within 18 months. Under Section 69-09-09-05, decommissioning and site restoration includes:

1. Dismantling and removing all towers, turbine generators, transformers, and overhead cables.
2. Removing all underground cables to a depth of 24 inches.
3. Removing foundations, buildings, and ancillary equipment to a depth of three feet and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before the construction.

In general, the site must be restored and reclaimed to the same topography with top soils respread over the disturbed area to a similar depth as before the disturbance. Areas disturbed by construction and decommission must be graded, top soiled, and reseeded. Under NDAC Section 69-09-09-06, before operating a commercial wind energy conversion facility, the owner or operator must file for commission review the estimated decommissioning cost and a comprehensive decommissioning plan. Under Section 69-09-09-08, after the 10th year of operation of a facility, the commission may order the owner or operator to secure a bond or other form of financial assurance to cover the anticipated costs of decommissioning the facility. Under Section 69-09-09-09, if an owner or operator does not complete decommissioning, the commission may complete decommissioning.

Public Service Commission Orders

The Public Service Commission issued two orders for site compatibility for a wind energy conversion facility on August 12, 2009--PrairieWinds ND 1 project in Ward County and Rough Rider Wind I project in Dickey County.

The PrairieWinds project has each tower secured by a concrete foundation that extends approximately 8 feet below grade and spreads to a final diameter of approximately 30 feet. The Rough Rider Wind I project has each tower secured by a concrete foundation that typically extends 7 feet to 10 feet below grade and spreads to a final diameter of 40 feet to 60 feet at the base.

The orders contain findings of fact relating to wetland and wildlife and cultural resources and the developer's actions to address concerns relating to these topics. The standard commission order includes provisions related to this study. There are standardized provisions relating to decommissioning, cultural resources, habitat, and reclamation. The provisions are:

- The applicant shall report promptly to the commission the presence in the permit area of any critical habitat of threatened or endangered species that the applicant becomes aware of and that were not previously reported to the commission.
- If any cultural resource, paleontological resource, archaeological site, historical resource, or gravesite is discovered during construction of the facility, earth-disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved, and protected from further disturbance until a professional examination can be made in consultation with the North Dakota State Historic Preservation Office. A report of such examination must be filed with the commission and clearance to proceed must be given by the State Historic Preservation Office.
- All preexisting roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.
- Reclamation, fertilization, and reseeding is to be done by the applicant according to the Natural Resources Conservation Service recommendations for the conservation reserve program, native prairie, and other noncropped lands unless otherwise specified by the landowner and approved by the commission.
- The applicant's obligation for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.
- The applicant shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
- The applicant, as soon as possible upon the completion of the construction of each wind turbine, shall restore the area affected by the

activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

- When the energy conversion facility is retired, structures and other facilities must be removed in accordance with applicable rules, and the area restored to as near as original condition as is practicable.
- Where available, at least 12 inches of topsoil over and along open cut areas, roadways, tower locations, and locations of associated facilities must be stripped and segregated from the subsoil and be replaced only after the subsoil is replaced.
- The applicant shall work with landowners and residents in the area to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.

2007-08 Study

During the 2007-08 interim, the Energy Development and Transmission Committee studied the siting and decommissioning of commercial wind farms. The study included the identification of key issues of public and industry concern; recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and decommissioning of wind farm sites. The committee was informed that the Public Service Commission adopted decommissioning rules. The committee reviewed the effect of wind farms on wildlife. In particular, the committee received testimony on the effect of wind farms on birds. The committee was informed that there has been a high level of decline of birds in native grasslands. A direct impact is the collision of birds with rotor blades. An indirect impact is habitat fragmentation. Roads for wind farms placed on native prairies increase predation and brood parasitism. Another indirect impact is that hunting is not allowed around wind towers, and people do not engage in birding. The committee made no recommendation as a result of this study.

Testimony and Discussion

The committee received testimony on the collocation of wind and other minerals. Issues as to collocation have arisen due to wind development in coal country. However, the committee was informed that there is not a problem with the location of wind and coal. Although mineral rights supersede the surface rights, the committee was informed that there are negotiations taking place between the coal and wind industries as to the issue of collocation. Although there are conflicting uses by the two industries, there are also positives of collocation. There are large transmission lines in coal country and coal country is windy. Generally, wind towers are on top of hills and coal veins are in valleys. This removes much of the conflict in areas in which there are located coal and wind resources. The committee was informed that the wind developers and coal companies should be able to work out their differences. The committee was informed of instances of coal and wind industries working together, e.g., a wind developer has moved collection lines so there is not any impact on coal development.

The committee received testimony on bonding. The committee investigated whether wind towers should be bonded for decommissioning like coal mines are for reclamation.

Committee discussion included that the cost of the bond would be built into the price of electricity, ultimately paid for by the consumer. In addition, additional costs would make this state less competitive with other states for wind development. North Dakota law allows for bonding to be required by the Public Service Commission after 10 years. It was argued that this is a good balance because there are only a few companies in this state developing wind farms, and these companies can be monitored by the Public Service Commission.

The committee was informed that when a turbine is new it has the intrinsic value of $3 million to $5 million and the price for the steel in a tower would cover the cost of decommissioning the tower. The committee was informed that a wind tower has approximately 350,000 pounds of high-grade steel valued at $300 to $500 per ton. Each turbine has three tons to four tons of copper, and the copper is worth $120,000 to $150,000. The tower is fully depreciated in 10 years and that is why there is a wait of 10 years before the Public Service Commission may require a bond. Therefore, a bond should not be needed in most situations and, at a minimum, not until at least 10 years have passed.

The committee heard testimony to the contrary. The committee was informed that developers should be bonded because counties would not be able to handle the cleanup of an abandoned wind farm.

Conclusion

The committee makes no recommendation regarding the collocation of wind and other mineral resources.

COMPREHENSIVE ENERGY POLICY STUDY

In an effort to create a comprehensive energy policy, the Legislative Assembly created NDCC Title 17. Title 17 was created in part by moving sections of the Century Code already in existence into Title 17. Title 17 includes what was formerly Sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, 4-14.1-09, and 4-14.1-10 relating to ethanol plant production incentives from the ethanol production incentive fund; Chapter 6-09.17 relating to the biodiesel partnership in assisting community expansion (PACE) fund being used for interest rate buydowns on loans to biodiesel production facilities; Section 9-01-22 relating to the termination of a wind option agreement; Sections 47-05-14 through 47-05-16 relating to the creation of wind easements and termination for lack of development; Section 47-16-42 relating to the termination of a wind energy lease for lack of development; and Chapter 49-24 relating to the North Dakota Transmission Authority.

In 2007, House Bill No. 1462 created the 25x'25 initiative for inclusion in NDCC Section 17-01-01. This initiative adopts the goal of having the agricultural,

forestry, and working lands of the United States provide from renewable resources not less than 25 percent of the total energy consumed in the United States by January 1, 2025. The initiative defines renewable energy to include biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, low emissions technologies that create or use hydrogen, and energy efficiency initiatives.

In 2009, four bills created major new law in Title 17.

Senate Bill No. 2350 (2009) created the North Dakota Ethanol Council consisting of members appointed by a facility located in this state which produces more than 1 million gallons of agriculturally derived denatured ethanol. The council is charged with expending money collected through an assessment at the rate of thirty-one hundredths of 1 percent per gallon imposed upon all ethanol produced and sold in this state for the purpose of funding research, education programs, promotion, and market development efforts and state, regional, national, and international entities that promote ethanol utilization. In addition, the bill provides for a refund of the assessment, a continuing appropriation for the assessment, and a penalty of a Class B misdemeanor for a person violating calculation and submission provisions of the assessment.

Senate Bill No. 2228 (2009) required the Department of Commerce to administer the biofuel blender pump incentive fund. The fund is to be used to provide cost-share grants of up to $5,000 per pump for the installation of biofuel blender pumps to retailers who qualify and install pumps that dispense at retail a blend of gasoline and ethanol in a ratio selected by the purchaser and have at least four hoses that include a hose that dispenses E-10, a blend of at least E-20, and E-85 fuel.

House Bill No. 1509 (2009) required a wind easement and a wind energy lease to contain certain warnings; to allow time for the document to be reviewed and discussed with an attorney or other landowners; to prohibit a property owner from being liable for property taxes associated with a wind energy facility; to prohibit a property owner for being liable for damages caused by the wind energy facility; to prohibit making the property owner liable for a violation of law or regulation; to allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years; to state circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments; to require the owner of a wind energy facility to carry general liability insurance; and to allow for judicial relief. In addition, the bill provides for a study of wind easements and wind energy leases which is being conducted by this committee and was discussed earlier in this report.

House Bill No. 1462 (2007) required the Department of Commerce to convene an energy policy commission for developing a comprehensive energy policy as part of the North Dakota energy independence initiative. The purpose for this policy was to:

1. Stimulate the development of renewable and traditional fossil-based energy within the state with the goal of providing secure, diverse, sustainable, and competitive energy supplies to reduce the dependence on foreign energy sources.
2. Promote the development of new technologies to decrease dependence on foreign energy supplies.
3. Address the growth of fossil fuel and renewable energy industries to encourage the state's competitiveness.
4. Address research, development, and marketing of North Dakota-produced energy.
5. Address the expansion of existing energy resources and the diversification of this state's energy resource base.
6. Evaluate existing tax credits and incentives.
7. Modernize and expand this state's energy infrastructure.
8. Examine potential innovations to improve environmental conditions through new technologies and review energy industry workforce and training needs and develop a strategy to maximize the state's market opportunities.

In 2009 the Energy Policy Commission was codified in NDCC Section 17-07-01 through House Bill No. 1322. The purpose of the commission is to develop a comprehensive energy policy, update that policy, and monitor progress in reaching the goals of the policy. The Energy Policy Commission consists of the Commissioner of Commerce, as chairman, and members appointed by the Governor to represent the agricultural community, the Lignite Energy Council, the North Dakota Petroleum Council, the biodiesel industry, the biomass industry, the wind industry, the ethanol industry, the North Dakota Petroleum Marketers Association, the North Dakota investor-owned electric utility industry, the generation and transmission electric cooperative industry, the lignite coal-producing industry, the refining or gas processing industry, and additional nonvoting members. The Energy Policy Commission has designated itself the EmPower ND Commission.

2009 Legislation

The following is a list of legislative changes that promoted energy development in this state during the 2009 legislative session and includes 2007 changes if on the same subject matter. These changes are organized by the following categories of funds and funding, governmental entities and priorities, and taxes:

Funds and funding:

1. Expanded the biofuels PACE interest rate buydown (2007). Expanded for installation of a biodigester system and decreased funding (2009).
2. Increased funding to the lignite research fund (2007). Increased funding (2009).
3. Created the biomass incentive and research fund (2007). Combined in renewable energy development fund (2009).
4. Increased funding to the oil and gas research fund from the oil and gas gross production tax (2007). Increased funding (2009).

5. Created the biofuel blender pump incentive fund (2009).
6. Increased allocation of the oil and gas production taxes to political subdivisions and the oil and gas impact grant fund (2009).
7. Funded the Great Plains Applied Energy Research Center (2009).
8. Provided for a fracturing sand project with Division of Mineral Resources (2009).
9. Provided for a coalbed methane drilling study with Industrial Commission (2009).

Governmental entities and priorities:

1. Provided for an energy policy commission (2007). Made permanent the Energy Policy Commission (2009).
2. Created the North Dakota Pipeline Authority (2007). Expanded authority to include interconnection pipeline systems (2009).
3. Created the North Dakota Ethanol Council (2009).

Taxes:

1. Reduced the property tax for wind generation facilities (2007). Extended this reduction (2009).
2. Extended the sales tax exemption for materials for a wind-powered facility (2009).
3. Extended a sales tax exemption for certain power plant equipment (2007). Extended the exemption to beneficiated coal (2009).
4. Added soybean and canola crushing facility equipment costs to the income tax credit for biodiesel production (2009).
5. Expanded income tax credits to install geothermal, solar, and wind devices to include biomass and made these tax credits tradable and transferable (2007). Extended this tax credit and placed the geothermal tax credit on the Form ND-1 income tax return (2009).
6. Reduced the oil extraction tax (2007). Created a new triggered reduction in the oil extraction tax for horizontal wells (2009).
7. Exemption from oil extraction tax for tertiary recovery (2009).
8. Created credit against coal conversion tax for capture of carbon dioxide (2009).
9. Created an oil and gas gross production tax exemption for gas used to generate electricity at the well site (2009).
10. Replaced the rural electric cooperative gross receipts tax with a line mile tax and a megawatt/hour retail tax (2009).

Reports

In its study of a comprehensive energy policy, the committee received testimony regarding the following areas listed in this report. The Legislative Management delegated to the Energy Development and Transmission Committee the responsibility to receive reports from a number of entities during the interim.

The Energy Policy Commission (EmPower ND Commission) also studied a comprehensive energy policy. The EmPower ND Commission provided the report required by NDCC Section 17-07-01 entitled *EmPower ND 2010-2025 Comprehensive State Energy Policy*.

Portions of the following testimony came from the EmPower ND Commission. However, the testimony of the EmPower ND Commission has not been separated from other testimony but is noted as such when appropriate. The Empower ND Commission provided major policy goals for all energy; wind; transmission; lignite and coal conversion facilities; ethanol; biodiesel; biomass; energy efficiency; refining; oil and gas; natural gas processing; petroleum marketing; solar, geothermal, hydrogen, and hydropower; workforce; and infrastructure. The general principles supported by the Empower ND Commission are to grow all energy industries, use sound science and economics, support research and development for new technologies, support incentives over mandates, support fair regulations and a friendly business climate, and be environmentally responsible. North Dakota has an opportunity in all areas of energy, and this state wants to be first in American energy, no matter what the demand.

In addition, the committee received reports from the Industrial Commission, Basin Electric Power Cooperative on a carbon capture project, the State Water Commission, the North Dakota Transmission Authority, and the North Dakota Pipeline Authority.

Carbon Sequestration and Industrial Commission Report

Two reports are required from the Industrial Commission. Senate Concurrent Resolution No. 4015 directed the Industrial Commission to study the economic impacts of proposed federal, regional, and state carbon cap and trade systems, including the Minnesota Next Generation Energy Act of 2007. The Industrial Commission is to report the findings and recommendations to the Legislative Management. In addition, as a part of Senate Bill No. 2095 (2009), which established permit, fee, and title requirements for the geologic storage of carbon dioxide, the Industrial Commission is required to file a report beginning December 2014 and every four consecutive years on the amount of money in the carbon dioxide storage facility trust fund and if fees being paid into it are sufficient to satisfy the fund's objectives under NDCC Section 38-22-15. Under the same section, storage operators of carbon dioxide must pay a fee based on the expense associated with long-term monitoring and management of a closed storage facility. The fees are placed in a carbon dioxide storage facility trust fund.

The committee received testimony relating to the authority of the Industrial Commission and State Department of Health over the storage of carbon dioxide. There are three types of storage--enhanced oil recovery, when enhanced oil recovery is converted to carbon dioxide storage, and saline aquifer storage. Because there is a gap between what will be paid for carbon dioxide and the cost to make carbon dioxide, this gap needs to be closed and it is expected to be closed by carbon credits. It was argued that the carbon dioxide should be used for enhanced oil recovery, not just stored, because the use for enhanced oil recovery

makes carbon dioxide a valuable commodity and subsidizes the cost of sequestration.

The annual production of carbon dioxide in this state is approximately 40 million tons. Carbon dioxide emissions are coincident with the local economy. In western North Dakota the local economy is energy production. In eastern North Dakota and western Minnesota the local economy is agricultural processing. There are not capture opportunities from small sources because it is cost-prohibitive. An ethanol plant was investigated as a potential source, but the average ethanol plant produces 8 million cubic feet per day of carbon dioxide. The economics of a pipeline require 1 million cubic feet per day per mile.

Oil companies are willing to pay $15 to $20 per ton for carbon dioxide for enhanced oil recovery, and carbon dioxide from power plant emissions costs $40 to $60 per ton. The Dakota Gasification Company is estimated to create carbon dioxide at a cost in the range of $20 to $30 per ton. Canada is using carbon dioxide from the gasification plant because of carbon credits, and most all of the minerals in Canada are owned by the Crown.

The committee was informed that the rules being adopted by the Industrial Commission will contain a fee of one cent per ton of carbon dioxide stored for administration and a fee of seven cents per ton for the trust fund. These fees may be adjusted on an annual basis and the relatively low charge is to avoid pricing carbon dioxide storage out of business. The company that stores carbon dioxide will have liability for the 40-year active life of the storage and a 10-year closure. The state will then issue a certificate of closure and then absorb liability. The committee was informed that the risk drops dramatically at that point. In addition, by the time the state becomes liable, it will have experience with carbon dioxide storage. The first closure would be around 2060, and there would be $50 million in the trust fund.

The committee received testimony on potential problems with sequestration. The risk timeline for leakage is heavily laden in the injection period and steeply drops off after that to near zero at 100 years. In the short term, escape of the carbon dioxide, although not toxic, could asphyxiate through oxygen deprivation if accumulated in a low-lying area. Another risk is the energy release at the point of injection, i.e., the burst. However, a mitigating factor is that the main flow of the carbon dioxide is horizontal underground. In addition, the escape of carbon dioxide would be a negation of the climate change mitigation in the long term.

The committee was informed that over a period of 90 years, natural gas storage has resulted in five accidents and 10 deaths. The 10 deaths resulted from explosions. By comparison, carbon dioxide is not explosive. Carbon dioxide has been used for 40 years for enhanced oil recovery, and no death has resulted from carbon dioxide in that time.

The committee received testimony on the Plains CO_2 Reduction Partnership and carbon sequestration. The committee was given an overview of carbon capture and sequestration. Carbon capture and sequestration works by capturing carbon dioxide from a major stationary source and compressing the carbon dioxide for transportation to a suitable storage site. The carbon dioxide is pumped underground as a liquid at great depth into traps in geological structures. To find a place for carbon sequestration, the geology, hydrology injection zone, and cap rock and seal need to be characterized.

The partnership has completed four Phase II field validation tests, including:

1. The Zama acid gas injection site.
2. The lignite carbon dioxide sequestration-enhanced coalbed methane recovery site.
3. The prairie pothole wetlands terrestrial sequestration site.
4. The carbon dioxide sequestration in deep saline formation/enhanced oil recovery site.

The partnership is planning Phase III efforts. One of those Phase III efforts is in the Williston Basin. The concept is to capture approximately 1 million tons per year of carbon dioxide at an existing coal-fired power plant in central North Dakota and transport the carbon dioxide to the Williston Basin oilfield. The partnership is evaluating candidate oilfields. North Dakota has the capacity to store a substantial volume of carbon dioxide above what is generated in this state.

To be used for enhanced oil recovery, there needs to be millions of barrels of recovery to justify the expense. In the primary recovery in a conventional field, 15 percent of the oil is recovered. In the secondary water flood, 12 percent to 20 percent of the oil is recovered. In the tertiary recovery, whatever oil was recovered in the secondary is generally what will be recovered in the tertiary.

The viability of enhanced oil recovery using carbon dioxide in the Bakken Formation is inconclusive. The Bakken is never going to have a water flood because it pushes the oil deeper, so carbon dioxide likely will be the secondary recovery. The committee was informed that presently enhanced oil recovery with carbon dioxide is not done in this state.

Senate Concurrent Resolution No. 4015 directed a cap and trade study, and the Industrial Commission secured the services of an economics firm. The North Dakota Transmission Authority was the entity through which the economics firm was secured and was doing the project development for this study. The study was not completed by the end of the interim. Part of the cap and trade study is a review of the Minnesota Next Generation Energy Act of 2007. The committee was informed that any new power purchase agreements must meet the Minnesota Next Generation Act of 2007 but not existing projects.

The committee received testimony on federal legislation and issues. The committee received testimony on the Waxman-Markey bill, the Kerry-Boxer bill, and the energy bill. This testimony included the economic impact of the Waxman-Markey bill. In addition, the committee received testimony on the Environmental Protection Agency regulatory initiatives to regulate carbon dioxide emissions, mercury, air quality, and coal combustion byproducts. The committee received testimony on the Clean Water Restoration Act

and proposed changes to the definition of navigable waters to give the federal government jurisdiction over all waters in the United States. The committee was informed that there are congressional members who think coal can be removed as an energy source.

Coal Conversion Facility Carbon Capture Project Report

North Dakota Century Code Section 57-60-02.1 provides that a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions is entitled to a 20 percent reduction in the state general fund share of the coal conversion tax. In addition, the facility may receive an additional reduction of 1 percent for each two percentage points of capture of carbon dioxide emissions up to 50 percent and for 10 years. A coal conversion facility that receives a credit is required to report to the Legislative Management. The report must include an overview of the project; a status report on past, current, and captured carbon dioxide; any changes to the carbon dioxide capture system; and the status of federal law and any federal benefits to the project. The only project in this state at this time is at the Antelope Valley Station near Beulah. The Antelope Valley Station is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine.

The committee received annual reports on Basin Electric Power Cooperative's carbon dioxide capture project at the Antelope Valley Station. The committee was informed that the cost for carbon dioxide capture will have to be passed on to cooperative members. For carbon dioxide capture to be profitable, there will need to be an offset, such as enhanced oil recovery. The committee was informed that carbon dioxide has not been used for tertiary oil recovery in the Bakken Formation. The Bakken is a tight formation, and a new technique will have to be developed for the use of carbon dioxide in the Bakken. Committee discussion included that the Bakken laid idle for years until there was the technology for fracture jobs. The same may hold true for the use of carbon dioxide for tertiary recovery. The committee was informed that the goal is for carbon capture to be achieved at an at least break-even position so as to advance the technology. The technology used in the carbon capture program will be sold by the partners developing the technology. The development of the technology allows for performance guarantees, which are required by the purchasers of the technology.

The committee was informed that the process for carbon dioxide capture uses steam to break the bonds and then the water is cooled down. In addition, the flue gas will need to be cooled. The additional energy needs for the 100,000-plus megawatt plant to remove 99 percent of carbon dioxide is 20 megawatts to 21 megawatts. In short, approximately 20 percent of the power is used to get 99 percent removal. The reduced power available to consumers will have to be made up from wind power, gas generators, or the open market.

Water Issues and Water for Each Sector of the Energy Industry Report

House Bill No. 1322 (2009) required the State Water Commission to study and determine unit water use for each energy sector, including petroleum, ethanol, electrical generation, and biodiesel; identify water quality constraints for each energy sector; estimate projected water use in each energy sector based on growth projections provided by the EmPower ND Commission; and assess the quality and sources of water for energy development. The State Water Commission was required to cooperate with the EmPower ND Commission in conducting this study and to report to the Legislative Management before September 1, 2010.

The committee was informed that the water resource study is of existing projects and planned projects and the water needs for those projects. As a rule, the availability of water is more important than the quality of water for the energy industry. The report contained a number of maps showing water resources. The committee was informed that the study areas in the report as they relate to aquifers only included aquifers that might be able to provide water for the oil industry. As such, if the aquifer is a good aquifer, but is already being used, it may not have been included in the study area. As part of the report, the committee was provided a list of permits and applications for water for industrial purposes from surface water upstream of Garrison Dam.

The committee was informed that water is the most critical limiting resource throughout the world. Sustainable water supplies are needed for energy production, growing crops, industrial manufacturing, and expanding populations. The committee received information on the users of water. The committee was informed that conventional coal-powered generation is second only to agriculture as the largest user of water in the United States. In Montana 95 percent of water withdrawals are for irrigation, and in Wyoming 90 percent are for irrigation. In North Dakota 77 percent of the water withdrawals are for thermalelectric power and 12 percent for irrigation. However, the withdrawal rate of North Dakota compared with other states is one-tenth to one-half of other states in the region. The committee was informed that this state has coal-fired power plants because of Lake Sakakawea. The Lake Sakakawea-regulated water is needed for cooling.

The committee received testimony on permitting issues in this state. The committee was informed that it is difficult to obtain water permits. Each water permit is considered on its own merits, on a case-by-case basis, and permits are issued on a first-come, first-served basis. The State Water Commission needs to do due diligence, and this may take six months to two years. This due diligence is required because people are more litigious, and the reason for the decision needs to be based on a complete investigation and a good plan. It was argued that challenges to permits are a big problem because every withdrawal permit for oil is challenged by environmental groups. This slows down the process and was argued to be an abuse of the system. The committee was informed that the permitting process for

water is frustrating because it takes a long time, and most requesters just want a decision.

The committee received testimony on the need for water for fracture jobs. The committee was informed that oil companies will do what it takes to find water for fracture jobs, but oil companies do not want to be in the water business. The committee was informed that the oil industry needs to get water and has been encouraged by the State Water Commission to get water for fracture jobs from Lake Sakakawea. The use of water for a fracture job is equivalent to the use of water for a center pivot irrigation system on a quarter section of land. The water used by Fargo is 77 fracture jobs per day. The committee was informed that a treatment plant by Lake Sakakawea for water used in the oil industry will depend on cost and access through Army Corps of Engineers' lands. The committee was informed that there had been meetings between the oil industry and the corps, and the meetings were positive. However, the corps does not seem to want many points of diversion, wants storage fees, and is concerned with the amount of water removed from Lake Sakakawea. The main reason that progress is slow is because the corps has to follow rules, and if the rules are followed the process will move forward.

The committee received testimony on a program of the Northern Great Plains Water Consortium. The overall goal of the program is to assess, develop, and demonstrate technologies and methodologies that minimize water use and reduce impacted water discharges from a range of energy technologies, including coal combustion, coal gasification, coalbed methane, and oil and natural gas production. One project was to assess the economic potential to recycle fracture flowback water in the Bakken Formation. As much as 1 million gallons of water per well are used in a fracture job, and the water is transported to the well site at great expense by truck. Recycling flowback water would prevent hauling for deep hole disposal. The committee was informed that with transportation and disposal, the current fracture water costs range between $2 and $11.75 per barrel.

The first task of the consortium was an inventory of industry freshwater use, the second was to assess flowback quality, the third was to evaluate current water-handling costs, the fourth was to evaluate the feasibility of recycle/reuse technologies, the fifth was to assess the current state of existing recycling technologies, and the sixth was to make recommendations and plans. The committee was informed that there is relatively low recovery of original fracture water within the first 10 days, and there is very high salinity in flowback water. The committee was informed that fracture flowback water treatment needs to be oilfield-compatible, robust, mobile, use existing technology, and highly treat the water recovered. The problems with recycling Bakken flowback are the slow recovery, the low volume, the high dissolved salts, technological challenges, and treatment is not likely cost-effective in most cases.

Committee discussion included that the main objection to using freshwater for fracture jobs is because it is put in the earth and not placed back in the atmosphere. It is argued that this use of water is a consumptive use.

The committee was informed that hydraulic fracturing is being attacked at the federal level by legislation providing for regulation by the Environmental Protection Agency. The reason for the potential regulation of fracture jobs is the concern over impact to freshwater.

Transmission and North Dakota Transmission Authority Report

North Dakota Century Code Section 17-05-13 requires the North Dakota Transmission Authority to deliver a written report on its activities to the Legislative Management each biennium.

The committee was informed that the North Dakota Transmission Authority has been working with local-, regional-, and national-level transmission planning. The committee was informed that there are 250 miles of transmission under construction or recently completed at an estimated investment of $81.1 million.

The committee was informed that the present transmission system was designed to move power to customers within this area. The goal of the North Dakota Transmission Authority is to move power out of this area. The committee was informed that developing a transmission plan that encompasses the entire United States has begun through regional groups, including the Upper Midwest Transmission Development Initiative, and through the Strategic Midwest Area Transmission Study with transmission owners with interests in Midwest ISO and outside Midwest ISO. This has resulted in looking at interconnections between independent system operators. These efforts are building blocks for the Eastern Interconnection States Planning Council.

The committee received testimony from the EmPower ND Commission on transmission. This testimony mirrored the testimony from the North Dakota Transmission Authority. The committee also received other testimony on transmission. The testimony focused on transmission for wind energy.

The committee was informed that there is a need for transmission to transport wind energy to the large load centers to the east because of demand created by renewable standards or consumer request. However, wind creates the problem of integrating small operators into a large system. This creates issues on how to keep energy moving around that is not created by a consistent baseload, like that of a coal plant. Present wind projects generate electricity for local utilities and are not shipping to far-off load centers.

There are over 5,000 megawatts of wind development in the queue in North Dakota. This wind power will need transmission for there to be development. Renewable energy can use the excess capacity on a first-come, first-served basis and no utility can designate extra capacity. When the capacity is full, then the user would have to pay for network upgrades. The committee was informed that there is cultural confusion by people that want wind power but object to having other electricity on the line that provides the wind power. It is impossible to tell the source of energy once

it is in the electric lines. The committee was informed that it is not economically feasible to build transmission solely for wind. The committee was informed that the collaboration between wind and coal is good for the development of both energy sources. As such, the committee was informed that Big Stone II would have shored up transmission, given transmission to areas that want wind power, and given wind power to those areas.

Committee discussion included that transmission is being pushed by wind, and wind helps build transmission for other forms of power.

Committee discussion included that states like Minnesota have placed regulatory barriers to siting and should allow the siting of transmission that is created to transport green energy.

The committee received testimony on the Green Power Express and other groups looking at large high-voltage overlays to move energy to the east. The Green Power Express is an independent transmission company developing a high-voltage overlay to take wind energy from the Dakotas to eastern loads. The company is a New York Stock Exchange company and has banking partners and investors that will provide the money for the Green Power Express. The committee was informed that the main issue for the company is cost allocation not investment. A cost allocation on a project this size has never been done, and it will have to be dealt with differently from previous projects.

The committee was informed that groups like the Green Power Express are waiting for federal action on transmission and whether there is a renewable energy standard at the federal level before starting any projects. The committee was informed that construction could begin within two years if there was the proper regulation and siting, and the project could be completed within five years.

The company intends to use the Federal Energy Regulatory Commission's backstop authority with problem areas. The committee was informed that the Federal Energy Regulatory Commission could stretch its authority to site the Green Power Express; however, the hope is that Congress will provide the explicit authority.

It was argued that transmission lines are one of the few areas in which the federal government should have oversight because of the multijurisdictional nature of transmission lines. The committee was informed that the Federal Energy Regulatory Commission has not implemented backstop siting authority. There is a potential for the use of this authority for siting a line from Arizona into California. The committee was informed that there is interest in Congress to give the Federal Energy Regulatory Commission more backstop siting authority.

Because of the amount of wind in the queue and the limited amount of transmission, the committee followed action by the Federal Energy Regulatory Commission on cost recovery for transmission. The committee was informed that before the transmission is constructed there needs to be regulatory certainty, which would be aided by a decision on cost recovery.

The committee reviewed the new generator interconnection cost allocation approved by the Federal Energy Regulatory Commission in October 2009. The old cost allocation formula placed 50 percent of the cost with the interconnection customer and 50 percent with the transmission owner. North Dakota utilities paid for 50 percent of the transmission upgrades when new generation was brought online. Because these costs are passed on to utility customers, North Dakotans were expected to pay 50 percent of those costs even when the power was for the benefit of consumers elsewhere. The new cost allocation formula places 90 percent with the interconnection customer and 10 percent is shared across the Midwest ISO footprint for lines 345 kilovolts and above. For lines under 345 kilovolts, the total cost is with the interconnection customer. Interconnection customers are generators like wind farms and coal plants. The committee was informed that the new cost allocation formula is a benefit to this state because it will decrease the risk that North Dakotans will pay an unfair share of the cost of generation development in our state especially for wind energy. However, it was argued that it is unfair for the generator to pay for all of the transmission, and there will have to be further action on cost allocation.

The interconnection customer paying 100 percent can create an unfair situation because under open access, others can use the same transmission for free. For example, this is like building a highway for one additional car and having that car pay for the highway, even though others can use the highway. However, it was argued that the new cost allocation is better than the old cost allocation.

The committee was informed that the best solution for wind integration would be for the storage of electricity. Wind energy and electric cars work well together because the car can be charged in the middle of the night. The committee was informed that if there is too much wind to integrate into the system, the system would need a price signal, a mandatory curtailment, or plants to be taken offline.

Pipeline Issues and North Dakota Pipeline Authority Report

North Dakota Century Code Section 54-17.7-13 requires the North Dakota Pipeline Authority to deliver a written report on its activities to the Legislative Management each biennium.

The committee received testimony on the anticipated need for additional capacity for transporting crude oil to market after 2010. The state has 345,000 barrels of export capacity and projected production of 410,000 barrels in the next biennium. The committee was informed that there is excess pipeline capacity, but as production increases, capacity will be outpaced until projects are completed. In the long-term, transportation of oil will meet production; however, in the next few years there will be challenges. The North Dakota Pipeline Authority is working to meet the potential increase in production.

The committee received testimony on efforts to meet the transportation needs of oil produced. The committee was informed in the short term that these challenges will be met by trucking oil to Canada until the completion of

pipeline expansion projects. Another means of meeting this challenge is rail transportation of oil. The committee received testimony on the EOG Stanley rail station that is used to transport oil using EOG's rails and trains. The cost to transfer oil by train is $8 to $10 per barrel and by pipeline is $4 to $6 per barrel. The committee was informed that economics for the project have the project going forward even though being more expensive. The committee reviewed many pipeline projects, including the Keystone interconnect. The Keystone interconnect is the most expensive and furthest time out as to completion. The Keystone interconnect is attractive because it would allow the transportation of oil to Oklahoma, which is a good place to transport oil because of refining capacity. Other pipeline projects were planned for Enbridge, Kinder Morgan, and Alliance.

The committee was informed that new pipelines are not an attractive business proposition at this time. Pipeline contracts need to be from 5 years to 20 years in term to be attractive. Oil producers in the Williston Basin have been unwilling to agree to these terms because of the uncertainty of the future of oil in North Dakota. As the future of oil in North Dakota is becoming more certain, the building of new pipelines will become more attractive. In addition, new pipelines need large batches of oil, which requires massive storage units that are not available in this state.

Shallow Gas Taxation

A shallow gas gross production tax exemption was created in 2003 by House Bill No. 1145. The purpose of the exemption was to generate activity in the drilling of shallow gas wells, especially coalbed methane gas wells. The fiscal note on the bill stated that the overall fiscal impact was an expected reduction in gross production tax revenues totaling $400,000 for the 2003-05 biennium.

Shallow gas produced during the first 24 months of production from and after the first date of sales from a shallow gas zone after June 30, 2003, is exempt from gross production tax. Initially, this exemption was ineffective for gas wells completed or recompleted after June 30, 2007. However, the June 30, 2007, limitation was removed in 2007 by House Bill No. 1279. The fiscal note stated that by continuing the 24-month exemption, revenues to the permanent oil tax trust fund are expected to decrease by $1.1 million in the 2007-09 biennium. As for counties, most of the current shallow gas wells are located in a county that will reach the gross production gas cap so the county revenues will not be reduced by making the exemption permanent. However, new activity may occur in other counties, and these counties would have to wait until the end of the 24-month exemption to receive any gross production tax revenue.

The legislative history reveals the 24-month exemption resulted in a sevenfold increase in the number of wells in production. Testimony indicated that the increased activity was a result of the tax exemption, and the fiscal note was based on an assumption that the drilling that was encouraged by the current shallow gas would be in a single geological formation from one field in southwestern Bowman County. There was hope that the extension of the exemption would encourage companies to explore shallow gas in eastern North Dakota.

Oil and Gas

The committee received testimony on shallow gas. The committee was informed that the price for gas is down from $12 per million cubic feet a year ago to $2.66 per million cubic feet and natural gas is at a high in storage. This is the result of the shale gas development creating more gas than can be consumed. As such, the committee was informed it will be years before the natural gas market recovers and has removed any need for the development of shallow gas.

The committee received testimony from EmPower ND Commission on oil and gas. The committee was informed that this state is fourth among states in energy production for oil. In the Bakken Formation, with the best technology, 95 barrels out of 100 barrels are left in the ground. The committee was informed that the two major challenges to oil and gas development are prices and federal government legislation, especially hydraulic fracturing legislation.

The committee was informed that the industry favors a simplified state tax structure in this state. It was argued that there needs to be a review of all funding streams from oil because the tax structure as applied to each company is a disaster. It was argued that the distribution formula for tax revenue is broken. Tax revenues need to meet the infrastructure needs of the counties and need to be used for planning for the future. There needs to be long-term infrastructure planning for the Bakken Formation. In addition, the state needs to get the resources and people needed to the Department of Mineral Resources.

The committee received testimony on the price received for North Dakota oil being less than the market price. The committee received testimony on the supply chain for gasoline and the price differential. The committee was informed that the supply chain is complex, and each step extracts costs and profits. There are approximately 160 producers in this state, 12 purchasers, and 6 transporters. Purchasers aggregate oil for sale to a refinery.

Pricing for oil is calculated each day by New York traders. The average contract will change hands 20 times, and this creates variations in price. Local refineries look at the New York Mercantile Exchange (NYMEX) and set a posted price, approximately 10 percent below NYMEX. Purchasers will make offers below the posted price to make a profit to cover the cost of transportation to the refinery. If the supply chain is disrupted, purchasers are able to increase profit margins, and producers and royalty owners do not realize full profits. The committee was informed that taxes take the largest share of money from the supply chain. State taxes from extraction to at the pump equal 43 cents per gallon of gasoline.

The price differential should be at the normal level of 5 percent to 10 percent if there is adequate pipeline and refining capacity. Differentials have been as high

as $23. The committee was informed that when the Mandan Tesoro refinery shut down, price differentials increased but differentials have been dropping since the Tesoro refinery was brought back online. There is a $9 per barrel discount for transportation. There was a decrease in the discount when pipelines recently came online.

Refining and Refining Study

The committee received testimony from the EmPower ND Commission on refining. The committee was informed that there has been a drop in gasoline demand, and this is the first significant drop in recent history and the demand will not grow until at least 2020. Because demand is down, it is difficult to find a market for gasoline. The committee was informed that East Coast refineries are shutting down, and refineries are running at 70 percent of capacity. A few years ago, refineries were running at 95 percent capacity. In addition, the committee was informed that Europe dumps gasoline on the open market because Europe uses diesel. The demand for diesel has increased partly because an engine that uses diesel does not smell anymore, gets better gas mileage, and the engines last longer. In this state, there has been an increase in diesel use as a result of oil activity.

The United States is one of the few countries that has gas-based automobiles. The committee was informed our culture will not move to diesel as long as there is low-cost gas. The main impediment to having a large fleet of diesel passenger vehicles is Environmental Protection Agency rules. Europe's rules are not as strict. In addition, as new technologies are applied to diesel engines, more engines will meet United States standards, and more vehicles will be sold in the United States.

The committee was informed that there are some incremental opportunities for expansion at the Tesoro refinery in Mandan--this state's only refinery--because there is a market for 3,000 barrels to 5,000 barrels a day of diesel in this state. Although 15,000 barrels to 20,000 barrels of diesel enter North Dakota from out of state, to make 20,000 barrels of diesel, a refiner makes 30,000 barrels of gasoline for which there is no demand. Many refineries are not staying in business, and especially smaller ones are being closed because of no growth in gas consumption. The committee was informed that the Tesoro refinery in Mandan has been fortunate because it recently has been the only refinery to make money for Tesoro.

The committee received testimony from the North Dakota Association of Rural Electric Cooperatives on the study of the feasibility of increasing refining capacity in North Dakota. The committee was informed that there has not been a new refinery built since 1976; however, there has been a substantial expansion of refining capacity since 1976.

Phase 1 of the study was focused on a market assessment, and the committee was informed that Phase 2 of the study would only be done if the market assessment recommends increasing refining capacity. The committee was informed that the report will hopefully provide information for a strategic planning document for oil companies.

The first phase of the study looked at a 100,000-barrel-per-day, 50,000-barrel-per-day, and 20,000-barrel-per-day refinery. The 20,000-barrel-per-day plant had the most positive impact. As a result of the first phase of the study, it was determined that regardless of the size of the refinery, there were marginal economics. As a result of this discovery, the study investigated a naphtha alternative. The study evaluated a 34,000-barrel-per-day naphtha plant. The 34,000-barrel-per-day naphtha plant would provide economies of scale and less input costs than a 20,000-barrel-per-day refinery. The largest savings over a refinery is in the capital costs of construction. A naphtha plant does not make gasoline but makes diesel and extra naphthas. A naphtha plant will not depress the gas market. If constructed in this state, the naphtha would be sent to Canada to be used as a dilutant in oil pipelines to lower the viscosity. The market for naphtha in Canada is long-term and transparent.

The return rate without borrowed money for a 34,000-barrel-per-day naphtha plant is 9.2 percent. The model was over a 15-year term, and in the first 5 years of the project, there would be no income. There would be no taxes paid on any income because of the carryforward on losses. The 15-year model was used because there should be significant oilfield production in this state until at least 2025.

Wind

The committee received testimony from the EmPower ND Commission on wind energy. The committee was informed that there are approximately 1,200 megawatts of installed wind energy with 6,000 megawatts in the planning stages, and there were 1 megawatt to 2 megawatts eight years ago. The goal is to have 5,000 megawatts by 2020.

The EmPower ND Commission recommended that the siting threshold for the Public Service Commission be reviewed. There are issues when a wind farm is sited next to an existing wind farm and both separately are below the siting threshold but combined exceed the siting threshold. In addition, there is an issue in the northeast and central part of this state concerning unmanned aerial testing at the University of North Dakota. A wind farm creates challenges for radar. It was argued there are competitive economic reasons to not want wind in a particular area, and siting needs to be reviewed as the best sites are being taken. It was argued that the less favorable sites need to be weighed against other uses.

The committee received testimony on a legislative proposal by the EmPower ND Commission and the Public Service Commission to address the Public Service Commission's jurisdiction over wind farms. A complete bill was not drafted because the EmPower ND Commission was waiting for suggested rules differentiating between small and large wind projects to be drafted by the Public Service Commission.

Because small wind projects could have a cumulative effect, the future bill draft may give the Public Service

Commission jurisdiction over small wind projects with an expedited process. There is concern about small projects and the time it would take for Public Service Commission approval. One solution is for a small wind farm merely to provide notice to the Public Service Commission. The EmPower ND Commission did not want to overregulate and that was the reason for waiting to have the bill draft proposed with accompanying rules.

The committee was informed by the wind industry that the industry wants development without negative landowner impacts. As such, more oversight from the Public Service Commission may be desirable so that the 6,000 megawatts of planned wind energy will need to be developed in an orderly manner. If there is regulation at the state level, there will be more consistency and less of a personal adversarial tone that can arise if the decision is local.

Committee discussion included that there is a fine line between local control and the administrative ease of state control in siting. Committee discussion included that the Public Service Commission should find a balance for the state. It was argued Public Service Commission jurisdiction creates a comfort level for local governments so local governments are not pressured into making decisions. It was argued the Public Service Commission should have more oversight. Committee discussion included the wind industry in this state is firmly present and mature, and the committee should consider giving the Public Service Commission more siting jurisdiction.

Lignite and Coal Conversion Facilities

The committee received testimony from the EmPower ND Commission on lignite and coal conversion facilities. The committee was informed that lignite represents 29,000 jobs, of which 4,000 are direct and 25,000 are indirect. The lignite industry provides $100 million in tax revenue per year. The committee was informed that the first power plant built in the last 20 years in the United States was recently built in this state.

In particular, the committee received testimony on lignite coal. The perfect energy is clean, has low water consumption, does not compete with food production, has low carbon dioxide emissions, is domestically produced, is green, and most of all is low-cost. The positive properties of lignite are its high reactivity and low mining costs. The negatives are its low energy value, high moisture, medium sulfur, and high ash. The positives of utilizing lignite include the low fuel cost and good collocation with carbon dioxide sinks. The negatives include a higher capital cost, higher environmental performance costs, high transportation costs, and low carbon dioxide efficiency.

The committee was informed that the challenges to the coal industry are the availability of technology, the development of technology, and the affordability of technology. As to emission control, the committee was informed that the Energy and Environmental Research Center (EERC) in Grand Forks has developed zero or near zero emission technology for a coal-fired power plant. The extra capital costs for a coal-fired plant that has zero emissions are approximately 40 percent.

The committee was informed that the EmPower ND Commission supports reasonable federal air quality standards and encourages Congress to support preemption by the Environmental Protection Agency of state and local regulation of carbon dioxide emissions. In addition, the EmPower ND Commission supports the long-term sequestration of carbon dioxide. The goal is to keep the existing coal plants while building new clean coal plants and creating new industries of coal to liquids or gas. It was argued that Congress needs to establish what needs to be done to build a coal-fired plant so that new plants may be built with clean coal technology.

The committee received testimony on clean coal technologies. Clean coal technologies include conventional combustion, advanced combustion, gasification, pyrolysis, coal to liquids, emission control, near zero emissions, and water minimization. The committee was informed that there is no planned coal gasification in North America. Most existing and planned gasification is in Africa and the Middle East. The committee was informed that gasification is an answer to getting energy made from coal out of this state, and the greatest problem in building a gasification plant is the permitting issues. The committee was informed that coal to gas is still viable with the increased amounts and lowered prices of natural gas.

The committee was informed that the United States Army has announced its intent to build up to seven coal-to-liquid facilities. The reason for the facilities is to provide independence from foreign oil for military purposes. The committee was informed that coal to liquids is competitive with oil at $40 to $50 a barrel. It could take 8 years to 10 years to build a facility and considering the amount of time, the investment needed, and reliance on high oil prices, this is a major commercial risk. The committee was informed that all energy types should have an even platform for competition, and coal to liquids and emerging technologies need to be incorporated into the state tax code.

Biofuels

The committee received testimony from the EmPower ND Commission on ethanol. The committee was informed that 350 million gallons of ethanol are produced at present, and the goal is 450 million gallons by 2015. However, the federal cap for the amount of ethanol that can be produced by corn is being reached so ethanol will have to be made from biomass in the future. Research is being conducted by the EERC and North Dakota State University for the use of switchgrass and wheat straw as feedstocks for ethanol. The committee was informed that the Spiritwood facility will use wheat straw, and the development of sugar beets as a feedstock is in the early stages. If there is success with cellulosic ethanol at Spiritwood, there will be more efforts and opportunities.

The committee was informed that the major issue is the transportation of feedstock to the ethanol plant and ethanol from the plant. A 100-million-gallon ethanol

plant has 100 trucks deliver feedstock each day. Most ethanol is moved by rail at present, and pipeline infrastructure would provide for cheaper transportation of ethanol than rail. The cost for an ethanol pipeline is no different from a traditional oil and gas pipeline. In addition, the committee was informed that there needs to be improvements in the marketing, distribution, and use of ethanol.

The committee received testimony from the EmPower ND Commission on biodiesel. North Dakota is a leader in feedstocks for biodiesel. Canola is used because of its high oil content. Biodiesel is almost the same as vegetable oil. The committee was informed that biofuel of 20 percent or higher reduces greenhouse gases, cancer-causing chemicals, and particulates and aids lubricity. One of the problems with canola oil is poor cold flow capabilities. The committee was informed that research is being done to provide more oil and create better cold flow capabilities from canola oil. The committee was informed that there is a need for a heated blender in North Dakota.

The committee was informed that the biodiesel industry is suffering because of the nonextension of federal programs. It was argued that there needs to be longer federal incentives of at least five years. It was argued that the state should consider a biodiesel countercyclical production incentive like the one provided for ethanol.

The committee was informed that the EERC has developed technology using vegetable and algae oil to produce petroleum-analogous fuels that are drop-in compatible for the United States military. The United States Air Force aims to require 50 percent of its continental United States fuel from a nonpetroleum source by 2016. The fuel was tested in a rocket launch and provided excellent performance and is cleaner burning than regular fuel.

The committee was informed that algae is a good feedstock for biofuels because of greenhouse gas reductions, algae does not compete with food or with high-value agricultural land, and algae is a higher energy density oil than other oils. A field of soybeans produces 48 gallons of oil per acre per year, a field of sunflowers produces 102 gallons of oil per acre per year, and microalgae can produce between 5,000 and 15,000 gallons of oil per acre per year.

Biomass

The committee received testimony from the EmPower ND Commission on biomass. Biomass feedstocks include agricultural residues, wood residues, crop oils, municipal solid waste, and energy crops. The availability and sustainability of biomass are largely dependent on the commodity crop prices. The main impediments to the use of biomass are the infrastructure needed to produce, store, and transport the biomass. These impediments make biomass not cost-competitive with alternatives. Because the industry is in the infancy stage, investment is not there to develop this infrastructure. The committee was informed that biomass is more competitive on a smaller scale without much transportation costs.

The main uses of biomass are cellulosic-based ethanol and cofiring biomass with coal. There has been resurgence in the interest in cofiring biomass with coal, and a new cap and trade or carbon tax may make biomass cofiring a cheap and easy near-term solution. In addition, many states have renewable portfolios for electricity that require green energy and drive interest in cofiring biomass. The Spiritwood facility is looking at a 20 million gallon per year cellulosic ethanol plant, and the byproduct can be used as a fuel to be cofired with lignite. The committee was informed that the cofiring with coal will develop the market.

The committee was informed that there are many dynamics in this industry, which is in its infancy. Biomass is in competition with higher-returning crops and needs to use residues and marginal lands to be successful. Over time, wheat has been genetically altered to have a shorter stalk. If there were a biomass industry, then longer stalks may be developed or reintroduced. The committee was informed that soil scientists have shown that 50 percent or less of crop residue may be removed without fertilizer replacement.

Energy Efficiency

The committee received testimony from the EmPower ND Commission on energy efficiency. The committee was informed that more than $44 million in federal stimulus dollars have been invested in North Dakota to improve energy efficiency in homes.

Natural Gas Processing

The committee received testimony from the EmPower ND Commission on natural gas processing. The committee was informed that over $400 million has been spent on new projects in the last two years. Although there is a policy to reduce flaring, it was argued that flaring needs to be allowed because of the miniscule value of natural gas. The committee was informed that all Williston Basin gas is coincident to the liquid extraction. Based on British thermal units, natural gas should be one-sixth the cost of oil. The price should be $12 but is at under $3. The committee was informed that the EERC has been working on a microturbine that uses flared gas to make electricity. It was reported that the mircoturbine is commercially viable, but long-term demonstrations need to be done for the full life-cycle cost.

Petroleum Marketing

The committee received testimony from the EmPower ND Commission on petroleum marketing. The committee was informed that there needs to be a national policy for liability relief for petroleum marketers for leaks, especially leaks caused by higher blends of renewables. There is $4.5 million in the superfund in North Dakota. However, the committee was informed that the cost for fixing leaks is rising, and there needs to be a review of the funding source.

Geothermal and Hydrogen

The committee received testimony from the EmPower ND Commission regarding geothermal and

hydrogen. The testimony focused on the EERC as to hydrogen technology. As to hydrogen, the committee was informed that the current and pending contracts at the EERC relate to:

- Hydrogen from coal.
- Hydrogen on demand.
- Battlefield hydrogen (JP-8).
- Biomass to hydrogen.
- Integrated hydrogen and ethanol production.
- Wind to hydrogen.
- Hydrogen fuel cell-powered vehicles.

The committee was informed that technology providing on-demand hydrogen without compression and storage is moving toward commercial development. There are two primary means to carry hydrogen in a car. Hydrogen may be carried in a pressurized tank or in a tank chemically bonded to other chemicals, and the bonds are broken when needed. The difficulty with tanks is that they are very heavy. However, chemical bonding without compression does not need as heavy of a tank.

The EERC is developing on-demand fueling stations for hydrogen. The station would use the existing distribution network. The equipment could be integrated into an existing liquid fuel fueling station with minimal impact. The first commercial demonstration was scheduled to be ready in 2010.

The committee was informed that the EmPower ND Commission has investigated the industrial potential of using abandoned oil wells as sources of geothermal energy. The pressure and heat from the deep oil wells can produce energy.

Workforce

The committee received testimony from the EmPower ND Commission on workforce needs. The committee was informed that the largest demand for workforce in this state is in the oil and gas industry. In this sector, the committee was informed that the Job Service North Dakota website has 81 companies that want over 800 workers. However, it is difficult to measure the number of jobs in the oilfield. Some jobs are not listed with Job Service North Dakota, and some jobs listed with Job Service North Dakota are listed by trucking companies and not under oilfield subject headings.

The committee received testimony on workforce training. Williston State College petroleum training has trained over 4,000 people for the oil and gas industry. The two-year institutions have quickly developed programs to provide training for the energy industry--Williston State College for oil and gas and Lake Region State College for wind. The University of North Dakota and Minot State University are working on four-year degrees, but creating a four-year degree program takes more time. The University of North Dakota is working on an engineering program in geology, and Minot State University is working on an energy economics degree. The Department of Commerce and the North Dakota Petroleum Council are studying the number of skills needed by a workforce through a survey of 77 employers. The skill-set may be changing, and there may be a need for a higher skill-set and different training.

Infrastructure

The committee received testimony from the Empower ND Commission on housing infrastructure. The testimony stressed planning for oil development, including housing, highways, and city services. Because of the enormity of planning needed, it was argued that political subdivisions need help from the state in the form of planning and infrastructure, not just money. The Department of Commerce is cost-sharing planning with oilfield communities. In addition, the key to good planning is good information. The Department of Commerce is conducting a number of studies to address infrastructure needs.

Committee discussion included that some small counties and cities are overwhelmed and do not have resources for planning. In addition, it was argued that there needs to be some emergency funding for situations when there is no time for planning.

Because oil development will last for a long time and employees want to bring their families to North Dakota, the committee was informed that the first issue that needs to be addressed for people to work in the oilfield is housing. The challenge to recruiting people from states where there is high unemployment is housing.

The market needs confidence before there will be an investment in new housing. To have housing, developers need certainty in order to build homes and rental properties. The committee was informed that the federal government has created volatility by not having an energy policy.

The committee was informed that the Department of Commerce is engaging some communities in a housing study. There are housing studies with six communities in the Bakken Formation. The studies engage the communities on plans for infrastructure and involve the real and perceived barriers of developers. Another study is of employers to determine housing needs.

Part of the housing problem is the workers getting credit as a result of the economic downturn. However, some workers have credit issues and are good candidates for the rental market. Until housing is built, some workers are finding housing through recreational vehicles, skid shacks, man camps, and tents. Recently, there has been some apartment construction; however, only a few homes are being constructed.

Committee discussion included that there was over $20 million in debt because of overbuilding in Dickinson and Williston with the last oil boom. Local people are reluctant to invest because of the historical failure of investing in an oil boom. Despite all of this, the committee was informed that some developers are starting to build housing.

BILL DRAFTS CONSIDERED

Removal of Sunset for Sales Tax Exemption for Wind Facilities Bill Draft

The committee considered a bill draft to remove the expiration date on the sales and use tax exemption for production equipment and other property used for the

building, expanding, or upgrading of a wind facility. The bill draft came from a legislative proposal made by the EmPower ND Commission.

The committee received testimony in favor of the bill draft. The committee was informed that every other industry that has a sales and use tax exemption has a permanent exemption. However, the present income tax and property tax incentives for wind facility development expire in 2015. The committee was informed that the exemption is important to wind development because the exemption provides certainty and confidence when deciding to build in this state.

The committee was informed that there are sales tax exemptions for many activities and generally all business can receive a sales tax exemption with some exceptions. It was argued that many well-publicized projects exist because of the sales tax exemption.

As part of the review of the bill draft, the committee received testimony on the three primary incentives for wind--sales tax exemption, property tax reduction, and income tax credit. The committee was informed that income tax information for developers is confidential because there are fewer than five users of the credit. The estimated equipment cost for all wind farms was $1.2 billion, which translates to $60 million in sales tax exemptions. The majority of wind towers were installed in 2008 and 2009.

Committee discussion included that in 2001, a wind tower would pay approximately $7,000 in property tax in Minnesota and $20,000 in North Dakota. The Legislative Assembly balanced the states with the reduction to 3 percent. This placed a tax of approximately $6,000 per tower on the wind company. This state was competitive with Minnesota and South Dakota until those states changed their tax to be based on the cost of generation. As a result, this state was at twice the cost per tower. In reaction, the Legislative Assembly reduced the tax from 3 percent to 1.5 percent to make the tax competitive. It was argued that if the tax had remained at 10 percent, there would be no tax collected because wind farms would not have been built in this state.

The committee was informed that there is a full sales tax exemption in Minnesota and a partial sales tax exemption in South Dakota. Committee discussion included North Dakota appears to have a better tax policy than Minnesota and South Dakota and at a minimum are competitive.

Committee discussion included that the wind incentives were intended to launch the industry. It was argued that developers are standing in line to create wind energy in this state and there does not need to be incentives for wind energy. In addition, North Dakota exports 70 percent of its energy and exports the incentive with the energy.

The committee considered, but did not adopt, placing a sunset on the sales tax exemption of 2017 instead of making it permanent. A committee member commented that a drop-dead date would be better because the Legislative Assembly would then review the exemption at a future date. Committee discussion included that extending the sales tax exemption may be better than making it permanent because a permanent exemption is more likely to provide an incentive for an industry that may not need an incentive. However, it was argued to the contrary that the reason for the bill draft is consistency with other energy sectors and having the exemption permanent is an issue of fairness.

Committee discussion included that a permanent exemption brings certainty to the market because it takes time to develop a wind facility, and 2017 may be too short of a horizon for a large investment in a wind facility. It was argued that the Legislative Assembly can always revisit the issue, even if the exemption is made permanent.

Oil and Gas Research Council Purposes and Related Powers Bill Draft

The committee considered a bill draft to allow the Oil and Gas Research Council to promote innovation in safety, enhancement of environment, and an increase in education concerning the distribution of petroleum products and allowing the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and the petroleum marketing industry.

The committee received testimony in favor of the bill draft. The committee was informed that the bill draft expanded the mission of the council to include everything from the wellhead to the pump. In addition, the changes in powers of the Industrial Commission allowed refineries and petroleum marketers to apply for funds. The committee was informed that the change would allow for more renewable fuels marketing.

The committee was informed that the term "enhancement of environment" could include the capture of flare gas off the wellhead, which has been studied in the past. In the future, there might be other items that need to be addressed in response to federal environmental regulation. Committee discussion included that research to enhance the environment is good for the oil and gas industry.

Biodiesel Plant Production Incentive Bill Draft

The committee considered a bill draft to create a biodiesel plant production incentive. The language in the bill draft was based on the language for ethanol production incentives, before the countercyclical program. However, the bill draft did not identify a funding source. As such, the bill draft, if passed, would not provide an incentive until funding was provided. The incentive is for new production and expansion. The bill draft contained a continuing appropriation because if there was a funding source, funds would be collected throughout the biennium, sent to a special fund, and are paid out as needed. The bill draft came from a legislative proposal made by the EmPower ND Commission.

The committee received testimony in favor of the bill draft. The EmPower ND Commission supported production and consumer incentives for biodiesel. The ethanol production incentive is now a countercyclical

program and is easier to administer because of one feedstock--corn. However, biodiesel uses more than one crop. Canola is tailormade for biodiesel, but soybeans may be used to make biodiesel. The committee was informed that potential funding sources include registrations from farm vehicles or profits from the Mill and Elevator. However, it was argued that the funding source for the biodiesel plant production incentive should not take away from the funding for the ethanol production incentive. The committee was informed that the funding was left to be determined because the EmPower ND Commission focused on policy.

The committee was informed that the funding source for the ethanol production incentive is up to 40 percent of farm vehicle registrations, subject to a maximum of $7.5 million. This generates approximately $3.9 million per biennium. In addition, the incentive is funded by one cent from the refund to farmers for fuel tax. This generates approximately $100,000 per biennium. The committee was informed that if there were not any incentives paid from the fund, it would take approximately four years for the ethanol production incentive fund to reach the allowed $7.5 million threshold. The present balance of the fund is around $5,000.

The Archer Daniels Midland plant produces 85 million gallons of biodiesel each year, and this is basically the capacity of the state. The Archer Daniels Midland plant has an incentive in the bill draft to increase capacity. The committee was informed that the incentive for new production was created with the reality that existing production is already in place without the incentive. The committee was informed that agriculture production is available to support an increase in demand due to more biodiesel plants.

The committee was informed there is a shortage of diesel fuel, and incentivizing biodiesel would help this shortage. It was argued the bill draft would lessen dependence on foreign oil and make the United States more self-sufficient. This would create less conflict with other nations.

Committee discussion included without a countercyclical program, a subsidy is given to an industry regardless of profit. A countercyclical program turns off when the market works. Under a countercyclical program, if the price for the commodity goes down, then the plant can make money from the market. It was argued government incentives should not be open-ended, and the market has to come into play at some time.

Committee discussion included ethanol incentives worked well, and biodiesel is in the same place as ethanol was 10 years ago. It was argued that the Legislative Assembly needs to figure out how to develop the biodiesel industry.

Committee discussion included hesitation to support the bill draft because of the continuing appropriation. It was argued that the continuing appropriation is premature because there is no funding source.

Committee discussion included that incentives are good for a developing industry but should not be a subsidy because the Legislative Assembly should not be subsidizing somebody's competition.

Green Diesel Parity Bill Draft

The committee considered a legislative proposal that would treat green diesel the same as biodiesel under the law. The legislative proposal came from the EmPower ND Commission. The commission used Virginia law as a basis for the proposal.

Green diesel is made by the EERC and is the same as diesel fuel and is drop-in compatible. Green diesel is created through a Fischer-Tropsch process using high heat and pressure to break down the oil and rebuild it into a hydrocarbon chain. Green diesel is a hydrocarbon chain, not an ester chain, and may be blended at any temperature. Green diesel is derived from crambe, a crop related to canola.

Committee discussion included that the language on the green diesel legislative proposal placed restrictions on the biofuels PACE program of having agricultural producers hold at least 10 percent of the facility or have residents of this state own at least 50 percent of the facility. It was argued that this language should be struck or there should be a clawback provision if there is a later sale to a nonqualifying entity.

The committee considered, but did not recommend, a bill draft to treat green diesel the same as biodiesel and remove the ownership requirements of agricultural producers or residents from the biofuels PACE programs.

The committee considered a bill draft to treat green diesel the same as biodiesel with a clawback provision upon changing the ownership of a facility that received a biofuels PACE grant. The clawback provision provided that if the state provides an interest buydown to a cooperative and the cooperative decides to sell within five years, the state can take back the money provided for the interest buydown. The committee was informed that the biofuels PACE issue is tangential to treating green and biodiesel the same and the change as to biofuels PACE relates to all biofuels PACE grants, not just biodiesel.

The Tesoro refinery is working with the EERC to integrate a pilot program for the creation of green diesel at the refinery. The committee was informed that Tesoro would not use the biofuels PACE program or Ag PACE program to manufacture green diesel. Tesoro would have to change its ownership to qualify for biofuels PACE, but would otherwise be eligible for Ag PACE.

Committee discussion included that some members were uncertain as to the policy of approving a biodiesel incentive program and then treating green diesel the same as biodiesel.

Oil and Gas Impact Grant Fund Bill Draft

The committee received testimony on an EmPower ND Commission legislative proposal to increase oil impact grant funding and allow grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. The legislative proposal would change the administration of the funds by having the Board of

University and School Lands make the grants instead of the director of the Energy Development Impact Office. A specific amount for the increase was not included in the proposal. The committee was informed that the Department of Commerce has provided for a cost-share program for planning, but a permanent funding source is appropriate.

Committee discussion included support of the proposal. The impacts are not just a question of money, and all the construction that needs to be done takes planning. It was argued that the legislative proposal should have been considered last biennium.

In an effort to determine an amount of impact funding needed, the committee received testimony on the initiatives and progress relating to infrastructure issues, including transportation, public safety, housing, water needs, pipeline capacity, direct funding, and long-term planning. The committee was informed that there will be a good approximation of the impact of oil and gas development by mid-November when the North Dakota Association of Oil and Gas Producing Counties, the Department of Commerce, and the Department of Transportation have the results of a study by the Upper Great Plains Transportation Institute on short-term, intermediate-term, and long-term transportation needs. The study should be able to identify key arteries for drilling and for long-term use. The study involves determining the current conditions, required planning, cataloging needs and running forecasts, reviewing traffic patterns, and assessing long-term uses. The study should provide a forecast for 10 years to 20 years.

Because the formula money still goes to the county, committee members argued that this fund would be for additional upfront needs and it would be expected to go down over time. The committee was informed that the formula-based funding should take care of sustaining impacts. The impact grants are for upfront impacts when the county does not have the producing wells to pay for the impact and for indirect impacts. Roads have long-term and short-term impacts, and these impacts need to be separated to determine an accurate impact funding. The Upper Great Plains Transportation Institute study will help determine the largest portion of the fund.

The committee considered a bill draft based on the EmPower ND Commission legislative proposal that left open the increase for the oil and gas impact grant fund. The bill draft provided that the Energy Development Impact Office director is appointed by the Land Commissioner not the Board of University and School Lands. The director will make recommendations to the board for approving grants to political subdivisions. The bill draft added planning as a reason for the grants.

Committee discussion included support for not placing an amount of impact funding in the bill draft. It was argued that an amount should be provided for the increase in the oil and gas impact grant fund when the number is known. It was argued that the committee should not recommend a number because any number that is placed in the bill draft would not be based on good information. It was argued that the number placed in the bill draft may skew information the Legislative Assembly receives if the number is not correct. People may rely on the number placed in the bill draft. In addition, it was argued that placing the number in the bill draft without a reason for the number would subject the committee to criticism. If the committee chose a number before there is county involvement, the counties may assume the Legislative Assembly is ignoring the counties. Certain members wanted a number that could be defended.

To the contrary, the committee discussion included support for including an amount. It was argued that the committee should plug in an amount because the amount will be changed regardless of the amount during the next legislative session.

Impact fund grants for the last few bienniums have been 25 percent of request. Committee discussion included that the committee should review previous requests to determine the appropriate number for the bill draft. Other discussion included that applications for grants are wish lists as well as needs. As such, a review would not produce an accurate number.

Committee members argued if more money is going to be provided for impact grants, there needs to be more than one person making the decision about the grants. Committee discussion included support for the board making the decision even though the director has done a good job in the past making determinations as to grants. Committee members suggested the inclusion of local political subdivisions in the process of awarding grants and that the Agriculture Commissioner should be part of the process as well. The committee was informed that other councils act as screening committees for the Industrial Commission. Using this as a template, the Land Commissioner could have a screening committee with the Board of University and School Lands as the final arbiter.

To the contrary, other members were cautious as to having a committee do what one person has done in the past. One suggestion was to have a one-person screening committee with input from locals at the next level. In addition, committee discussion included that the preliminary determination should be made by people with firsthand knowledge.

The committee considered, but did not adopt, an amendment to the bill draft on impact funding to increase the funding to $20 million. Committee discussion included that $20 million was not enough money. Some members thought the number should be at least $75 million. It was argued that members of the committee should support a separate bill draft on impact funding during the legislative session. However, it was argued that placing a number in the bill draft keeps the issue in front of the Legislative Assembly. As such, the committee should keep the number in the bill draft because it shows support of increasing the cap, and any amount higher than $20 million is acceptable. Other members thought the amount should be determined after testimony and discussion on what is the appropriate number. However, to determine what the appropriate number should be, the committee needed information from the counties which was not available until November 2010.

Committee discussion included that the fund may be $100 million next biennium and be reduced near $8 million over time. Committee discussion included that the oil and gas impact grant fund was raised from $6 million to $8 million last legislative session. The Governor proposed $20 million last session. It was argued that the impact funding cap is an arbitrary number, and one solution would be to remove the cap. In addition, changing the percentage that goes into the impact fund without a cap may be a solution. Committee discussion included that the percentage is meaningless because the cap is hit in two months.

The committee amended the bill draft to remove the section on impact funding. Committee discussion included that the reason for the amendment was to deal with only the policy issues. This way the money issues would be a separate bill draft when there is better information.

Energy Conservation and Efficiency Standards for Public Buildings Bill Draft

The committee considered, but does not recommend, a bill draft that would have required the Department o Commerce Division of Community Services to adopt construction standards that are consistent with the silver building rating of the leadership in energy and environmental design (LEED) rating system. The standards would have applied to new public buildings in excess of $2 million and to modifications in excess of $500,000. The bill draft provided for an exemption if a written analysis is provided that proves the cost of compliance significantly outweighs the benefits.

The bill draft was based on legislation from other states, and many other states have a similar system. The lower level of the silver rating was chosen because it was a lesser standard as compared to other states. Committee discussion included that there needs to be something in the law for efficiency in public buildings.

Committee discussion included that the standards will create expense, and the committee should know the actual standards before voting on the bill draft. The committee received testimony on the LEED system. The LEED system is a point-based system. The committee was informed that the silver standard was recently updated and increased from 33 points to 38 points needed to 50 points to 59 points needed. The committee was informed that the silver certification includes sustainable sites, water efficiency, energy performance, material selection, indoor environmental quality, and innovation in design. These requirements make it mandatory to incorporate construction activity pollution prevention; storage and collection for recyclables; and a sustainable purchasing policy, for example, the use of green building cleaners.

The committee received testimony in opposition to the bill draft. It was argued that the exemption provision needed to be defined better. It was argued that other standards were more appropriate for efficiency.

The committee was informed that there are different opinions as to which standard to use when building. The committee was informed that the United States Green Building Council is the leader in sustainable buildings, but there is competition. Other standards include Green Globes, Energy Star, Green Star, American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the International Green Building Code. However, the American Society of Heating, Refrigerating and Air-Conditioning Engineers is referenced in the LEED standards and is complementary not competing.

The committee was informed that a building may be energy-efficient without being a LEED building. The committee was informed that the Energy Star standard primarily relates to energy use. An Energy Star building is 75 percent more efficient than a building of a similar type.

The committee was informed that the State Building Code will include portions of the International Energy Conservation Code by January 2011. The Energy Conservation Code is for residential and commercial buildings. The committee was informed that the building industry has a lot of work learning the new changes.

The committee was informed that one contentious area of the Energy Conservation Code is the requirement of basement insulation. Committee discussion included that insulating a basement may be unwise because some people do not wire a basement and would need to deal with the insulation when finishing the basement at a date later than building the home.

Committee discussion included that there were more concerns with the bill draft because it placed a nongovernmental agency in charge of setting a changing standard in the North Dakota Century Code. This raised the issue of what happens if the standard changes.

Committee discussion included that the bill draft last session received a lot of questions relating to modifications, which made the bill draft more complex. It was suggested that modifications be removed from the bill draft or the dollar threshold on modifications be raised. The committee amended the bill draft to address only new building construction and not the modification of an existing structure.

The committee received testimony in favor of LEED standards because energy efficiency is the cheapest energy and is good for customers. The committee was informed that the additional cost for a LEED-certified building is approximately 1 percent to 10 percent. The certification process costs less than 1 percent, and the payback is in five years to seven years. The most expensive portion of the building is a geothermal heating and cooling system. Because it is difficult to extract what would have been done without using the LEED-certified system, it is difficult to determine the additional cost of being LEED-certified. In addition, the building owner generally chooses points that are easily obtained.

The committee was informed that the third-party certification system helps push the sustainability issue when building. It was argued that if there is not a third-party certification system, people start sacrificing sustainability for cost.

The committee was informed that the standards have changed three times during the construction of a building in Bismarck. The certification gets tougher over time because expectations are increased over time.

However, some standards have been lessened. There are changes approximately every three years, which is comparable to the State Building Code. However, a building does not lose its LEED certification if the standards change after the process has begun. In addition, the LEED standards vary across the United States. There are regional priority credits that focus on regional issues.

The committee received testimony in favor of the bill draft. The committee was informed that 34 states have used the LEED standard. However, the United States Green Building Council recommended the bill draft be amended to be modeled after South Dakota's law.

Recommendations

The committee recommends Senate Bill No. 2030 to create a biodiesel plant production incentive.

The committee recommends Senate Bill No. 2031 to remove the sunset on the sales tax exemption for wind facilities.

The committee recommends Senate Bill No. 2032 to allow the Oil and Gas Research Council to promote innovation in safety, enhancement of environment, and an increase in education concerning the distribution of petroleum products and allowing the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and the petroleum marketing industry.

The committee recommends Senate Bill No. 2033 to allow oil and gas impact fund grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. The bill changes the administration of the funds by having the Board of University and School Lands make the grants instead of the director of the Energy Development Impact Office.

The committee recommends Senate Bill No. 2034 to treat green diesel the same as biodiesel with a clawback provision for the biofuels PACE grant upon a change in ownership within five years of the grant that negates the agricultural producer or resident ownership requirements.

GOVERNMENT SERVICES COMMITTEE

The Government Services Committee was assigned the following responsibilities:

- Study the classified state employee compensation system, including a review of the development and determination of pay grades and classifications pursuant to Section 7 of Senate Bill No. 2001 (2009).
- Study the salaries of state elected officials, including a comparison of salaries, the number of full-time equivalent (FTE) and temporary employees supervised by the elected official, and the complexity of each elected official's responsibilities. The study is also to include a comparison to similar positions in other states pursuant to Section 4 of House Bill No. 1005 (2009).
- Study the utilization of all facilities on the State Capitol grounds, including an evaluation of facility needs by state agencies and a review of the Capitol complex master plan pursuant to Section 1 of House Bill No. 1403 (2009).
- Receive a report from the Office of Management and Budget (OMB) regarding the location, expenses, and square footage requirements of all facilities occupied by each state agency, including recommendations for relocation of any entity to achieve improvements in service to the public along with optimal efficiencies in usage of space and cost and recommendations within the master plan for construction of buildings on the Capitol grounds pursuant to Section 1 of Senate Bill No. 2425 (2009).
- Approve any agreements between a North Dakota state entity and the state of South Dakota to form a bistate authority pursuant to North Dakota Century Code Section 54-40-01.
- Receive reports from the Department of Veterans' Affairs by December 1, 2009, July 1, 2010, and December 1, 2010, regarding the number of county veterans' service officers accredited in accordance with Section 37-14-18, the agency or organization through which each officer has been accredited, and an accountability report regarding the use of funds appropriated to the Department of Veterans' Affairs for the purpose of arranging for accreditation training for all county veterans' service officers pursuant to Section 4 of House Bill No. 1057 (2009).
- Receive reports from the board of county commissioners for each county by December 1, 2010, regarding the status of the county's compliance with Section 37-14-18 relating to accreditation of county veterans' service officers through the National Association of County Veterans Service Officers pursuant to Section 4 of House Bill No. 1057 (2009).

Committee members were Representatives Ken Svedjan (Chairman), Larry Bellew, Randy Boehning, Kari L. Conrad, Glen Froseth, Bette B. Grande, Karen Karls, Ralph Metcalf, Michael R. Nathe, Louise Potter, David S. Rust, Blair Thoreson, Dave Weiler, and Alon C. Wieland and Senators Dick Dever, Robert M. Horne, Elroy N. Lindaas, Richard Marcellais, and Carolyn Nelson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

CLASSIFIED STATE EMPLOYEE COMPENSATION SYSTEM STUDY

The Government Services Committee was assigned the responsibility to study the classified state employee compensation system pursuant to Section 7 of Senate Bill No. 2001 (2009).

Classified State Employee Compensation System

Background

Pursuant to Section 54-44.3-01, the purpose of Human Resource Management Services, OMB, is to establish a unified system of human resource management and to govern the position classification and pay administration. Pursuant to Section 54-44.3-01.1, it is the state's policy to establish equitable, nondiscriminatory compensation relationships among all positions and classes.

Class Evaluation System

The North Dakota class evaluation system was developed in 1982. Human Resource Management Services, as part of the class evaluation system, quantifies the factors used for valuing a job in the classification system. The factors evaluated include the knowledge and skills required for the job, the complexity, the accountability of the position, and the working condition hazards. Each component is analyzed and awarded a point range. The committee learned the points are totaled and placed in a point-to-grade conversion chart to determine the pay grade. Appeals relating to position classifications can be made to the State Personnel Board.

Human Resource Management Services conducts market surveys to determine the appropriate pay for a particular job. These surveys are updated periodically. Prior to the 2003-05 biennium, North Dakota updated its midpoint salaries biennially to 95 percent of the previous year's market level. No changes were made in the 2003-05 biennium, and in the 2005-07 biennium the midpoints were adjusted by 4 percent each year. In the 2007-09 biennium, the midpoints were adjusted to reflect 95 percent of market in 2007 and by 3 percent in 2008. Market comparisons are made to Job Service North Dakota labor market information for grades 1 through 10 and to a 10-state market sample, including the states of Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming, for grades 11 through 20. Pay ranges are based on the salary range midpoints with the salary range minimum being 25 percent less than the midpoint and the salary range maximum being 25 percent more than the midpoint.

As of December 2009, state agencies employed 7,062 classified employees. Human Resource

Management Services presented a fact sheet to the committee that indicated as of August 2008 the average classified employee age was 46.4 years, the average years of service of classified employees was 13.2, and classified employees had an average annual salary of $39,622. Section 54-44.3-20 provides that all positions within the state are included in the classification system except for the following positions:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota Vision Services - School for the Blind, the superintendent of the School for the Deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the State Board of Higher Education.
9. Members and employees of occupational and professional boards.
10. Officers and employees of the Mill and Elevator.
11. The director of the Committee on Employment of People With Disabilities of the Department of Human Services.
12. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.
13. Licensed teachers engaged in teaching at the Youth Correctional Center, North Dakota Vision Services - School for the Blind, and the School for the Deaf.
14. Officers of Workforce Safety and Insurance.
15. Officers and employees of the Department of Commerce.
16. Attorneys employed by the Insurance Commissioner.
17. Engineers and geologists employed by the director of mineral resources.

Compensation Structure

The North Dakota salary range structure includes 20 pay grades with a range width of approximately 66 percent and approximately a 10 percent difference between each grade. The ranges are recalculated annually within legislative appropriations to maintain the midpoints of all ranges within 5 percent of the average market salary for the level of work.

The committee reviewed comparative paylines for classified employee salaries and market salaries for pay grades 1 through 10 and pay grades 11 through 20. Jobs in grades 1 through 10 are generally entry-level positions which are compared to Job Service North Dakota market information. To develop the paylines, 169 benchmark jobs are used. The committee was informed classified salaries remain below market salaries for all grades, despite midpoint salaries being set above market salaries for grades 1 and 8 through 10. The committee learned classified employee salaries are close to the midpoint for grades 3 through 6 but remain below the midpoint for grades 1 and 2 and 7 through 10.

The committee learned employees in pay grades 11 through 20 generally search more widely for job opportunities. Classified employee salaries in grades 15 through 20 are above the midpoint and above salaries for comparable state positions in Montana, South Dakota, and Wyoming. The committee learned, however, that North Dakota classified employee salaries in grades 11 through 20 are lower than salaries for comparable positions in the 10-state survey and lower than comparable jobs listed through Job Service North Dakota.

Salary Increase History

The committee reviewed a history of state employee salary increases and the cost of providing salary increases for the 1997-99 through 2009-11 bienniums:

State Employee Salary Increases

Biennium	Percentage Increase	General Fund	Special Funds	Total
1997-99	3% on July 1, 1997 (includes 1.5% for merit) and 3% on July 1, 1998 (includes 1.5% for merit)	$24,304,117	$12,520,861	$36,824,978
1999-2001	2% with a $35 per month minimum on July 1, 1999, and 2% with a $35 per month minimum on July 1, 2000	$17,681,836	$9,633,401	$27,315,237
2001-03	3% with a $35 per month minimum on July 1, 2001, and 2% with a $35 per month minimum on July 1, 2002	$27,043,178	$12,493,632	$39,536,810
2003-05	Up to 1% on January 1, 2004, and up to 2% on January 1, 2005 (based on the elimination of positions and savings from vacant positions)			$0
2005-07	4% on July 1, 2005, and 4% on July 1, 2006	$19,778,486	$21,746,666	$41,525,152
2007-09	4% with a $75 per month minimum on July 1, 2007, and 4% with a $75 per month minimum on July 1, 2008 (salary increases were to be based on merit and equity and were not to be given across the board)	$23,372,817	$22,505,911	$45,878,728
2009-11	5% with a $100 per month minimum on July 1, 2009, and 5% with a $100 per month minimum on July 1, 2010 (salary increases are to be based on merit and equity and are not to be given across the board)	$36,821,006	$31,667,339	$68,488,345

Equity Adjustments

The committee learned that in addition to general salary increases, the Legislative Assembly has provided funding for pay or market equity adjustments for state employees. The funding has been appropriated either to OMB to distribute to classified state employees in various agencies or directly to selected agencies. The following schedule provides information on the funding appropriated by the Legislative Assembly for these equity increases since the 1999-2001 biennium:

	General Fund	Special Funds	Total
1999-2001 biennium			
Equity adjustment - Classified employee salary pool	$2,700,000	$2,700,000	$5,400,000
North Dakota University System salary pool	2,685,227		2,685,227
Merit increase - Department of Transportation engineers		800,000	800,000
Equity adjustment - Elected and appointed officials	77,000	22,000	99,000
Equity increase for Information Technology Department programmers and analysts		317,644	317,644
Equity increase for State Auditor's office	38,000		38,000
Public Employees Retirement System		33,574	33,574
Department of Public Instruction information technology staff	72,444		72,444
Agricultural Experiment Station/Extension Service, Upper Great Plains Transportation Institute, Northern Crops Institute	422,400		422,400
Total 1999-2001	$5,995,071	$3,873,218	$9,868,289
2001-03 biennium			
Equity adjustment - Classified employee salary pool	$2,700,000	$2,300,000	$5,000,000
Pay grade minimum adjustments - Classified employees	360,797	131,505	492,302
Equity adjustment - Elected and appointed officials	142,697	35,536	178,233
Equity adjustment - Supreme Court and district court judges	724,451		724,451
Equity adjustment - Department of Corrections and Rehabilitation	422,528		422,528
Equity adjustment - Department of Transportation		1,200,000	1,200,000
Total 2001-03	$4,350,473	$3,667,041	$8,017,514
2003-05 biennium			
Equity adjustment - Legislative Council	$150,000		$150,000
Equity adjustment - Public Employees Retirement System		$80,362	80,362
Equity adjustment - Attorney General's office for assistant attorneys general		241,024	241,024
Equity adjustment - Department of Human Services Program and Policy Division		131,784	131,784
Equity adjustment - Department of Financial Institutions		167,000	167,000
Equity adjustment - Department of Corrections and Rehabilitation Juvenile Services Division	99,856		99,856
Total 2003-05	$249,856	$620,170	$870,026
2005-07 biennium			
Equity adjustment - Department of Corrections and Rehabilitation	$1,500,000		$1,500,000
Equity adjustment - Highway Patrol	166,258	$28,209	194,467
Total 2005-07	$1,666,258	$28,209	$1,694,467
2007-09 biennium			
Equity adjustment - Classified employee salary pool	$5,000,000	$5,000,000	$10,000,000
Equity adjustment - Office of Administrative Hearings administrative law judges		120,528	120,528
Equity adjustment - State Auditor's office	115,500		115,500
Equity adjustment - Legislative Council	148,000		148,000
Equity adjustment - Securities Department attorney position	61,831		61,831
Equity adjustment - Attorney General's office	872,079	10,921	883,000
Equity adjustment - Council on the Arts	23,079		23,079
Equity adjustment - Agriculture Commissioner's office	151,000	108,000	259,000
Equity adjustment - Highway Patrol troopers and sergeants	352,500		352,500
Equity and pay grade adjustment - Adjutant General (State Radio employees)	300,000		300,000
Additional salary increase - Upper Great Plains Transportation Institute	9,955	106,973	116,928
Additional salary increase - Agricultural research and extension agencies	438,129	391,540	829,669
Base salary adjustment - Governor's office increase of base salary of a policy analyst	22,000		22,000
Equity adjustment - Insurance Department for boiler inspectors, attorneys, chief financial examiner, and directors of examining and licensing divisions		172,236	172,236
Equity adjustment - Retirement and Investment Office		65,301	65,301
Equity adjustment - Public Employees Retirement System		202,760	202,760
Classification adjustments - Department of Financial Institutions		155,696	155,696
Classification adjustments - Department of Corrections and Rehabilitation	748,234		748,234
Total 2007-09	$8,242,307	$6,333,955	$14,576,262

	General Fund	Special Funds	Total
2009-11 biennium			
Equity adjustment - Classified and nonclassified employee salary pool	$9,000,000	$6,984,000	$15,984,000
Salary adjustment - Deputy Treasurer	10,000		10,000
Salary adjustment - Attorney General (effective January 1, 2011)	10,100		10,100
Equity adjustments - Legislative Council	50,000		50,000
Recruitment and retention bonuses - Industrial Commission Department of Mineral Resources (nonclassified employees)	185,000		185,000
Salary increase - Branch research centers (irrigation scientist position at the Williston Research Center)	65,000		65,000
Total 2009-11	$9,320,100	$6,984,000	$16,304,100

Fringe Benefits

The committee received information regarding fringe benefits provided by North Dakota and 10 other states, including Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming. The following table provides information on North Dakota and the other states included in the 10-state survey relating to contributions for health insurance, retirement, and the total value of all benefits:

	Health Insurance Premium - Family Coverage		Retirement		
	Employer Contribution	Employee Contribution	Employer Contribution	Employee Contribution	Total Value of All Benefits Per Hour[1]
North Dakota	$826	$0	4.12%	4.00%[2]	$10.89
Colorado	$869	$326	12.15%	8.00%	$10.60
Iowa	$1,275	$225	6.65%	4.30%	$13.72
Kansas	$586	$330	7.57%	4.00%[3]	$9.60
Minnesota	$1,185	$130	4.75%	4.75%	$12.53
Missouri	$651	$283	12.75%	0.00%	$12.20
Montana[4]	$626	$204	6.90%	6.90%	$9.74
Nebraska	$1,624	$432	7.49%	4.80%	$15.26
Oklahoma	$752	$0	15.50%	3.50%	$15.47
South Dakota[4]	$481	$274	6.00%	6.00%	$8.50
Wyoming[4]	$1,099	$178	11.25%	0.00%	$13.13

[1]Total value of benefits includes values for vacation, sick leave, paid holidays, health insurance, dental insurance, life insurance, retirement, and Social Security and is based on a standardized average salary and five years of service.

[2]The employee contribution is paid by the state.

[3]The employee contribution increases to 6 percent for employees becoming members after July 1, 2009.

[4]States included in the three-state survey.

State Agency Compensation Adjustment Systems

The committee received information regarding the compensation systems of the following state agencies--the Department of Career and Technical Education, the Highway Patrol, Workforce Safety and Insurance, and the judicial branch. A summary of each agency's compensation adjustment systems is provided below:

- The Department of Career and Technical Education follows a performance-based salary compensation policy. Each year during an employee's employment anniversary month, a formal appraisal is conducted based on the past 12 months. The employee is rated in eight categories on a scale of 0 to 5 with 5 being exemplary. Based on the score, an employee is awarded no share or one, two, or three shares. For the 2009-11 biennium, each share is worth an $18 per month salary increase. In addition, those employees that score the highest on their appraisals are eligible for up to a $1,000 annual bonus.
- The Highway Patrol utilizes a step system to provide employees salary compensation commensurate with performance. The step system for patrol officers consists of pay steps each year through 10 years of employment with a final increase in the 13th year of employment. The step system allows an employee to be 7 percent above the midrange salary at 13 years of employment. Only 1 percent of Highway Patrol employees reach the fourth quartile of the salary pay range, which are generally nonsworn civilian employees with 25 years to 35 years of service. Troopers are paid overtime, which is not considered part of their base salary when calculating increases.
- Workforce Safety and Insurance conducts annual performance appraisals on all employees and utilizes a performance rating system to determine salary increases. Increases are based on a six-tier sliding scale from 0 percent to 6 percent with higher scores receiving larger increases. Most Workforce Safety and Insurance employees were not affected by the agency's transition from nonclassified status to classified status in the 2009-11 biennium; however, 31 classifications out of 237 classifications were in the process of being reviewed.
- Salaries within the judicial branch's compensation system for the classified employees are based on

a salary system consisting of 51 job classifications and 23 salary grades. Job classifications are developed and assigned salary grades through a formal evaluation process. The judicial branch develops salary grade minimums and maximums based on an examination of external market influences to ensure the compensation system is both externally competitive and internally equitable. In addition to general salary increases provided by the Legislative Assembly, the judicial branch has used a step system since 1991 to move employees through their assigned salary range. Step increases are provided to employees upon completion of the probationary period and upon the employee's odd anniversary date in a salary grade. Assuming acceptable performance, an employee staying in the same salary grade would move from the salary grade minimum to the maximum after 19 years of employment. The step system is designed to hire persons with limited experience at the entry-level salary. Salary increases are given as the employee gains knowledge and experience. Internal equity is maintained because new employees start at the lowest step.

Other Organizations' Compensation Systems

The committee received information from Cass County and Basin Electric Power Cooperative relating to their compensation systems. A summary of each organization's compensation system operations is provided below:

	Cass County	Basin Electric Power Cooperative
Number of employees	400+	A total of 2,016 employees with 1,623 employees in North Dakota, 50 percent of the employees are represented by a union.
Budget process	As part of the budget development cycle, the county annually sets the structure for the pay administration plan based on the financial condition of the county. The county begins its budget process in May and completes the process by October 1 of each year. Pay increases are effective the following January 1. Funding for the pay increases are appropriated to each department. Employee salaries are the first priority considered during the county's budget process. Remaining dollars are prioritized for other county needs.	The budget for salary increases is based on a percentage of the current salary, and funding is allocated to each department. The department supervisor determines the share of the allocated funding given to each employee. A complaint appeals process exists for nonunion employees and an arbitration process for union employees who have complaints or salary disputes.
Pay philosophy	The county personnel policy manual includes a pay philosophy for wage and salary administration.	
Market survey	Every three years the county conducts a comprehensive system review and a market study to determine the base for the county salary scale.	The compensation system for nonunion employees was reviewed in 2001 with the assistance of several employee focus groups. A consultant was hired to identify market salaries and review Basin Electric Power Cooperative's salaries. The review determined 92 percent of the employees were being paid appropriately.
Pay increases	The county pay scale starts approximately 6 percent above market and matches market at the upper end of the pay scale. The pay scale is adjusted annually to reflect cost-of-living adjustments unless the adjustment is negative. The county does not give across-the-board pay raises. Cost-of-living adjustments are provided to all employees, and any additional pay increases are based on performance.	Market surveys are done throughout the year and technical adjustments may be made three times each year to ensure employees are included in the right performance zone. Salary reviews are conducted annually which include a review of the consumer price index, affordability, and a comparison to bargaining agreements. The compensation system includes 22 grades, with performance zones within each pay grade. Zone 1 is for new employees, and salaries are in a range slightly below market. Zone 2 is for employees who have been in their position for more than one year, and salaries are in a range near market. Zone 3 is for long-term employees, and salaries are in a range near or above market. Performance zones are adjusted, if necessary, after the annual salary review.
Benefits	The county requires its employees to pay a formula-based portion of the health insurance premium. Employees currently pay 12 percent of the premium for a single policy, 17 percent for a single policy with dependents, and 22 percent for a family policy.	Health plan deductibles were increased from $500 to $750 effective January 1, 2010. The $750 deductible is anticipated to decrease the company's health care costs by 2.5 percent in 2010. Basin Electric Power Cooperative has reduced benefits for new employees. The board of directors approved a plan in 2005 to reduce the retirement benefit factor from 2 percent to 1 percent for employees hired on or after January 1, 2006. These same employees will receive a 1 percent increase in the 401k match.

Consultant Services and Methodology

The committee issued a request for proposal for the purpose of obtaining consultant services to evaluate the effectiveness of the classified state employee compensation system and make recommendations for improvements.

The Legislative Council received proposals from two companies--Hay Group and Fox Lawson & Associates. The committee selected and the Legislative Council contracted with Hay Group for a fee of $100,000. Hay Group began its work on the classified state employee compensation system study in February 2010 and concluded the study with the presentation of the final report to the committee in October 2010.

The committee requested the consultant to evaluate the following components relating to North Dakota's classified employee compensation system:

1. Methods used to develop and determine position classifications.
2. Methods used to set pay grade minimums, maximums, and midpoints.
3. Appropriate market comparisons.
4. Methods to minimize salary inequities both within an agency and within state government.
5. Methods of developing and sustaining a consistent long-term salary increase administration policy for state government, including the advisability of using cost-of-living increases, across-the-board increases, merit increases, equity increases, and performance increases.
6. A budget and appropriation process for providing funds to agencies to administer the state's salary increase policy.
7. The appropriate use of funding available within agency budgets from accumulated savings resulting from vacant positions and employee turnover.
8. Fringe benefits.
9. Recruitment and retention tools.
10. A state compensation philosophy statement.

Hay Group - Classified State Employee Compensation System Study

Agency Interviews

Hay Group completed interviews regarding components of the classified employee compensation system with 14 state agencies and representatives of the Governor's office. The purpose of the interviews was to gain agencies' perspectives on several factors related to the compensation practices and policies for classified employees. The agencies selected for the interview process were chosen to represent a sample of large, medium, and small agencies and included the Department of Transportation, Department of Human Services, Department of Corrections and Rehabilitation, State Department of Health, Information Technology Department, Workforce Safety and Insurance, Highway Patrol, Tax Department, Attorney General's office, Insurance Department, Veterans' Home, Parks and Recreation Department, State Auditor's office, and State Treasurer's office.

The interviews resulted in the following findings:

- The 10 areas to be reviewed as part of the compensation study are valid areas of concern needing review.
- The reclassification process is viewed as taking too much time and may be too subjective.
- Human Resource Management Services has established positive working relationships with agencies.
- The benefits package is favorably perceived by employees primarily due to health insurance premium and retirement contributions being paid entirely by the employer.
- Employees are concerned regarding the status of employee benefits in the future.
- Market comparisons being made for certain occupations may not be the most appropriate.
- Equity pools are being used by agencies as a key mechanism to move employees through the pay ranges; however, concern was expressed regarding the guidelines being used for determining pay equity increases for employees.
- The state does not have a recognized compensation philosophy statement.
- A review of classification and pay grade information identified very few employees in the lower five and upper five pay grades. There are instances where an employee reports to another employee in the same pay grade.

Study Findings

Areas to be addressed as directed by the committee and Hay Group's major findings for each of the 10 components of the classified state employee compensation system evaluation are listed below:

1 - Methods of Classification

Hay Group reviewed the overall classification process, including the position information questionnaire, classification specifications, leveling decisions, and classification process. This review analyzed the extent to which job documentation accurately describes job content, the methods and processes by which position classification decisions are made, and the extent to which employees are appropriately classified. Regarding the classification and reclassification processes, Hay Group determined:

- The process includes potential steps that could be modified or eliminated.
- The forms to collect job content information are typical and consistent with sound practice but may need improvement.
- Some methods to assess job content and make classification or reclassification decisions are not consistent with sound practice.

Hay Group noted some negative agency and employee perceptions exist with the classification process. From agency interviews, Hay Group concluded agency representatives:

- Perceive the classification and reclassification process as taking too much time and being too rigid.

- Believe the ranking of classifications are, at times, not appropriate.

Hay Group found that Human Resource Management Services is following guidelines established for requests, but the reconsideration process is an area for improvement. Hay Group's analysis found that 87 percent of requests are completed within 60 days, but 69 percent of reconsiderations take over 121 days to complete.

Hay Group found that overall classification decisions are appropriate; however, the practice of comparing individual positions within a classification for internal comparisons results in subjectivity and is not appropriate for determining classification.

Hay Group reviewed information on the number of employees per pay grade. Hay Group's analysis indicates:

- Of the 20 pay grades, only 14 are primarily in use.
- Some heavily populated job families tend to have the majority of their positions within a cluster of four to five grades.
- The more heavily populated grades consist of entry to mid-level professional positions (grades 10 to 12).
- Compression exists between entry level to management pay grades.

2 - Methods to Establish Pay Grades

To analyze the methods used to set pay grade minimums, maximums, and midpoints, Hay Group reviewed the market target level, external market comparisons, and salary structure.

Hay Group informed the committee that North Dakota's market target is not consistent with best practices. Hay Group explained the state has established an informal policy to set salary ranges at 5 percent below the average of the market; however, Hay Group found that the midpoint for salaries ranges from 10 percent below to 3 percent above market. Hay Group noted the best practice to establish a market target is to balance internal pay practices with external market competitiveness.

Hay Group analyzed external market comparisons. Hay Group's analysis revealed different pay practices among various job families, but the majority of the state's current pay grade exceptions are consistent with market practices. Hay Group findings indicate over 45 classifications are more than 15 percent less than the Job Service North Dakota market, and 23 classifications are more than 15 percent less than the central states market comparison.

Hay Group informed the committee that because the state of North Dakota hires employees among many professions, it is difficult to have one salary structure that is appropriate for all. Hay Group reported that having only one salary structure, with only 14 grades of 20 grades primarily being used, significantly limits the state's ability to respond to salary market pressures.

3 - Appropriate Market Comparisons

Hay Group informed the committee that North Dakota's current market definition comparing its salary levels in grades 1 through 20 to the Job Service North Dakota labor market information report and grades 11 through 20 to the central states 10-state market is not appropriate. Hay Group indicated the market definition should consider the markets from which agencies compete for employees and those to which it loses employees. Hay Group noted that the use of the Job Service North Dakota labor market information report may result in salary comparisons that are not relevant. The focus of the Job Service North Dakota report is labor reporting, and it includes employers that should not be part of the state's definition of its market. Hay Group explained the 10-state market comparison may also not be appropriate because that comparison is not specifically narrowed to the markets from which agencies compete for employees and those to which it loses employees.

Hay Group found that some job families may require a different market definition from the general pay positions. Hay Group explained by recognizing the importance of local market data for specific job families, the state may more effectively compete for and retain employees.

4 - Salary Inequities

Hay Group reviewed salary equity issues, including the state's current leveling method, job evaluation, and internal equity to determine the:

- Extent to which there is an objective, fair, and defensible means by which to measure and differentiate job content.
- Extent to which pay is aligned internally as based on the job evaluation methodology.
- Amount of horizontal and/or vertical dispersion from an appropriate internal alignment of positions within an agency or among agencies.

Hay Group found the current leveling method is a strength of the state's classification process. This method utilizes a point factor method to evaluate and level classifications focusing on complexity, accountability, knowledge, and skill.

Hay Group conducted a sample and quality review of existing job evaluations consisting of 160 classifications across the majority of grade levels and job families. Hay Group concluded that several job evaluation concepts are not clearly defined and, therefore, the application of such concepts by job evaluators may be inappropriate. Over 33 percent of the 160 classifications evaluated had a significant difference in weighting from the current Human Resource Management Services evaluations. Hay Group reported that inequities do exist in the current ranking of positions.

Statewide internal equity was analyzed by Hay Group comparing employee pay based on a comparison of job content. Hay Group concluded that, overall, internal equity is positive--as job contribution increases, so does pay. Items noted as inequities by Hay Group include the:

- Wide range of pay for classifications of similar types of jobs.
- Pay for approximately 5 percent of total classified employees is below the current salary range minimums.
- Overall compa-ratio is 93 percent, indicating overall salaries are 7 percent below the midpoint, which is set by the state at 5 percent below market. Therefore, state employee salaries are approximately 12 percent below current market comparisons.

Hay Group also reviewed internal equity by job family and agency. Regarding internal equity by job family, Hay Group determined that although the state has one salary structure for all classifications, actual pay analysis reveals that the state does recognize pay differences for some job families. There is a wide range of pay within approximately 50 percent of the job families for positions of the same job type indicating potential job evaluation, grade assignment, or pay administration issues. To determine internal equity by agency, Hay Group compared the salary spread of seven classifications across the state. Salary spread within the examined classifications ranged from a 33 percent to 65 percent difference between the highest and lowest salary. The classification with the greatest difference of 65 percent was the administrative assistant classification, ranging from $36,384 in the Department of Agriculture to $22,020 in the State Library. Hay Group noted the more common the classification among agencies, the greater the range of pay.

5 - Salary Increase Administration Policy

Hay Group evaluated the state's methods of developing and sustaining a consistent long-term salary increase administration policy by reviewing the current process and analyzing salary funding and salary adjustment mechanisms. Hay Group commended the state for having performance and equity as the two key components of salary adjustments.

The legislatively approved general salary increase was identified by Hay Group as the primary mechanism by which employees move through the pay ranges, with a focus on performance being the primary form of distribution within the agency. The committee learned that because the legislatively approved general salary increase is the primary mechanism for adjusting salaries, the determination, communication, and distribution of these funds is critical to the success of the compensation system.

Market equity salary adjustments were identified by Hay Group as the second most common mechanism by which employees move through the pay ranges. Hay Group reported that these adjustments are not provided on a consistent basis and, at times, the equity adjustments may offset the general salary adjustment, which is based on performance, negatively impacting the performance-based system. Hay Group explained while addressing equity is important, a significant emphasis on equity adjustments may negatively affect a performance-based compensation system.

6 - Budget and Appropriation Process

To assess the budget and appropriation process for providing funds to agencies to administer the state's salary increase policy, Hay Group reviewed the budget request, appropriation, and budget administration process. Hay Group reported that the budgeting process for salaries is effective. Hay Group found that the current budgeting process does not provide specific funding for accrued annual leave and sick leave (10 percent) payouts to resigning or retiring employees.

7 - Vacancy Savings

Hay Group reviewed the appropriate use of funding available within agency budgets from accumulated savings resulting from vacant positions and employee turnover. Hay Group found the primary use by state agencies of vacancy savings was for the purpose of paying accumulated annual and 10 percent of sick leave balances for employees who resign or retire. Hay Group found the state limits the accrual of annual leave, but does not limit sick leave accumulation. Hay Group found agencies may also be using vacancy savings for:

- Operational costs relating to travel, contract workers, and overtime.
- Recruitment, retention, and performance bonuses.
- Market equity adjustments.

Hay Group concluded that salary savings occurring in the period between one employee leaving a position and another employee filling that position are salary savings that the agency should have the flexibility to use at its discretion. Hay Group also noted that within some agencies authorized FTE positions that have been vacant for a number of years continue to be authorized and funded.

8 - Fringe Benefits

Hay Group analyzed noncash benefits provided to employees of the state to determine the level of competitiveness compared to public sector organizations (central states 10-state market) and general market companies (650 general market organizations' information provided by a separate Hay Group study). Hay Group determined the following:

Benefit Area	Market Comparison	Key Findings
Total benefits	At market	The market position of health care, retirement, and time off contribute to the state's overall benefit program's competitiveness.
Life	Below market	The state's low flat dollar benefit of $1,300 is well below both market comparator groups. An employee-paid supplemental offering does provide the employee with higher coverage, but does not enhance the value significantly.
Disability	Below market	North Dakota provides a salary continuation short-term disability plan which provides benefits at full pay based on accumulation of sick leave days (12 days per year) with no maximum. This is consistent with other central states.
		North Dakota provides long-term disability benefits through the state's retirement plan. The benefit provides 25 percent of final average salary to disabled employees, subject to disability requirements. The long-term disability benefit provided through the retirement plan is less competitive and less common than separate long-term disability plans. North Dakota's long-term disability benefit structure is not consistent with current market practice for either the general market or central states.

Benefit Area	Market Comparison	Key Findings
Health care	At market	The state's payment of health insurance premiums combined with low out-of-pocket maximums offset other plan design features to put the state's health care program at market. The following factors were found to slightly decrease the value of the health care program: • North Dakota's family deductible of $1,200 is higher when compared to 57 percent of the general market and 71 percent of central states which have a family deductible of $900 or less. • Sixty-five percent of the general market and 50 percent of central states pay 90 percent or 100 percent for inpatient hospital, surgical, and outpatient charges, while North Dakota pays 80 percent. • Dental coverage is 100 percent employee-paid. Only 10 percent of the general market and 20 percent of central states are fully employee-paid. Most share the cost--71 percent of the general market and 60 percent of central states.
Retirement	At market	North Dakota offers a final average pay defined benefit pension plan to employees. The plan benefit is 2 percent of pay per year of service and requires employees to contribute 4 percent. North Dakota offers a 457 defined contribution plan.
Time off	At market	The number of paid holidays and vacation schedule is at market for both central states and the general market.
Other	Below market	North Dakota provides health care and dependent care spending accounts to its employees. The state does not, however, provide tuition reimbursement or commuting assistance to employees. Due to the low level of employer-paid benefits in this category, North Dakota is below market in comparison to the general market and central states.

9 - Recruitment and Retention Tools

Hay Group identified the availability of recruitment and retention bonuses as a positive aspect to the state's compensation program. Recruitment and retention bonuses are tools that may be used to attract, hire, and retain talented employees. Hay Group noted the effectiveness of these tools may be limited by the availability of agency funds. Hay Group provided the following analysis of recruitment and retention bonus payments made during fiscal years 2008 and 2009:

Bonus	Recruitment		Retention	
	Fiscal Year		Fiscal Year	
	2008	2009	2008	2009
Number of employees	270	180	170	132
High	$6,500	$4,188	$22,299	$19,686
Low	$50	$100	$50	$1,200
Most common amount	$250	$250	$250 and $1,200	$2,000

Hay Group reviewed a sample of evaluation forms from nine state agencies to assess the performance methods being utilized to award retention bonuses based on performance. Overall, Hay Group concluded that the methods used by most of the sample agencies were above average compared to methods used by other states. Hay Group noted that the methods being used focus on the key job duties required for the upcoming year and behavioral-related competencies that are important for successful performance. Hay Group findings indicate that agencies may be limited in their ability to recognize and reward performance through retention bonuses due to limited funding. Hay Group explained that because the administration of retention bonuses based on performance is not centralized, it may be necessary for Human Resource Management Services to provide guidelines.

10 - State Compensation Philosophy Statement

Hay Group reviewed current compensation philosophy documentation to determine if a compensation philosophy exists and, if so, the extent to which it includes component statements typically found in a compensation philosophy. Hay Group found that within Title 54, the roles and responsibilities of Human Resource Management Services and the State Employee Compensation Commission are established and a statement is provided about compensation relationships. However, Hay Group reported that North Dakota does not have a specific section that states its compensation philosophy.

Consultant Recommendations

Hay Group's recommendations relating to the classified state employee compensation system study are identified as "must do," "should do," and "nice to do" as follows:

		Work to Be Done	Outcomes	Priority
1	Methods used to develop and determine classifications	Simplify the overall classification and reclassification process, including how decisions are made, defining a group responsible for decisionmaking, accountability, and responsibility of the State Personnel Board. This may be done through the creation of a classification and reclassification committee that includes Human Resource Management Services staff and agency representatives comprised of both human resources and non-human resources staff.	Simplification of the overall classification and reclassification process should result in quicker classification and reclassification decisions, increased fairness, a less complicated process, and an enhanced partnership between agencies and Human Resource Management Services. The process simplification should also strengthen the link between classification and reclassification decisions and job evaluation methodology. The simplified process should not result in subjective whole job comparisons.	Should do
		Revise the classification and reclassification forms to be more customized depending on the type of review request	Revision will result in forms that collect more information required for a decision and that allow for more input from the employee rather than the supervisor.	Should do
		Revise classification specifications to ensure duties and responsibilities increase in complexity within a classification series and that minimum qualifications are appropriate. The class evaluation section of classification specifications should be removed.	Classification specification revision should provide greater clarity of the duties and responsibilities performed at the first level within a series, provide a stronger link between minimum qualifications and actual responsibilities performed, and prevent employees or agency authorities from misinterpreting or using the class evaluation section to influence a reclassification decision.	Should do

		Work to Be Done	Outcomes	Priority
		Provide communication and education on the new process to affected employees	Communication and education should invoke a positive perception of the process to ensure changes are perceived as sound and fair.	Should do
2 3	Methods used to set pay grade minimums, maximums, and midpoints Appropriate market comparisons	Grade structure redesign and grade reassignment of benchmark and nonbenchmark classifications	Grade structure redesign and grade reassignment should: • Reduce compression. • Create appropriate distance between levels of work. • Establish grade structure in which all the grades are available for use. • Enhance internal equity by ensuring jobs that require the same level of knowledge, complexity, and accountability are in the same grade.	Must do
		Customize the salary survey and market analyses for the determined relevant labor market. Discontinue or limit use of the Job Service North Dakota statewide labor market survey.	Determination of relevant labor markets should be based on the state's definition of "relevant labor markets." An appropriate relevant labor market customized salary survey and market analysis should be used to establish the foundation for pay strategies and increase the number and quality of job matches to salary survey data.	Must do
		Identify job family and occupational groups that require different pay strategies from "general" pay classifications	Identifying job family and occupational groups that require different pay strategies should instill a salary structure that recognizes different pay markets for certain job family and occupational groups versus using a "one size fits all" salary structure and increase the state's ability to identify and address internal equity issues.	Must do
		Develop salary ranges for general pay structure and job family and occupational group structures	The development of customized pay structures should enhance recruitment and retention efforts as well as increase market competitiveness.	Must do
		Decrease width of salary ranges and perform cost analysis to implement changes	A decrease in the width of salary ranges should enhance recruitment efforts and enable competent employees to reach market target within a reasonable timeframe. Performing a cost analysis will provide detailed information to be used in the budgeting process.	Must do
		Perform statewide, agency, and job family and occupational group internal equity analyses against the new pay strategies to develop a more detailed implementation plan	This plan should enable Human Resource Management Services staff to provide direct advice and guidance to agencies on methods to address implementation and internal equity issues.	Should do
4	Methods to minimize salary inequities both within an agency and within state government	Provide job evaluation training for Human Resource Management Services job evaluators and classification and reclassification committee members provided by Hay Group	Job evaluation training provided by Hay Group will authorize the use of the Hay Group chart-profile method of job evaluation. Using the Hay Group chart-profile method should provide consistency and calibration of methodology and application in job evaluation.	Must do
		Evaluating, reviewing, and refining common job classifications	Common job evaluations should result in a defined framework of classified positions which may be used as an internal equity comparison for less common jobs.	Must do
		Reviewing unique job classifications and developing a classification framework	The classification framework should ensure all classifications are appropriately evaluated and leveled to ensure internal equity across the state, decrease the number of classification requests, and be used in classification and reclassification decisions to ensure integrity of the system is maintained over time.	Must do
		Identify "catch all" classifications and assess appropriateness	Broad classifications should represent a similar level of work performed. In assessing appropriateness, jobs may be reclassified to ensure levels of complexity are recognized in the classification system.	Should do
		Identify jobs that are unique to an agency to determine if these jobs are a core part of the service the agency provides and to assess the appropriateness of a statewide classification	This assessment of agency unique jobs should ensure core service jobs for an agency are appropriately classified and by doing so increase the agency's capability to recruit and retain key agency jobs.	Should do
5	Methods of developing and sustaining a consistent long-term salary increase administration policy for state government, including cost-of-living increases, across-the-board increases, merit increases, equity increases, and performance increases	Base salary adjustments on components of performance and equity. Provide funding for salary adjustments through one allocation rather than two separate allocations of funds to better link relativity to market and performance. The following principles may be applied: • For positions, which are below market target, both a market adjustment and a performance payment may be made. • For positions, which are above market target, a performance payment may be made. • For positions, which are high in their salary range, the performance payment may be made with a mix of base salary and lump sum payment.	Salary adjustments based on components of performance and equity provides the Legislative Assembly with the assurance that salary dollars appropriated are distributed in accordance with established philosophy and fiscal parameters. This will provide agencies the ability to administer pay in a way that recognizes both equity and performance.	Must do

		Work to Be Done	Outcomes	Priority
6	A budget and appropriation process for providing funds to agencies to administer the state's salary increase policy	Communicate appropriated funds as a dollar amount rather than a percentage	Communicating appropriated funds as a dollar amount rather than a percentage works to limit employee expectation of receiving the appropriated percentage increase and assists agencies in administering movement of pay based on components of performance and equity.	Must do
		Provide funding for employee salary increases at the beginning of the budget and appropriation process	Provide funding for employee salary increases at the beginning of the budget and appropriation process to communicate the state's commitment to employees.	Should do
7	The appropriate use of funding available within agency budgets from accumulated savings resulting from vacant positions and employee turnover (focus is only on salary savings during the year)	Provide funding for accrued annual and sick leave	Providing funding for accrued annual and sick leave will address the state's commitment.	Must do
		Define "vacant" positions. The definition should include whether the period between one employee leaving a position and another employee filling that position is vacancy savings that the agency has the authority to use.	Defining a vacant position and related salary funding allows agencies to be accountable for managing their resources.	Should do
8	Fringe benefits	Increase the basic life insurance benefit from the current level of $1,300 to an employee's annual salary or a flat dollar benefit of at least $25,000	The increase in basic life insurance benefit should provide a more competitive benefit that provides adequate coverage for basic expenses.	Must do
		Consider implementing a separate long-term disability benefit outside the pension plan	If the defined benefit plan is modified in the future, a separate long-term disability benefit program will be easier to administer and communicate to employees.	Should do
		Consider introducing contributions toward the cost of health insurance premiums	Rather than using plan design elements, such as copayments or deductibles, exclusively to increase employee cost-share, a balanced approach of using plan design and premium contributions provides more flexibility to the state and is more consistent with market practice.	Should do
9	Recruitment and retention tools	Develop detailed guidelines and amounts for recruitment and retention bonuses	Results of detailed recruitment and retention bonus guidelines and amounts include consistent application of the use of recruitment and retention bonuses across agencies.	Should do
		Define the type of performance to be recognized and rewarded through a performance bonus. Type of performance may include performance of core job responsibilities or achievement of specific goals or areas of desired discretionary effort.	Defining the type of performance to be recognized and rewarded through a performance bonus ensures the same type is being recognized and rewarded across the state.	Should do
		Review the performance bonus maximum and consider performance amounts that are commensurate with the job level. Classifications with higher requirements for knowledge, complexity, and accountability may receive a larger amount than those with lower requirements.	To create a performance-based culture, performance goals must be aligned with the level of contribution a job provides to meet assigned objectives of the agency or state and achievement rewarded according to the level of contribution. To support internal equity, jobs with lower levels of contribution may receive different payout than jobs with higher levels of contributions.	Should do
		Continued Human Resource Management Services consultation with agencies on the utilization of nonmonetary rewards for retention efforts to increase retention	Employee retention will increase.	Should do
		Develop a targeted retention program for those employees that have between three to five years of service.	This program increases retention and lowers costs associated with recruiting, hiring, and training new employees.	Nice to do
10	State compensation philosophy statement	Develop a compensation philosophy that serves as an umbrella statement, linking compensation to the state's mission, vision, values, and its human resources objectives The compensation philosophy statement should include: • Definition of the market. • Definition of compensation. • Definition of how pay ranges will be established. • Definition of how pay will move. • Definition of roles and accountabilities. • Definition of what will be stated in statute, policy, procedure, etc. Key leadership from the legislative and executive branches should be involved in the development of the compensation philosophy.	A compensation philosophy statement sets the legislative intent for the state's compensation system and program. Use of a compensation philosophy statement increases consistency across the state, as all compensation decisions will be made according to the philosophy statement. A compensation philosophy statement creates a more balanced approach to compensation by ensuring budgeting and pay administration decisions take into consideration both the external market and internal equity and performance factors. A compensation philosophy statement establishes the appropriate balance between centralization and decentralization of compensation plan administration and provides a framework within which to consider total reward. Within the compensation philosophy statement, the roles and accountabilities of the legislative and executive branches of government are clearly stated.	Must do

Final Report

The committee received and accepted Hay Group's final report of the classified employee compensation system study. The committee learned that Hay Group's analysis concludes that the current classified employee compensation plan is not broken and the recommendations for enhancement can be done within the current plan. The current plan has an appropriate mix of centralized policy setting by Human Resource Management Services and decentralized implementation within the agencies. Hay Group's recommendations primarily focus on creating internal equity and external competitiveness within the classified employee compensation plan. The report may be viewed on the Internet at www.legis.nd.gov/docs/pdf/haygroupreport.pdf.

Compensation Philosophy Statement

Based on recommendations provided by Hay Group, the committee developed a compensation philosophy statement for the classified state employee compensation system. In developing a compensation philosophy statement, the committee reviewed information on other states' compensation philosophy statements. Information was reviewed from 12 states, including Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Carolina, Oklahoma, South Dakota, and Wyoming. The committee learned 6 of the 12 states have incorporated their pay philosophies into statute--Colorado, Idaho, Kansas, North Carolina, Oklahoma, and Wyoming. Key components identified in other states' compensation philosophy statements include a summary, categories of employees for which the philosophy statement applies, definitions of terms, goals of the compensation system, compensation ideology, compensation methodology, designation of responsibilities, and legislative intent.

The compensation philosophy statement was created based on input from committee members; representatives of Hay Group, Governor's office, OMB, Human Resource Management Services, and the North Dakota Public Employees Association; and from other interested persons. The committee approved the following compensation philosophy statement:

> The compensation program for classified state employees must be designed to recruit, retain, and motivate a quality workforce for the purpose of providing efficient and effective services to the citizens of North Dakota. For purposes of this section, "compensation" is defined as base salary and related fringe benefits. The compensation program must:
>
> 1. Provide a competitive employee compensation package based on job content evaluation, internal equity, and external competitiveness balanced by the state's fiscal conditions.
> 2. Be based on principles of fairness and equity.
> 3. Include a consistent compensation policy which allows for multiple pay structures to address varying occupational specialties.
> 4. Set the external competitiveness target for salary range midpoints at a competitive level of relevant labor markets. For purposes of this section, "relevant labor markets" is defined as the labor markets from which the state attracts employees in similar positions and the labor markets to which the state loses employees in similar positions.
> 5. Include a process for providing compensation adjustments that considers a combination of factors, including achievement of performance objectives or results, competency determinations, recognition of changes in job content, and acquisition and application of advanced skills or knowledge.
> 6. Provide funding for compensation adjustments based on the dollar amounts determined necessary to provide competitive compensation in accordance with the state's compensation philosophy. Funding for compensation adjustments may not be provided as a statewide percentage increase attributable to all employees nor as part of a statewide pool of funds designated for addressing equity issues.
> 7. Consider the needs of the state as an employer and the tax effect on North Dakota citizens.

The Office of Management and Budget shall develop and consistently administer the compensation program for classified state employees and ensure that state agencies adhere to the components of the state's compensation philosophy. The Office of Management and Budget shall regularly conduct compensation comparisons to ensure that the state's compensation levels are competitive with relevant labor markets.

The Legislative Assembly recognizes the importance of providing annual compensation adjustments to employees based on performance and equity to maintain the market competitiveness of the compensation system. To provide funding for compensation adjustments in times of difficult fiscal conditions, the Legislative Assembly may consider increasing revenues or eliminating certain functions or programs.

Implementation of Classified State Employee Compensation Study Recommendations

Hay Group Proposal

The committee considered options for implementing Hay Group's recommendations. The committee learned that unless the implementation process begins immediately, many of the recommendations would not be implemented until the 2013-15 biennium. The committee considered options to allow implementation for the 2011-13 biennium.

As requested by the committee, Hay Group presented a proposal for the cost of assisting the state in the initial implementation of the recommendations relating to the classified state employee compensation system study prior to the end of the 2011 legislative session. The proposal provided details on the implementation of each Hay Group recommendation, including a summary of the initial work to be done, expected outcomes, the involvement of Hay Group and the state, the timing, and the associated cost. The proposed timeline provides for

the initial implementation of the recommendations to be completed by April 2011, based on the assumption the work will begin by the end of November 2010. Hay Group informed the committee that completing initial implementation by April 2011 allows the 2011 Legislative Assembly to receive and consider information on any estimated funding necessary for the 2011-13 biennium relating to full implementation. Based on the outcomes of the initial implementation, the committee learned funding for full implementation of the recommendations could be provided as a lump sum or through funding phases. The following chart summarizes Hay Group's proposed schedule for the initial implementation of recommendations:

Recommendation Component	Involves		Timing	Fee
	Hay Group	State		
Compensation philosophy statement	X	X	Immediate	$0
Methods to develop and determine classifications	X	X[1]	February to March 2011	15,000
Methods to minimize salary inequities within agency and state government	X	X[2]	November 2010 to April 2011	64,000[3]
Appropriate market comparisons and methods to set pay grade minimums, maximums, and midpoints	X	X[4]	November 2010 to April 2011	105,000
Fringe benefits	[5]	X		0
Recruitment and retention tools	X	X	February to April 2011	5,000
Methods of developing and sustaining a consistent long-term salary increase administration policy	X	X	February to April 2011	9,000
Budget and appropriation process		X		0
Use of funding from accumulated savings resulting from vacant positions and employee turnover		X	February to April 2011	0
Total estimated cost				$198,000

[1]Hay Group estimates this component would include a few days of the state's time to meet with Human Resource Management Services and agency directors.

[2]Hay Group estimates this component would include 15 days of the state's time over three months, if web-based job evaluation manager software is utilized. Without the software, this component will require more of the state's time.

[3]This cost estimate does not include the cost of job evaluation manager software. Hay Group estimates the first-year cost to be $54,000 and a subsequent software licensing fee of $27,000 each year thereafter.

[4]Hay Group will develop and conduct the customized salary survey. A relatively small amount of state time will be required to better understand the market and to provide data.

[5]Hay Group did not include implementation assistance with fringe benefits on the basis that Hay Group has sufficient benefits data in existing databases. If fringe benefits implementation assistance were to be requested by Hay Group, the associated cost would be $45,000.

Committee Considerations to Implement Hay Group's Recommendations

The committee considered sources of funding available to contract with Hay Group to begin the initial implementation process in November 2010. The funding options included:

1. The Office of Management and Budget contract with Hay Group using funds within the agency's current budget authority or funding continued from the 2007-09 biennium.
2. The Office of Management and Budget request funding from the Emergency Commission's state contingencies appropriation and, if approved, proceed to contract with Hay Group.
3. The Legislative Council contract with Hay Group using funds available for interim committee consultant contracts.

The committee learned that the Governor's office, OMB, and Human Resource Management Services support the recommendations included in the employee compensation study conducted by Hay Group and proceeding with implementations; however, concern was expressed regarding the potential difficulty in completing the initial implementation prior to adjournment of the 2011 legislative session and the lack of available funding to enter a contract with Hay Group for assistance with implementation of the recommendations.

The committee considered an option of the Legislative Council contracting with Hay Group to begin the initial implementation process with a commitment from OMB and Human Resource Management Services to be involved in the project and to purchase the job evaluation manager software for $54,000 to assist in the implementation.

Committee Recommendations

The committee recommends the Legislative Management chairman enter a contract with Hay Group for up to $198,000 for the initial implementation of the recommendations of the classified state employee compensation system study, subject to OMB's involvement in the project and the purchase by OMB of the necessary job evaluation manager software.

The committee recommends the 62nd Legislative Assembly appoint a joint committee during the 2011 legislative session to receive reports from Hay Group and OMB on the status of implementation of changes to the classified state employee compensation system.

The committee recommends House Bill No. 1031 creating a new section to Chapter 54-44.3 to provide a compensation philosophy statement providing directives to OMB for the implementation of Hay Group's recommendations, requiring OMB to provide status reports on the implementation of the recommendations to a joint committee during the 2011 legislative session and to the Budget Section after the adjournment of the 2011 legislative session, and providing an emergency clause to allow the initial implementation process to occur by the end of the 2011 legislative session and, therefore, the recommendations to be effective during the 2011-13 biennium.

STATE ELECTED OFFICIALS' SALARIES STUDY

The Government Services Committee was assigned the responsibility of studying the salaries of state elected officials, including a comparison of salaries, the number of FTE and temporary employees supervised by the elected official, and the complexity of each elected official's responsibilities. The study was also to include a comparison to similar positions in other states pursuant to Section 4 of House Bill No. 1005 (2009).

Background Information

Salaries of Elected Officials

Pursuant to Section 54-44.3-20, the state's executive branch elected officials are exempt from the classification system. Salaries for state elected officials are established statutorily. The salary and powers and duties of each elected official are provided for in each official's respective chapter of the North Dakota Century Code. The following schedule lists North Dakota's executive branch elected officials, their fiscal year 2010 salaries, and the related Century Code chapter:

Elected Official	Fiscal Year 2010 Salary	Century Code Chapter
Agriculture Commissioner	$90,122	4-01
Attorney General	$96,304[1]	54-12
State Auditor	$87,728	54-10
Governor	$110,285	54-07
Insurance Commissioner	$87,728	26.1-01
Public Service Commissioner	$90,122	49-01, 4-02
Secretary of State	$87,728	54-09
Tax Commissioner	$95,212	57-01
State Treasurer	$82,845	54-11

[1]Pursuant to Section 9 of House Bill No. 1003 (2009), the Attorney General's salary will increase to $113,266 effective January 1, 2011, and to $130,228 effective July 1, 2011.

Survey of Elected and Appointed Positions

In 1998, OMB contracted with Fox Lawson & Associates to conduct a survey of elected and appointed positions in other states. Nine states were surveyed to obtain salary information for positions similar to those in North Dakota. The cost of living for each capital city was also compared. The salary data was adjusted, using a wage geographical adjustment, to Bismarck's labor market and wage scales. As a result of the survey, equity adjustments were provided to all state elected officials except the Governor and Lieutenant Governor effective January 1, 2001, and to all elected officials except the Governor, Lieutenant Governor, and State Treasurer effective January 1, 2002. The equity increases were in addition to legislatively approved general salary increases effective on July 1 of each year. The following schedule reflects information on the salary adjustments, including the equity increases for elected officials for the four-year period beginning July 1, 1999, and ending June 30, 2003:

	Salary on		
	July 1, 1999	July 1, 2002	Percentage of Increase
Governor	$76,879	$87,216	13.4%
Lieutenant Governor	$63,183	$67,708	7.2%
Secretary of State	$58,262	$68,018	16.7%
Attorney General	$65,753	$74,668	13.6%
Superintendent of Public Instruction	$59,437	$77,434	30.3%
Tax Commissioner	$58,262	$76,821	31.9%
Insurance Commissioner	$58,262	$68,018	16.7%
Public Service Commissioners	$58,262	$69,874	19.9%
Agriculture Commissioner	$58,262	$69,874	19.9%
State Auditor	$58,262	$68,018	16.7%
State Treasurer	$58,262	$64,233	10.2%

Other States' Elected Officials Comparisons

The committee received information regarding selected other states' elected officials offices and salaries. The states selected for comparison are the states included in the 10-state salary survey conducted by Human Resource Management Services and include Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming. The following is a summary of the information based on 2009 salaries:

- Governor - The Governor is an elected position in all states. Primary duties include being the chief executive officer of the state; supervising all executive and other state agencies; signing and vetoing legislation; authorizing executive orders; granting reprieves, pardons, and commutations; and being commander in chief of the militia except during a federal activation. All states except Kansas require the Governor to be a certain age ranging from at least 18 years to at least 30 years of age and to be a state resident. North Dakota requires its Governor to be at least 30 years of age and a state resident for at least five years. The highest-paid Governor is from Oklahoma and is paid $140,000 per year and supervises 28.1 FTE positions. The lowest-paid Governor is from Colorado and is paid $90,000 and supervises 79.4 FTE positions. North Dakota's Governor's salary of $105,034 ranks 7th out of the 11 states surveyed. The North Dakota Governor's office has 18 FTE positions.
- Lieutenant Governor - The Lieutenant Governor is an elected position in all states. Primary duties include being the successor to the Governor's office, presiding over the Senate, and serving on several boards or commissions. All states except Kansas have the same requirements as the Governor to hold office. The highest-paid Lieutenant Governor is from Oklahoma with an annual salary of $114,713. The lowest-paid Lieutenant Governor is from Colorado with a salary of $68,500. North Dakota's Lieutenant Governor's salary of $81,538 ranks 5th out of the 11 states surveyed. In Wyoming the Secretary of State fulfills the Lieutenant Governor's duties. In South Dakota the Lieutenant Governor is a part-time position. In Kansas the Lieutenant Governor

also serves as the Governor's chief of staff and elects to receive that salary.

- Secretary of State - The Secretary of State is elected in 10 states and appointed by the Governor in Oklahoma. Primary duties include being the chief election officer, being the custodian of official government documents, and registering corporations and other business organizations. Seven of the states require the Secretary of State to be a certain age ranging from at least 18 years to at least 31 years of age, and most states require the Secretary of State to be a state resident. The highest-paid Secretary of State is from Missouri and is paid $107,746 per year and supervises 255 FTE positions. The lowest-paid Secretary of State is from Colorado and is paid $68,500 and supervises 133.9 FTE positions. North Dakota's Secretary of State's salary of $83,550 ranks 8th out of the 11 states surveyed. North Dakota's Secretary of State's office has 28 FTE positions.
- Attorney General - The Attorney General is elected in 10 states and appointed by the Governor in Wyoming. Primary duties include being the chief legal counsel and adviser for the state, providing opinions on legal or constitutional questions, and enforcing consumer protection laws. Ten states require the Attorney General to be a state resident, seven states require the Attorney General to be a certain age ranging from at least 18 years to at least 31 years of age, and five states require the Attorney General to be licensed to practice law in the state or a member of the state bar. The highest-paid Attorney General is from Wyoming and is paid $137,150 per year and supervises 247 FTE positions. The lowest-paid Attorney General is from Colorado and is paid $80,000 and supervises 396.2 FTE positions. North Dakota's Attorney General's salary of $91,719 ranks 10th out of the 11 states surveyed. North Dakota's Attorney General's office has 202.5 FTE positions. Pursuant to Section 9 of House Bill No. 1003 (2009), the Attorney General's salary will increase to $113,266 effective January 1, 2011, and to $130,228 effective July 1, 2011.
- Superintendent of Public Instruction - The Superintendent is elected in four states and appointed by the Governor or State Board of Education in seven states. Primary duties include enforcing state and federal laws pertaining to public schools and related programs and administering policies and rules of the State Board of Education. In three states--North Dakota, Colorado, and Wyoming--the Superintendents have supervisory control over the states' blind or deaf schools, and in North Dakota and Colorado the Superintendents have supervisory control over the State Library. Four states require their Superintendents to be a certain age ranging from at least 21 years to at least 31 years of age. Two states--Colorado and Montana--require their Superintendents to hold an advanced degree and a bachelor's degree respectively. Six states have no formal requirements for the Superintendent. The highest-paid Superintendent is from Colorado and is paid $223,860 per year and supervises 557.3 FTE positions. The lowest-paid Superintendent is from Wyoming and is paid $92,000 and supervises 124 FTE positions. North Dakota's Superintendent's salary of $95,116 ranks 10th out of the 11 states surveyed. North Dakota's Department of Public Instruction has 99.75 FTE positions.
- Tax Commissioner - The Tax Commissioner is appointed by the Governor in all states except North Dakota where the Tax Commissioner is elected. Primary duties include the collection of taxes and fees, administration and enforcement of tax laws, and auditing of tax returns. In several states the department is known as the Department of Revenue and includes additional duties. In Colorado the duties also include administering the lottery, gaming, and racing and enforcing liquor laws. In Iowa the duties include enforcing bingo and tobacco regulations and issuing motor vehicle registrations and driver's licenses. In South Dakota the duties include administering the lottery. The highest-paid Tax Commissioner is from Colorado and is paid $146,040 per year and supervises 1,512.7 FTE positions. The lowest-paid Tax Commissioner is from North Dakota and is paid $90,678 and supervises 133 FTE positions.
- Insurance Commissioner - The Insurance Commissioner is elected in three states and appointed by the Governor in five states. In three states--Minnesota, Montana, and South Dakota--the duties of the Insurance Commissioner are assumed by another state agency. Primary duties include licensing, supervising, and regulating insurance companies. North Dakota requires its Insurance Commissioner to be at least 25 years of age and a state resident. Missouri also requires its Insurance Commissioner to be a state resident. The other six states with an Insurance Commissioner have no formal requirements to hold the office. The highest-paid Insurance Commissioner is from Missouri and is paid $120,000 per year and supervises 545 FTE positions. The lowest-paid Insurance Commissioner is from North Dakota and is paid $83,550 and supervises 45.5 FTE positions.
- Public Service Commission - The Public Service Commission is elected in five states and appointed by the Governor in six states. Primary duties include the regulation of electric, gas, telecommunications, and water utilities; pipelines; and transmission lines. Three states have a minimum age requirement of 25 years of age to hold this office. Eight states have no formal requirements to hold the office. The highest-paid commissioner is in Kansas with an annual salary of $134,750 and supervises 214 FTE positions.

The lowest-paid commissioner is in Nebraska with an annual salary of $75,000 and supervises 48.89 FTE positions. Each North Dakota commissioner's salary is $85,830 and ranks 10th out of the 11 states surveyed. The North Dakota Public Service Commission has 43 FTE positions.

- Agriculture Commissioner - The Agriculture Commissioner is appointed by the Governor in nine states and elected in North Dakota and Kansas. Primary duties include promoting the agricultural industry and related products; pest control; inspecting and licensing various aspects, including commercial feeds, packing plants, and livestock sale barns; disease control in domestic animals; and enforcing laws pertaining to humane treatment of animals. Nine states have no formal provisions regarding the qualifications to hold office. North Dakota requires its Agriculture Commissioner to be at least 25 years of age and a state resident for five years. Missouri requires its Agriculture Commissioner to be a practical farmer versed in agriculture science. The highest-paid Agriculture Commissioner is from Colorado and is paid $146,040 per year and supervises 293 FTE positions. The lowest-paid commissioner is from North Dakota and is paid $85,830 and supervises 74.5 FTE positions.
- State Auditor - The State Auditor is elected in nine states, appointed by the General Assembly in Colorado, and appointed by the Legislative Post Audit Committee in Kansas. Primary duties include performing or providing for audits of state agencies. Five states require their auditor to be a certain age ranging from at least 25 years to at least 31 years of age. Seven states require the auditor to be a state resident. Kansas and South Dakota have no formal requirements for this office. The highest-paid auditor is from Colorado and is paid $145,140 per year and supervises 73 FTE positions. The lowest-paid auditor is from South Dakota and is paid $78,363 and supervises 18 FTE positions. North Dakota's State Auditor's salary of $83,550 ranks 9th out of the 11 states surveyed. The North Dakota State Auditor's office has 51.8 FTE positions.
- State Treasurer - The State Treasurer is elected in nine states, appointed by the Commissioner of Management and Budget in Minnesota, and appointed by the Governor in Montana. Primary duties include cash management, investment of funds, and banking services. In seven states--Colorado, Iowa, Kansas, Missouri, Oklahoma, South Dakota, and Wyoming--the treasurer is also responsible for unclaimed property. Six states require the treasurer to be a certain age ranging from at least 18 years to at least 31 years of age. Six states also require the treasurer to be a state resident. Four states have no formal requirements for the office. The highest-paid treasurer is from Oklahoma and is paid $109,250 per year and supervises 90 FTE positions. The lowest-paid treasurer is from Colorado and is paid $68,500 and supervises 133.9 FTE positions. North Dakota's State Treasurer's salary of $78,900 ranks 9th out of the 11 states surveyed. The North Dakota State Treasurer's office has 7 FTE positions.

In North Dakota the Governor is the highest-paid elected official, and the State Treasurer is the lowest-paid elected official. Seven of the Governor's appointed cabinet members receive a higher annual salary than the Governor. North Dakota has the second smallest population of the states and is generally among the smallest in number of employees for each of the elected officials' offices.

The committee learned other states use various methods for providing for elected officials' salary increases, including statutory provisions, basing the salaries as a percentage of the Governor's salary, providing the same rate of increase as provided to state employees, and legislative discretion.

The committee learned the state constitution does not require the Superintendent of Public Instruction to hold a valid teaching license. Prior to 2007, state statute required the Superintendent to hold a professional teaching license during his or her term of office. The requirement was removed by the 2007 Legislative Assembly based in part on the Attorney General's Letter Opinion 2007-L-05 dated February 13, 2007. The opinion concluded that "a court faced with the issue would determine the requirement that the superintendent hold a valid teaching license to be unconstitutional."

The committee received information from Human Resource Management Services regarding elected officials' salaries compared to the regional 10-state median salary. North Dakota's elected officials' salaries on July 1, 2009, rank 5th for the Lieutenant Governor to 11th for the Agriculture and Tax Commissioners, when compared to other states, and on July 1, 2010, North Dakota's elected officials' salaries rank 3rd for the Lieutenant Governor to 9th for the Tax Commissioner.

The committee learned because several states did not provide salary increases for their elected and appointed officials in fiscal year 2010, the cost of adjusting North Dakota's elected officials' salaries to the median of the 10-state salaries decreased from $177,316 per year based on 2009 salaries to $141,254 per year based on 2010 salaries. Increases based on 2010 salaries would range from .4 percent for the Secretary of State to 36.6 percent for the Superintendent of Public Instruction. The Lieutenant Governor is 7.7 percent above the 10-state median salary. If North Dakota's elected officials were compared only to those positions elected in other states, increases based on 2010 salaries would range from 2.7 percent for the Attorney General to 21.2 percent for the Insurance Commissioner. The following schedule presents information on a comparison of North Dakota's elected officials' salaries and median salaries for similar positions in other states in the region:

North Dakota Elected Official	North Dakota FY 2010 Salary	Ten-State Median Salary[1]	Three-State Median Salary[2]	Ten-State Median Salary for Elected Officials (Not Appointed)
Governor	$110,285	$110,252	$105,000	$110,252
Lieutenant Governor	$85,615	$79,007	$79,007	$79,007
Secretary of State	$87,728	$88,115	$79,129	$86,003
Attorney General	$96,304[3]	$106,595	$97,928	$98,901
State Treasurer	$82,845	$92,000	$92,000	$88,500
Agriculture Commissioner	$90,122	$103,106	$103,000	$103,212[4]
State Auditor	$87,728	$102,735	$92,000	$102,257
Superintendent of Public Instruction	$99,872	$136,450	$104,635	$104,635
Insurance Commissioner	$87,728	$110,228	$101,567	$106,358[5]
Public Service Commissioner	$90,122	$105,474	$91,390	$96,000
Tax Commissioner	$95,212	$114,213	$110,303	[6]

[1]States included in the 10-state comparison are Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming.

[2]States included in the three-state comparison are Montana, South Dakota, and Wyoming.

[3]Pursuant to Section 9 of House Bill No. 1003 (2009), the Attorney General's salary will increase to $113,266 effective January 1, 2011, and to $130,228 effective July 1, 2011.

[4]The amount shown is the salary for Iowa. Iowa is the only state in the 10-state comparison that also elects its Agriculture Commissioner. The position is appointed in the other nine states.

[5]The amount shown is the average salary of Kansas and Oklahoma, the only 2 states in the 10-state comparison that also elect their Insurance Commissioners. The position is appointed in the other eight states.

[6]The Tax Commissioner is appointed in all states included in the 10-state comparison.

Recommendation

The committee makes no recommendation regarding the study of state elected officials' salaries but requested that the Legislative Council staff provide information to the Appropriations Committees during the 2011 Legislative Assembly regarding the committee's review of North Dakota's and other states' elected officials' salaries.

CAPITOL COMPLEX AND STATE FACILITIES STUDY

The Government Services Committee was assigned the following responsibilities regarding the Capitol complex and state facilities:

- Study the utilization of all facilities on the State Capitol grounds, including an evaluation of facility needs by state agencies and a review of the Capitol complex master plan pursuant to Section 1 of House Bill No. 1403 (2009).
- Receive a report from OMB regarding the location, expenses, and square footage requirements of all facilities occupied by each state agency, including recommendations for relocation of any entity to achieve improvements in service to the public along with optimal efficiencies in usage of space and cost and recommendations within the master plan for construction of buildings on the Capitol grounds pursuant to Section 1 of Senate Bill No. 2425 (2009).

Background Information

Capitol Complex

The Capitol complex was established in 1883 when two tracts of 160 acres each were deeded to the Territory of North Dakota from the Northern Pacific Railroad Company. After the first State Capitol was destroyed by fire in 1930, 160 acres were sold to pay for a new building which was completed in 1934. Additional acreage was sold in 1949 and other acreage is used as easements for water and streets. The current Capitol complex consists of 132 acres. Besides the Capitol, other facilities at the complex include the Heritage Center, State Office Building, Governor's residence, Department of Transportation building, and the Liberty Memorial Building which houses the State Library.

Facility Management Division

The Facility Management Division of OMB is responsible for the overall daily operations and preservation of the State Capitol complex and surrounding 132-acre grounds. In addition, the division is responsible for providing space management services for most state agencies. All new construction, historical preservation and restoration, and extraordinary repairs are prioritized and forecasted for a 10-year period.

The 2009 Legislative Assembly appropriated $4,487,000 from the general fund for the following extraordinary repairs during the 2009-11 biennium:

	General Fund
Veterans' Memorial repairs	$187,000
Capitol grounds building repairs	675,000
Capitol grounds parking lot repairs	1,775,000
Capitol restoration	1,200,000
Cooling tower and heat pump replacements	500,000
Exterior Capitol limestone study	150,000
Total	$4,487,000

Capitol Grounds Planning Commission

The Capitol Grounds Planning Commission, provided for in Section 48-10-01, advises the director of OMB and the Legislative Council on matters relating to the physical and aesthetic features of the interior and exterior of all buildings on the Capitol grounds. The commission consists of the Lieutenant Governor as chairman and eight other members, including two citizens, one licensed architect, and one representative from the State Historical Society appointed by the Governor. The president of the Senate appoints two senators as members, and the Speaker of the House of Representatives appoints two representatives.

The Capitol Grounds Planning Commission is provided a continuing appropriation from the Capitol building fund of $100,000 per biennium.

Capitol Building Fund

The Capitol Grounds Planning Commission administers the Capitol building fund. The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act

provided 50 sections of land totaling 32,000 acres to North Dakota upon statehood to be used for the purpose of financing construction of public buildings for legislative, executive, and judicial use. The Capitol building fund is made up of the land, proceeds from the sale of the land, and any investment income from the proceeds. Section 12 of the Enabling Act was amended by Congress in 1957 to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

Section 2 of Senate Bill No. 388 (1967) (contained in Section 48-10-02) provided that all money, properties, and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for such purpose.

Section 3 of Senate Bill No. 388 (1967) appropriated $30,000 from the Capitol building fund to the commission for the purpose of conducting a study of legislative facilities and exploring the feasibility of converting additional space within the existing State Capitol for committee rooms, office space, and other legislative needs. If additional space within the State Capitol was not determined available, the commission was to prepare plans for a new wing or an addition to the existing legislative wing to provide sufficient space to meet the present and foreseeable future needs of the Legislative Assembly. Additional space was found within the existing State Capitol and no additions were built.

House Bill No. 1117 (1979) amended Section 48-10-02 to provide that the Board of University and School Lands invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The bill further amended Section 48-10-02 to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made, after consideration of the Capitol grounds master plan, for projects or planning but may not exceed $50,000 per biennium. The bill provided that expenditures may only be made upon approval by two-thirds of the total membership of the commission. The 2007 Legislative Assembly in Senate Bill No. 2090 increased the continuing appropriation limit to $100,000.

A 1993 Attorney General's opinion (Letter Opinion 93-L-119) dated April 1, 1993, addressed the issue of whether the principal of the Capitol building fund may be expended pursuant to legislative appropriation. The opinion stated that neither the Enabling Act nor the state constitution provide for permanent status of any portion of the Capitol building fund. The opinion further stated that funds derived from the Capitol land grant are not meant to be kept permanent and may be used as the Legislative Assembly determines. The opinion concluded that the Legislative Assembly may appropriate funds for capital improvements which result in the expenditure of the fund's principal.

The current value of the Capitol building fund's permanent assets is $1,433,222, of which $1,333,303 is cash and investments and $99,919 is land. The Capitol building fund includes 9,992 surface acres and 27,000 acres of mineral rights. Acreage held by the Capitol building fund was sold at auction as North Dakota was being settled. Five thousand acres were sold with the state reserving no mineral rights. In 1939 the state began reserving 5 percent of the mineral rights, in 1941 the reserve was increased to 50 percent, and since 1960 the state reserves 100 percent of mineral rights. The trust fund is expendable, and money from the trust fund has been spent over time to maintain the Capitol. The fund has increased substantially over the last four years due to mineral and lease revenue from land owned by the trust.

The committee learned the Land Department uses a standard lease form for all oil and gas leases issued by the department, regardless of which trust fund owns the mineral rights. Leases are issued for a term of five years and will continue in effect as long as oil and gas are produced in commercial quantities. All oil and gas leases are subject to the public auction process at the department's quarterly oil and gas lease sales. The state retains a royalty of one-sixth of the value of oil and gas produced and sold from the leases.

The table below provides an analysis of the Capitol building fund for the 2007-09 and 2009-11 bienniums:

	2007-09 Biennium Actual[1]		2009-11 Biennium Estimated[1]	
Beginning balance		$805,304[2]		$1,333,303
Add revenues				
Investment income	$65,193		$57,558	
Rentals, royalties, and bonuses	984,458		1,636,712	
Total revenues		1,049,651		1,694,270
Total available		$1,854,955		$3,027,573
Less expenditures and transfers				
Administrative expenses	$28,544		$44,419	
Income payments to counties	4,656[3]		4,954[3]	
Capitol Grounds Planning Commission operating expenses (2007 HB 1522 and Section 49-10-02[4])	488,452[5]		25,000	
Total expenditures and transfers		521,652		74,373
Ending balance		$1,333,303		$2,953,200

[1]The analysis reflects the legislative appropriations for the 2007-09 and 2009-11 bienniums and does not include the land owned by the fund.

[2]The 2007-09 biennium beginning balance has been adjusted to remove the value of the land owned by the fund. The current value of land owned by the fund is approximately $99,919.

[3]The 1999 Legislative Assembly approved Senate Bill No. 2088, which provides that the Board of University and School Lands is to pay a fee to the board of county commissioners of each county in which the state retains original grant lands. The total fees paid may not exceed 5 percent of the net revenue generated from the original grant lands in that county during the year preceding the payments. The board of county commissioners is to forward a prorated portion of any fees received to the organized townships in which the original grant lands are located. The funds are to be used for the repair, maintenance, and construction of roads and bridges. Any remaining funds are to be used by the county for repair, maintenance, and construction of roads and bridges in unorganized townships in which the original grant lands are located.

[4]Section 49-10-02 provides a continuing appropriation to the Capitol Grounds Planning Commission to expend up to $100,000 per biennium of income and interest of the Capitol building fund. The amount that may be spent may not exceed 50 percent of the unencumbered balance of the fund on the first day of the biennium.

[5]The following projects were completed during the 2007-09 biennium:

- Brass restoration on the ground and first floors;
- Cleaning of black marble in the main stairway;
- Granite cleaning and repair on the exterior of the Capitol; and
- Replacement of copper roofs on the Memorial Hall revolving doors and the south side of Memorial Hall.

NOTE: The estimated June 30, 2011, balance made at the end of the 2009 legislative session was $1,634,975. The increase in the estimated balance of $1,318,225 is primarily due to an increase in the anticipated income from mineral royalties, mineral rents, and mineral bonuses.

Capitol Grounds Master Plan

The committee reviewed the Capitol grounds master plan and learned the 2000 Capitol grounds master plan recommends construction of three new office buildings totaling 286,000 gross square feet on the Capitol complex within the next 30 years based on the projected growth of FTE employees. The first office building proposed in the master plan was to consist of 156,000 gross square feet and was to be built by 2005. The construction of the Century Center office building owned by Workforce Safety and Insurance alleviated the need for the first building. The two additional buildings are suggested for construction in the 22nd and 27th years of the master plan.

The Capitol complex master plan includes the construction of a covered parking deck to replace the west parking lot. The covered parking deck would cost an estimated $3 million and provide an additional 115 parking spaces.

Capitol Grounds Improvements

The committee learned restoration projects on the Capitol grounds have been identified in preparation of the Capitol's 100th anniversary in 2034. Cost estimates in 2010 dollars for the projects total $20.1 million, of which $16.2 million would be from the general fund and $3.9 million from the Capitol building fund. The projects will be completed over several bienniums.

The committee learned the 2009 Legislative Assembly provided $1.775 million for parking lot repairs. During legislative sessions there is a shortage of approximately 200 parking spaces. During the 2009-10 interim, the Facility Management Division added 35 new parking spaces to the judicial wing parking lot, and the Facility Management Division plans to work with the Capitol Grounds Planning Commission to redesign the north parking lot to add more parking spaces.

The Capital Grounds Planning Commission has approved projects to renovate the brass columns, refurbish black marble, and clean and restore parts of the limestone exterior. The following priority projects have been approved by the commission:

- Restoration of wood and brass in House and Senate chambers.
- Refurbishment of the hallway leading to the cafeteria and cafeteria improvements.
- Signage.
- Renovation of the south entrance.

Study Findings

Space Needs and Utilization

The committee received information from the Facility Management Division regarding the Capitol complex and state facilities. The committee learned, based on a standard of 230 square feet per occupant, the Capitol tower is designed to house 537 employees and the judicial wing is designed to house 453 employees. During the 2009-10 interim there are 596 employees in the Capitol tower and 506 employees in the judicial wing. In addition to the employees housed in the Capitol tower and judicial wing, there are 569 employees housed in other buildings on the Capitol complex, including 90 employees at the State Office Building, 375 employees at the Department of Transportation Building, 61 employees at the Heritage Center, and 43 employees at the Liberty Memorial Building. The committee learned, based on a standard of 230 square feet per occupant, there is a shortage of approximately 12,400 square feet to house employees at the Capitol complex.

In addition to the employees housed at the Capitol complex, there are 648 employees in other buildings owned by state agencies in Bismarck, including the Bank of North Dakota, Workforce Safety and Insurance, Job Service North Dakota, and the Game and Fish Department.

The committee received information from select state agencies regarding their space needs. The committee learned the Attorney General's office leases 11,454 square feet in the Capitol and 56,455 square feet in various locations in Bismarck. The Attorney General's office does not anticipate a need for additional space with the current functions and staffing levels of the agency. The judicial branch currently has 21,604 square feet of space on the first and second floors of the judicial wing at the Capitol which houses 44 employees and 5 Supreme Court justices. The judicial branch also leases 11,156 square feet in Bismarck for 14 employees, information technology

equipment, two conference rooms, a training room, and storage space. The Judicial Conduct Commission also leases 700 square feet of space in Bismarck. The Information Technology Department leases 17,688 square feet of space in the Capitol and 37,487 square feet in various locations in Bismarck and Mandan. The agency anticipates leasing an additional 6,162 square feet in the 2011-13 biennium. The agency also has 14 employees who telecommute part time. The committee learned the agency needs a total of approximately 90,000 square feet of space for its employees and information technology equipment.

Leased Space

The committee learned 1,162 employees are located in 320,436 square feet of leased spaces throughout Bismarck and Mandan. During the 2009-11 biennium agencies are leasing a total of 709,673 square feet of space throughout the state at an average cost of $10.63 per square foot. The cost per square foot lease rate charged by OMB to "non-general fund" agencies is $8.97 for space in the Capitol, $8.54 for space at the Heritage Center and the Liberty Memorial Building, and $7.65 for space at the State Office Building. The cost per square foot for leased space in the Bismarck-Mandan area averages $14 per square foot. State agencies anticipate paying $8 million in leases in the Bismarck-Mandan area during the 2009-11 biennium.

Operating Costs

The committee received information on the cost to maintain a state-owned building.

The following table provides information relating to facility operating costs for select state agencies that own their building and the Capitol complex for fiscal year 2009:

	Land Department	Job Service North Dakota	Workforce Safety and Insurance	State Capitol
Real estate taxes/fee in lieu of taxes			$247,356	
Security services		$270		[1]
Building automation				[2]
Janitorial services	$9,350	24,600	126,336	[2]
Janitorial supplies	935		26,995	$205,000
Snow removal	3,650	2,187	52,821	[2]
Mechanical repairs	1,513	40,061	51,155	[2]
Electrical repairs	1,377	3,581		[2]
Insurance	1,130	3,375	3,917	105,000
Trash removal	441	2,732	3,167	21,458
Electricity	11,754	76,053	114,661	284,536
Natural gas		31,266	1,452	55,635
Water and sewer	1,719	3,883	6,448	[2]
Grounds and landscaping	188	16,582	16,062	[2]
Elevator contract	522	744	5,312	110,000
Administration			40,522	868,452
Total	$32,579	$205,334	$696,204	$1,650,081
Gross square feet of building	7,225	40,000	110,000	184,000
Annual cost per square foot	$4.51	$5.13	$6.33	$8.97

[1]Security for the Capitol is provided by the Highway Patrol.

[2]This service is provided by the Facility Management Division employees.

The committee received information on the estimated cost per square foot to operate and maintain a newly constructed state office building. If no return on investment is required, the estimated operating and maintenance cost would be $8 to $9 per square foot relating to a building built on the Capitol grounds. Operating and maintenance costs for a new building located off the Capitol grounds would be for $4 per square foot for operating and maintenance costs and up to $6 per square foot for operating and maintenance costs and payments in lieu of taxes. The committee learned buildings on the Capitol grounds are more expensive to operate and maintain because of the additional services provided by the Facility Management Division at the Capitol complex.

New Building Construction Costs

The committee learned the new Workforce Safety and Insurance building cost approximately $12 million, or $94.72 per square foot, to build in 2003. The new Bank of North Dakota building cost approximately $11 million, or $200 per square foot, to build in 2007.

The committee received information regarding estimated lease rates for an 80,000 square-foot and a 156,000 square-foot building constructed on the Capitol grounds. Estimated 2013 construction costs of $300 and $350 per square foot and 0 percent, 4 percent, 5 percent, and 6 percent rates of return were used in the lease rate calculations for each building. The committee learned lease rates range from $22.94 per square foot with a 0 percent rate of return to $33.73 per square foot with a 6 percent rate of return for a building that would cost $300 per square foot to build, and from $25.44 per square foot to $38.10 per square foot for a building that

would cost $350 per square foot to build. The estimated construction costs include a parking lot.

The committee also learned students in the finance program at the University of North Dakota could conduct a cost-benefit analysis of leasing versus constructing a new state office building.

New Building Lease/Purchase Option

The committee learned an investment group which owns the former Home Depot building in north Bismarck would sell the 127,000 square-foot building to the state for $5 million. As an alternative, the investment group would consider leasing the building to the state for $16 per square foot. The lease term would be 20 years, and the state could obtain ownership of the building at the end of the lease.

Office of Management and Budget Facilities Space Needs Report

Pursuant to Section 1 of Senate Bill No. 2425 (2009), the committee received a report from the Facility Management Division regarding the location, expenses, and square-footage requirements of all facilities occupied by each state agency, including recommendations for relocation of any entity to achieve improvements in service to the public along with optimal efficiencies in usage of space and cost and recommendations within the master plan for construction of buildings on the Capitol grounds pursuant to Section 1 of Senate Bill No. 2425 (2009).

The committee learned the state of North Dakota currently has 3,460 employees located in 898,963 total square feet of office space in Bismarck and Mandan, including space at the Capitol, state-owned buildings, and leased space.

The committee learned the state of North Dakota currently leases 320,436 square feet of office space throughout Bismarck and Mandan and 709,673 total square feet of office space throughout the state at an average cost of $10.63 per square foot. The total annual lease payments are $7,940,291. Of these totals, the largest 20 leased office spaces account for 59 percent of the total leased space and 61 percent of the total annual rent.

Based on occupancy square-feet requirements utilized in the Capitol grounds master plan of 230 square feet per employee and 300 square feet per employee in some instances, the Facility Management Division determined a need for an additional 11,686 square feet of office space in the Bismarck-Mandan area. The committee learned the deficient office space at all locations in Bismarck and Mandan is less than 1.4 percent of the total 898,963 occupied square feet. One-third of office space occupied by state employees in Bismarck and Mandan is leased.

The Facility Management Division surveyed other states to determine the standard occupancy square-feet requirements. Based on the results of the survey, the average amount of office space allocated to each employee was 211 square feet. The committee learned if this measurement was used in calculating appropriate office space, there would be a surplus of 39,168 square feet.

All leases are currently negotiated between the state agency and the property owner. During the past eight years, The Facility Management Division has assisted agencies in the Bismarck-Mandan area to negotiate lease rates at or below market rates, resulting in an estimated average annual lease payment savings of $250,000.

Based on the information reviewed, OMB does not recommend constructing a new building but recommends that the Facility Management Division provide additional lease negotiation assistance to all state agencies.

Recommendation

The committee makes no recommendations regarding the study of the Capitol complex and state facilities.

COUNTY VETERANS' SERVICE OFFICERS

The Government Services Committee was assigned the responsibility of receiving reports from the Department of Veterans' Affairs by December 1, 2009, July 1, 2010, and December 1, 2010, regarding the number of county veterans' service officers accredited in accordance with Section 37-14-18, the agency or organization through which each officer has been accredited, and an accountability report regarding the use of funds appropriated to the Department of Veterans' Affairs for the purpose of arranging for accreditation training for all county veterans' officers pursuant to Section 4 of House Bill No. 1057 (2009). The committee was also assigned the responsibility of receiving reports from the board of county commissioners for each county by December 1, 2010, regarding the status of the county's compliance with Section 37-14-18 relating to accreditation of county veterans' service officers through the National Association of County Veterans Service Officers pursuant to Section 4 of House Bill No. 1057 (2009).

County Veterans' Service Officers

The committee learned Section 37-14-18 provides that the board of county commissioners of each county may appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. Such appointment must be made with the prior advice of the commissioner of the Department of Veterans' Affairs and in accordance with veterans' preference. It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted to assist returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer, under the supervision of the commissioner of the Department of Veterans' Affairs, to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure

promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits.

Services provided by county veterans' service officers at no charge to veterans include:

- Advising veterans and their dependents on federal benefits, including compensation and pension.
- Advising veterans and their dependents on state benefits, including loans and grants, veterans' preference, and tax exemptions.
- Assisting veterans with federal and state veterans' administration forms.
- Assisting veterans and their dependents in obtaining health care, mental health care, education benefits, housing, and death benefits.
- Outreach.
- Transportation.

Service officers also advise local veterans and their dependents of their rights and entitlements under various federal and state laws, counsel them, and actively assist them to complete necessary forms and obtaining documents and affidavits. State officers can act as a power of attorney to represent veterans and their dependents in claims to the federal Department of Veterans' Affairs to acquire benefits.

Sections 57-15-06.4 and 57-15-06.7(18) provide that a county may annually levy a tax to provide for the payment of the salary, traveling, and office expenses of the county veterans' service officer. The county mill levy rate may not exceed two mills.

The committee learned tribal veterans' service officers are appointed and employed by each respective tribe. The tribal veterans' service officers are invited to participate in the training seminars offered by the Department of Veterans' Affairs each spring and fall.

Department of Veterans' Affairs Report

County Veterans' Service Officer Accreditation

Section 1 of House Bill No. 1057 amended Section 37-14-18 to require that by August 1, 2011, all county veterans' service officers must be accredited by the National Association of County Veterans Service Officers.

The committee learned the United States Department of Veterans' Affairs does not require county service veterans' officers to be accredited. Accreditation requirements through the National Association of County Veterans Service Officers include the following:

- Complete initial accreditation training.
- Pass an examination.
- Attend contract training.
- Submit an application for accreditation.

The committee learned North Dakota has 49 county veterans' service officers and 3 tribal officers. Griggs and Steele Counties, Stark and Dunn Counties, Sargent and Ransom Counties, and Oliver and Morton Counties share officers. There are three state service officers employed by the department and five national service officers employed by specific veterans' organizations. Annual salaries for county veterans' service officers range from $1,823 in Slope County to $62,165 for the Morton/Oliver officer. Counties are limited to levying no more than two mills for veterans' service officers pursuant to Section 57-15-06.7(18); however, counties may use other sources of income for these costs.

The National Association of County Veterans Service Officers provided accreditation training in Bismarck in April 2010. Fifty-six people attended the training including 38 county veterans' service officers, 5 assistant county veterans' service officers, 5 department employees, 4 tribal veterans' service officers, and 4 out-of-state county veterans' service officers.

The committee learned as of October 2010, 24 county veterans' service officers are listed on the federal Department of Veterans' Affairs website as being accredited through the national association. Five officers have submitted applications through the North Dakota Department of Veterans' Affairs which are pending. There are 20 officers who have not applied for accreditation through the North Dakota Department of Veterans' Affairs and are not listed on the federal department's website.

Section 5 of the bill appropriated $20,000 from the general fund to the Department of Veterans' Affairs for the purpose of arranging for accreditation training for all county veterans' service officers in the state during the 2009-11 biennium. The training provided by the national association in April 2010 cost $14,000 and $6,000 of the $20,000 appropriation provided by the 2009 Legislative Assembly remains available for accreditation training. The National Association of County Veterans Service Officers will be providing accreditation training in June 2011 in Biloxi, Mississippi.

The committee learned several county officers are accredited through other veterans' organizations as follows:

- American Legion - 36 county veterans' service officers accredited.
- American Veterans - 19 county veterans' service officers accredited.
- Disabled American Veterans - 6 county veterans' service officers accredited.
- Veterans of Foreign Wars - 29 county veterans' service officers accredited.

County Site Visits

The committee learned the commissioner of the Department of Veterans' Affairs has completed site visits to county veterans' service offices in 46 of the 53 counties. The commissioner has made 207 recommendations relating to improvements to the office sites, evaluations of the county service officers by the board of county commissioners, web access and training, and additional funding for the county veterans' service office. The commissioner determined 135 recommendations have been implemented as of October 2010.

Reports From Boards of County Commissioners

The Legislative Council staff summarized information received from boards of county commissioners regarding the status of accreditation of county veterans' service

officers pursuant to Section 37-14-18. Fifty-one of the 53 counties responded to a survey conducted by the Legislative Council regarding the status of each county's veterans' service officers. Of the counties that responded, 43 responded that their county veterans' service officer is accredited through the National Association of County Veterans Service Officers as required by Section 37-14-18, 6 counties responded that their county veterans' service officer will be accredited at the next available opportunity, 1 county gave no indication of when its veterans' service officer would be accredited, and 1 county responded that it is in the process of consolidating with another county.

Other Information

Service Member and Family Support Program

The committee received information from the North Dakota National Guard regarding services provided to veterans and their families by the National Guard. The committee learned the Service Member and Family Support program is a partnership with the North Dakota National Guard and North Dakota servicemen and servicewomen and their families. The Service Member and Family Support program currently has 37 full-time employees and over 100 registered volunteers to assist over 58,000 North Dakota veterans, service members, and their families. There are five military Family Assistance Centers in North Dakota located in Bismarck, Jamestown, Fargo, Grand Forks, and Minot. Over the past year, program outreach specialists have contacted and met with over 9,000 North Dakota veterans and provided case management services to almost 700 veterans. Benefits provided by the program include:

- Chaplain.
- Survivor outreach.
- Reintegration.
- Suicide prevention.
- Sexual assault response.
- Transition assistance.
- Outreach.

County Veterans' Service Officer Structure Study

The committee received information regarding a study of the structure of the county veterans' service officers completed by the University of Mary to determine if restructuring or consolidation of county veterans' service offices could increase operational efficiency and effectiveness for North Dakota. The study concluded that North Dakota should review the Montana organizational structure. The Administrative Committee on Veterans' Affairs is considering conducting an additional study on services provided to veterans.

Emergency Grant Program

The committee received information regarding the Department of Veterans' Affairs emergency grant program. The grant program receives funding from interest earned on the veterans' postwar trust fund. The Administrative Committee on Veterans' Affairs, based on a continuing appropriation, determines the allocation of interest earnings to various programs, including the emergency grant program. The State Treasurer determined interest earnings of $200,000 would be available for the 2009-11 biennium, up to 50 percent less than previous bienniums. As a result, the committee learned there is approximately $45,000 in grant applications for which funding is not available. The committee learned the Department of Veterans' Affairs may receive donations and a donation page has been added to the department's website. The Impact Foundation has agreed to administer a charitable fund for veterans' emergency needs. Emergency Commission approval will be needed to spend any donations received.

The committee learned grant recipients must be in need of dental work, dentures, optical needs, hearing aids, deposit funds for securing housing, transportation for medical reasons, or a special medical requirement. An applicant must be a resident of North Dakota for one year prior to the date of application and meet income guidelines. Income guidelines are based on established indexes, such as pension rates and poverty levels, and are reviewed annually. Applicants may not have more than $2,000 in cash assets with the exception of $5,000 in a certificate of deposit with the requirement to be on deposit for a minimum of 12 months from the date of application for assistance.

Veterans' Eligibility Requirements for Medicaid

The committee received information from the Department of Human Services regarding the eligibility requirements of veterans for Medicaid. The committee learned Medicaid eligibility is determined similarly for all applicants. No distinction is made between veterans and other applicants.

The committee received information regarding the possibility of Medicaid paying for eligible veterans' prescription drug costs not paid by the federal Department of Veterans' Affairs. The committee learned Medicaid, which provides prescription coverage, is available to veterans who qualify for one of the various Medicaid categories--veterans who are disabled, pregnant, a caretaker relative of a deprived child, or aged 65 or older.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

Section 54-40-01 provides that an agency, department, or institution may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Legislative Management or a committee designated by the Legislative Management for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Management. The Government Services Committee was assigned this responsibility for the 2009-10 interim.

The committee received information regarding the history of the bistate authority legislation. The

1996 South Dakota Legislature enacted a law creating a legislative commission to meet with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. The North Dakota Legislative Council appointed a commission to meet with the South Dakota commission. As a result of the joint commission, the North Dakota Legislative Assembly enacted legislation relating to higher education and the formation of a cooperative agreement with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislature did not approve any of the related bills.

During the 2009-10 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

HEALTH AND HUMAN SERVICES COMMITTEE

The Health and Human Services Committee was assigned the following responsibilities:

1. Section 1 of House Bill No. 1391 (2009) provided for a study of the unmet health care needs in the state. The study was to include an assessment of the needs of underinsured and uninsured individuals and families, consider federal health care initiatives, and include consultation with the State Department of Health, the Insurance Commissioner, and the Department of Human Services.
2. Section 1 of House Bill No. 1573 (2009) provided for a study of voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services. The study was to explore the extent to which vouchers are currently used in federal and state human service programs and other programs, how voucher systems are implemented, and the advantages and challenges posed by the use of vouchers as a mechanism for expanding service options and maximizing client choices. The study also included a comprehensive review of funding for human services and other state programs, focusing on the feasibility of improving access to care and providers for clients through the use of a voucher system, including programs related to mental health services, addiction treatment, counseling services, and transition services.
3. Section 10 of Senate Bill No. 2004 (2009) provided for a study of the state immunization program. The study was to identify pharmacists' or other providers' ability and interest in immunizing children and include a review of the effect of the program on public health units, including billing, billing services, fee collections, and uncollectible accounts.
4. Section 2 of Senate Bill No. 2394 (2009) provided for a study of existing services for minors who are pregnant and whether additional education and social services would enhance the potential for a healthy child and a positive outcome for the minor. The study was to consider the potential benefits of support services for parents of these minors and guardianship for the minor for cases in which parental abuse or neglect may be an issue. The study was also to consider the benefits to the minor of subsidies for open adoptions and supportive housing and child care for single parents enrolled in secondary and postsecondary educational institutions. In addition, the study was to determine the most desirable evidence-based service delivery system and the amount and sources of adequate funding.
5. House Concurrent Resolution No. 3003 (2009) provided for a study of the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.
6. The Legislative Management assigned the committee the responsibility to receive a recommendation from the Insurance Commissioner on an entity to provide a cost-benefit analysis on legislative measures mandating health insurance coverage of services or payment for specified providers of services or amendments that mandate such coverage or payment pursuant to North Dakota Century Code Section 54-03-28.
7. The Legislative Management also assigned the committee the responsibility to receive the following reports:
   a. Annual reports from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program (CHIP) state plan pursuant to Section 50-29-02.
   b. Periodic reports from the State Health Officer and the Regional Public Health Network Task Force regarding the protocol for the regional public health network pursuant to Section 2 of Senate Bill No. 2333 (2009).
   c. Annual reports from the Department of Human Services regarding the status of the alternatives-to-abortion services program pursuant to Section 2 of Senate Bill No. 2391 (2009).
   d. An accountability report from the North Dakota Fetal Alcohol Syndrome Center before September 1, 2010, regarding the use of funds granted to the center by the State Department of Health pursuant to Section 2 of Senate Bill No. 2412 (2009).

Committee members were Representatives Robin Weisz (Chairman), Larry Bellew, Tom Conklin, Kari L. Conrad, Jeff Delzer, Mary Ekstrom, Robert Frantsvog, Curt Hofstad, Richard Holman, Gary Kreidt, Vonnie Pietsch, Chet Pollert, Louise Potter, and Alon C. Wieland and Senators Robert S. Erbele, Tom Fiebiger, Ralph L. Kilzer, Judy Lee, Tim Mathern, and Jim Pomeroy.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

UNMET HEALTH CARE NEEDS STUDY

Section 1 of House Bill No. 1391 (2009) directed a study of the unmet health care needs in the state. The study was to include an assessment of the needs of underinsured and uninsured individuals and families, consider federal health care initiatives, and include consultation with the State Department of Health, the Insurance Commissioner, and the Department of Human Services.

The committee reviewed previous studies relating to unmet health care needs in the state, including studies by the 1999-2000 Budget Committee on Health Care of the various challenges facing the delivery of health care in the state, the 2001-02 Budget Committee on Health Care regarding the coordination of the medical assistance and state CHIP, the 2005-06 Budget Committee on Health Care regarding the need for a comprehensive long-range study of the state's current and future health care needs, and the 2005-06 Budget Committee on Human Services regarding state programs providing services to children with special health care needs.

Availability and Affordability of Health Care in the State

The committee received information regarding the availability and affordability of health care services in the state. The committee learned the state has:

- Six tertiary hospitals in the four major cities of Bismarck, Fargo, Grand Forks, and Minot.
- Thirty-six critical access hospitals in rural communities.
- Seven specialty hospitals, including two long-term care acute hospitals, the State Hospital in Jamestown, a psychiatric care hospital in Fargo, and a Department of Veterans' Affairs hospital also in Fargo.
- Two Indian Health Service hospitals.

The committee learned there is concern regarding the future viability of a number of the hospitals in the state. Low profits and operating deficits make it difficult for North Dakota health care providers to offer competitive salaries and maintain current technology. The committee learned Medicare and Medicaid are the major payers of health care in North Dakota, especially in the rural areas of the state. Medicare payments generate approximately 50 percent of hospital revenue, and Medicaid payments generate from 12 percent to 20 percent.

The committee learned the Dakota Medical Foundation and the University of North Dakota School of Medicine and Health Sciences Center for Rural Health conducted an assessment of health and health care in North Dakota. The study was conducted from December 2008 to February 2009. Issued in May 2009, the report entitled *An Environmental Scan of Health and Health Care in North Dakota*: *Establishing the Baselines for Positive Health Transformation* provides an overview of selected health and health care issues in North Dakota. The committee learned North Dakota's health and health care are affected by demographic, social, and economic factors. Population characteristics, including age composition, income levels, educational achievement, and changes in the number and distribution of people, affect health status. The committee learned as rural populations age and as the number of residents declines, the ability of providers to maintain and sustain local health systems is challenged. Rural populations also tend to have lower incomes, higher poverty rates, and lower rates of insurance coverage. The committee learned availability and access to care are influenced by a number of factors, including financial constraints; the availability of health care systems; number of providers; and geographic considerations, such as distance, terrain, weather, and transportation resources. The committee learned low-income, aged, or disabled individuals living in rural communities often have limited transportation options.

Health Insurance

The committee received information regarding the number of uninsured individuals in the state, including the types of individuals likely to be uninsured and reasons for not being insured. The committee learned a 2004 United States Health Resources and Services Administration survey found that approximately 52,000 people or 8.2 percent of North Dakota's population were uninsured. In addition, another 8.5 percent were reported as underinsured, using the definition that the underinsured spend more than 10 percent of their family income on health care. The survey found:

- The uninsured are more likely to be young, unmarried male adults with a lower income but who were employed;
- American Indians are far more likely to be uninsured (31.7 percent) than Caucasians (6.9 percent); however, the study did not consider American Indians receiving health care from the Indian Health Service as insured;
- The majority of uninsured adults are employed (71.7 percent);
- The majority of insured adults are employed (82.3 percent);
- Employees of smaller businesses are more likely to be uninsured, especially in businesses with 10 or fewer employees, while individuals employed by a business with more than 500 employees have the lowest uninsured rate at 3.8 percent;
- Self-employed individuals are more likely to be uninsured (21.3 percent).

In addition to the 2004 United States Health Resources and Services Administration survey, the committee also received the following information regarding the number of uninsured individuals in the state:

- The State Health Access Data Assistance Center reported an 11.5 percent uninsured rate in North Dakota for 2005 and 2006;
- The Kaiser Family Foundation reported a 12.5 percent uninsured rate for 2007 and 2008;

- The Center for American Progress reported a 13 percent uninsured rate for 2009; and
- The United States Census Bureau preliminary estimated uninsured rate was 10.5 percent in 2008.

The committee learned the number of individuals without insurance in North Dakota is estimated to be between 50,000 and 70,000.

The committee learned the University of North Dakota School of Medicine and Health Sciences Center for Rural Health partnered with Job Service North Dakota in 2005 to survey North Dakota employers on health insurance coverage for employees and their family members. The survey indicated 64 percent of businesses provided health insurance coverage and the most common reasons for not providing health insurance coverage to employees were the high cost of premiums, coverage by another source, high employee turnover, and too many low-wage workers. The committee learned the cost of insurance premiums was 7 percent of median family income in 1987 compared to 17 percent in 2006.

Health Care Coverage Available in the State

The committee reviewed other forms of health care coverage available to individuals who cannot afford or who cannot purchase health insurance, including Medicaid, Healthy Steps, Caring for Children, Health Tracks, and the Comprehensive Health Association of North Dakota (CHAND) program.

Medicaid

The committee learned Medicaid was authorized in 1966 for the purpose of strengthening and extending the provision of medical care and services to people whose resources are insufficient to meet their medical-related costs. Corrective, preventative, and rehabilitative medical services are provided with the objective of retaining or attaining capability for independence, self-care, and support. These services are extended to elderly, blind, or disabled individuals as well as to caretaker relatives and children to the age of 21. Funding is shared by federal, state, and county governments, with eligibility determined at the county level.

The committee learned for those that qualify, Medicaid may provide aid to individuals without health insurance or for those whose health insurance does not cover all of their needs. Medicaid pays for health services for qualifying families with children and people who are pregnant, elderly, or disabled. The committee learned in June 2010 approximately 62,000 individuals were eligible for Medicaid in North Dakota.

The committee learned to qualify for Medicaid coverage, an individual must be a state resident and must qualify financially. The individual must also be at least one of the following:

- Pregnant;
- Blind, disabled, or aged 65 or older;
- A member of a family with children;
- Aged 21 or younger or aged 65 or older and receiving services at the State Hospital;
- Younger than age 21 and living independently or in a licensed foster home;
- An adopted child younger than age 21 who has special health needs or meets other criteria; or
- A woman screened through the State Department of Health's Women's Way program who needs treatment for breast or cervical cancer.

The committee learned Medicaid eligibility is based on income and, in some cases, assets. Some assets are not counted when determining eligibility. There is no asset limit for children, families, or pregnant women in the children and families coverage group or women who apply under the Women's Way program.

Healthy Steps

The committee learned CHIP--also known as Healthy Steps--provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for Medicaid coverage but not enough to afford private insurance.

The committee learned that although monthly premiums are not charged to families in the Healthy Steps program, most families are required to pay copayments for emergency room visits, hospitalizations, and prescriptions. Copayments are not required for American Indian children.

The committee learned Healthy Steps-covered services include inpatient hospital stays, medical and surgical services, outpatient hospital and clinic services, mental health and substance abuse services, prescription medications, routine preventative services such as well baby checkups and immunizations, dental and vision services, and prenatal services.

The committee learned the 2009 Legislative Assembly changed income eligibility for the program from 150 percent to 160 percent of the federal poverty level. To qualify, a family's net income after deducting child care costs and payroll taxes, such as Social Security and Medicare, must be greater than the Medicaid level but may not exceed 160 percent of the federal poverty level. When a child is enrolled in Healthy Steps, the child receives coverage for a 12-month period or until the end of the month in which the child becomes age 19.

Caring for Children

The committee learned Caring for Children is a benefit program for eligible North Dakota children up to age 19 who do not qualify for Medicaid or Healthy Steps and have no other insurance. Benefits include primary and preventative medical and dental care. Caring for Children is a program of the North Dakota Caring Foundation, Inc., a nonprofit 501(c)(3) foundation established by Blue Cross Blue Shield of North Dakota in 1989. Primary and preventative care services include:

- Routine and primary medical care.
- Limited inpatient (hospital) care.
- Immunizations.
- Mental health and substance abuse.
- Primary and preventative dental care.

Children are eligible for Caring for Children if they are:

1. A resident of the state;
2. A United States citizen or legal permanent resident;
3. Under age 19;
4. Unmarried and whose guardians have an annual income of between 161 percent and 200 percent of the federal poverty level;
5. Without comprehensive medical coverage through Medicaid, Healthy Steps, or a private insurance carrier; and
6. Within household income guidelines of the North Dakota Caring Foundation, Inc.

The committee learned individuals who have voluntarily canceled medical insurance are not eligible to participate in Caring for Children for six months after the date the coverage was canceled.

Health Tracks

The committee learned North Dakota Health Tracks (formerly early periodic screening diagnosis and treatment) is a preventative health program that is free for children aged 0 to 21 who are eligible for Medicaid. Health Tracks pays for screenings, diagnosis, and treatment services to help prevent health problems from occurring or help keep health problems from becoming worse. Health Tracks also pays for orthodontics (teeth braces), glasses, hearing aids, vaccinations, counseling, and other health services.

Comprehensive Health Association of North Dakota

The committee learned CHAND was created by the Legislative Assembly in 1981 and became operational in 1982. Its initial purpose was to provide comprehensive health insurance benefits to residents of the state who have been denied health insurance or have been given restricted coverage or excessive health premiums because of high-risk health problems.

The committee learned the 1997 Legislative Assembly modified CHAND to comply with federal law--the Health Insurance Portability and Accountability Act of 1996 (HIPAA), to provide coverage for people eligible under HIPAA. To be eligible for coverage under HIPAA, an applicant must be a resident of North Dakota; meet the federally defined eligibility guidelines; not be enrolled in Medicaid; and not have health insurance premiums paid for or reimbursed under any government-sponsored program, government agency, health care provider, nonprofit charitable organization, or employer. The committee learned the 2003 Legislative Assembly added language that allows CHAND to provide coverage for North Dakota residents that are eligible for assistance with health premiums through the federal Trade Adjustment Assistance Reform Act of 2002 (TAARA) or Pension Benefit Guaranty Corporation assistance.

The committee learned with passage of the 1997 and 2003 legislation, the program now offers coverage to four types of eligible residents--standard, HIPAA, TAARA, and aged 65 and over or disabled. The standard, HIPAA, and TAARA comprehensive major medical policies offer $500 and $1,000 deductibles with or without a chiropractic endorsement, each with a $3,000 out-of-pocket maximum. The aged 65 and over or disabled policy offers a basic or standard supplemental plan. The maximum lifetime benefit of a CHAND comprehensive plan is $1 million which closely resembles major medical contracts sold by commercial health insurance carriers doing business in North Dakota.

The committee learned CHAND members include accident and health insurance companies selling a minimum of $100,000 of health insurance annually in North Dakota. The Comprehensive Health Association of North Dakota premiums are limited to 135 percent of the average amount charged for standard coverage in the state. Losses in excess of the premiums are paid by participating companies in the form of assessments. Companies are allowed a credit against the premium tax they would otherwise pay to the state in an amount equal to the assessment paid to CHAND which reduces the amount of insurance premium tax deposited in the general fund. Blue Cross Blue Shield of North Dakota is currently under contract with the state of North Dakota to administer CHAND operations. The committee learned as of March 1, 2010, there were 1,407 individuals insured through CHAND.

Other Services

The committee received information regarding other services available to uninsured and underinsured individuals in the state. The committee learned the State Department of Health provides services to the uninsured and underinsured through programs relating to colorectal cancer; cancer prevention and control; breast and cervical cancer; oral health; maternal and child health; family planning; child passenger safety; special supplemental nutrition for women, infants, and children; Tobacco Quitline; specialty care diagnostic and treatment; Russell-Silver Syndrome; metabolic food; immunizations; human immunodeficiency virus (HIV); and primary care.

Health Care Affordability and Availability Initiatives

Continuous Eligibility of Children

The 2007 Legislative Assembly approved Senate Bill No. 2012 providing 12-month continuous eligibility rather than 1 month for children under Medicaid. The department implemented the 12-month continuous eligibility policy in June 2008. The committee learned the number of children continuously eligible increased from 23,953 in November 2008 to 33,112 in October 2009. The committee learned outreach activities may also have contributed to the increase in the number of children on Medicaid because when the department does outreach for Healthy Steps, children are also reviewed for Medicaid eligibility.

2010 Federal Health Care Reform

The committee received information regarding the projected effect of 2010 federal health care reform legislation on the availability and affordability of health care services in the state. The committee learned as a

result of the federal health care reform legislation, up to 47,200 individuals aged 50 to 64 may be eligible for a tax credit that could help make premiums more affordable, and an estimated 8,800 of these individuals may qualify for Medicaid. The committee learned the Kaiser Commission on Medicaid and the Uninsured estimates almost 29,000 North Dakota residents (up to 40,000 with an enhanced outreach effort) may enroll in the Medicaid program by 2019 under the new health care reform legislation.

The committee received information from the Department of Human Services regarding the effect of federal health care reform legislation on state programs and learned:

- Federal health care reform legislation expands Medicaid coverage to those individuals below 133 percent of the federal poverty level (138 percent when considering a 5 percent income disregard) rather than 100 percent and provides coverage to qualified childless adults.
- The Department of Human Services estimates the cost of the federal health care reform legislation in the state over the next 10 years to be approximately $749 million, of which $643 million will be paid by the federal government and $106 million from the state general fund. The department estimates additional full-time equivalent (FTE) positions will be needed in the Medical Services Division, the Economic Assistance Policy Division, and in administration and technology support. The department anticipates the additional FTE positions would be added incrementally between 2010 and 2014, and when fully staffed in 2014, the estimated total cost, not adjusted for inflation, of all additional FTE positions will be approximately $1.2 million per year.
- Federal health care reform legislation enacts policies that address children's health care coverage and establishes parents' responsibility for their children's coverage. The committee learned the child support enforcement program could be affected if federal health care reform legislation requires all child support orders to be modified. In addition to reviewing existing orders, the department would need to develop rules, policies, and procedures to accommodate the new requirements, determine the changes needed to the department's computer system, and provide training and outreach. The committee learned the provisions of federal health care reform that most directly affect child support collections are effective January 1, 2014.

Health Information Technology

The committee learned health information technology and telemedicine are efforts to not only improve access to care, but also to improve the quality of care through the collection and sharing of clinical information, the reduction of errors, computer-aided decisionmaking systems, and enhanced patient and clinician communication. Health information technology includes practice management systems, disease registries, clinical messaging, personal health records, electronic prescribing, electronic medical records, and health information exchanges.

The committee learned telemedicine services have been reimbursable by Blue Cross Blue Shield of North Dakota since 1998, but the number of claims has been minimal. The committee learned the most common telemedicine services billed were psychotherapy diagnostic interview, individual psychotherapy, and pharmacologic management. The committee learned most telemedicine providers in the state are located in Grand Forks, Fargo, and Jamestown, but telemedicine patients are located throughout the state.

The committee learned obstacles to offering telemedicine, specifically telepsychiatry services, include the lack of an adequate number of physicians to provide telemedicine services in addition to the regular services provided at the clinic as most payers require regular onsite visits for the patient to qualify for reimbursement. The remoteness of patients result in substantial travel time for the physician and limits the ability of the clinic to offer the service.

The committee learned telepharmacy has been implemented in several hospitals across the state, and several critical access hospitals have contracted with a group of out-of-state physicians to provide oversight by tele-e-care in emergency rooms. The committee learned this system of care has been successful in South Dakota but raises issues relating to credentialing of out-of-state physicians, liability, and reimbursement for covered services. The committee learned telemedicine offers a solution to providing many services in rural areas and selected services to major health care providers.

The committee learned the Health Information Technology Advisory Committee was awarded a four-year $5.3 million grant in March 2010 to establish a statewide health information exchange to improve the coordination, efficiency, and quality of health care; develop governance, policies, and network services; and allow providers the ability to connect to the national health information exchange network.

The committee learned Senate Bill No. 2332 (2009) provided $5 million from the current earnings and accumulated profits of the Bank of North Dakota for low-interest loans to health care organizations to assist with the installation of electronic health records. The committee learned 14 applications were received, and the Health Information Technology Advisory Committee approved 12 awards. The committee learned all of the hospitals in the state have videoconferencing capabilities via their connection to the bioterrorism wide area network. This connection allows the hospitals to conduct and access clinical and nonclinical education and training; participate in administrative functions; and provide clinical services, such as postsurgical followups and psychiatric consultations.

Transportation

The committee received an update from the Department of Transportation on the status of the development of public transportation coordination pilot

projects underway to address the coordination of transportation services in limited areas of the state. Senate Bill No. 2223 (2009) provided for two public transportation coordination pilot projects. Jamestown in the south central region and Bismarck in the west central region were chosen for coordination efforts. The committee learned the department contracted with the Small Urban and Rural Transit Center to conduct the related studies. The committee learned regional coordination can increase the opportunities to provide services and coordinators can identify and bring together stakeholders, provide research, and facilitate the sharing of technical resources. The committee learned in addition to the studies, the Department of Transportation has contracted to perform a rural public transit needs assessment. The committee learned information from the studies and the needs assessment will be provided to the 2011 Legislative Assembly.

North Dakota Area Health Education Center Program

The committee learned the University of North Dakota Department of Family and Community Medicine, School of Medicine and Health Sciences, and the College of Nursing have formed a partnership to plan, develop, and implement a North Dakota area health education center program. The committee learned two area health education centers are operating in the state--one at Mayville for the eastern region and the other at Hettinger for the southwest region. A third area health education center is anticipated for the northwest region. Area health education centers connect students to health care careers and to the rural, underserved communities in the state through activities developed for kindergarten through postsecondary students, educational programs, clinical rotations, and recruitment and retention of health care providers. The committee learned funding for the program is from a federal Human Resources and Services Administration grant, the University of North Dakota School of Medicine and Health Sciences, and a Dakota Medical Foundation grant. State funding may be needed to match federal funds to continue the program in the future.

Other

The committee received other information regarding efforts to improve and increase rural health care in the state, including federal rural health grants, a critical access hospital quality network, emergency medical services access critical grants, community-based outpatient clinics for veterans' care, health professional workforce development, and efforts to increase the viability of rural hospitals.

Recommendations

The committee makes no recommendations regarding the unmet health care needs study.

VOUCHER USE AND PROVIDER CHOICE FOR CLIENTS STUDY

Section 1 of House Bill No. 1573 (2009) directed a study of voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services. The study was to explore the extent to which vouchers are currently used in federal and state human service programs and other programs, how voucher systems are implemented, and the advantages and challenges posed by the use of vouchers as a mechanism for expanding service options and maximizing client choices. The study also was to include a comprehensive review of funding for human services and other state programs focusing on the feasibility of improving access to care and providers for clients through the use of a voucher system, including programs related to mental health services, addiction treatment, counseling services, and transition services.

Voucher use or provider choice is a method of providing goods and services to a beneficiary with the use of a voucher. The voucher can be submitted to the beneficiary's provider of choice for the goods or services. Federal, state, and local agencies develop service agreements with providers to supply goods or services in exchange for the vouchers, which are presented to the agencies for payment as provided in the agreement.

The committee reviewed previous studies relating to voucher use or provider choice for clients, including studies by the 2001-02 Budget Committee on Human Services of the issues and concerns of implementing Charitable Choice and the 2007-08 Long-Term Care Committee regarding the long-term care system in North Dakota. Charitable Choice is the privatization of federally funded welfare services through faith-based organizations.

Voucher Use and Provider Choice

The committee reviewed a summary of programs offered by the Department of Human Services. The summary included program descriptions, eligibility requirements, descriptions of the program's provider choice, and the 2009-11 appropriation for each program.

The committee learned that while the department does not use the term "vouchers" in its services delivery, the department does use the term "individualized service budgets" in several areas. Individualized service budgets use the same concept as vouchers and are used in the family caregiver support program, self-directed support waiver, and child care. The committee learned in addition to the programs that use individualized service budgets, client choice is available in programs relating to:

- Child welfare and mental health when a service plan is developed;
- Vocational rehabilitation where client-informed choice is a regulatory requirement; and
- Medicaid, where freedom of provider choice is required with few exceptions.

Access to Recovery Grant

The Access to Recovery grant was a federal Substance Abuse and Mental Health Services

Administration grant opportunity that used the voucher model for providing substance abuse treatment services. The Department of Human Services Division of Mental Health and Substance Abuse Services, established a recovery council as an advisory committee to the Access to Recovery grant. The committee learned the division and the recovery council determined adequate recovery support infrastructure was not available in North Dakota as required by the Access to Recovery grant. Because the state was not prepared to provide required recovery support, the division and the recovery council decided not to submit the Access to Recovery grant application. The latest round of Access to Recovery grants were awarded in August 2010 and future Access to Recovery grant opportunities are uncertain.

Money Follows the Person Developmental Disabilities Service Demonstration Project

The committee learned the Department of Human Services was awarded an $8.9 million Money Follows the Person demonstration grant in 2007. The committee learned the grant funding is to assist persons with a developmental disability, a physical disability, and older adults in transitioning from an institutional setting to a community setting through the increased use of home and community-based services. The grant funding is available through calendar year 2018, and individuals may receive services through 2019.

The committee learned there have been 17 transitions from nursing facilities and 14 transitions from intermediate care facilities since the program began in August 2008. Of the 31 total transitions, 6 individuals have completed 365 days of enhanced Money Follows the Person grant funding (3 individuals from nursing facilities and 3 individuals from intermediate care facilities). The cost to Medicaid for the three individuals in a nursing facility averaged $44,245 per individual per year, including institutional, medical, and medication costs. After transition, the average cost was $38,873 per year, including transition coordination, supplemental services, home and community-based services, medical costs, and medication costs. The committee learned the cost to Medicaid for the three individuals in an intermediate care facility averaged $121,194 per year, while the average cost after transition was $100,950 per year. The committee learned one of the primary barriers to the transition of individuals from either nursing facilities or intermediate care facilities is lack of accessible and affordable housing in communities.

Program of All-Inclusive Care for the Elderly

The committee received information on the program of all-inclusive care for the elderly. The program is a capitated benefit program that provides a comprehensive service delivery system. The system includes all needed preventative, primary, acute, and long-term care services to allow the individual to continue to live at home or in the community. The program of all-inclusive care for the elderly providers assume full financial risk for the participant's care without limits on amount, duration, or scope of services. The program of all-inclusive care for the elderly began operating in Bismarck and Dickinson in September 2008 under the Northland Healthcare Alliance. The program served 29 participants in Bismarck and 19 in Dickinson as of March 2010.

Mental Health and Substance Abuse Treatment Services and Limitations

The committee received a summary of the cost of substance abuse and mental health services in each region, including contract costs and numbers served by race. The committee learned the availability of services and providers varies across the state and each of the human service centers provides some direct services while contracting with private providers for other services. The committee learned of the $97.8 million budgeted at the human service centers for mental health and substance abuse services for fiscal year 2009, $26.5 million or 27 percent is for contracted services. The committee learned 25,289 clients received mental health and substance abuse services at human service centers in fiscal year 2009, an increase of 1.3 percent from fiscal year 2008. Native American clients totaled 2,803 or 11.1 percent of the total clients served.

The committee received information regarding cost-based rates for services provided by staff at selected human service centers and the contract rate for similar services when the department contracts for the service in the same human service region. The committee learned the statewide rate and the contract rates are submitted to Medicaid for reimbursement. Contracted rates include all of the costs to operate the facility and provide the service while the human service center rate is computed statewide and is determined by dividing all of the costs the state incurs to provide that service, including designated staff and supervision, by the total units provided by the state. The committee learned Medicaid requires the state to charge a consistent rate based on cost. As a result, the department calculates a statewide rate rather than different regional rates. The committee learned that the use of a statewide rate for human service centers service costs makes it difficult to compare to private providers rates for similar services.

The committee received a summary by region of mental health and substance abuse residential bed capacity, including the number of available crisis beds. There are 445 residential mental health and substance abuse beds available statewide, including 78 flex beds, which are available for use as mental health crisis or substance abuse residential beds. In addition to the mental health and substance abuse residential bed capacity provided through the regional human service centers, the Division of Mental Health and Substance Abuse Services contracts for 40 residential treatment substance abuse beds at the Robinson Recovery Center.

The committee learned the Robinson Recovery Center reports annually to the division on the number of individuals referred and admitted and on measures relating to completion of treatment, employment, and housing. The committee learned the division compares the center's outcomes to national trends. In addition, the committee received information regarding the

Department of Human Services' mental health block grant outcome report, substance abuse prevention treatment block grant outcome report, and outcome information for youth who receive services. Key outcomes reported relate to arrests, levels of functioning, stable housing, employment, independence, school attendance, client perception of care, social support/social connectedness, and abstinence from alcohol and drugs.

The committee received information regarding the challenges facing hospitals that provide inpatient psychiatric services and a summary of the specialty and acute hospitals that provide inpatient psychiatric services. The committee learned a North Dakota Hospital Association study of the behavioral health challenges facing hospitals identified funding of care, physician recruitment, access to the State Hospital, and telemedicine as challenges to be addressed. The committee learned hospitals that provide inpatient psychiatric services face funding challenges that have contributed to the closing of inpatient psychiatric units in Dickinson and Williston. The committee learned the closure of these two units has placed increased demands on other providers and has resulted in an inadequate level of service in the western part of the state.

The committee learned addiction counselors must be licensed by the Board of Addiction Counseling Examiners and received information regarding the requirements for licensure. The committee learned 334 addiction counselors were licensed in the state as of January 2010. The Board of Counselor Examiners offers three counseling licenses--licensed associate professional counselor, licensed professional counselor, and licensed professional clinical counselor. The committee received information regarding the requirements for each counseling licensure and learned 359 professional counselors were licensed in the state as of January 2010.

The Department of Human Services' stakeholder report identified shortages of mental health professionals, inpatient bed capacity, and residential options and funding for peer support as major mental health and substance abuse services issues to be addressed by the department. The Department of Human Services' staff, legislators, representatives of private hospitals with behavioral health care services, and others identified the following recommendations:

- Develop a standard purchase of service agreement between the Department of Human Services and private hospitals;
- Establish one contracted rate for services (the Medicaid daily rate);
- Enhance available crisis and residential beds in the state to assure treatment at the appropriate level of care;
- Explore alternative models of crisis intervention and case management, particularly for afterhours services;
- Expand the use of telemedicine to increase client access; and
- Increase the role of higher education.

Implementation of a Voucher System

The committee received information regarding lessons learned from Round 1 of a 2004 federal Substance Abuse and Mental Health Services Administration Access to Recovery grant for which North Dakota applied but was not successful. Each state receiving the grant was asked to provide information regarding its experiences in operating a voucher model for providing substance abuse treatment services. Key lessons identified include:

1. Service provider base:
   a. Treat outreach as marketing via communications. Outreach and communication is required to persuade providers to become part of the voucher network.
   b. Adopt a systems perspective. There is no guarantee of business and reporting, documentation, reimbursement requirements, hands-on targeted training, and support are necessary.
   c. Deliver targeted training.
2. Client base:
   a. Implement client outreach.
   b. Ensure informed client choice.
   c. Define an appropriate client base.
   d. Take advantage of existing structures.
3. Administrative systems and procedures:
   a. Plan ahead. Voucher management is required to issue vouchers, manage claims, integrate procedures, reconcile outstanding vouchers, and monitor voucher activity.
   b. Develop logical procedures.
   c. Understand contextual issues.
   d. Provide oversight.
4. Outcomes of treatment and recovery support systems:
   a. Assess the outcomes of treatment and recovery support services.
   b. Outreach and training are necessary to assure reporting requirements and data collection procedures are in place.

The committee learned private providers support the use of a voucher system for uninsured and underinsured North Dakota residents to access mental health and chemical dependency services. Human service centers often have waiting lists for services. The distance to human service centers may also be an impediment to individuals being able to access the services. In some regions of the state a voucher system may provide more options, but a lack of available providers may require travel to another region to use a voucher. Implementing a voucher system would:

- Empower the patient by allowing the patient to choose the provider.
- Provide the opportunity to receive care closer to home.
- Improve the quality of care.
- Reduce strain on the state system.
- Allow the State Hospital to function as a long-term psychiatric facility.
- Offer patient access to a full continuum of care.

- Better match the level of care to the patient's psychiatric needs.
- Improve public/private partnerships by increasing the network of resources available.

Under a voucher system:

- The state could set the price it will pay for a service and determine the desired outcomes.
- A contract, similar to contracts private providers have with insurance companies, could establish rates.
- Competition among providers for these services could control costs.
- Services must be documented as medically necessary.
- The regional human service centers could provide case management services, determine care needed for clients, and contract with private providers for the necessary services.
- Client choice would increase.
- An increase in choice could result in an increase in access.

Pilot Voucher Payment Program

The committee learned a demonstration voucher payment program in one area of the state could provide an opportunity to evaluate a voucher payment system. The Department of Human Services would need additional funding to implement a pilot voucher payment program for the increased administrative costs to monitor the vouchers and for potential additional treatment costs for individuals currently untreated that may seek treatment under the voucher system. The committee learned the cost of the pilot voucher payment program will depend on the services included.

Recommendations

The committee recommends House Bill No. 1032 directing the Department of Human Services to establish and operate a pilot voucher payment program to provide mental health and substance abuse services for the 2011-13 biennium. The department is to offer the mental health and substance abuse services pilot voucher payment program in three human service regions of the state; a primarily urban region where a variety of mental health and substance abuse services are available but where access to services is limited, a primarily rural region where a variety of mental health and substance abuse services are not available, and a region including an Indian reservation where the demand for mental health and substance abuse services may exceed the capacity of existing mental health and substance abuse service providers. The bill draft also provides for a comprehensive review of the pilot voucher payment program and a report of the preliminary findings and recommendations to the Legislative Management prior to September 30, 2012.

IMMUNIZATION PROGRAM STUDY

Section 10 of Senate Bill No. 2004 (2009) provided for a study of the state immunization program. The study was to identify pharmacists' or other providers' ability and interest in immunizing children and include a review of the effect of the program on public health units, including billing, billing services, fee collections, and uncollectible accounts.

Background

The 2007 Legislative Assembly in House Bill No. 1435 provided for an immunization program and an Immunization Task Force. The bill provided that:

1. During the period beginning July 1, 2007, through December 31, 2007, the State Department of Health distribute vaccines to local public health units and other immunization providers for the purpose of continuing the immunization services previously funded through the immunization grant program authorized under Section 317 of the federal Public Health Service Act while transitioning to a provider choice immunization program.
2. During the period beginning January 1, 2008, through June 30, 2009, the State Department of Health may distribute vaccines to local public health units and other immunization providers for the purpose of continuing the transition to a provider choice immunization program. The department was to distribute the vaccines in accordance with the department's protocol established in consultation with the Immunization Task Force.
3. The State Health Officer appoint an immunization task force to meet during the 2007-08 interim to establish a protocol on how to transition from a universal-select immunization program to a provider choice immunization program.

The bill also appropriated $2 million from the general fund to the State Department of Health for the 2007-09 biennium for the purpose of providing vaccines to public health units and other immunization providers. Of the total amount appropriated, $500,000 was only available if the State Department of Health determined that vaccines needed to be purchased after December 31, 2007.

The 2007-08 Human Services Committee received periodic reports on the immunization program transition and learned that in 2005, due to increasing costs of vaccinating children, North Dakota moved from a universal state in which all vaccines are provided to all children, even those insured, to a universal-select state in which all vaccines are provided to all children eligible for a federal program called Vaccines for Children, which generally includes children that are uninsured, underinsured, Medicaid-eligible, or American Indian, and most vaccines are provided to most insured children. The Provider Choice program is a program to manage and cost-effectively pay for all recommended vaccines for all children. The Provider Choice program continues the provision of federal vaccines to providers for eligible children and gives providers the choice of purchasing all other vaccines through the State Department of Health where they can achieve lower vaccine costs through multistate, large-volume purchasing agreements.

Vaccines for all children are provided either through the federal Vaccines for Children program or through an individual's health insurance. Some copayments may apply. The department spent approximately $1.993 million of the $2 million 2007-09 general fund appropriation on vaccine purchases and payments to local public health units for the cost of administering immunizations and for immunization program startup costs for supplies and equipment, such as vaccine cooling units.

The 2007-08 Human Services Committee received information regarding the uses of federal "317" vaccine allocations by the State Department of Health. The department receives a yearly allocation of vaccine through Section 317 direct assistance grants. The grants are intended to allow grantees to provide vaccines for populations at the greatest risk for undervaccination and disease. Children who do not have health insurance or are eligible for Medicaid receive vaccinations through the federal Vaccines for Children program rather than the "317" program.

The immunization transition project required the development of a billing process for local public health units. Two local public health units were chosen as testing sites and completed testing of the billing system in February 2008. On March 31, 2008, all local public health units began billing insurance companies. Local public health units electronically submit information to the University of North Dakota School of Medicine and Health Sciences through the North Dakota immunization information system. The University of North Dakota School of Medicine and Health Sciences provides billing services on behalf of the health units, including the collection of insurance copayments and deductibles, and withholds $2 from each vaccination payment for administrative costs.

Concerns expressed to the 2007-08 Human Services Committee regarding the transition included:

- The difficulty of local public health units in obtaining insurance information.
- The large amount of vaccine required to be stored by local public health units.
- Excessive administrative costs incurred by local public health units for providing immunizations.

The 2009 Legislative Assembly approved Senate Bill No. 2333 which created regional public health networks to share administrative functions and public health services and provided $275,000 from the general fund to the State Department of Health for a regional public health network pilot project. The bill also provided one-time funding of $1.2 million from American Recovery and Reinvestment Act of 2009 funds to the State Department of Health to provide funds to local public health units for immunization services and included a contingent general fund appropriation for $1.2 million if the federal funds are not available to provide for this purpose. The committee learned pursuant to Senate Bill No. 2333 (2009), 2009-11 biennium funding for the immunization program through May 2010 was as follows:

- American Recovery and Reinvestment Act of 2009 - Of the $1.2 million appropriation of federal stimulus funds made available to the state under the American Recovery and Reinvestment Act of 2009, the State Department of Health reported receiving:

  An allocation of vaccine ($345,220).

  A noncompetitive operations grant of $310,296 to increase immunization rates which was used to add forecasting and reminder/recall to the North Dakota immunization information system, for a statewide media campaign, for an immunization conference, and for local public health unit funding for immunization coalitions.

  A competitive operations grant of $146,360 to enhance the North Dakota immunization information system.
- General fund - Expenditures from the $1.2 million contingent general fund appropriation totaled $205,682 for reimbursement of shortfalls experienced by local public health units for the cost of immunizations in current programs. The estimated total biennial expenditures are not yet known. These reimbursements are determined through a formula that is based on number of doses and includes a base amount by county. The committee learned American Recovery and Reinvestment Act of 2009 funding could not be used for these payments.

Independent Quality Improvement Evaluation of the State's Immunization Program

The committee received information regarding challenges encountered by the local public health units and the state immunization program and learned a review of the immunization system by a consultant would identify areas needing improvement and the State Department of Health could identify funds available to pay for the review.

The committee recommended the Legislative Management chairman encourage the State Department of Health to contract for an independent quality improvement evaluation of the state's immunization program.

The State Department of Health contracted for the study at a cost of up to $90,000. The committee learned the department received a $10,000 grant from the Dakota Medical Foundation and has used $35,000 from the department's state general fund appropriation. In addition, $45,000 of the funding provided in Senate Bill No. 2333 (2009) was approved by the PROtect ND Kids Task Force and the Health Council for use on the study.

Dr. William Riley, Associate Dean, University of Minnesota School of Public Health, was retained for the independent quality improvement evaluation of the state's immunization program. The committee learned the consultants evaluated the clinical and billing processes of the immunization program at the local public health units. The evaluation focused on the following four areas--financial analysis, vaccine procurement and management, data capture (billing and receivable management), and information systems--and made recommendations for improvement.

The committee received a copy of the final report entitled *Riley and Associates Protect ND Kids Immunization Project Vaccine Management* and *Billing/Claims Management Final Report* dated October 2010. The report made the following recommendations:

- The relationship with the University of North Dakota School of Medicine and Health Services should be terminated.
- Each local public health unit should decide how to bill and collect for services provided under the PROtect ND Kids Program. Larger local public health units are in the position to perform the billing and collection internally and smaller local public health units have expressed the desire to collaborate for the service either with a larger local public health unit or with other smaller local public health units through a request for proposal from professional billing service providers.
- The leadership of each local public health unit should continue to collaborate with other local public health unit leaders to determine how each will assume responsibility for billing and collecting for services provided under the PROtect ND Kids Program.
- Based on the difference in cost of vaccine between private and federal rates, a universal vaccine supply policy is best for local public health units and should be pursued if further investigation determines that the universal vaccine supply policy yields a similar impact on private providers and payers.

Universal Vaccine Supply Policy

The committee received information from the State Department of Health regarding the funding available for immunizations in the state and vaccine procurement options available to the state. The committee learned vaccines for immunizations in the state are primarily available from:

- The Vaccines for Children program, which is federally funded and provides all recommended vaccines for children who are Medicaid-eligible, American Indian, uninsured, or underinsured;
- The 317 vaccine program, which is also federally funded but is discretionary--the state can decide which vaccines to offer through the program; and
- Private insurance.

The committee learned federal programs do not provide funding for vaccine but instead provide vaccines for use in the state. The state receives vaccine allotments that are distributed to providers. The committee learned price levels for the purchase of vaccine are as follows:

- Private rate (most expensive);
- Mid-level rate (negotiated); and
- Federal contract rate (least expensive).

The committee learned vaccine procurement options were reviewed as part of the independent quality improvement evaluation of the state's immunization program. The department believed the federal contract rate was available only when vaccines were purchased with state funds. The department reported that other states have now been allowed to collect funding from insurance companies to purchase vaccines at the federal contract rate and that several states are using universal vaccine for their childhood immunizations. Under the universal vaccine supply policy the state supplies all vaccines to all children, including those with insurance.

The committee learned under a universal vaccine supply policy, the federally funded Vaccines for Children program would continue to supply vaccines for children who are either Medicaid-eligible, American Indian, uninsured, or underinsured and either state funds, other federal funds (317 funds), or private funds (insurance companies) would be used to purchase vaccines under the federal contract for insured children. Vaccine inventories would no longer need to be stored and reported separately.

The committee learned the universal vaccine supply policy would:

- Increase efficiencies in vaccine inventory management because local public health units would no longer be required to maintain separate inventories for children vaccinated through publically funded programs and children whose vaccinations are covered by insurance or private pay.
- Increase the state's ability to provide all immunizations recommended by the Advisory Committee on Immunization Practices.

The committee learned challenges to the universal vaccine supply policy include:

- Limited ordering opportunities that may require the storage of larger amounts of inventory because providers may order, at a maximum, only once per month;
- The success of the universal vaccine supply policy and purchasing under the federal contract is based on the assumption that all insurance companies are required to fully cover all Advisory Committee on Immunization Practices-recommended vaccines for children;
- A funding source is needed to provide for the procurement of the vaccine on the federal government contract;
- To comply with new health care reform legislation regarding medical loss ratios, insurers will require an itemized claim be submitted showing the vaccine and member's name;
- Addressing vaccine currently in stock and the billing cycle of the local public health units; and
- Computer programming changes necessary for insurers and providers.

The State Department of Health is continuing discussions with stakeholders to identify obstacles and seek solutions to the vaccine supply policy. The department anticipates providing additional information to the 2011 Legislative Assembly.

Immunization Rates

The committee received information regarding immunization rates in the state. North Dakota ranks in the middle of all of the states regarding immunization rates for children. The national average immunization rate is 78.7 percent, and the immunization rate for North Dakota is 78.6 percent. Increases in the number of vaccines recommended, combination vaccines, and increases in vaccine pricing have dramatically increased the cost to vaccinate a child through age 18.

In addition to a study of the clinical and billing processes of the immunization program at the local public health units, the independent quality improvement evaluation of the state's immunization program also provided an assessment of the feasibility of pharmacists providing childhood immunizations. The committee learned pharmacists have a strong sense of service and commitment to their communities but are sensitive to the potential conflict that could occur with other health care providers if immunizations are offered. The committee learned pharmacy students expressed a willingness to assist in improving the state's immunization rate by immunizing children, and the North Dakota State University College of Pharmacy, Nursing and Allied Sciences has indicated a willingness to add the training necessary for pharmacists to immunize children. The committee learned excluding hospital pharmacies, there are approximately 150 pharmacies in the state, of which approximately 50 pharmacies provide some immunization services. The committee learned that while pediatricians support the goal of increasing immunizations of children, concern exists that if pharmacists are able to immunize children, the number of pediatric visits where children can also be evaluated will decline. The committee learned pharmacists are required to notify the primary physician of record that an individual was immunized and enter the immunization into the North Dakota immunization information system.

Recommendations

The committee recommends Senate Bill No. 2035 to allow pharmacists to administer influenza shots or influenza mist to children at least 5 years of age and other immunizations to children at least 11 years of age.

SERVICES FOR PREGNANT MINORS STUDY

Section 2 of Senate Bill No. 2394 (2009) provided for a study of existing services for minors who are pregnant and whether additional education and social services would enhance the potential for a healthy child and a positive outcome for the minor. The study was to consider the potential benefits of support services for parents of these minors and guardianship for the minor for cases in which parental abuse or neglect may be an issue. The study was also to consider the benefits to the minor of subsidies for open adoptions and supportive housing and child care for single parents enrolled in secondary and postsecondary educational institutions. In addition, the study was to determine the most desirable evidence-based service delivery system and the amount and sources of adequate funding.

Background

The committee learned in addition to providing for the Legislative Management study of services to pregnant minors, Senate Bill No. 2394 (2009) also created a new section to Chapter 14-10 relating to consent for prenatal care and other pregnancy care services provided to minors. The bill provides:

- A physician or other health care provider may provide pregnancy testing and pain management related to pregnancy to a minor without the consent of a parent or guardian.
- A physician or other health care provider may provide prenatal care to a pregnant minor in the first trimester of pregnancy or may provide a single prenatal care visit in the second or third trimester of pregnancy without the consent of a parent or guardian.
- A physician or other health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the physician or other health care provider is unable to contact the minor's parent or guardian.
- The costs incurred by the physician or other health care provider for performing services under this section may not be submitted to a third-party payer without the consent of the minor's parent or guardian.
- If a minor requests confidential services, the physician or other health care professional must encourage the minor to involve her parent or guardian.
- A physician or other health care professional or a health care facility may not be compelled against their best judgment to treat a minor based on the minor's own consent.

The bill allows the physician or other health care professional who provides pregnancy care services to a minor to inform the parent or guardian of the minor of any pregnancy care services given or needed if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian prior to the disclosure and, in the judgment of the physician or other health care professional:

- Failure to inform the parent or guardian would seriously jeopardize the health of the minor or her unborn child;
- Surgery or hospitalization is needed; or
- Informing the parent or guardian would benefit the health of the minor or her unborn child.

The bill does not authorize a minor to consent to abortion or otherwise supersede the requirements of Chapter 14-02.1 relating to abortion control.

Services to Pregnant Minors

Alternatives-to-Abortion Services Program

The Department of Human Services administers the alternatives-to-abortion services program. The program provides counseling and support services to assist pregnant women or women who believe they may be

pregnant to choose childbirth instead of abortion and to make informed decisions regarding the choice of adoption or parenting with respect to their children. Senate Bill No. 2391 (2009) requires the Department of Human Services, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, to contract to inform the public about the alternatives-to-abortion services program. The bill provided $100,000 from federal temporary assistance for needy families (TANF) block grant funds to the Department of Human Services to inform the public about the alternatives-to-abortion program. The appropriation bill for the Department of Human Services for the 2009-11 biennium--House Bill No. 1012--includes $400,000 of federal TANF funding for the alternatives-to-abortion program; therefore, a total of $500,000 of federal funds is appropriated for the program for the 2009-11 biennium. The Department of Human Services enters a memorandum of agreement with each alternatives-to-abortion provider. Billable services include pregnancy testing, prenatal education/classes, pregnancy counseling, and parenting education/classes.

The following is a summary of the services provided and the outcomes of the alternatives-to-abortion services program:

		Outcomes Reported[1]						
	Clients Receiving Services	Negative Pregnancy Test or Data Not Provided[2]	Client Still Pregnant	Miscarriage or Stillbirth	Abortion or Postabortion Counseling	Live Birth	Adoption or Foster Care	Client Parenting
November 1, 2006, to June 30, 2007	490	139	321	0	1	0	17	12
Fiscal year 2008	666	181	418	4	3	1	18	41
Fiscal year 2009	663	146	380	22	4	48	12	51

[1]Outcomes were identified based on the last service the clients received.

[2]In March 2008 the Department of Human Services revised the payment voucher. The department no longer monitors outcomes for a negative pregnancy test. In addition, some forms are submitted without outcome data. In fiscal year 2008, 119 women reported a negative pregnancy test and 62 forms did not include outcome data. In fiscal year 2009, outcomes relating to negative pregnancy tests were no longer monitored and 146 forms did not include outcome data.

CHIP

The state CHIP provides coverage for prenatal services for eligible pregnant minors but does not cover delivery services. Delivery services for eligible minors are generally covered by the Medicaid program. As of July 1, 2009, the income eligibility level for CHIP is 160 percent of the federal poverty level, or $2,940 per month for a family of four. The number of teenagers receiving prenatal services under CHIP was:

- Twenty-five in 2007;
- Thirty-three in 2008; and
- Twenty-eight in 2009.

Medicaid

Medicaid provides medical care and services to people whose resources are insufficient to meet these costs. Corrective, preventative, and rehabilitative medical services are provided with the objective of retaining or attaining capability for independence, self-care, and support. Medicaid pays for health services for qualifying families with children and individuals who are pregnant, elderly, or disabled. Medicaid eligibility is based on income and, in some cases, assets. There is no asset limit for children, families, or pregnant women in the children and families coverage group or women.

Pregnant women may be eligible for Medicaid if the family income net of deductions and disregards is within 133 percent of the federal poverty level, or $1,201 per month for a family of one and $2,444 per month for a family of four. Families with income above 133 percent of the poverty level may still qualify for Medicaid; however, they will be responsible for a share of the costs based on the amount of their excess income. A pregnant minor in a Medicaid-eligible household continues to be part of the household and does not create a separate household for Medicaid eligibility reporting purposes. Eligibility may begin as early as the first month of pregnancy and can continue through the month 60 days after the pregnancy ends. Once a pregnant woman becomes eligible for Medicaid, any increase in income is disregarded to ensure the woman stays continuously eligible for coverage and a baby born to an eligible pregnant woman remains eligible for Medicaid for 12 months. Medicaid prenatal or delivery services were provided to 87 individuals aged 17 and younger and to 569 individuals aged 18 to 20 in 2008.

Targeted case management services may also be available to pregnant women who qualify by meeting one of several "high-risk" criteria or for whom any three or more risk factors exist. One of the high-risk criteria is that the woman is aged 17 or younger at the time of assessment. As a result, a pregnant minor otherwise qualified under Medicaid would also qualify for targeted case management. Targeted case management services include assessment, case planning and preparation, case monitoring, care coordination, case evaluation, case reevaluation, health and parenting education, and followup home visits. Targeted case management assessments were completed for 13 individuals aged 17 and younger and for 36 individuals aged 18 to 20 in 2008.

Saint Gianna's Maternity Home

The committee received information regarding the background, target population, qualifications, and resources of Saint Gianna's Maternity Home--a maternity home in Warsaw that provides residential services to pregnant women in crisis and their children.

Since opening in January 2004, 40 percent of Saint Gianna's Maternity Home residents have been minors.

Kay's Place

Kay's Place (formerly the Oppen Home), located in Minot, is operated by the North Central Human Service Center and provides services for up to seven unmarried, adolescent females aged 12 through 19 who are pregnant or in need of residential services through an order of the court for shelter care or short-term foster care. Kay's Place is supported by the foster care services program and provides the youth with structure and supervision. Services include:

- Individual, group, and family counseling;
- Prenatal classes;
- Parenting education;
- Education through tutoring or correspondence courses; and
- Residential services.

During fiscal year 2009, Kay's Place provided services to 17 girls, 8 of which were pregnant. Seven of the eight girls kept their babies, and one girl placed her baby for adoption.

Adoption

The committee received information regarding the number of infant adoptions and the number of adoptions that resulted from removal through the child welfare system. During the last eight years, the number of regular infant adoptions, not including child welfare removals, has decreased from 54 in 2001 to 37 in 2008. The number of special needs adoptions has increased from 94 in 2001 to 115 in 2008.

The committee learned free pregnancy counseling is offered across the state by adoption agencies and approximately 13 percent of the pregnancy counseling provided results in an adoption plan for the child. Fees charged to adoptive parents related to adopting an infant is approximately $13,000. A portion of the adoption fee supports pregnancy counseling, travel, supervision, administration, and lifetime records retention.

Child Care Assistance Program

The child care assistance program (Crossroads program) allows for the payment of the actual cost of child care up to a maximum monthly amount for young parents who are aged 20 years or under, are the primary caretaker of their child, and are pursuing their high school diploma or general educational development. The program currently serves between 50 and 60 young parents per year. In cases where the father has chosen to parent the child, the father may receive child care assistance.

Healthy Families Program

The committee learned the Healthy Families program provides home visitation services to at-risk families in Burleigh, Morton, Grand Forks, and Nelson Counties. Visitation programs can reach out to high-risk parents during pregnancy, with a focus on pregnancy wellness, and immediately after the child is born, emphasizing child wellness and parent self-sufficiency. Weekly home visits support parents and reduce the risk of child abuse and neglect. Parents receiving the intensive home visitor service show positive changes, such as consistent use of preventative health services, increased high school completion rates, higher employment rates, adequate housing, lower use of welfare, and fewer repeat pregnancies. The Healthy Families program bills Medicaid for certain services.

Other Programs

The Department of Human Services, counties, and State Department of Health also provide the following services to pregnant minors:

- Child protective services;
- Temporary care, including foster care and shelter care for children;
- Family preservation services;
- Economic assistance programs, including the supplemental nutrition assistance program and TANF;
- Parent aides to assist the pregnant minor with a variety of tasks, including transportation to prenatal appointments and budgeting;
- Individual and family therapy provided at the eight human service centers;
- Women, infants, and children supplemental food program;
- Health Tracks; and
- Optimal pregnancy outcome program - Administered by the State Department of Health, the program maintains statistics regarding the number of clients; services received; and outcomes, including full-term pregnancies, birth weights, and breastfeeding.

Births and Abortions to Minors

Births to Minors

The committee received information regarding a history of the number of births to minor mothers in the state. The following summary provides the number of births among North Dakota women and those younger than age 19, based on information received from the State Department of Health Division of Vital Records:

Year	Births to North Dakota Residents Aged 18 and Under	Births to All North Dakota Residents	Births to North Dakota Residents Aged 18 and Under as a Percentage of Total Births to All North Dakota Residents
2000	393	7,676	5.12%
2001	384	7,664	5.01%
2002	350	7,755	4.51%
2003	340	7,976	4.26%
2004	347	8,179	4.24%
2005	366	8,381	4.37%
2006	373	8,616	4.33%
2007	382	8,818	4.33%
2008	369	8,931	4.13%

The State Department of Health administers the maternal and child health block grant and maintains various statistics from birth to adolescence. The State Department of Health reports on several federal

performance and state-negotiated measures relative to the maternal and child health grant, including the rate of birth (per 1,000) for teenagers aged 15 through 17 and the percentage of infants born to pregnant women receiving prenatal care beginning in the first trimester. Based on data included in the grant document, the birthrate for teenagers aged 15 through 17 has increased from 2004 to 2008 as follows:

	2004	2005	2006	2007	2008
Birthrate per 1,000 teenagers aged 15 through 17[1]	10.2	10.5	10.6	11.3	12.3

[1]The census estimate of teenagers aged 15 through 17 remained consistent from 2004 to 2008.

Abortions

The committee received information regarding the relationship of the rate of teenage abortions to the rate of teenage pregnancies in the state. Reported teenage abortions as a percentage of teenage pregnancies were 21 percent in 2004, 15 percent in 2006, and 19 percent in 2008. Teenage abortions reported from 1999 through 2008 totaled 1,581. Unlike the agreement between states that allows for the reporting of births, no agreement exists to report abortions; therefore, the number reported for abortions does not include state residents having an abortion performed out of state.

The committee received information regarding the age at which parental consent is required for an abortion and the number of abortions provided to individuals requiring parental consent. Chapter 14-02.1 requires a physician receive parental consent to perform an abortion on a pregnant woman younger than 18 years of age, unless the minor woman is married and has given her consent or the minor woman has received authorization from the juvenile court to obtain an abortion without parental consent (judicial bypass). The annual average number of abortions provided to resident minor women requiring parental consent was 44 for the period 2005 through 2008.

The committee received information regarding judicial bypass option abortions for minors. Chapter 14-02.1 relating to judicial bypass abortions authorizes an unmarried minor to obtain an abortion without parental consent if a judge finds either that the minor is sufficiently mature and well-informed about the nature, effects, and consequences of an abortion or if the minor is not sufficiently mature and well-informed but the judge has determined that it would not be in the best interest of the child to notify the child's parent or guardian to advise and counsel the minor. The court system reviewed cases from 2007 through 2009 and found during this period 140 judicial bypass abortion cases were heard statewide (2007 - 51, 2008 - 37, 2009 - 52). Of the cases reviewed 84 judicial bypass abortions were granted, 1 was denied and 27 were withdrawn by the petitioner. The court system was unable to determine the disposition of the remaining 28 cases.

Support Services and Benefits

The committee received information from alternatives-to-abortion service providers regarding the potential benefits of support services for pregnant minors. The committee learned approximately 85 percent of individuals receiving pregnancy counseling and support services make a parenting plan for their child, while 10 percent to 13 percent make an adoption plan, and approximately 2 percent plan for an abortion. The committee learned additional pregnancy options counselors would allow for more outreach, education, and decisionmaking counseling to these teenagers. Incentives, such as gas coupons and gift cards, for accessing options and decisionmaking could be provided to reinforce problem-solving and decisionmaking skills in both the mother and the father. The committee learned expanding home-based support services, such as the Healthy Families program, to cover the entire state would provide a way to reach high-risk teenage parents during pregnancy and immediately after the child is born. The committee learned housing options are important for women and their infants, and securing a priority on housing waiting lists could help provide safe, affordable housing.

The committee reviewed a proposal from alternatives-to-abortion service providers for five strategies to support pregnant and parenting teenagers, including expansion of outreach and education, delivery options and decisionmaking counseling, incentives for accessing services for both parents, incentives for postadoption achievement, and expansion of home-based proactive support services for teenage families. The proposed strategies were the result of collaboration on the part of alternatives-to-abortion services providers, and the estimated cost of implementing these strategies is $2,558,328 annually. The proposal includes an expansion of the Healthy Families program to make home visitation services available in all counties.

Recommendations

The committee makes no recommendations regarding the services for pregnant minors study.

STUDY OF THE EFFECTS OF FEDERAL, STATE, AND COUNTY GOVERNMENT FUNDING AND ADMINISTRATION ON THE SOCIAL SERVICE PROGRAMS OF TRIBAL GOVERNMENTS

House Concurrent Resolution No. 3003 (2009) directed a study of the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

Background

The committee reviewed previous interim studies relating to the effect of federal, state, and county government funding and administration on the social service programs of tribal governments, including studies by the 1997-98 Welfare Reform Committee regarding the issues of welfare reform relating to the relationship between the state and the federally recognized Indian tribes within the state and the 2003-04

Budget Committee on Human Services regarding the administrative costs of human service programs.

The 2009 Legislative Assembly approved House Bill No. 1540 which amended Section 50-01.2-03.2(3) relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land. The bill provided that effective July 1, 2010, any county with 10 percent or more of the county's supplemental nutrition assistance program caseload on federally recognized Indian reservation land is eligible for a grant. Grants are equal to a county's actual direct costs and indirect costs for locally administered economic assistance programs multiplied by the percentage of a county's average total supplemental nutrition assistance program caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed 90 percent. The Legislative Assembly provided $3,924,148 for these Indian county payments, of which $1,959,541 is from the general fund and $1,964,607 is from retained funds.

A number of social service agencies serve each reservation, including Bureau of Indian Affairs Social Services, the tribal social services, the Indian Health Service, and the county social services, which causes jurisdictional issues, especially in child welfare cases. In Sioux County, if the child is Native American, a memorandum of understanding with the tribe signed in 1983 prohibits the state from being involved in the assessment and placement of a Native American child.

In 1978 Congress enacted the Indian Child Welfare Act. The Act sought to protect and preserve the bond between Indian children and their tribe and culture. The committee reviewed information regarding child welfare services on South Dakota Indian reservations. In response to the Indian Child Welfare Act, the South Dakota Legislature created a commission to analyze compliance. Recommendations of the commission acted upon by South Dakota included a statewide Indian Child Welfare Act coordinator to help enforce a statewide Indian Child Welfare Act compliance plan; improvements in the notice to a tribe of a child custody proceeding; and improvements in the custody and placement of Indian children, including the use of family locators. In addition, the committee learned South Dakota state and tribal leaders formed a committee--the Collaborative Circle--to bring together all stakeholders who are committed to improving child well-being outcomes for Native American children in South Dakota, including the tribes, the Division of Child Protection Services, families, consumers, providers, and other partners. The Collaborative Circle meets quarterly, and members have identified enhancing placement resources, establishing transfer protocols, and engaging tribes to contract with the state to provide services as critical issues to be addressed by the group.

Human Services Programs and Tribal Governments

The committee received information from the Department of Human Services regarding the coordination of human service programs with tribal governments. The Department of Human Services collaborates with various tribes to offer economic assistance, child support services, medical services, vocational rehabilitation services, foster care services, aging services, and mental health and substance abuse services. Every two years the department holds stakeholder meetings in all eight regions of the state, and notification letters are sent to the counties and tribes of each region. In addition, county social service boards meet monthly in Bismarck and various budget issues are addressed.

The coordination of human services programs and tribal governments varies among programs within the Department of Human Services because of the nature of the programs or federal requirements. The committee received the following information regarding the coordination with tribal governments for the delivery of services:

- Contracts or memorandums of understanding are the predominant methods of coordinating services with the tribes. The department does not have a policy in place with regard to memorandums of understanding and each division is responsible for negotiating contracts and memorandums of understanding with the tribes.
- Contracts and memorandums of understanding may differ by division based on the program but should not vary much among the tribes for the same program.
- Memorandums of understanding allow tribes to claim Title IV-E funding for maintaining children that meet Title IV-E eligibility in a foster care placement. Claims are made through the state and reimbursement is made to the tribe. Children and Family Services currently has foster care-related memorandums of understanding with every tribe in the state.
- There are currently no memorandums of understanding in place for child protective services. The committee learned Title IV-E funding cannot be used for child protective services assessments because it is not available until the child is placed in foster care.

The committee received information regarding the involvement of the tribes in the budget development process of the county social services of Sioux, Benson, Mountrail, and Rolette Counties; the collaboration with the tribes in those counties and the Department of Human Services in providing services on the reservation; and the child abuse and neglect referral processes in those counties.

Sioux County

The committee learned:

- Sioux County is unique because it is one of only eight counties in the nation that are entirely encompassed on an Indian reservation.
- The Department of Human Services, through the human service centers, provides services to the Standing Rock Reservation, including seriously emotionally disturbed and developmental disabilities case management.

- Funding for child welfare services on the reservation is provided from different sources, including Bureau of Indian Affairs 638 contracts, gaming compacts with the state, Medicaid targeted case management, and Title IV-E foster care funding.
- The regional representative for social services participates in Standing Rock Sioux Tribe children and family team meetings for Title IV-E children.
- The state paid $491,745 for the foster care of Standing Rock Sioux Tribe children in calendar year 2009, and 99 percent of the caseload in Sioux County is Native American.
- Although a 1983 memorandum of understanding provides the state will not assume jurisdiction over American Indian children, when asked, the county will collaborate with tribal social services to assist with foster care and medical care placement. Sioux County Social Services interacts daily with Standing Rock child protection workers regarding payment, placement, jurisdiction, and Medicaid issues.
- Although the county interacts with the tribe, there is not much collaboration between the county, state, tribes, and the Bureau of Indian Affairs.
- Standing Rock Sioux Tribe is not contacted in the development of the county social services budget, but the tribe may provide input at the budget hearings.

Benson County

The committee learned:

- Benson County provides outreach to Fort Totten 4.5 days per week in space provided by Spirit Lake Tribal Social Services.
- Benson County administers the supplemental nutrition assistance program and TANF program. Approximately 68.8 percent of the supplemental nutrition assistance program caseload and 87.5 percent of the TANF caseload are Native American.
- Both the county and the tribe operate child care and fuel assistance programs.
- Child abuse and neglect reports relating to Native American children residing on the reservation are referred to tribal social services. Tribal social services is typically understaffed, and work is often limited to crisis resolution and referral to other service agencies.
- Benson County has three licensed child foster care homes, and 92.1 percent of the foster care caseload is Native American.
- Tribal social services certifies its own foster care homes.
- Certain counties explored sharing child welfare staff with tribal social services offices that were understaffed but were unable to agree on funding issues.
- Approximately 60.6 percent of Benson County's home and community-based service program clients are Native American.
- The Benson County Social Services budget is developed based on history and service trends and published at least two weeks before final approval.

Mountrail County

The committee learned:

- Mountrail County Social Services and the Three Affiliated Tribes of the Fort Berthold Reservation collaborate to provide services, including:
  - Outreach by eligibility workers.
  - Assessments.
  - The use of Mountrail County Social Services licensed foster homes for Three Affiliated Tribes Social Services placements.
  - The Dreamcatchers Servant Camp, a volunteer renovation and repair of homes for families in need.
- More collaboration is needed regarding the funding of foster care and child abuse and neglect.
- Direct involvement of the tribe in the Mountrail County's budgeting process is minimal.
- Approximately 75 percent to 80 percent of economic assistance clients are Native American, and approximately 50 percent to 60 percent of the home and community-based service clients are Native American.

Rolette County

The committee learned:

- Approximately 90 percent of the TANF caseload and 80 percent of the supplemental nutrition assistance program caseload are Native American.
- The Department of Human Services has contracted with the tribal employment and training program to provide job opportunities and basic skills program services.
- The Department of Human Services has a memorandum of understanding for another tribal program, the Tribal New program, to provide job opportunities and basic skills program services for certain TANF clients. The committee learned the contract and the memorandum of understanding require communication and coordination with the county and the tribal programs to ensure clients are properly referred and are compliant.
- Both the county and the tribe operate child care and fuel assistance programs.
- The county budget is published each year, and a public hearing is held to gather comments.

Coordination of the Social Service Programs of County, State, and Tribal Governments

The Native American Training Institute, located in Bismarck, was created in 1995 to assist in training foster parents, adoptive parents, child care providers, parent educators, juvenile justice workers, tribal courts, legal services, law enforcement, and others involved with child protection services. The Native American Training Institute receives funding from various sources, including

grants and contracts, including a contract with the Department of Human Services.

The committee encouraged representatives of the Native American Training Institute, North Dakota Association of Counties, the Indian Affairs Commission, Department of Human Services, the tribes, and other agencies involved in providing social services on reservations to meet and develop solutions to service barriers.

The Indian Affairs Commission coordinated meetings attended by representatives of the Native American Training Institute, Department of Human Services, county social services, and the tribes to identify service gaps and barriers and to develop strategies to improve the delivery of social services on reservations. The stakeholder group identified strategies, including:

- Holding an annual meeting to address Title IV-B issues;
- Encouraging consistent tribal representation at tribal stakeholder and Department of Human Services meetings;
- Evaluating county outreach to the tribes;
- Addressing the delay in completing tribal-related reporting and documentation;
- Addressing jurisdictional issues that impede timely child protective services investigations;
- Encouraging regular meetings of tribal and county social service directors;
- Partnering with the Supreme Court to address issues through the Court Improvement Committee;
- Reviewing agreements and technical assistance available to the tribes; and
- Coordinating training sessions.

The Indian Affairs Commission plans to continue to work with stakeholders to strengthen communication, relationships, and agreements. The Indian Affairs Commission plans to facilitate quarterly meetings to discuss issues and concerns and to identify training and potential partnerships. The Department of Human Services will also host a tribal stakeholder meeting every two years to gather input during the budgeting process. In addition, the Indian Affairs Commission is encouraging tribal and state court systems to create memorandums of understanding to address the collection of child support on reservations.

Recommendations

The committee makes no recommendations regarding the study of the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

MANDATED HEALTH INSURANCE COVERAGE

Section 54-03-28 provides that the Legislative Council contract with a private entity, after receiving one or more recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure or amendment mandating health insurance coverage of services or payment for specified providers of services. The Health and Human Services Committee was assigned responsibility to make a recommendation regarding this contract.

The committee learned the Insurance Commissioner is to pay the cost of the contracted cost-benefit analysis services. The analysis must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease administrative expenses of insurers and the premium and administrative expenses of the insured.
4. The impact of the proposed mandate on the total cost of health care.

Section 54-03-28 provides that any legislative measure mandating health insurance coverage may only be effective for the next biennium and is limited to the public employees health insurance program. For the subsequent Legislative Assembly, the Public Employees Retirement System (PERS) must prepare and request introduction of a bill to repeal the expiration date and expand the mandated coverage to all accident and health insurance policies. In addition, PERS is required to prepare a report which is attached to the bill regarding the effect of the mandated coverage or payment on the system's health insurance program. Because no legislation mandating health insurance coverage has been adopted since these provisions were enacted, PERS has not yet had to complete a report regarding effects of mandated health insurance coverage.

Health Insurance Mandate Analysis Costs

The committee received information regarding recent costs incurred by the Insurance Department for health mandate-related cost-benefit analyses. During the 2005 legislative session, two bills were referred for cost-benefit analysis at a total cost of $8,323. In addition, the Insurance Department paid $5,606 for general project work to the contractor during the 2005 legislative session for total payments of $13,929. During the 2007 legislative session, there were no health insurance mandates referred for cost-benefit analysis. During the 2009 legislative session, the Insurance Department paid a total of $28,070 to Milliman USA for analyses conducted on three bills. The 2009 Legislative Assembly appropriated $10,000 to the Insurance Commissioner from the insurance regulatory trust fund for paying for cost-benefit analyses during the 2011 legislative session.

The committee learned PERS has not required the use of a consultant when evaluating legislative measures mandating health insurance coverage. However, if a future analysis does require additional resources, Section 54-52.1-06.1 provides a continuing appropriation to PERS for consulting services related to the uniform group insurance program.

Length of Time Necessary to Complete Cost-Benefit Analyses

The committee received information regarding the length of time necessary to complete cost-benefit analyses for health insurance mandates proposed during each of the last four legislative sessions. The committee learned the number of days required to perform the analyses ranged from 6 days to 19 days during the 2003 session and 20 days for one bill proposed during the 2005 session. There were no mandates proposed during the 2007 session. The number of days required to perform the analyses ranged from 23 days to 24 days for the three bills introduced during the 2009 session.

Legislative Rules Regarding Bills That Include Health Insurance Mandates

The committee reviewed legislative rules relating to health insurance mandate legislation. The committee learned in September 2008, the 2007-08 interim Legislative Management Committee recommended proposed amendments to House and Senate Rules 402 relating to bill introduction deadlines for measures subject to cost-benefit analysis under Section 54-03-28. The proposed rules amendment provided that a current legislator may submit a mandated health insurance bill to the Employee Benefits Programs Committee no later than April 1 of the year before a regular legislative session. Any new legislator taking office after November 30 of the year preceding the legislative session may submit a mandated health insurance bill for consideration by the Employee Benefits Programs Committee no later than the first Wednesday following adjournment of the organizational session. During the December 2008 organizational session, the House adopted the proposed amendment to House Rule 402, but the Senate did not.

Insurance Commissioner Recommendation

The Insurance Commissioner recommended that based on proposals received from interested entities the Legislative Council continue to contract with Milliman, Inc., for cost-benefit analyses during the 62nd Legislative Assembly.

Recommendations

The committee recommends the Legislative Council contract with Milliman, Inc., for cost-benefit analyses of future legislative measures mandating health insurance coverage pursuant to Section 54-03-28.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

Section 50-29-02 requires the Department of Human Services to report annually to the Legislative Council regarding enrollment statistics and costs associated with the state CHIP, which is known as the Healthy Steps program. The Legislative Management assigned this responsibility to the Health and Human Services Committee.

The committee learned that the 2009 Legislative Assembly provided funding of $21.6 million, of which $5.6 million is from the general fund and $16 million is from federal funds for Healthy Steps, for the 2009-11 biennium. Compared to the 2007-09 legislative appropriation, the funding provided is a $1.4 million increase, $1 million of which is from the general fund and $400,000 of which is from federal funds. The Legislative Assembly made a number of adjustments to Healthy Steps, including increasing eligibility for the program from 150 percent to 160 percent of the federal poverty level effective July 1, 2009, adjusting funding to reflect utilization reprojections anticipating an average of 3,941 children per month and a revised premium amount of $228.71 per month, and adding funding of $300,000 from the general fund for additional program outreach.

The following schedule provides a comparison of funding for Healthy Steps:

	2007-09 Biennium	2009-11 Executive Budget	2009-11 Legislative Appropriation	2009-11 Legislative Increase (Decrease) to 2009-11 Executive Budget	2009-11 Legislative Increase (Decrease) to 2007-09 Biennium
Total Healthy Steps	$20,204,746	$35,248,129	$21,632,536	($13,615,593)	$1,427,790
General fund	$4,669,885	$9,122,897	$5,598,799	($3,524,098)	$928,914
Federal funds	$15,534,861	$26,125,232	$16,033,737	($10,091,495)	$498,876

The Department of Human Services contracts with Blue Cross Blue Shield of North Dakota for the health insurance coverage for the children in the program. The premium rate for the 2009-11 biennium is $228.71 per child per month, an increase of 13 percent compared to the 2007-09 premium rate of $202.40.

The state CHIP was reauthorized by Congress in February 2009 which required several changes. The changes impact administrative costs and premiums paid for coverage, and the department is calculating the estimated increases as part of the 2011-13 biennium budget request. As of August 2010 there were 3,620 premiums paid for children enrolled in CHIP, 353 more than paid in August 2009. The 2009 Legislative Assembly provided $753,000 for outreach, and the department has contracted with the Dakota Medical Foundation for $650,000 to engage in a variety of outreach activities to inform families who may not be aware of the health insurance coverage programs offered by the department.

REGIONAL PUBLIC HEALTH NETWORK TASK FORCE

The 2009 Legislative Assembly approved Senate Bill No. 2333, which created regional public health networks. Section 1 of Senate Bill No. 2333 established regional public health networks that correspond to the emergency preparedness and response regions established by the State Department of Health. The regional public health networks must share a minimum of three administrative functions and a minimum of three public health services.

Participation by local public health units is voluntary. The bill provided $275,000 from the general fund to the State Department of Health for a regional public health network pilot project.

Pursuant to Section 2 of Senate Bill No. 2333, the State Health Officer is to appoint a Regional Public Health Network Task Force to establish protocol for the regional public health network and with the task force, report periodically to the Legislative Council during the 2009-10 interim regarding the development of the regional public health network. The Health and Human Services Committee was assigned the responsibility to receive these reports.

A regional public health network is defined as a group of local public health units that have entered a joint powers agreement or an existing lead multidistrict health unit identified in the emergency preparedness and response region that has been reviewed by the State Health Officer and verified as in compliance with the following criteria:

- The geographical region corresponds to one of the emergency preparedness and response regions.
- The regional network shares emergency preparedness and response and environmental health services and shares a regional public health network health officer.
- The joint powers agreement:

  Includes sharing at least three administrative functions and at least three public health services identified in Section 23-35.1-02(3)(b).

  Provides for the future participation of public health units that were not parties to the original joint powers agreement and an appeal process for any application denials.

  Provides the structure of the governing body of the network.
- The regional network complies with other requirements adopted by the Health Council by rule.
- The regional network meets maintenance of effort funding requirements.

Each regional public health network must prepare an annual plan regarding the provision of required and optional public health services that must be approved by the State Health Officer and may receive and expend money for the provision of services.

The committee learned Southeast Central in the Jamestown region was selected as the regional public health network pilot site and was approved by the Health Council to receive the $275,000 public health network pilot grant. Participating health units include Central Valley Health District, City-County Health District, LaMoure County Public Health Department, and Wells County District Health Unit. The pilot network established a joint powers agreement in July 2010 to share family planning services, sexual assault response, and chronic disease management services. The shared administrative functions provided in the agreement include billing, accounts receivable, policy standardization for public health services, and implementation of community health assessment data. To reduce costs, the pilot network purchased software through a member's existing agreement and staff had the expertise to conduct the training for staff at other local public health units. Cost-savings realized on the purchase of the billing system by the four local public health units participating in the regional public health network pilot project totaled $15,000 and ranged from $3,333 to $5,000 per local public health unit. The committee learned $52,181 of the grant was spent in the first quarter of the biennium, and the entire appropriation is expected to be used. A baseline evaluation revealed participants were supportive of the regional project but also expressed concern that mandates may result from the project without adequate input from all participants. The pilot network is required to submit a written report by January 31, 2011, and more information regarding the effectiveness of the joint powers agreement will be available during the 2011 legislative session.

ALTERNATIVES-TO-ABORTION PROGRAM REPORT

The 2009 Legislative Assembly approved Senate Bill No. 2391, which requires the Department of Human Services, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, to contract to inform the public about the alternatives-to-abortion services program. Pursuant to Section 2 of the bill, the Department of Human Services is to provide annual status reports regarding the program to the Legislative Council. The Health and Human Services Committee was assigned responsibility to receive these reports.

The appropriation bill for the Department of Human Services--House Bill No. 1012 (2009)--includes $400,000 of federal TANF federal block grant funds for the alternatives-to-abortion services program. In addition, Senate Bill No. 2391 provides $100,000 from federal TANF funds to the Department of Human Services to inform the public about the alternatives-to-abortion services program to provide a total of $500,000 from federal funds for the program.

The program began in 2005 and provides funds to organizations that provide alternatives-to-abortion services and to educate the public about the program. The schedule below presents the appropriations provided by the Legislative Assembly for the 2005-07 through 2009-11 bienniums:

Biennium	Appropriations From Federal Funds
2005-07	$500,000
2007-09	$400,000
2009-11	$500,000

The committee learned the alternatives-to-abortion budget for the 2009-11 biennium is as follows:

	2009-11 Biennium Budget
Printing and poster design	$2,163
2-1-1 hotline services	10,800
Provider services	387,037
Advertising	100,000
Total	$500,000

The committee learned 3,258 women have received services since the program began in 2006, of which 8 have reported an abortion. The committee learned outcomes for clients that discontinue services are not available.

NORTH DAKOTA FETAL ALCOHOL SYNDROME CENTER REPORT

The 2009 Legislative Assembly approved Senate Bill No. 2412 providing a $369,900 general fund appropriation to the State Department of Health for a grant to the North Dakota Fetal Alcohol Syndrome Center. Pursuant to Section 2 of the bill, the North Dakota Fetal Alcohol Syndrome Center is to provide an accountability report with respect to the use of the funds appropriated. The Health and Human Services Committee was assigned responsibility to receive this report.

The North Dakota Fetal Alcohol Syndrome Center began diagnosis of fetal alcohol syndrome in 1982. The center received competitive funding to form the Four-State Fetal Alcohol Syndrome Consortium, which included Minnesota, Montana, North Dakota, and South Dakota, to examine rates of alcohol use during pregnancy and identify intervention and prevention strategies. The 1993 Legislative Assembly established the North Dakota Fetal Alcohol Syndrome Center at the University of North Dakota where the Fetal Alcohol Syndrome Clinic evaluates and treats children and adults for fetal alcohol syndrome and related conditions. The center also has multiple ongoing research activities funded by the National Institutes of Health and by the Centers for Disease Control and Prevention.

Four hundred thirty-seven fetal alcohol spectrum cases are included in the fetal alcohol spectrum registry. The committee learned the North Dakota Fetal Alcohol Syndrome Center plans to supply each prenatal care provider in the state an assessment strategy. The center has developed a brief intervention strategy for use with women in which alcohol use during pregnancy has been identified.

OTHER INFORMATION RECEIVED

Heart Disease and Stroke Program

The committee received information regarding an overview of the heart disease and stroke program and funding, including the implementation of House Bill No. 1339 (2009) and an update on the status of the stroke registry. The committee learned the State Department of Health established a Stroke System of Care Task Force that is reviewing nationally recognized stroke-triage assessment tools and is working to identify a tool that can be standardized for North Dakota. The 2009 Legislative Assembly appropriated $472,000 to the State Department of Health to implement a stroke registry program. The funding has been allocated to statewide technology, chart entry, training, regional coordinators/technical assistance, warning signs, and symptoms public awareness campaign. As of March 2010 slightly more than 21 percent of the appropriation had been distributed as grants to 9 of the state's 42 hospitals.

Department of Human Services Estimated Costs to Continue for the 2011-13 Biennium

The estimated cost to continue Department of Human Services programs in the 2011-13 biennium totals between $185 million and $190 million and does not include additional costs related to caseload growth, salary and health insurance increases, or federal health care reform legislation. Cost increases primarily relate to the expiration of enhanced federal medical assistance percentage (FMAP) funding and a lower preliminary estimated FMAP for federal fiscal year 2012.

Medicaid Eligibles, Recipients, Utilization Rates, and Average Cost Per Recipient for Fiscal Years 2008, 2009, and 2010

The committee received information on the Medicaid program. The number of Medicaid eligibles ranged from 52,404 in September 2008 to 62,914 in August 2010. The increase in Medicaid eligibles may be the result of increased outreach to cover children and continuous eligibility of children. Current projections of medical assistance expenditures for the 2009-11 biennium exceed budgeted medical assistance expenditures by approximately $25.6 million primarily relating to inpatient hospital costs.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned the following responsibilities:

1. Section 31 of Senate Bill No. 2003 (2009) provides for a study of the options for funding higher education institutions, including a review of funding based upon student completion rates.
2. Section 32 of Senate Bill No. 2003 (2009) provides for a study of the impact of tuition waivers on higher education institutions under the control of the State Board of Higher Education. The study must review the types of tuition waivers available, the number of tuition waivers granted, and the value of tuition waivers.
3. Section 9 of Senate Bill No. 2038 (2009) provides for a study of various issues affecting higher education. The study requires the use of at least six educational summit meetings to discuss topics that may include:
   - Alternative uses of institutions and changes to institutional missions.
   - Issues affecting two-year campuses.
   - Tuition affordability, including a review of tuition reciprocity agreements.
   - Accessibility of higher education.
   - Workforce needs.
   - Contributions to economic development.
   - Utilization and capacity of higher education institution facilities.
   - Quality of education being delivered.
   - Revenue-neutral policies that would aid in the reduction of student loan debt.
4. Receive a biennial report from the University of North Dakota School of Medicine and Health Sciences Advisory Council pursuant to North Dakota Century Code Section 15-52-04 regarding the strategic plan, programs, and facilities of the school.
5. Receive a report pursuant to Section 15-70-05 from tribally controlled community colleges receiving a grant under Chapter 15-70 detailing grant expenditures and recipient demographics.
6. Receive a report from the chairman of the American Indian Language Preservation Committee pursuant to House Bill No. 1399 (2009) regarding the work of the committee.
7. Receive a report from the State Board of Higher Education pursuant to Section 15-62.2-05 regarding North Dakota academic scholarships and career and technical education scholarships.
8. Receive a report from the State Board of Higher Education pursuant to Section 5 of Senate Bill No. 2038 (2009) regarding employee compensation and student enrollment.

Committee members were Representatives Bob Skarphol (Chairman), Lois Delmore, Mark A. Dosch, Kathy Hawken, Brenda Heller, Dennis Johnson, Nancy Johnson, RaeAnn G. Kelsch, Joe Kroeber, Bob Martinson, Darrell D. Nottestad, Kenton Onstad, Ken Svedjan, and Clark Williams and Senators John M. Andrist, Tim Flakoll, Tony S. Grindberg, Ray Holmberg, Karen K. Krebsbach, Elroy N. Lindaas, Dave Nething, David O'Connell, Larry J. Robinson, and Tom Seymour.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

BACKGROUND

The North Dakota University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's-granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate and technical degrees.

Total legislative appropriations provided the University System since the 2005-07 biennium are:

Biennium	General Fund	Special Funds	Total
2005-07	$387,157,893	$178,552,108	$565,710,001
2007-09	$472,036,237	$165,419,701	$637,455,938
2009-11	$593,296,143	$202,764,364	$796,060,507

Pursuant to Section 15-10-12, tuition and fees are not specifically appropriated by the Legislative Assembly as statutory authority is provided for the continuing appropriation of these funds.

PREVIOUS LEGISLATIVE HIGHER EDUCATION STUDIES AND RELATED LEGISLATION

The Legislative Management has established a Higher Education Committee each interim since 1999. These committees have reviewed higher education funding, expectations of the University System, and accountability and reporting measures for the University System. The committees have gathered input through the use of a Higher Education Roundtable, which consists of members of the Higher Education Committee and representatives from the State Board of Higher Education; business and industry; the executive branch; and higher education institutions, including tribal and private colleges.

Since its inception, the Higher Education Roundtable has met nine times. The table below summarizes the meeting dates of the Higher Education Roundtable from the 1999-2000 interim through the 2007-08 interim:

Interim	Meeting Dates
1999-2000	September 28-29, 1999 (Jamestown) October 29, 1999 (Carrington) April 19, 2000 (Rugby)
2001-02	July 18, 2001 (Mandan) June 12, 2002 (Bismarck)
2003-04	October 21, 2003 (Bismarck) June 15, 2004 (Bismarck)
2005-06	February 15, 2006 (Bismarck)
2007-08	October 8, 2008 (Bismarck)

For each interim since 1999-2000, the Higher Education Committee has recommended a number of bills for consideration by the Legislative Assembly. The bills approved by each Legislative Assembly have included the following provisions:

1. Provide continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through the end of the next biennium.
2. Require the budget request for the University System to include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component, and require the appropriation for the University System to include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through the end of the next biennium.
3. Authorize the University System to continue or carry over at the end of the biennium unspent general fund appropriations through the end of the next biennium.

In addition to the recommended bills, several interim Higher Education Committees have recommended performance and accountability measures for the University System performance and accountability report required pursuant to Section 15-10-14.2.

HIGHER EDUCATION STUDY

The committee was assigned the following responsibilities relating to the study of higher education:

1. Section 31 of Senate Bill No. 2003 (2009) provides for a study of the options for funding higher education institutions, including a review of funding based upon student completion rates.
2. Section 32 of Senate Bill No. 2003 (2009) provides for a study of the impact of tuition waivers on higher education institutions under the control of the State Board of Higher Education. The study must review the types of tuition waivers available, the number of tuition waivers granted, and the value of tuition waivers.
3. Section 9 of Senate Bill No. 2038 (2009) provides for a study of various issues affecting higher education. The study requires the use of at least six educational summit meetings to discuss topics that may include:
   - Alternative uses of institutions and changes to institutional missions.
   - Issues affecting two-year campuses.
   - Tuition affordability, including a review of tuition reciprocity agreements.
   - Accessibility of higher education.
   - Workforce needs.
   - Contributions to economic development.
   - Utilization and capacity of higher education institution facilities.
   - Quality of education being delivered.
   - Revenue-neutral policies that would aid in the reduction of student loan debt.

As part of the study, the committee:

- Invited the presidents of the two-year institutions to participate in discussions with the committee at the August 20, 2009, committee meeting.
- Invited members of the State Board of Higher Education to participate in discussion with the committee at the October 28, 2009, committee meeting.
- Invited the presidents of the four-year institutions to participate in discussions with the committee at the January 19-20, 2010, committee meeting.
- Held discussions regarding issues affecting two-year campuses, accessibility, workforce needs, and higher education contributions to economic development.
- Held a joint meeting with the interim Workforce and Education Committees on March 31, 2010, to receive information pertinent to all committees.
- Received information from national higher education experts regarding various higher education topics.
- Convened the Higher Education Roundtable on September 13-14, 2010, to discuss higher education in North Dakota and recommendations for action by the Legislative Assembly, the University System, and the private sector.

Committee Findings

The committee conducted a review of major higher education policy areas as provided in the directives relating to the studies. The following is a summary of committee findings in each of the policy areas:

Enrollment

The committee received information regarding student enrollment at higher education institutions. The following schedule details enrollment at each higher education institution for the 2007-08 academic year:

University System 2007-08 Headcount Enrollment Summary

	Degree Credit[1]	Non-Degree Credit[2]	Non-Credit[3]	Total
Bismarck State College	4,122	557	9,035	13,714
Dakota College at Bottineau	740	67	8	815
Dickinson State University	2,631	0	259	2,890
Lake Region State College	2,499	38	1,712	4,249
Mayville State University	916	43	0	959
Minot State University	3,808	2	311	4,121
North Dakota State University	12,702	950	132	13,784
State College of Science	2,599	489	993	4,081
University of North Dakota	13,294	129	2,763	16,186
Valley City State University	1,079	11	0	1,090
Williston State College	941	42	2,816	3,799
Total	45,331	2,328	18,029	65,688
Less: Students taking classes at more than one institution	1,744	0	57	1,801
Total University System enrollment	43,587	2,328	17,972	63,887

[1]All instructional activities that can be applied toward college degree or credit-based remedial courses taken by degree-seeking students.

[2]Credit courses taken through continuing education for personal development, such as workshops or seminars, that do not typically apply toward a degree.

[3]Instructional activities, such as workforce training, that do not apply toward a degree.

The committee received information regarding the University System enrollment management service plan which was created as a result of legislative intent included in Senate Bill No. 2003 (2001). The plan was adopted by the State Board of Higher Education in November 2002 and includes the following six goals:

- Increase the talent pool in North Dakota.
- Increase access to academic programs and degrees throughout the state.
- Expand the state's population base.
- Increase the diversity of students enrolled at University System institutions.
- Enhance, support, and empower campuses to achieve their campus enrollment and retention goals.
- Increase the resources available for investment in the initiatives and strategies selected by the State Board of Higher Education to support campuses in achieving their enrollment and retention goals.

The committee learned State Board of Higher Education policy provides for minimum admissions requirements. Board policy requires students to complete certain high school courses in English, mathematics, science, and social studies. The policy provides some exceptions for students not meeting minimum admissions requirements. Four-year institutions may admit students who do not meet minimum admissions requirements on a provisional basis. Additional admissions requirements are used by North Dakota State University and the University of North Dakota.

Accessibility

The committee received information regarding accessibility to higher education programs. The committee learned 226 programs are offered through distance education, including 140 online programs and 118 programs offered at other campus locations. There are 16,382 distance education students taking courses through the University System of which 11,630 are enrolled in online courses.

Approximately one-half of all University System students taking classes online are also taking classes on campus. There is no significant difference in the completion rates of students taking online classes compared to classes on campus. Many programs are completely online with no on-campus classes. Examinations for online classes generally require a proctor to maintain the integrity of the class.

Student enrollment in online courses is increasing at a faster rate than student enrollment in traditional classroom courses. Online courses may combine several learning methods, including animated lectures and simulations. Some courses also allow students to remotely control laboratory equipment located on campus. Many students choose to take online courses due to the increased accessibility and flexibility of the courses.

The committee learned State Board of Higher Education policy requires institutions to charge online students a tuition rate that is not less than the regular resident tuition rate. Institutions may also charge a distance-learning access fee to students taking online courses. Online course tuition and fees are the same for resident and nonresident students. Online classes generate additional revenue that is used to supplement state appropriations and tuition revenue. The average cost for providing a class credit online is $183 compared to $275 for a traditional delivery method. The average tuition rate charged to students is $199 per credit for online classes compared to $114 per credit for traditional delivery methods.

The committee received information regarding the use of higher education centers to offer courses from multiple institutions at one location. The 2011-13 biennium University System capital project budget request includes $8.5 million from the general fund for a higher education center in Bismarck. The center will be used to offer academic programs in Bismarck from various higher education institutions. Consideration may be given to expanding the higher education center concept to other areas of the state if the Bismarck center is successful.

The committee received information regarding partnerships between institutions to serve students. The committee learned the State College of Science has a Pathway Program at North Dakota State University for students who do not meet North Dakota State University admissions requirements. The program allows students to take classes through the State College of Science on the campus of North Dakota State University. Approximately 40 percent of program participants eventually continue their education as students of North Dakota State University.

Lake Region State College entered a program partnership with the University of North Dakota for students who are not eligible to enroll at the University of North Dakota but meet admissions criteria at Lake Region State College. Students in the Launch Program are allowed to live on the campus of the University of North Dakota but take classes from Lake Region State College. Students who successfully complete 24 credits are allowed to transfer to the University of North Dakota.

The committee learned Chapter 15.1-25 allows high school sophomores, juniors, and seniors to receive both high school and postsecondary credit for the successful completion of certain dual-credit courses. A student must receive permission to enroll in a dual-credit course from the student's school superintendent. The student or the student's parent or legal guardian is responsible for all course costs.

Developmental (Remedial) Education

The committee received information regarding developmental or remedial education at institutions. The committee learned nontraditional-age students may experience difficulty when taking placement examinations for college courses. A nontraditional-age student may not have taken an educational course for several years prior to enrolling at a higher education institution.

The committee learned some students may need developmental education because they only take classes in certain academic areas the first two years of

high school. In addition, high school curriculum requirements may not align with higher education admissions standards. There may also be a lack of developmental education courses at high schools.

The committee learned the State Board of Higher Education has developed a plan with the following strategies to address developmental education:

- Continue to work with other educational and governmental entities to define expectations for students at all grade levels.
- Explore options for student assessment tests.
- Implement a definition of developmental courses and develop uniform placement standards by fall 2012.
- Encourage universities to develop partnerships, including partnerships with community colleges, to meet the developmental needs of students on the university campus.
- Use the data warehouse and state longitudinal data system to provide status reports on the success of students.
- Use technology infrastructure funding to develop programs to be used by students in developmental courses.

Affordability

The committee received information regarding student affordability. The schedule below details recent resident student tuition increases at University System institutions:

Academic Year	Tuition Increase at Two-Year Institutions	Tuition Increase at Four-Year Institutions
2005-06	5.9%-9.5%	9.5%
2006-07	8.0%-9.9%	9.0%-9.5%
2007-08	5.0%	5.0%
2008-09	5.0%	5.0%
2009-10	0.0%	3.5%
2010-11	0.0%	3.5%

The committee learned the state of North Dakota enters tuition reciprocity agreements with other states and organizations. The University System has tuition reciprocity agreements with the state of Minnesota, the Western Interstate Commission on Higher Education, and the Midwest Higher Education Compact.

The North Dakota tuition reciprocity agreement with Minnesota is based upon the intent that an equal number of students from each state will attend an institution in the other state. The reciprocity agreement generally requires students to pay the higher of the two states' tuition rate. The agreement provides that a cash payment be made to the state that receives more students than it sends to the other state. The state of Minnesota is anticipated to provide a $3.3 million cash payment to North Dakota for the 2009-10 academic year.

The University System also has agreements with the state of Minnesota, Iowa State University, Kansas State University, and the Western Interstate Commission on Higher Education for the placement of North Dakota students in veterinary medicine, dentistry, and optometry programs. The tuition reciprocity agreements allow students to attend an out-of-state institution offering a professional program and pay a reduced tuition rate.

The committee learned several institutions offer unique tuition rates. The following schedule details campuses offering unique tuition rates:

Lake Region State College	All nonresident students, except international students, receive the resident tuition rate.
Williston State College	All nonresident students receive the resident tuition rate.
Minot State University	All nonresident students receive the resident tuition rate.
State College of Science	Nonresident students who reside in a residence hall and purchase a meal plan receive the resident tuition rate.
Dakota College at Bottineau	Nonresident students from the Canadian provinces of Manitoba and Saskatchewan receive the resident tuition rate.

The committee received information regarding various financial aid programs for students. The committee learned the state grant program provides $1,200 grants each year to resident students based on student financial need. Grants were provided to 7,865 students during the 2009-10 academic year.

The committee learned science, technology, engineering, and mathematics (STEM) occupations loan forgiveness program recipients receive $1,500 per year in loan forgiveness for each year they are employed in an approved STEM occupation in the state. A recipient may receive a maximum of $6,000 in loan forgiveness. There were 595 program recipients during the 2009-10 academic year.

The committee learned the 2009 Legislative Assembly authorized the academic scholarship program and the career and technical education scholarship program. The scholarship programs provide eligible students with a $750 scholarship per semester up to a maximum of $6,000 per student.

Tuition Waivers

The committee received information regarding tuition waivers provided by University System institutions. The committee learned state statute requires waivers for qualified members of the National Guard; for dependents of resident veterans who were killed in action, died of service-related causes, were prisoners of war, or were declared missing in action; and for survivors of firefighters, emergency medical services personnel, or peace officers who died as a direct result of injuries received in the performance of official duties. State Board of Higher Education policy provides waivers for the student member of the State Board of Higher Education and for nontemporary University System employees.

During the 2008-09 academic year, 7,707 University System students received 9,413 full or partial tuition waivers worth a total value of approximately $27 million. The students receiving full or partial tuition waivers paid over $16 million in tuition, almost $10 million in room and board costs, and over $6 million of mandatory fees. The following details were presented to the committee by the University System regarding tuition waivers provided during the 2008-09 academic year:

- Of the 7,707 students who received tuition waivers, 52 percent of tuition waivers (4,027) were provided to resident students; 24 percent of tuition waivers (1,804) were provided to in-country, nonresident students; and 24 percent of tuition waivers (1,876) were provided to foreign students.
- Full tuition waivers were provided to 2,283 students.
- Of the 30,139 resident students enrolled at University System institutions, 87 percent (26,112) received no tuition waiver, 9 percent (2,818) received a partial tuition waiver, and 4 percent (1,209) received a full tuition waiver.
- Of the 17,725 in-country, nonresident students enrolled at University System institutions, 90 percent (15,921) received no tuition waiver, 7 percent (1,306) received a partial tuition waiver, and 3 percent (498) received a full tuition waiver.
- Of the 2,959 international students enrolled at University System institutions, 37 percent (1,083) received no tuition waiver, 44 percent (1,300) received a partial tuition waiver, and 19 percent (576) received a full tuition waiver.

The following schedule provides information on tuition waivers granted at each institution for the 2008-09 academic year:

2008-09 Tuition Waivers		
Institution	**Number[1]**	**Value**
Bismarck State College	180	$151,709
Dakota College at Bottineau	38	51,161
Dickinson State University	890	3,484,272
Lake Region State College	147	227,089
Mayville State University	157	222,557
Minot State University	842	1,339,249
North Dakota State University	3,631	13,061,132
State College of Science	842	753,257
University of North Dakota	2,410	7,454,948
Valley City State University	211	442,283
Williston State College	65	77,248
Total	9,413	$27,264,905

[1]Represents both full and partial tuition waivers provided at each institution. A student may receive multiple partial tuition waivers.

The following schedule details the value of tuition waivers granted at each institution as a percentage of total tuition:

Institution	2008	2007	2006	2005
Bismarck State College	1.0%	1.1%	1.5%	1.8%
Dakota College at Bottineau	3.0%	3.5%	2.6%	3.7%
Mayville State University	4.0%	5.0%	9.9%	13.1%
Williston State College	4.2%	3.9%	3.5%	3.0%
Lake Region State College	5.2%	4.3%	3.0%	2.3%
State College of Science	5.7%	7.0%	6.0%	5.3%
University of North Dakota	6.7%	8.0%	8.4%	7.9%
Minot State University	7.4%	7.4%	6.8%	6.6%
Valley City State University	8.1%	8.1%	8.5%	7.4%
North Dakota State University	13.2%	12.1%	12.9%	13.7%
Dickinson State University	21.1%	19.3%	16.5%	13.0%
System average	9.1%	9.3%	9.4%	9.2%

The committee learned tuition waivers provided to students do not waive auxiliary costs, such as room and board. Campuses benefit by having the additional students who utilize the auxiliary services. The campus missions may be the reason that one campus offers more tuition waivers than another.

The committee learned tuition waivers may be provided to students who are graduate assistants. Approximately 45 percent of graduate students at the University of North Dakota receive a graduate student tuition waiver. The waivers are limited to the number of actual credit-hours needed to complete a graduate course. The average graduate student tuition waiver is approximately $4,500.

Higher Education Funding Methods

The committee received information regarding methods of providing higher education funding. The committee learned the current higher education financing plan is based on a peer institution funding comparison. The financing plan has components for base funding, capital assets funding, and incentive funding. The State Board of Higher Education adopted the following recommendations for the plan in January 2010:

1. Conduct an evaluation of peer institutions that are currently used by campuses to develop peer funding benchmarks.
2. Proceed with the development of a limited number of performance measures to be used for incentive or performance funding beginning with the 2013-15 biennial budget request.
3. Incorporate an investment funding component into the 2011-13 biennial budget request.
4. Utilize the most current student enrollment data available for funding allocations.
5. Modify the long-term finance plan to allocate a minimum amount of equity funding to all campuses, which are funded at a level of less than 110 percent of their peer benchmark.

The University System engaged MGT of America, Inc., to complete a review of the appropriateness of peer institutions currently being used. The review was completed in February 2010 and determined that no changes were needed to peer institutions.

The University System 2011-13 biennium budget request includes a funding pool for campus equity allocations. The equity funding allocation is weighted to provide more funding to institutions furthest from their peer benchmark. The funding gap between an institution and a peer benchmark is evaluated both in terms of total dollar difference and percentage funding difference. Institutions' funding levels are currently at 48 percent to 95 percent of their peer institutions.

The committee learned a previous higher education funding method was used from 1970 to 2001 and provided funding through the use of five separate formulas. The funding was allocated to institutions based on an instructional formula, instructional support formula, support services formula, equipment formula, and physical plant formula.

The committee received information regarding concerns with changes to the higher education funding model. The University System suggested the following items be considered when discussing changes to the higher education funding method:

1. The need for greater recognition of the cost variations between higher education programs.
2. The need for greater recognition of differences in campus physical plant sizes and related operating costs.
3. The ability for funding to follow students.
4. The lack of economies of scale at smaller campuses and the recognition of minimum operating costs.
5. The inconsistency of completion-based funding with the mission of a campus and goals of students.

University System Financial Information

The committee received financial information regarding the University System. The committee learned that as of June 30, 2009, the University System has total assets of over $1 billion with net assets of $723 million. The following is a schedule of operating revenue, nonoperating revenue, and revenue received from capital grants and gifts for the University System for fiscal year 2008:

North Dakota University System Revenues - Fiscal Year 2008		
Source	**Amount (in Thousands)**	**Percentage**
Operating revenues		
Tuition and fees	$226,177	41%
Grants and contracts	187,946	34%
Sales and services of education departments	54,429	10%
Auxiliary enterprises	83,099	15%
Other	1,304	0%
Total operating revenues	$552,955	100%
Nonoperating revenues, capital grants, and gifts		
State appropriations	$244,200	79%
Federal appropriations	7,587	2%
Gifts	22,760	7%
Investment income	7,788	3%
State appropriations - Capital assets	10,253	3%
Capital grants and gifts	12,592	4%
Other	4,811	2%
Total nonoperating revenues, capital grants, and gifts	$309,991	100%
Total revenues	$862,946	

The University System had total liabilities of $275.7 million for fiscal year 2008. The following schedule details long-term liabilities for the University System for fiscal year 2008:

Category	Amount (in Thousands)
Bonds payable	$194,957
Notes payable	5,574
Capital leases	49,839
Special assessments	1,641
Compensated absences	23,667
Total debt	$275,678

The committee received information regarding the sources of revenue and major expenditure areas for higher education. The following schedule details fiscal year 2010 budgeted revenue sources for the University System:

Revenue Source	Funding (in Millions)	Percentage of Total Funding
General fund	$315.44	29.6%
Tuition	212.94	20.0%
Grants and contracts	166.24	15.6%
Other current funds[1]	371.56	34.8%
Total	$1,066.18	100.0%

[1]Includes auxiliary operation, investments, endowments, and other funding.

The following schedule details fiscal year 2010 budgeted expenditures for the University System:

Expenditure Category	Expenditures (in Millions)	Percentage of Total Expenditures
Salaries	$592.44	55.7%
Operating	283.28	26.7%
Equipment	20.50	1.9%
Other	156.53	14.7%
Debt service	10.75	1.0%
Total	$1,063.50	100.0%

The following schedule details University System expenditures by function for fiscal year 2009:

Function	Expenditures	Percentage of Total Expenditures
Instruction	$284,057,894	32.1%
Academic support	61,703,804	7.0%
Student services	39,283,360	4.4%
Institutional support	84,195,458	9.5%
Physical plant	56,853,434	6.4%
Scholarships and fellowships	28,693,667	3.2%
Auxiliary services	110,972,988	12.6%
Public service	47,428,890	5.4%
Research	125,916,949	14.2%
Depreciation	45,478,142	5.2%
Total	$884,584,586	100.0%

The committee received information on the use of funding from the state general fund for auxiliary operations. The following schedule details direct general fund support for auxiliary operations during fiscal year 2009 and the estimated support for fiscal year 2010:

Institution	Description	2009	2010 Estimate
University of North Dakota	Athletics	$1,061,126	$1,114,183
North Dakota State University	Athletics	$499,199	$519,167
Dickinson State University	Athletics	$26,684	$26,684
Minot State University	Athletic dome maintenance	$100,000	$55,000
Valley City State University	Offset auxiliary services revenue loss during spring 2009 flood	$54,000	

The committee learned University System institutions had unspent general fund and permanent oil tax trust fund appropriations of $12,439,751 at the end of the 2007-09 biennium which were continued into the 2009-11 biennium. Most of the unspent funds relate to major capital projects and deferred maintenance. The

University System office had unspent appropriations of $1,680,781 at the end of the 2007-09 biennium which were continued into the 2009-11 biennium. Of the total unspent appropriations, $1,564,207 was from the general fund and $116,574 was from special funds.

The committee learned that in October 2009 the University System had 17,578 full-time and part-time employees, including 5,682 student employees. The number of University System office employees has increased from 22 full-time equivalent (FTE) positions during the 2005-06 fiscal year to 28 FTE positions during the 2009-10 fiscal year.

Approximately 4,615 University System employees participate in the TIAA-CREF defined contribution retirement plan, and approximately 2,475 University System employees participate in the Public Employees Retirement System defined benefit plan. The 2011-13 University System budget request includes funding of $3.8 million from the general fund to increase retirement plan contributions for all employees by 2 percent on January 1, 2012, and by 2 percent on January 1, 2013. The budget anticipates the cost of the retirement plan contribution increase will be shared equally between employees and the state general fund.

The committee received information regarding grants received through the American Recovery and Reinvestment Act of 2009. The committee learned $11,607,819 of competitive grants has been awarded to University System institutions. In addition, $11.7 million received by the Governor's office through the American Recovery and Reinvestment Act of 2009 was distributed to the University of North Dakota for the Education Building project and a nursing simulation program at the University of North Dakota.

The committee learned some University System institutions will be requesting deficiency appropriations from the 2011 Legislative Assembly. Valley City State University is requesting a $58,904 deficiency appropriation relating to 2009 flood expenditures. Bismarck State College is requesting a $195,000 deficiency appropriation relating to the flooding of the Jack Science Center in September 2008. A deficiency appropriation may also be requested by North Dakota State University relating to the December 2009 Minard Hall collapse.

Capital Projects and Capital Asset Maintenance

The committee learned State Board of Higher Education policy requires institutions to receive board approval prior to beginning projects greater than $250,000. Changes were made in 2009 to State Board of Higher Education policies that govern capital projects. The changes were made in determining which costs are to be included in total project costs as well as in the methods used to record project expenses.

The committee learned the following three sections of North Dakota Century Code provide authority for the Budget Section to approve higher education capital projects or changes to projects originally approved by the Legislative Assembly:

- Section 15-10-12.1 requires approval by the Legislative Assembly or Budget Section of higher education capital projects costing more than $385,000 that are financed by donations, gifts, grants, and bequests. The Budget Section may not approve projects during the legislative session or during the six months preceding a session.
- Section 15-10-12.3 provides that all local funds used for a higher education capital project must be from sources presented to and approved by the Legislative Assembly. Any changes in the source of funds must be approved by either the Legislative Assembly or Budget Section.
- Section 48-01.2-25 precludes state agencies, including higher education institutions, from significantly changing or expanding capital projects beyond what was approved by the Legislative Assembly unless approval is received from the Legislative Assembly or Budget Section for project changes, project expansions, or for any additional project expenditures.

The committee received suggestions from the State Auditor's office for changes to the method of the Legislative Assembly approval of higher education capital projects. It was suggested that the Legislative Assembly provide additional detail in appropriation bills to more clearly define the cost, scope, and funding sources for capital projects. The Legislative Assembly should also consider clarifying the appropriateness of institutions entering capital leases with other entities for capital projects. The use of capital leases in certain situations may circumvent the intent of the Legislative Assembly.

The committee received information regarding the 2011-13 biennium capital funding request of the University System. Major areas of the request include:

- Major capital projects prioritized by the State Board of Higher Education that total $108,305,000 from the general fund and $11,265,805 from special funds.
- Major campus capital projects from special funds that total $78.6 million.
- Funding from the general fund of $11,118,546 for infrastructure maintenance and repairs. This amount represents 15 percent of the Office of Management and Budget building and infrastructure maintenance formula for University System infrastructure.
- Small- to medium-size projects that total $25,665,427 from the general fund and $775,000 from special funds. The definition of a small- to medium-size project varies based on the amount of infrastructure at each institution.
- Funding of $2.5 million from the general fund for a funding pool to address emergency infrastructure needs.

Issues Affecting Two-Year Campuses

The committee learned there are five 2-year institutions in the state--Bismarck State College, Dakota College at Bottineau, Lake Region State College, State College of Science, and Williston State College. The core functions and fundamental purposes of two-year institutions include:

- Providing the first two years of a four-year degree.
- Providing certificates or degrees to students wanting to enter the workforce with less than a four-year degree.
- Making higher education more accessible and affordable throughout the state.
- Providing opportunities and special support, including remedial and developmental learning activities to assure success for those who would not otherwise pursue a college degree.
- Assuming primary responsibility for the delivery of workforce training in designated regions.
- Enhancing the community and regional economic, social, and cultural vitality and improving the quality of place essential to business development.

The committee learned two-year institutions are facing several issues, including the decline of high school graduates in the state, the need for career and technical education programs in larger cities, the difficulty of providing training in certain fields, and the effort required to develop new programming for high-growth occupations. Two-year institutions are addressing these issues by developing greater collaboration with other institutions and increasing the flexibility of program offerings to meet the needs of students.

The committee received the following comments from representatives of two-year institutions regarding efforts of two-year institutions to address the needs of the state:

- Program partnerships with private entities have increased.
- The utilization of campus space has improved.
- Additional courses for the adult population are being offered at times convenient for adult students.
- Career and technical education programs are becoming more accessible.
- Accessibility is being improved by offering courses online and providing dual-credit courses.
- Institutions are working collaboratively to offer education programs at various locations in the state.
- Institutions are offering programs to meet local workforce needs.

In July 2010 the committee conducted a tour of the Bismarck State College National Energy Center of Excellence building. While on the tour, the committee viewed several laboratories used for energy education programs. The programs are used to meet the workforce needs of the energy industry.

The committee received information from the University System regarding the use of an $800,000 general fund appropriation provided by the 2009 Legislative Assembly for increasing the awareness of two-year institutions and related careers. The committee learned two-year institutions worked with the University System office to develop a request for proposal for the community college awareness initiative. Based on the request for proposal, Odney Advertising was selected to develop the marketing initiative. Two media campaigns were used from February to April 2010 that included television, radio, newspaper, and social networking website advertising. Two additional media campaigns are scheduled for November through December 2010 and February through March 2011. The University System anticipates spending all funds provided for the initiative.

Workforce Needs

The committee received information from the University System regarding how institutions are meeting the workforce needs of the state. The committee learned the length of time to respond to a workforce need is dependent on the time required for approval of a new program. The availability of funding is also a concern with new programs because campuses may need to reallocate funding internally to provide the necessary funding for a new program.

The committee learned the University System 2011-13 biennium budget request includes $3 million from the general fund for a funding pool to address immediate workforce needs. The funding will be available for programs that have a vital need in the state with either the chancellor or State Board of Higher Education determining the final use of funds. Reporting requirements will inform the Legislative Assembly on the uses of funding.

Contributions to Economic Development

The committee received information from the Department of Commerce regarding the economic development strategic plan of the state and how higher education contributes to meeting the goals of the plan. The committee learned the key functions of the economic development strategic plan are to assess the current economic situation and target industries, identify key areas of opportunity, and establish goals and performance measures for economic development. Strategies for continued economic growth in the state include:

- Investing in university-based research and development conducted with the private sector.
- Fostering a culture of entrepreneurship where innovative companies can thrive.
- Addressing education, training, recruitment, and retention to provide a steady supply of skilled workers.
- Promoting export trade.

The following schedule presented by the Department of Commerce details goals and strategies identified in the draft economic development strategic plan:

North Dakota Economic Development Strategic Plan
Goal #1 - Create, attract, and retain quality jobs and workforce in targeted industries and high-demand occupations
• Encourage industry cross-selling and supply chain development through a campaign to purchase products and services from in-state companies
• Recruit industries that complement supply chains for target industries and encourage entrepreneurial growth
• Continue to refine the set of business startup, expansion, and attraction initiatives
• Refine workforce training programs to focus on developing the skills needed by the state's businesses and industries

North Dakota Economic Development Strategic Plan

- Promote the existing state and federal government job training incentives
- Support and encourage privately funded seed stage or early venture capital funds
- Support the continued development of a statewide network of entrepreneurial resources

Goal #2 - Strengthen North Dakota's business climate and image to increase national and global competitiveness

- Promote national and international partnerships and competitiveness
- Support and grow the successful public/private international trade model
- Strengthen North Dakota's regulatory, tax, and business climate

Goal #3 - Accelerate innovation and entrepreneurship in targeted industries and emerging technologies

- Focus state tax incentives and supportive legislation to accelerate innovation and entrepreneurship in targeted industries and emerging technologies
- Assess state programs and how they fit with innovation, entrepreneurship, targeted industries, and emerging technologies
- Explore health care as a profit center for long-term economic development
- Support state programs for research, development, demonstration, and commercialization of new technologies, including the development of technology parks and incubators
- Develop rural and agriculture-based business development opportunities, education vacations, and green tourism options throughout North Dakota

Goal #4 - Enhance the state education and training system's ability to meet business and workforce needs of the future

- Expand the promotion of skilled trade and technical education programs at North Dakota's high schools, area career and technical centers, and two-year colleges to North Dakota employers
- Better leverage the resources of the state's entire education system to support long-term economic development through education, training, and research
- Support an accountable University System that has the flexibility needed to meet the needs of the private sector
- Promote Operation Intern with businesses in targeted industries while supporting internships and apprenticeships in general
- Support youth and young adult development and retention initiatives

Goal #5 - Continue to enhance a unified front for North Dakota that supports community, economic, and workforce development

- Enhance collaboration between economic development and tourism stakeholders, the Congressional Delegation, the Legislative Assembly, the Governor's office, the tribes, the workforce delivery system, the University System, the Department of Commerce, and the private sector in order to leverage all available sources of support
- Consistently collaborate with state stakeholders to determine the value of cooperative activities and identify ways to improve them

Goal #6 - Enhance North Dakota's image

- Develop a statewide internal marketing effort to improve North Dakota's self-image
- Continue to measure aggressive media relations campaigns that enhance North Dakota's image and increase awareness of North Dakota as a great place to live, work, play, visit, and be in business
- Establish a measurement for social media engagement and its impact on the state's image
- Work with our regional partners, overseas offices, and Visit America committees and consultants to keep North Dakota in the news and to educate on travel requirements and business opportunities

Medical School

The committee received information regarding issues affecting the University of North Dakota School of Medicine and Health Sciences, including medical student residencies and future health care needs. The committee learned the medical school class of 2014 includes 66 students, and the average student age is 24.8 years. The following schedule details the state of residence for the students, including students enrolled through an agreement with the Western Interstate Commission on Higher Education:

Residency Type	Number	Percentage of Total Students
North Dakota resident	46	78%
Minnesota resident	6	10%
Enrolled through the Western Interstate Commission on Higher Education exchange program	7	12%
Total	59[1]	100%

[1]Does not include seven students enrolled in the Indians into Medicine Program.

The committee received the following information comparing medical student residencies in North Dakota to national averages:

	North Dakota	National Average
Number of residencies per 100,000 residents	17.8	35.7
Ratio of medical residents to medical students	0.42	1.11
Percentage change in the number of medical residents from 1999 to 2008	(3.4%)	12.6%

The number of first-year residencies available in North Dakota was 44 in 2010. Of this amount, 17 were related to family medicine. The following schedule details the number of physicians that remain in the state after attending medical school in North Dakota or completing a residency in the state:

	North Dakota	National Average
Retention of students that attend medical school in the state	31%	37%
Retention of students that complete a medical residency in the state	43%	45%
Retention of students that attend medical school in the state and complete a medical residency in the state	63%	66%

The committee learned 1,489 physicians are actively practicing in the state. Of these physicians, 51 percent are aged 50 or younger and 17 percent have their primary office in a rural area. Of the total number of actively practicing physicians in the state, 461 are graduates of the University of North Dakota School of Medicine and Health Sciences.

The committee learned the North Dakota Area Health Education Center program administered by the University of North Dakota School of Medicine and Health Sciences is designed to improve access to health care services in medically underserved areas throughout the state by addressing the distribution, diversity, supply, and quality of health care professionals. The program works with other organizations and state agencies to

accomplish program goals. The program supports community partnerships in an effort to provide a balance of health care resources and professionals.

The committee learned the School of Medicine and Health Sciences RuralMed program provides eight new freshman medical students per year with a full tuition waiver for all four years of medical school if the student agrees to complete a family medicine residency and then practice family medicine in a rural area of the state for five years. Guidelines for the RuralMed program define a rural area of the state as being anywhere in the state except Bismarck, Fargo, Grand Forks, and Minot.

Institutional Missions

The committee received information regarding potential changes to the missions of institutions. The committee learned the mission of each institution includes the functional emphasis of the campus, the program emphasis of the campus, the primary clientele, and other campus roles. The State Board of Higher Education has created a Mission Review Task Force to review campus missions. The task force is considering the following:

- The relevancy of the current institution missions and consistency with the University System's strategic plan.
- The economic needs of the state and region.
- The view of the University System as a total resource unit.
- The maintenance and enhancement of academic quality.
- The use of review objectives that include understanding campus goals and market niches, increasing collaboration, and improving University System knowledge of campus needs.
- The changing definition of a "student."

Program Evaluation Procedures

The committee received information regarding the evaluation of programs at University System institutions. The committee learned a process to add or remove programs at institutions has been developed at the University System level. The necessary steps to add or remove a program may take several months.

Major committee findings regarding program evaluations include:

- A new academic program is automatically reviewed when the first class of students graduates from the program.
- All programs are reviewed by the University System office on a five- to seven-year cycle.
- Course enrollments are used as part of the program review process.
- Some programs could be expanded due to demand, but funding is not available for program expansion.
- Other methods to evaluate programs include results of national examinations, faculty surveys, and reviews of program enrollment and semester credit-hour production.

Faculty Engagement and Evaluation

The committee received information regarding the engagement of faculty in decisionmaking processes, the process used to evaluate faculty, and funding available for faculty development. The committee learned the following regarding faculty involvement and evaluation at University System institutions:

- Faculty are involved in developing campus budget requests and campus master planning.
- Funds are allocated for faculty initiatives.
- Funds are allocated for quality improvement.
- Student retention in courses is reviewed when evaluating faculty.
- Student evaluations are used extensively when evaluating new faculty members.
- The student evaluation of faculty that teach online courses is done in the same manner as for faculty that teach courses in a traditional classroom.
- Tenured faculty members receive annual performance reviews, and tenured faculty members that do not remedy performance issues are subject to termination.

University System Strategic Plan and Governance

The committee received information regarding the University System strategic plan approved by the State Board of Higher Education in September 2009. The strategic plan is intended to be used for the next five years and identifies related goals and objectives summarized as follows:

State Board of Higher Education Strategic Plan Goals and Objectives
Goal #1 - The University System is accessible--a view held by all North Dakotans. • Increase the percentage of recent North Dakota high school graduates enrolled in the University System by five percentage points • Increase the percentage of North Dakota's total young adult population (aged 25 to 34) enrolled in University System institutions for credit to 6 percent • Increase the percentage of North Dakota's total population (aged 35 to 44) enrolled in University System institutions for credit to 2 percent • Increase the total number of certificates and associate and baccalaureate degrees awarded by 4 percent • Increase the total number of graduate and professional degrees awarded by 3 percent • The percentage of family income in North Dakota needed to pay for community college after deducting grant aid will decrease to the national average.
Goal #2 - North Dakotans recognize that the University System is affordable at a level that can be sustained. • North Dakota will rank in the top 20 percent of states in per capita support for higher education--a level that is both achievable and sustainable. • North Dakota will rank in the top 10 percent of the most productive states in total funding per degree/certificate. • The state strategic plan guides allocation of resources to achieve the vision.
Goal #3 - The University System increases the overall vitality of the state through exceptional education, research, training, and service. • Increase completions in targeted, high-potential programs

State Board of Higher Education Strategic Plan Goals and Objectives
• Increase the number of certificates and associate degrees awarded in vocational and technical fields at community colleges by 5 percent • Rank first in the nation for the percentage of degrees and certificates awarded in STEM fields • University System students will perform at or above the national average on all nationally recognized examinations. • University System students will exceed the national average first-time pass rates on all professional licensure examinations. • University of North Dakota and North Dakota State University research will, at a minimum, demonstrate overall progress on several research criteria based on an external evaluation, including collaborations in and outside North Dakota, patents, proposals, publications, and new faculty hires. • The centers of excellence will, at a minimum, meet expectations according to the criteria established by the Centers of Excellence Commission for annual review. • University System alumni and students will report levels of satisfaction with preparation in their selected major, acquisition of specific skills, and technology knowledge and abilities that exceed the national average. • Employers will report high/increased levels of satisfaction with the preparation of recently hired University System graduates benchmarked against historical trends. • Increase the number of businesses served by TrainND workforce training by at least 4 percent **Goal #4 - The 11 institutions comprising the University System work together to achieve the vision effectively.** • The University System will report the number of students who successfully transfer into a degree program at another University System institution. • University System institutions will benchmark the number of student credit-hours delivered to students attending another University System institution against historical data. • Integrate the role of each University System institution within the overall system mission and strategic plan • Increase awareness of the University System and its institutions through a common, consistent message • Increase State Board of Higher Education opportunity for discussion of strategic policy topics

Each objective has action steps that detail the methods used to accomplish an objective with responsibility for each action step assigned to the appropriate University System office staff member.

Performance and Accountability

The committee received information regarding the performance and accountability of the North Dakota University System. The committee received information regarding the *2009 Accountability Measures Report*. Selected findings of the report include:

Measure	Status/Result
What percentage of University System college and university graduates who stay in the state find employment appropriate to their education?	About 72 percent of the 2004-05 graduates who remained in North Dakota in 2006 were employed in occupations related to their education or training.
What is the level of North Dakota's research investment in education?	Research grew by 24 percent during the past five years with $186.2 million in research expenditures in fiscal year 2009.
Are graduates of North Dakota colleges and universities finding employment in the state?	Approximately 60.1 percent of University System graduates are employed in North Dakota one year after graduation.
Are University System students completing their degrees?	Based on University System adjusted graduation rates from all institutions, 39.3 percent of two-year college students completed degrees within three years and 63.6 percent of four-year university students completed degrees within six years.
Do University System graduates believe they are prepared for the workforce?	Seventy-three and two-tenths percent of University System alumni said their current jobs were highly related or moderately related to the most recent degrees they earned, and 81.8 percent said the college or university they attended prepared them at least adequately for their current jobs.
How does the average student loan debt of North Dakota students compare to the national average and the state with the lowest debt per student?	In 2006-07 undergraduate students in North Dakota borrowed an average of $5,122 compared to the national average of $4,608. Vermont has the lowest average amount at $4,122.
To what extent do North Dakota taxpayers provide financial support for University System students?	The average per capita state general fund appropriation for the 2007-09 biennium was $730, an increase of 31 percent since the 1999-2001 biennium.

The committee received information regarding the internal control and compliance report on the audit of the general purpose financial statements included in the June 30, 2009, annual financial report for the University System. The committee learned prior audit recommendations in the following areas have not been implemented:

- Proper use of account codes, funds, fund groups, and functions available on PeopleSoft to comply with generally accepted accounting principles.
- Preparation of financial statements in accordance with generally accepted accounting principles.
- Comprehensive fraud and control risk assessments and establishment of appropriate internal controls.
- Segregation of duties relating to inventory.

The committee learned the audit report also identifies five current audit recommendations relating to:

- Noncompliance with generally accepted accounting principles by the North Dakota State University Development Foundation on its financial statements.
- Lack of internal auditors at nine campuses and lack of reporting to the State Board of Higher Education by University of North Dakota and North Dakota State University internal auditors.
- The need for improvement in imaging application procedures at Bismarck State College and the University of North Dakota.
- Lack of timely legislative approval of additional construction costs for presidents' houses at the University of North Dakota and North Dakota State University.

- Noncompliance with criminal history background checks for new employees at Dickinson State University and the University of North Dakota.

The committee received information regarding the University System capital projects performance audit dated April 5, 2010. The objective of the performance audit was to determine if University System capital projects are adequately monitored. Based on the performance audit, the State Auditor's office determined:

- Capital projects within the University System are not adequately monitored.
- The University System does not have a unified system for capital projects.
- Monitoring of compliance with State Board of Higher Education policies relating to capital projects is minimal.
- North Dakota State University and the University of North Dakota have not complied with capital project requirements in state law and State Board of Higher Education policies.
- Dickinson State University did not comply with capital project requirements in State Board of Higher Education policies.

The committee learned additional oversight may be necessary for institution foundations that conduct activities besides raising funds for an institution. Institution foundations are legally separate and independent organizations. The foundations have independent governing boards, but representatives of the institution may serve on the foundation boards. Some institutions have several foundations that support specific departments or areas of the institution. State Board of Higher Education policy requires that institutions have written agreements with foundations that include a description of the services and benefits the institution and foundation provide each other.

Some institution foundations are constructing buildings for institutions, entering leases with institutions, and issuing bonds for capital projects. Leases between institutions and institution foundations are unique because the entities are related parties. Auditors have concerns when institution representatives also serve as representatives of an institution foundation and transactions occur between the entities. The use of capital leases may allow institutions to proceed with building projects without obtaining approval from the State Board of Higher Education or Legislative Assembly.

The committee learned several changes have been implemented in response to audits of the University System. Some institutions have implemented fraud hotlines, are reviewing business processes, and have improved internal auditing functions. An internal audit position is being added at the University System office to coordinate internal auditing for the University System and internal audit staff at the University of North Dakota and North Dakota State University will report to the State Board of Higher Education Budget, Audit and Finance Committee in addition to their institution presidents. The University System employee code of conduct also requires each new employee to review the code and sign a statement certifying that the employee has read and agrees to comply with the code.

University System Actions to Meet Goals and Recommendations

The committee received information regarding the actions of the University System in response to goals recommended by the 2007-08 interim Higher Education Committee. The following schedule details State Board of Higher Education actions for each goal:

Goals Adopted by the 2007-08 Interim Higher Education Committee	Related Actions by the State Board of Higher Education
Attainment - The education attainment of North Dakota's population will be at the level of the highest-performing countries in the world.	1. Developing a P-20 initiative to create a seamless P-20 education system 2. Increased education opportunities for nontraditional students through the: a. Adult Education Council b. College Access Program 3. Increased student services and support to help students achieve success
Accessibility - Students in all parts of North Dakota will have ready access to both two-year and four-year degrees in a wide range of academic programs.	1. Developing a higher education center in Bismarck 2. Increasing the number of programs available through distance education 3. Increased program collaboration 4. Supporting the initiative for increased awareness of two-year programs
Contribution to economic development - North Dakota will have an increasing number of high-wage jobs through the following methods: • The University System will produce graduates who are educated to meet the needs of the state's economy. • The University System will be responsive to the training needs of the state's employers. • The research conducted at the state's universities will contribute to the expansion and diversification of the state's economy.	1. Communicated with business and industry representatives 2. Participating in workforce meetings with state agencies, including the Department of Commerce and Job Service North Dakota 3. Served the training needs of 1,345 employers throughout North Dakota during fiscal year 2008 through TrainND workforce training efforts 4. Increased research by 19 percent from fiscal year 2004 to fiscal year 2008 with a significant increase in grants from federal sources
System functioning - The University System will function in a way that all the assets of the system will be efficiently utilized in achieving the goals established.	1. Initiated a process for reviewing the University System and institutional missions 2. Increased collaborative course development through technology 3. Trained faculty and staff in the use of collaborative technologies
Affordability - Higher education in North Dakota will be affordable to both the students and the taxpayers of the state.	1. Focusing on affordability as a priority policy objective through support for: a. Increased financial aid for the 2009-11 biennium b. Limited tuition increases for the 2009-11 biennium 2. Initiated a review of the higher education long-term finance plan 3. Initiated a study of tuition and fees

Future of Higher Education

The committee received comments regarding the future of higher education, including expected changes in the education environment, in teaching methods, in physical plant needs, and in funding methods. Major comments received from institution representatives regarding the future of higher education include:

- Campuses are expecting a greater percentage of nontraditional students.
- There may be a shortage of faculty.
- There will be an increase in the number of developmental or remedial courses for students not prepared for college.
- There will be an increase in the number of students taking classes from multiple campuses simultaneously.
- Flexible course scheduling will be needed to accommodate student schedules.
- There will be an increase in the number of part-time students.
- There will be an increase in student diversity.
- More students will enroll in health occupations programs.

Higher Education Experts

The committee received information from national higher education experts during the joint meeting with the Workforce and Education Committees. Key information presented included:

- Technology can be used to improve efficiency in education and increase student learning.
- The amount of educational courses and workforce training programs offered online continues to increase.
- Job skills assessment systems can be used to determine student readiness for postsecondary education programs or for specific occupations.
- Student financial aid programs can be used to encourage students to remain in the state after attending a postsecondary institution.
- Global competition for educated workers will increase.
- The Legislative Assembly should define state priorities for higher education and use measures to determine the success in meeting the priorities.

Other Information Received

The committee also received information regarding:

- The use of student assistants on campuses.
- The implementation status of the 1999-2000 Higher Education Roundtable recommendations assigned to the University System.
- An update on the development of a statewide longitudinal data system.
- An overview of postsecondary consumer protection in the state.

Higher Education Roundtable

The Higher Education Roundtable convened on September 13-14, 2010, and included the 24 members of the Higher Education Committee and 42 representatives from the State Board of Higher Education, business and industry, higher education institutions, and the executive branch. The roundtable received information from various speakers regarding higher education finance, higher education performance, and a performance funding method for higher education currently used in Ohio.

Information Received by the Roundtable

Members of the roundtable learned a state higher education finance policy should focus on state goals by defining the goals, measuring progress to meet the goals, and rewarding the accomplishment of the goals. It is important to have a higher education system that is perceived as being responsive to the needs of the state. Performance funding may provide an incentive for higher education institutions to meet the goals of the state.

The roundtable received information regarding the performance of higher education in North Dakota, and major findings include:

- Student debt has become a concern in most states, but North Dakota students have better student loan repayment rates and student loan default rates than the national average.
- The productivity of research faculty can be measured based upon grants received, articles published, and awards received. Research faculty in North Dakota generally have a lower productivity rate than research faculty in other states.
- The University System currently reports 33 performance measurements for higher education. It may be beneficial to reduce the number of measures to approximately five and refine the measures to clearly state the expectations for higher education.
- Student retention, progression, and completion can be used to determine student success.

Members of the roundtable learned the state of Ohio has developed performance funding methods specifically for main universities, regional universities, and community colleges. The funding methods focus on issues that affect institution research, student access, student success, and workforce training. A portion of higher education funding in Ohio is distributed based on student completion rates. The method of providing funding based on student completion rates has not affected the quality of education.

Roundtable Discussion

Major comments and suggestions made by roundtable members in response to the information received include:

Major Policy Area	Comment
Access	Online courses are important to students. Current policies that require students to pay additional tuition costs for taking online courses discourage on-campus students from taking online courses.
	There is a lack of distance and online learning in elementary and secondary education.
Economic development	It is important to view higher education as an economic development tool for the state.

Major Policy Area	Comment
	Additional emphasis should be placed on entrepreneurial programs.
	Scholarship programs should be used to encourage students to pursue careers in areas that have future workforce needs.
System functioning	It is important for students to have a seamless transition from one higher education institution to another.
	Collaboration among institutions allows for additional efficiency in higher education.
	The missions of higher education institutions are different, and it is important to understand the differences among institutions.
	It is important to have a strong chief executive for the University System to represent all institutions.
	The University System strategic plan is an evolving document that is used to develop priorities and initiatives for higher education. The use of accountability measures ensures that the University System is meeting the objectives of the strategic plan.
Student retention and success	The quality of education needs to be considered when reviewing the length of time a student needs to complete a higher education program.
	Internships are important for student development.
	It is important to recruit the top-ranking students from both in state and outside the state.
	Additional career advising for elementary and secondary students may improve college retention and completion rates.
	Consideration should be given to differences among students. Each student has different needs, objectives, and goals.
Funding and affordability	Productivity and efficiency are important, and performance measures should be incorporated into the budgeting process.
	It is important to consider the results of higher education when reviewing the funding needed for higher education.
	An investment in affordable higher education is an investment in the future of the state.
Goals and outcomes for higher education	It is important to focus on the desired outcomes for higher education.
	A definition of success for higher education needs to be determined.
	Many communities have strong support for higher education.
	Because of North Dakota's small size, changes to higher education should be easier to implement than in larger states.
	Specific expectations should be developed for higher education, and the success of the University System in meeting the expectations should be measured.
	Open communication between the State Board of Higher Education and the Legislative Assembly is important.

Recommendations

The committee recommends the following bills:

- House Bill No. 1033 to continue the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for an asset funding component through July 31, 2013.
- House Bill No. 1034 to provide for the continuation of the University System's authority to continue at the end of the biennium unspent general fund appropriation through July 31, 2013.
- House Bill No. 1035 to extend the continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through June 30, 2013.
- House Bill No. 1036 to provide interim Legislative Management study of developmental education. The study is to include a review of ways to alleviate developmental education, efforts to reduce developmental education, and a study of the origin of students needing developmental education.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL REPORT

Section 2 of Senate Bill No. 2081 (2009) amended Section 15-52-04 to provide that the Legislative Management receive a biennial report from the University of North Dakota School of Medicine and Health Sciences Advisory Council. The report is to provide recommendations regarding the strategic plan, programs, and facilities of the School of Medicine and Health Sciences. Recommendations for implementing strategies must address the health care needs of the people of the state and provide information regarding the state's health care workforce needs. Additionally, recommendations of the advisory council may include the areas of medical education and training, recruitment and retention of health care professionals, factors influencing the practice environment of health care professionals, access to health care, patient safety, quality of health care, and financial challenges in the delivery of health care.

The University of North Dakota School of Medicine and Health Sciences Advisory Council consists of 15 members, including a majority party member and minority party member from both the Senate and House of Representatives. Other members to the advisory council are selected by the Department of Human Services, State Board of Higher Education, State Department of Health, North Dakota Medical Association, North Dakota Hospital Association, the Department of Veterans' Affairs hospital in Fargo, the University of North Dakota Center for Rural Health, and the dean of the School of Medicine and Health Sciences.

Report

The committee received an update from the School of Medicine and Health Sciences Advisory Council on the status of the development of a report regarding the strategic plan, programs, and facilities of the School of

Medicine and Health Sciences. The report will be completed by December 2010 and will address the projected future shortage of physicians and the future health care needs of the state. The following key recommendations will be included in the report and have been used in developing the 2011-13 biennium budget request of the School of Medicine and Health Sciences:

- Increase the number of available medical student openings by 16 per year.
- Increase the number of health sciences student openings by 30 per year.
- Add 17 residency positions per year.
- Construct a new School of Medicine and Health Sciences building.
- Implement a geriatrics training program.
- Develop a master's of public health degree program.

The cost of the recommended building project is $28.9 million. It is anticipated that additional funding of $5.8 million will be needed for the other recommended initiatives for the 2011-13 biennium as well as an additional $12 million for the 2013-15 biennium and $7 million for the 2015-17 biennium.

GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

The 2009 Legislative Assembly appropriated $700,000 from the permanent oil tax trust fund to the State Board of Higher Education to provide grants to tribally controlled community colleges. The grants are to be used to offset the financial impact of the enrollment of nonbeneficiary students.

Section 15-70-05 was amended in Section 3 of House Bill No. 1394 (2009) to provide that each tribal college receiving a grant under Chapter 15-70 is to submit a report to the Legislative Council detailing the expenditures of the grant funds received by the institution. Additionally, each college is to submit a copy of the institution's latest audit report and document the enrollment status of each student for whom financial assistance is requested. Any institution that fails to meet the reporting requirements is ineligible to receive future grants until the required information is submitted.

In order to qualify for a grant, a qualified institution shall submit an application to the State Board of Higher Education that documents the enrollment status of each student for whom financial assistance is sought. If an application is approved, the State Board of Higher Education is to distribute $5,304 during each year of the biennium to the institution for each FTE nonbeneficiary student. If sufficient funding is not available, the amount of the grant distributed is to be prorated to the appropriate amount.

Report

The committee received information from the University System regarding grants provided to tribal colleges to offset the impact of nonbeneficiary students. The committee learned $350,000 was allocated to five tribal colleges during the 2009-10 academic year. A total of 112.79 FTE nonbeneficiary students were enrolled at tribal colleges. Each tribal college received $3,103 for each FTE nonbeneficiary student. The following schedule details the distribution of grant funding to the tribal colleges during the 2009-10 academic year:

Tribal College	FTE Nonbeneficiary Students	Grant Funding Received
Fort Berthold	22.71	$70,465
Little Hoop	6.58	20,429
Turtle Mountain	29.63	91,928
Sitting Bull	4.83	14,998
United Tribes	49.04	152,180
Total	112.79	$350,000

The University System expects to distribute the remaining $350,000 of grant funding during the 2010-11 academic year.

AMERICAN INDIAN LANGUAGE PRESERVATION COMMITTEE

House Bill No. 1399 (2009) created an American Indian Language Preservation Committee that is to develop a process for the preservation of languages of tribes located in the state. The committee is comprised of the executive director of the Indian Affairs Commission who serves as chairman, the Superintendent of Public Instruction or the Superintendent's designee, a faculty member at a tribal college appointed by the Governor, the director of the State Historical Society, the chairman of the North Dakota Humanities Council, the chairman of the University of North Dakota Department of Indian Studies or the chairman's designee, and an individual appointed by the Governor who has experience in the development of curriculum pertaining to and the teaching of American Indian languages.

Section 5 of House Bill No. 1399 requires the chairman of the American Indian Language Preservation Committee to provide a report to the Legislative Council prior to September 2010 regarding the work of the committee and recommendations for ongoing preservation efforts.

Report

The chairman of the American Indian Language Preservation Committee provided a report to the committee. Section 4 of House Bill No. 1399 provides an appropriation of $18,000 from federal fiscal stabilization - other government services funds to the Indian Affairs Commission for providing matching funds to the American Indian Language Preservation Committee. The funding is contingent upon the committee demonstrating it has matched each dollar provided in the appropriation with $3 from nonstate sources. The American Indian Language Preservation Committee anticipates matching the state funds and using the funds for various projects.

Various projects are being completed to preserve American Indian languages. Many young students have taken an interest in American Indian languages. A project is being completed to use animated movies to teach young students native languages.

NORTH DAKOTA CAREER AND TECHNICAL EDUCATION SCHOLARSHIPS AND ACADEMIC SCHOLARSHIPS

Sections 15.1-21-02.4 and 15.1-21-02.5, as enacted by the 2009 Legislative Assembly in Sections 17 and 18 of House Bill No. 1400, created the North Dakota career and technical education scholarship program and the North Dakota academic scholarship program. Section 15-62.2-05 requires the State Board of Higher Education to provide an annual report to the Legislative Council that details the number of scholarships given and demographic information pertaining to the recipients.

To be eligible for a scholarship, a student must be a resident of the state, graduate from high school during or after the 2010-11 school year, complete the requirements for a high school diploma, and meet the following program requirements for one of the programs as follows:

Career and Technical Education Scholarship	Academic Scholarship
Complete one unit of algebra II	Complete one unit of algebra II and one additional unit of mathematics for which algebra II is a prerequisite
Complete two units of a coordinated study plan as recommended by the Department of Career and Technical Education	Complete two units of the same foreign language; one unit of fine arts or career and technical education; and one unit of a foreign language, fine arts, or career and technical education
Complete three additional units, two of which must be in the area of career and technical education	Complete one unit of an advanced placement course or a dual-credit course
Obtain a grade of at least "C" in each unit or one-half unit required for a diploma	Obtain a grade of at least "C" in each unit or one-half unit required for a diploma
Obtain a cumulative grade point average of at least "B"	Obtain a cumulative grade point average of at least "B"
Receive a composite score of at least 24 on the American College Test (ACT) or a score of at least five on each of three WorkKeys assessments	Receive a composite score of at least 24 on the ACT

Section 20 of House Bill No. 1400 (2009) provides that students who graduate from high school during the 2009-10 academic year are also eligible for the career and technical education or the academic scholarships. To be eligible for an academic scholarship, a student must have obtained at least a 24 on the ACT. To be eligible for a career and technical education scholarship, a student must have obtained at least a 24 on the ACT or a score of at least five on each of three WorkKeys assessments as recommended by the Department of Career and Technical Education.

Any student that meets the requirements for a career and technical education scholarship or an academic scholarship is entitled to receive a scholarship of $750 per semester for each semester the student is enrolled at a North Dakota higher education institution up to a maximum amount of $6,000.

Report

Representatives of the University System reported 7,621 North Dakota high school students graduated in 2010, and 1,609 of those students applied for a scholarship. Of the 1,609 students that applied for a scholarship, 1,589 applicants met the eligibility requirements. Of the total qualified applicants, 1,421 students indicated they would be attending a North Dakota higher education institution which is required to receive the scholarship. The following schedule presented by the University System details the enrollment of students receiving an academic scholarship or a career and technical education scholarship:

	Academic Scholarship Recipients	Career and Technical Education Scholarship Recipients	Total
Public two-year institution	117	146	263
Public baccalaureate institution	157	66	223
Public research institution	659	128	787
Private institution	122	24	146
Tribal institution	1	1	2
Total	1,056	365	1,421

The 2009 Legislative Assembly provided a $3 million appropriation from the general fund for the scholarship programs during the 2009-11 biennium. A total of $2,131,500 of scholarship funding is estimated to be disbursed during the 2010-11 academic year, and $868,500 of funding will be continued into the 2011-13 biennium for the scholarship program. The University System estimates an additional $7 million will be needed in the 2011-13 biennium to continue the scholarship programs.

CAMPUS SALARY INFORMATION AND STUDENT ENROLLMENT INFORMATION

Section 5 of Senate Bill No. 2038 (2009) requires certain reports to be provided to the Legislative Council by the State Board of Higher Education. These reports include:

1. Information on the salaries, benefits, and total compensation of higher education instructional personnel at each campus having master's degrees, including a comparison to the salaries, benefits, and total compensation of teachers who have master's degrees and are employed by the school district headquartered in the same city as the higher education institution.
2. The number of students at each campus enrolled only in courses delivered electronically to a site not on the campus, the types of courses delivered in this manner, and demographic information regarding the students enrolled in such courses.
3. The number of students who have not yet graduated from high school but are enrolled in higher education courses offered for credit at each campus.

Reports

The committee received information from the University System regarding the salaries, benefits, and total compensation of higher education instructional personnel at campuses having master's degrees, including a comparison to the compensation of teachers with master's degrees in local school districts. The following table details the average compensation for each group for the 2008-09 academic year:

	Average Salary	Average Benefits	Total
College instructors with a master's degree	$51,430[1]	$11,914	$63,344
Elementary and secondary teachers with a master's degree (in school districts that have a higher education institution)	$53,908[2]	$11,556	$65,464

[1]Includes compensation for administrative responsibilities, additional duties, and summer school.

[2]Includes compensation for administrative responsibilities, extended contracts, extracurricular activities, and workload adjustments.

The committee learned 140 online courses are offered in several academic areas by University System institutions. During fall 2009, 11,630 students were enrolled in online classes and 2,226 students were enrolled in dual-credit courses. The majority of students enrolled in online courses are from within the country, but students from multiple foreign countries are enrolled in online courses offered by University System institutions.

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Industry, Business, and Labor Committee was assigned two studies.

House Bill No. 1577 (2009) directed a study of factors impacting the cost of health insurance and health insurance company reserves. The bill provided that the factors considered in the study must include:

1. Minimum loss ratio;
2. Three tier rating bands;
3. The effect of the federal Employee Retirement Income Security Act, Medicare, Medicaid, and the state children's health insurance program (CHIP) on individual and small group pricing;
4. Options for self-funding, fully insured funding, and combinations of these two methods of funding;
5. Prepaid coverage versus risk coverage;
6. Corporate structure of health insurance companies;
7. Health insurance company subsidiaries;
8. Rate, form, and reserve approval requirements;
9. Statutory barriers to competition and lower costs;
10. The role of health promotion versus risk coverage;
11. Transparency requirements based on tax incentive benefits;
12. Plan design or coverage options;
13. Health service mandates;
14. Uninsured and underinsured North Dakotans;
15. Proposed federal changes in health care coverage;
16. The business organization and tax status of health insurance companies and the impact this has on premium rates and reserves; and
17. Other health insurance cost and competition factors.

The bill also included a directive to study the impact of health insurance company board member compensation and employee salaries, benefits, and severance packages on health insurance rates and health insurance company reserves. In addition, the chairman of the Legislative Management expanded the scope of the study to include the monitoring of federal health care reform legislation, including its effect on North Dakota citizens and state government; the related costs and state funding requirements; related tax or fee increases; and the impact on the Medicaid program and costs, other state programs, and health insurance premiums, including the Public Employees Retirement System (PERS).

Section 2 of Senate Bill No. 2267 (2009) directed a study of the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection.

The Legislative Management also assigned to the committee the responsibility to receive a report from the State Fire Marshal on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes as required by North Dakota Century Code (NDCC) Section 18-13-02 and a report from Workforce Safety and Insurance on recommendations based on the safety audit of the Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program as provided under Section 65-06.2-09.

Committee members were Representatives George J. Keiser (Chairman), Bill Amerman, Rick Berg, Tracy Boe, Donald L. Clark, Mark A. Dosch, Kathy Hogan, Jim Kasper, Scot Kelsh, Dan Ruby, Mike Schatz, Elwood Thorpe, Don Vigesaa, and Steven L. Zaiser and Senators Arthur H. Behm, David Hogue, Dave Oehlke, Tracy Potter, and Terry M. Wanzek. Representative Jasper J. Schneider was also a member of this committee until his resignation from the Legislative Assembly in November 2009.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

HEALTH INSURANCE STUDY

Background

In 2009 the director of the federal Office of Management and Budget stated that rising health care costs are the primary fiscal challenge facing the country. The World Health Organization reported that in 2006 health care expenditures accounted for 15.3 percent of gross national product for the United States and could exceed 20 percent within a decade based upon trends at that time.

Although estimates by numerous organizations vary greatly, the United States Census Bureau estimated that there were over 45 million uninsured individuals in the United States in 2007. That figure represented approximately 15 percent of the total population of the country. The Census Bureau estimates indicated that of the individuals with insurance coverage, approximately 177 million had employment-based private coverage, approximately 27 million had private direct purchase coverage, nearly 40 million were covered by Medicaid, over 41 million were covered by Medicare, and nearly 11 million were covered by military health care. The Census Bureau study further estimated that over the three-year period from 2005 through 2007, approximately 12 percent of North Dakotans were without health insurance coverage.

A recent study indicated that the cost of health care provided for uninsured individuals results in approximately $1,000 per year in added health insurance premium costs per covered family. According to the report, uninsured individuals received over $115 billion in health care from providers in 2008. Of that amount, the uninsured paid about 37 percent from their own pockets. Third-party sources, such as governments and charities, covered about 26 percent of the cost of coverage for the uninsured, and the

remaining amount went unpaid and was ultimately covered through additional health insurance premiums.

On March 23, 2010, the President of the United States signed the Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152). The legislation, which is intended to expand health care coverage to 32 million additional citizens at an estimated cost of $960 billion, has a phasein approach to implementation with the most significant changes becoming effective January 1, 2014.

Testimony and Committee Considerations

Minimum Loss Ratio and Statutory Barriers to Competition and Lower Costs

The committee received testimony regarding the statutory minimum loss ratio, which is the ratio of claim payments to premiums. Section 26.1-36-37.2 requires the Insurance Commissioner to adopt rules establishing minimum loss ratios for all policies providing hospital, surgical, medical, or major medical benefit offered by an insurance company, a nonprofit health service corporation, a fraternal benefit society, and any other entity providing a plan of health insurance or health benefit subject to state insurance regulation at not less than 70 percent and at not less than 55 percent for individual policies. The Insurance Commissioner also has adopted minimum loss ratios for other policies, such as Medicare supplement policies, long-term care policies, and specified disease policies.

The committee received testimony indicating minimum loss ratios in Iowa, Kansas, and South Dakota are generally slightly higher than in this state. The minimum loss ratio in Minnesota varies depending upon the type of insurance provider and the size of the provider. Montana does not have a minimum loss ratio requirement.

A representative of the Insurance Department provided testimony regarding a survey of insurers taken about five years ago which addressed impediments to insurers entering the insurance market in this state. The survey identified five impediments, including the amount of time taken to review policy forms for new entrants into the market, the presence of a dominant market share provider, the difficulty in getting provider agreements, and the minimum loss ratio. With respect to rate approval, North Dakota is a prior-approval state, which means that forms and rates may not be implemented until first approved by the Insurance Commissioner. The committee received information indicating the Insurance Department has a goal of completing all policy form and rate reviews within 60 days. Although the minimum loss ratio was reduced after the survey was taken, no additional insurers applied to enter the insurance market in the state.

The committee learned the federal health care reform legislation includes a requirement that health insurance providers report the proportion of premium dollars spent on clinical services, quality improvement, and other costs. An insurer will be required to provide rebates to consumers for the amount of the premium spent on clinical services and quality improvement which is less than 85 percent for plans in the large group market and 80 percent for plans in the individual and small group markets. There was some concern expressed regarding how the federal government will define what qualifies as quality improvement costs and the impact the definition could have on chronic disease management programs, medication compliance initiatives, health information technology expenses, and wellness coaching sessions.

The committee considered a bill draft that would have required an insurer providing accident and health insurance to provide a disclosure of the anticipated loss ratios for the plan. The bill would have required the disclosure to be provided to the insured at initial policy application or coverage and at any time the plan's premium changes thereafter and be provided in clear language that makes it clear what portion of premium covers administration and profit. Initially, proponents of the bill draft argued disclosure of the loss ratio on the policy would assist a consumer in determining which policy is a good value. However, because of the inclusion of minimum loss ratio requirements in the federal health care reform legislation and the uncertainty of the impact of the federal requirements on state law, committee members generally agreed the bill draft likely is not necessary and may result in an unnecessary burden on health insurers.

The committee received information regarding the health insurance market in North Dakota. As of July 31, 2009, there were five companies offering health insurance in the individual market in this state, seven companies offering coverage in the small group market, and nine companies licensed to sell in the large group market. In 2008 the dominant insurer in the state--Blue Cross Blue Shield of North Dakota--had a market share of over 89 percent of the premiums paid in the state. The insurer with the next largest market share accounted for approximately 4.5 percent of premiums paid that year.

The committee invited representatives of insurance companies to testify regarding the health insurance market in the state. The chief executive officer of Blue Cross Blue Shield of North Dakota testified that the loss ratio requirement likely is not a significant factor in new insurers entering the North Dakota market. However, establishing provider networks and maintaining flexibility in those networks may be difficult for some insurers.

A representative of Medica--an insurer that entered the North Dakota market in 1994 and which had about 20,000 members in this state as of January 2010--testified regarding the company's expansion in the state. Although the minimum loss ratio has not been an issue affecting the expansion of the company in this state, the testimony indicated the development of a provider network has been difficult.

A representative of PreferredOne--an insurer attempting to enter the health insurance market in this state--testified that four major plans have competed in Minnesota because of the ability to secure equitable contracts with providers, something the company has been unable to accomplish in this state. Because of the equitable provider contracts in Minnesota, those

companies have been able to compete based on service, quality products, and innovation.

The committee also received testimony regarding the merger of the Meritcare Health System and Sanford Health and the introduction of the Sanford health insurance plan into the North Dakota market. The testimony indicated Sanford's share of the health insurance market in South Dakota has had little impact upon the dominant carrier in that state.

Rate, Form, and Reserve Approval Requirements

The committee received information regarding insurance company regulation. As a prior-approval state, insurance forms and rates may not be implemented until approved by the Insurance Commissioner. The Insurance Commissioner reported that the Insurance Department received 928 health insurance rate and form filings during the period beginning July 1, 2008, and ending June 30, 2009. Of those filings, 280 were form filings, 273 were rate filings, 151 were form and rate combined filings, and the remainder were classified as "other." The average review and response time for the filings was 56 days, which is slightly under the department's goal of 60 days.

The Insurance Commissioner testified that justification for a rate increase is based, in part, on minimum loss ratio requirements, and when comparing loss ratios with the minimum requirements, historical experience and projected future experience are considered. Other factors considered are past premium increases and claim trends.

Risk-based capital is a measurement of the minimum amount of capital that an insurance company needs to support its overall business operation considering the size and degree of risk taken by the insurer. The types of risk measured to arrive at an overall risk-based capital amount for a health insurer include the asset risk, the insurance and underwriting risk, the credit risk, and the business risk. In North Dakota, the minimum capital and surplus for a company in its first year of business is $1 million. After the first year, a company's risk-based capital must be at least 200 percent. If a company's surplus falls below 200 percent risk-based capital, the company must submit to the Insurance Commissioner a risk-based capital plan that identifies the issues leading to the problem and proposes corrective action. If the company's surplus falls below 100 percent, the Insurance Commissioner may take action to place the company under regulatory control.

To protect against insolvency of a health insurance company, any company licensed to sell health insurance in the state must be a member of the North Dakota Life and Health Insurance Guaranty Association. The association may pay up to $100,000 in health insurance benefits to an insured individual if the individual's insurer becomes insolvent. The Insurance Commissioner provided information to the committee which indicated there have been 37 insurance company insolvencies since 1983 for which the association was actuated to provide protection to North Dakota policyholders. For the years 2007-09, the association paid approximately $250,000 in health insurance claims.

The committee received data from Blue Cross Blue Shield of North Dakota regarding the company's reserve levels. Since 1999 the company's financial reserves have nearly doubled to approximately $200 million in 2008. Over the last decade, the number of months of reserve held by Blue Cross Blue Shield has varied from a high of 4.1 months in 2005 to a low of 2.7 months in 2008. The risk-based capital ratio at the end of the calendar year of the company over the five-year period beginning on December 31, 2004, and ending on December 31, 2009, ranged from 722 percent on December 31, 2005, to 496 percent on December 31, 2008.

Plan Design or Coverage Options

The committee received information from the Insurance Commissioner regarding coverage options and alternatives to increasing health insurance premiums. Although higher deductibles and higher copayments increase out-of-pocket expenses to policyholders, these options also reduce premiums. Nonetheless, a plan with higher deductibles may be attractive to individuals who are financially able to pay higher costs or who utilize health care services less frequently. A limited benefit health plan is another option to reduce premiums but may provide inadequate coverage for large medical claims. In addition to the alternative insurance options, health discount plans offer a low premium. A health discount plan offers discounts on services such as physician visits, hospital stays, prescription drugs, and other treatments. However, the plans are not insurance and may be limited to certain common procedures or services while the subscriber remains responsible for the remaining costs.

Role of Health Promotion

The committee received testimony regarding health promotion and wellness programs implemented in the state. A representative of the State Department of Health provided the committee with information regarding the Healthy North Dakota program and an overview of the health status of North Dakotans. Although there have been improvements in the prevalence of some unhealthy behaviors, studies show tobacco use, poor nutrition, physical inactivity, and excessive alcohol use continue to affect the health and quality of life for many North Dakotans. Of particular concern is the number of overweight youth and lack of regular exercise by young people. A 2007 survey found 52 percent of high school students and 37 percent of middle school students in this state did not engage in sufficient physical activity, and the number of high school students who ate five or more servings of fruits and vegetables each day decreased from 18 percent in 2001 to 14 percent in 2005. In addition, according to data from Blue Cross Blue Shield of North Dakota, the prevalence of diabetes in the insurer's members aged 18 and younger increased from 2.8 per 1,000 children in 2003 to 4.5 per 1,000 children in 2007.

To improve the health of the state's residents, the Healthy North Dakota program has developed initiatives to undertake through 2020 to provide a comprehensive

and coordinated approach to health. The key strategies identified to accomplish the goals of the program include:

- Implementing prevention and wellness initiatives.
- Increasing ownership and personal health responsibility.
- Building services infrastructure.
- Implementing appropriate medical technology.

The committee received a report on the North Dakota Worksite Wellness Initiative, which has the goal to get more North Dakota businesses and organizations to offer and participate in worksite wellness programs. The initiative is a collaborative effort of the Dakota Medical Foundation, North Dakota Caring Foundation, Inc., and Healthy North Dakota. Statistics provided to the committee suggest there is a $2.1 billion loss in the state due to lost workdays and decreased productivity as a result of sicknesses and disability, and poor health and modifiable lifestyle choices result in over $550 million annually in medical expenditures in the state. The committee also received reports regarding wellness programs implemented by insurers and received testimony from a representative of YMCAs in the state.

The committee received testimony from a representative of the University of North Dakota Center for Rural Health regarding a report entitled *Environmental Scan of Health and Health Care in North Dakota*. According to the report, the state has the third longest life expectancy among the states at 78.7 years. However, residents of the state utilize medical services at a rate higher than the national average. The state faces challenges in that approximately 65 percent of the adult population is classified as overweight, and the state has the second highest rate of binge drinking and is below the national average with respect to child immunization rates. With respect to the status of health care in the state, the report indicated insurance premiums, health care provider costs, and health care provider reimbursement rates in this state are lower than in most other states. Although the state rates high in most health care quality measurements, the state faces challenges with respect to limited access to health services due to geographic distances, health professions shortage areas, lack of adequate insurance coverage, and an imbalance between reimbursement and cost.

Health Service Mandates

The committee received information from the Insurance Department regarding statutorily required health service mandates. There are over 20 types of mandated coverage, some of which are limited to group policies, and some of which apply to all policies issued in the state. The following North Dakota Century Code provisions include mandates:

- Section 26.1-36-03.1 requires insurers to provide a plan description in layman's terms which includes the terms and conditions of coverage in an insurance policy.
- Section 26.1-36-06 requires coverage of all prescribed drugs and medicines and chiropractic care provided by a licensed chiropractor under a group health insurance policy or a group health service contract.
- Section 26.1-36-06.1 prohibits insurers from excluding coverage of a drug for a particular indication on the grounds the drug has not been approved by the federal Food and Drug Administration for the indication if the drug is recognized for treatment of the indication in one of the standard reference compendia or medical literature.
- Section 26.1-36-07 provides for coverage of injury or sickness to newborn or adopted children of an insured whose policy includes coverage for a family member.
- Section 26.1-36-08 requires insurers offering group health insurance policies and group health service contracts to provide benefits for substance abuse diagnosis, evaluation, and treatment.
- Section 26.1-36-09 requires insurers offering group health insurance policies and group health service contracts to provide benefits for the diagnosis, evaluation, and treatment of mental disorders.
- Section 26.1-36-09.1 requires coverage for mammogram examinations.
- Section 26.1-36-09.2 requires coverage for involuntary complications of pregnancy and prohibits limitations, deductibles, or coinsurance for that coverage unless the limitations, deductibles, or coinsurance applies generally to all conditions.
- Section 26.1-36-09.3 requires coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder.
- Section 26.1-36-09.4 requires coverage for prenatal care, recommended immunizations from birth through age 5, and well child visits from birth through age 5.
- Section 26.1-36-09.5 provides that an advanced registered nurse practitioner is entitled to direct payment for services performed which are within the scope of practice of the practitioner.
- Section 26.1-36-09.6 requires coverage for prostate-specific antigen test coverage.
- Section 26.1-36-09.7 requires coverage for medical foods and food products for inherited metabolic diseases.
- Section 26.1-36-09.8 requires coverage for inpatient care for a mother and her newborn for 48 hours following a vaginal delivery and 96 hours following a caesarean delivery.
- Section 26.1-36-09.9 requires coverage for dental anesthesia and hospitalization for dental care provided to a child under the age of 9, an individual who is severely disabled, or an individual who has a medical condition requiring hospitalization or general anesthesia for dental treatment.
- Section 26.1-36-09.10 requires insurers that have contracts that include prehospital emergency

medical services benefits to use the statutory definition to make coverage decisions.

- Section 26.1-36-12.2 mandates freedom of choice for pharmacy services.
- Section 26.1-36-20 requires insurers to continue coverage of a juvenile while the legal custody of the juvenile has been granted by a court to any public institution for as long as the juvenile otherwise maintains eligibility for coverage.
- Section 26.1-36-21 requires continued coverage of a prisoner while incarcerated and under state supervision as long as the prisoner meets all other eligibility requirements and continues to pay premiums.
- Section 26.1-36-22 provides for mandated dependent coverage up to certain age limitations and for a child unable to be self-sustaining due to a physical handicap or mental retardation.
- Section 26.1-36-23 provides for continuation of group hospital, surgical, and major medical coverage after termination of employment or membership for a period of up to 39 weeks.
- Section 26.1-36-23.1 prohibits group policies from including provisions that terminate coverage for a covered spouse solely as a result of a break in the marital relationship, except upon an entry of a decree of annulment or divorce.
- Section 43-13-31 requires direct payment for coverage for optometric services regardless of whether the services were provided by a physician or an optometrist.

Health Insurance Pricing

The committee received information regarding modified community rating in this state, which means an insurer charges a particular group an amount that is derived by modifying the community rate for the group's specific demographic factors, such as age, gender, and industry. Under modified community rating for individual policies, premium rates charged during a rating period may not vary by a ratio of more than 5 to 1 when age, industry, gender, and duration of coverage of the individuals are considered. For any policy issued after January 1, 1997, only age and industry may be used as rating factors. However, an insurer also may use geography, family composition, healthy lifestyles, and benefit variations to determine premium rates. Under small group modified community rating, which applies to groups of 2 to 25 eligible employees, premium rates for a health plan may not vary by a ratio greater than 4 to 1. In addition, the index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 15 percent, and for a class of business, the premium rates charged during a rating period may not vary from the index rate by more than 20 percent of the index rate.

The committee received testimony regarding the cost of health insurance in this state. Although premium costs have generally increased by an average of about 7 percent annually, premiums in the state remain among the lowest in the nation. When compared to premium rates in adjacent states, premiums in this state are the lowest. However, testimony suggested factors such as increased health care utilization and the aging population of the state will likely contribute to the continuing increase of premium rates.

The committee participated in the Choosing Health Plans All Together (CHAT) exercise that the Insurance Department made available to consumers throughout the state. In the CHAT exercise, participants were given a wide range of available health insurance services and a number of markers that represented a unit of cost. Participants were then allowed to choose how to spend the markers to purchase health insurance coverage. The purposes of the exercise were to demonstrate that there are not enough funds available to purchase all the health coverage consumers may desire, choices are necessary, and the choice will vary depending upon the particular circumstances of each participant.

Uninsured and Underinsured North Dakotans

The committee received testimony regarding the demographics of the state and the number of individuals covered by various types of insurance and other health care coverage in an attempt to determine the number of individuals who have no type of health care coverage. A representative of the State Department of Health informed the committee of a survey conducted in 2004 which concluded there were approximately 52,000 uninsured individuals in the state, which is about 8.2 percent of the state's population. The survey estimated more than 11,000 children younger than age 18 and 41,000 adults were uninsured. In addition, according to the survey, the uninsured were more likely to be young adult, unmarried, and male, and Native Americans were far more likely to be uninsured at 31.7 percent, compared to the Caucasian rate of 6.9 percent. However, in evaluating the insurance status of Native Americans, availability of services through Indian Health Service was not considered to be insurance.

The committee received testimony from a representative of the State Data Center which estimated that 88.2 percent of North Dakotans had some type of health insurance coverage and which suggested about 74,000 individuals were uninsured. Of those insured, the report indicated about 76 percent had private insurance coverage and about 24 percent were covered by government insurance, such as Medicaid, Medicare, and military health care.

Data provided by the Insurance Department and compiled by Blue Cross Blue Shield of North Dakota indicated 379,426 individuals in the state had private insurance in July 2009. The data also indicated 1,105 individuals were covered under the Comprehensive Health Association of North Dakota (CHAND) program, 3,209 individuals were covered under CHIP, 117,130 individuals were covered by Medicare, 47,864 individuals were covered by Medicaid, and 31,020 individuals had access to coverage through Indian Health Service. In addition, the report indicated 580 children had insurance coverage through a charitable program provided by Blue Cross Blue Shield. The compilation of data concluded over 580,000 of the

state's approximately 640,000 residents had insurance coverage.

The committee received information indicating a number of individuals may be eligible for insurance coverage under programs such as Medicare, CHAND, or CHIP. The estimate of those eligible but not covered was approximately 15,000. In addition, the committee received an estimate suggesting approximately 15,000 individuals select not to be covered by an employer or through the individual market due to cost but have the capacity to afford coverage. The committee estimated there were about 15,000 individuals who are essentially uninsurable due to preexisting conditions or having met lifetime coverage limitations.

The committee also discussed the difficulty in defining what is considered to be underinsured. One definition presented was if 10 percent or more of an individual's or family's income is spent on health care, the individual or family is defined as underinsured. Another definition offered suggested an individual or family may be underinsured if the health insurance coverage includes a high deductible or the individual or family is a high user of health care. Committee members generally agreed a definition of underinsured is subjective and imprecise.

The committee received a report from the North Dakota Hospital Association regarding charitable care provided by hospitals and hospital costs associated with uncollectible debts. Charity care provided is estimated to be approximately .70 percent of gross charges by hospitals, and uncollectible debt is estimated to be slightly less than 2.44 percent of gross charges. The testimony indicated the costs associated with charity care and uncollected debt is attributable to care provided to the uninsured and the underinsured.

Blue Cross Blue Shield of North Dakota

The committee received information regarding the structure, governance, and taxpaying status of the state's dominant health insurance carrier--Noridian Mutual Insurance Company, which operates as Blue Cross Blue Shield of North Dakota. The company changed its corporate structure in 1998 to become a nonprofit mutual insurance company, which means it is owned by its members and governed by a board selected by the members. The company employs approximately 2,000 people, about 50 percent of whom work for Noridian Administrative Services. In addition to Blue Cross Blue Shield, Noridian operates for-profit subsidiaries, including Noridian Administrative Services, which processes Medicare claims, and Noridian Insurance Services, Inc., which serves as an insurance agency. The company also has at least 50 percent ownership in CoreLink--an information technology investment--and Discovery Benefits, which is involved in employee benefits administration and services. Noridian has partial ownership in Prime Therapeutics--a pharmacy benefits manager; TriWest Healthcare Alliance, which administers the TRICARE program for more than 2.9 million military service members and their families in 21 states; BCS Life Insurance; Plans Liability Insurance Company; and Blue Bank--a Blue Cross Blue Shield financial services organization.

Noridian is governed by a 13-member board consisting of 8 consumer members and 5 health care provider members. Board members may serve up to four 3-year terms. Candidates for the board may be nominated by petition of 250 members, nominated by the board's governance and nominating committee, or nominated from the floor at the company's annual meeting. To be a consumer member of the board, a candidate must have health coverage from the company, may not be a health care provider or an employee of a provider, and may not be a supplier of health care services. Information provided to the committee regarding board member compensation stated the board compensation is based on research conducted by the Blue Cross and Blue Shield Association and the National Association of Corporate Directors. In addition, the company has compared director compensation amounts from local, regional, and national like-sized health care companies. A representative of the company testified board member compensation has been frozen since 2005, and board compensation research concluded the board compensation levels are below national board compensation levels and are the median of North Dakota company board compensation levels.

A representative of Noridian provided information to the committee which related to company executive compensation. The report indicated the company regularly reviews executive compensation to ensure compensation levels are fair and appropriate. Although an Insurance Department auditor's examination in 2009 cited compensation, employee benefits, and fringe benefits as concerns, the report from Noridian concluded executive compensation at the company was in line with other like-sized companies in North Dakota and Minnesota based upon research done by the company of other companies, including Medica, Sanford Health Systems, and several other large health systems. The total of salary and benefits costs for Noridian account for 55.8 percent of the administrative expenses of the company. The company's last report of administrative expenses revealed that administrative expenses amount to 7.6 cents of every premium dollar. Thus, total salary and benefits account for about four cents of each premium dollar collected by the company. However, the company's board froze 2010 executive compensation at the 2009 levels.

The committee received information regarding taxation of insurers. Under Section 26.1-03-17, a premium tax of 1.75 percent is imposed on the gross premiums; assessments; and membership, subscriber, policy, and service fees of a health insurer. The premium tax applies to all insurers, except fraternal benefit and benevolent societies.

The committee received information regarding the amount of premium tax and the amount of other taxes paid by Noridian. Noridian paid $11,013,746 in premium taxes in 2009, $10,554,855 in 2008, and $9,884,867 in 2007. The company paid $204,122 in real estate taxes for 2009, $299,123 for 2008, and $281,143 for 2007. In

addition, the company is subject to sales and use taxes and federal income tax.

The committee considered a bill draft that would have exempted all nonprofit health insurers from the state insurance premium tax, a portion of which funds the Insurance Department. The bill draft was revised to exempt all major medical insurance policies from the insurance premium tax. Proponents of the bill draft contended the insurance premium tax amounts to a tax on policyholders. In addition, it was argued because the state has a substantial budget surplus, a reduction of the tax would put money directly into the hands of policyholders. Opponents of the bill draft argued the net effect of the exemption would be a reduction of taxes for insurance companies, but the bill draft would not address from where the revenue will come to make up for the loss in tax revenue. In addition, it was argued the federal health care reform legislation likely will result in additional costs to the Insurance Department which could result in having to take money from the general fund if the insurance premium tax were to be eliminated. A representative of the Insurance Department testified the bill draft would have an estimated fiscal impact of a biennial reduction in revenue of at least $22 million.

Transparency Requirements

The committee received information regarding the oversight of insurance companies. When an insurance company applies to do business in the state, the company must provide the Insurance Commissioner with a copy of the company's articles of incorporation and a copy of the company's bylaws. In addition, an applicant to do business in the state must provide the commissioner with copies of any of the company's filings with the Securities and Exchange Commission in connection with a public offering within the last three years. If the applicant, its parent, or its ultimate holding company is not publicly traded, the application must include a copy of the applicant's most recent consolidated generally accepted accounting principles financial statement. The Insurance Commissioner reported that the Insurance Department continually monitors the financial strength of insurance companies to help assure the companies have enough money to pay policyholder claims. The department performs periodic financial audits of insurance companies based in this state to assure the companies are financially sound and complying with state laws dealing with insurance company financial matters.

Impact of Federal Changes in Health Care Coverage

At each meeting of the committee before the adoption of the federal health care reform legislation in March 2010, the committee received updates regarding the various versions of reform legislation under consideration. After the President of the United States signed the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, the committee held panel discussions at its three remaining meetings with the purpose of determining the content of the legislation and the impact of the legislation on the state.

The federal legislation provided for the establishment of health care exchanges by January 1, 2014, to help individuals and small businesses purchase health care coverage. Although the legislation requires individuals to obtain qualified health care coverage and imposes a penalty on individuals who fail to comply with the requirement, the legislation maintained an employer-based health care system under which employers that have more than 50 employees and do not provide health care coverage for employees will be subject to a penalty if the employees need to obtain coverage through a health care exchange. Plans offered by the exchanges and offered in the group and individual market will be required to offer an essential benefits package.

The federal legislation provided for the expansion of Medicaid by establishing a national minimum eligibility level of 133 percent of the federal poverty level. In addition, the legislation expanded mandatory categories of Medicaid eligibility for single, childless adults who are not disabled. To finance the coverage for the newly eligible, states will receive 100 percent federal funding for 2014 through 2016, 95 percent federal financing in 2017, 94 percent federal financing in 2018, 93 percent federal financing in 2019, and 90 percent federal financing for 2020 and subsequent years. The legislation also required states to maintain current income eligibility levels for children in Medicaid and CHIP until 2019. The provisions of the legislation relating to Medicaid also provided for coverage of preventative services with no cost-sharing.

The federal legislation required states to either implement a temporary high-risk pool to provide health coverage to individuals with preexisting conditions or to participate in a national pool. To be eligible for the temporary high-risk pool, an applicant must have been uninsured for at least six months before enrollment.

With respect to private insurance, the federal legislation established a minimum loss ratio of 85 percent for plans in the large group market and 80 percent for plans in the individual and small group markets. The legislation required insurers to provide dependent coverage for children up to age 26 for all individual and group policies. In addition, an insurer is prohibited from placing lifetime limits on the dollar value of coverage on individual and group health plans, including preexisting condition exclusions for children, or rescinding coverage except in cases of fraud. The legislation required all new policies, including those offered through the exchanges, to comply with one of the four benefit categories established by the legislation.

The Insurance Commissioner provided the committee with information regarding the impact of the federal health care legislation on the Insurance Department. The commissioner provided the committee with a timeline with respect to implementation of the provisions affecting the department and with an estimate of the cost to implement the required provisions. One of the first provisions to affect the state was the requirement to either establish a high-risk pool to operate until 2014 or to participate in the temporary federal high-risk pool. Although the state operates the CHAND program as a high-risk pool, the program did not meet the federal

requirements for a high-risk pool. Because there were concerns with the amount of funding allocated by Congress to reimburse states for the operation of high-risk pools, the state elected to participate in the federal high-risk pool rather than establish another state pool.

The Insurance Commissioner informed the committee the state must design and have certified an insurance exchange before January 1, 2013. The exchange must operate for the nongroup market and the small business group market. In addition, the exchange is required to certify plans, operate a toll-free hotline, maintain a website with information regarding standard plans, rate health plans with respect to quality and cost, inform individuals of eligibility for Medicaid and CHIP and enroll individuals if eligible, provide an online calculator, grant certifications for mandate exemptions, determine subsidies and pay subsidies to insurers, identify individuals exempt from the individual mandate, and establish an outreach program. The commissioner indicated the main questions that need to be addressed with respect to the insurance exchanges are who will operate the exchange and should the state participate in a regional exchange. The commissioner estimated an additional 19 full-time equivalent positions will be necessary within the department and the fiscal impact of the exchange requirement will amount to nearly $4 million for the 2011-13 biennium, not including undetermined additional information technology system costs. In addition, it was anticipated the department will incur costs for increased rate review processes and the operation of a consumer assistance office.

The committee received testimony from a representative of the Department of Human Services regarding the anticipated costs associated with the expansion of Medicaid. The testimony indicated the department likely will be required to add approximately 30 full-time positions as a result of the federal legislation. Including vendor contracts and one-time technology costs, the department estimated total administrative costs for the next decade to amount to over $27 million. To address the state's share of costs associated with the newly eligible Medicaid recipients, the department estimated an additional $83 million will be needed over the decade.

In addition to the costs associated with Medicaid, the Department of Human Services reported the federal health care reform legislation may have an impact on the child support enforcement responsibilities of the department. The testimony indicated the department may be required to review up to 23,000 child support orders and modify orders to include required medical support provisions. Although there remains some uncertainty regarding the federal requirement, it may be necessary to adopt rules to implement any additional federal requirements and, possibly, make changes to the computer programs supporting the child support system.

The committee received testimony from a representative of PERS regarding potential costs to PERS as a result of the federal health care reform legislation. The testimony indicated the three areas in which PERS will most likely be affected are related to the removal of annual and lifetime maximums for benefits, the extension of dependent coverage to age 26, and inclusion of mandated preventative health services. In addition, PERS will be affected by a provision of the federal legislation which would create a temporary reinsurance program for employers providing health insurance coverage to retirees over the age of 55, but who are not eligible for Medicare. However, a federal grant of $1 million may be available to offset the pre-Medicare retiree costs. The total anticipated costs for PERS and for political subdivisions participating in PERS was estimated to be approximately $12.6 million over the next decade.

The committee received testimony from representatives of the State Department of Health regarding the impact of the federal health care reform legislation on the department. Because of concerns regarding the potential ongoing costs of maintaining a criminal history record check system for certain health care providers, the department elected not to apply for a grant to implement such a system. The testimony indicated if the criminal history record check program were to become mandatory after September 30, 2013, the department would have lost out on receiving 25 percent of the approximately $550,000 in costs associated with building a criminal history record check system. The testimony indicated the department may have opportunities to apply for federal wellness and prevention grants to be used by the department and other public health agencies.

The committee received information from the Tax Commissioner regarding the taxes and tax credits included within the federal health care reform legislation. Although the legislation is likely to have no impact on the Tax Department, the commissioner testified taxpayers will be impacted by the taxes and tax credits included within the legislation and the state is likely to receive some additional tax revenue.

The committee received testimony from the president of the Bank of North Dakota regarding the impact of the federal health care reform legislation on the student loan program administered by the Bank. The federal legislation eliminated the federal family education loan program, which is a program the Bank participates in administering. The federal family education loan program at the Bank comprises about 80 percent of the Bank's student loan portfolio, or about $800 million. After July 1, 2010, administration of the federal student loan program became the sole responsibility of the federal Department of Education through four federal contractors. The testimony indicated the student loan program accounted for up to 33 percent of the total earnings of the Bank in the past, but the amount of earnings had been reduced significantly due to the College Credit Reduction Act, which significantly reduced lender margins and imposed fees on banks to participate in the federal family education loan program. Although no immediate reductions in full-time positions were anticipated and potential exists to contract with the federal government to service direct student loans, there was concern expressed regarding the loss of revenue associated with servicing loans under the federal family education loan program. The impact of the loss of the

servicing of the federal student loan program will not be significant in the short-term; however, the impact by 2013 is estimated to be about $5 million annually.

To aid in determining the impact of the legislation, the committee was authorized to invite national experts to present testimony to the committee with respect to the health care reform legislation. The committee received testimony from a representative of the National Conference of State Legislatures and a representative of the National Association of Insurance Commissioners which summarized the contents of the federal health care reform legislation and addressed timelines for implementation of the legislation.

The committee received testimony from a representative of the Cato Institute regarding the federal health care reform legislation. Although health insurance premiums were estimated to double over the next decade, the testimony cited a Congressional Budget Office study that indicated health insurance premiums will likely double despite the adoption of the federal legislation. The testimony suggested that although there may be little difference in the cost of health insurance premiums as a result of the legislation, large companies may see a smaller increase in health insurance costs, small businesses may see little change in the amount of increase, and the individual market will likely see a 15 percent greater increase than the doubling of the cost of health insurance premiums. In addition, the rate of increase may vary by the age of the policyholder, with the young and healthy more likely to see a larger increase in premiums than they would have without the reform legislation. Because of decreases in Medicare reimbursement, the testimony suggested approximately 15 percent of hospitals could fail, which may increase concerns with accessibility of health care. Although there will be an increase in health care coverage in the state, 40 percent of the increased coverage is anticipated to be within the Medicaid system. The speaker from the Cato Institute stated that over the next decade, North Dakota should be close to breaking even with respect to the increase in Medicaid coverage, but increased Medicaid costs will occur later in the decade and will result in additional costs down the road.

The committee received testimony from a representative of the George Mason University Center for Health Policy Research and Ethics regarding the federal health care reform legislation. The testimony cited a study that estimated to fund North Dakota's obligation under the Medicaid expansions, the state will have to spend between $32 million and $57 million over the six years between 2014 and 2019. In exchange for that additional cost, the study estimates the state will receive between $595 million and $709 million in federal funds. As a result of increased federal spending for health care in the state, the state should anticipate a positive economic effect. The testimony contended the health care reform legislation was necessary because it has been estimated that by 2016, between 34 percent and 45 percent of median family income will be required to purchase family health insurance. In addition, because Medicare cost growth is unsustainable, it was argued that reform of the health care system in which Medicare purchases services was necessary. The testimony suggested insurance market reform is about reducing the profitability of discrimination against the unhealthy and increasing the profitability of helping all enrollees find clinical and health value in a complicated health delivery system. To accomplish that goal, it was argued everyone must be required to participate and obtain health insurance coverage, with the assistance of subsidies for those unable to afford coverage. In addition to insurance market reform, it was suggested that to make high-quality health care and health insurance affordable, clinicians, patients, and payers must move from pay for volume to pay for clinical value.

The committee received testimony from a representative of the Pharmaceutical Research and Manufacturers of America regarding the federal health care reform legislation. The testimony cited a report indicating an estimated 30,500 North Dakota residents will qualify for premium tax credits to help purchase health coverage as a result of the new law. According to the testimony, about 18,800 Medicare beneficiaries in this state hit the "donut hole," or coverage gap in Medicare Part D, and the legislation will provide a 50 percent discount for brand name drugs in the coverage gap beginning in 2011. This discount will be paid by pharmaceutical companies. The federal government also will begin providing additional funds so that in 10 years, senior citizens will have to pay only 25 percent of a drug's cost in the donut hole instead of the 100 percent currently paid. The testimony contended expanding health insurance coverage will help reduce the estimated $155 million in care provided annually by health care providers in this state without compensation.

The committee received testimony regarding the Canadian medical system from a representative of the Cameron Institute and the Health Services Management Programme at McMaster University located in Hamilton, Ontario. Under the Canadian Constitution, health care is the responsibility of the provinces. However, through the federal government's power to raise revenues through taxation and other means, a significant proportion of provincially funded health care is financed by the federal government conditioned upon criteria established by the federal government with respect to universality, comprehensiveness, accessibility, portability, and public administration. According to the testimony, all medically necessary physician and hospital services are paid by the provincial government. The medically necessary care represents about 70 percent of health care spending in Canada. The remaining 30 percent, including drugs, is paid by private insurance or cash. However, most prescription drugs are virtually free to seniors and low-income individuals and families through point-of-sale provincial government reimbursement with the patient generally paying only a copayment on the prescription fee.

The committee also received testimony from a native Canadian who is a physician practicing in Bismarck. The testimony also reviewed the Canadian medical system and the historical development of the system.

Although most surveys taken in Canada with respect to governmental programs demonstrate the health care program is the most popular governmental program, the testimony suggested Canadian patients may have to wait a significant amount of time to receive certain tests and surgeries. The testimony suggested the strength of the Canadian system is that it provides good coverage, and a weakness of the system is that it is slow to implement technology and cutting-edge treatments.

The committee received testimony from a representative of the North Dakota Medical Association regarding the development, content, and impact of the federal health care reform legislation. In September 2009, the association adopted a resolution that urged the North Dakota Congressional Delegation as part of health system reform to pursue multiple avenues for Medicare physician and hospital payment reform that address the unfair geographic disparity to North Dakota and address other needed payment reforms to ensure the future sustainability of North Dakota's health care system. Testimony from the association suggested that part of the solution for North Dakota in addressing projected physician shortages is to expand the capacity of the state to "home grow" doctors. A plan proposed by the University of North Dakota School of Medicine and Health Sciences Advisory Council has been developed to expand that capacity by providing for 16 additional medical student slots for each of the medical student classes, 30 additional health science students in each class, and 17 additional residency slots per year. The testimony also expressed the need to focus on physician recruitment and retention strategies to ensure good access to care for patients. In addition, it was suggested the federal legislation was a significant step forward in addressing the unfair geographic disparity of Medicare payments for physician and hospital services. The testimony cited an American Medical Association report that concluded Medicare payments for physician services across North Dakota increased more than any other state with an increase of 3.9 percent for 2010 and another 7.7 percent increase for 2011. The testimony also addressed concerns with respect to the failure of the United States Congress to timely address the Medicare sustainable growth rate formula, which calculates an annual target for Medicare spending on physician services based in part on changes in the gross domestic product.

The committee received testimony from representatives of the North Dakota Hospital Association regarding the impact of the health care reform legislation on hospitals in this state. The testimony indicated that although the frontier states amendment included within the reform legislation will provide an additional $650 million in reimbursement to hospitals in the state over the next 10 years, the overall fiscal impact will be less than that amount due to adjustments in annual hospital inflationary Medicare reimbursements included within the legislation. In addition, hospitals will be affected by provisions of the legislation which relate to readmissions and hospital-acquired conditions. Beginning in federal fiscal year 2013, inpatient hospitals with higher than expected readmission rates will experience decreased Medicare payments for all Medicare discharges in an attempt to encourage appropriate-length hospital stays and quality care after discharge. In addition, the federal Centers for Medicare and Medicaid Services will be required to review in-patient admissions related to certain conditions, and payments will not be made if a condition was not present on admission to the facility. Concern was expressed regarding the responsibility and the ability of a health care facility to appropriately document conditions present on admission to a facility. The association estimated the net fiscal impact of the health care reform legislation, after offsetting the potential decreases, to be $260 million over the next 10 years.

The committee received testimony reviewing the provisions of the federal legislation from a representative of the North Dakota Pharmacists Association. The testimony indicated the potential impact of the legislation is not likely to be significant with respect to the practice of pharmacy and the operation of pharmacies in the state.

The committee received testimony from representatives of Blue Cross Blue Shield of North Dakota relating to the anticipated impact of the federal health care reform legislation. The company anticipates health insurance premiums may increase up to 15 percent for group business and up to 75 percent to 100 percent for the individual market after the reform legislation is fully implemented. However, to offset some of the premium increases, many residents of the state may be eligible to receive the benefit of premium credits and cost-sharing subsidies. In addition, some small employers may be eligible for tax credits through 2015. Actuaries for Blue Cross Blue Shield estimated the increases in premium costs based on the following factors:

- Mandated benefit changes.
- Transfer of higher-cost pools, such as CHAND, into the general pool.
- Antiselection due to the individual mandate having a weak penalty allowing an individual to purchase insurance only when needed.
- Health insurance taxes and fees imposed under the legislation.
- Pharmaceutical cost increases due to higher taxes and fees.

In addition to the those factors, representatives of Blue Cross Blue Shield of North Dakota expressed concern with provisions of the legislation that eliminate annual and lifetime limits on benefits and provisions that will increase administrative costs. There also were concerns with respect to the uncertainty of federal rules regarding key definitions and the timeline for implementation of the law.

The committee received testimony from business owners and farm groups regarding the impact of the federal health care reform legislation. Concerns were expressed regarding the cost of mandated coverage for employees and whether employers would be forced to cut the number of employees so that the mandates would not apply. Because of the potential costs to employers, it was suggested that employers may be

forced to reduce existing health care coverage or eliminate coverage and pay the federal tax penalty, which may be more cost-effective. There also were concerns with the administrative costs of complying with the federal legislation. Supporters of the legislation contended consumers will benefit through the elimination of preexisting conditions and coverage limits. In addition, it was contended the tax credits available to individuals and small businesses will help pay for coverage for those who may not have been able to afford coverage previously.

The committee also received information regarding the operation of community health care centers in the state and the children's defense fund.

The committee considered a concurrent resolution draft to direct the Legislative Management to continue studying the impact of federal health care reform legislation during the next interim. Proponents of the concurrent resolution draft contended continued study is necessary to monitor developments during implementation of the federal health care reform legislation.

Recommendation and Work Product

The committee recommends House Concurrent Resolution No. 3003 to direct the Legislative Management to continue studying the impact of federal health care reform legislation during the next interim.

The chairman of the committee developed and the committee approved the following summary, which identifies the anticipated costs to the state of implementation of the federal health care reform legislation:

- State population - 645,000.
- Number of residents without insurance - 45,000 (7 percent):

  15,000 (2.3 percent) qualify for current programs (Medicare, CHIP, CHAND, etc.) but have not applied.

  15,000 (2.3 percent) select not to be covered by an employer or the individual market due to cost but have the capacity to afford coverage.

  15,000 (2.3 percent) are uninsured due to preexisting conditions, lifetime maximum, etc.

- Assumptions used in developing cost matrix:

  Cost increases limited to federal health care bill only - No inflators applied for increases in health care costs, utilization, salaries, technology, or other factors (2010-19).

  Cost increases based on actuarial analyses - Estimates should be used with caution, as amounts will change when additional guidance and policy decisions are made at the federal level.

  Numbers used for Blue Cross Blue Shield of North Dakota (80 plus percentage of market) assume all covered individuals remain in "grandfathered" plans throughout 2010-19. Premiums would increase as "grandfathered" status is removed.

  Numbers used for PERS and political subdivisions assume all covered employees remain in "grandfathered" plans throughout 2010-19. Premiums would increase as "grandfathered" status is removed.

  Grants and subsidies may offset some projected cost increases.

					Blue Cross/Blue Shield			
	Insurance Dept.	**Human Services - Medicaid Expansion**	**Health Dept.**	**NDPERS**	**Grandfathered**	**Non-Grandfathered**	**Political Subdivisions**	**Total**
2010		$725,942		Current Contract	$20,200,000	$51,500,000	Current Contract	$20,925,942
2011		998,634		$470,700	30,300,000	61,900,000	$151,800	31,921,134
2012	$676,018*	7,223,354		990,000	30,300,000	61,900,000	303,600	39,492,972
2013	1,429,287	9,156,319		1,029,000	30,300,000	61,900,000	314,100	42,228,706
2014	1,763,543	6,595,088		1,068,000	85,500,000	180,100,000	324,600	95,251,231
2015	1,704,116	8,408,645		1,068,000	124,900,000	223,500,000	324,600	136,405,361
2016	1,704,116	8,922,201		1,068,000	165,400,000	268,000,000	324,600	177,418,917
2017	1,704,116	18,335,757		1,068,000	165,400,000	268,000,000	324,600	186,832,473
2018	1,704,116	21,149,314		1,068,000	165,400,000	268,000,000	324,600	189,646,030
2019	1,704,116	24,462,870		1,068,000	165,400,000	268,000,000	324,600	192,959,586
Total	$12,389,428	$105,978,124		$8,897,700	$983,100,000	$1,712,800,000	$2,717,100	**$1,113,082,352**
	*Does not include IT costs to be determined	DHS May have other costs related to Child Support Enforcement, Behavioral Health Services and/or delivery of services at the Human Service Centers		Assumes grand-fathered status 2010-19	Assumes all policies grandfathered 2010-19	Assumes all plans not grandfathered 2010-19		

	Medicare Frontier Provision	Bank of North Dakota
2010	$65,000,000	Family Ed. Loan Program
2011	65,000,000	Loss of 80% of Student Loan Program
2012	65,000,000	
2013	65,000,000	
2014	65,000,000	
2015	65,000,000	
2016	65,000,000	
2017	65,000,000	
2018	65,000,000	
2019	65,000,000	
Total	$650,000,000 6 Hospitals/ Physicians - Minus Offset	
	Five * States qualify	
	Projected adjustments - Decreases in Medicare Reimbursement ($260,000,000)	

Related Grants Applied for		
Insurance Department	Human Services Medicaid Expansion	NDPERS
Rate Review Grant $1,000,000	Nursing Home Diversion and Transition Grant $399,000	Subsidy - Pre-Medicare Retirees Health Insurance $1,200,000/yr. through 2013 based on funds available

WHISTLEBLOWER PROTECTION STUDY

Background

North Dakota Law

In general, a whistleblower protection law protects an employee who reports misconduct or a violation of law by an employer or a fellow employee. Under North Dakota law, there are two provisions that commonly are referred to as whistleblower protection laws.

Section 34-01-20 provides protection to any employee who in good faith reports a violation or suspected violation of a federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official; who is requested by a public body or official to participate in an investigation, a hearing, or an inquiry; or who refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. Section 34-11.1-04, before being amended in 2009 by the Legislative Assembly, provided that a state or political subdivision employee "may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:

a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
b. The job-related misuse of public resources."

Section 34-11.1-04 further provided that "[a]n employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board."

Senate Bill No. 2267 (2009) amended Section 34 -11.1-04 to allow any employee of the state, except an employee under the jurisdiction of the State Board of Higher Education or the judicial branch, who claims reprisal for filing a report under that section to appeal in the manner prescribed for a classified employee grievance under Chapter 54-44.3. Under that chapter, an employee may appeal a decision by an agency for a hearing before an administrative law judge appointed by the director of the Office of Administrative Hearings. An employee may appeal a decision of an administrative law judge to the district court under Chapter 28-32.

Senate Bill No. 2267 also established a procedure under which the Labor Department is required to receive complaints of violations of Section 34-11.1-04 and attempt to obtain voluntary compliance with the section through informal advice, negotiation, or conciliation. To receive assistance from the Labor Department, an individual claiming to be aggrieved must file a complaint with the department within 300 days after the alleged act of wrongdoing.

2009 Failed Legislation

In 2009 the Legislative Assembly considered Senate Bill No. 2258, which failed to pass the Senate. The bill would have established an investigative procedure for a report of a violation of law or misuse of public resources by a public employee by allowing an employee to file a report with the employee's employer, an employee organization, the Attorney General, the State Auditor, the Labor Commissioner, or a law enforcement official. The bill would have required the recipient of the report to forward the report to the State Auditor for investigation. After concluding the investigation, the State Auditor would have been required to provide a report to the employee and the employer that would include a determination of whether the alleged violation of law or the alleged job-related misuse of public resources occurred, whether the employer would be required to take any actions to remedy the alleged violation or misuse of public funds, and the process through which the State Auditor would track whether the employer implemented remedial actions that may have been required. Senate Bill No. 2258 would have allowed an employee who claims reprisal for filing a report to bring a civil action for injunctive relief or actual damages, or both, within 180 days after the alleged violation or completion of any grievance procedure available to the employee under a collective bargaining agreement, employment contract, or other policy. The bill provided that if a court were to determine that the employer violated the employee's rights, the court could order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of the remedies. In addition, the bill would have authorized a court to award reasonable attorney's fees to the prevailing party.

Senate Bill No. 2258 also would have required the Labor Department, upon receipt of a timely complaint of

reprisal for filing a report, to determine whether the employee was seeking assistance in obtaining voluntary assistance or whether the employee was seeking an administrative decision. If the employee was seeking voluntary assistance, the bill would have required the Labor Department to determine whether the complaint may be substantiated. The bill would have required the department to attempt to obtain voluntary compliance through informal advice, negotiation, or conciliation if the complaint was determined to be substantiated. If the employee had sought an administrative decision, the bill would have required the Labor Department to review a complaint and issue an administrative decision, which may have included an order of reinstatement, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of the remedies. Under the proposal, an employee would have been prohibited from bringing a separate civil action for injunctive relief if the employee sought an administrative decision.

Whistleblower Protection Laws in Neighboring States

Under Minnesota law, an employer may not discharge, discipline, threaten, discriminate against, or penalize an employee regarding compensation or terms, conditions, location, or privileges of employment because the employee in good faith reports a violation or suspected violation of a law or refuses to participate in any activity that the employee in good faith believes to be a violation of law. Under Minnesota law, a discharged employee must request within 15 days a written explanation of the reason for the discharge. If the employer fails to notify a discharged employee of the true reason for the discharge within 10 working days of the employee's request, the employer may be fined $25 per day, up to $750. The employee may bring a civil action to recover damages and attorney's fees and may receive injunctive relief.

The state of Montana does not have a general whistleblower protection law. Under the Montana law addressing the filing of false financial claims, a governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of the filing of a false claim. Under that law, a governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency.

The state of South Dakota does not have a whistleblower protection law.

Testimony and Committee Considerations

The committee received testimony from representatives of public employees contending the whistleblower protection law is ambiguous and lacks strength to protect public employees, and recent events had demonstrated the law failed to protect employees who had filed complaints. The representative of public employees testified that he receives several inquiries a week from public employees who are questioning the appropriateness of various workplace actions, and he frequently advises employees not to go forward with complaints because of the potential of negative consequences for pursuing complaints. The testimony indicated that most complaints or inquiries are related to supervisors not coming to work on time or to similar issues that may cost the state money.

The committee received testimony from the director of the Risk Management Division of the Office of Management and Budget which indicated handling whistleblower complaints through an administrative process, such as that implemented by the 2009 Legislative Assembly through Senate Bill No. 2267, is a quick and inexpensive means through which to address complaints. Although the law does not allow the Attorney General to order the reinstatement of an employee who has been terminated for filing a workplace complaint, the administrative process allows an administrative law judge to order a remedy such as reinstatement. The testimony suggested there have been numerous instances in which an employee who filed a complaint that was found not to be a violation of law was not terminated from employment.

The committee considered a bill draft that would have established a procedure for the review of reports of violations of misuse of public resources or job-related violations of law. The bill draft would have required an agency head who received a report of a job-related violation of law or job-related misuse of public funds to review the report, provide the employee with a written response, and take other appropriate action if warranted under the circumstances. The bill draft would have required the agency head to seek written guidance from legal counsel if the written report from the employee raised a legitimate question on the proper interpretation and application of law. In addition, the bill draft would have required the Attorney General or a state's attorney upon receiving a report of a job-related violation of law or job-related misuse of public funds to review the report and determine whether the concerns raised involve internal management decisions or issues of policy left to the discretion of an agency head. If the report involved issues of policy or management, the Attorney General or the state's attorney would have been required to provide the employee with a general written explanation. If the report involved a question on the proper interpretation and application of law, the Attorney General or the state's attorney would have been required to provide written guidance to the agency head, with a copy provided to the employee.

There was concern expressed by committee members with respect to the protection of individuals accused of job-related violations of the law and the lack of confidentiality of accusations against those individuals. In addition, concerns were raised with respect to individuals being able to use the whistleblower protection law to circumvent legitimate disciplinary actions for substandard work performance by filing a

complaint over minor issues under the whistleblower protection law.

Proponents of strengthening the whistleblower protection law argued that although the bill draft may not be perfect, something should be done to address problems with the law while additional study is conducted.

STATE FIRE MARSHAL REPORT

Section 18-13-02 requires the State Fire Marshal to make findings with respect to the effectiveness of the law on reduced ignition propensity standards for cigarettes and make any recommendations for legislation necessary to improve that law. The State Fire Marshal reported because the law governing reduced ignition propensity standards for cigarettes did not become effective until August 1, 2010, the State Fire Marshal was unable to make any recommendations.

WORKFORCE SAFETY AND INSURANCE REPORT

Pursuant to Section 65-06.2-09, the committee received a report from Workforce Safety and Insurance regarding the status of the modified workers' compensation program performance audit and the Roughrider Industries safety audit. The modified workers' compensation program was established in 1997 to provide workers' compensation coverage for inmates in prison work programs and to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program. The report indicated Roughrider Industries was found to be in compliance with all components of the Workforce Safety and Insurance risk management program. The audit of the modified workers' compensation coverage program indicated that the program is effective, and the desired results are being achieved. The committee received information indicating that since the program was implemented, no injury claims have been submitted under the modified program established for prison work programs.

The committee considered a bill draft to provide for a biennial safety audit of the Roughrider Industries work programs and a biennial performance audit of the modified workers' compensation coverage program and provide that if there are any recommendations for change in either program as a result of the audit, Workforce Safety and Insurance shall submit a report with the recommendation to the Legislative Management before the commencement of the next regular session of the Legislative Assembly. Proponents of the proposal contended it is not necessary to keep providing reports that contain no recommendations for change in the program. However, if a biennial report were to include a recommendation, a report could be presented to the Legislative Management.

Recommendation

The committee recommends House Bill No. 1037 to remove the requirement that Workforce Safety and Insurance provide a report with recommendations based on the performance and safety audits to the Legislative Management no later than 30 days before the commencement of each regular session of the Legislative Assembly, unless either audit includes any recommendation for change.

INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code Section 54-35-15.1 requires the Legislative Management, during each biennium, to appoint an Information Technology Committee in the same manner as the Legislative Management appoints other interim committees. The committee is to consist of six members of the House of Representatives and five members of the Senate. The Chief Information Officer of the state serves as an ex officio nonvoting member of the committee.

Section 54-35-15.2 requires the committee to:

1. Meet at least once each calendar quarter.
2. Receive a report from the Chief Information Officer of the state at each meeting.
3. Review the business plan of the Information Technology Department.
4. Review macro-level issues relating to information technology.
5. Review the activities of the Information Technology Department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Review information technology efficiency and security.
9. Review established or proposed information technology programs and information technology acquisitions by the executive and judicial branches.
10. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected agency regarding any major information technology project of an executive branch agency. A major project is a project with a total cost of $250,000 or more.
11. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the Information Technology Department and the affected institution regarding any major project of the State Board of Higher Education or any institution under the control of the State Board of Higher Education. A major project is a project that significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project and is a project with a cost of $250,000 or more in one biennium or a total cost of $500,000 or more.
12. Receive and review information from the Information Technology Department and the affected agency regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $250,000 as determined necessary by the Information Technology Department.
13. Receive a report from the Chief Information Officer regarding the recommendation of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues.
14. Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the affected legislative or judicial branch agency regarding any information technology project of the legislative or judicial branch with a total cost of $250,000 or more.
15. Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any information technology project or information technology plan. The section provides that if the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure or funding appropriated for a project or plan. The Office of Management and Budget may suspend the expenditure authority if the office agrees with the recommendation of the committee.

Section 54-35-15.4 provides that the Information Technology Committee may request the State Auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

The committee was also assigned the responsibility for receiving:

- A report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system, including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance pursuant to Section 15.1-02-18.
- A report from the Chief Information Officer regarding the coordination of services with political subdivisions and a report from the Chief Information Officer and the commissioner of the

State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education pursuant to Section 54-59-12.

- A report from the Information Technology Department regarding any executive branch agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards pursuant to Section 54-59-13.
- The annual report from the Information Technology Department pursuant to Section 54-59-19.
- A report from the Information Technology Department regarding the department's level of outsourcing information technology services, former employees who provide consulting services, and the department's efforts to assist in the creation of North Dakota technology-related companies pursuant to Section 9 of Senate Bill No. 2021 (2009).
- Periodic reports from the Health Information Technology Office and the Health Information Technology Advisory Committee on the status of health information technology activities pursuant to Section 7 of Senate Bill No. 2332 (2009).

Committee members were Senators Larry J. Robinson (Chairman), Randel Christmann, Joe Miller, Tom Seymour, and Rich Wardner; Representatives Craig Headland, Corey Mock, Bob Skarphol, Gary R. Sukut, Robin Weisz, and Lonny Winrich; and Chief Information Officer Lisa Feldner. Senator Aaron Krauter was also a member of the committee until his resignation from the Legislative Assembly in September 2009.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

Section 54-59-02.1 requires the State Information Technology Advisory Committee to prioritize major computer software projects. The Chief Information Officer is to submit recommendations of the State Information Technology Advisory Committee regarding major computer software projects to the Information Technology Committee, Office of Management and Budget, and Appropriations Committees of the Legislative Assembly.

The committee received information from the Information Technology Department regarding the prioritization of proposed major computer software projects for the 2011-13 biennium and learned executive branch agencies developed and internally prioritized information technology projects and submitted their information technology plans to the department. The Information Technology Department compiled the information technology projects over $250,000 by funding source. State agencies self-scored the projects based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. The Information Technology Department presented the self-scoring to the State Information Technology Advisory Committee for the committee's prioritization.

The State Information Technology Advisory Committee met on September 20, 2010, and prioritized major executive branch computer software projects proposed for the 2011-13 biennium as follows:

General Fund Projects

	Project	Agency	Preliminary Project Budget	
			General Fund	Total Funds
1	Eligibility determination systems replacement	Department of Human Services	$23,395,890	$46,937,379
2	Dispatch console replacement system	Adjutant General	$1,100,000	$1,100,000
3	Commercial vehicle information exchange window	Highway Patrol	$185,000	$474,000
4	Statewide Longitudinal Data System Initiative	Information Technology Department	$3,293,225	$3,364,162
5	Automated routing application	Highway Patrol	$467,000	$1,194,000
6	Statewide baseline map - Phase 2	Adjutant General	$400,000	$900,000

Special Funds Projects

	Project	Agency	Preliminary Project Budget
1	Criminal history repository replacement	Attorney General's office	$450,000
2	Driver's license redesign	Department of Transportation	$17,322,400
3	Loan servicing for Department of Education direct student loans	Bank of North Dakota	$2,220,000
4	Road construction estimating program rewrite	Department of Transportation	$537,680
5	Billing system	Information Technology Department	$767,726

Federal Fund Projects

	Project	Agency	Preliminary Project Budget
1	Vocational rehabilitation information technology system replacement	Department of Human Services	$2,896,480
2	Workforce Data Quality Initiative	Job Service North Dakota	$1,036,000

The Information Technology Department will revise the prioritized listing to reflect those projects that are included in the Governor's 2011-13 biennium budget and will present the revised priority listing to the Appropriations Committees of the 2011 Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC PLAN

Section 54-59-06 requires the Information Technology Department to develop and maintain a business plan. Pursuant to that directive, the department prepared a strategic business plan for the 2009-11 biennium. The plan includes 23 objectives relating to the department's mission to provide leadership and knowledge to assist

customers in achieving information technology goals. The following is a summary of the objectives included in the plan:

Perspectives	Objectives
Customer	Meet customer service delivery expectations Provide an "easy to do business with" environment Provide a positive customer experience Build and maintain strong relationships Provide information technology services as needed Provide technology direction
Financial	Make cost-effective investments Manage revenue Align rates with customer business needs Manage statewide technology spending
Internal processes	Standardize processes and approaches Deliver reliable and available services Deliver solutions on schedule Deliver projects on time and on budget Capture and follow up on customer feedback Continuous sharing and understanding of business needs Plan for technology change Provide guidance on information technology best practices Deploy enterprise solutions
Learning and growth	Attract and hire quality people Maintain high employee satisfaction Support employee growth and development Retain talented employees

INFORMATION TECHNOLOGY DEPARTMENT ANNUAL REPORT

Section 54-59-19 requires the Information Technology Department to prepare an annual report on information technology projects, services, plans, and benefits. Pursuant to that directive the department prepared a report that includes an executive summary, rate comparisons, and information on the department's performance.

The committee learned the department tracks and monitors the cost and revenue for each service to ensure that one service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors other entities' rates for similar services in an effort to maintain quality services at a fair price. The following is a summary of rate comparisons for the services that generate a majority of the department's total revenue:

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information and Telecommunications Rates	Montana Information Technology Services Division Rates	Minnesota Office of Enterprise Technology Rates
Central computer central processing unit (CPU rates)	**Batch CPU** - $1.07 per second	**Batch CPU** - $1.59 per second	**Batch CPU** - $2.96 per second	**Batch CPU** - N/A
	CICS CPU - $1.07 per second	**CICS CPU** - $1.59 per second	**CICS CPU** - $.84 per second	**CICS CPU** - N/A
	ADABAS CPU - $1.17 per second	**ADABAS CPU** - $1.59 per second	**ADABAS CPU** - $1.73 per second	**ADABAS CPU** - N/A
	TSO CPU - $1.07 per second	**TSO CPU** - $1.59 per second	**TSO CPU** - $3.17 per second	**TSO CPU** - N/A
Network fees	**Device fee** - $43.50 per device per month	**Device fee** - $57 per device per month	**Device fee** - $117.63 per device per month	**Device fee** - $45.50 per device per month
	DSL service - Actual cost (ranges from $40 to $199)	**DSL service** - N/A	**DSL service** - $297.67 per month	**DSL service** - Cost plus 15 percent
	ETS-5 service - $890 per month	**ETS-5 service** - N/A	**ETS-5 service** - $1,989.25 per month	**ETS-5 service** - Cost plus $140 (access) $150/Mbps (bandwidth)
		Access fee - $53 per device per month		**Access fee** - $99 per device per month
Telephone fees	**Telephone line** - $24 per device per month (Voice over Internet Protocol)	**Telephone line** - $13 per device per month	**Telephone line** - $55.93 per device per month (Voice over Internet Protocol)	**Telephone line** - $54 per device per month (Voice over Internet Protocol)
	Speaker function - $3 per month	**Speaker function** - Actual cost	**Speaker function** - Included in fee	**Speaker function** - Actual cost
	Display function - $5 per month	**Display function** - Actual cost	**Display function** - Included in fee	**Display function** - Actual cost
	Voice mail - Unlimited - $5 per month	**Voice mail** - Unlimited - $6 per month	**Voice mail** - Three-minute limit - $7.04 per month Additional minutes - $8.87 per month	**Voice mail** - Unlimited - $6 per month
Long-distance fees	**In state** - $.07 per minute	**In state** - $.09 per minute	**In state** - $.06 per minute	**In state** - $.049 per minute
	Out of state - $.07 per minute	**Out of state** - $.10 per minute	**Out of state** - $.06 per minute	**Out of state** - $.07 per minute
	800 service - $.07 per minute	**800 service** - $.10 per minute	**800 service** - $.08 per minute	**800 service** - $.13 per minute

Software Development		
	Location	Billing Rate Per Hour of Service
Information Technology Department	Bismarck, North Dakota	$63 to $79
Applied Engineering, Inc.	Bismarck, North Dakota	$75 to $92
Eide Bailly LLP	Bismarck, North Dakota	$95 to $190
Enterprise Solutions, Inc.	Bismarck, North Dakota	$95 to $140
Nexus Innovations	Bismarck, North Dakota	$95 to $125
Vision Technology, Inc.	Bismarck, North Dakota	$70 to $75
Everest Consultants, Inc.	Beaverton, Oregon	$63 to $99
CIBER, Inc.	Vancouver, Washington	$55 to $180
Compuware	Plymouth, Minnesota	$80 to $151
Maximus	Rancho Cordova, California	$145 to $190

The report included information on the department's performance measures. The following is an update on the department's performance measures:

Performance Measures	Baseline (Previous Years)	Current Status (June 2010)	Target
Acceptable level of total net assets (ratio of total net assets to average monthly expenditures)	2007 - 1.7 2008 - 1.4 2009 - 1.7	2.4	< or = to 2
Percentage of Information Technology Department rates reported in the annual report that are competitive	2007 - 100% 2008 - 100% 2009 - 100%	100%	100%
Total number of customer projects and service requests completed:	2009		
• Service requests	33,243	34,247	N/A
• Incidents	55,421	60,835	N/A
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2008 - 2009		
• Value	86.9% - 83.9%	87.0%	92%
• Timeliness	86.9% - 92.2%	91.6%	97%
• Quality	93% - 95.3%	95.7%	97%
• Knowledge	97% - 96.8%	95.8%	98%
• Professionalism and courtesy	99% - 100%	98.9%	100%
Employee satisfaction index	2007-08 - 2.13 2008-09 - 2.14	2.21	2
Controllable employee turnover	2008 - 6.8% 2009 - 3.6%	5%	Below 6%
Percentage of service levels met	100%	100%	100%
Percentage of strategic business plan objectives completed or on schedule	2008 - 43% 2009 - 61%	47%	75%

POLICIES, STANDARDS, AND GUIDELINES

Section 54-59-09 requires the Information Technology Department to develop statewide information technology policies, standards, and guidelines based upon information received from state agencies and institutions. Except institutions under the control of the State Board of Higher Education, each executive branch agency and institution is required to comply with the policies and standards developed by the department. Information technology policies, standards, and guidelines must be reviewed by the State Information Technology Advisory Committee.

The committee learned the department has adopted policies, standards, and guidelines in a variety of areas and continues to update and adopt new policies, standards, and guidelines as necessary. The policies, standards, and guidelines are categorized as follows:

Category	Number of Policies, Standards, and Guidelines
Information Technology Department	5
Application software	3
Communications	2
Data and information	5
Desktop	6
Document management	6
E-government	9
Network	7
Security	13
Servers and storage	1
Total	57

INFORMATION TECHNOLOGY PLANS

Section 54-59-11 requires every executive branch agency, except institutions under the control of the State Board of Higher Education, unless the Chief Information Officer grants an exemption to prepare an information technology plan. The plan must be prepared based on guidelines developed by the department and must be submitted to the department by August 15 of each even-numbered year unless the Chief Information Officer grants an extension. The department is required to review each entity's plan for compliance with statewide information technology policies and standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches are required to file their information technology plans with the department by August 15 of each even-numbered year. Based on the information technology plans, the department must prepare a statewide information technology plan. The statewide information technology plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments.

The committee learned the department will present its statewide information technology plan to the 2011 Legislative Assembly. The plan will communicate a shared vision between state government, higher education, and elementary and secondary education; outline strategic initiatives; and establish goals and

strategies that will serve as a basis for more detailed planning efforts.

MAJOR INFORMATION TECHNOLOGY PROJECTS

The committee is authorized to review any information technology project or information technology plan. If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of money appropriated for the project or plan. In addition, the committee is directed to review a project startup and project closeout report for any major information technology project. A major information technology project is defined in Section 54-33-15.2 to be an executive, judicial, or legislative branch project with a cost of $250,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

Project Management Lifecycle Processes

The committee learned the project management life cycle for major information technology projects consists of five processes--project origination, project initiation, project planning, project execution and control, and project closeout. The following is a summary of the project management life cycle processes and activities relating to planning and executing major information technology projects:

Project Management Lifecycle Processes	Activities
Project origination - Evaluate projects proposed for the next planning cycle and reach a consensus on the projects to be selected	1. Agencies identify projects to create a product or develop a service that can solve a problem or address a need within the agency. 2. Agencies develop a project proposal, including a business case and proposed solution, for each proposed project. The business case should include information on project description, project objectives, business need or problem, proposed solution, consistency and fit with the organization's mission, cost-benefit analysis, and project risks. 3. Agencies prioritize information technology projects and submit their information technology budgets into the budget analysis and reporting system (BARS). In most cases, the budget for a project is the initial cost estimate. The most accurate project budget is not available until the completion of the project planning process. 4. The State Information Technology Advisory Committee--a committee created by Section 54-59-07--reviews information regarding proposed major information technology projects for executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and the judicial and legislative branches, and ranks those projects that receive the committee's affirmative recommendation. The following is a summary of the steps involved in the prioritization: a. The Information Technology Department sorts proposed information technology projects over $250,000 into the following three categories: (1) Projects requesting funds from the **general fund** for the investment or the ongoing maintenance costs. (2) Projects requesting funds from **federal fund** sources for the investment or the ongoing maintenance costs. (3) Projects requesting funds from other **special fund** sources for the investment or the ongoing maintenance costs. b. State agencies **self-score projects over $250,000** based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. c. The Information Technology Department presents a preliminary report, including information regarding agencies' self-scoring, to the State Information Technology Advisory Committee. In addition, agencies present a short summary of each project to the committee. d. The State Information Technology Advisory Committee prioritizes projects for each of the categories. e. The Information Technology Department forwards the prioritized listings for each of the categories to the Information Technology Committee and the Office of Management and Budget for consideration in the development of the Governor's budget recommendation. 5. The Governor selects projects to be funded in the executive budget recommendation. 6. The Information Technology Department revises the prioritized listings to reflect those projects that are funded in the Governor's budget recommendation and presents the listing to the Appropriations Committees of the Legislative Assembly. 7. The Legislative Assembly selects projects to be funded in the legislatively approved budget. 8. Agencies refine the business cases as appropriate for those projects funded in the legislatively approved budget. 9. Agencies submit a copy of the final business case for a project to the Information Technology Department.

Project Management Lifecycle Processes	Activities
Project initiation - Define the overall parameters of a project and establish the appropriate project management and quality environment required to complete the project	10. Agencies initiate the project by identifying the project sponsor, project manager, and project team; developing a project charter; and conducting a project kickoff meeting. A project charter is developed and executed to initiate a project and to secure commitment for the resources, including human, financial, and equipment, necessary for the project. A project charter should include information on project background, project scope, measurable project objectives, required resources, constraints, assumptions, and project authority.
	11. Agencies submit a copy of the project charter to the Information Technology Department prior to any project expenditures or signing of vendor contracts.
Project planning - Define the exact parameters of a project and ensure that all the prerequisites for the project execution and control are in place	12. Agencies complete planning for a project by completing and approving a project plan. A project plan should identify specific milestones throughout the project and their associated cost, schedule, and deliverables. At this time, agencies complete the budget for the project. This project budget is considered to be the baseline budget for all cost comparisons.
	13. Agencies submit a copy of the project plan to the Information Technology Department after the plan has been approved by the project sponsor.
	14. Agencies present a project startup report to the Information Technology Committee. A project startup report summarizes information from the business case, project charter, and project plan, including project description, project objectives, business need or problem, cost-benefit analysis, and project risks.
Project execution and control - Develop the project or service that the project was commissioned to deliver	15. Agencies launch the project. The assigned project manager is to manage every aspect of the project to ensure that all the work is being performed correctly and on time.
	16. Agencies submit a project status report to the Information Technology Department on a quarterly basis or when a project milestone exceeds 20 percent of planned cost or schedule. The status report includes an executive summary and information on budget, schedule, issues, risks, project accomplishments, and upcoming activities.
	17. Each calendar quarter the Information Technology Department prepares a large project summary report that summarizes the performance of large information technology projects and submits the report to the Information Technology Committee.
	18. Agencies formally acknowledge that all deliverables produced during project execution and control have been completed, tested, accepted, and approved by the project sponsor.
Project closeout - Assess the project and derive any lessons learned and best practices to be applied to future projects	19. Agencies complete a postimplementation review for the project in order to assess the success of the project and to capture historical information. The postimplementation review should include information on the measurement and attainment of project objectives, project budget and schedule variances, and lessons learned.
	20. Agencies notify the State Information Technology Advisory Committee if the actual cost for the project exceeded the original budget by 20 percent or more or if the final project completion date extended beyond the original project scheduled completion date by 20 percent or more.
	21. Agencies submit a copy of the postimplementation review to the Information Technology Department.
	22. Agencies present a project closeout report to the Information Technology Committee. A project closeout report summarizes information from the postimplementation review, including the project objectives achieved, project budget and schedule variances, and lessons learned.

Review of Major Information Technology Projects

The committee received and reviewed quarterly reports of major information technology projects compiled by the Information Technology Department, project startup and project closeout reports relating to major information technology projects, and other information regarding specific information technology projects. The following is a summary of the project startup and project closeout reports received by the committee:

Project Startup Reports				
Agency	Project Name	Project Description	Estimated Cost	Estimated Completion Date
Secretary of State	Data processing system	Implementation of an off-the-shelf business system to replace the agency's legacy mainframe and AS400-based applications to support the agency's Uniform Commercial Code and licensing and registration processes	$714,553	November 2009
Office of Management and Budget	ConnectND system - Business intelligence project	Implementation of a reporting solution for state agencies regarding the financial and human capital management data stored in the ConnectND system	$929,531	September 2009
Information Technology Department	Statewide automated victim information and notification (SAVIN) system	Implementation of an automated victim information and notification system to provide crime victims and concerned citizens with free, prompt, and confidential notification and information regarding the status of offenders	$1,410,160	June 2010

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Judicial branch	Unified court information system replacement project - Phase 2	Implementation of the Odyssey case management environment to replace all case management functionality in the current unified court information system	$8,310,000	July 2011
Department of Human Services	Office Vision mail replacement project	Implementation of a replacement system for the Office Vision mail system that was used for creating and editing documents on the mainframe	$426,018	June 2009
Job Service North Dakota	Unemployment insurance modernization directional study	Completion of an analysis of the current state of the state's unemployment insurance technology system and a recommendation of a realistic direction for the modernization of the system	$815,280	July 2009
Bank of North Dakota	Cash management project	Replacement of the Bank's current online system with a cash management system	$255,625	February 2010
Department of Public Instruction	Direct certification process project	Implementation of a direct certification process for simplifying the process of providing free meals at school to low-income children	$717,178	June 2010
Department of Emergency Services	Computer-aided dispatch system project	Acquisition and implementation of a computer-aided dispatch system	$1,794,276	June 2010
Legislative Assembly	Legislative enterprise system North Dakota (LEGEND)	Replacement of legislative applications	$5,637,066	April 2011
Department of Public Instruction	North Dakota state longitudinal education data system planning project	Gathering and analyzing information to produce a project plan and schedule for the execution of the North Dakota state longitudinal education data system	$387,900	July 2010
Tax Department	Oil and gas integration and taxpayer application program project	Migration of the oil and gas tax system into the GenTax integrated system and the implementation of the taxpayer access program	$1,500,000	October 2010
Office of Management and Budget	Enterprise learning management project	Implementation of the PeopleSoft enterprise learning management module to provide an online, self-service, and administrative employee training module for state agencies	$425,580	June 2010
Department of Transportation	Facial recognition	Incorporation of additional functionality into the digital driver's license system to allow for the automated verification of new photography captures against the existing driver's license image database	$481,121	April 2010
Seed Department	Application software upgrade project	Upgrade of the current application software from obsolete development tools to current tools meeting state technology standards	$367,000	December 2012
Information Technology Department	Broadband mapping project	Development of a comprehensive, interactive, and searchable inventory map of existing broadband service connectivity available in the state	$782,951	October 2010
Bank of North Dakota	Student loan lender system project	Replacement of the Bank's student loan lender system	$2,302,858	March 2011
Department of Human Services	Minimum dataset (MDS) project	Modification of the department's MDS legacy system to incorporate the new MDS 3.0 assessment	$836,626	September 2010
Department of Corrections and Rehabilitation	Inmate trust and commissary system project	Acquisition and implementation of an inmate banking trust and commissary system	$568,500	July 2010
Attorney General	State Crime Laboratory information management system project	Implementation of a State Crime Laboratory management system to manage cases, track and process evidence, and maintain records	$700,000	October 2011
Department of Public Instruction	Child nutrition and food distribution system replacement project (NDFoods)	Replacement of the existing child nutrition and food distribution system with a more user-friendly and easier-to-maintain system	$1,173,035	September 2012
Department of Transportation	Position information questionnaire (PIQ) rewrite project	Rewrite of the PIQ system from a Lotus Notes application to a web-based platform	$297,225	January 2011
Department of Emergency Services	Statewide seamless base map - Phase 1	Establishment of a statewide, seamless, spatially accurate, and complete base map dataset of the state	$1,959,809	September 2012
Job Service North Dakota	Unemployment insurance consortium project	A federally funded consortium to develop and administer a study to determine the feasibility of designing, developing, and implementing a core unemployment insurance benefit system that could be used by multiple state agencies	$408,508	December 2011
Job Service North Dakota	Unemployment insurance Internet claim entry application reemployment enhancements project	Enhancements to the unemployment insurance Internet claim entry application to incorporate the delivery of individualized intensive reemployment services, provide automated notification of suitable job openings, expand self-service capabilities, and provide automated task reminders and event notifications	$615,025	June 2011

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Office of Management and Budget	ConnectND system - Absence management	Implementation of an online, self-service absence request and management application	Actual expenditures of $511,000, compared to the budget of $551,000	Completed in January 2009, approximately two months later than the scheduled completion date of November 2008
Information Technology Department	Mainframe migration project	Migration of applications from the mainframe to other information technology platforms	Actual expenditures of $5,762,037, compared to the budget of $8,271,274	Completed in November 2008 approximately seven months before the revised scheduled completion date of June 2009 and approximately 17 months later than the original scheduled completion date of June 2007
Information Technology Department	Criminal Justice Information Sharing (CJIS) Initiative portal 2.0 project	Modification of the CJIS portal so the addition of new record types is completed by configuration rather than by development	Actual expenditures of $234,149, compared to the budget of $327,032	Completed within the scheduled completion date of December 2008
Legislative Council	Legislative applications replacement system project - Phase 2	Replacement of legislative applications	Actual expenditures of $2,428,848	The project was terminated.
Judicial branch	Unified court information system replacement project - Phase 1	Selection of a vendor and development of an implementation budget for replacement of the unified court information system	Actual expenditures of $176,988, compared to the budget of $200,000	Completed within the scheduled completion date of October 2008
Department of Public Instruction	Special education individualized education program project	Implementation of a statewide web-based special education case management system	Actual expenditures of $891,879, compared to the budget of $913,264	Completed in February 2009, approximately two months later than the scheduled completion date of December 2008
Department of Human Services	Continuous Medicaid eligibility project	Modification of the department's eligibility system--Vision--to accommodate continuous Medicaid eligibility for children under 19 years of age who are either categorically needy or optionally categorically needy	Actual expenditures of $294,449, compared to the budget of $378,472	Completed within the scheduled completion date of November 2008
Department of Human Services	Electronic benefits transfer reprocurement project	Reprocurement of a vendor to provide electronic benefits transfer of food stamps benefits	Actual expenditures of $130,278, compared to the budget of $320,000	Completed in June 2009 approximately two months before the scheduled completion date of August 2009
Department of Human Services	Office Vision mail replacement project	Implementation of a replacement system for the Office Vision mail system that was used for creating and editing documents on the mainframe	Actual expenditures of $399,339, compared to the budget of $426,018	Completed within the scheduled completion date of June 2009
Department of Human Services	Master client index	Implementation of a client identity matching system to assist the department in linking client demographic information between systems	Actual expenditures of $836,245, compared to the budget of $815,393	Completed in June 2009 approximately two months after the scheduled completion date of April 2009
Department of Public Instruction	Foundation aid system rewrite project	Rewrite of the system used for calculating state school aid payments to school districts to a modern architecture	Actual expenditures of $359,159, compared to the budget of $326,167	Completed in November 2009 approximately three months after the scheduled completion date of August 2009
Job Service North Dakota	Appeals and UI Easy program enhancements project	Enhancements to the UI Easy and UI ICE applications to provide electronic appeals hearing reminders and additional self-service capabilities	Actual expenditures of $243,144, compared to the budget of $258,790	Completed in July 2009 approximately nine months after the scheduled completion date of October 2008
Job Service North Dakota	Unemployment insurance modernization directional study	Completion of an analysis of the current state of the state's unemployment insurance technology system and a recommendation of a realistic direction for the modernization of the system	Actual expenditures of $773,503, compared to the budget of $815,280	Completed within the scheduled completion date of July 2009

Project Closeout Reports				
Department of Corrections and Rehabilitation	Electronic medical records system	Implementation of an electronic medical records system that allows the agency to administer, manage, and record all aspects of medical care provided to both adult and juvenile offenders	Actual expenditures of $918,952, compared to the budget of $1,000,000	Completed in February 2010 approximately four months later than the scheduled completion date of September 2009
State Treasurer's office	Tax distribution rewrite	Rewrite of the existing outstanding checks and tax distribution applications to a new language for a more user-friendly and easy-to-maintain environment	Actual expenditures of $480,491, compared to the budget of $515,560	Completed in March 2010 approximately 10 months later than the scheduled completion date of May 2009
Office of Management and Budget	Enterprise learning management project	Implementation of the PeopleSoft enterprise learning management module to provide an online, self-service, and administrative employee training module for state agencies	Actual expenditures of $390,579, compared to the baseline budget of $425,580	Completed within the scheduled completion date of June 2010
Department of Human Services	Children and Family Services front-end project	Implementation of a single case management system for the department's child abuse and neglect, in-home treatment and wraparound, and foster care programs	Actual expenditures of $988,946, compared to the original baseline budget of $1,027,257 and the final baseline budget of $938,946	Completed in 24 months, 7 months longer than the baseline schedule of 17 months and 5 months longer than the final baseline schedule of 19 months
Bank of North Dakota	Cash management project	Replacement of the Bank's current online system with a cash management system	Actual expenditures of $247,764, compared to the budget of $255,625	Completed in May 2010, approximately three months later than estimated
Department of Transportation	Facial recognition	Incorporation of additional functionality into the digital driver's license system to allow for the automated verification of new photography captures against the existing driver's license image database	Actual expenditures of $485,775, compared to the budget of $481,121	Completed within the scheduled completion date of April 2010
Department of Emergency Services	Computer-aided dispatch system project	Acquisition and implementation of a computer-aided dispatch system	Actual expenditures of $1,704,086, compared to the budget of $1,794,276	Completed within the scheduled completion date of June 2010
Information Technology Department	Broadband mapping project	Development of a comprehensive, interactive, and searchable inventory map of existing broadband service connectivity available in the state	Actual expenditures of $779,266, compared to the budget of $782,951	Completed within the scheduled completion date of October 2010
Office of Management and Budget	ConnectND system - Business intelligence project	Implementation of a reporting solution for state agencies regarding the financial and human capital management data stored in the ConnectND system	Actual expenditures of $853,117, compared to the budget of $929,531	Completed within the final baseline schedule of March 2010

Legislative Assembly - LEGEND

The committee learned the LEGEND project consists of a partnership with the Propylon group and the Information Technology Department. The project began in June 2009, and the new system is scheduled to be operational for the 2011 legislative session. As of October 2010, the project is 17 percent under budget and 2 percent behind schedule.

Department of Human Services - Medicaid Management Information System Rewrite Project

The committee learned the 2005 Legislative Assembly appropriated $29,188,859, of which $3,667,820 was state matching funds from the permanent oil tax trust fund, to the Department of Human Services to rewrite the Medicaid management information system. The 2007 Legislative Assembly provided additional funding of $31,072,641, of which $3,643,133 is state matching funds from the general fund, for the project. The department did not spend all of the state matching funds during the 2005-07 biennium and was authorized to continue the unspent funds into the 2007-09 biennium for the project. As a result, the department used these funds to obtain additional federal matching funds of $2,267,871 for the project. Total funding available for the project is:

	State Match	Federal Funds	Total
2005-07 application	$3,667,820	$25,521,039	$29,188,859
2007-09 application	3,643,133	27,429,508	31,072,641
Additional federal matching funds		2,267,871	2,267,871
Total	$7,310,953	$55,218,418	$62,529,371

The committee learned ACS--the project vendor--has revised the project schedule by extending the completion date from May 2010 to June 2012 due to product development issues. The Department of Human Services has completed and accepted all revised detailed project workplans and is in the process of revising the integrated project workplan and finalizing cost negotiations with ACS. The following is a summary of project expenditures through August 2010:

Description	Budget	Spent Through August 2010	Remaining
General fund	$3,643,133	$2,651,027	$992,106
Federal funds	55,218,418	33,079,533	22,138,885
Other funds	3,667,820	1,828,252	1,839,568
Total	$62,529,371	$37,558,812	$24,970,559

Workforce Safety and Insurance - Information Technology Transformation Project

The committee learned Workforce Safety and Insurance is in the process of replacing its existing core business applications with a commercial, off-the-shelf integrated software solution. The project has experienced schedule delays due to difficulties completing technical specifications and corresponding custom development. The production implementation dates have been revised to January 2012 for claims and September 2012 for policy. Previously, production implementation dates were June 2011 for claims and November 2011 for policy.

The committee learned the agency has made changes and adjustments to increase the likelihood of success of the project, including the hiring of a senior adviser to the director who is responsible for objectively reviewing the project, making recommendations to senior executives, and finding solutions for project issues. The agency has agreed to provide the project vendor--Aon eSolutions--additional funding of $2.677 million to complete the project and to provide additional functionality. The $2.677 million is in addition to the $14 million appropriated for the project.

Secretary of State - Data Processing System Project

The committee learned the Secretary of State's office is in the process of implementing an off-the-shelf business system to replace the agency's legacy mainframe and AS400-based applications to support the agency's Uniform Commercial Code and licensing and registration processes. The project is behind schedule due to the project vendor experiencing financial challenges. The agency is working with the project vendor on a recovery plan that will allow the project to resume and be completed during the 2011-13 biennium.

State Department of Health - Disease Surveillance Management System Project

The committee learned the State Department of Health is in the process of implementing a flexible and configurable, commercial, off-the-shelf, electronic disease surveillance and outbreak management system. The system became operational on January 1, 2010, with all but four of the components functioning. One of the four components not operational on January 1, 2010, was completed on October 1, 2010. The remaining three components are pending completion and are not critical to the department's operations. The department anticipates all components to be operational by December 31, 2010.

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

Section 54-59-12 provides for the review and coordination of information technology between the Information Technology Department, higher education, and political subdivisions. In addition, Sections 15-10-44 and 54-35-15.2 provide that the Information Technology Committee is to receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects. Pursuant to these directives, the committee received information from representatives of higher education, elementary and secondary education, and political subdivisions regarding information technology activities.

Higher Education

Planning, Services, and Major Projects

The committee learned Section 15-10-44 provides that the State Board of Higher Education manage and regulate information technology planning and services for institutions under its control. Pursuant to this section, the State Board of Higher Education has adopted a policy that requires the preparation and approval by the board of a comprehensive information technology plan along with periodic progress reports to the board.

The committee learned the North Dakota University System's information technology strategic plan consists of the following goals:

- Goal 1 - Improve information technology-enabled business processes and services while providing and managing resources to align with strategic goals.
- Goal 2 - Support systemwide infrastructure needs.
- Goal 3 - Improve and enhance collaborative efforts.
- Goal 4 - Improve and enhance student learning.
- Goal 5 - Increase customer focus.

The committee learned recent University System information technology accomplishments include:

- Establishment of a Microsoft campus agreement.
- Implementation of Wimba--a suite of interactive, web-based software collaboration and communication tools.
- Implementation of Moodle--an open source learning management system.
- Implementation of TouchNet software--a software that allows campuses to accept online credit card payments.
- Expansion of desktop virus protection software to include spyware prevention.

The committee learned the University System is in the process of implementing an integrated services initiative. The objectives of the initiative are to:

- Improve the integration of systemwide applications.
- Provide a more consistent end-user experience for students, faculty, and staff.
- Improve coordination of resources, applications, and processes.

- Provide better support for collaborative students.

The committee learned the integrated services initiative consists of multiple projects, including:

- Project 1 - Phased migration to an active directory single forest/domain model.
- Project 2 - Implementation of a common e-mail and calendar system.
- Project 3 - Implementation of a common framework for unified communications.

Northern Tier Network

The committee received status reports on Northern Tier Network activities from representatives of the University System. The committee learned the Northern Tier Network Consortium, which was created in 2003, seeks to develop and sustain advanced networking capabilities in order to support the education, research, and economic vitality of the Northern Tier region of the United States. The Northern Tier Network project is the implementation of an ultra high-speed information technology network from Seattle, Washington, to Chicago, Illinois, and from Winnipeg, Manitoba, to Omaha, Nebraska. North Dakota's segments border Montana to the west, Minneapolis, Minnesota, to the east, the Canadian border to the north, and South Dakota to the south.

The committee learned the 2007 Legislative Assembly appropriated $2,773,800 from the permanent oil tax trust fund for the Northern Tier Network project. The University System used the funding to complete and operate the segments from Montana to Minneapolis, Minnesota, and from Fargo to Grand Forks. In August 2010 the University System and the South Dakota Board of Regents were awarded a federal grant for fiber optics connections between Fargo and Aberdeen, South Dakota. In September 2010 the University System and the University of Washington in Seattle, Washington, were awarded a federal grant to add services along the Northern Tier Network path between Seattle and Chicago, Illinois. As a result of the grants, the University System has revised its 2011-13 budget request for Northern Tier Network operations from $1,691,399 to $1,572,200.

Internet2

The committee learned Internet2 is a research and development consortium led by higher education institutions in partnership with private industry and other government agencies to develop and deploy advanced network applications and technologies. North Dakota State University and the University of North Dakota are members of Internet2, and the other University System higher education institutions, kindergarten through grade 12, and the Flatlands Disability Network--a dedicated high-speed network linking disability service providers and groups--are sponsored education group participants. Internet2 facilitates high-performance applications not possible on the Internet, supports development of revolutionary applications, allows the transfer of large datasets quickly, and allows testing of new technologies.

2011-13 Budget Request

The committee learned the University System's budget request for the 2011-13 biennium includes specific information technology-related items totaling $28.3 million. The following is a summary of specific information technology-related budget request items for the 2011-13 biennium beyond regular parity or cost-to-continue funding requests:

Technology maintenance enhancement - Network improvements and cost increases to expand disk and processor capacity	$3,200,000
Technology infrastructure pool - Funding for licensing of software, maintenance, limited personnel support for new technologies, applications, or services	4,300,000
Technology infrastructure enhancements - One-time funding to enhance efficiency, foster collaboration, and improve student success	3,200,000
Joint data center facility - One-time funding for construction of a new data center facility	17,600,000
Total	$28,300,000

Elementary and Secondary Education

The committee learned the Educational Technology Council is created by Section 54-59-17 for coordinating education technology initiatives for elementary and secondary education. The council provides governance for EduTech and the Center for Distance Education. The council's initiatives include:

- Technology plans - All public elementary and secondary education technology plans were received, reviewed, and approved by the council and approved by the United States Department of Education.
- Classroom transformation grants - The council awarded 22 classroom transformation grants totaling $349,000 to schools in the 2009-11 biennium. The grants require a 50 percent local school match.
- Video classroom grants - The council awarded video classroom grants totaling $255,000 to six video consortiums in the 2009-11 biennium. The grants require a 60 percent local match.

The committee learned elementary and secondary education schools are self-organized into 10 interactive television consortiums. The schools have made decisions regarding the upgrading of video equipment on their own or as part of a group decision at the interactive television consortium level. There is a wide variety of video equipment in schools. Some equipment is current, but most is out-of-date. The average cost per classroom upgrade is estimated to be $24,000. The total estimated cost for upgrading the out-of-date equipment in classrooms and related state-level network resources is $7,502,000.

The committee learned EduTech provides information technology services and professional development to North Dakota elementary and secondary schools. EduTech's mission is to provide educators and students with opportunities that extend learning in the classroom and that focus on the use of technology to improve student achievement.

The committee learned all elementary and secondary education schools are required to use the PowerSchool

application as their student information system. As of October 2010, the application is being used in 125 schools. An additional 14 schools will begin using the application by September 2011. All schools will be using the application by June 30, 2013.

The committee learned the Center for Distance Education is North Dakota's online distance education high school. The center's goal is to make online learning an integral part of each North Dakota student's educational experience. The center has begun a process of redefining its mission and making technical advancements in its delivery of online courses to high school students.

The committee learned anticipated elementary and secondary information technology budget needs for the 2011-13 biennium include:

- An increase in funding from the general fund for the video grants program to help schools update video classroom transmission equipment.
- An increase in funding from the general fund for the Center for Distance Education's reorganization.
- Full funding of the PowerSchool application for all public schools.

Political Subdivisions

The committee learned the coordination of information technology services between the Information Technology Department and political subdivisions is essential to the efficient delivery of services. The Information Technology Department through the statewide information technology network provides the network connectivity, Internet access, firewall security, videoconferencing, and secure wireless access that supports the delivery of services. Information Technology Department personnel meet regularly with the technology resources group of the North Dakota Association of Counties to discuss issues and strategize about future improvements and enhancements. Information Technology Department personnel have also provided training to city representatives regarding the state's comprehensive records management program, which provides information on records retention and methods of records disposal for all city departments.

INFORMATION TECHNOLOGY OUTSOURCING SERVICES

The committee received a report from the Information Technology Department regarding the department's level of outsourcing information technology services, former employees who provide consulting services, and the department's efforts to assist in the creation of North Dakota technology-related companies pursuant to Section 9 of Senate Bill No. 2021 (2009). The committee learned the department outsources approximately 60 percent of its 2009-11 operational budget. The following is a summary of the department's outsourcing for the 2009-11 biennium:

	Core Services[1]	Demand-Driven or Other Services[2]	Total
Internal expenditures[3]	$24,482,604	$23,931,273	$48,413,877
Vendor payments (outsource payments)[4]	55,138,262	310,065	55,448,327
Professional services (outsource payments)	12,489,395	3,812,869	16,302,264
Total	$92,110,261	$28,054,207	$120,164,468
Percentage of outsource payments	73%	15%	60%

[1]Services considered essential for the Information Technology Department to maintain security and cost-effectiveness.

[2]Services offered due to demand or other requirements.

[3]Salaries, professional development, rent, and other expenditures, which the department considers not to be outsource payments.

[4]Software, hardware, and other supplies expenditures. The department considers these expenditures to be outsource expenditures.

The committee learned from January 1, 2004, to June 30, 2010, three employees have resigned from the department to provide information technology consulting services in the private sector. Of the three, two have been rehired by the department.

The committee learned the department has been involved in a number of initiatives to assist North Dakota technology companies, including:

- Establishment of an information technology vendor pool, which makes it easier for vendors to contract with the state for information technology services.
- Establishment of information technology standards that allow all vendors to compete on an equal basis.
- Membership in the Information Technology Council of North Dakota.
- Attendance at meetings with potential companies considering locating in North Dakota.

OTHER INFORMATION

Information Technology Department 2011-13 Budget Request

The committee received information from representatives of the Information Technology Department regarding the department's budget request for the 2011-13 biennium. The committee learned the department's budget request for the 2011-13 biennium includes several optional package adjustments, including adjustments relating to federal funding for E911 and broadband mapping grants, continued implementation of the Statewide Longitudinal Data System Initiative, continued development of new applications for the CJIS Initiative, and establishment and operation of a health information exchange.

Information Technology Department 2011-13 Information Technology Rates

The committee received information from representatives of the Information Technology Department regarding technology rates for the 2011-13 biennium. The committee learned increases in rates are due to:

- Providing anticipated salary and health insurance increases for department employees.
- Projected growth in services, including network bandwidth, increased Internet capacity, and additional video bridging.
- Anticipated increases in vendor contract rates.

The following is a summary of select rates for the 2011-13 biennium:

Description of Service	2009-11 Budget Rate	2011-13 Budget Rate
Architect	$79.00 per hour	$89.00 per hour
Analyst	$63.00 per hour	$67.00 per hour
Analyst II/project manager	$69.00 per hour	$75.00 per hour
Senior analyst/senior project manager	$75.00 per hour	$86.00 per hour
Technology fee	$43.50 per FTE position	$49.00 per FTE position
Wide area network access - Broadband add-on	N/A	$50 to $230 per circuit

Information Technology Department Vulnerability Assessment and Penetration Testing

The committee learned the State Auditor's office contracts for a vulnerability assessment and penetration test of the Information Technology Department each biennium. For the 2009-11 biennium, ManTech Security and Mission Assurance performed the assessment and testing consisting of the following five major project tasks:

Project Task	Description
External vulnerability assessment	An external vulnerability assessment is intended to provide an organization with information on the overall security and risk of the network from an external point of view. External assessment procedures focus on performing Internet research, discovering systems connected to the Internet, and probing the system to discover misconfigurations and vulnerabilities.
Internal vulnerability assessment	An internal vulnerability assessment is intended to provide an organization with information on the overall security and risk of the systems and network from an internal point of view. Internal assessment procedures focus on examining systems for vulnerabilities, misconfigurations, and implementation flaws that may expose the system to additional risk.
Application security assessment	An application security assessment gives an organization an opportunity to thoroughly and realistically evaluate the security posture of an application and its associated components.
Wireless security assessment	A wireless security assessment seeks to identify unauthorized wireless devices and access points within an organization. It may also be used to verify proper setup and controls of approved wireless configurations.
Penetration testing	Penetration testing is intended to provide an organization with information on the overall security and risk picture of its network from an external or an internal point of view. Penetration testing focuses on gaining access to systems under an organization's control.

The committee learned vulnerabilities discovered were assigned a risk identifier that was relative to the network or system under test. The three risk levels used are defined as follows:

- High risk - A high likelihood of compromise of system-level access exists. If exploited, this vulnerability may allow total control of the system.
- Medium risk - A vulnerability exists that may provide access to critical data or user-level access to a system. This vulnerability may lead to further exploitation.
- Low risk - A vulnerability exists that may disclose information but does not directly lead to the exploitation of a system.

The following is a summary of the findings and recommendations:

Project Task	Findings	Recommendations
External vulnerability assessment	Overall, 109 systems at state agencies or organizations were found to have at least one vulnerability that would allow an external attacker potential access that could lead to the compromise of the state's network from the Internet. There were 14 unique vulnerability findings, including 9 high-risk, 3 medium-risk, and 2 low-risk.	Filter inbound access to all state systems
Internal vulnerability assessment	Overall, 440 systems were found to have at least one vulnerability that would allow an attacker with potential access that could lead to the compromise of the state's network and sensitive information. There were 46 unique vulnerability findings, including 23 high-risk, 19 medium-risk, and 4 low-risk.	Segment public facing servers from internal network Internal segregation of critical servers and development systems Implement outbound access control Require use of encrypted protocols for remote management
Application security assessment	The applications assessed were: Game and Fish Department online services, Department of Transportation driver's license online services, the CJIS system, and the Job Service North Dakota unemployment insurance Internet claim entry. There were eight unique vulnerability findings, including four high-risk, two medium-risk, and two low-risk.	None
Wireless security assessment	The following locations were assessed: • State Capitol, 600 East Boulevard Avenue • Department of Transportation, 608 East Boulevard Avenue • State Water Commission, 900 East Boulevard Avenue • Bank of North Dakota, 1200 Memorial Highway No high-, medium-, or low-risk vulnerabilities were identified during the assessment of these locations.	None
Penetration testing	The test team was able to gain full administrative control of 14 systems. In addition, using social engineering techniques, the test team was very successful in its attempts to gain user account credentials and showed the susceptibility of users to execute malicious content downloaded from the Internet or access unknown media on their local systems.	None

Statewide Longitudinal Data System

The committee received information from representatives of the Information Technology Department regarding the Statewide Longitudinal Data System Initiative. The committee learned Section 15.1-02-18 establishes a Statewide Longitudinal Data System Committee consisting of:

- The chancellor of the State Board of Higher Education.
- The Superintendent of Public Instruction.
- The Chief Information Officer.
- The director of the Department of Career and Technical Education.
- The director of Job Service North Dakota.
- The Commissioner of Commerce.
- The executive director of the Department of Human Services.
- The director of the Educational Technology Council.
- The director of the North Dakota Council of Educational Leaders.
- The director of the North Dakota Workforce Development Council.
- Two members of the Legislative Assembly.

The Statewide Longitudinal Data System Committee is to establish policy and adopt rules relating to access to and the collection, storage, and sharing of information and the systems necessary to perform those functions.

The committee learned a statewide longitudinal data system is required of states in order to receive elementary and secondary education federal fiscal stimulus funds. The following is a summary of efforts currently underway regarding the initiative:

- The Department of Public Instruction has been awarded approximately $6.7 million of federal funds for implementing an elementary and secondary education longitudinal data system. This system will provide information to the statewide longitudinal data system.
- Authorizations and data sharing agreements have been received for the unemployment insurance datasets. These datasets will serve as the foundation for workforce measurements.
- Staff is in the process of matching elementary and secondary education data and unemployment insurance data. This effort will identify linkages needed between elementary and secondary education systems and workforce systems.
- A data exchange with the Federal Employee Data Exchange System is being established to identify program participants that are federally employed.
- An interface with the National Student Clearinghouse has been authorized and will be established to determine elementary and secondary education enrollment in higher education across the nation.

Health Information Technology

The committee received information from representatives of the Information Technology Department regarding health information technology. The committee learned Senate Bill No. 2332 (2009), codified as Section 54-59-25, establishes a Health Information Technology Advisory Committee consisting of the Chief Information Officer, the State Health Officer, the Governor, the executive director of the Department of Human Services, and individuals appointed by the Governor and the State Health Officer to represent a broad range of public and private health information technology stakeholders. The bill also establishes a Health Information Technology Office in the Information Technology Department.

In March 2010, the Information Technology Department was awarded a four-year grant totaling $5,343,733 from the Office of the National Coordinator for Health Information Technology for implementing a statewide health information technology and exchange network. The match requirements of the grant are as follows:

Year 1	$0 of state funds for each federal dollar
Year 2	$1 of state funds for each $10 of federal dollars
Year 3	$1 of state funds for each $7 of federal dollars
Year 4	$1 of state funds for each $3 of federal dollars

The committee learned the Health Information Technology Office and the Health Information Technology Advisory Committee completed a strategic plan and an operational plan for the statewide health information technology and exchange network. Both plans were submitted to the federal Office of the National Coordinator for Health Information Technology in September 2010. The plans must be approved by the Office of the National Coordinator for Health Information Technology before implementation of the statewide network.

The committee learned Senate Bill No. 2332 (2009) established a health information technology planning revolving loan fund at the Bank of North Dakota for providing low-interest loans to health care entities to assist those entities in improving health information technology infrastructure. Section 9 of Senate Bill No. 2332 provided for a transfer of $5 million from the current earnings and accumulated undivided profits of the Bank of North Dakota to the loan fund contingent upon actual general fund revenues for the period July 1, 2007, through September 30, 2009, exceeding estimates by at least $22.5 million. The condition was met, and the $5 million has been made available. The Health Information Technology Office received 14 applications requesting a total of $7.2 million in loans. The Health Information Technology Advisory Committee approved 12 applications at 90 percent of each applicant's loan request for a total of $5 million.

COMMITTEE CONSIDERATIONS

The committee considered but did not recommend a bill draft relating to the definition of a major information technology project. The bill draft would have amended Sections 54-35-15.2, 54-59-05, and 54-59-23 to change the definition of a large information technology project from a project with a total cost of $250,000 or more to a project with a total cost of $500,000 or more.

COMMITTEE RECOMMENDATIONS

The committee recommends Senate Bill No. 2036 to amend Sections 54-59-02 and 54-59-05(13) relating to the responsibilities and powers and duties of the Information Technology Department to provide that the department may connect to a wide area network service for health information exchange in accordance with federal requirements for health information technology exchange.

The committee recommends Senate Bill No. 2037 relating to the establishment and participation in the health information exchange. The bill draft creates four new sections of the North Dakota Century Code relating to the confidentiality of health information under the health information exchange and participation in the health information exchange and amends Sections 54-59-25 and 54-59-26 relating to the Health Information Technology Advisory Committee and the Health Information Technology Office.

JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned six studies. Section 1 of House Bill No. 1497 (2009) directed a study of the feasibility and desirability of transferring from the county to the state the responsibility for the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals under North Dakota Century Code Chapter 25-03.3.

Section 1 of Senate Bill No. 2370 (2009) directed a study of the feasibility and desirability of transferring from the county to the state the responsibility for the cost of expert examinations and the cost and responsibility for providing legal counsel in mental health commitment cases. Because of the similarity in the studies directed by the two bills, the two studies were combined into one comprehensive study.

Section 3 of Senate Bill No. 2421 (2009) directed a study of the involuntary mental health commitment procedures under Chapter 25-03.1. Section 2 of Senate Bill No. 2420 (2009) directed a study of the establishment of an ombudsman program for consumers of child and family services.

Section 9 of House Bill No. 1012 (2009) directed a study of the Department of Human Services' child support enforcement program. Section 1 of Senate Bill No. 2420 (2009) directed a study of child support determination of income and support obligations, the feasibility and desirability of the establishment of an ombudsman program, and coordination of services and resources for parents. Because of the similarity in the studies directed by the two bills, the two studies also were combined into one comprehensive study.

The Legislative Management delegated to the committee the responsibility to receive four reports. The first, under Section 19-03.1-44, is a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. The second, under Section 54-61-03, is an annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices. The third, under Section 50-06-31, is a report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services. The fourth is a report from the Department of Corrections and Rehabilitation regarding the short-term shelter and assessment pilot program for at-risk children and youth in the South Central Judicial District during the 2009-11 biennium.

Committee members were Representatives Shirley Meyer (Chairman), Stacey Dahl, Lois Delmore, Chris Griffin, Nancy Johnson, Joyce M. Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, and Lisa Wolf and Senators Arden C. Anderson, Tom Fiebiger, Tom Fischer, Judy Lee, Stanley W. Lyson, Tim Mathern, Curtis Olafson, and Jim Pomeroy.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

MENTAL HEALTH AND SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT COSTS STUDY

North Dakota Indigent Defense

The Sixth Amendment to the United States Constitution guarantees to all individuals accused of a crime the right to counsel in their defense. The United States Supreme Court has interpreted the Sixth Amendment to require each state to provide counsel to any individual accused of a crime before the individual can be sentenced to jail or prison if that individual cannot afford to hire an attorney. The right to counsel in North Dakota is established by North Dakota Supreme Court rules.

Prior to January 1, 2006, North Dakota indigent defense services were provided primarily by attorneys working under contract with judges. Court-appointed attorneys handled those cases in which the contract attorneys had a conflict of interest. The state's indigent defense system was administered through the judiciary and was almost 100 percent state-funded. The one exception was that each of the 53 counties remained responsible for funding assigned counsel representation of indigent defendants facing mental health commitment proceedings or proceedings for the commitment of sexually dangerous individuals.

In 2005 the Legislative Assembly enacted legislation that removed the responsibility for the administration of indigent defense from the judiciary and established a statewide Commission on Legal Counsel for Indigents. The legislation--codified as Chapter 54-61--provides that the Commission on Legal Counsel for Indigents is charged with developing and monitoring the delivery process for state-funded defense services for indigents accused of crimes. The director of the Commission on Legal Counsel for Indigents is responsible for administering and coordinating indigent defense services in the state.

North Dakota Law Regarding Indigent Legal Expenses and Other Costs

Indigent Defense for Criminal Cases

Chapter 54-61 provides that the Commission on Legal Counsel for Indigents is responsible for providing state-funded defense services for indigents accused of crimes which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. Under this chapter, the commission is authorized to establish and implement a process of contracting for legal counsel services for

indigents and to establish public defender offices in the regions of the state as the commission considers necessary and appropriate. Section 54-61-02(2) provides that "[u]pon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund."

For the 2009-11 biennium, the appropriation for the Commission on Legal Counsel for Indigents is $11,420,365, which includes $1,950,217 in special funds. The commission has 30 full-time equivalent (FTE) positions.

Mental Health Commitment Costs

North Dakota law regarding involuntary mental health commitments provides that the respondent has certain rights. Section 25-03.1-09 provides that the respondent has a right to a preliminary hearing; a treatment hearing; be present at the hearings; counsel before the hearings and any court-ordered examination; an independent evaluation; and, if the respondent is indigent, counsel and an independent expert examiner. This section provides that in the case of an indigent respondent, the legal counsel and independent expert examiner is to be provided at the expense of the county that is the respondent's place of residence. Section 25-03.1-13, which also provides that "[e]very respondent under this chapter is entitled to legal counsel", provides that if the court determines that the respondent is indigent, the court is required to order that appointed counsel be compensated from county funds of the county from which the respondent is a resident.

Sexually Dangerous Individuals Legal Counsel Costs

For cases involving the commitment of sexually dangerous individuals, Section 25-03.3-09 provides that every respondent is entitled to legal counsel. This section provides that if the court determines that the respondent is indigent, the court is required to appoint counsel and order that the appointed counsel be compensated by the county that is the respondent's place of residence.

Testimony and Committee Considerations

The committee received extensive testimony from the North Dakota Association of Counties, the State Hospital, several state's attorneys, the Commission on Legal Counsel for Indigents, a county auditor, and a county administrator regarding the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals under Chapter 25-03.3 and in cases involving mental health commitments under Chapter 25-03.1. The committee's deliberations focused on two issues--the counties' caseload and costs with regard to civil commitment cases and the feasibility and desirability of transferring the civil commitment responsibility to the state.

County Caseload and Costs

The committee received testimony regarding the number of mental health and sexually dangerous individual civil commitment cases handled by the counties each year as well as estimates on the costs to the counties incurred as a result of providing the legal counsel services.

With regard to mental health commitment cases, in 2007 and 2008 there were 1,200 to 1,300 mental health commitment petitions filed each year in the state. According to the testimony, 1,067 individuals were committed to the State Hospital for mental health reasons in 2007 and 1,076 individuals were committed in 2008. It was noted that the vast majority of these cases involved both the state's attorney and an indigent defense lawyer, both of whom are paid by the counties. Regarding the cost of legal counsel for the mental health commitment cases, information provided by the Supreme Court indicated that the counties spent $262,243 on legal fees for indigent mental health clients in 2007 and $333,663 in 2008.

With regard to sexually dangerous individual commitment cases, there were 17 sexually dangerous individual commitment filings in 2008 and 15 in 2009. Of the 15 sexually dangerous individual commitment filings in 2009, 2 were committed to the State Hospital. The testimony indicated there are usually about 15 to 20 filings per year, and from those about 8 individuals to 10 individuals are committed.

There are 61 individuals currently committed to the State Hospital as sexually dangerous individuals. It was noted that each of those committed individuals is entitled to an annual review of their case. An attorney is required for all new cases and for annual reviews. With regard to the counties' costs of providing legal counsel in sexually dangerous individual commitment cases, the testimony indicated that because counties typically include funding for legal costs for mental health commitments, guardians ad litem, and sexually dangerous individual commitments in one budget, it is difficult for counties to identify the actual cost of sexually dangerous individual commitment cases.

The committee received testimony from several counties regarding costs of providing legal counsel in sexually dangerous individual commitment cases. Grand Forks County indicated that in 2007, 2008, and 2009, the county spent $28,807, $21,538, and $7,105, respectively on sexually dangerous individual commitment cases and $30,000 for each of those years on mental health commitment cases. Testimony from Williams County indicated the county spent $29,727 on mental health, chemical dependency, and sexually dangerous individual commitment cases in 2007 and $30,800 in 2008. Other testimony indicated that Burleigh County spent $16,000 in 2008 and $31,000 in 2009 on costs associated with sexually dangerous individual cases. In 2009 Cass County paid $31,380 for indigent defense in both mental health and sexually dangerous individual commitment cases. Divide County

spent $608 on civil commitment costs in 2008 and $8,635 in 2009.

With regard to the state's cost for sexually dangerous individual commitments, the testimony from the State Hospital indicated that sexually dangerous individual commitments cost the state about $10 million per biennium. Included in this amount is the cost of expert examinations for sexually dangerous individual commitment cases at a cost of about $352,000 per biennium. Since 1997, 12 individuals have been released from the sexually dangerous individual treatment program at the State Hospital. The State Hospital's sexually dangerous individual treatment program has a maximum capacity of 85.

Responsibility for Legal Counsel in Civil Commitment Cases

The committee received extensive testimony from the North Dakota Association of Counties regarding the reasons that the costs and responsibilities incurred by the county in providing legal counsel in sexually dangerous individual commitment cases and mental health commitment cases should be shifted to the state. The testimony noted that because the county state's attorney represents the county in commitment cases and the respondent's attorney is paid by the county, conflict of interest issues exist. The testimony also noted that the issue of conflict of interest arises because the court appoints the legal counsel that represents the respondent. The testimony cited the following reasons for shifting the responsibility of providing legal defense counsel for those individuals for whom the state's attorney is pursuing for civil commitment:

- There is no direct oversight on the county level for evaluating the delivered services.
- Even if oversight could be established, the county officials lack the expertise and qualifications to make those determinations.
- While not staggering, costs can be difficult to budget for especially in the smaller counties in which the demand for services is more sporadic. Additionally, counties lack the true leverage to negotiate fees when appointments have already been made by the court system.
- There already exists a statewide system designed to deliver and monitor indigent defense counsel.

The testimony indicated that an attorney needs a very different level of expertise for handling a sexually dangerous individual commitment case than for a criminal case. It was noted that because the individual potentially could be committed for life, it is important to have an attorney with expertise in that area defending that individual. It was noted that some counties may have only one commitment case in five years. The testimony indicated that having 53 different ways of handling commitment cases is a very inefficient way of providing legal counsel and suggested it would be much more efficient to have one entity responsible for providing legal counsel for all commitment cases in the state. The committee also received testimony regarding the shortage of attorneys who are willing to take civil commitment cases, especially in the western part of the state.

Other testimony indicated that while counties may be able to control the expenditure of funds on mental health commitment hearings, the lack of uniformity and control in sexually dangerous individual commitment cases is problematic. It was noted that while larger counties are able to plan for the wide variation in the sexually dangerous individual commitment case expenditures, most counties in the state are not equipped for the lack of predictability and lack of uniformity in expenditures. According to the testimony, a natural consequence of this unpredictability in expenditures is that a county may base the decision to pursue a civil commitment solely on the availability of funding for defense counsel. Conversely, it was noted, the state budgeting process leaves more room for the unpredictability of expenditures. According to the testimony, an unexpected $20,000 is more easily planned for and absorbed in a state-level budget than in a county-level budget. Besides the cost issue, it was noted the issue of the treatment of mentally ill individuals is one of statewide importance. The testimony suggested that the state is far better equipped to administer the defense attorney component of the civil commitment process than are the 53 separate counties of the state. The testimony indicated that if provided with the necessary additional money and staff, the Commission on Legal Counsel for Indigents is the agency best-suited for providing the legal services for mental health and sexually dangerous individual commitment cases.

The committee also received testimony from the Commission on Legal Counsel for Indigents regarding the prospect of having the commission assume the responsibility for providing legal counsel in cases involving mental health commitments and the commitment of sexually dangerous individuals. The Commission on Legal Counsel for Indigents, which has 30 full-time employees--3 of whom are in administration--administers and oversees 16 staff attorneys and about 42 private attorney contractors. Through the attorneys, the commission provides legal services for indigents for about 9,500 criminal cases per year. It was estimated that sexually dangerous individual commitment cases take an average of 50 or more hours of an attorney's time compared to an average of 15 hours for a criminal case. When comparing the two types of civil commitment cases, the testimony indicated that sexually dangerous individual commitment cases require more expertise and present more challenges than mental health commitment cases. It was noted, however, that mental health cases operate on extremely tight deadlines.

The testimony indicated that the commission's attorneys are not trained to handle civil commitment cases; therefore, if the commission assumed this responsibility, funding would be necessary for extra staff, training, office space, and equipment. It was also noted that because part of the commission's budget is funded by fees paid by criminal defendants, the costs of legal counsel for civil commitment cases could not be commingled with criminal defense costs. According to

the testimony, if the commission was required to assume civil commitment cases, a separate budget would be necessary for criminal and civil cases, new attorneys would need to be hired, and another administrator would be needed to handle a separate, civil division of the commission. The testimony indicated that the commission would prefer that the responsibility for civil commitments not be given to the Commission on Legal Counsel for Indigents.

The committee considered a bill draft that would transfer from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subjects of sexually dangerous individual commitment proceedings. The bill draft includes an appropriation of $814,293 for the 2011-13 biennium. Because there are about 1,400 mental health cases in the state per year versus 20 sexually dangerous individual commitment cases, the committee made the decision to focus the bill draft on the sexually dangerous offender commitment cases.

Testimony from the Commission on Legal Counsel for Indigents regarding the bill draft indicated the commission adopted a resolution that indicated that the commission does not wish to expand the legal services currently being provided. According to the testimony, the resolution provided that if the commission is given the responsibility for the sexually dangerous individual cases, the commission would request a separate division and budget for those cases. The testimony indicated that the appropriation amount includes funding for one FTE position housed in the Valley City office and four attorneys located across the state.

Testimony from a county administrator in support of the bill draft indicated that there is a need for a more efficient system of providing legal counsel in civil commitment cases in the state. The testimony noted that although the counties select attorneys for these cases, the counties do not provide training and have not developed any standards for selecting attorneys. According to the testimony, the commission is the perfect program to make sure sexually dangerous individual cases are handled properly. It was noted that although the counties would prefer that both mental health and sexually dangerous individual cases be handled by the state, the transfer of these responsibilities may have to be done in steps. The testimony also noted that it is likely that 100 percent of the counties would support moving costs and responsibility for mental health and sexually dangerous individual cases to the state.

Testimony from the State Hospital regarding the bill draft indicated that the patient is the one who would benefit by having legal counsel with more expertise in handling the commitment cases; however, it was noted that in most cases the individuals have been receiving adequate legal counsel.

The North Dakota Association of Counties also expressed support for the bill draft. The testimony indicated that the counties would like the state to take responsibility for all civil cases, but the sexually dangerous individual commitment cases is a step in the right direction. It was noted that the sexually dangerous individual commitment process is a relatively new process and new cost for counties, the cost of which is much more erratic for counties than mental health commitment cases. It was also noted that certain counties, such as Burleigh and Stutsman, bear the majority of the costs because of the location of the State Penitentiary and the State Hospital. The testimony indicated that the Commission on Legal Counsel for Indigents is the best agency to handle the sexually dangerous individual commitment cases.

The committee also received testimony in support of the bill draft from a county auditor. According to the testimony, there are few attorneys willing to take sexually dangerous individual commitment cases. The testimony noted that the district court administrator is reluctant to get involved in the attorney selection process because it is a county function. The testimony also indicated that the state's attorney is reluctant to get involved in the legal defense selection because the state's attorney is prosecuting the case. As a result, it was noted the responsibility then falls to the county auditor. The testimony indicated that county auditors do not have the expertise needed to select a qualified attorney for the commitment cases.

Other testimony in support of the bill draft indicated that it is very difficult in the western counties to find attorneys who are willing to take these cases. It was noted that attorneys who can make three times as much in oil-related cases do not want to take sexually dangerous individual commitment cases. According to the testimony, counties are reaching the point where no one will take these cases and are in need of a state entity to take over these responsibilities. The testimony also emphasized that it would be more streamlined and efficient for the state to handle civil commitment cases.

Several committee members expressed concerns that counties have little control over their costs in civil commitment cases and indicated that a centralized location for providing legal services in sexually dangerous individual commitment cases would create a higher level of efficiency and expertise. The committee members expressed support for the idea of having four attorneys with expertise in the area of civil commitment of sexually dangerous individuals. These committee members concluded that the Commission on Legal Counsel for Indigents is the best solution.

One committee member in opposition to the bill draft indicated that the current system is working and that the only question that needs to be addressed is who is responsible for paying for the services. The committee member indicated that the Commission on Legal Counsel for Indigents does not want this responsibility, and the counties should be responsible for finding the appropriate location for the responsibility.

Recommendation

The committee recommends Senate Bill No. 2038 to transfer from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subjects of sexually dangerous individual

commitment proceedings. The bill includes an appropriation of $814,293 for the 2011-13 biennium.

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES

Mental Illness Commitment Laws

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164--the bill that created Chapter 25-03.1. The bill established many of the commitment procedures for the individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law.

A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted in 1977. For example, Senate Bill No. 2389 (1989) replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person," set forth more specific procedures for the application for involuntary treatment, and permitted the parties to waive the preliminary hearing. Senate Bill No. 2370 (1993) authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property, clarified that a respondent has a right to a preliminary hearing, and set forth a procedure for a respondent to seek the discharge of a petition.

Involuntary Commitment Procedures - Summary of Statutory Provisions

Chapter 25-03.1 provides for commitment procedures for mentally ill and chemically dependent individuals. Section 25-03.1-07 provides that a person may be involuntarily admitted to the State Hospital or another treatment facility only if it is determined the individual requires treatment. Section 25-03.1-08 provides that any adult (the applicant) may present a petition for involuntary treatment of an individual (the respondent) to the state's attorney of the county where the respondent is located or to an attorney retained by the applicant to represent the applicant through the proceedings.

Section 25-03.1-09 provides that the clerk of court, upon the filing of a petition for involuntary treatment, is to notify the district judge or juvenile court judge. The judge is to review the petition and the accompanying documentation to determine whether it meets requirements of law and whether it establishes probable cause to believe the respondent requires treatment. If probable cause has not been established, the petition must be dismissed unless an amendment can cure the defect.

Section 25-03.1-10 provides that if the petition is not accompanied by a written supportive statement of a psychiatrist, physician, psychologist, or addiction counselor who has examined the respondent within the last 45 days, the court is to order the respondent to be examined by an expert examiner of the respondent's choice or one appointed by the court.

Section 25-03.1-11 provides that the respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under emergency treatment provisions, the examination must be conducted within 24 hours of custody. Under this section, an evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.

Section 25-03.1-12 provides that the court is to give notice of a petition and of a time and place of any hearing to the respondent, parents of a respondent who is a minor, the respondent's attorney, the petitioner, the state's attorney, the superintendent or the director of any hospital or treatment facility in which the respondent is hospitalized or is being treated, the spouse of the respondent, any guardian, and other relatives or persons as the court may determine.

Section 25-03.1-13 provides that every respondent is entitled to legal counsel. The section also provides procedures for appointing counsel, waiver of the right to counsel, and compensation of counsel for an indigent respondent.

Section 25-03.1-17 provides that a respondent who is in custody and who is alleged to be mentally ill or to be suffering from a combination of chemical dependency and mental illness is entitled to a preliminary hearing.

Section 25-03.1-19 provides that the involuntary treatment hearing, unless waived by the respondent, must be held within 14 days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the examiner's report.

Section 25-03.1-20 provides that if the respondent is found at the involuntary treatment hearing to require treatment, the court may order the individual to undergo a program of treatment other than hospitalization, order the individual hospitalized in a public institution, or order the individual hospitalized in any other private hospital if the attending physician agrees.

Section 25-03.1-25 provides that when a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual requires treatment and there exists a serious risk of harm to that person, other person, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a judge, the peace officer, physician, psychiatrist, psychologist, or mental health professional, using the screening process set forth in Section 25-03.1-04, may cause the person to be taken into custody and detained at a treatment facility for up to 23 hours.

Testimony and Committee Considerations

In its study of the state's mental health commitment procedures and the availability of psychiatric services in the state, the committee received extensive testimony from the State Hospital, regional human service centers, the Mental Health America of North Dakota, the Protection and Advocacy Project, psychiatrists, psychologists, state's attorneys, a district judge, a private attorney, law enforcement, and private citizens who have been involved in the mental health commitment process. The committee's deliberations focused on two issues--statutory time limitations on patient holds and related issues and the availability of psychiatric services in the state.

Statutory Time Limitations on Patient Holds

Section 25-03.1-25 provides that a patient must be examined by an expert examiner within 23 hours of the placement of an emergency hold. An emergency hold can be placed by a peace officer or a physician if the patient appears to be potentially dangerous and does not agree to allow further evaluation and treatment. The committee received testimony from several psychiatrists and state's attorneys regarding this section and the problems the expert examiners and others are experiencing with the time limitation in this section. The testimony indicated that problems arise when a person is brought to an emergency health care facility that does not have a psychiatrist or psychologist to do an expert examination.

The testimony indicated that another problem with the 23-hour requirement is the limited capacity of facilities and the lack of availability of beds in treatment centers in the state. According to the testimony, when there is only 23 hours from the initiation of the hold to start the expert examination and time is needed to coordinate care and find an available bed, major problems arise. The testimony noted that there are times when a facility may decline the acceptance of a patient for admission because the facility knows it would not be able to examine the patient within the 23 hours from the initiation of the hold. The testimony indicated that a case may be dismissed before it gets to court because timeframes have been missed. The testimony indicated that the timelines for mental health evaluations are 24 hours in Minnesota, Wyoming, and Alaska, while Montana provides that the examination must be done as soon as the professional can be contacted.

The committee also received testimony that the lack of available transportation for transporting patients is another key issue that can prevent an expert from being able to conduct an examination within 23 hours. The testimony indicated that if a hospital is unable to find a bed for the patient, the hospital may contact other agencies in search of a bed, detain the patient in a correctional facility, or violate the 23-hour requirement.

The testimony indicated that because psychiatric services are no longer available at the hospital in Dickinson, patients cannot be held at that location while awaiting transport to Bismarck or Jamestown. As a result, the testimony indicated that individuals may have to be held at the correctional facility until transportation can be arranged. The testimony indicated that this hold is usually for 3 hours or 4 hours but has been up to 12 hours. The testimony from the Badlands Human Service Center noted that a request for more beds in Dickinson was denied by the Legislative Assembly in 2009. It was noted that the additional beds could be used to hold patients awaiting transport.

Other testimony indicated there are concerns in the state about the lack of uniformity of commitment procedures from county to county. It was noted that this may be the result of differences in resources, differences in philosophy, and differences in expertise. It was suggested that one solution to those uniformity issues would be the simplification of commitment forms. The testimony indicated that there are multiple and duplicative forms that contribute to the lack of uniformity in procedures. According to the testimony, uniformity could be accomplished with input from stakeholders and through legal processes. It was noted that Department of Human Services staff has engaged in meetings and consultation with judges and attorneys regarding commitment rules and will continue to do so.

The committee received testimony that recommended the 23-hour time period within which the expert examination must take place be modified to allow 48 hours or 72 hours for an expert examination, exclusive of weekends or holidays. It was suggested that if a 48-hour or 72-hour time period is not possible, then current holders of qualified mental health professional status should be allowed to initiate commitments and proceed to court hearings without requiring an additional expert examination within 23 hours. The testimony indicated that in no case should the time period be longer than 72 hours. It was noted that the 23-hour time period is adequate in most cases, but for those in which it is not, the law should allow for exceptions. One psychiatrist indicated extending the time period within which an examination must be done would be preferable to authorizing a broader group of professionals to conduct the examinations. It was noted that South Dakota allows some professionals to conduct the examinations who are not trained to treat chemical dependency or mental illness. It was noted, however, that even with the broader group of professionals who are permitted to conduct the examinations in South Dakota, there is still a shortage of professionals in the more rural areas of that state.

Testimony received from a private attorney in opposition to extending the 23-hour time period indicated that the problem is not with the laws and mental health commitment procedures, but rather the problem is the medical community and the lack of resources. According to the testimony, it is not appropriate to hold a person beyond 23 hours. The testimony stressed in order to protect the rights of the individual, it is important that the evaluation is conducted as quickly as possible. It was noted that the initial examination that is required to be performed within 23 hours is conducted before an attorney is involved in the process. The testimony also indicated that judges can order a delay based on just cause, such as a snowstorm or transportation issues.

The committee also received testimony that indicated that the commitment procedures in Chapter 25-03.1 serve the community and the persons in need of treatment very well. The testimony indicated that extending the examination period from 24 hours to 48 hours may be too great of an infringement on a person's rights.

The committee considered a bill draft that would provide for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status. Testimony in support of this bill draft indicated that the change would help to enhance mental health services in the state.

The committee also considered a bill draft that would amend Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order. The committee received testimony that 2009 legislation, which attempted to fully recognize licensed addiction counselors as experts in addiction commitment definitions, did not include a reference to licensed addiction counselors in Section 25-03.1-23. The testimony in support of the bill draft indicated the change was necessary to make this section consistent with other provisions in Chapter 25-03.1.

Availability of Psychiatric Services in the State

The committee received testimony regarding the availability of psychiatric services in the state and potential solutions to the access issue. The committee received testimony that indicated that due to the rural nature of the state and the limited availability of psychiatric services in many parts of the state, it is often difficult to meet the deadlines imposed by law within which an expert examination is required to be conducted. According to the testimony, there are 107 psychiatrists in the state located in 8 communities and 170 psychologists in the state located in 16 communities. About 23 percent of the state's population lives in a county without a psychiatrist or psychologist. It was noted that 31 out of 55 hospitals in the state do not have a psychiatrist or psychologist on staff or in the community.

The committee received testimony that among the reasons for the loss of psychiatric services in the state is the financial pressures to be more productive, the division of a bigger workload among fewer providers, and the pressures of financial reimbursement in mental health care. It was noted that ideally there should be 13 mental health professionals per 100,000 people. According to the testimony, although it appears there are a sufficient number of mental health professionals in the Fargo area (66 psychiatrists and 53 psychologists), the number of available mental health professionals in that area is somewhat skewed because the Fargo providers also serve a large population of people who live on the Minnesota side of the river.

Other testimony regarding the availability of psychiatric services in the state indicated the two problems that are in need of solutions are the lack of sufficient resources to deal with treating mental illness and chemical dependency in the state and the fragmented utilization of the private and public resources currently devoted to the treatment of mental illness and chemical dependency. The testimony indicated that over the past decade, general hospitals in the state and other states have taken an increasingly larger role of responsibility for behavioral health care, particularly in the area of emergency services and have had to act as a backstop to other agencies and organizations. It was noted as financial margins for health care reimbursement have gotten narrower and the stability of health care organizations more tenuous, there has been declining ability of those hospitals to cross-subsidize services that historically are mission-driven. As a result, psychiatric programs at private facilities across the state have cut programming and faced increasing pressures to reduce financial losses. The testimony indicated that without adequate supervised residential housing options, community case management, access to medications, and outpatient psychiatric care, the system is caught in a cycle of using expensive inpatient resources because it is the only thing available. It was suggested there should be joint ventures and partnerships with respect to the continuum of care needed for mental health patients. It was noted when it comes to dealing with mental health cases, hospitals and social service agencies do not communicate as well as they should.

Testimony from law enforcement indicated private medical facilities and emergency responders are being overutilized as the gateway and a treatment option for the community-based treatment program. It was noted that the statewide human service centers operate on a Monday through Friday schedule with holidays off; however, people in crisis occur 24 hours a day 7 days a week. According to the testimony, when someone is in crisis and needs assistance, the call goes to the emergency responders. The testimony suggested some solutions to this problem is more funding for community-based programs, an admissions facility that is available 24 hours per day, increased bed level at the State Hospital, and a transition facility.

Other testimony regarding the availability of psychiatric services in the state for mental health commitment evaluations indicated that availability is not so much related to the numbers or prevalence of psychiatrists, as it is to other factors, such as lack of transportation. It was suggested that increasing the availability of psychiatric services can be accomplished through expansion of telemedicine and psychiatric consultation with family medicine physicians and other medically trained professionals. It was also suggested that in the long term, the future availability of psychiatric services can be ensured by working collaboratively with all mental health and primary care providers and by working to build incentives and opportunities for those in medical training to pursue mental health practices. It was noted primary care resident physicians in the state are required to spend time in psychiatry rotations. In Fargo there is integration of psychiatry training built into the internal medicine residency.

Testimony from the Protection and Advocacy Project suggested that to increase the number of psychiatrists

and other mental health professionals, the state may wish to implement a scholarship and student loan program for mental health professionals which is similar to the program for encouraging more dentists to practice in the state. It was noted that a loan or scholarship program to forgive student debt could be set up in a way that would identity certain rural areas in which the person must practice to qualify for the program.

The committee received testimony regarding the use of telepsychiatry or telemedicine for mental health evaluations. The testimony indicated telemedicine is a valuable tool that could be used to some extent, but it is important to consider the patient's rights to an expert examination. The testimony noted that although telemedicine or telepsychiatry is the wave of the future, the ideal situation is still a face-to-face evaluation. Testimony from a pediatric psychiatrist who has worked with hundreds of children using telemedicine technology indicated the quality of telemedicine technology is good, there are few delays, and there are few concerns about breaches of security when using telemedicine technology.

Testimony from several attorneys regarding the use of telemedicine technology for conducting an expert examination indicated that if the use of the telemedicine or telepsychiatry technology is acceptable to the medical community, its use may be acceptable to the legal community as well. It was noted the use of telemedicine in the area of mental health examinations will depend on the quality of the equipment and transmissions.

The committee considered a bill draft that would authorize the use of telemedicine technologies for court-ordered examinations. Testimony in support of the bill draft indicated the bill draft clarifies that telemedicine may be used for conducting the examinations. It was noted that authorizing the use of telemedicine technologies will make the commitment process work better without extending the time limitations. Other testimony in support of the bill draft indicated the use of telemedicine technologies would enhance the use of psychiatrists in underserved parts of the state.

Recommendations

The committee recommends Senate Bill No. 2039 to provide that for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status.

The committee recommends Senate Bill No. 2040 to amend Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order.

The committee recommends Senate Bill No. 2041 to authorize the use of telemedicine technologies for court-ordered examinations.

CHILD AND FAMILY SERVICES OMBUDSMAN PROGRAM STUDY

North Dakota Children and Family Services

The public child welfare system in North Dakota is county-administered and state-supervised. The Department of Human Services Children and Family Services Division is responsible for many programs and services and sets policies and procedures for public child welfare services. The Children and Family Services Division administers the following programs--adoption, early childhood services, the child protection program, children's mental health services, family preservation services, foster care services, the Head Start State Collaboration Project, and refugee services.

Testimony regarding Senate Bill No. 2420 indicated the Children and Family Services Division has a formalized process for hearing and investigating complaints. According to the testimony, the division, in cooperation with the Governor's office, receives calls, complaints, and requests from parents and other individuals. It was noted the response to the calls varies depending on the nature or complexity of the problem. The division has a process in place for recording the reports and requests.

Child and Family Services Ombudsman Offices

Ombudsman offices have been established in a variety of state, municipal, county, local, federal, and academic organizations and businesses. As an independent, impartial, and confidential complaint handler, an ombudsman serves as an alternative means of dispute resolution. The United States Ombudsman Association describes an ombudsman as "a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government."

In recent years, some states have chosen to create ombudsman offices or offices of the child advocate to assist in providing oversight of children's services. The purpose of these offices is to handle and investigate complaints from citizens and families related to government services for children and families. This may include child protective services, foster care, and adoption and juvenile justice services and providing a system accountability mechanism by recommending systemwide improvements to benefit children and families which may be in the form of annual reports to the legislature, Governor, and the public. For example, Delaware's Office of the Child Advocate examines policies and procedures and evaluates the effectiveness of the child protection system, specifically the respective roles of the division, the Attorney General's office, the courts, the medical community, and law enforcement agencies; reviews and makes recommendations concerning investigative procedures and emergency responses; protects the interests and rights of children and families both individually and systemwide; and monitors programs, placements, and departments responsible for providing children's services, which may include inspecting state facilities and institutions.

Approximately 29 states have either ombudsman offices or offices of the child advocate with duties and purposes related to the welfare of children. This number is not exhaustive, and there are a number of states in the process of creating ombudsman offices. Jurisdiction, size, and operation of the offices vary.

Testimony and Committee Considerations

In its study of the establishment of an ombudsman program for consumers of child and family services, the committee received testimony from the Department of Human Services, the North Dakota Coalition for Child Protection Services and Foster Care Reform, and from numerous parents and children who shared their personal experiences in dealing with the Department of Human Services and county social services programs. The committee's deliberations focused on two issues--the ombudsman programs of other states and the need for a child and family services ombudsman program in North Dakota.

Child and Family Services Ombudsman Programs in Other States

The committee received information regarding the children's ombudsman programs of other states, including the method for establishment, the jurisdiction of the various programs, the programs' funding, and outcomes. The following 18 states have established children's ombudsman programs by means of legislative enactments--Alaska, Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Michigan, New Hampshire, New Jersey, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, and Washington. Kentucky and New Mexico have established children's ombudsman programs by executive or administrative order.

California, Illinois, Kentucky, Massachusetts, Missouri, New Hampshire, New Mexico, Oklahoma, Oregon, South Carolina, Texas, Utah, and Wyoming all provide ombudsman services through the states' divisions of child and family services. Connecticut, Delaware, Georgia, Michigan, Missouri, New Jersey, Rhode Island, Tennessee, and Washington operate independent and autonomous ombudsman offices specifically handling issues related to children. These offices are not part of the states' divisions of child and family services.

The information indicated that some states, such as Iowa and Arizona, have independent ombudsman agencies that assist citizens with nearly every area of state government, not just child welfare. Some child welfare ombudsman offices are independent agencies, while others are housed within the human services agency and may include child welfare ombudsman work with a range of other human-services related areas, such as medical services, long-term care, civil rights, or even employee concerns. The Tennessee program, which was initially funded by an Office of Juvenile Justice and Delinquency Prevention grant, is now state-funded. The Tennessee program has two staff members who investigate complaints involving foster children, children in kinship placements, and families involved with child protection services. Arizona's ombudsman office is a separate agency empowered to investigate nearly every other agency in the state.

Some of the state's programs are identified as ombudsman programs, while others have labels such as child advocate, public counsel, and inspector general. Other programs would not fall under formal ombudsman definitions because the programs are housed within the human services system itself. The information indicated that many of these programs would actually be considered internal complaint resolution offices, which may handle civil rights complaints and employee complaints as well as consumer complaints.

According to testimony on the structure of ombudsman programs, if there was a child and family services ombudsman program in North Dakota, decisions as to how the ombudsman would be selected, the qualifications necessary, the jurisdiction, access to records, and funding would have to be addressed. The testimony indicated that other states' general funds appear to be the source of funding for most programs. Most of the children's ombudsman offices require yearly state appropriations to cover operating costs. In addition, statutes allow many of the offices to accept funds through other sources, such as grants, foundations, and state license plate programs. Yearly budgets depend on the size of the office and number of staff, caseload of complaints, and state availability of funds. Oregon's funding is provided in part by a $1 charge on marriage licenses, divorce filing fees, and adoption filing fees. The testimony indicated that the cost of implementing an ombudsman program in the state would depend on the amount of authority granted to the program.

The Need for a Child and Family Services Ombudsman Program

The committee received extensive testimony from numerous individuals who shared with the committee personal stories about their experiences with the social services system in the state. The testimony of many of these individuals expressed frustration with the county social service system and with individual caseworkers. The testimony indicated that the social services system is difficult for people who are not part of the system to understand. Much of the testimony also focused on the problem of the lack of accountability on the part of social services offices. The committee also received extensive testimony on the need for an ombudsman or some independent entity to assist families in working through the system. The testimony of these individuals indicated that the establishment of an ombudsman program would offer individuals a place to voice their concerns and to receive information about how to proceed. The testimony indicated there is a need for an independent ombudsman office that could provide that contact between the family and the system. The testimony stressed the importance of having an office for families to go to that was not under the authority of the Department of Human Services. According to the testimony, the Department of Human Services has not taken active steps to inform the public that there is a process or a protocol in place to handle consumer inquiries and complaints.

The committee received testimony from the Department of Human Services regarding the procedures followed by the department when receiving inquiries and complaints from consumers. The testimony indicated the department receives inquiries

from direct calls from consumers, inquiries from the website, referrals from others or requests from others to contact a certain party, calls received in the Department of Human Services' executive office regarding child welfare situations, calls of inquiry from the Governor's office in response to information the Governor has received, and calls of inquiry received from legislators. According to the testimony, the protocol for the calls varies depending on the nature of the call. Direct calls, referrals, and website inquiries are referred to the program administrators, whereas calls from the Governor's office, legislators, or the department's executive office are referred to the division director for assignment and resolution or are sent directly to the program administrator. It was noted that upon receipt, an inquiry is addressed the same day, if possible. It was also noted that files and documentation of inquiries are maintained by the division's staff.

The testimony indicated that many of the calls and inquiries concern the activities of county social services offices or the staff of those offices. The testimony noted that social services in North Dakota are state-supervised and county-administered. According to the testimony, the division works with the county using a formal protocol to address these inquiries. It was noted that in some cases it is necessary for the Department of Human Services to engage the county to investigate why policies are not being followed.

The testimony from the department indicated caseworkers in the state have good training. According to the testimony, if the department receives a complaint about a caseworker's failure to follow the procedures, the department may notify the caseworker's supervisor. It was noted it is the county's responsibility to supervise its employees. According to the testimony, if the division receives an emergency call, the call is referred to the appropriate entity, such as law enforcement or other first responders.

The testimony indicated if an ombudsman program was implemented, the department would work with that program. It was the conclusion of the testimony, however, that there is a process in place and the process works. The testimony indicated there is not a formal process for those consumers who are still dissatisfied after dealing with the division or the department. It was also noted the department does not have a contract with an outside entity to resolve disputes. According to the testimony, some consumers have contacted the Protection and Advocacy Project for assistance.

The committee considered a bill draft that would have established a family and children's ombudsman program in the Governor's office. The bill draft would have provided for an ombudsman who would be appointed by the Governor and confirmed by the Senate. The bill draft--the language of which was modeled after a similar law in Washington--would have provided that the ombudsman duties include the following:

- Provide information on the rights and responsibilities of individuals receiving family and children's services and on the procedures for providing these services;
- Investigate administrative acts alleged to be contrary to law, rule, or policy imposed without an adequate statement of reason or based on irrelevant, immaterial, or erroneous grounds;
- Monitor the procedures as established, implemented, and practiced by the Department of Human Services to carry out its responsibilities in delivering family and children's services with a view toward appropriate preservation of families and ensuring children's health and safety; and
- Recommend changes in the procedures for addressing the needs of families and children.

Testimony in support of the bill draft indicated the lack of adequate services from the Department of Human Services, the lack of accountability on the part of social workers, and the lack of protection for children and families in the state are the reasons why the state needs an ombudsman program for children and families. Other testimony in support of the bill draft indicated the bill draft would address the need to have someone to advocate for families, especially for those families in lower economic statuses and with less education. It was noted that many people do not know the right questions to ask. The testimony indicated an ombudsman would help families get the information the families need to ask the right questions. The testimony also indicated an ombudsman is important for an independent review of children and family services issues.

The committee received testimony in opposition to the bill draft from a representative of the Children and Family Services Division of the Department of Human Services. The representative, who had previously worked for Washington's human services department, provided testimony that indicated Washington's ombudsman program is designed to listen to constituents but is not that willing to listen to the state's human services department. The testimony noted that because the Washington ombudsman program and the human services department both answer to the Governor, the conflicts between the two departments put the Governor in an awkward position. The testimony also expressed concerns about the confidentiality provisions in the bill draft. The testimony noted that the bill draft would have opened client files and the Department of Human Services' online database to the ombudsman or the ombudsman's designees.

The testimony in opposition to the bill draft indicated that the bill draft would have duplicated what the Department of Human Services is already doing. The testimony indicated that while is it rare for the Department of Human Services to reverse a countymade decision, it has been done. It was noted when the department recommends an action to the county, the expectation is the county will follow the recommendation. The testimony indicated the Department of Human Services would be willing to discuss with the counties the issues that were raised by testimony before the committee.

The committee also received testimony in opposition to the bill draft from the executive director of the Department of Human Services. The testimony indicated while the department is not perfect, the system

does work. The testimony indicated the department would like to have an opportunity to work with the counties to look at issues that have been raised. The testimony noted there may be a need for the state to have more authority over the county in some cases. It was noted it is important to not lose sight of the children's best interests. The testimony indicated the department will work on the issues internally to get to the root of the problems. According to the testimony, the department is not in favor of another layer of government as proposed in the bill draft.

Several committee members expressed concerns that the bill draft, which would have required a large staff, would have given the ombudsman's office great power with no accountability. The committee members indicated that although the counties are serving citizens well, there may be a need for the Legislative Assembly to give the Department of Human Services more authority over county social services matters.

Committee members in support of the bill draft indicated the bill draft would have removed the ombudsman from the adversarial process that exists between the families and social services agencies.

Conclusion

It was the consensus of the committee the Department of Human Services is strongly encouraged to work with the counties to address the issues that have been raised in this study. It also was the consensus of the committee that the Department of Human Services is expected to offer proposals for change to the Legislative Assembly during the next legislative session.

CHILD SUPPORT OBLIGATIONS AND ENFORCEMENT STUDY

North Dakota Child Support Laws

Child support is a parental obligation to provide financial and medical support for their children. Child support commonly refers to the money paid by the noncustodial parent to the custodial parent to assist in meeting the continuing needs of the children. Child support is often one of the most contentious aspects of a custody arrangement and rarely considered fair by either parent. Divorce or separation does not end the legal obligation for child support. Although the bond of marriage or other relationship has been broken, each parent still retains a legal responsibility to provide adequate support for the children. The duty of parents to support their children is provided for in Section 14-09-08, which provides that "[p]arents shall give their children support and education suitable to the child's circumstances. The court may compel either or both of the parents to provide for the support of their children."

Establishment of Child Support

Section 14-09-09.7 provides the establishment of child support obligations must be calculated using child support guidelines. The guidelines are based, in part, upon federal requirements regarding the establishment of child support guidelines.

Federal Statutory Provisions

The 1996 federal welfare reform legislation (42 U.S.C. 602(a)(2)) provided that a state's eligibility to receive a block grant for temporary assistance for needy families (TANF) is in part dependent on "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the state plan approved under" the Child Support Enforcement Act.

The Child Support Enforcement Act requires states to enact certain remedies and procedures to improve child support collections. The Child Support Enforcement Act is found in Sections 651 through 669 of Title 42 of the United States Code.

North Dakota Child Support Guidelines

North Dakota's child support guidelines law is found in Section 14-09-09.7. This section, as created in 1983 and amended in 1989, 1993, 1997, 1999, 2001, 2007, and 2009, in part, provides that the "department of human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section." Section 14-09-08.4 provides for the periodic review of child support orders.

North Dakota Administrative Rules

The Department of Human Services has established child support guidelines to be used by courts in determining the amount a parent is expected to contribute toward the support of a child. The guidelines apply in any action in North Dakota in which a child support obligation is being established or changed. The current guidelines, which became effective on October 1, 2009, are contained in North Dakota Administrative Code Chapter 75-02-04.1.

Child Support Enforcement Program

The federal child support enforcement program was established in 1975 under Title IV-D of the Social Security Act. This federal program was a response by Congress to reduce public expenditures on welfare through aid to families with dependent children, foster care, and Medicaid. Title IV-D requires each state to provide a statewide child support enforcement program that establishes and maintains case records, offers locate services for finding the legally responsible parent, establishes paternity, establishes legal orders requiring child support, provides for enforcement of child support obligations, and provides for collection and distribution of child support payments. These services are automatically offered to families receiving public assistance and are available through an application to families that are not receiving public assistance. Additionally, Title IV-D requires each state to designate a single and separate organization unit of state government to administer the state's child support enforcement program. Sections 50-06-01.4 and 50-09-02 designate the Department of Human Services as the official agency of the state in the administration of the state's child support enforcement program and medical support enforcement program in conformity with

Title IV-D. Section 50-09-02 provides that in administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.

Enforcement Tools

State law provides for a number of tools that can be used to enforce the child support amount that is ordered by the court. Section 14-09-09.11 provides that a judgment for the payment of child support may be enforced by an income withholding order. Section 14-09-09.6 authorizes an obligor to execute a document voluntarily authorizing income withholding from income in an amount sufficient to meet the child support obligation imposed by the court or otherwise.

Other child support enforcement tools include lottery prize setoff authority under Section 53-12.1-12; the authority to report child support arrearages to credit bureaus under Section 50-09-08.4; the authority to suspend occupational, professional, and recreational licenses under Section 14-08.1-06 and motor vehicle operator's licenses under Section 14-08.1-07; and the authority to seize real and personal property as the result of a judgment under Section 14-08.1-05. In addition, child support may be enforced by means of federal and state tax refund offset, passport denial, and referral for state or criminal prosecution.

Child Support Arrearages

Section 14-09-25, which defines arrearage as "an unpaid child support obligation that was due in a month prior to the current month," provides that the public authority is required to enter in its records judgment interest on child support obligations that first became arrearages after July 1, 2002. Section 28-20-34 provides for the interest rates on judgments. This section provides that beginning January 1, 2006, the interest on judgments is payable at a rate equal to the prime rate published in the *Wall Street Journal* on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded.

Testimony and Committee Considerations

In its study of child support obligations and enforcement, the committee received testimony regarding the state's child support enforcement system from the child support enforcement division of the Department of Human Services. The committee also received testimony regarding concerns about the child support system from attorneys and concerned parents. The committee's deliberations focused on four issues--child support enforcement efforts in the state, child support guidelines, monthly administrative fees, and child support guideline deviations and related issues.

Child Support Enforcement Efforts

The committee received extensive information from the child support enforcement division of the Department of Human Services regarding the operation of the state's child support enforcement system. The program in North Dakota is supervised and administered by the state through Child Support Enforcement, Department of Human Services. In addition to a central office in Bismarck, there are eight local regional child support enforcement offices in the following locations--Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston. In addition to state laws, the child support enforcement program operates under federal laws and regulations. Compliance with federal laws and regulations is required for eligibility for states to receive TANF funding. According to the testimony, the state's child support enforcement unit has ranked in the top three programs nationally since 2003 according to the federal performance measures, was recognized as the outstanding program by the Western Interstate Child Support Enforcement Council in 2006 and the National Child Support Enforcement Association in 2008, has received innovation awards, and several staff members have been recognized for their work.

Child Support Enforcement works with two types of cases--Title IV-D cases that stem from referrals from public assistance programs (TANF, medical assistance, or foster care) or from either custodial or noncustodial parents applying for Title IV-D services; and non-Title IV-D cases that stem from court orders where there is no referral or application to the program or where people choose to close their Title IV-D cases. As of December 2008, the division's total number of Title IV-D cases was 42,108 and non-Title IV-D cases was 9,971. These cases include about 66,000 children and 79,600 parents. The caseload is distributed among the 54 states and territories plus a number of Indian tribes and foreign countries.

During federal fiscal year 2009, the Department of Human Services collected and paid out $34 million on behalf of non-Title IV-D parents, including $22,480,579 through income withholding. Also during that period, the department issued 5,850 income withholding orders and related documents and received about 161,000 payments that were recorded, distributed among cases, and paid out to parents.

The testimony indicated the statewide arrears total as of June 30, 2010, including interest, was $282,754,306. It was noted the amount of arrears owed in Title IV-D cases, which are the cases being served by the state program, has dropped for the first year since the program began collecting this information. According to the testimony, this was accomplished by a number of new or refined business practices, including increased collection of current support through income withholding and employer compliance, realistic child support obligations, and improved collection of arrears.

Regarding other child support enforcement efforts, the committee received testimony that the child support enforcement unit is working on developing the policy for the new law that authorizes the issuance of work permits for those individuals whose driver's license has been

suspended due to nonpayment of child support. It was noted the department does not foresee much need to use this tool because if the obligor is working, an income withholding order can be put in place and there is not a need to suspend the driver's license.

Child Support Guidelines

The committee discussed the issue of the authority of the department to develop the child support guidelines and the child support guidelines model used by the state. The Legislative Assembly delegates to the Department of Human Services the authority to develop the child support guidelines through the administrative rulemaking process. The child support guidelines, which are reviewed every four years, are being reviewed in 2010 and will be finalized after the 2011 legislative session.

North Dakota's child support guidelines are developed based upon the model that sets support as a percentage of the noncustodial parent's income. The testimony noted federal laws and regulations do not designate the child support guidelines model that is to be used by the state. According to the testimony, the perception that the income shares model--a model that uses the income of both parents to calculate the child support amount--would be fairer to both parties is more theory than reality. It was noted current law provides that if the custodial parent's income is more than three times that of the obligor, the obligor can request a review. The testimony indicated a conversion to the income shares model would require additional staff to review the additional incomes that would have to be considered. It was noted the conversion would also require about $300,000 for a new computer system. It was also noted an interim Legislative Council study in 1997-98 concluded there was not a significant enough difference between the two methods to justify the change. Nationally, more states use the income shares method. The testimony noted, however, that the income shares method of calculating child support creates a perception of fairness. The testimony indicated there is not a consensus among the parenting groups as to which method of calculating child support is best. The testimony also noted it would be more productive to put additional money into customer support than conversion to a new method of calculating child support.

Monthly Administrative Fees

Several committee members expressed concern about the monthly administrative fee that is assessed to parents who use Child Support Enforcement's services. According to the testimony, the program assesses a monthly administrative charge of $2.10 for non-Title IV-D cases. During federal fiscal year 2009, the department retained $89,404 in non-Title IV-D fees from 4,684 parents. The maximum any one individual paid in fees was $50.40. For Title IV-D service recipients, a $25 annual fee is charged in each case in which an individual has never received assistance and for whom there has been support collections of at least $500. The fee is collected from the custodial parent by retaining the amount from support collected in excess of the first $500. The decision was made to collect the fee from the custodial parent because the noncustodial parent is already paying child support and the noncustodial parent does not know if the custodial parent is on assistance. The court may order that the amount of the fee be collected from the noncustodial parent as an additional arrearage. It was noted Child Support Enforcement was given legislative authorization to assess these fees. According to the testimony, the biggest cost in implementing the administration fee was the programming. Because the fee was required by federal law on Title IV-D cases, the department did not incur any additional cost to implement the fee for non-Title IV-D cases. The federal requirement is met differently by different states. Some states pay the fee out of the state's general fund while other states, including North Dakota, pass the cost on to the parents.

Child Support Guideline Deviations and Related Issues

Testimony was received regarding the need for deviations from the child support guideline amounts for child care expenses. It was noted it is not uncommon to see child care expenses range from $400 to over $1,000 per month nor is it uncommon that court orders for child support are in an amount that is equal to or less than child care expenses for the entire month. According to the testimony, even though courts can deviate from the guidelines for child care expense, parents may not want to risk the cost and expense of going to court to try to secure that deviation. It was noted that in Minnesota, child care expenses are paid by each parent on a pro rata share of the parental income for determining support. The pro rata share is determined by looking at each parent's percentage of the total income after deducting the tax benefits of paying the day care expenses. It was noted it would be helpful to attorneys and the court to have guidelines developed to assist in determining when to deviate from the guideline amount of support for purposes of paying for the increased needs of the children related to child care expenses.

In response to this concern, the committee received testimony that the issue was discussed by the Department of Human Services' Child Support Guidelines Drafting Advisory Committee. It was reported the drafting advisory committee did not recommend a guideline change in this area; however, the drafting advisory committee asked the department to prepare material for the members of the State Bar Association of North Dakota and the public explaining the level of child care expenses that are included in the guidelines based on United States Department of Agriculture figures for the cost of supporting children and the level of child care expenses for which a deviation would be appropriate. It was reported the material would be included in a publication of the State Bar Association of North Dakota.

The committee also received testimony regarding the need for self-help measures for obligors who lose their jobs because of the economic downturn or other reasons out of the obligor's control. It was noted the only remedy for the obligor is to hire an attorney which is time-consuming and expensive. The committee received

testimony from the department regarding an economic downturn pilot project that is underway which helps obligors who lose their jobs through no fault of their own. According to the testimony, the program helps to get an obligor's case back to court quickly. It was reported the program has worked well.

The committee also received testimony regarding the problems enforcing out-of-state orders. In response to these concerns, the committee received testimony that every state has enacted the Uniform Interstate Family Support Act, which provides a standard process in all states for requesting and receiving help in cases. It was noted, however, that in spite of this law, interstate cases are often still difficult to work and produce collections. To help make sure all available steps are taken in cases in which North Dakota has asked for another state's help, it was reported the department has specialized this work with the Outgoing Interstate Center in Grand Forks. Since each specialized worker is given a specific state or states to work with, the worker is able to develop contacts in those states that hopefully will bridge the communication gap between states and lead to higher levels of enforcement activity in these cases. As with all Title IV-D cases, a parent may apply for services from Child Support Enforcement's program for free if the obligor lives in another state. It was noted the parent is not required to travel to the other state or hire an attorney in the other state.

Finally, the committee received testimony that in individual cases, parents and their attorneys often stipulate to obligations or payment arrangements that are not consistent with state or federal law. In the absence of an objection or explanation of the problem, some courts may unintentionally approve these stipulations, and the problem does not surface until enforcement actions are taken because payments are not received by the state disbursement unit. The testimony indicated Child Support Enforcement regularly works with these attorneys on a case-by-case basis to correct the problem. In addition, it was reported that the Child Support Enforcement attorneys participate in numerous continuing legal education seminars each year to help familiarize the private bar with program requirements, any problem areas, and any law changes in the child support area.

Conclusion

The committee makes no recommendation regarding the child support obligations and enforcement study.

COMPREHENSIVE STATUS AND TRENDS REPORT

The committee received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in the state as required by Section 19-03.1-44. According to the report, the youth risk behavior survey conducted by the Department of Public Instruction indicates binge drinking in grades 9 through 12 showed a slight decline from 34 percent in 2005, 33 percent in 2007, and 31 percent in 2009. Drinking rates in grades 9 through 12 revealed 43 percent of the students responding indicated they had at least one drink on one or more days during the past 30 days. This is down from 46 percent in 2007, 49 percent in 2005, 54 percent in 2003, and 59 percent in 2001. Regarding middle school students in grades 7 and 8, the survey indicated that 44 percent of students had at least one drink of alcohol on one or more days during the past 30 days, and 12.1 percent reported having their first drink of alcohol before age 11, up from 9.9 percent in 2007. According to the report, while education efforts targeting high school students appear to have had some positive effect on the rate of binge drinking, the emerging trend appears to indicate that students are first using alcohol at an earlier age and that a significant number of students in both middle school and high school regularly consume alcohol.

With regard to tobacco usage among youth, the report indicated educational efforts appear to be having success. In 1999, 44 percent of students in grades 7 and 8 and 73 percent of those in grades 9 through 12 indicated they had experimented with smoking; in 2009, the numbers had decreased to 21 percent in grades 7 and 8 and 47 percent in grades 9 through 12, a reduction of 23 percent and 27 percent, respectively.

The report indicated that, for the first time, the survey addressed the rate of over-the-counter and prescription drug abuse. Among high school students, 13.3 percent reported having taken over-the-counter drugs to get high at least once. The rate is 4.6 percent among middle school students. Fifteen percent of students in grades 9 through 12 and 6.3 percent of middle school students reported having taken a prescription drug, such as oxycontin, percocet, and vicodin, without a doctor's prescription one or more times during their life. The use of other illicit drugs, such as marijuana, inhalants, methamphetamines, and heroin, appears to have remained somewhat constant over the past six years.

The report indicated that in conjunction with a prescription drug conference in Bismarck and Fargo, the Attorney General launched the "Prescription Drug Take Back Pilot Program." The program provides disposal units for people to dispose of their unused medications. The units, which are similar to the needle disposal containers in hospital rooms but on a much larger scale, are located in the lobby of the police department. The program is operated by the Attorney General at no cost to the communities or the local law enforcement agencies. The program is designed to remove unwanted and frequently abused narcotics from circulation. The pilot program launched in five cities--Minot, Bismarck, Grand Forks, West Fargo, and Fargo. According to the report, in the first few months of the program 60 pounds or 34,000 doses of prescription drugs were surrendered through the program.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT

The committee received a report from the director of the Commission on Legal Counsel for Indigents, as required by Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent

defense contract system and any established public defender offices. According to the report, for the year beginning July 1, 2009, and ending June 30, 2010, the Commission on Legal Counsel for Indigents provided counsel in about 9,100 cases. Forty-four percent of those cases were handled by the full-time public defenders, and 56 percent were handled by private attorneys who independently contract with the commission to provide legal services. Of those cases, 3,094 were felonies; 3,172 were misdemeanors; 1,586 were juvenile matters; and the remainder of the caseload consisted of appeals, postconviction petitions, and miscellaneous cases. The cases are being handled by a combination of 16 full-time public defenders and contract attorneys. Approximately 42 attorneys are employed to take excess or conflict cases. According to the report, finding attorneys to take indigent cases continues to be a problem.

The report indicated the staff of the Commission on Legal Counsel for Indigents includes 30 full-time employees and 7 part-time employees. Six public defender offices are located in Williston, Dickinson, Minot, Bismarck, Grand Forks, and Fargo. The commission's administrative office is located in Valley City. According to the report, some of the commission's accomplishments during the first five years of operation include the adoption of performance standards for adult criminal providers and juvenile providers, the creation of a case reporting system, the adoption of fraud risk assessments, and the hiring of a financial officer. The commission's budget for the 2009-11 biennium consists of $11,420,365. Of that amount, $9,470,148 is from the general fund and $1,950,217 is generated from court fees paid by defendants. According to the report, the commission will be asking the Legislative Assembly for three FTE positions to staff a public defender office in the Northeast Judicial District, which includes Devils Lake, Grafton, Pembina, Rugby, Cavalier, and other cities. The report indicated the commission is having difficulty finding attorneys willing or able to take indigent cases in that region. The report also indicated the commission will also be asking for funds to raise the rate for legal services from $65 per hour to $70 per hour.

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from the Department of Human Services regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. At the time of the report, the State Hospital had 62 patients under the care and custody of the executive director of the Department of Human Services in its program for the evaluation and treatment of sexually dangerous individuals. Fifty of these patients were civilly committed under Chapter 25-03.3, eight patients were being evaluated to determine whether they met criteria for commitment, and four were currently in prison. The report indicated there is a patient in the transitional housing program, which is the last stage of treatment prior to discharge from the program. The State Hospital has discharged 12 patients from the program since 1997. The current annual cost per patient in the program is $86,344. In 2007 the Legislative Assembly mandated that the Department of Corrections and Rehabilitation enter an agreement with the Department of Human Services to provide security services for the sexual offender unit located at the State Hospital. The James River Correctional Center provides security consultation, training, and services to the State Hospital under this agreement.

SHORT-TERM SHELTER AND ASSESSMENT PILOT PROGRAM REPORT

The committee received a report from the Department of Corrections and Rehabilitation regarding the short-term shelter and assessment pilot program during the 2009-11 biennium for at-risk children and youth in the South Central Judicial District. According to the report, the need for this project arose because of concerns about at-risk youth who may not need to be in the legal system. The report indicated that to meet this need, a demonstration project was begun in December 2006 in the South Central Judicial District area. Initial funding was provided through the Children's Services Coordinating Committee and the Bush Foundation. Local support for the project was provided by the City of Bismarck. The appropriation of $200,000, which was authorized by Senate Bill No. 2355 (2009), was intended to continue the demonstration program through the 2009-11 biennium. This funding allowed for a thorough analysis of the effectiveness of a crisis intervention approach. According to the report, because the pilot project is in its initial year of operation under the legislative appropriation, outcome data for that period was not yet available. The report, however, indicated for the year beginning July 1, 2008, and ending June 30, 2009, 103 youth received shelter care services. Of those, 37 youth were at high risk for further formal system involvement but were identified as candidates to receive reunification services. At the end of 180 days, 67.6 percent of the youth were still successfully placed with their families. According to the report, a detailed analysis of cost is underway, and results will be available before the next legislative session convenes. The report indicated it is estimated that each child will need an average of 56 hours of services at a cost of $1,000 per child. The cost of foster care is about $213 per day, and the average time in foster care is 172 days. The report indicated the cost of a statewide program will depend on what facilities and services are already available in various communities.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies. Senate Concurrent Resolution No. 4028 (2009) directed a study of the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. This study was revised by Legislative Management directive to include the administration of pari-mutuel racing. House Concurrent Resolution No. 3005 (2009) directed a study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act. House Concurrent Resolution No. 3006 (2009) directed a study of the feasibility and desirability of adopting the Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would impact existing state laws, and what issues other states have addressed in enacting the Act. Section 7 of House Bill No. 1003 (2009) directed a study of whether penalties for felonies are suitable to the felonious behavior. House Concurrent Resolution No. 3023 (2009) directed a study of the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in Chapter 12.1-23. Because of the similarity in these two studies, the Judiciary Committee considered the two topics as a single study.

The Legislative Management delegated to the committee the responsibility to review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws under Section 54-35-02. The Legislative Management also delegated to the committee the responsibility under Section 53-06.2-04 to receive a biennial report from the Racing Commission regarding the operation of the commission and under Section 53-12.1-03 to receive a report from the director of the North Dakota Lottery regarding the operation of the lottery. The Legislative Management delegated to the committee the responsibility for statutory and constitutional revision.

Committee members were Representatives Chris Griffin (Chairman), Lois Delmore, Edmund Gruchalla, Patrick R. Hatlestad, Kathy Hogan, Robert Kilichowski, Joyce M. Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Lisa Wolf, and Steven L. Zaiser and Senators Jim Dotzenrod, Stanley W. Lyson, Dave Nething, Curtis Olafson, and Mac Schneider. Representative Jasper J. Schneider was a member of the committee until his resignation from the Legislative Assembly in November 2009.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

CHARITABLE GAMING AND PARI-MUTUEL RACING LAWS STUDY

Senate Concurrent Resolution No. 4028 directed a study of the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. The legislative history regarding this resolution indicated that a comprehensive review of the state's charitable gaming laws has not been conducted since the 1993-94 interim and that a thorough review of laws governing charitable gaming was necessary to ensure that laws regarding taxes, expense limitations, enforcement, conduct, and play of charitable games are adequate to govern charitable gaming under current conditions.

Under Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-Mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events.

Charitable Gaming - Early History

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana Lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of $100,000, followed by annual payments of $75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Article XI, Section 25, of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976, when the prohibition was amended to allow certain forms of charitable gaming. The Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations; civic and service clubs; or such other public-spirited organizations as it may recognize to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited use.

Advent of Charitable Gaming

After passage of the constitutional amendment in 1976, a temporary law was passed in 1977 followed by another temporary law in 1979 and finally legislation in 1981 which was codified as Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. A bill passed in 1987 added Chapter 53-06.2, allowing charitable organizations to conduct pari-mutuel horse racing.

Many changes have been made to the charitable gaming law during the 17 legislative sessions since passage of the constitutional amendment. During the

first three interims after passage of the law in 1981, Legislative Council interim committees studied charitable gaming and suggested many of the changes that have since been made to the law. The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee. That committee suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that legislative session and others have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

Charitable Organizations

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use that is made of the proceeds from the games. The constitutional provision requires that the charity be a "bona fide nonprofit veterans', charitable, educational, religious, or fraternal" organization, or a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires that the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

All organizations must meet the first test in order to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. Other charities meet only the first constitutional test, so they cannot use the proceeds themselves. Instead they must give the proceeds to beneficiaries who meet the second test.

Under Section 53-06.1-01, "eligible organization" is used to describe generically all the kinds of organizations permitted to conduct games of chance. Other statutory definitions are provided to describe the specific kinds of organizations enumerated in the constitution. Particular definitions are provided in Section 53-06.1-01 for civic and service, educational, fraternal, public-spirited, religious, and veterans' organizations, respectively.

Games Permitted

Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. The 1979 law added sports pools on professional sports. In 1981 charities were permitted to conduct the game of twenty-one. In 1987 draw poker and stud poker were added to the list of permitted games. Also, that same year Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the pari-mutuel system. The pari-mutuel betting system is one in which bets are placed in a pool, a percentage is taken out for the race organizer--the charity--and taxes, and the remainder is divided up among the bettors who selected the horses finishing well enough. The definitions of qualifying organizations are similar to those under Chapter 53-06.1, except that educational organizations are omitted.

There were three additions made to the types of games in 1989. Eligible organizations were permitted to conduct calcutta, allow off-track pari-mutuel betting on races held at licensed racecourses inside or outside the state, and use electronic video gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989. In 1991 paddlewheels were added as a game of chance.

Expense Limits

Allowable expenses are deducted from adjusted gross proceeds to get net proceeds. Allowable expenses are important to the charities because expenditures in excess of the allowable limits must be made up from other contributions the charity receives. It is important to recipients of net proceeds, as a higher expense limit means there will be less net proceeds available for distribution.

Section 53-06.1-11 provides that the allowable expense limit is 51 percent of the first $200,000 of adjusted gross proceeds per quarter and 45 percent of the adjusted gross proceeds in excess of $200,000 per quarter. The section also provides that in addition, an organization may deduct as an allowable expense 2.5 percent of the gross proceeds of pull tabs; capital expenditures for security or video surveillance equipment used for controlling games; and if an organization's total actual expenses exceed the allowable expenses, the expenses up to two additional percent of the first $200,000 of adjusted gross proceeds per quarter.

Administration of the Charitable Gaming Law

Licensing Procedures

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General. The Attorney General has served as the primary licensing authority since 1977, and local jurisdictions have had varying roles over the years.

Under both the 1977 and 1979 laws, charities maintaining their own buildings for use by members and also serving meals and liquor were licensed by the Attorney General, while other charities were required to secure approval from local officials to operate their games.

In 1981 the licensing procedure was rearranged and a two-tiered license system was established. Class A licenses were issued to charities that maintained a building for their own use and which served meals or liquor. All other charities were granted Class B licenses. Under a 1995 law, the tiered licensing system was eliminated. Effective July 1, 1995, the same licensing classification applied to all organizations. The annual license fee was standardized at $150 for all organizations. Previously, the license fee for an

organization whose annual gross proceeds did not exceed $25,000 was $100. Other organizations paid $150.

Role of Local Officials

Local government officials have had a role in charitable gaming since the first law. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979 local government officials have been the primary approving agency for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials are still involved in charitable gaming.

Enforcement of the Charitable Gaming Laws

Since the 1977 law, responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 the State Gaming Commission received an increased role in charitable gaming enforcement. Enforcement attention has been directed at preventing crimes and at ensuring compliance with the many requirements of the law. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

The 2009-11 budget for the Gaming Division of the Attorney General's office includes a full-time equivalent (FTE) staff of 15 people. Total budgeted salaries and wages amount to $1,916,174. The total funding to the Gaming Division is $2,670,902 for the 2009-11 biennium. This amount includes $510,000 in local gaming enforcement grants. The total funding to the Gaming Division includes $247,061 for tribal casino inspections and $6,141 for the State Gaming Commission.

Taxation of Charitable Gaming Proceeds

A state tax has been imposed on the proceeds of charitable gaming since 1977. In the 1977 law, a tax of 3 percent of adjusted gross proceeds was established and allocated to the general fund of the state. The tax was part of the expense limit for the charity. The tax rate was increased to 5 percent in 1979 and was payable from adjusted gross proceeds (and not charged against the allowable expenses of the charity).

The current tax structure, which is contained in Section 53-06.1-12, provides as follows:

- On adjusted gross proceeds not exceeding $200,000, a tax of 5 percent;
- On adjusted gross proceeds exceeding $200,000 but not exceeding $400,000, a tax of 10 percent;
- On adjusted gross proceeds exceeding $400,000 but not exceeding $600,000, a tax of 15 percent; and
- On adjusted gross proceeds exceeding $600,000, a tax of 20 percent.

This section further provides that in addition to any other tax, an excise tax of 3 percent is imposed on the gross proceeds from the sale at retail of pull tabs and 3 percent on the gross proceeds from the sale at retail of bingo cards to final users. For those organizations that do not have gross proceeds of pull tabs that exceed $400,000 per calendar quarter, no excise tax is imposed. The Attorney General is required to deposit 3 percent of the total taxes collected under this section into a gaming and excise tax allocation fund. The money in this fund, pursuant to legislative appropriations, is to be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations within each city or county.

Racing Administration - Background

In 1987 the Racing Commission was established, and pari-mutuel horse racing was authorized by the Legislative Assembly. Initially, the Racing Commission was established in the Secretary of State's office. Members of the commission originally were the Secretary of State and four other members appointed by the Governor. In 1989 the Racing Commission was moved from the Secretary of State's office to the Attorney General's office. The Secretary of State was removed as chairman of the commission, and one other member appointed by the Governor was added. This bill also established the breeders' fund and purse fund. The bill also authorized off-track wagering on races held at licensed racecourses either in state or out of state. In 1991 the off-track wagering statute enacted in 1989 was replaced with a similar statute providing for simulcast wagering for in-state or out-of-state races. The 1991 legislation also created the promotion fund and provided that unclaimed tickets and breakage from each live race and simulcast program be deposited in the promotion fund. The bill also provided that the money in the breeders' fund, purse fund, and promotion fund may be spent by the commission pursuant to a continuing appropriation.

In 1993 the Legislative Assembly authorized simulcast dog racing in the state. In 2001 the Legislative Assembly authorized pari-mutuel wagering to be conducted through account wagering and provided that an account wager may be made on an account only through a licensed simulcast service provider authorized to operate the simulcast pari-mutuel wagering system under the certificate system.

In 2003 the Legislative Assembly required the Racing Commission to reinstate race dates and issue a license under the certificate system to any racetrack in the state which was operational after December 31, 2000.

In 2005 the Legislative Assembly passed two bills relating to the Racing Commission. The first bill provided that a member of the Racing Commission who is appointed to fill a vacancy arising from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed. The second bill removed the Racing Commission from the Attorney General's office. The bill authorized the Attorney General to request payment for any services the Attorney General renders to the Racing Commission.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, charitable organizations, gaming vendors, members of the Charitable Gaming Association of North Dakota, the executive director and members of the Racing Commission, and other individuals involved in horse racing. The committee's deliberations centered on four issues--charitable gaming taxes and allowable expenses, gaming demonstrations, gambling treatment services, and Racing Commission administration.

Charitable Gaming Taxes and Allowable Expenses

The committee reviewed extensive information submitted by the Gaming Division of the Attorney General's office with regard to all aspects of the charitable gaming industry. According to the testimony, although the charitable gaming industry in North Dakota continues to be fairly healthy, there has been a decrease in the number of licensed gaming organizations over the years. It was noted that without periodic changes to the play of games, gaming activity tends to go flat. It was also noted that expenses continue to rise for the charities, especially with the increases in the minimum wage. It was suggested that it may be time to review the laws relating to the gaming tax structure and the allowable expense structure.

In an analysis of gaming activity for the calendar year ending December 31, 2008, the committee received testimony that the amount wagered on charitable games for that year was $265,805,193, an amount that represented a 2.9 percent increase or $7,539,813 from calendar year 2007. It was reported that all major game types had increases in the amount wagered in 2008, including pull tab dispensing devices, which increased 5.9 percent or $3,125,850; twenty-one, which increased 2.6 percent or $1,955,784; pull tab jars, which increased 2.5 percent or $2,158,677; and bingo, which increased .9 percent or $300,600. Poker had the largest percentage decrease of 37.5 percent or $445,576 during calendar year 2008. Approximately 79 percent of the amount collected from charitable gaming goes back to the players as prizes. It was noted that the estimated $17.3 million that will be deposited in the general fund from charitable gaming taxes in the current biennium makes the state of North Dakota the single largest recipient of proceeds from charitable gaming. The testimony also indicated that the old technology of stamps on pull tabs is another area to consider changing. It was noted that the North Dakota charitable gaming industry is locked into this old technology because the requirements are set in statute. According to the testimony, the gaming industry has evolved, and the statutes have not kept pace. It was noted that there are gaming organizations that have been in the gaming business for decades but are unable to make a profit for their charity. For those gaming organizations for which the expenses exceed the profits, the gaming organization is forced to pay the charity from other sources within the organization.

The committee also received testimony regarding biennial gaming tax collection. The state collects about $15.4 million in gaming taxes per biennium. The Attorney General's general fund appropriation for the Gaming Division is about $1.8 million per biennium. Of that amount, approximately $510,000 is paid to local law enforcement for gaming enforcement and approximately $6,000 is appropriated for the State Gaming Commission's expenses. The state collects about $80,000 from gaming stamps and is reimbursed about $247,000 from the tribes for casino inspections. It was noted that the amount of taxes collected in one quarter, or about $1.9 million, is more than enough to cover the state's gaming administration costs for the biennium.

As a result of a survey of gaming organizations conducted by the Gaming Division of the Attorney General's office, the committee received testimony regarding recommendations those organizations may have for changes. Of the 326 licensed gaming organizations in the state, 48 responded to the survey, or approximately 15 percent. The survey results indicated that 51 percent of the gaming organizations responding do not consider the gaming tax on adjusted gross proceeds to be fair and appropriate, 59 percent would prefer a flat tax based on a single taxable amount rather than a progressive tax based on periodic increases, 72 percent would support a single percentage expense allowance on adjusted gross proceeds, and 51 percent would support a single expense allowance even if it slightly decreased the organization's expense amount in some quarters if the entire process was simplified. It was noted that although 72 percent of respondents indicated that the current gaming tax return is easy to prepare, about one-half indicated they have some problems with the form or need adjustments.

The committee also received testimony from the Charitable Gaming Association of North Dakota and from representatives of individual gaming organizations regarding issues facing the charitable gaming industry in the state. According to the testimony, because there has not been any major change in the operation of charitable games in the state since 2001 when the bet limit for the game of twenty-one was increased, the charitable gaming industry is seeing a decrease in activity and is in need of changes. It was suggested that because electronic gaming is easier to audit and control and is a "greener" way to conduct gaming, the state may want to consider a move to more electronic devices for conducting charitable gaming. Other testimony indicated support for changes to the tax structure of charitable gaming as long as there is not an organization that would be penalized by paying an increase in taxes because of these changes. It was also suggested that the state may want to consider increasing the minimum bet in blackjack to $2 per hand, increasing the number of occasions that an organization can conduct poker events, and allowing electronic variations of existing game types.

Several members of the committee expressed concern that the state should be taxing charitable gaming only in an amount sufficient to cover gaming administration and enforcement expenses. In light of

these concerns, the committee considered a bill draft that would have provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 58 percent for all organizations and that would have consolidated all taxes into a flat rate of 3.16 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds.

Testimony in explanation of the bill draft indicated that although the bill draft would simplify the gaming tax structure from a progressive tax based upon adjusted gross proceeds to a flat tax of 3.16 percent of gross proceeds, the bill draft was revenue-neutral, and the state would continue to collect about $15.4 million per biennium in gaming taxes. The testimony indicated that the bill draft would help the smaller organizations, most of which are now paying 4 percent to 5 percent of gross proceeds in gaming taxes. It was noted that about 80 percent of the gaming organizations would see a tax reduction while about 20 percent would see an increase. The testimony indicated that to get the entire industry to support the tax rates in the bill draft, it is likely that the rate would have to be lower than 3.16 percent.

The committee also considered a bill draft that provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and which consolidated all taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. Testimony in explanation of the bill draft indicated that based on the current wagering level and average tax rate, each one-half percent decrease in the tax rate on gross proceeds represents a $1.25 million decrease in taxes collected per year, or $2.5 million per biennium. If the tax rate on gross proceeds were reduced from 3.16 percent, as was reflected in the first bill draft considered by the committee, to 1 percent of gross proceeds, the tax collections would be reduced to $2.5 million per year, or $5 million per biennium.

The testimony in explanation of the bill draft also indicated that Section 53-06.1-12, which provides for the deposit of 3 percent of the total taxes collected to be deposited into a gaming tax allocation fund that is allocated to cities and counties for gaming enforcement, would need to be adjusted from 3 percent to 10 percent if it was the committee's intent to continue to return the same amount to the local governments each biennium. According to the testimony, the current tax payback to cities and counties is limited to a maximum of $510,000 per biennium. How the money that is distributed to the cities and counties is used varies by community. The City of Fargo uses the money to hire a separate employee for gaming enforcement, while other communities use the money to offset law enforcement costs. The committee amended the bill draft to change the percentage in Section 53-06.1-12 from 3 percent to 10 percent.

Testimony in support of the bill draft indicated that a tax rate of 1 percent is very significant for the gaming industry because it provides relief for all sizes of organizations. According to the testimony, the current tax rate has been a burden to most gaming organizations. It was noted that reduction to a 1 percent tax would allow more money to be used for charitable purposes--the reason gaming was established in the state.

Several committee members indicated that the beneficiary of this bill draft will be the charities, which was the initial intent of charitable gaming. One committee member noted that the bill draft does not expand gaming, but rather makes gaming fairer.

Gaming Demonstrations

Several gaming vendors demonstrated their products for the committee.

Testimony from the various vendors indicated that while charitable gaming in the state provides a visible community benefit and is monitored by civic-minded volunteers, charitable gaming is restricted to vending that is the least secure and has the most expensive chances of any form of recreational gaming, including the commercial casinos and the state lottery. According to the testimony, the need for new games that utilize technologies developed over the past few decades is clear; however, the process of introducing those new games requires new legislation for each new game. It was noted that it is difficult to run a gaming business when every game or game change must be approved by the Legislative Assembly. It was suggested that the Legislative Assembly articulate values or parameters for new games and allow a committee or commission with gaming knowledge to find the best games that fit within those values.

The testimony indicated that electronic gaming, which allows for a computerized point-of-sale system, results in the need for less inventory, reduces shipping costs, and is a more efficient use of labor. It was noted that the greatest advantage of electronic gaming is the detailed reporting that is possible. It was suggested that giving the State Gaming Commission general rulemaking authority to allow the use of electronic pull tab devices would allow the gaming industry in the state to be able to use the latest technologies. It was noted that Canada has seen a significant increase in gaming following the introduction of electronic pull tabs. It was also noted that in addition to the financial savings that a gaming organization would incur by using electronic pull tabs, the electronic version of the game would attract a different demographic. A vendor of an electronic pull tab dispenser indicated that the benefits of the dispenser are:

- Significantly reduced labor;
- The single roll of tabs makes restocking fast and easy;
- The dispenser accepts cash, accumulates credits, dispenses tabs, validates tabs, and prints credit vouchers;
- The retailer validates and redeems credit vouchers only;
- Accounting reports can be automatically generated;
- Added security and an ability to counteract counterfeit pull tabs, collusion, and peeking tickets; and

- The state has access to reports for audit purposes.

The committee also observed a demonstration of a new game referred to as "the horse racing game." The developer of the game explained the rules of the game and conducted a brief demonstration.

Gambling Treatment Services

The committee received testimony from the Mental Health and Substance Abuse Division of the Department of Human Services and Lutheran Social Services regarding gambling treatment in the state. The Department of Human Services was appropriated $650,000 for the 2009-11 biennium for the treatment of problem gambling. This appropriation, which is managed by the Mental Health and Substance Abuse Division, consists of $400,000 from the North Dakota Lottery and $250,000 from the state general fund. The division contracts with Gamblers Choice--a program of Lutheran Social Services--to provide treatment to problem gamblers. According to testimony, the state is in the infant stages of addressing gambling addiction. It was noted that as the state builds the infrastructure for gambling addiction, there will be a need for more funding. The testimony emphasized the importance of publicizing the availability of gambling treatment services. According to the testimony, the public is not as aware of the services and treatment available for problem gambling as they are for other addictions. Approximately $220,000 is spent per biennium for public information. It was noted that when media efforts are down, referrals are also down.

Testimony from a representative of Gamblers Choice indicated that gambling treatment services are available in Fargo, Grand Forks, Williston, Devils Lake, Minot, and Bismarck. According to the testimony, Gamblers Choice treated 109 clients in 2008 and 130 clients in 2009. From all sources of funding, including state funding, tribal contributions, United Way funding, and self-pay clients, the Gamblers Choice program operates on a budget of about $300,000 to $315,000 per year.

The testimony indicated that the program has had significantly more women seeking treatment in recent years. Problems with casino gambling have been more prevalent, but charitable gambling also is indicated as a problem. According to the testimony, most individuals are involved in the treatment program for six to eight months, treatment is not a quick fix and requires a significant commitment to lifestyle changes, and those seeking treatment also may have other mental health issues that need to be addressed. About 50 percent of those individuals treated are in recovery from another addiction like drugs or alcohol.

According to the testimony, a full seven- to eight-month gambling treatment program costs about $3,600. The treatment program is based on a 12-step model. Of the 12 counselors across the state, 6 are certified nationally as gambling addiction counselors. It was noted that there appears to be a connection between the immediacy of the game and the propensity to have a gambling problem. It also was noted that traditional and electronic pull tabs offer immediate play and results and that electronic pull tabs are not necessarily more likely to result in problem gambling than traditional pull tabs.

Racing Commission Administration

The committee received testimony regarding the responsibility for the administration of racing in the state as well as testimony regarding the status of racing and the activities of the Racing Commission.

Regarding the responsibility for the administration of horse racing in the state, the committee received testimony from the Attorney General's office. The responsibility for the administration of racing began in the Secretary of State's office in 1987, was transferred to the Attorney General in 1989, and was removed from the Attorney General in 2005. The 2005 legislation made the Racing Commission a freestanding agency; however, the Attorney General retained audit and license approval authority and provides legal services for the Racing Commission. The testimony indicated that the Racing Commission has had problems with taxation; however, because of 2009 legislative changes, North Dakota now has one of the lowest account wagering tax rates in the country. It was noted that another problem that has faced the Racing Commission is the disagreement among those in the racing industry regarding the distribution of the racing funds. The testimony indicated the hiring of a new racing director was a positive change for the Racing Commission, and the key to the Racing Commission's success in functioning as a stand-alone agency is its director. The testimony further indicated that it does not make sense to separate the administration of the Racing Commission between two separate state agencies as was proposed in the 2009 legislation. According to the testimony, if the Attorney General is responsible for the administration of the Racing Commission, the commission should be advisory in nature.

The committee also received testimony from the Agriculture Commissioner regarding the administration of the Racing Commission. The testimony indicated that the only services provided by the Department of Agriculture to the Racing Commission are regulations regarding the moving of equine across borders and the quarantining of equine. According to the testimony, splitting the functions of the Racing Commission between the Attorney General and the Agriculture Commissioner could be more problematic than the current structure. The testimony also expressed support for the hiring of the new racing director and indicated that the racing director has a good handle on the process and that racing is functioning well. The testimony indicated that it would not be in the best interests of the Racing Commission to split its functions among other agencies.

Testimony from the racing director recommended that the Legislative Assembly wait four years and then reevaluate the responsibility for the administration of the Racing Commission. It was noted that the Racing Commission will likely be in a much more stable position at that time.

Testimony from representatives of the horse industry regarding the responsibility for the administration of

racing expressed support for the Racing Commission's appointment of a new director. The testimony, however, suggested that with an increase in international betting, the Legislative Assembly should consider giving the Attorney General oversight over the Racing Commission. It was suggested that the Racing Commission is the only stand-alone agency that does not have a system of checks and balances.

The committee also received extensive testimony throughout the interim from the racing director. The testimony included information on the status of live racing in the state as well as account wagering activity. According to the testimony, the 2009 racing season in Fargo at the North Dakota Horse Park, which is operated by Horse Race North Dakota, resulted in a number of concerns about the management practices at the Fargo track. In light of the issues facing the Fargo track, it was reported there was not any live racing at the track for the 2010 season. The committee received testimony that the race track in Belcourt conducted live racing in the 2010 season. The Racing Commission provided $637,000 in funding to the Fargo track in 2009 and $207,500 to the Belcourt track in 2010. It was noted that because it is expensive to have live races, account wagering is needed to continue to fund live racing in the state.

The racing director also provided information to the committee regarding the increased activity in the licensing of account wagering companies as a result of 2009 changes to the account wagering tax structure. According to the testimony, a number of domestic and international companies have been licensed and are doing business in North Dakota. The testimony indicated these companies could generate thousands of dollars for the horse funds and the general fund. It was noted that the Attorney General and the Racing Commission are working on regulations regarding international and electronic wagering.

Recommendation

The committee recommends Senate Bill No. 2042 relating to charitable gaming taxes and allowable expenses. The bill provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and consolidates all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund.

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT STUDY

House Concurrent Resolution No. 3005 (2009) directed a study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act. In 2006 the National Conference of Commissioners on Uniform State Laws (National Conference) approved and recommended for enactment in all states the Revised Uniform Limited Liability Company Act. This Act revises the original Uniform Limited Liability Company Act, promulgated in 1995 and amended in 1996. The new revision is intended to provide states with modern, updated legislation governing the formation and operation of limited liability companies. A limited liability company is a single business entity that provides limited liability protection for the partners, as well as providing all the owners of the business with federal partnership taxation. The revised Act, which has been endorsed by the American Bar Association and the Real Property, Probate and Trust Law Sections of the American Bar Association, has been adopted in Iowa and Idaho.

Background

The majority of North Dakota law that relates to limited liability companies has been codified in Chapter 10-32. Numerous other sections of the North Dakota Century Code are directly or indirectly affected by or related to this chapter.

The North Dakota Limited Liability Company Act, which was enacted in 1993, was patterned after the Minnesota Limited Liability Company Act and was prepared by a drafting committee that consisted of representatives from the State Bar Association of North Dakota, the Certified Public Accountant Society, the North Dakota Tax Department, and the North Dakota Secretary of State's office. Various amendments and additions have been made to the North Dakota Limited Liability Company Act in every legislative session since its enactment in 1993. The Secretary of State, in his testimony in support of House Concurrent Resolution No. 3005, indicated that as of January 2009, there are 10,570 limited liability companies registered with the Secretary of State, including 6,561 general limited liability companies, 88 professional limited liability companies, 116 farm limited liability companies, and 3,805 foreign limited liability companies.

Section 10-32-02 defines a limited liability company as a "limited liability company, other than a foreign limited liability company, organized under or governed by this chapter excluding a nonprofit limited liability company organized under or governed by chapter 10-36." This chapter also provides for the governance of a limited liability company.

Revised Uniform Limited Liability Company Act (2006) Summary

By the time the National Conference promulgated the Uniform Limited Liability Company Act in 1996, the majority of the states had enacted legislation that provided for limited liability companies. Consequently, by 2006, the 1996 uniform Act had been enacted in only nine states.

Under the 1996 uniform Act, a limited liability company has members who primarily contribute capital to the company and who share in the profits or losses. The limited liability company may have managers who do the business of the company. A member may be a manager, but nonmember managers are also allowed. If there are no designated managers, members run the company as general partners in a general partnership would. A limited liability company statute has certain key features--a means of creating the company, usually by filing a certificate; a liability shield provision; rules

governing the relations between members and between members and any managers; rules governing distributions of profits or losses to members and a member's creditor's rights; rules governing a member's exit rights from the company; rules on dissolution of the company; and rules governing mergers and conversions. A limited liability company usually is governed by an operating agreement that almost always supersedes and overcomes the statutory rules.

The limited liability company originated because of the desire to have a full liability shield while retaining the so-called "passthrough" qualities of a partnership. This means that the company itself pays no federal income tax, leaving any tax liability to members receiving taxable distributions from the company. Before limited liability companies, full limitation of liability was available only for corporation shareholders. Corporations, however, are taxed as individuals on their income, but shareholders are also taxed on corporate distributions made to them. The ability to obtain passthrough status, then, provided a very substantial incentive for states to enact limited liability company statutes. The great wave of statutes preceded the promulgation of the 1996 uniform Act.

Limited liability companies have other qualities than passthrough status that make them desirable as a business organization. A limited liability company may be tailored specifically to the business or objective of the members because its structure mainly depends upon the agreement between members and managers. This means a kind of flexibility coupled with the liability shield that makes the limited liability company a more efficient organization than the corporation or any of the other unincorporated business organizations for many purposes. The limited liability company structure lends itself to nonprofit organizations, and many states do not require a for-profit reason for organization. The limited liability company form has been adapted to allow a single-member company to be formed. A single person may not form a partnership or limited partnership. Forming a corporation raises the tax issue and the complexities of maintaining a corporation for a single shareholder. A single-member limited liability company resolves these problems and makes it an efficient way for a single individual to have a vicarious liability shield.

Because of the new ideas and developments in the area of limited liability company law since 1996, the National Conference reconsidered the 1996 uniform Act. The result was the 2006 Uniform Limited Liability Company Act.

The issues addressed in the 2006 uniform Act are issues of formation; relationships between members and managers, if applicable; distributions; dissociation; dissolution and winding up; foreign limited liability companies; merger and conversion; and actions against a company by members. It is not possible in a short summary to do more than highlight some significant changes. The following are some of the changes made in 2006 over 1996:

1. In the 2006 Act, the operating agreement determines whether a company is manager-managed or member-managed. In the 1996 Act, the kind of management is determined in the certificate of organization. If the agreement is silent, the company is a member-managed company by default. A third-party creditor may seek affirmation of a manager's or a member's authority before doing business with the company and practice indicates the creditor does so without checking the official record for the certificate. In addition, certificates of authority may be filed to provide notice that only certain members or managers in a company are entitled to do business on behalf of the company.
2. There is no requirement that a company's operating agreement be in writing in either the 1996 or 2006 Act. However, the definitions "record" and "signature" establish that any statute of frauds requirement within the 2006 Act may be satisfied with electronic records and signatures. The 1996 Act does not recognize electronic records or signatures.
3. A member may not transfer membership in a company unless the operating agreement makes it possible. The only interest that may be transferred is called the "distributional interest" in the 1996 Act and the "transferable interest" in the 2006 Act. In the 2006 Act, a "transferable interest" is generally any right to distributions that a member has under the operating agreement. The operating agreement may impose restrictions on a right to transfer. However, the certificate of organization may provide that a "transferable interest" is freely transferable under the 2006 Act. If it does, the transferable interest may be certificated in the same manner any investment security is and is likely to be a security under Article 8 of the Uniform Commercial Code.
4. In both the 1996 and 2006 Acts, members owe a duty of care to each other. The duty in the 1996 Act is to refrain from conduct that is grossly negligent or reckless, intentional misconduct, or a knowing violation of law. In the 2006 Act, the standard is ordinary care subject to the business judgment rule.
5. Under both the 1996 and 2006 Acts, the operating agreement governs the relationships between members and members and managers, if any. The 1996 Act, however, provides that the duty of loyalty and the duty of care may not be eliminated in the operating agreement. In the 2006 Act, the operating agreement may eliminate the duty of loyalty or duty of care, provided that eliminating them is not "manifestly unreasonable." The agreement may not authorize intentional misconduct or knowing violations of law, as well.
6. The 1996 Act does not expressly address the issue of indemnification of members or managers, but the 2006 Act does. The 2006 Act provides for indemnification as a statutory matter; however, the operating agreement may alter the right to indemnification and may limit

damages to the company and members for any breach except for breach of the duty of loyalty or for a financial benefit received to which the member or manager is not entitled.

7. The 1996 Act makes no provision for companies that are initially organized without members. There must be at least one member upon filing the certificate of organization. In the 2006 Act, a member needs to be named within 90 days from the day the certificate is filed. There is a limited ability, therefore, to create what are called "shelf" companies.
8. The 1996 Act restricts creditors' interests to a member's distributional interest and provides a judgment creditor with a "charging order" as the only method of executing against that interest. The resultant lien may be foreclosed and sold in a judicial foreclosure sale. The 2006 Act further requires a finding that payment may not be made within a reasonable time before a court orders foreclosure of the lien. This finding is not required in the 1996 Act. In addition, the 2006 Act makes it clear that a purchase in a foreclosure sale does not make the purchaser a member.
9. In the 1996 Act, resignation from membership, or dissociation, of a member by express will triggers an obligation to buy the interest of that member in an at-will or term company. Failure to buy may subject the company to a judicial dissolution and winding up of the business. The 2006 Act provides no obligation to buy out a dissociating member, nor a ground based upon failure of a buyout for judicial dissolution.
10. The 1996 Act provides members with the right to file a derivative action on behalf of a company alleging certain kinds of misfeasance on the part of the company by its management. Under the 2006 Act, the company may form a "litigation committee" to investigate claims asserted in a derivative action. This stays the litigation while the committee does its investigation.
11. The 1996 Act allows no right of direct action against the company on behalf of a member as a plaintiff. The 2006 Act provides for direct action.

Testimony and Committee Considerations

The committee received testimony and information from the Secretary of State and the State Bar Association of North Dakota regarding the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act. The committee also received information and recommendations from a task force formed by the State Bar Association of North Dakota to conduct an indepth review of the Revised Uniform Limited Liability Company Act.

Testimony from the Secretary of State regarding the adoption of the Revised Uniform Limited Liability Company Act indicated that the study was important because of the complexity of the uniform Act and to ensure that the uniform Act is modified to include the provisions applicable to North Dakota practices and procedures. It was noted that there are over 11,000 limited liability companies registered in the state.

Following a review of the Revised Uniform Limited Liability Company Act by the State Bar Association of North Dakota task force, the committee received a report that it was the recommendation of the task force and the Secretary of State to postpone consideration of this revised Act until the 2013 legislative session. The report cited three reasons for the task force recommendation. First, only four states--Iowa, Idaho, Nebraska, and Wyoming--have enacted the Revised Uniform Limited Liability Company Act. It was noted that Iowa's adoption has not gone well and will require significant amendments in Iowa's next legislative session. Second, North Dakota's current Limited Liability Company Act, which is a fairly recent enactment, has been regularly updated and is serving the state's citizens well. It was noted that the state's best course of action may be to retain current law and enact the Revised Uniform Limited Liability Company Act as an alternative. Finally, Minnesota is working on an effort to retain its current Limited Liability Company Act and is trying to find a way to incorporate aspects of the Revised Uniform Limited Liability Company Act as an alternative available to those entities that may want to utilize it in Minnesota. According to the report, Minnesota's work product and experience with that state's project may be valuable resources for North Dakota to use if consideration is delayed until 2013.

According to the report, this legislation is too important to be enacted without careful consideration. The report indicated that one of the controversial elements of the revised Act is the allowance for a date of creation, which is not the date when the documents were filed with the Secretary of State or on a later specified date. The report indicated there are concerns that this date could actually be a date prior to the filing with the Secretary of State which could cause a concern for those individuals who rely on the public record and for the filing offices that certify the information. Another concern was that the revised Act enables the creation of a limited liability company for any purpose whether it is for profit or nonprofit reasons. It was noted that this proposal conflicts with the state's current statutory structure. The report indicated that because of the concerns that the revised Act has raised in various states, the National Conference considered revisions to the Act during its summer 2010 meeting, with final approval of those revisions scheduled for the summer of 2011. The report also indicated that as written, the Revised Uniform Limited Liability Company Act would undo the current limited liability company structure in the state and could negatively impact some of those businesses operating under current law.

Recommendation

The committee recommends that the Legislative Management continue the study of the Revised Uniform Limited Liability Company Act during the 2011-12 interim.

UNIFORM DEBT-MANAGEMENT SERVICES ACT STUDY

The Uniform Debt-Management Services Act was among the 2008 recommendations of the North Dakota Commission on Uniform State Laws for introduction in the 2009 legislative session. Before the 2009 legislative session, concerns were expressed by members of the commission, the Attorney General, and the director of the Department of Financial Institutions that before the uniform Act is introduced for adoption in North Dakota, a determination should be made as to which state agency would be the most appropriate agency for the administration and enforcement of the Uniform Debt-Management Services Act. It was noted that the Uniform Debt-Management Services Act is a complicated Act that will require additional staffing and budget to implement. Because of these concerns, it was recommended that a study of the Uniform Debt-Management Services Act be conducted to address these concerns before introduction.

The Uniform Debt-Management Services Act has been adopted in Colorado, Delaware, Missouri, Nevada, Rhode Island, Tennessee, and Utah.

Background

The National Conference completed the Uniform Debt-Management Services Act in 2005. The uniform Act is intended to provide the states with a comprehensive Act governing these services that will allow for the national administration of debt counseling and management in a fair and effective way.

Uniform Debt-Management Services Act Summary

The Uniform Debt-Management Services Act may be divided into three basic parts--registration of services, service-debtor agreements, and enforcement.

Registration

The Uniform Debt-Management Services Act provides that a service may not enter an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Under the uniform Act, registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors, and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft, and the like in an amount no less than $250,000. The service also must provide a security bond of a minimum of $50,000 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application results in a certificate to do business from the administrator. A yearly renewal is required.

Agreements

In order to enter agreements with debtors, the uniform Act requires a disclosure requirement respecting fees and services to be offered and the risks and benefits of entering such a contract. The service must offer counseling services from a certified counselor, and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. The uniform Act provides for a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. The uniform Act contains strict accounting requirements and periodic reporting requirements respecting funds held.

Enforcement

The uniform Act prohibits specific acts on the part of a service, including misappropriation of funds in trust, settlement for more than 50 percent of a debt with a creditor without a debtor's consent, gifts or premiums to enter an agreement, and representation that settlement has occurred without certification from a creditor. Enforcement of the uniform Act occurs at two levels--the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist, power to assess a civil penalty up to $10,000, and power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the uniform Act, and may seek punitive damages and attorney's fees. A service has a good-faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years and two years for a private right of action.

Banks as regulated entities under other law are not subject to the uniform Act, as are other kinds of activities that are incidental to other functions performed. For example, a title insurer that provides a bill-paying service that is incidental to title insurance is not subject to it.

North Dakota Statutory Provisions

There are several areas of North Dakota law which may be impacted by the enactment of the Uniform Debt-Management Services Act. North Dakota law regarding debt adjustment and consumer credit counseling services are contained in Chapters 13-06 and 13-07. Chapter 13-06, which relates to debt adjusting, provides that unless exempted, any person who engages in the business of debt adjusting is guilty of a Class A misdemeanor. Section 13-06-03 provides for exemptions from the prohibition on debt adjusting, including situations involving debt adjusting incurred incidentally in the lawful practice of law in this state; banks and fiduciaries; title insurers and abstract companies; judicial officers or others acting under court orders; nonprofit or charitable corporations or

associations engaged in debt adjusting; situations involving debt adjusting incurred incidentally in connection with lawful practice as a certified public accountant and licensed public accountant; bona fide trade or mercantile associations in the course of arranging adjustment or debts with business establishments; any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for services rendered in adjusting the debts; and licensed and bonded collection agencies.

Chapter 13-07, which was enacted in 1993, provides for the regulation of consumer credit counseling services. Under Section 13-07-01, a consumer credit counseling service is defined as "a nonprofit corporation engaged in the business of debt adjusting as defined in section 13-06-01." Section 13-07-02, which sets forth the contract requirements in an agreement between the consumer credit counseling service and the debtor, provides that a consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan. Section 13-07-06 authorizes the consumer credit counseling service to charge an origination fee of up to $50. Section 13-07-07 prohibits a consumer credit counseling service from taking a confession of judgment or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding. This section also authorizes the Attorney General to receive and investigate complaints against a consumer credit counseling service. The remaining sections in this chapter set forth the surety bond, trust account, and accounting requirements for a consumer credit counseling service.

Testimony and Committee Considerations

The committee received extensive testimony and assistance from the Department of Financial Institutions and the Consumer Protection and Antitrust Division of the Attorney General's office.

The committee received testimony regarding the feasibility and impact of enacting the Uniform Debt-Management Services Act, as well as testimony regarding consumer protection services that are being provided by the state. The testimony indicated that other states have reported problems with some debt-management companies. According to the testimony, there are debt-management companies that lead consumers to believe the company can settle the debtor's debt for less than one-half of the debt owed. It was noted, however, when the company cannot deliver what has been promised, the debtor suffers. The Uniform Debt-Management Services Act would regulate debt-management companies.

Nonprofit consumer credit counseling services companies that do business in the state are required to register with the Attorney General. The registration process includes the posting of a bond. Actions that have been taken against consumer credit counseling services companies were the result of the companies' failure to post a bond or contact the Attorney General's office. According to the testimony there are about 25 consumer credit counseling services companies registered in the state; however, about 15 to 20 companies may be doing business in the state without following the bond and registration requirements. Complaints regarding consumer credit counseling services companies are received by the Attorney General's office. It was noted that there are three to five enforcement actions per year against consumer credit counseling services companies. According to the testimony, most of the consumer credit counseling services companies, which are nonprofit, are legitimate.

The testimony indicated the Attorney General has received few complaints from consumers regarding debt-management services companies in the state; however, it was noted that the office has received complaints from bankruptcy trustees regarding these companies. According to the testimony, the deceptive practices among debt-management services companies have become a real problem over the past several years. The industry is ripe for abuse because the industry targets consumers who are desperate for help, and the Uniform Debt-Management Services Act may be a proactive way to prevent problems before they get to North Dakota. It was also noted that current law regarding consumer fraud is very broad and would allow the Attorney General to take action if needed; however, a specific law may allow the Attorney General to move more quickly against a company. According to the testimony, the Uniform Debt-Management Services Act would meld current consumer credit counseling services laws with the debt-management regulations. The testimony indicated that the topic of regulating debt-management companies is one of concern to consumer protection offices throughout the country. It was noted, however, that many of the states do not like the uniform Act because it does not provide enough consumer protection.

The committee also received testimony regarding the appropriate agency to administer the Uniform Debt-Management Services Act. According to the testimony, while both the Attorney General and the Department of Financial Institutions are willing to administer the regulation provided for in the uniform Act, the Department of Financial Institutions would be the more appropriate agency. The testimony indicated that the regulation of debt-management services companies in other states is typically done by either a consumer fraud department or a banking department.

Testimony from the Department of Financial Institutions indicated that there are concerns about some of the provisions in the Uniform Debt-Management Services Act. The testimony indicated that one of the concerns is whether to require licensure of both for-profit and nonprofit companies. According to the testimony, if the state is going to regulate the industry, both types of companies should be regulated. The testimony indicated that the department would prefer licensing over registering as a method of regulating debt-management

companies because when a license is issued the license can be revoked for violations. It was estimated that there may be 100 to 200 companies that potentially could be licensed under the uniform Act. It was suggested that any legislation should address the collection of fees and the department's ability to issue enforcement actions that are consistent with other entities that the department licenses. It was noted that significant resources for licensing, bonding, and monitoring will be needed to regulate the debt-management services industry. It was estimated that two to three FTE positions would be necessary to handle the regulation of the debt-management services companies that would be licensed in the state. The testimony indicated that the goal is to have a law that provides for accountability but that allows legitimate companies to do business.

During the course of the committee's study, the committee considered a bill draft relating to the regulation of debt-settlement providers. According to testimony, the bill draft incorporated some of the provisions of the uniform Act but also included provisions modeled after current North Dakota consumer protection laws, as well as provisions contained in Illinois debt-settlement provider legislation. Testimony in explanation of the bill draft indicated the changes were made to the uniform Act to make the legislation more workable for North Dakota consumers. It was noted that the uniform Act only requires registration of the debt-management companies; however, the bill draft would require licensure. Another distinction noted between the uniform Act and the bill draft was that the uniform Act allows for the regulation of either for-profit or nonprofit companies, or both; however, the bill draft would require the regulation of both types of companies. The testimony noted that the regulations in the bill draft do not apply to professions such as lawyers and accountants because those professions are already regulated and licensed by their respective licensing bodies. The bill draft retained private rights of action which would allow a person to sue a company in civil court. Under the bill draft, the Department of Financial Institutions would be responsible for the regulation of the debt-settlement companies, and the Attorney General would be given enforcement authority.

The testimony indicated that the bill draft is consistent with other state laws. It was noted that many of the provisions of the Uniform Debt-Management Services Act are included in the bill draft but are located in different sections. The committee reviewed several documents that detailed the distinctions between the Uniform Debt-Management Services Act and the bill draft.

Other testimony regarding the bill draft indicated that even if a federal law is enacted on debt-management services, a state law is helpful because a state is usually able to react much more quickly than the federal government.

One committee member expressed concern about the bill draft and its deviations from the Uniform Debt-Management Services Act. It was noted that the area of debt management is very complicated, and the state's laws will not be uniform if the bill draft is adopted. It was noted that while the intent of uniform laws is to attain uniformity across the country, a state does not have to adopt uniform Acts, and a state can change a uniform Act to suit the state's needs. Concern was expressed about the effect this bill draft would have on a company located in another state if the other state adopted the uniform Act and North Dakota did not.

Recommendation

The committee recommends House Bill No. 1038 to provide for the regulation of debt-settlement providers.

CRIMINAL OFFENSES AND PENALTIES STUDY

Section 7 of House Bill No. 1003 directed a study of whether penalties for felonies are suitable to the felonious behavior. House Concurrent Resolution No. 3023 directed a study of the criminal offenses in the Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in Chapter 12.1-23. Because of the similarity in the studies, the two studies were combined into one comprehensive study.

Background

Criminal offenses are addressed in the Constitution of North Dakota. Article I, Section 7, of the Constitution provides that "[e]very citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor." Article I, Section 10, of the Constitution of North Dakota refers to the term "felony" and provides that no person may be proceeded against for a felony, except by indictment, until another procedure is provided by law. Article XI, Section 11, of the Constitution of North Dakota provides that "[a]ll officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law." Section 11 of Article I, dealing with bail for criminal offenses, refers to "capital offenses" which need not be bailable where proof of commission "is evident or the presumption great."

North Dakota Century Code Criminal Offenses

Statutory provisions governing criminal offenses are primarily contained in Title 12.1 with sentencing in misdemeanor and felony cases primarily contained in Chapter 12.1-32; however, criminal offenses can be found throughout the Century Code.

Classification of Offenses

North Dakota law regarding the classification of offenses is contained in Section 12.1-32-01. The offenses are divided into seven classes, each of which is

subject to maximum penalties. This penalty structure has undergone several changes since initially enacted in 1973. In 1975 this section was amended to include the classification of infraction. The penalty for an infraction--a maximum fine of $500--has not changed since enactment.

In 1979 a new classification of felony was added to Section 12.1-32-01. This change provided for the classification of Class AA felony, the penalty for which was a maximum of life imprisonment. This change also provided that a person found guilty of a Class AA felony could not be considered eligible for parole for 30 years less sentence reduction earned for good conduct. The Class AA felony classification was amended again in 1995. The 1995 change provided that the maximum penalty for a Class AA felony is life imprisonment without parole. This change also required the court to designate whether the life imprisonment sentence imposed is with or without an opportunity for parole.

The most recent change to Section 12.1-32-01 occurred in 1997. This change increased the maximum fine for a Class A misdemeanor from $1,000 to $2,000, and the maximum fine for a Class B misdemeanor from $500 to $1,000.

Criminal Offense Grading Based Upon Monetary Amounts

Century Code provisions for which a monetary amount triggers the grading of the offense included Sections 6-08-16 (Issuing Check or Draft Without Sufficient Funds or Credit), 6-08-16.2 (Issuing Check Without Account), 12.1-21-02 (Endangering by Fire or Explosion), 12.1-21-04 (Release of Destructive Forces), 12.1-21-05 (Criminal Mischief), 12.1-21.1-04 (Penalty for Damage to Animal Facility), 12.1-23-05 (Grading of Theft Offenses), 12.1-23-06 (Unauthorized Use of a Vehicle), 12.1-23-07 (Misapplication of Entrusted Property), 12.1-23-08 (Defrauding Secured Creditors), 12.1-23-08.1 (Removal of Identification Marks), 12.1-23-08.2 (Possession of Altered Property), 12.1-23-11 (Unauthorized Use of Personal Identifying Information), 12.1-24-01 (Forgery or Counterfeiting), 12.1-24-03 (Deceptive Writings), 12.1-24-05 (Making or Uttering Slugs), 12.1-28-02 (Gambling-Related Offenses), 12.1-31-07.1 (Exploitation of a Vulnerable Adult), 12.1-37-01 (Willful Failure to Pay Child Support), and 26.1-02.1-05 (Insurance Fraud).

Testimony and Committee Considerations

The committee in its study of criminal offenses and penalties primarily focused its study on those crimes for which a monetary amount triggers the level of the penalty. The committee received testimony from the North Dakota Association of Counties, the North Dakota State's Attorneys Association, the North Dakota Association for Justice, the Commission on Legal Counsel for Indigents, and from private attorneys regarding the study.

The committee received testimony about the importance of periodically reviewing criminal statutes to determine whether the penalties continue to be appropriate. The testimony also indicated that it is important to consider the impact of changing penalties. Most of the penalties and the dollar amounts that trigger the penalties were set in the 1970s and 1980s. For example, Section 12.1-23-05 provides that the offense of theft is a Class C felony if the property or services stolen exceeds $500 in value. It was noted that $500 in the 1970s economy would be the equivalent of $2,200 today. According to the testimony, because felonies create resource problems for the state, it is important to focus on where the felony and misdemeanor lines are drawn.

Upon identifying and reviewing 20 sections in the Century Code in which a monetary amount triggers the level of the penalty, the committee requested recommendations for changes to these sections from the various interested parties. During the course of the committee's study of these sections, the committee considered a bill draft that would have amended certain statutes that include a monetary amount which triggers the level of the penalty. The bill draft proposed the following changes:

- Section 6-08-16, which prohibits the issuing of a check or draft without sufficient funds or credit, provides that a violation of this section is an infraction if the amount of insufficient funds or credit is not more than $50; a Class B misdemeanor if the amount of insufficient funds or credit is more than $50 but not more than $250; a Class A misdemeanor if the amount of insufficient funds or credit is more than $250 but not more than $500; and a Class C felony if the amount of insufficient funds or credit is more than $500 or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order. The bill draft would have increased the amount that triggers the infraction from $50 to $100, the amount that triggers the Class B misdemeanor from more than $50 but not more than $250 to more than $100 but not more than $500, the amount that triggers the Class A misdemeanor from more than $250 but not more than $500 to more than $500 but not more than $1,000, and the amount that triggers the Class C felony from more than $500 to more than $1,000.
- Section 12.1-23-05, which relates to the grading of theft offenses, generally provides that a theft under Chapter 12.1-23 is a Class B felony if the property or services stolen exceed $10,000 in value, are acquired or retained by a threat to commit a Class A or Class B felony, or are acquired or retained by a threat to inflict serious bodily injury. This section also provides that a theft is a Class C felony if the property or services stolen exceed $500 in value. The bill draft would have provided that a theft under this chapter is a Class A felony if the property or services stolen exceed $50,000 in value, is a Class B felony if the property or services stolen exceed $10,000 but do not exceed $50,000, and a Class C felony if the property or services stolen exceed $1,000 in value.

- Section 12.1-23-06, which relates to the unauthorized use of a vehicle, provides that the offense is a Class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds $500. Otherwise the offense is a Class A misdemeanor. The bill draft would have increased the threshold in this section to $1,000.
- Section 12.1-23-07, which relates to the misapplication of entrusted property, provides that the misapplication of entrusted property is a Class B felony if the value of the property misapplied exceeds $10,000, a Class C felony if the value of the property misapplied exceeds $500 but does not exceed $10,000, a Class A misdemeanor if the value of the property misapplied exceeds $250 but does not exceed $500, and a Class B misdemeanor in all other cases. The bill draft would have made misapplication of entrusted property a Class A felony if the value of the property misapplied exceeds $50,000, a Class B felony if the value of the property misapplied exceeds $10,000 but does not exceed $50,000, a Class C felony if the value of the property misapplied exceeds $1,000 but does not exceed $10,000, a Class A misdemeanor if the value of the property misapplied exceeds $500 but does not exceed $1,000, and a Class B misdemeanor in all other cases.
- Section 12.1-23-08 provides that defrauding secured creditors is a Class C felony if the property has a value of more than $500. The bill draft would have increased that threshold to $1,000.
- Section 12.1-24-01 provides that forgery or counterfeiting is a Class B felony if the offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of $10,000. The offense is a Class C felony if the offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of $100. The offense is a Class A misdemeanor in all other cases. The bill draft would have provided that the offense is a Class A felony if the money or property has a value that exceeds $50,000, a Class B felony if the money or property has a value in excess of $10,000 but not in excess of $50,000, a Class C felony if the money or property has a value in excess of $500 but not in excess of $10,000, and a Class A misdemeanor in all other cases.
- Section 12.1-24-03 provides that a person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating a deception or harm by another person, that person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing. Under this section the offense is a Class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of $10,000. The offense is a Class C felony if the offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of $100. Otherwise the offense is a Class A misdemeanor. The bill draft would have increased the threshold for a Class C felony to $500.

Testimony in support of the bill draft indicated that the proposed changes would result in a more efficient use of government services, including the use of indigent defense attorneys and use of the State Crime Laboratory for conducting DNA testing on individuals who are charged with a felony. Other testimony in support of the bill draft indicated that the proposed amendments were reasonable and, in some instances, helped to clarify some issues. The testimony also indicated that the monetary increases are a reasonable reflection of inflation.

Other testimony regarding the bill draft indicated that upon distribution of the bill draft to 103 prosecutors in the state, only four responses were received. It was noted that of the four who responded, three did not feel the changes were necessary.

A committee member expressed concerns that regardless of whether the monetary amounts may need to be adjusted because of inflation, the individual is committing theft--an offense that should remain a felony. Another committee member expressed concern regarding the lack of interest from prosecutors. It was noted that this may indicate the prosecutors are content with the current laws. Another committee member expressed concerns that the state does not need to increase the incentives for crime in the state. The member noted that the biggest group that would benefit from this bill draft would be the criminals.

The committee also considered a bill draft to amend Section 12.1-21-04, which relates to the penalty for intentionally causing a catastrophe. The bill draft would have provided that it is a Class AA felony if a person intentionally causes a catastrophe. The bill draft defined catastrophe as damage to one or more structures, property loss in excess of $500,000, or a substantial risk of serious bodily injury or death to five or more individuals.

Testimony regarding the bill draft indicated concern with the increase in the gradation of the offenses in the bill draft. The testimony noted that the state has not been inundated with any massive releases of destructive forces lately, and, thus, the amendment to this provision is not warranted by any recent event in the state. It was noted that given some recent attempted terroristic events, there may be some legitimate concern about such issues. It was also noted that in most cases involving this type of crime, federal law would apply.

Conclusion

The committee made no recommendation regarding either of the two bill drafts considered during its study.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine members. The primary function of the commission is to represent North Dakota in the National Conference. The National Conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- Insurable Interest Amendments to Uniform Trust Code. These amendments address concerns regarding the purchase of life insurance trusts by trustees as it relates to insurable interest law. The amendments were approved by the National Conference in 2010.
- Uniform Military and Overseas Voter Act. This Act simplifies the process of absentee voting for United States military and overseas civilians who are unable to vote in person. This Act was approved by the National Conference in 2010.
- Revised Uniform Law on Notarial Acts. This Act updates the 1982 Act with respect to notary responsibilities, electronic recording, interstate recognition, and remedies. This Act was approved by the National Conference in 2010.
- Uniform Electronic Recording of Custodial Interrogations Act. This Act addresses the use of audio or videotaping to record law enforcement officers' interviews of criminal suspects who are in custody and mandates audio recordings of interrogations. This Act was approved by the National Conference in 2010.
- Amendments to Uniform Commercial Code Article 9. These amendments modify the existing Article 9 to respond to filing issues and address other matters that have arisen following a decade of experience with the 1998 version of Article 9, especially as to the name of an individual debtor to be provided on a financing statement. The amendments were approved by the National Conference in 2010.
- Uniform Real Property Transfer on Death Act. This Act allows an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate by means of a recorded transfer on death deed. This Act was approved by the National Conference in 2009.
- Uniform Unsworn Foreign Declarations Act. This Act will permit in state court proceedings unsworn declarations under penalty of perjury to be executed by witnesses physically located outside the United States in lieu of other sworn court filings, similar to federal law allowing an unsworn declaration executed outside the United States to be recognized as the equivalent of a sworn affidavit. This Act was approved by the National Conference in 2008 and was enacted in Minnesota and Wisconsin in 2010.

The committee made no recommendation regarding these uniform Acts.

RACING COMMISSION REPORT

The committee received a report from the director of the Racing Commission pursuant to Section 53-06.2-04. The Racing Commission is the regulatory body in charge of regulating live and simulcast racing in the state. The Racing Commission is a member of the Association of Racing Commissioners International, an organization that monitors racing on both a national and international level and is constantly creating and modifying rules for the regulation and improvement of racing.

The Racing Commission's primary responsibilities are to regulate live and simulcast races as well as to license all of the participants, including simulcast service providers; tote operators; simulcast site operators; live track providers; simulcast employees; and live racing participants, including owners, trainers, and jockeys. Because racing deals with live horses, qualified veterinarians are hired to ensure the safety of the animals. Certified stewards are needed for the regulation of the races. The winners of all races are tested for drugs to assure the integrity of racing. One of the most important areas of regulation is to protect the interest of the pari-mutuel wagers. Audits, investigations, and inspections of the pari-mutuel facilities are done for the protection of those wagering in our state. Compliance with the state's laws and rules is of utmost importance to the commission. According to the report, pari-mutuel wagering is the driving force that supports the live horse racing industry in North Dakota.

In light of management issues that arose at the North Dakota Horse Park during the 2009 race season, the decision was made to cancel the race season at the North Dakota Horse Park for 2010. The report included information regarding a financial review of Horse Race North Dakota. According to the report, some of the areas of concern that led to the review were the lack of centralized ordering of concession supplies, the lack of a budget, overspending, and other management issues.

For 2009 the Racing Commission provided $637,000 in funding for the North Dakota Horse Park. For the 2010 race season, the Racing Commission provided $207,500 in funding to the Belcourt track. The Belcourt track is working on an improvement plan that will allow the track to continue racing. The report noted that because conducting live races is expensive, account wagering is needed to continue to fund live racing in the state.

As a result of the racing tax changes that were passed in 2009, four new account wagering companies have begun doing business in the state, and several other account wagering companies are in the process of becoming licensed. The report indicated that these companies could generate thousands of dollars for the horse funds and the general fund. The Attorney General and the Racing Commission are working on regulations to allow for international and electronic wagering in the

state. A number of states, including Oregon, serve as a model for the Racing Commission in drafting laws and regulations for account wagering.

The Racing Commission's revenue projections for calendar year 2011 are $256,875 from taxes for the three funds plus breakage of $324,800 for total revenue of $581,675. To conduct race meets at the Fargo and Belcourt tracks, based on the 2009 and 2010 levels, the Racing Commission would need to generate $845,000.

LOTTERY REPORT

The committee received a report from the director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03. According to the report, the lottery's mission is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust.

For the 2009-11 biennium, the lottery's operating revenue was $2.15 million for operating expenses and $1.433 million for salaries and benefits for 9.5 FTE positions for a total of $3.584 million. The lottery has a continuing appropriation for variable expenses of prizes, retailer commission, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds eight FTE positions in the Lottery Division of the Attorney General's office, one FTE position in the Information Technology Division of the Attorney General's office, and a .5 FTE position in the Finance and Administration Division of the Attorney General's office. The appropriation also funds three part-time draw operators. The lottery recently celebrated its fifth anniversary and enjoys broad public support in the play of its games. The lottery has achieved exceptional success in ticket sales and generating state general fund revenue. The challenge facing the lottery is to increase ticket sales and state general fund revenues each year in a very competitive market environment. The lottery's give-a-gift service provides players an opportunity to purchase lottery gift certificates for special occasions. For the fiscal year ended June 30, 2009, sales of gift certificates were $1,559. The lottery's subscription service accounts for about 1.7 percent of total draw sales.

For the 2007-09 biennium, the lottery had operating revenue of $44.03 million. For the 2009-11 biennium, the lottery has projected sales of $46.45 million and net proceeds of $12.4 million. Of those net proceeds, $11.155 million will be deposited in the state general fund, $400,000 will be deposited in the compulsive gambling prevention and treatment fund, and $845,000 will be transferred to the Multijurisdictional Drug Task Force grant fund. As of June 30, 2009, $38.4 million or 65.6 percent of the prize expenses were payable to North Dakota players, and $20.1 million or 34.4 percent were payable to the Multi-State Lottery Association to fund prizes. For fiscal year 2010, $7.9 million or 83.4 percent of the prize expenses were payable to North Dakota players and $1.5 million or 16.6 percent were payable to the Multi-State Lottery Association to fund prizes.

According to the report, a vital part of the lottery's mission is to maximize revenue for the state's general fund. To do this, the lottery must be innovative, energetic, and offer exciting and attractive games that add value to the lottery's product mix for players to play; license retailers that are in convenient locations to sell tickets; develop attractive point-of-sale items; have creative marketing promotions; provide quality customer service to retailers and players; and control operating expenses. During the 2009-11 biennium, the lottery has done or has plans to generate net proceeds of $12.4 million, add the game Mega Millions to the games available to North Dakota players, relaunch the game of Wild Card 2, monitor the development of a national and a world game, expand the information available on the lottery's website, expand into social media by creating a lottery Facebook page, and continue to encourage players to be responsible in their amount of play.

TECHNICAL CORRECTIONS - RECOMMENDATION

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee recommends House Bill No. 1039 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

4-32-09	The repeal of this section is due to the occurrence of a triggering event that was based on the date on which North Dakota ratified the Interstate Pest Control Compact. North Dakota joined the compact in 1973.
14-15-17	The change relates to the visa requirement for foreign adoptions. The change adds the IH-3 visa--the document that is applicable to a child adopted in one of the countries that is part of the Hague Adoption Convention.
15-12-25	This change removes a reference to Technology Transfer, Incorporated, which was repealed in 1997.
15-52-03	The change is necessary due to a name change from the North Dakota Healthcare Association to the North Dakota Hospital Association.
23-34-02	The change is necessary due to a name change from the North Dakota Healthcare Association to the North Dakota Hospital Association.
23-34-02.1	The change is necessary due to a name change from the North Dakota Healthcare Association to the North Dakota Hospital Association.
40-05-21	This section, which relates to the establishment of a Centennial Coordinating Committee for the 1989 Centennial celebration, is repealed.
43-04-40	This change is necessary because the State Board of Health no longer exists, and the State Department of Health does not issue rules governing sanitary regulations of barbershops.
43-53-04	This change reflects a correction in an inaccurate reference to the name of the "Marriage and Family Therapy Licensure Board" as stated in Section 43-53-01 and several other provisions.
50-06-05.1	This change removes a reference to the appointment of members to a board regarding sexually violent predators' determinations, an appointment requirement that was eliminated from this section by 1999 Session Laws Chapter 131.
61-06-13	This change removes obsolete references to documents that are typewritten or mimeographed.
61-07-03	This change removes obsolete references to documents that are typewritten or mimeographed.
65-02-03.1	The change is necessary due to a name change from the North Dakota Healthcare Association to the North Dakota Hospital Association.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Management. Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Management. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state money is in compliance with law, legislative intent, and sound financial practices.
- Provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to Section 54-35-02.2, the committee is charged with the duty of studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Senators Randel Christmann (Chairman), Joan Heckaman, Jerry Klein, and Judy Lee and Representatives Rick Berg, Merle Boucher, Jeff Delzer, Patrick R. Hatlestad, RaeAnn G. Kelsch, Jerry Kelsh, Keith Kempenich, Gary Kreidt, Louis Pinkerton, Chet Pollert, Bob Skarphol, Blair Thoreson, Benjamin A. Vig, and Lonny Winrich.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

During the 2009-10 interim, the State Auditor's office and independent accounting firms presented 3 performance audit and evaluation reports and 115 financial or information technology application audit reports. An additional 47 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member. At the end of this report is a listing of the audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2009-10 interim:

1. Receive the annual audit report for the State Fair Association (Section 4-02.1-18).
2. Receive the annual audit report from any corporation, limited liability company, or limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (Sections 10-19.1-152, 10-32-156, and 45-10.2-115).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Developmental Center at Westwood Park (Sections 50-06.3-08 and 25-04-17).
4. Receive the annual audited financial statements and a report from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
5. Receive the North Dakota Stockmen's Association audit report. (Section 36-22-09 provides for the audit report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
6. Receive the performance audit report of Job Service North Dakota upon the request of the Legislative Audit and Fiscal Review Committee (Section 52-02-18).
7. Determine necessary performance audits. (Section 54-10-01(4) provides that the State Auditor is to perform or provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee.)
8. Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit (Section 54-10-01).
9. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
10. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).
11. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
12. Study and review audit reports submitted by the State Auditor (Section 54-35-02.2).
13. Study the structure and requirements of the State Auditor's office necessary to carry out its auditing of political subdivisions as required by law, including how such audits should be adequately self-funded (Section 4 of 2009 House Bill No. 1129).

GUIDELINES FOR AUDITS OF STATE AGENCIES

The committee received information on and reviewed the guidelines, which were developed by prior Legislative Audit and Fiscal Review Committees, relating to state agency and institution audits performed by the State Auditor's office and independent certified public accountants. For audit periods covering fiscal years since June 30, 2006, auditors of state agencies and institutions are requested to address the following six audit questions:

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

In addition, auditors are asked to communicate to the Legislative Audit and Fiscal Review Committee eight issues which identify:

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

AUDIT OF THE STATE AUDITOR'S OFFICE

Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Bailly LLP for an audit of the State Auditor's office for the years ended June 30, 2009 and 2008. The firm presented its audit report at the committee's February 10, 2010, meeting. The audit report contained an unqualified opinion and did not include any findings or recommendations.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the Comprehensive Annual Financial Report. The Comprehensive Annual Financial Report contains the audited financial statements for state agencies and institutions. An unqualified opinion was issued on the financial statements. The committee received and accepted the state's June 30, 2008, and June 30, 2009, Comprehensive Annual Financial Reports.

NORTH DAKOTA UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

The committee received the North Dakota University System's annual financial report for the fiscal year ended June 30, 2009. An unqualified opinion was issued on the financial statements. As of June 30, 2009, the University System had total assets of $1,109 million and total liabilities of $358 million, resulting in total net assets of $751 million. The total net assets increased $28 million during fiscal year 2009.

The annual degree credit headcount enrollment for the fall 2008 semester was 43,442, a 4 percent increase over the fall 2007 enrollment. The revenues from student tuition and fees were $244,594,000 for the fiscal year ended June 30, 2009, which is an increase of 3 percent compared to the revenues from this source for the fiscal year ended June 30, 2008. For the 2008-09 academic year, the campuses raised tuition rates an average of 5 percent.

PERFORMANCE AUDITS AND EVALUATIONS

Department of Commerce

The committee received the State Auditor's office performance audit report for the Department of Commerce conducted pursuant to authority provided in Chapter 54-10. The audit period for which information was reviewed was July 1, 2005, through December 31, 2008.

The Department of Commerce was established by the 2001 Legislative Assembly by consolidating the duties of the Department of Economic Development and Finance, the Division of Community Services of the Office of Management and Budget, and the Tourism Department. The Department of Commerce has four divisions--Economic Development and Finance, Community Services, Workforce Development, and Tourism. The Department of Commerce is also responsible for managing the application process, reviews, and postaward monitoring of centers of excellence.

The performance audit included 50 recommendations. Major recommendations include:

1. The Centers of Excellence Commission should ensure compliance with Section 15-69-04(5) and determine whether centers of excellence are achieving the desired economic impact.

2. The Department of Commerce should ensure applications provided to the Centers of Excellence Commission contain budgeted expenditures that are in compliance with state law.
3. The Centers of Excellence Commission should establish formal policies and procedures for the application process. The policies should address:
   a. Definitions of key terms used in the application;
   b. Submission of revised applications, budgets, and/or other information when recommending a lesser amount than requested;
   c. Submission of information from centers of excellence previously receiving funding; and
   d. Completed applications being forwarded to the commission.
4. The Centers of Excellence Commission should establish criteria to be used for determining the approved funding amount in applications and analyze the effects of changing requested funding amounts of projects.
5. The Department of Commerce should establish an effective departmentwide monitoring function emphasizing compliance, consolidation of processes and procedures, and efficient operations. If reallocating resources is not possible to establish such a function, the department should take appropriate action to obtain additional full-time equivalent (FTE) positions or other necessary resources.
6. The Department of Commerce should ensure administrative costs of local recipients paid with community development block grant funds are reasonable and adequately supported.
7. The North Dakota Development Fund, Inc., should ensure compliance with policies for investments. In instances of exceptions or waivers of policies, reasons should be adequately documented.
8. The Agricultural Products Utilization Commission should make improvements relating to the monitoring requirements in North Dakota Administrative Code Title 95. The Agricultural Products Utilization Commission should:
   a. Ensure compliance with requirements established in rules; and
   b. Take appropriate action to ensure rules are updated as necessary.

The committee accepted the performance audit report of the Department of Commerce.

Later during the interim, the committee received a report on the status of implementation of the performance audit recommendations. The committee learned the Department of Commerce has addressed 49 of the 50 recommendations with action taken to ensure substantial compliance with the recommendations. The department has hired a compliance manager to assist with the implementation of many of the recommendations.

University System Capital Projects

A representative of the State Auditor's office presented the performance audit report for University System capital projects. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The audit period for which information was reviewed was July 1, 2005, through October 31, 2009.

The University System was organized as a system in 1990 and is made up of 11 institutions governed by the eight-member State Board of Higher Education. The board includes seven citizen members appointed by the Governor who serve four-year terms and one student appointed by the Governor for a one-year term. A nonvoting faculty adviser to the board is selected by the Council of College Faculties.

Requirements related to capital projects are included in state law and State Board of Higher Education policies. According to policy, board approval is required for all institution capital projects or improvements for which the total cost exceeds $250,000 (prior to September 2008, the amount was $100,000). The committee learned the State Board of Higher Education made a number of changes to policies related to capital projects in October 2009.

The performance audit included 18 recommendations. Major recommendations include:

1. The State Board of Higher Education should take appropriate action to address differences relating to capital projects to ensure there is a unified system of higher education.
2. The State Board of Higher Education should establish an effective, systemwide monitoring function to ensure institutions are complying with policies and state law. The monitoring function should report directly to the board's Budget, Audit, and Finance Committee.
3. North Dakota State University and the University of North Dakota should obtain proper approval to proceed with improvement projects.
4. North Dakota State University and the University of North Dakota should ensure appropriate authorization is received from the State Board of Higher Education and, if applicable, the Legislative Assembly for projects which have been significantly changed or expanded or when authorized amounts are exceeded.
5. North Dakota State University and the University of North Dakota should ensure all project costs and project-related information is fully and accurately reported.
6. Dickinson State University should ensure appropriate authorization is received from the State Board of Higher Education for projects, which have been significantly changed or expanded.

The committee learned the construction of the new president's house at North Dakota State University exceeded the authorized project cost of $900,000 by approximately $1.3 million, not including donations of approximately $400,000 and transition costs of approximately $99,000. The university did not receive

additional legislative or State Board of Higher Education approval until after the majority of the expenditures were incurred and paid.

The committee learned the construction of the new president's house at the University of North Dakota exceeded the authorized project cost of $900,000 by approximately $363,000, not including $50,000 worth of brick and transition costs of approximately $54,000. The university did not receive additional legislative or State Board of Higher Education approval until after the expenditures were incurred and paid.

The committee accepted the performance audit report of University System capital projects.

Medicaid Provider and Recipient Fraud and Abuse

A representative of the State Auditor's office presented the performance audit report for Medicaid provider and recipient fraud and abuse. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The audit period for which information was reviewed was July 1, 2006, through June 30, 2009.

The Medicaid program was authorized in 1966 to strengthen and extend the provision of medical care and services to people whose resources are insufficient to meet these costs. Corrective, preventative, and rehabilitative medical services are provided with the objective of retaining or attaining capability for independence, self-care, and support. These services are extended to elderly, blind, or disabled individuals as well as to caretaker relatives and children to the age of 21 years. Funding is provided by federal, state, and county governments with eligibility determined at the county level. The Department of Human Services identified over 18,000 providers and 62,000 recipients enrolled in the Medicaid program.

Requirements related to Medicaid fraud and abuse are included in federal law, state law, and Department of Human Services policies. Federal requirements stipulate the state Medicaid agency utilize a surveillance and review process to protect the integrity of the program. The purpose is to avoid unnecessary costs due to fraud or abuse and ensure Medicaid-eligible recipients receive quality medical care. The Department of Human Services has a Surveillance and Utilization Review System Unit located within the Medical Services Division for implementing a surveillance and utilization control program.

The performance audit included 21 recommendations. Major recommendations include:

1. The Department of Human Services should promote a culture of identifying potential Medicaid fraud and abuse. The department should:
   a. Establish adequate policies and procedures for identifying potential Medicaid fraud and abuse, including definitions and steps to take when indications of potential Medicaid fraud and abuse are identified;
   b. Define employees' responsibilities of identifying potential Medicaid fraud and abuse;
   c. Communicate such responsibilities to employees; and
   d. Provide adequate training for identifying potential fraud and abuse to employees.
2. The Department of Human Services should comply with federal requirements and ensure an effective surveillance and review process is established to protect the integrity of the Medicaid program.
3. The Department of Human Services should ensure the Surveillance and Utilization Review System Unit is sufficiently organized outside the control of the other Medicaid operations.
4. The Department of Human Services should ensure the administrator of the Surveillance and Utilization Review System Unit has the necessary knowledge and skills to conduct utilization reviews and identify suspected fraud by requiring the administrator to have the necessary qualifications as required by the Medicaid program.
5. The Department of Human Services should submit a request to the federal government for a Medicaid fraud control unit waiver. Based on the determination from the federal government, the department should:
   a. Take appropriate action to establish a North Dakota Medicaid fraud control unit; or
   b. Ensure adequate resources are made available to efficiently and effectively investigate and refer Medicaid provider fraud and abuse.
6. The Department of Human Services should comply with federal requirements and take appropriate action when a provider is suspected of fraud or abuse following a preliminary investigation. When applicable, the department should:
   a. Conduct full investigations; or
   b. Refer the case to an appropriate law enforcement agency.
7. The Department of Human Services should improve the postpayment review process of Medicaid providers to ensure fraud and abuse are effectively identified.
8. The Department of Human Services should comply with federal requirements following preliminary investigations of Medicaid recipients. When applicable, the department should:
   a. Refer the case to an appropriate law enforcement agency if there is reason to believe a recipient has defrauded the Medicaid program; and
   b. Conduct a full investigation of abuse if there is reason to believe a recipient has abused the Medicaid program.
9. The Department of Human Services should establish policies and procedures for conducting

investigations of potential Medicaid recipient fraud and/or abuse.

10. The Department of Human Services should establish policies and procedures for referring suspected Medicaid recipient fraud.
11. The Department of Human Services should conduct a formal cost-benefit analysis to determine if the reestablishment of welfare fraud units within North Dakota is warranted.

The committee learned the Department of Human Services:

- Processes approximately $1.4 billion in Medicaid claims each biennium.
- The instances of billing errors were identified in the audit as well as instances that indicated potential fraud.
- The Department of Human Services began conducting provider audits in 2009.

The committee accepted the performance audit of Medicaid provider and recipient fraud and abuse.

INFORMATION TECHNOLOGY AUDITS

North Dakota Network and Security Audit

A representative of ManTech Security and Mission Assurance presented the North Dakota network and security audit report. The audit focused on five tasks--external vulnerability assessment, internal vulnerability assessment, application security assessment, wireless security assessment, and penetration testing.

The external vulnerability assessment identified 109 systems at state agencies or organizations with at least one vulnerability that would allow an external attacker potential access that could lead to compromise of the state's network from the Internet. The external vulnerability assessment identified nine unique high-risk vulnerabilities on multiple systems, three unique medium-risk vulnerabilities on multiple systems, and two unique low-risk vulnerabilities on multiple systems. The external vulnerability assessment resulted in the general recommendation to filter inbound access to all state systems.

The internal vulnerability assessment identified 440 systems at state agencies or organizations with at least one vulnerability that would allow an attacker potential access that could lead to compromise of the state's network and sensitive information. The internal vulnerability assessment identified 23 unique high-risk vulnerabilities on multiple systems, 19 unique medium-risk vulnerabilities on multiple systems, and 4 unique low-risk vulnerabilities on multiple systems. The internal vulnerability assessment resulted in the following general recommendations:

- Segment servers allowing public access from the internal network.
- Internal segregation of critical servers and development systems.
- Include applications in formal patch management program.
- Implement outbound access control.
- Require use of encrypted protocols for remote management.

Applications assessed during the application security assessment were the Game and Fish Department online services, Department of Transportation's driver's license online services, the criminal justice information sharing system, and the Job Service North Dakota unemployment insurance Internet claims entry. The application security assessment identified four unique high-risk, two unique medium-risk, and two unique low-risk vulnerabilities with the applications and associated components. No recommendations were made relating to the application security assessment.

The following locations in Bismarck were assessed during the wireless security assessment:

- State Capitol, 600 East Boulevard Avenue.
- Department of Transportation, 608 East Boulevard Avenue.
- State Water Commission, 900 East Boulevard Avenue.
- Bank of North Dakota, 1200 Memorial Highway.

No high-, medium-, or low-risk vulnerabilities were identified, and no recommendations were made.

During the penetration test, the test team was able to gain full administrative control of 14 systems. In addition, using social engineering techniques, the test team was successful in its attempts to gain user account credentials and showed the susceptibility of users to execute malicious content downloaded from the Internet or access unknown media on their local systems. No recommendations were made relating to the penetration test.

The committee accepted the North Dakota network and security audit report.

STUDY OF REQUIREMENTS FOR POLITICAL SUBDIVISION AUDITS

House Bill No. 1129 (2009) directed a study of the structure and requirements of the State Auditor's office necessary to carry out its auditing of political subdivisions as required by law, including how such audits should be adequately self-funded.

Sections 54-10-13 and 54-10-14 require the State Auditor to perform audits of political subdivisions. The State Auditor's office identified the following 1,173 political subdivisions subject to audit:

- Counties (53).
- Cities (354).
- Park districts (186).
- School districts (193).
- Firefighters relief associations (4).
- Airport authorities (10).
- Public libraries (8).
- Water resource districts (20).
- Garrison Diversion Conservancy District (1).
- Rural fire protection districts (226).
- Special education districts (22).
- Area career and technology centers (5).
- Correction centers (4).
- Recreation service districts (1).
- Weed boards (2).
- Irrigation districts (6).

- Rural ambulance service districts (12).
- Southwest Water Authority (1).
- Regional planning councils (8).
- Soil conservation districts (57).

Rather than an audit, Section 54-10-14 allows the State Auditor to receive annual reports from school districts with less than 100 enrolled students; cities with a population of less than 500; park districts and soil conservation districts with less than $200,000 of annual receipts; and other political subdivisions with less than $100,000 of annual receipts, excluding any federal funds passed through the political subdivision to another entity.

Section 54-10-14 also allows political subdivisions that are subject to audit to choose to be audited by a certified public accountant or licensed public accountant rather than by the State Auditor. The public accountant must comply with generally accepted government auditing standards and submit copies of the audit report to the State Auditor's office when the report is delivered to the political subdivision. The State Auditor must review the audit report and may review the public accountant's workpapers to determine if the report and workpapers meet generally accepted government auditing standards. The State Auditor may charge the political subdivision a fee of up to $80 per hour, not to exceed $500, for costs related to reviewing the audit report and workpapers.

The committee learned the State Auditor's office's Division of Local Government Audit is primarily responsible for auditing political subdivisions, reviewing audits submitted by public accounting firms, and reviewing annual reports submitted in lieu of audit reports. The State Auditor's office, in its 2009 budget request, removed three FTE positions due to the closing of the local government audit office in Bismarck. The Division of Local Government Audit is now located only in Fargo and currently has six FTE auditor positions and two part-time temporary auditor positions. The 2009 Legislative Assembly provided approximately $1.34 million of special funds for operations of the division for the 2009-11 biennium. The special funds are from fees charged to a political subdivision for audit and review services.

The committee learned the State Auditor's office annually reviews approximately 300 political subdivision audit reports submitted by public accounting firms. The amount of time required to review the report depends on the size of the political subdivision. The average amount of time needed to review an audit report submitted by a public firm is two hours to two and one-half hours. The State Auditor's office conducts approximately 85 political subdivision audits every two years, and private certified public accountant firms conduct approximately 600 political subdivision audits every two years. Some political subdivisions choose to be audited annually. The Division of Local Government Audit would require approximately $184,800 from the general fund per biennium to pay for the costs of reviewing political subdivision annual reports. If this funding would be provided, the State Auditor would no longer need to charge these political subdivisions for the annual report review.

The committee learned travel and pay are two issues that contribute to employee turnover in the political subdivision audit division. Fewer private certified public accountant firms are conducting audits of political subdivisions receiving federal funds due to the increasing requirements of generally accepted governmental auditing standards and federal requirements surrounding federal funds.

The committee received information relating to other states' provisions for political subdivision audits and learned most states allow political subdivisions to contract with private auditing firms. Montana requires all political subdivision audits to be conducted by private auditing firms. In Missouri, the State Auditor is required to audit all counties that do not elect a county auditor and other political subdivisions if petitioned to do so by a requisite percentage of qualified voters in the political subdivision. Arkansas has established an ad valorem tax fund for deposit of taxes levied against certain transportation companies which is used to pay administrative costs of auditing political subdivisions.

The committee received testimony from the North Dakota Association of Counties regarding suggestions for committee consideration regarding political subdivision audits. The North Dakota Association of Counties would consider the possibility of a joint bid process for audit services through an existing joint powers agreement for purchases. The association is supportive of eliminating fees charged to political subdivisions for review of annual reports and providing the necessary funds for these reviews to the State Auditor from the general fund.

Recommendations

The committee did not make any recommendations regarding its study of requirements for political subdivision audits.

OTHER REPORTS

Retirement and Investment Board Performance Audit

A representative of Clifton Gunderson LLP, Baltimore, Maryland, presented a performance audit report of the Retirement and Investment Office. The audit was conducted at the request of the State Investment Board after the death of the executive director/chief investment officer. The audit focused on the following seven objectives:

1. Determine whether the former executive director/chief investment officer adhered to executive limitation policies regarding:
   a. The protection, maintenance, and risk of assets; and
   b. Not allowing conflicts of interest in the procurement of goods and services.
2. Determine whether the former executive director/chief investment officer's actions directed:
   a. The receipt of cost-effective investment services directed at meeting the written financial goals under the prudent investor rule; and

b. The receipt of investment returns consistent with the written investment policies and market variable.

3. Determine whether the former executive director/chief investment officer performed adequate due diligence in the selection, retention, and compensation of money managers.
4. Determine whether the former executive director/chief investment officer complied with all laws applicable to the State Investment Board and the Retirement and Investment Office as outlined in the North Dakota Century Code.
5. Determine whether the former executive director/chief investment officer exercised any exclusive fund transaction access which could lead to any irregular financial activity or discrepancies related to the management of the Retirement and Investment Office or its funds.
6. A comparison of benchmarking of money manager compensation to comparable investment, public pension, or other state investment agencies.
7. Verification of the classification of investments into designated categories of:
   a. Equities;
   b. Fixed income;
   c. Real estate;
   d. Alternative investments; and
   e. Cash.

The audit revealed no evidence of corruption or fraud. The following is a summary of the report findings and recommendations:

- Enhance current conflict of interest policies.
- Update the executive limitation policy to address new federal Securities and Exchange Commission regulations.
- Update current policies regarding the selection and hiring process of investment managers.
- Expand the number of individuals involved in the initial investment manager due diligence process.
- Consider the prudence of obtaining fee concessions from external managers either by negotiation or reallocation.
- Expand disclosures of certain investment vehicles and their categorization with asset classes.
- Consider modifying the makeup of the State Investment Board and the creation of subcommittees specific to investments and oversight.
- Develop a strategic plan.
- Implement a formal valuation policy.
- Implement a policy for formal compliance reports and documentation received from the external investment managers.
- Reevaluate/realign the compliance officer position and/or create a deputy investment executive whose duties include compliance responsibilities.
- Maintain a formal log of compliance-related issues.
- Develop a policy dictating actions to be taken when a compliance matter arises.

Investment Fee Analysis - State Investment Board and Retirement

A representative of Callan Associates, Inc., Denver, Colorado, presented a report on the analysis of investment management fees paid to the State Investment Board's private equity asset managers. The purpose of the analysis was to determine the amount and rate of fees paid by the pension and insurance trusts for the one-year period ended March 31, 2010, and how the fees paid by the State Investment Board compare with those paid by other large institutional investors. The report concluded that fee schedules for North Dakota's conventional strategies are near or below industry averages for accounts of similar size. Fee schedules for North Dakota's special strategies, or those that invest in private markets, use leverage, or incorporate performance fees, result in increased fees within the asset classes to which these strategies have been assigned. The State Investment Board's pension trust's plan level fees are higher than average, and the insurance trust's overall fees are generally competitive.

State Investment Board

The committee received information from the Retirement and Investment Office regarding investment returns of funds invested by the State Investment Board, including the status of funds held in receivership. The committee learned:

- The average annual return for the five-year period ending March 31, 2010, for the Teachers' Fund for Retirement is 3.63 percent and the Public Employees Retirement System is 3.87 percent. The estimated fiscal year 2010 return as of May 10, 2010, for the Teachers' Fund for Retirement is 20.14 percent and the Public Employees Retirement System is 19.58 percent.
- The total State Investment Board exposure to the alleged fraud by WG Trading Investors, L.P., was $161.3 million.
- $23.3 million has been recovered, and $138 million is in receivership.
- Of the $138 million in receivership, $55.2 million, or 40 percent, was written down in May 2009, resulting in $82.8 million awaiting recovery.
- Recovery is expected in approximately two years.
- The State Investment Board and its six coclaimants have retained the services of a forensic accountant who will evaluate documents and a report from the receiver and assist in formulating a distribution plan for any funds that may become available.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to present a report to the Legislative Audit and Fiscal Review Committee regarding accounts receivable writeoffs at

the State Hospital, Developmental Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 2009 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2009, were $4,579,486 at the State Hospital, $104,236 at the Developmental Center, and $1,061,958 at the human service centers.

The department's report for fiscal year 2010 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2010, were $4,333,603 at the State Hospital, $54,174 at the Developmental Center, and $1,112,039 at the human service centers.

Judicial Branch
Uncollectible Fines and Fees

The committee received information from the Supreme Court regarding uncollectible fines and fees. The committee learned unpaid fines and fees are cumulative and continue from one year to the next year. The balance of uncollected fines and fees was $12.54 million as of June 30, 2010. Twenty-seven percent of the amount outstanding at June 30, 2010, or $3.29 million is less than one year past due, 14 percent or $1.76 million is between one year and two years past due, and the remainder of $7.49 million is more than two years past due.

The committee learned the courts have collected $10.6 million in revenues from fines and fees in fiscal year 2010, $10.7 million in fiscal year 2009, and $11.1 million in fiscal year 2008.

OTHER INFORMATION

The committee received other information and reports, including information and reports relating to:

- Public Employees Retirement System and Teachers' Fund for Retirement funds.
- The State Auditor's authority relating to audits or reviews of entities and component units of the University System.
- State liability for boards, commissions, and commodity groups.
- Agricultural commodity groups.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2009-10 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Abstracters' Board of Examiners	August 31, 2007 and 2006	February 10, 2010
Addiction Counseling Examiners, Board of	June 30, 2009 and 2008	October 1, 2010
Adjutant General	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Administrative Hearings, Office of	June 30, 2009 and 2008	October 1, 2010
Aeronautics Commission	June 30, 2009 and 2008	October 1, 2010
Ag PACE fund	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Ag PACE fund	June 30, 2009 and 2008	February 10, 2010
Agriculture, Department of	June 30, 2009 and 2008	October 1, 2010
Architecture, Board of	June 30, 2009 and 2008	October 1, 2010
Athletic Training Board	June 30, 2009, 2008, 2007, and 2006	October 1, 2010
Attorney General	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 2008, 2007, and 2006	February 10, 2010
Bank of North Dakota	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Bank of North Dakota	December 31, 2009 and 2008	May 12, 2010
Barley Council	June 30, 2008	February 10, 2010
Beef Commission	June 30, 2008 and 2007	February 10, 2010
Beef Commission	June 30, 2009 and 2008	February 10, 2010
Beginning farmer revolving loan fund	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Beginning farmer revolving loan fund	December 31, 2009 and 2008	May 12, 2010
Bismarck State College	June 30, 2009 and 2008	May 12, 2010
Building Authority	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Building Authority	June 30, 2009 and 2008	February 10, 2010
Career and Technical Education, Department of	June 30, 2009 and 2008	October 1, 2010
Chiropractic Examiners, Board of	December 31, 2007	May 12, 2010
Chiropractic Examiners, Board of	December 31, 2008	Sept. 30-Oct. 1, 2009
Chiropractic Examiners, Board of	December 31, 2009	May 12, 2010
Clinical Laboratory Practice, Board of	June 30, 2009	October 1, 2010
College SAVE (BND)	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
College SAVE (BND)	December 31, 2009 and 2008	October 21, 2010
Commerce Department	June 30, 2009 and 2008	October 21, 2010
Commerce Department performance audit	August 11, 2009	Sept. 30-Oct. 1, 2009
Commission on Legal Counsel for Indigents	June 30, 2009 and 2008	October 21, 2010
Community water facility loan fund	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Community water facility loan fund	December 31, 2009 and 2008	May 12, 2010
ConnectND - Finance component	June 30, 2008	Sept. 30-Oct. 1, 2009
ConnectND - Student administration component followup	May 12, 2009	Sept. 30-Oct. 1, 2009
Corn Utilization Council	June 30, 2008	Sept. 30-Oct. 1, 2009
Corrections and Rehabilitation, Department of	June 30, 2009 and 2008	May 12, 2010
Cosmetology, Board of	June 30, 2008	February 10, 2010
Cosmetology, Board of	June 30, 2009	February 10, 2010
Council on the Arts	June 30, 2009 and 2008	October 21, 2010
Counselor Examiners, Board of	June 30, 2008 and 2007	May 12, 2010
Dairy Promotion Commission	June 30, 2008 and 2007	February 10, 2010
Dakota College at Bottineau	June 30, 2009 and 2008	May 12, 2010
Dental Examiners, Board of	June 30, 2009 and 2008	February 10, 2010
Development Fund, Inc.	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Development Fund, Inc.	June 30, 2009 and 2008	February 10, 2010
Developmentally disabled facility loan program	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Developmentally disabled facility loan program	December 31, 2009 and 2008	May 12, 2010
Dickinson State University	June 30, 2009 and 2008	May 12, 2010
Dietetic Practice, Board of	September 30, 2009 and 2008	May 12, 2010
Dry Bean Council	June 30, 2008	February 10, 2010
Dry Pea and Lentil Council	June 30, 2008 and 2007	February 10, 2010
Education Standards and Practices Board	June 30, 2008	Sept. 30-Oct. 1, 2009
Electrical Board	June 30, 2009 and 2008	February 10, 2010
Financial Institutions, Department of	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Firefighter's Association, North Dakota	December 31, 2009 and 2008	October 1, 2010
Game and Fish Department	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Governor's office	June 30, 2009 and 2008	October 1, 2010
Guaranteed student loan program	June 30, 2009 and 2008	February 10, 2010
Guaranteed student loan program	September 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Health, State Department of	June 30, 2009 and 2008	October 1, 2010
Highway Patrol	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Historical Society	June 30, 2008	Sept. 30-Oct. 1, 2009
Housing Finance Agency	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Housing Finance Agency	June 30, 2009 and 2008	February 10, 2010
Human Services, Department of	June 30, 2009 and 2008	May 12, 2010
Indian Affairs Commission	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009

Industrial Commission	June 30, 2009 and 2008	October 21, 2010
Information Technology Department	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Insurance Commissioner	June 30, 2009 and 2008	October 21, 2010
Job Service North Dakota	June 30, 2007 and 2006 reissue	Sept. 30-Oct. 1, 2009
Job Service North Dakota	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Job Service North Dakota	June 30, 2009 and 2008	February 10, 2010
Judicial branch	June 30, 2009 and 2008	October 1, 2010
Labor Department	June 30, 2009 and 2008	May 12, 2010
Lake Region State College	June 30, 2009 and 2008	October 1, 2010
Law Examiners, Board of	June 30, 2009 and 2008	May 12, 2010
Legislative Assembly	June 30, 2009 and 2008	February 10, 2010
Legislative Council	June 30, 2009 and 2008	February 10, 2010
Lottery, North Dakota	June 30, 2009 and 2008	February 10, 2010
Management and Budget, Office of	June 30, 2009 and 2008	October 1, 2010
Massage, Board of	June 30, 2007 and 2006	Sept. 30-Oct. 1, 2009
Mayville State University	June 30, 2009 and 2008	May 12, 2010
Medicaid provider and recipient fraud and abuse (performance audit)	September 2, 2010	October 21, 2010
Medical Examiners, Board of	December 31, 2008 and 2007	February 10, 2010
Milk Marketing Board	June 30, 2008	February 10, 2010
Mill and Elevator Association	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Mill and Elevator Association	June 30, 2009 and 2008	February 10, 2010
Minot State University	June 30, 2009 and 2008	May 12, 2010
North Dakota State University	June 30, 2009 and 2008	October 1, 2010
North Dakota University System	June 30, 2008	Sept. 30-Oct. 1, 2009
North Dakota University System	June 30, 2009	May 12, 2010
North Dakota University System capital projects performance audit	April 5, 2010	May 12, 2010
Nursing Home Administrators, Board of Examiners for	June 30, 2008 and 2007	February 10, 2010
Occupational Therapy Practice, Board of	June 30, 2009 and 2008	May 12, 2010
Oilseed Council	June 30, 2008 and 2007	February 10, 2010
Optometry, Board of	June 30, 2008 and 2007	February 10, 2010
PACE fund	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
PACE fund	June 30, 2009 and 2008	February 10, 2010
Parks and Recreation Department	June 30, 2009 and 2008	October 1, 2010
Peace Officer Standards and Training Board	December 31, 2008 and 2007	February 10, 2010
Pharmacy, Board of	June 30, 2009 and 2008	May 12, 2010
Physical Therapy, Board of	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Plumbing, Board of	June 30, 2009 and 2008	February 10, 2010
Potato Council	June 30, 2008	February 10, 2010
Private Investigative and Security Board	December 31, 2007	February 10, 2010
Private Investigative and Security Board	December 31, 2008	February 10, 2010
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2009	May 12, 2010
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2008	Sept. 30-Oct. 1, 2009
Professional Soil Classifiers, Board of Registration for	June 30, 2009 and 2008	October 1, 2010
Protection and Advocacy Project	June 30, 2008	Sept. 30-Oct. 1, 2009
Psychologist Examiners, Board of	June 30, 2007 and 2006	Sept. 30-Oct. 1, 2009
Psychologist Examiners, Board of	June 30, 2009 and 2008	October 1, 2010
Public Accountancy, Board of	June 30, 2008	Sept. 30-Oct. 1, 2009
Public Accountancy, Board of	June 30, 2009	February 10, 2010
Public Employees Retirement System	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Public Employees Retirement System	June 30, 2009 and 2008	February 10, 2010
Public Finance Authority	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Public Finance Authority	December 31, 2009 and 2008	May 12, 2010
Public Instruction, Department of	June 30, 2009 and 2008	May 12, 2010
Public Service Commission	June 30, 2009 and 2008	October 1, 2010
Racing Commission	June 30, 2009 and 2008	October 21, 2010
Real Estate Commission	June 30, 2008	Sept. 30-Oct. 1, 2009
Real Estate Commission	June 30, 2009	May 12, 2010
Reflexology, State Board of	June 30, 2008	Sept. 30-Oct. 1, 2009
Reflexology, State Board of	June 30, 2009	October 1, 2010
Respiratory Care, Board of	January 31, 2007 and 2006	Sept. 30-Oct. 1, 2009
Respiratory Care, Board of	January 31, 2009 and 2008	February 10, 2010
Retirement and Investment Office	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Retirement and Investment Office	June 30, 2009 and 2008	February 10, 2010
Secretary of State	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Securities Commissioner	June 30, 2008	February 10, 2010
Seed Department	June 30, 2008	Sept. 30-Oct. 1, 2009
Soybean Council	June 30, 2009	October 1, 2010
Soybean Council	June 30, 2009	February 10, 2010
State Auditor	June 30, 2009 and 2008	February 10, 2010
State College of Science	June 30, 2009 and 2008	October 1, 2010
State Fair Association	September 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
State Fair Association	September 30, 2009 and 2008	February 10, 2010
State network security audit	June 30, 2009	February 10, 2010

State Treasurer	June 30, 2009 and 2008	October 21, 2010
State Treasurer, TDOC information system audit	June 30, 2010	October 21, 2010
Statewide CAFR	June 30, 2008	Sept. 30-Oct. 1, 2009
Statewide CAFR	June 30, 2009	May 12, 2010
Statewide single audit	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Stockmen's Association	December 31, 2008 and 2007	Sept. 30-Oct. 1, 2009
Student loan trust	June 30, 2009 and 2008	February 10, 2010
Tax Commissioner	June 30, 2009 and 2008	October 1, 2010
Transportation, Department of	June 30, 2009 and 2008	May 12, 2010
University and School Lands, Board of	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
University and School Lands, Board of	June 30, 2009 and 2008	February 10, 2010
University of North Dakota	June 30, 2009 and 2008	October 1, 2010
University System office	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Valley City State University	June 30, 2009 and 2008	May 12, 2010
Vehicle registration and titling system information system audit	June 30, 2009	February 10, 2010
Veterans' Affairs, Department of	June 30, 2008	Sept. 30-Oct. 1, 2009
Veterans' Home	June 30, 2009 and 2008	October 1, 2010
Veterinary Medical Examiners, Board of	June 30, 2008 and 2007	May 12, 2010
Water Commission, State	June 30, 2009 and 2008	October 1, 2010
Water Well Contractors, Board of	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Wheat Commission	June 30, 2008 and 2007	February 10, 2010
Williston State College	June 30, 2009 and 2008	May 12, 2010
Workforce Safety and Insurance	June 30, 2008 and 2007	Sept. 30-Oct. 1, 2009
Workforce Safety and Insurance	June 30, 2009 and 2008	February 10, 2010

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Management delegated to the Legislative Procedure and Arrangements Committee the Legislative Management's authority under North Dakota Century Code Section 54-35-11 to make arrangements for the 2011 legislative session. Legislative rules are also reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's:

1. Duty under Section 54-03-26 to determine the computer usage fee for legislators, and the authority to establish a policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council;
2. Power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents and to control permanent displays in Memorial Hall and use of the legislative chambers;
3. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
4. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the department;
5. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
6. Responsibility under Section 4-35.2-04 to determine when the Agriculture Commissioner must report to the Agriculture Committees on the status of the pesticide container disposal program;
7. Authority under Section 46-02-05 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and
8. Authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel.

The Legislative Management also assigned to the committee the responsibility under 2009 Session Laws, Chapter 29, Section 5, to administer the appropriation for legislative wing equipment and improvements. The Legislative Management also designated the committee as the Legislative Ethics Committee under Section 54-35-02.8 with the responsibility to consider or prepare a legislative code of ethics.

Committee members were Representatives Al Carlson (Chairman), Merle Boucher, David Monson, Kenton Onstad, and Don Vigesaa and Senators Randel Christmann, Jerry Klein, Carolyn Nelson, David O'Connell, and Bob Stenehjem.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

LEGISLATIVE SPACE RENOVATION PROJECTS

Legislative Committee Meeting Room Renovations

1979-80 and 1981-82 Renovation Project

During the 1977-78 interim, the Legislative Procedure and Arrangements Committee established as a top priority the moving of legislative committee rooms to the ground floor from the balconies behind the Senate and House chambers. This was the impetus of the major legislative space renovation during the 1979-80 and 1981-82 legislative interims.

Additional committee rooms were established by moving the Legislative Council staff to the offices vacated by the Supreme Court, which resulted in the Roosevelt Park, Fort Union, and Peace Garden Rooms; the legislative study; the doctor's examination room; the press studio; and the press room on the ground floor. The former Supreme Court hearing room was converted into the Prairie Room. The Highway Patrol was moved to the new State Office Building, which resulted in the Harvest Room. The cafeteria was moved to the new State Office Building, which resulted in the Roughrider and Sakakawea Rooms and the Appropriations Committees clerk rooms.

1983-84 Through 2005-06 Interims

During the 1983-84 interim, the woodwork in the Prairie Room and the wood base and doors and frames throughout the ground floor of the legislative wing were refinished, and the hardware throughout the legislative wing was repaired or replaced. New tables and a new sound system were installed in the Roughrider Room, and the sound system was upgraded in the Harvest Room.

During the 1985-86 interim, the wood paneling on the first and second floors was stripped and refinished, a new sound system was installed in the Harvest Room, bookcases and new chairs were installed in the Roughrider Room, a new table was installed in the Prairie Room, a new ceiling with recessed lighting was installed in the Prairie Room, and new committee room signage boards were installed.

During the 1989-90 interim, thematic pictures were installed in all committee rooms, and microphones were replaced in the Roughrider Room.

During the 1995-96 interim, electrical and data wiring and grommets were installed in the Harvest, Roughrider, Sakakawea, and House Conference Rooms; sound-absorbent surface was installed on the ceiling over the table area, and a curtain was installed in front of the

stage in the Brynhild Haugland Room; and committee room bookcases were installed in four committee rooms.

During the 2003-04 interim, a new sound system was installed in the Brynhild Haugland Room, and new stacking chairs were placed in the Brynhild Haugland Room.

During the 2005-06 interim, the space occupied by the joint bill and journal room was renovated to provide a substantially smaller bill and journal room and two committee rooms--the Medora and Great Plains Rooms; new committee member chairs were installed in all committee rooms; and projection screens and projectors were installed in the Roughrider and Harvest Rooms.

2007-08 Interim and 2009 Legislative Session

During the 2007-08 interim, the wall between the Medora and Great Plains Rooms was removed, resulting in the Medora Room.

The carpeting was replaced in all committee rooms except the Harvest, Pioneer, Prairie, and Roughrider Rooms. The carpeting in the ground floor circular hallway on the north side of the main hallway, and in the hallway outside the Fort Lincoln Room, also was replaced. Committee tables in the Medora, Fort Lincoln, Fort Union, and House and Senate Conference Rooms were replaced. A lectern was installed in the Medora Room.

During the 2009 session, the side chairs in all committee rooms were reupholstered; the carpeting in the Senate Conference Room was replaced; digital signage was installed for the Fort Union, Peace Garden, Harvest, and Pioneer Rooms; lecterns in the Fort Lincoln and Fort Union Rooms were replaced; and portable sound systems were used in the Fort Lincoln, Missouri River, and Sakakawea Rooms.

After the 2009 session, committee room tables in the Roosevelt Park, Missouri River, Red River, and Lewis and Clark Rooms were replaced; coffee counters were installed in the regular House and Senate committee rooms, except the Medora Room; and side chairs in the Lewis and Clark, Red River, and Missouri River Rooms were replaced.

2009-10 Interim

The committee approved replacement of the committee tables in the Fort Totten, Harvest, Peace Garden, Roughrider, and Sakakawea Rooms; replacement of the carpeting in the Harvest, Prairie, Roughrider, and Senate Conference Rooms; replacement of the lecterns in the Fort Totten, Harvest, Lewis and Clark, Missouri River, Peace Garden, Prairie, Red River, Roosevelt Park, Roughrider, and Sakakawea Rooms; installation of coffee counters in the Medora Room; replacement of the intern desks in all committee rooms except the Pioneer, Roughrider, and Harvest Rooms; replacement of the committee clerk desks in the Sakakawea and Medora Rooms; and installation of digital signage for the Fort Lincoln, Fort Totten, Lewis and Clark, Medora, Missouri River, Prairie, Red River, Roosevelt Park, Roughrider, and Sakakawea Rooms.

The committee approved portable sound systems for the Fort Totten, Fort Union, Lewis and Clark, Medora, Peace Garden, Prairie, Red River, Roosevelt Park, and Sakakawea Rooms.

The committee approved replacement of the sound systems and microphones in the Harvest and Roughrider Rooms.

The committee approved replacement of the screens and projectors in the Harvest and Roughrider Rooms. The Harvest Room will have a projector and screen on the east and west walls. The Roughrider Room will have a projector and screen on the north and south walls.

Basically, since the 2007-08 interim, carpeting in all committee rooms, except for the Pioneer Room, has been replaced; committee tables in all committee rooms, except the Pioneer and Prairie Rooms, have been replaced; side chairs in the committee rooms, except for the Pioneer and Prairie Rooms, have been reupholstered or purchased; lecterns and committee intern/Appropriations Committees clerk desks have been replaced in all committee rooms except the Harvest, Roughrider, and Pioneer Rooms; new coffee counters have been installed in all committee rooms except the Pioneer and Harvest Rooms; digital signs have been installed for all committee rooms, including the Brynhild Haugland Room; and sound systems have been placed in all committee rooms, including a portable sound system for the Pioneer Room.

During discussion of the committee room table and chair arrangement, it was suggested that an area be designated in each committee room for space by individuals using wheelchairs.

The names of committee rooms accessible through the circular hallway on the ground floor are listed on bronze signage over the entrances to the hallway. The signage did not include the Medora Room. The committee approved replacing the bronze signage with bronze signage including the name of the Medora Room.

Legislative Assembly Offices Renovation

1979-80 and 1981-82 Interims

During the major legislative space renovation project in the early 1980s, the offices for the Senate leaders and their secretaries were moved to behind the Senate chamber; an office for the Secretary of the Senate was created; separate offices for the House leaders and their secretaries on each side of the House chamber were created; and offices for the Speaker of the House, the Speaker's secretary, and the Chief Clerk of the House were created behind the west balcony of the House chamber.

2009 Session

After the 2009 legislative session, the carpeting and furniture in the House and Senate majority and minority leaders' office suites were replaced.

2009-10 Interim

The committee approved replacement of the House Speaker's office suite furniture and carpeting; replacement of the Chief Clerk of the House's office furniture and carpeting; and replacement of the Secretary of the Senate's office furniture and carpeting.

Committee Clerk Areas

The committee approved replacement of the carpeting and installation of new modular furniture in the House and Senate committee clerk areas behind the Senate balcony. The modular furniture allows for adjustment in work surface height to accommodate individual committee clerks.

The committee approved replacement of the carpet and installation of new modular furniture in the secretarial services area.

Legislative Studies

During the major legislative space renovation project in the early 1980s, a legislative study on the ground floor was created from a portion of the space formerly occupied by the Legislative Council staff. In addition, a legislative study on the first floor was created from a portion of the space on the side of the Senate chamber, which was the Lieutenant Governor's office.

When the legislative studies were created, legislators did not have telephones at their desks in the chambers. The legislative studies were viewed as fulfilling a need for legislators to have a private area for making telephone calls. Thus, each study contained several telephone carrels for use by legislators. In the late 1980s and early 1990s, telephones for individual legislators were installed at their desks in the chambers. As a result, usage of the telephone carrels has declined.

The committee approved removing the telephone carrels and installing new carpeting in the legislative studies.

Each legislative study is in the shape of an L. Committee members reviewed plans to convert each L-shaped study into two rooms. Two proposals for the first floor study were to divide the study into two rooms--one proposal was for two rooms of 260 square feet and 285 square feet, and one proposal was for two rooms of 170 square feet and 380 square feet. The proposal for the ground floor study was to divide the study into two rooms--one with 245 square feet and one with 445 square feet.

After viewing the study areas, the committee approved installing a wall and door in the ground floor study to split the room into two rooms. The intent is to provide a separate space in the study, containing a meeting table and chairs.

Legislative Information Monitors

During the 1981-82 interim, video monitors were hung from the ceiling near the west end of the ground floor, near the elevators on the ground floor, and on the information kiosk on the first floor. The monitors displayed committee hearing schedules for the week. During the daily floor session, the monitors displayed the vote results during second reading of measures.

The committee determined that the video monitors should be replaced by display screens that would result in an improved look to information provided from the new legislative enterprise system North Dakota (LEGEND) project being developed. The discussion centered on the placement of the screens. Proposals included installing screens above the entrances to the House and Senate chambers, installing screens on all or certain sides of the information kiosk, installing screens in the same positions where the existing monitors were located on the ground floor, installing screens in the north and south entrances to the Capitol, or installing screens in the west end of the ground floor of the Capitol.

The committee approved installing an "information wall" of four 47-inch display screens on the wall between the two roll-up windows of the bill and journal room. In addition, the committee approved installing four 26-inch monitors--two facing east and two facing west--hanging from the ceiling of the ground floor near the Capitol information desk. The committee also approved four 22-inch display screens on the west side of the information kiosk.

The four display screens in each grouping will display a variety of information, including daily committee hearings, weekly committee hearings, and activities in each chamber.

Brynhild Haugland Room Chairlift

During the major legislative space renovation project in the early 1980s, a chairlift was installed in the west stairwell entry to the Brynhild Haugland Room. The chairlift was intended to make the ground floor of the Brynhild Haugland Room, which is five steps below the ground floor of the Capitol, accessible to individuals in wheelchairs.

The committee received testimony that the chairlift is not user-friendly. The chairlift requires the individual to find two keys to operate the lift, the keys must be inserted on the upper and lower levels, the safety arms require an ability to twist or turn around and lift the safety arms to get on or off the lift platform, the controls require physical dexterity to stretch and reach to access the controls, and the off-ramp at the bottom of the lift is too steep to roll a manual wheelchair onto the ramp. Basically, the chairlift requires assistance for its use.

After viewing the chairlift in operation, the committee approved replacement of the chairlift.

House Brass Rail

The committee received information on the cost of cutting an opening in the brass rail in the first section on the west side of the House chamber. The estimate to cut one opening on the west side and one opening on the east side of the House chamber (to balance the opening on the west side) was $5,750.

The committee approved cutting an opening in the brass rail between the first and second or the second and third columns on the west and east sides of the House chamber. The intent is to improve access to the seating in the back row.

Legislative Chambers

The committee received estimates from Facility Management to restore the desks in the chambers, including cleaning, stripping, repairing, staining, and refinishing, for $154,500.

The committee received estimates from Facility Management to restore the copper alloy (brass/bronze)

in the legislative chambers, including handrails, columns, grilles, edge trim, and door hardware, for $421,800.

The committee received estimates from Facility Management to restore the wood walls, cornice, base, doors, and trim in the chambers and legislative hall for $882,700.

The committee approved acquiring two stands with handicapped reserved signage to be used by the House sergeant-at-arms to provide a designated area for wheelchairs near the sergeant-at-arms' area in the back of the chamber.

The committee urges the Governor to include in the executive budget recommendation for the 2011-13 biennium funding from the Capitol building fund for projects to renovate the wood desks in the House and Senate chambers, to renovate the brass in the chambers and areas in the legislative wing not included in the prior brass renovation project, and to renovate the wood in the chambers and the legislative hall.

The committee approved acquiring an electronic keyboard for use in the chambers rather than a piano.

LEGISLATIVE SPACE USE

Legislative Chambers and Memorial Hall

Since 1981 the Legislative Management has delegated to the committee the responsibility under Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

Under the 1996 guidelines, reapproved by the committee in June 2008, the first priority for use of the chambers is for the legislative branch. When the Legislative Assembly is not in session, the chambers may be used by other groups or organizations if certain requirements are met. A state agency may use the chambers for official purposes of that agency. Any other group or organization may use the chambers for mock legislative sessions if the group or organization has not employed a registered lobbyist or contracted for independent lobbying services by a registered lobbyist within two years before the request for use. Any use cannot interfere with legislative branch activities, the sponsor of the function must make suitable arrangements with the Office of Management and Budget, the sponsor must assume full responsibility for the care of the chambers, and prior approval must be obtained from the Legislative Procedure and Arrangements Committee or from the director of the Legislative Council or the director's designee.

During its review of the guidelines, the committee approved requests for use of both chambers by the North Dakota High School Activities Association State Student Congress on November 5-6, 2009, on November 4-5, 2010, and on November 3-4, 2011; and use of the House chamber by the Secretary of State on March 23-24, 2010, to conduct a statewide biennial election conference; and by the Land Department for oil and gas lease auctions on November 3, 2009, and February 2, May 4, August 3, and November 2, 2010. In addition, approval under the guidelines was given for use of the House chamber by the Supreme Court on September 25, 2009, for the admission to the bar ceremony and by the Silver-Haired Education Association on July 28-30, 2010, for a Silver-Haired Assembly.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues and a replica of the liberty bell in 1984, Memorial Hall does not contain any permanent display. (The liberty bell is on display in the entrance/commons area of Century High School in Bismarck.)

Legislative Committee Rooms

Joint Rule 803 provides that during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but the Secretary of the Senate or the Chief Clerk of the House may grant a state agency permission to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, Section 48-08-04 applies and provides that committee rooms may not be used without authorization of the Legislative Council or its designee.

The Legislative Management adopted the policy governing approval of use of committee rooms in 1998 and has revised the policy as issues have arisen. The policy also applies to proper use of the press studio on the ground floor of the legislative wing whether during the session or during the interim. The policy is similar to that governing use of the chambers.

The committee discussed whether to allow use of the rooms after new carpet and new tables have been installed. In the past, damage to tables and carpet has been caused when individuals rearrange the tables and chairs, place cooking or heating devices on tabletops, set hot food containers on tabletops, and spill beverages.

The committee reapproved the policy in June 2009, after amending the policy to provide that the sponsor of the planned function assumes full responsibility for the care of the room, will see that no food is brought into the room, will see that coasters are used if beverages are brought into the room, will not rearrange the furniture in or remove the furniture from the room, and will leave the room in the condition it was in before the planned function.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee reviewed specific questions or comments recorded during the 2009 legislative session regarding rules issues. The committee also reviewed a side-by-side comparison of Senate and House rules.

Crossover and Reporting Deadlines

Senate and House Rules 329(4) require relevant bills in the house of origin to be rereferred to the Appropriations Committees not later than the 23rd legislative day and relevant bills in the second house to be rereferred not later than the 47th legislative day.

Senate and House Rules 508 require most measures in the house of origin to be reported back no later than the 31st legislative day.

Joint Rule 203 generally prohibits bills that have passed the house of origin from being delivered to the other house after the 34th legislative day.

The committee discussed several alternatives to allow additional time for consideration of measures. One alternative would have extended the deadline for rereferral to the Appropriations Committee in the house of origin from the 23rd to the 25th legislative day, extended the deadline for rereferral to the Appropriations Committee in the second house from the 47th to the 52nd legislative day, and extended the deadline for reporting of measures in the second house from the 55th to the 60th legislative day. Another alternative, in addition to extending the deadlines for rereferral to the Appropriations Committees, would have extended the deadline for reporting measures in the house of origin from the 31st to the 34th legislative day, moved crossover from the 34th to the 37th legislative day, and extended the deadline to report in the second house from the 55th to the 62nd legislative day.

The committee determined that additional time should be given to committees before rereferral of relevant bills to the Appropriations Committees, additional time should be given to the Appropriations Committees to consider bills, especially due to the later deadline for rereferrals from other committees, and additional time should be given for consideration of bills in the second house.

The committee recommends amendment of Senate and House Rules 329(4) to extend the deadline for rereferral to the Appropriations Committee in the house of origin from the 23rd to the 25th legislative day and the deadline for rereferral in the second house from the 47th to the 57th legislative day.

The committee recommends amendment of Senate and House Rules 508 to extend the deadline to report bills and most resolutions from the 31st to the 36th legislative day; to extend the deadline to report resolutions proposing constitutional amendments or Legislative Management interim studies from the 37th to the 42nd legislative day; and to extend the deadline to report bills and resolutions in the second house from the 55th to the 65th legislative day.

The committee recommends amendment of Joint Rule 203 to move the deadline for bills to crossover to the other house from the 34th to the 39th legislative day.

Basically, the recommended amendments give the three-day and two-day committees an additional day for consideration of measures before rereferral; give the three-day committees three additional days, the two-day committees two additional days, and the Appropriations Committees five additional days for consideration of measures before reporting measures out of committee; give the three-day and two-day committees three additional days for consideration of constitutional amendment and study resolutions; extend the deadline for crossover of bills and resolutions by one week; and extend the deadline for reporting measures in the second house by two weeks.

Transmittal of Measures

As a result of extending the various deadlines for reporting measures, the committee recommends amendment of Senate and House Rules 346 to make corresponding changes to the days on which measures would not be retained until the end of the next legislative day (for purposes of reconsideration). Measures would be transmitted immediately upon adjournment on the 38th rather than the 33rd legislative day (continuing such transmittal on the day before crossover) and after the 59th rather than the 49th legislative day (continuing such transmittal two days after the deadline for rereferral to the Appropriations Committee in the second house). Measures would be transmitted immediately after second reading on the 68th rather than the 58th legislative day (continuing such transmittal three days after the deadline for reporting measures from committee in the second house). To address an ambiguity, the rules amendment also adds the day of crossover as a day on which measures would be transmitted immediately upon adjournment.

Introduction of Constitutional Amendment and Interim Study Resolutions

As a result of extending the various deadlines for reporting measures, the committee recommends amendment of Senate Rule 402(3) and House Rule 402(4) to extend the deadline for introduction of resolutions that propose amendments to the Constitution of North Dakota or directing a Legislative Management study from the 31st to the 36th legislative day. This maintains the introduction deadline with the deadline to report most bills and resolutions in the house of origin.

Copies of Journals

Senate and House Rules 204(4) and (5) provide for 27 copies of the daily journals to be bound as permanent journals. The rules also provide for the distribution of these journals.

The committee recommends amendment of Senate and House Rules 204(4) and (5) to increase the number of copies of daily journals to be bound as permanent journals from 27 to 28. The amendment provides for the additional copy to be provided to the Legislative Council.

Publication of Legislative Documents

During the interim a question arose over whether the web version of bills, resolutions, and journals is official, and whether a change could be made to delete a portion of the journals on the web, while leaving the printed version complete. The Legislative Council provides all documents to the contract printers and publishes those documents on the legislative branch website.

The committee recommends creating Joint Rule 604 to provide for the Legislative Council to arrange for the publication of legislative documents in accordance with constitutional and statutory requirements and the rules of the Senate and House and the Joint Rules. The proposed rule also provides that as published by the Legislative Council, the legislative documents, whether in electronic or print format, are the correct copies, deemed to be officially published. The intent of the

proposed rule is to eliminate the ambiguity over whether a printed bill, printed resolution, or printed journal is "official" while an electronic version of that bill, resolution, or journal is not "official."

Smoking in Legislative Areas

Senate Rule 105 prohibits smoking in the Senate chamber. House Rule 105 prohibits smoking in the House chamber or in House committee rooms. Since the amendment of Sections 23-12-09 and 23-12-10 in 2005, relating to smoking in public places and places of employment, the rules are not necessary.

The committee recommends repeal of Senate and House Rules 105 relating to smoking in certain areas in the legislative wing.

Confirmation of Executive Nominations

Senate Rule 701 provides the procedure for Senate consideration of nominations from the executive. The rule is silent on the vote requirement and under Senate Rule 318(1)(m) the vote requirement would be the majority of the members present. Under Article VIII, Section 6, of the Constitution of North Dakota, however, the vote requirement for confirming executive nominations to the State Board of Higher Education is a majority of the members-elect.

The committee recommends amendment of Senate Rules 318(2) and 701 to require a majority of the members-elect to confirm executive nominations. The intent is to eliminate ambiguity or distinction of vote requirements among different nominees.

Motion for Reconsideration

Senate and House Rules 347 provide that the vote by which any measure passed or failed may not be reconsidered more than once in any natural day. The question that arose is the definition of "natural" day. When this language was added to the rules, reference was to the definition of natural day in Article IV, Section 7, of the Constitution of North Dakota. That section defines a natural day as a period of 24 consecutive hours. The difficulty in applying this definition is that the time a motion to reconsider is made is not officially recorded.

The committee recommends amendment of Senate and House Rules 347 to replace "natural day" with "legislative day."

Rules of Debate

Senate and House Rules 306 provide that no member may speak more than twice on the same subject without leave of the house, no more than once until every member choosing to speak on the subject pending has spoken. The question that arose is whether the rule restricts the number of floor amendments that can be submitted on the 11th or 14th order if "order" is considered the same stage of proceedings. *Mason's* Section 102 refers to a question under debate rather than the subject.

The committee recommends amendment of Senate and House Rules 306 to change "subject" to "question." The intent is to clarify that the limit to speaking twice applies to the "question" under consideration and not to a "subject" that is under discussion during a particular order of business. Thus, each floor amendment is a separate question, and the two-time limit would apply to the specific amendment, not to the 11th or 14th order.

Recording Remarks in Journal

Senate and House Rules 345 allow the majority and minority leaders to request that remarks of a member be recorded in the journal. Customary practice is that the assistant leaders make the requests.

The committee recommends amendment of Senate and House Rules 345 to authorize the assistant leaders to request the remarks of a member be recorded in the journal.

Transmittal of Measure Without Motion

Senate and House Rules 346 provide that after the 49th legislative day, a bill is to be transmitted to the other house at the end of the day unless notice of intention to move reconsideration of the bill is given. The question that arose is the length of time a measure should be held, waiting for the motion, after receiving notice.

The committee recommends amendment of Senate and House Rules 346 to provide that if notice is given but the motion to reconsider is not made before the end of the next legislative day, the measure is to be transmitted to the other chamber at the end of that day.

Reporting of Measures

Senate and House Rules 508 provide the deadlines for reporting bills and resolutions from committee. The question arose of whether the 55th legislative day deadline for reporting measures in the second house should apply to bills introduced after deadlines for introduction of bills.

The committee recommends amendment of Senate and House Rules 508 to provide two exceptions for a delayed bill. Rather than being required to be reported back by the 31st legislative day in the house of origin, a delayed bill must be reported back within five legislative days after the day of introduction, and rather than being required to be reported back by the 55th legislative day in the second house, a delayed bill received in the second house after the regular crossover deadline must be reported back within five legislative days after the day of receipt from the other house.

Sponsors of Measures

Senate and House Rules 401(2) limit the number of sponsors of bills or resolutions to six members of the Legislative Assembly. The committee considered a proposal to increase the number of allowed sponsors from 6 to 12.

Other Rules Proposal Considered

The committee reviewed a proposal to amend Senate and House Rules 401 to increase the number of allowed sponsors of measures from 6 to 12.

LEGISLATIVE INFORMATION SERVICES

Beginning with the 1985-86 interim, the Legislative Procedure and Arrangements Committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established which approximate the cost of printing a set of the relevant documents during the previous legislative session, e.g., the cost of printing the documents is divided by the number of sets of documents printed. Representatives of the media as determined under Joint Rule 802 and state agencies and institutions are not charged the fees for copies of bills and resolutions as introduced and printed, daily journals, daily calendars, and committee hearing schedules.

Bills, Resolutions, and Journals Subscription

During the 2009 legislative session, 4 entities paid to pick up a set of bills and resolutions from the bill and journal room, 34 paid to pick up a set of bills and resolutions as introduced and as engrossed, 13 paid to pick up a set of journals, and 5 paid to receive the journal index.

The committee eliminated the option of subscribing to a set of bills and resolutions as introduced only (not including engrossed measures). The committee established the following fees with respect to these documents during the 2011 legislative session--$315 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, $540 if mailed; $90 for a set of daily journals of the Senate and House, $230 if mailed; and $30 to receive the index to the Senate and House journals.

The committee continued the policy provided under Joint Rule 603 that anyone can receive no more than five copies of a limited number of bills and resolutions without charge.

Bill Status Report Subscription

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. One entity paid a $350 subscription fee to receive these reports from the bill and journal room during the 2009 legislative session.

The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2011 bill status reports and pay a $350 subscription fee, $490 if mailed. The committee determined, however, that two copies of the bill status reports should be provided to the press room in the State Capitol without payment of subscription fees.

Committee Hearing Schedules and Daily Calendars Subscription

The committee continued the practice of making committee hearing schedules and daily calendars available at no charge. The committee also determined that if a request is received for mailing the committee hearing schedules or daily calendars, the policy followed during the 2009 legislative session should continue, and a fee should be imposed to cover the cost of mailing. The committee established a subscription fee of $40 for mailing a set of the weekly hearing schedules for Senate and House committees and a subscription fee of $70 for mailing a set of daily calendars of the Senate and House.

Bill and Journal Room Photocopy Policy

Under the contract for providing bill and journal room services, the contractor is to collect photocopying fees and transmit those fees to the Legislative Council office. Fees are not charged for providing a photocopy of a legislative document available for distribution to the public by personnel in the bill and journal room (bills, engrossed bills, journals, calendars, and committee hearing schedules) nor for providing a photocopy to a legislator, a House or Senate employee, or a Legislative Council employee. Under the policy, the fee for photocopying service is 25 cents per page.

CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS

Background

Under Section 46-02-05, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. The Central Services Division of the Office of Management and Budget prepares the requests for bids for the printing of these items in accordance with the requirements set by the committee.

Contract Contents

With respect to the contract for printing bills, resolutions, and journals for the 62nd Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 190 to 175, reduced the number of engrossed bills printed from 190 to 175, and reduced the number of journals printed from 170 to 150. The reduction in the number of bills, resolutions, and journals printed is based on the surplus of bills, resolutions, and journals remaining after the 2009 legislative session. If there is a need for additional copies, plans are to use a networked printer to make the additional copies, as was done in 2009.

SESSION ARRANGEMENTS

Legislator Expense Reimbursement Policy

Article XI, Section 26, of the Constitution of North Dakota provides that payment for necessary expenses of legislators may not exceed that allowed for other state employees. Under the formula provided by Section 54-03-20, legislators may receive up to $1,040 per month as reimbursement for lodging. The policy followed for the 61st Legislative Assembly was to allow these items as reimbursable lodging expenses during a legislative session--electricity and heat, water (including garbage collection and sewer charges), snow removal, basic telephone service, telephone installation charges, rental of furniture and appliances, and transit charges for moving rental furniture and appliances. The lodging

expense reimbursement of two or more legislators sharing housing in a single dwelling was subject to approval by the Legislative Management chairman, in accordance with Section 54-03-20. The committee recommends the legislative expense reimbursement policy for the 62nd Legislative Assembly be the same as that followed for the 61st Legislative Assembly.

Doctor of the Day Program

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 2011 legislative session under the same arrangements as in the past. The association is planning to arrange health screenings and other educational and wellness activities during the legislative session.

Legislator Wellness Program

Section 54-52.1-14 requires the Public Employees Retirement System Board to develop an employer-based wellness program encouraging employers to adopt a board-approved wellness program. The incentive for adoption of a program is a 1 percent of health insurance premium charge to agencies that do not participate in the wellness program.

A wellness program must include the "mandatory activity" of communicating wellness materials provided by the Public Employees Retirement System and Blue Cross Blue Shield of North Dakota to individual employees on a monthly basis and promoting the Public Employees Retirement System smoking cessation program to employees. In addition to this mandatory activity, different "optional" activities must be developed each year.

The committee approved as a wellness activity for July 1, 2010, through June 30, 2011, continuation of the comprehensive health assessment during the 2011 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during the 2009 legislative session.

Legislators' Supplies

Stationery

The committee approved continuation of the policy that every legislator be given the option of receiving 250 sheets of regular (8.5 inches by 11 inches) or Monarch (7.5 inches by 10.5 inches) stationery and envelopes, 250 sheets of each type of stationery and envelopes, 500 sheets of either type of stationery and envelopes, or 250 or 500 envelopes. A legislator can also request no stationery or envelopes. Legislators also can elect to use an electronic letterhead. Under the policy, a legislator also can request an additional 500 sheets of stationery and 500 envelopes, up to 1,000 sheets and envelopes total. The Speaker, each leader, and each assistant leader continue to receive as much regular and Monarch stationery as needed.

Brief Bags

The committee approved continuation of the policy, first established in 1984, of providing a brief bag (also referred to as a letter file or carrying case) to each legislator on request. With respect to newly elected legislators, the request form will be included in the information packets distributed to newly elected legislators during the organizational session. The committee approved use of a leather-type carrying case having an embossed Great Seal and an embroidered name of the legislator.

Capitol Access Cards

Since October 1999, the Capitol has operated under a security key system. Access to the Capitol on weekdays before 6:45 a.m. or after 5:30 p.m. or on weekends requires use of a security key to present near a reader that unlocks the door and records use of the card. Each security key is coded and a computerized record is kept of use. During the 2001 session, every legislator received a security card for access to the Capitol, and beginning with the 2003 session, a security card has been provided to a legislator on request.

The committee approved continuation of the policy that a security card be provided to a legislator who requests one and signs a form acknowledging receipt of the card.

Legislator Photo Identification Cards

The committee approved providing a credit card-size photo identification card to each legislator. Current cards expire in 2010. The card will contain the 2011 legislative photograph, a current signature of the legislator, the legislative session WATS line number (1-888-635-3447), the Legislative Council telephone number, the Legislative Council WATS line number, and will be valid during the term for which elected.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 62nd Legislative Assembly. Generally, the invitation to bid contained the same specifications as the contract for the 61st Legislative Assembly. With respect to the House, the specifications provide for two poses and two wallet-size color pictures of each pose of 97 individuals; color touchup of the final pose; one composite color picture approximately 50 inches by 60 inches, proofed, framed, and ready to hang; and 97 copies of the composite picture 11 inches by 14 inches in size. With respect to the Senate, the specifications provide for two poses and two wallet-size color pictures of each pose of 51 individuals; color touchup of the final pose; one composite color picture approximately 30 inches by 40 inches, proofed, framed, and ready to hang; and 51 copies of the composite picture 11 inches by 14 inches in size. The committee continued the option for oak frames for the small composite, available for purchase by individual legislators. The photographs of legislators are to be taken during the organizational session in 2010, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session.

For the large composite pictures, the Legislative Council provides the frames from previous Legislative Assembly pictures. The large composites of the previous Legislative Assembly are transferred to the

State Historical Society and are placed in the state archives. The photographer is to provide the digital image of the pose selected by the photographer to the Legislative Council by Wednesday, December 22, 2010, for use in updating the legislative branch website, and the photographer is to provide the digital image of the final pose to the Legislative Council by Friday, February 18, 2011.

The invitation to bid was sent to 68 photography firms in central and western North Dakota. Four firms submitted bids--Anderson Photography, Crosby, $3,300; Third Day Photography, Jamestown, $3,500; Image Photography, Mandan, $4,865; and Portraits by Misti, Rugby, $24,500. The committee awarded the contract to the lowest bidder--Anderson Photography--the firm that was also the photographer for the 54th through 61st Legislative Assemblies.

Legislator Computer Training

The committee approved the agenda for providing computer training to legislators before the convening of the 62nd Legislative Assembly and authorized the Legislative Council staff to conduct training sessions for legislators. The training focuses on two areas--general computer training and LAWS system training.

New legislators with computer experience are scheduled for a two-hour class immediately after the organizational session adjourns Wednesday afternoon. New legislators with limited computer experience are scheduled for a two-hour class after the first class finished on Wednesday afternoon. This training includes the signout of computers, review of the policies governing use of computers, and general introduction to the software packages on the computers.

During the organizational session, returning legislators can take 90-minute miniclasses on e-mail, archiving e-mail, and tips and techniques. The miniclasses are scheduled for Monday morning and afternoon.

During the organizational session, legislators can view a demonstration of the new LAWS system Tuesday morning and afternoon. Training on the new LAWS system will be immediately before the regular session convenes.

Personal Computer Use Policy

To ensure proper use of personal computers by legislators, the Legislative Management Committee approved the *Policy on Use of Personal Computers by Legislators* in November 2004. The policy describes statutory restrictions on use of personal computers, governs use of privately owned personal computers to access legislative information systems, and governs use of state-owned personal computers. The committee makes no recommendation regarding changing the personal use fee of $10 per month, first established during the 1997-98 interim, which allows legislators a personal use option under Section 54-03-26. The committee did not establish a policy for purchase of a computer used by a legislator because computers used by legislators were not replaced during the interim.

Journal Distribution Policy

The committee approved continuation of the policy that a legislator may have daily journals sent, without charge, to any person upon approval of that legislator's leader. Because journals are available on the legislative branch web page, legislators providing journals will be requested to ask the person to whom journals are to be sent whether that person has Internet access. The intent is to encourage those persons with Internet access to use that access, which reduces labor and postage costs.

Session Employment Coordinators

The committee approved the hiring of one individual to represent each political party to receive and coordinate the handling of applications for legislative session employment.

Session Employee Positions

The committee reviewed the number of employee positions during the 2005, 2007, and 2009 legislative sessions; the impact computerization has had on both houses; the potential impact of increased use of technology in providing legislative information; and the impact resulting from contracting for secretarial, telephone message, and bill and journal room services rather than hiring employees for those areas.

The committee reviewed a legislative session employee position plan that provided for 37.5 Senate employee positions and 41 House employee positions during the 2011 legislative session. The plan:

- Recognized the four staff assistants authorized for the majority leaders and the four staff assistants authorized for the minority leaders.
- Recognized Senate employment of the payroll clerk (to continue the rotation of the position between the Senate and the House every session).
- Recognized continued Senate employment of the supply room coordinator (to make that employee available for providing assistant sergeant-at-arms services during the Senate floor sessions as needed).
- Recognized House employment of two one-half time assistant sergeants-at-arms.
- Recognized employment of a parking lot attendant by each house.

The committee recommends that the Employment Committees provide for 37.5 Senate employee positions and 41 House employee positions.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2009 legislative session. The committee received information on the effect of providing a general increase reflecting the increases of 5 percent and 5 percent approved by the 61st Legislative Assembly for state employees in 2009 and 2010.

The committee recommends daily compensation rates be increased to reflect increases of 5 percent and

5 percent. As a result of this recommendation, compensation will range from $98 to $161 per day ($12.25 to $20.13 per hour based on an eight-hour day). The committee recommends continuation of the authorization for employees to receive an additional $1 per day for each previous regular session employed, up to an additional $10 per day.

Section 54-03-10 requires the compensation of Legislative Assembly employees to be set by concurrent resolution. The committee recommends that the concurrent resolution establishing employee positions continue the practice of not including specific names or identifying specific individuals. This type of resolution was first adopted in 1997 as a means to provide flexibility in the hiring of employees after adoption of the concurrent resolution. By designating positions and compensation levels, and not naming employees, an Employment Committee report that names an employee and designates the position is sufficient to identify that employee, the position, and the compensation level. The committee also recommends that the concurrent resolution continue to refer to the generic position of "legislative assistant" in place of employees formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book clerk, information kiosk attendant, and parking lot attendant; continue to include provisions authorizing conversion of full-time positions to part-time positions; and continue to authorize the leaders to consolidate staff assistant positions.

Session Employee Orientation and Training

The committee approved the agenda for orientation and training of legislative session employees starting in November and continuing up to the legislative session and authorized the Legislative Council staff to conduct training sessions for various session employees.

The training will be similar to that provided before the 2009 legislative session--the payroll clerk will receive training in mid-November, the journal reporters will receive training before the organizational session convenes, and committee clerks will receive training in December before the legislative session convenes.

The committee recommends that session employees be hired to begin work at various times before the convening of the Legislative Assembly, depending on the nature of each employee's duties and the training required of the employee.

Incoming WATS Line Service

Beginning with the 1985 legislative session, incoming WATS lines have been provided for residents in the state to contact legislators or obtain information concerning legislative proposals. Even if all telephone lines are in use, callers do not receive a "busy" signal. If all lines are in use or the call is made after regular business hours, a caller is given two options--one for staying on the line (if the call is during regular business hours) and one for leaving a message for legislators from the caller's district. This message feature is available 24 hours a day 7 days a week during regular legislative sessions.

The committee discussed whether the policy restricting the messages to messages only for legislators from the caller's district or for legislators specifically named by the caller should be changed to allow callers to leave messages for any or all legislators.

The committee recommends continuation of the incoming WATS line telephone message service for the 62nd Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

The committee recommends continuation of the policy that a caller may leave a message for the caller's local legislators (legislators from the caller's district and legislators of the city of the caller) and for specifically named legislators identified by the caller.

Secretarial, Telephone Message, and Bill and Journal Room Services

Secretarial Services

In 1993 the joint secretarial pool consisted of the equivalent of 10.5 stenographers and typists and cost $56,629.20, and each house employed a chief stenographer and payroll clerk at a cost of $14,326.59. Beginning with the 1995 legislative session, the Senate and House have shared a part-time payroll clerk, and the Legislative Assembly has contracted with a third party to provide secretarial services.

Telephone Message Services

In 1999 the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages at a total cost of $57,169.69. Beginning with the 2001 legislative session, the Legislative Assembly contracted with a third party to provide telephone message services.

Bill and Journal Room Services

In 1995 the Legislative Assembly employed 12 bill and journal room clerks at a cost of $57,170.61. Beginning with the 1997 legislative session, the Legislative Assembly has contracted with a third party to provide bill and journal room services.

Consolidated Services

Beginning with the 2001 legislative session, secretarial services and telephone message services were provided by the same contractor. Beginning with the 2003 legislative session, secretarial, telephone message, and bill and journal room services have been provided by one third-party contractor.

Since the first contract with a third party to provide services formerly provided by Legislative Assembly employees, the committee has reviewed workload so as to ensure appropriate levels of service. As a result of the decreasing number of documents prepared and the decreasing number of telephone calls received during recent legislative sessions, as well as recommendations of the third-party contractors to allow for cross-training of employees so they can be assigned among the areas as needed, the number of employees under contract to provide secretarial, telephone message, and bill and journal room services has been lowered as appropriate to meet workload.

The committee approved an invitation to bid for services during the 2011 legislative session to provide six employees for secretarial, telephone message, and bill and journal room services. Three employees and the onsite supervisor are to be located in the secretarial and telephone message services area. All four are to be trained to provide secretarial and telephone message services. During the first three weeks of the legislative session, one or more of the employees are to be available to be assigned to assist the two employees in the bill and journal room area as workload requires.

The invitation to bid to provide secretarial, telephone message, and bill and journal room services was sent to eight temporary personnel services in the Bismarck-Mandan area. The committee received one bid. The daily bids were $563.82 by Spherion. The hourly pay range in the bid is secretarial and telephone message services - $8.75 to $9.25; and bill and journal room services - $8.25.

The committee recommends accepting the bid by Spherion, Bismarck, to provide six employees for secretarial, telephone message, and bill and journal room services during the 2011 legislative session.

To ensure proper use of secretarial services, the committee reviewed and approved the *Policy Regarding Secretarial Services to Legislators* last approved by the Legislative Management in November 2008. The policy points out that secretarial service employees are not legislative employees; describes secretarial services as being available between 7:30 a.m. and 5:00 p.m.; provides for 24-hour turnaround of most projects; limits requests for transcripts of committee hearing tapes to the majority leader, as requested by the committee chairman when the committee clerk is unable to prepare minutes due to illness, disability, or absence; limits merge requests to 25 individual addresses unless otherwise approved by a majority leader or minority leader, as appropriate; and provides the procedure for any comment or complaint regarding the service. A copy of the policy is included in the legislators' information packets distributed during the organizational session.

Legislative Internship Program

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and the graduate school at the University of North Dakota and the graduate school at North Dakota State University. The program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, especially the preparation of amendments, and has provided the students with a valuable educational experience. Although assigned to committees, the interns are supervised by the Legislative Council staff. Since the beginning of the program, each intern has received a stipend as a means of covering the expense of participating in the program.

The committee approved continuation of the program for the 62nd Legislative Assembly, with up to 10 intern positions to the University of North Dakota School of Law for assignment to the 10 standing committees and 2 internship positions among participating entities for assignment to the Appropriations Committees. The committee also authorized an increase in the stipend to $2,200 per month for the four-month program.

Legislative Tour Guide Program

For the past 17 legislative sessions, the Legislative Council has operated a tour guide program that coordinates tours of the Legislative Assembly by high school groups. The tour guide program is used extensively by high school groups during legislative sessions, and other groups have been placed on the tour schedule at their request. The committee approved the continuation of the tour guide program for the 2011 legislative session.

Chaplaincy Program

The Bismarck and Mandan ministerial associations have coordinated the scheduling of a chaplain in each house to open the daily session with a prayer. Each chaplain receives a daily stipend of $25. The committee authorized the Legislative Council staff to invite the local ministerial associations to continue to schedule chaplains for opening prayers for both houses each day of the 2011 legislative session.

The committee authorized the Legislative Council staff to notify all legislators that they have until December 31, 2010, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2011 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2010 organizational session. Two major changes first made in 2002 were continued--convening the session on Monday rather than Tuesday and convening at 1:00 p.m. rather than 9:00 a.m. As the result of amendment of Section 54-03.1-02 in 2005, the "default" day for convening the organizational session is the first Monday in December. The convening of the organizational session on Monday allows additional time to update computers for new legislators, assign computers to new legislators, and provide computer training to new legislators. Convening the session at 1:00 p.m. allows veteran legislators the opportunity to travel to the Capitol on Monday rather than during the evening of the previous day, while continuing to provide orientation to new legislators and computer training to veteran legislators beginning at 9:00 a.m.

A substantive change from the 2008 agenda is the expansion of presentations relating to affiliated organizations to include the Midwest Council of State Governments.

The agenda also provides for a joint session on Tuesday, December 7, for comments by outgoing Governor (and new United States Senator-elect John Hoeven, and administration of the oath of office to new Governor Jack Dalrymple.

State of the State Address

During the 2009 legislative session, the House and Senate convened in joint session at 1:00 p.m. on the first legislative day. Three escort committees were appointed to escort various officials, former officials, and spouses into the chamber--one for the Lieutenant Governor, one for the Chief Justice, and one for the Governor and his spouse. The Governor then presented his State of the State address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the State of the State address on the first legislative day of the 2011 legislative session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the Supreme Court for the State of the Judiciary address to a joint session on the second legislative day of the 2011 legislative session.

Tribal-State Relationship Message

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to the 62nd Legislative Assembly on the third legislative day.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be a written report submitted to the presiding officer of each house.

Agricultural Commodity Promotion Groups Report

The committee reviewed Section 4-24-10, which requires agricultural commodity promotion groups to file a uniform report at a public hearing before the standing Agriculture Committee of each house. The committee designated the second legislative day the Agriculture Committees meet--Friday, January 7, 2011--as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

Agriculture Commissioner Report

The committee reviewed Section 4-35.2-04, which requires the Agriculture Commissioner to submit a biennial report to a joint meeting of the House and Senate Agriculture Committees on the status of the pesticide container disposal program. The committee determined the report should be made on the same day the committees receive the agricultural commodity promotion groups report--Friday, January 7, 2011.

Commissioner of Commerce Report

The committee reviewed Section 54-60-03, which requires the Commissioner of Commerce to report to a standing committee of each house as determined by the Legislative Management. The report is to be with respect to the department's goals, objectives, and activities. The committee determined the reports should be made to the Industry, Business and Labor Committees on the second legislative day those committees meet--Monday, January 10, 2011.

LEGISLATIVE ETHICS COMMITTEE

Section 54-35-02.8 requires the Legislative Management to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995, the Legislative Management has appointed the Legislative Management Committee as the Legislative Ethics Committee.

During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee recommended legislative rules declaring a legislative ethics policy urging members to maintain ethical standards and recognize the importance of standards contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Assembly adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

TELEPHONE USAGE GUIDELINES

Under Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

MISCELLANEOUS MATTERS

2010 Legislative Redistricting

The committee reviewed a proposed timeline for legislative redistricting after the 2010 census. The timeline included acquiring software and licenses in December 2009, purchasing equipment to be used by legislators in winter 2010-11, adopting the concurrent resolution establishing the redistricting process during the regular 2011 legislative session, appointing the redistricting committee in May 2011, developing legislative redistricting plans from May to October 2011, holding a special legislative session to consider legislative reapportionment in November 2011, and adopting a redistricting plan with an effective date of December 1, 2011.

The Legislative Council had purchased Maptitude for Redistricting software, used by more than 30 states after the 2000 census, from the Caliper Corporation in order to

participate in the Phase II census redistricting project authorized by the Legislative Procedure and Arrangements Committee during the 2007-08 interim. If purchased before December 31, 2009, this software was available at a reduced price for use with the 2010 census.

The committee authorized the purchase of licenses for Maptitude for Redistricting software, along with maintenance agreements for two-year terms, at a number to provide one license for the Legislative Council and for each caucus.

LONG-TERM CARE COMMITTEE

The Long-Term Care Committee was assigned the following responsibilities:

1. Section 10 of House Bill No. 1012 (2009) directed a study of long-term care services in the state, including a review of the Department of Human Services' payment system and a review of the State Department of Health's survey and inspection programs and processes.
2. Section 2 of House Bill No. 1263 (2009) directed a study of how state laws and administrative rules regulate basic care and assisted living facilities. The study was to include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities.
3. Section 16 of House Bill No. 1012 (2009) directed a study of the impact of individuals with traumatic brain injury (TBI), including veterans who are returning from wars, on the state's human services system.
4. Section 3 of House Bill No. 1269 (2009) directed a study of steps necessary to enable the State Department of Health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a potential location for that registry.
5. The Legislative Management assigned the committee responsibility to receive the following reports from the Department of Human Services:
   a. A report regarding the outcomes of the dementia care services program pursuant to Section 2 of House Bill No. 1043 (2009).
   b. A report regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home and community-based service providers pursuant to Section 1 of House Bill No. 1556 (2009).

Committee members were Representatives Gary Kreidt (Chairman), Tom Conklin, Richard Holman, Robert Kilichowski, Joyce M. Kingsbury, Vonnie Pietsch, Chet Pollert, Louise Potter, Gerry Uglem, Robin Weisz, and Alon C. Wieland and Senators JoNell A. Bakke, Dick Dever, Tom Fiebiger, Joan Heckaman, Terryl L. Jacobs, Judy Lee, and Jim Pomeroy.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

STUDY OF LONG-TERM CARE SERVICES

The Long-Term Care Committee was assigned the following responsibilities relating to long-term care services:

- A study of long-term care services in the state, including a review of the Department of Human Services' payment system and a review of the State Department of Health's survey and inspection programs and processes, pursuant to Section 10 of House Bill No. 1012 (2009).
- A study of how state laws and administrative rules regulate basic care and assisted living facilities, including consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities, pursuant to Section 2 of House Bill No. 1263 (2009).

Background Information

Previous Studies

The committee reviewed previous studies relating to long-term care services, including studies by the 1999-2000 Budget Committee on Health Care relating to the possibility of creating an incentive package to assist rural communities and nursing facilities significantly reduce bed capacity and provide alternative long-term care services; by the 2001-02 Budget Committee on Human Services relating to long-term care needs and the nursing facility payment system in North Dakota; by the 2003-04 Budget Committee on Health Care relating to the nursing facility survey process; and by the 2007-08 Long-Term Care Committee relating to a wide range of long-term care issues, including capacity, geographical boundaries for determining capacity, the need for home and community-based services, and a methodology to identify areas of the state needing additional nursing facility beds, access, workforce, reimbursement, and payment incentives.

Continuum of Care Services for the Elderly

The committee reviewed the following programs that comprise North Dakota's continuum of care for the elderly:

Nursing home care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require 24-hour-a-day medical or nursing services and personal and social services.

Basic care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require health, social, or personal care services but not 24-hour-a-day medical or nursing services.

Medicaid waiver for the aged and disabled - Provides in-home and community-based care to individuals who

otherwise would require nursing home care and who are Medicaid-eligible. Services available include:

- Adult day care.
- Adult foster care.
- Adult/traumatic brain-injured residential.
- Chore.
- Emergency response system.
- Environmental modification.
- Case management.
- Homemaker.
- Transportation (nonmedical).
- Respite care.
- Specialized equipment/supplies.
- Supported employment.
- Transitional care.
- Nurse management.
- Attendant care service.

Service payments for elderly and disabled (SPED) - Provides in-home and community-based care to individuals who are impaired in at least four activities of daily living (examples include toileting, transferring, eating, etc.) or at least five instrumental activities of daily living (examples include meal preparation, housework, laundry, medication assistance, etc.). Services available include:

- Adult day care.
- Adult foster care.
- Chore.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker.
- Respite care.
- Personal care.

Personal care services - Provides in-home care to individuals who are impaired in at least one activity of daily living or at least three of the four instrumental activities of daily living. The individual must be Medicaid-eligible to receive personal care services. These services include assistance with bathing, dressing, toileting, transferring, eating, mobility, and incontinence care and also assistance with meal preparation, housework, laundry, and medication assistance.

Expanded SPED - Provides in-home and community-based care to individuals who are not severely impaired in activities of daily living but who are impaired in at least three of the four activities of daily living or who have health, welfare, or safety needs, including requiring supervision or a structured environment. This program is an alternative to basic care. The individual must be Medicaid-eligible to receive services under this program. Services include:

- Adult day care.
- Adult foster care.
- Chore.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker.
- Respite care.

Health Care Trust Fund

The committee received information on the health care trust fund, which was established by the 1999 Legislative Assembly (Senate Bill No. 2168), for providing nursing facility alternative loans or grants. House Bill No. 1196 (2001) provided that money in the fund may be transferred to the long-term care facility loan fund for nursing facility renovation projects and for other programs as authorized by the Legislative Assembly. Money was generated for the health care trust fund as a result of the Department of Human Services participating in a government nursing facility funding pool at two government nursing facilities--McVille and Dunseith. The federal funds were deposited in the health care trust fund. Any investment earnings are retained in the fund. The federal government subsequently eliminated this intergovernmental transfer program. North Dakota received a total of $98.2 million under this program from 2000 to 2004. Of the total, $11.3 million was used for long-term care facility loans and the remainder for other programs and purposes. The fund has a projected June 30, 2011, fund balance of $162,222.

Under North Dakota Century Code (NDCC) Chapter 50-30, subject to legislative appropriations, money may be transferred from the health care trust fund to the long-term care facility loan fund for the purpose of making loans as approved by the Department of Human Services for renovation projects. Each loan is limited to $1 million or 90 percent of the project cost, whichever is less. Under the program, 23 loans have been approved totaling $11.4 million. As of June 2009, $8.9 million of outstanding loans remain. Of the approved loans, 3 were for assisted living facilities, 17 for nursing home facilities, 1 for a basic care facility, and 2 for combination nursing, assisted living, and basic care facilities.

Nursing Care and Basic Care Bed Moratorium

The committee learned Senate Bill No. 2044 (2009) continues through July 31, 2011--the moratorium on the expansion of nursing facility bed capacity above the state's gross licensed capacity of 6,236 beds. The provisions allow not more than once in a 12-month period a nursing facility to convert licensed nursing facility bed capacity to basic care bed capacity and a basic care facility to convert basic care bed capacity back to nursing facility bed capacity. The bill also continues through July 31, 2011, the moratorium on basic care bed capacity. The bill provides that except for a nursing facility that is converting nursing facility bed capacity to basic care or unless the applicant demonstrates to the State Department of Health and the Department of Human Services that a need for additional basic care bed capacity exists, the department may not issue a license for additional basic care bed capacity above the state's gross licensed capacity of 1,619 beds.

North Dakota Century Code Section 23-16-01.1 allows nursing facilities to transfer beds from one facility to another, and Section 23-09.3-01.1 allows basic care facilities to transfer beds from one facility to another. Under both sections, the facility receiving the beds has 48 months in which to license the beds.

Nursing Facilities

Licensure

The committee learned North Dakota Administrative Code (NDAC) Section 33-07-03.2-03, as authorized by NDCC Sections 23-01-03 and 28-32-02, requires that nursing home facilities must obtain a license from the State Department of Health to operate in North Dakota. An application for an initial license will not be accepted until the State Department of Health conducts an inspection of the nursing home facility and the facility is found to be in compliance with NDAC Chapter 33-07-03.2 relating to operation of nursing facilities and Chapter 33-07-04.2 relating to construction and equipment for nursing facilities. The State Department of Health issues renewal licenses to facilities if they are found to be in compliance with the licensing requirements, as determined by periodic unannounced onsite health and Life Safety Code surveys conducted by the department. There are currently 85 licensed nursing facilities in North Dakota.

Renewal licenses expire on December 31 of each year. The annual license fee pursuant to NDCC Section 23-16-03 for nursing home facilities not owned by the state or its political subdivisions is $10 for each bed. This amount was increased from $7, effective July 1, 2003.

Survey Process

The committee learned nursing homes that provide services under Medicare or Medicaid must be certified as meeting certain federal minimum requirements established by Congress. Certification is achieved through routine facility surveys performed by the states under contract with the Centers for Medicare and Medicaid Services. In North Dakota the State Department of Health is the agency responsible for conducting nursing home surveys. The department conducts the inspections of each nursing home on an average of once per year (9-month to 15-month intervals); however, inspection may occur more frequently if the nursing home is not performing at a satisfactory level. There are two types of surveys conducted--health and Life Safety Code surveys. Any deficient practices identified are documented in writing and sent to the facility for it to develop a plan of correction.

Payment System

The committee learned North Dakota's nursing facility payment system has been in place since 1990 and requires equalized rates, which means nursing facilities may not charge private pay residents a higher rate than individuals whose care is paid for through the Medicaid program. Nursing facilities may, however, charge higher rates for private occupancy rooms.

The North Dakota nursing facility payment system consists of 34 classifications. Classifications are based on the resident assessment instrument (minimum dataset) required in all nursing facilities. Each nursing facility has specific rates associated with the 34 classifications based on each facility's historical costs. Facility rates change annually on January 1 and may change throughout the year due to audits or special circumstances. There are six components to the rates established for a facility:

1. Direct care rate.
2. Other direct care rate.
3. Indirect care rate.
4. Property rate.
5. Operating margins.
6. Incentive.

Only the direct care rate component is determined based on resident needs and conditions. The remaining components of the rate are the same for all classifications. Rate limits have been established for direct care, other direct care, and indirect care components. A facility receives the lesser of the established rate for the category or the rate limit.

Each resident is reviewed within 14 days of admission or reentry from a hospital and every three months subsequently. A resident's classification may change only at the scheduled three-month interval or if hospitalization occurs.

The committee learned the Centers for Medicare and Medicaid Services is replacing the minimum dataset 2.0 with the minimum dataset 3.0 effective October 1, 2010. The dependence upon the minimum dataset for establishment of payment classifications results in the Department of Human Services implementing the new version in order to continue to pay nursing facilities using the existing methodologies. Under the new version, a resident's classification period will remain a three-month period; however, during that three-month period if a resident is classified in a rehabilitation category and therapies are discontinued, the resident's classification will change as of the date all therapies were discontinued to the classification that would otherwise have been in effect at the beginning of the classification period had there been no therapies. Likewise, if therapies begin during the three-month classification period, a resident's classification may be changed as of the date of the start of therapies to reflect the provision of therapies.

Private Pay Appeals

The committee learned the Department of Human Services is responsible for nursing facility private pay appeals because the department is responsible for the oversight of the nursing facility ratesetting for both private pay clients and Medicaid clients. A resident or resident's representative may request an appeal for the review of any classification issued. Once an appeal request is received by the department, a request is made to the nursing facility for supporting documentation to determine if it supports the coding of the resident's assessment. If the department determines that the classification is incorrect based on the supporting

documentation, the classification is modified. Correspondence is sent to the resident or resident's representative who made the request indicating the decision on the review of the classification.

The committee learned the Department of Human Services completed 146 classification appeal requests in 2009, of which 1 was for a Medicaid client and the other 145 requests were from private pay clients. Of the 146 requests, 87 classifications were upheld, 26 were modified with no change in classification, 6 were denied because the appeal was not filed with the department within 30 days of the classification notice, and 27 were modified with a change in classification.

The committee received comments regarding the potential transfer of the responsibility for conducting nursing facility private pay appeals from the Department of Human Services to the Office of Administrative Hearings. The committee learned the Office of Administrative Hearings could conduct nursing facility private pay appeals, but the agency expressed concerns, including:

- The agency does not have personnel with expertise or experience in nursing facility resident payment classifications.
- The agency does not have personnel with expertise or experience in the methodology for assigning nursing facility residents to appropriate classifications.
- Appeal determinations require onsite reviews. Administrative law judges are not qualified to conduct onsite reviews.
- Funding for the agency to conduct the appeals. The agency currently does not receive general fund support. The agency's funding is generated from billing client agencies and local entities that use its hearing officer services.

Basic Care Facilities

The committee learned NDCC Section 23-09.3-01 defines a basic care facility as a residence that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular 24-hour-a-day medical or nursing services. There are currently 63 licensed basic care facilities in North Dakota.

Licensure

The committee learned NDCC Sections 23-09.3-05 and 23-09.3-05.1 provide that no person, institution, organization, limited liability company, or public or private corporation may keep, operate, conduct, or manage a basic care facility without holding a valid license issued by the State Department of Health. A basic care facility must apply annually to the department for a license and pay the annual license fee of $10 per bed.

Survey Process

The committee learned the State Department of Health has implemented a two-tiered survey process for basic care facilities. The process includes a categorization of the survey findings into two groups called tiers. Tier 1 findings are isolated findings that do not have more than a minimal potential for causing a negative effect on the resident. Tier 2 findings are more serious, usually apply to more than one resident, and encompass all other findings identified during the survey.

Payment System

The committee learned North Dakota's basic care facilities payment system has been in place since 2003. Rates are established for personal care and room and board. The personal care rate includes resident care services and supplies and laundry, dietary, and housekeeping salaries. The room and board rate is for semiprivate accommodations and includes all other costs, such as health care professional services, property, food, utilities, and other plant costs. Basic care facilities may charge higher rates for private occupancy rooms. The personal care costs are included under the Medicaid program, and the room and board costs are paid entirely from state funds.

Facility rates change annually on July 1 and may change throughout the year due to audits or special circumstances. Rates are facility-specific and are based on historical costs of the facility. Basic care facilities must charge private pay individuals a rate that is equal to or greater than the rate charged for individuals whose care is paid for under the Medicaid program.

Assisted Living Facilities

The committee learned NDCC Section 50-32-01 defines an assisted living facility as a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individuals' needs and abilities to maintain as much independence as possible. There are currently 69 licensed assisted living facilities in North Dakota, of which 33 facilities are owned or operated by a nursing facility corporation.

Licensure

The committee learned NDCC Section 50-32-02 provides that an entity may not keep, operate, conduct, manage, or maintain an assisted living facility or use the term "assisted living" in its advertising unless it is licensed by the Department of Human Services. An assisted living facility is to apply annually to the department for a license and pay the annual license fee of $75 for each facility. The following items must be submitted along with the assisted living license application:

1. A copy of the license issued by the State Department of Health Food and Lodging Division or local health unit.
2. A blank copy of the written agreement with the tenant that includes the rates for rent and

services, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections.
3. A copy of the written notice provided to tenants that explains how they may report a complaint regarding the assisted living facility.
4. A copy of the facility's brochure.
5. A copy of the resident handbook.

The committee learned the Department of Human Services may deny or revoke an assisted living facility's license if:

1. The application for a license or renewal of a license or supporting documents contain fraudulent or untrue representations or if the license was otherwise issued based upon bribery or fraudulent or untrue representations.
2. The assisted living facility is in violation of or is unwilling or unable to conform to the requirements of NDAC Chapter 75-03-34 relating to the licensing of facilities and complaints.
3. The assisted living facility, or the premises proposed for the assisted living facility, is not or will not be maintained according to NDAC Chapter 75-03-34.
4. The assisted living facility is denied any license necessary under federal, state, or local law or such license has been revoked.
5. The assisted living facility refuses to allow the department access to any material or information necessary to determine compliance with licensing requirements.
6. The assisted living facility demonstrates a pattern of failing to abide by the terms of its contract with tenants.

The Department of Human Services has authority to assess a fine against any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing but does not have a license issued by the department. The fine may be up to $50 per day beginning 60 days after written notification by the department of noncompliance.

The committee received comments regarding the appropriateness of the responsibility for the licensing of an assisted living facility being within the Department of Human Services. The committee learned assisted living facilities support continuing to be licensed by the Department of Human Services.

Services, Duties, and Educational Requirements

The committee learned NDCC Section 50-32-04 provides that an entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. Health services is defined as services provided to an individual for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

North Dakota Century Code Section 50-32-05 provides additional requirements for assisted living facilities, including:

1. Requiring each facility to have clear, concise, understandable tenancy criteria that are fully disclosed in writing to all potential tenants prior to the agreement being signed.
2. Requiring all administrators to complete 12 hours of continuing education annually and all direct care staff to have training in resident rights, fire and accident prevention and training, mental and physical health needs of tenants, behavior problems and prevention, and control of infection.
3. Outlining the minimum requirements for tenants' records. Records should include the initial evaluation to meet the tenancy criteria, the tenancy agreement signed by the tenant or the tenant's legal representative, the tenant's medication records if the facility administers the medication, and an itemized list of services.
4. Assuring the facility will conduct a reference and previous employment check on each employment applicant.
5. Requiring each assisted living facility at least once every 24 months to conduct a consumer satisfaction survey and provide a copy of the survey results to each tenant.

Payment System

The committee learned individuals in assisted living facilities are responsible for paying their own room and board expenses. Individuals may be eligible to receive financial assistance for personal care services.

Rent Subsidy Pilot Project

The 2009 Legislative Assembly in House Bill No. 1327 appropriated $200,000 from the health care trust fund to the Department of Human Services for providing a grant to a nursing facility for costs associated with remodeling the facility to meet the requirements of an assisted living facility and a basic care facility. In order to receive the grant, the facility must agree to use at least $50,000 of the grant to conduct a rent subsidy pilot project for at least four assisted living residents.

The committee learned the Department of Human Services entered a contract with Golden Manor, Inc., Steele. The contract provides that:

- The grantee must meet the requirement of both an assisted living facility and a basic care facility.
- At least $50,000 of the grant must be used to conduct a rent subsidy pilot project for at least four assisted living residents. The individuals receiving rent subsidy must be Medicaid-eligible and have a functional need as established by a county case manager in at least one activity of daily living. A functional assessment must be completed every 12 months for an individual receiving a rent subsidy. The monthly rent subsidy may not exceed $1,000 per month or the difference between the base rent less one-third of the individual's monthly maintenance income.
- A written report must be submitted on the success of the rent subsidy pilot project compared to the

basic care assistance program by December 1, 2010.

- A final written report is due by June 30, 2011.

The committee received information from representatives of Golden Manor, Inc., regarding the pilot project. The committee learned Golden Manor, Inc., is making progress toward the opening of Golden Manor, Inc., as a basic care and assisted living facility. The basic care portion of the facility is scheduled to open in the fourth quarter of 2010, and the assisted living units are estimated to be completed six months after receiving approval of architectural plans by the State Department of Health. The committee learned Golden Manor, Inc., may need to continue the assisted living facility rent subsidy pilot project beyond the 2009-11 biennium.

Long-Term Care Services Funding

The committee received reports from the Department of Human Services regarding the status of 2009-11 legislative appropriations for long-term care-related services, the average number of clients that are anticipated to be served during the 2009-11 biennium, and estimated costs to continue these programs in the 2011-13 biennium.

The committee learned the 2009 Legislative Assembly provided funding to:

- Allow for a 6 percent per year inflationary increase for long-term care services providers.
- Provide salary and benefit supplemental payments for individuals employed by basic care and nursing care facilities, except for administrators and contract nursing.
- Increase nursing facility bed limits in the formula for nursing home payments.
- Provide a $1 per hour increase for qualified service providers.
- Revise the SPED fee schedule based on the actual cost-of-living adjustment through January 2008 and an estimated cost-of-living adjustment for January 2009 to allow individuals with higher incomes to receive SPED services without paying a fee.

The following schedule compares actual long-term care services utilization and spending for the 2007-09 biennium to estimated utilization and spending for the 2009-11 biennium:

	2007-09 Biennium		2009-11 Biennium		2009-11 Biennium Over (Under) 2007-09 Biennium	
Services	Actual Monthly Average Number of Individuals Served	Actual Expenditures	Projected Monthly Average Number of Individuals Served	Projected Expenditures	Monthly Average Number of Individuals Served	Expenditures
Nursing facilities	3,259	$350,805,632	3,276	$412,424,880	17	$61,619,248
Basic care facilities	415	15,104,482	507	21,149,224	92	6,044,742
SPED	1,397	12,230,307	1,314	12,234,092	(83)	3,785
Expanded SPED	108	489,282	124	753,294	16	264,012
TBI waiver	27	1,929,530	27	2,306,183	0	376,653
Aged and disabled waiver	223	3,612,234	289	6,127,170	66	2,514,936
Targeted case management	421	1,088,501	464	1,368,394	43	279,893
Personal care option	569	17,024,465	635	24,247,214	66	7,222,749
Technology-dependent waiver	1	181,563	2	352,065	1	170,502
Medically fragile waiver	1	16,658	6	128,093	5	111,435
Children's hospice waiver	0	0	30	846,720	30	846,720
Program of all-inclusive care for the elderly (PACE)	12	501,430	60	5,023,726	48	4,522,296
Total		$402,984,084		$486,961,055		$83,976,971

The following is a summary of the estimated general fund costs to continue programs in the 2011-13 biennium:

Funding to continue the increase in nursing facility property cost limits	$915,000
Funding from the general fund to replace federal fiscal stimulus funding relating to the enhanced federal medical assistance (FMAP) ($66.5 million) and child support incentive matching funds ($2.76 million)	69,260,000
Increased general fund costs for grants resulting from an anticipated reduction in the FMAP	82,000,000 to 83,000,000
Funding from the general fund to replace health care trust fund money used for nursing facilities payments during the 2009-11 biennium	4,100,000
Funding to continue the 6 percent inflation provided to providers on July 1, 2010, for a full 24 months and to maintain the ending caseloads for the 2009-11 biennium for a full 24 months	31,000,000 to 32,000,000
Total	$187,275,000 to $189,275,000

Other Testimony and Reports

Availability of Long-Term Care Facility Beds

The committee received information from the North Dakota Long Term Care Association and learned the association believes an adequate supply of long-term care facility beds is currently available in North Dakota. The following is a summary of the availability of long-term care beds:

	Total Number of Licensed Beds (As of February 2010)	Total Number of Vacant Licensed Beds (As of March 2010)
Basic care facilities	1,727	227
Nursing facilities	6,248	450

The following is a summary of new facilities that opened during 2010:

City	Facility	Number of Beds/Units
Bismarck	Good Samaritan Society	48 nursing facility beds 16 basic care beds 16 assisted living units
Bismarck	St. Gabriel's Community	72 nursing facility beds
Grand Forks	Valley Memorial Homes	36 nursing facility beds
West Fargo	Eventide at Sheyenne Crossings	64 nursing facility beds

Adult Foster Care

The committee received information from the Department of Human Services regarding adult foster care services. The committee learned NDCC Section 50-11-00.1 defines an adult family foster home as an occupied private residence in which adult family foster care is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

Applicants for an adult family foster care license are directed to contact the home and community-based services case manager in their local county social service office. Home and community-based services case managers are responsible for completing the initial licensing study and assisting the applicant in completing all of the required documentation. Once the application documentation is complete, the case manager submits the information to the regional human service center for review. The human service center issues the adult family foster care license once all documentation has been reviewed. The initial license period is 12 months. After completion of the initial licensing period, licenses are effective for 24 months. As of March 2010, 64 licensed adult family foster care homes and 168 licensed beds were in operation in North Dakota.

In the event of an adult family foster care complaint, the home and community-based services case manager is responsible for completing an investigation. Results of the investigation are reviewed with representatives of the regional human service center and the Department of Human Services' Aging Services Division. Any action needed as a result of the investigation is generally issued from the human service center representative.

Adult family foster care provides services that include bathing, communication, dressing, eye care, feeding, hair care, housework, laundry, medication assistance, mobility, money management, shopping, toileting, and transportation. The services are identified on the monthly rate worksheet by the county home and community-based services case manager, and a rate is determined according to the number of activities that have been identified.

Payments for adult family foster care services for public pay clients are as follows:

Room and board	Adult family foster care providers receive up to $525 per month which is paid by the resident.
Cost of care	The maximum rate for adult family foster care providers per client under SPED and expanded SPED is $1,819 per month or $55.85 per day. The maximum rate for adult family foster care providers per client under the home and community-based services waiver is $2,049.10 per month or $66.10 per day.

Adult family foster care charges for private pay clients range from $1,200 to $5,000 per month. This rate includes room, board, and care.

Elder Abuse

The committee received information from the Grand Forks County State's Attorney's office regarding elder abuse. The committee learned the Grand Forks County State's Attorney's office has been involved in the Later in Life Project--a coordinated multidisciplinary effort involving the state's attorney's office, the Community Violence Intervention Center, local law enforcement, and local adult protective services. The project involves:

- Training law enforcement to identify and investigate all aspects of elder abuse, including financial exploitation.
- Community education.
- Education of justice partners that these types of cases are no longer viewed as only civil matters.

Recommendations

The committee recommends House Bill No. 1040 to extend the nursing facility care and basic care bed moratorium for four years through July 31, 2015.

In addition, the committee concluded that:

- The Department of Human Services should continue the current appeals process for nursing facility residents' classifications.
- The licensure of an assisted living facility should remain with the Department of Human Services.
- The state should continue to maintain separate definitions for basic care and assisted living.

STUDY OF THE IMPACT OF INDIVIDUALS WITH TRAUMATIC BRAIN INJURY

Section 16 of House Bill No. 1012 (2009) directed a study of the impact of individuals with TBI, including veterans who are returning from wars, on the state's human services system.

General Information

The committee learned the Department of Human Services does not have a specific TBI program. Individuals with TBI can access services at the regional human service centers as well as other divisions within the department. In addition, the following private sector entities provide services to individuals with TBI:

- North Dakota Protection and Advocacy provides advocacy services.
- HIT, Inc., and High Soaring Eagle Ranch provide residential and transitional care services.
- HIT, Inc., provides transitional care and social and recreational services.
- The Head Injury Association of North Dakota provides information and referral services, public awareness and education, peer mentoring services, and informal support services.

2009 Legislative Assembly Related Legislation

The 2009 Legislative Assembly approved Senate Bill No. 2198 which:

- Requires the Department of Human Services to provide outreach services and conduct public awareness efforts regarding the prevention and identification of TBI.
- Allows the department to accept and expend money from public or private sources for any purpose involving TBI or the provision of services to individuals with TBI and their families.
- Directs the department to contract with public or private entities for the provision of informal supports to individuals with TBI.
- Amends NDCC Section 50-06.4-02 to provide that the department is to annually call a joint meeting of the Adjutant General, the State Department of Health, the Department of Veterans' Affairs, and the Superintendent of Public Instruction to discuss the provision of services to individuals with TBI.
- Directs the department to provide or contract for the provision of social and recreational services for individuals with TBI.
- Directs the department to provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with TBI.
- Requires the department to provide home and community-based services to individuals who have moderate or severe impairments as a result of TBI as a part of the department's personal care services program and as a part of the department's services for eligible disabled and elderly individuals. The department is to provide outreach and public awareness activities regarding the availability of home and community-based services to individuals who have moderate or severe impairments as a result of TBI, and the department is to conduct quality control activities and make training available to case managers and other persons providing services to individuals with TBI.
- Provides a $330,000 general fund appropriation to the department for providing services to individuals with TBI.

The committee received information from the Department of Human Services regarding the implementation of Senate Bill No. 2198. The committee learned:

- The department has entered a contract with HIT, Inc., for social and recreational services to individuals who have sustained a TBI.
- The department entered a contract with the Head Injury Association of North Dakota for referral services, public awareness and education, peer mentoring services, and informal support services. The amount of the contract is $112,200. The association has established a toll-free telephone number and website and is in the process of opening an office.
- The department's Division of Vocational Rehabilitation is providing extended employment support services to individuals who have sustained a TBI. For the period October 1, 2009, through September 27, 2010, the division has served 206 individuals with a primary or secondary disability of TBI. Of those 206 individuals, 17 have been employed.
- The department entered a contract with Community Options for Residential and Employment Services, Inc., to provide prevocational skills training and mentoring services to individuals who have sustained a TBI. The goal is to assess the individual needs related to employment, develop an individual plan, and prepare individuals to work with the Division of Vocational Rehabilitation.
- Funds designated for quality assurance and training have been used to assist the Indigenous People's Brain Injury Association with its annual conference, participate in a statewide effort to distribute a book for children on TBI to all elementary schools and libraries, and to assist individuals providing mentoring services to attend a national conference on TBI.
- The department has held three joint meetings with representatives of the Adjutant General, Department of Veterans' Affairs, Superintendent of Public Instruction, and the State Department of Health to discuss ways to efficiently coordinate services to individuals with TBI while avoiding duplication.

TBI-Related Grants

The committee learned North Dakota received a TBI planning grant totaling approximately $381,000 in April 2003. As part of the grant, the State Department of Health contracted with the University of North Dakota School of Medicine and Health Sciences Center for Rural Health to form a TBI advisory committee, conduct a statewide TBI assessment, and develop a plan to address the needs of North Dakotans with TBI and their families. The advisory committee met regularly, the

needs assessment was completed, and an action plan was developed which provided for the following goals:

- Traumatic brain injury will have a presence in the state with accessible, available, appropriate, and affordable services and supports for individuals with TBI and their families.
- Individuals with TBI, family members, significant others, and providers of support and services will have timely information, resources, and education regarding TBI.
- Individuals with TBI and their families will have access to a coordinated system for services and supports.
- Individuals with TBI and their families will have increased quality and availability of key supports.
- American Indian individuals with TBI and their families will have access to culturally appropriate TBI information, services, and supports.

As a result of the action plan, the Department of Human Services, in partnership with the University of North Dakota School of Medicine and Health Sciences Center for Rural Health, was awarded a TBI implementation partnership grant in April 2007. The grant was a three-year grant with the department receiving approximately $118,000 each year. The grant officially ended March 31, 2010. The following is a summary of the goals and current status of the goals associated with the grant:

Goal	Status
Sustainability - To build a formal presence and infrastructure for the advancement of TBI-focused issues	Complete. A TBI advisory committee has been established consisting of representatives of individuals with TBI, family caregivers, service providers, the Department of Veterans' Affairs, the Indigenous People's Brain Injury Association, and state agencies. The committee meets on a quarterly basis for assisting in the management of the grant and advising the Department of Human Services on the needs of individuals with TBI and their family members.
Education and awareness - To provide timely information, resources, and education regarding TBI to individuals with TBI, family members, other caregivers, and service and support providers	Ongoing. TBI 101 training has been conducted at each of the eight regional human service centers, county social service boards, and numerous statewide conferences. Toolkits on different aspects of TBI have been disseminated to senior citizen centers, clinics, coaches, and teachers.
Enhancement of services - To ensure a coordinated system to access and receive support for individuals with TBI and their families	Ongoing. A project to integrate a TBI screening tool at the eight regional human service centers is in progress. The home and community-based services case managers at the county social service boards are reporting data on the individuals who receive home and community-based services on a monthly basis. Relationships with the veterans' system of care are in place with the goal to work cooperatively to meet the needs of veterans.
Tribal issues - To improve access for American Indian individuals with TBI and their families to culturally appropriate information, services, and support	Ongoing. The TBI project director from the University of North Dakota School of Medicine and Health Sciences Center for Rural Health and two members of the TBI advisory committee facilitated a talking circle on each of the four reservations. Information on TBI was shared as well as establishing a number of contacts for ongoing collaboration and support.

Other Testimony

The committee received information from the North Dakota Army National Guard regarding services available to returning veterans with TBI. The committee learned 18 percent to 62 percent of soldiers returning from Afghanistan and Iraq have at least a mild case of TBI. The Army National Guard has hired a director of psychological health to lead the effort in educating the soldiers and medical providers on how to help soldiers deal with TBI and to assist returning soldiers with any mental health issues. Soldiers diagnosed with some form of TBI are assessed for the degree of rehabilitation needed. If neurological or psychological rehabilitation is warranted, the soldier is provided care at the active duty installation or from local health care providers.

The committee received information from the Department of Public Instruction regarding services provided in schools to children with TBI. The committee learned 50 students in the state were identified during the 2009-10 school year as having a TBI. Within the disability classification of TBI, there is a wide range of diversity with regard to the severity of deficits, types of skills and problem areas, and intellectual functioning among students. Students with TBI differ from students with other disabilities in the onset of the disability, the complexity, and the recovery process.

The committee received information from the Head Injury Association of North Dakota and learned the association is working toward the following goals:

- Awareness - Make the general public aware of head injuries and the resulting impact upon individual and family lives.
- Information - Accumulate and disseminate information to the public.
- Training - Recruit and train volunteers for assisting those suffering head injuries.
- Prevention - Exercise the appropriate behavior, precaution, protection, and prevention.

Recommendation

The committee made no recommendations regarding its study of the impact of individuals with TBI.

STUDY OF THE REGISTRATION OF HEALTH CARE PROFESSIONALS

Section 3 of House Bill No. 1269 (2009) directed a study of steps necessary to enable the State Department of Health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons and examine the possibility of one registry and a potential location for that registry.

Background Information

North Dakota, unlike the majority of other states, has two registries that impact health care professionals, including certified nurse assistants, nurse assistants, and unlicensed assistive persons--one with the State Board of Nursing and one with the State Department of Health.

State Board of Nursing - Unlicensed Assistive Person Registry

An unlicensed assistive person is any individual who is an assistant to a nurse who regardless of title is authorized to perform nursing interventions delegated and supervised by a nurse. An unlicensed assistive person complements the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. An unlicensed assistive person is generally responsible to the licensed nurse to assist with client care but may be responsible to an individual directing his or her own care or to the legally responsible person directing an individual's care for services provided to that individual. An unlicensed assistive person is typically employed by hospitals, home health, assisted living facilities, basic care facilities, and developmental disabilities facilities.

Pursuant to NDAC Section 54-07-02-01, the State Board of Nursing is to establish and maintain an unlicensed assistive person registry. Individuals may be placed on the registry either through a competency evaluation by an employer or licensed nurse or through a national nurse aide competency evaluation testing program. Individuals must renew their registration every two years. The State Board of Nursing charges a $30 fee for individuals to be placed on the registry. If the individual has never held registry status, the individual has four months from the date of initial employment to achieve registry status. If an individual practices as an unlicensed assistive person without registration, the State Board of Nursing may discipline the individual. Pursuant to NDCC Section 43-12.1-14.2, enacted by the 2009 Legislative Assembly, the action of the board in the case of first violation is limited to the issuance of a letter of concern.

State Department of Health - Certified Nurse Aide Registry

A certified nurse aide (commonly known as a certified nursing assistant) is any individual who has successfully completed the requirements for the state-approved nurse aide training and competency evaluation program or state-approved competency evaluation program. The scope of work for a certified nurse aide includes infection control, safety and emergency procedures, promoting resident or patient independence, respecting resident rights, basic nursing skills, personal care skills, mental health and social service needs, care of the cognitively impaired resident or patient, basic restorative services, resident or patient rights, and communication and interpersonal skills. A certified nurse aide is typically employed by nursing facilities and other health care facilities.

The State Department of Health Division of Health Facilities is designated by the Centers for Medicare and Medicaid Services as the agency responsible for the registration of certified nurse aides. Individuals may be placed on the department's registry after successfully completing a state-approved competency evaluation program. Individuals must renew their registration every two years. Federal regulations prohibit charging fees to the individual for placement of the individual's name on the registry. The department's registry is recognized by the State Board of Nursing as provided for in NDAC Section 54-07-01-03.

Long-Term Care Professionals Workgroup

The committee learned the State Department of Health established a long-term care professionals workgroup consisting of members representing the State Department of Health, the State Board of Nursing, the North Dakota Hospital Association, the North Dakota Long Term Care Association, the Department of Human Services, developmental disabilities, and home health care. The workgroup reviewed Section 3 of House Bill No. 1269 (2009) which directs the Legislative Management to study the registration of health care professionals, received presentations by representatives of the State Board of Nursing and the State Department of Health regarding each of the entity's respective registrations, and discussed the benefits and concerns relating to one entity overseeing both registries. The workgroup recommended:

- Transferring regulation and registry of nurse aides, home health aides, and medication assistants I and II from the State Board of Nursing to the State Department of Health.
- Providing the State Department of Health with rulemaking authority to implement the necessary changes.
- Allowing nurses to continue to provide oversight and delegate responsibilities to individuals on the State Department of Health registry.
- Prohibiting fees from being charged for registration or renewal consistent with the federal prohibition of charging fees for registration and renewal of certified nurse assistants.

The State Department of Health presented the following estimated biennial costs relating to the proposed changes:

Salaries and wages (1.5 full-time equivalent (FTE) positions)		
Salaries	$128,668	
Benefits	52,896	
Total - Salaries and wages		$181,564
Operating expenses		
Travel	$9,600	
Information technology software and supplies	4,000	
Supplies	4,000	
Postage	800	
Telephone/communications	5,000	
Training	2,000	
Legal	4,000	
Information technology equipment under $5,000	1,500	
Total - Operating expenses		$30,900
Total		$212,464
Additional startup expenses		
Rulemaking	$5,000	
Information technology changes	47,114	
Total - Additional startup expenses		$52,114
Total estimated costs		$264,578

Recommendation

The committee recommends House Bill No. 1041 that incorporates the statutory changes recommended by the State Department of Health's long-term care professionals workgroup. The bill creates a new chapter to NDCC Title 23 relating to nurse aide registry and amends sections of Chapter 43-12.1 relating to individuals exempt from regulation by the State Board of Nursing and delegation of medication administration.

OTHER RESPONSIBILITIES

The committee was also assigned to:

1. Receive a report from the Department of Human Services regarding the outcomes of the dementia care services program pursuant to Section 2 of House Bill No. 1043 (2009).
2. Receive a report from the Department of Human Services regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home and community-based service providers pursuant to Section 1 of House Bill No. 1556 (2009).

Dementia Care Services Program

Section 2 of House Bill No. 1043 (2009) required the Department of Human Services to report to the Legislative Management after June 30, 2010, regarding the outcomes of the dementia care services program. The Legislative Management assigned the responsibility to receive this report to the Long-Term Care Committee.

Background Information

The 2009 Legislative Assembly approved House Bill No. 1043 which:

- Directed the Department of Human Services to contract with a private provider for a dementia care services program in each area of the state served by a regional human service center. The dementia care services must include:

  Identifying available services within the region.

  Providing information to medical professionals, law enforcement, and the public regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers.

  Assessing the needs of individuals with dementia and their caregivers.

  Training care providers to manage and provide for the care of individuals with dementia.

  Providing consultation services to individuals with dementia and their caregivers.

  Facilitating the referral of individuals with dementia and their caregivers to appropriate care and support services.
- Provided for a report to the Legislative Management regarding the outcomes of the program.
- Provided a $1.2 million general fund appropriation for the program.

Report

The committee received reports from the Department of Human Services and learned that the department entered a contract with the Alzheimer's Association of Minnesota-North Dakota Chapter for provision of a dementia care services program in each area of the state served by a regional human service center. The association has hired five regional care consultants to provide services in the state. The consultants have been fully trained and are networking with other agencies and organizations to coordinate efforts, develop referral processes, and assure that services are not duplicated. Preliminary outcomes include:

- The number of citizens completing intake into the program continues to grow each month.
- Services are being provided in all eight Department of Human Services regional service areas.
- An estimated 56 percent of those living with Alzheimer's disease remain in their own home.
- Families caring for the family member in their own home are those needing the greatest assistance.

Recommendation

The committee made no recommendations regarding the report on the outcomes of the dementia care services program.

Developmental Disabilities Service Provider Rates

Section 1 of House Bill No. 1556 (2009) required the Department of Human Services to report to the Legislative Management before September 1, 2010, regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home and community-based service providers. The Legislative Management assigned the responsibility to receive this report to the Long-Term Care Committee.

Background Information

House Bill No. 1556 (2009) provided that during the 2009-10 interim the Department of Human Services contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse all developmental disabilities service providers, including public and private, licensed developmental disabilities ICF/MR facilities, such as the Anne Carlsen Center, and home and community-based service providers serving ICF/MR medically fragile and behaviorally challenged individuals. The study was to address reimbursement adequacy and equitability and fairness of reimbursement rates among such providers; the level of medical and supportive services required by providers to adequately

serve individuals in those categories; the varying levels of medical and behavioral complexity of individuals requiring services by the providers; and any other analytical comparisons bearing upon issues of reimbursement adequacy, fairness, and equitability to such providers. The bill provided a $200,000 appropriation, of which $100,000 was from the general fund, to the department for conducting the study.

The committee received information from the Department of Human Services regarding the state's developmental disabilities ratesetting process. The committee learned the current ratesetting process for the developmental disabilities program is a mix of a cost-based, retrospective ratesetting system with additional compensation provided for individuals who are medically fragile or behaviorally challenging. The following is a summary of the ratesetting and reimbursement process:

1. Submission of a provider budget - Each developmental disabilities service provider submits an annual budget based on allowable, reasonable, and client-rated costs to the department's Developmental Disabilities Division, and an interim rate is established.
2. Establishment of a provider budget limitation - Provider budget limitations are used to implement available appropriations and apply appropriation increases or decreases. Payments are made in the current year based on this interim rate.
3. Application of targeted appropriations - After the budget limitation and interim rate are set, targeted appropriations tied to six specific categories of adults and children who are medically fragile or behaviorally challenging are applied. These targeted appropriations are based on two assessment tools. Payments for these targeted groups are totaled by provider, and each provider is paid that provider's allotment on a quarterly basis.
4. Submission of cost reports - At the end of the provider's fiscal year, a cost report is submitted to the department's Developmental Disabilities Division. Providers are allowed three months with a potential of a one-month extension to submit their cost reports.
5. Audits and cost settlement - The department conducts an annual compliance audit of reported costs for each provider, and the audited, allowable costs are compared to the reimbursements received through the interim rate. Final payments are cost-settled after completion of an audit. Actual revenue received by a provider is limited to the lesser of the budget limitation or cost, whichever is less. The audit and cost settlement is a lengthy process. Some audits and cost settlements are completed approximately 20 months after the end of the fiscal year.

Report

The committee received reports from the Department of Human Services and learned that the department contracted with Burns and Associates, Inc., to complete the study. The following is a summary of findings and recommendations by Burns and Associates, Inc.:

Assessment findings and recommendations	Discontinue use of the Oregon behavioral assessment for both children and adults
	The Oregon medical assessment does have predictive value for children, but it is no better than the currently used progress assessment review to predict costs for adults.
	The progress assessment review is a powerful tool and predicts 43.1 percent of the current developmental disabilities expenditures.
Reimbursement systems findings	North Dakota's current system is seen by providers to adequately pay in total for services and supports, but the dollars are not always distributed to the individuals who are medically fragile or behaviorally challenged.
	Other states that base payment on the needs of individuals do not use cost-based reimbursement systems.
	North Dakota's reimbursement system is slow and very resource-intensive.

The committee learned Burns and Associates, Inc., offered four options for consideration by the state--two options for adults and two options for children. The following is a summary of the four options:

Adults	Option A - Revise and shorten the progress assessment review and continue the cost-based, retrospective reimbursement process
	Option B - Adopt a new assessment tool--supports intensity scale--and move to a prospective reimbursement process
Children	Option C - Pilot the child supports intensity scale and move to a prospective reimbursement process
	Option D - Continue the Oregon medical tool and add the child and adolescent level of care utilization system or other similar tools and continue the cost-based, retrospective reimbursement process

The committee learned replacing the progress assessment review with the supports intensity scale would result in high administrative costs initially because it requires new assessments to be performed on all consumers and the results of those assessments to subsequently be used to develop a resource allocation model and prospective rates. However, administrative costs would decrease in future years. The following is a five-year summary of estimated state administrative costs for the four options:

	Options A and D		Options B and C	
	Low	High	Low	High
Year 1	$1,422,000	$1,665,000	$2,459,000	$2,879,000
Year 2	1,252,000	1,297,000	2,582,000	3,023,000
Year 3	1,314,000	1,362,000	1,586,000	1,586,000
Year 4	1,380,000	1,430,000	1,666,000	1,666,000
Year 5	1,449,000	1,501,000	818,000	818,000
Total	$6,817,000	$7,255,000	$9,111,000	$9,972,000

The committee learned the department agrees with the recommendation to move to a prospective reimbursement process using an independent ratesetting model and a resource allocation for the entire development disability client base. The department recommends hiring a consultant to guide the ratesetting and assessment implementation process and to begin implementation with a pilot project.

Audit and Reimbursement Review

The committee learned Senate Bill No. 2423 (2009) requires the Department of Human Services to conduct a review of the audit and reimbursement process and a review and reconsideration of the 95 percent occupancy rule. The department established a workgroup comprised of members from developmental disabilities providers, the department, and the North Dakota Association of Community Providers. The workgroup issued a request for information to gain an understanding of the available services that could address the timing of the audits and the costs associated with an independent audit firm completing the audits of the cost reports rather than provider audit. The workgroup learned the estimated biennial cost for independent audit firms completing the audits is $298,020 to $471,600 compared to the department's estimated biennial cost of $171,447. The workgroup also reviewed the 95 percent occupancy rule. The department believes the only method that would allow the elimination of the 95 percent occupancy limitation would be to no longer use the retrospective reimbursement process.

Recommendations

The committee recommends Senate Bill No. 2043 requiring the Department of Human Services to implement a prospective reimbursement pilot project for the developmental disabilities program during the 2011-13 biennium.

The committee also recommends the department maintain the 95 percent occupancy rule while proceeding with the prospective reimbursement pilot project.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned four studies. Section 6 of House Bill No. 1009 (2009) directed the Legislative Management to study the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services program. Section 4 of House Bill No. 1459 (2009) directed the study of weed control programs of the Army Corps of Engineers (corps) on federal land under its control. Senate Concurrent Resolution No. 4027 (2009) directed the Legislative Management to study the leasing of state lands. House Concurrent Resolution No. 3045 (2009) directed the Legislative Management to study severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota.

The committee was assigned by the Legislative Management the duty to receive a report as required by Senate Bill No. 2309 (2009) from the Parks and Recreation Department on the findings and recommendations of the study by the Parks and Recreation Department, State Historical Society, Game and Fish Department, and the Tourism Division of the Department of Commerce on linking and improving a series of public sites along the Sibley and Sully historic trails for historical education, heritage tourism, and access for public hunting.

Committee members were Senators Robert S. Erbele (Chairman), Arden C. Anderson, Bill Bowman, David Hogue, Ryan M. Taylor, and Constance Triplett and Representatives Mike Brandenburg, Donald L. Clark, Stacey Dahl, Chuck Damschen, David Drovdal, Lyle Hanson, Bob Hunskor, James Kerzman, Bob Martinson, Shirley Meyer, Kenton Onstad, Todd Porter, Mike Schatz, and Elwood Thorpe.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

WILDLIFE SERVICES STUDY

Section 6 of House Bill No. 1009 (2009) directed the Legislative Management to study the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services program. The bill required the study of:

1. A review of current program funding sources.
2. A review of wildlife damage control programs in other states, including South Dakota.

The legislative history reveals concern over funding sources as expressed by the State Auditor in a performance audit report dated May 9, 2008. The concern was over the amount of money being provided to the federal government for which there was not the return of adequate services or accounting for services. House Appropriations Committee members focused on the aerial hunting activities of Wildlife Services. Testimony from agriculture producers supported increased funding due to the high number of coyotes and increased costs for fuel, maintenance, and vehicle replacement.

Wildlife Services Program

The North Dakota Wildlife Services program is a cooperative effort of state and federal agencies to provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. Authority for the program comes from the Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426, 426b), and the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (7 U.S.C. 426c). The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services.

Under North Dakota Century Code Section 4-01-17.1, the Agriculture Commissioner may cooperate with APHIS or other appropriate federal agencies in the control and destruction of fur-bearers, including coyotes, wolves, bobcats, and foxes, that are injurious to livestock, poultry, and big and small game; injurious field rodents; big game threatening human health or domestic livestock; and birds causing crop damage, substantial economic loss, or threats to human health. Although the control and destruction must be approved by the Game and Fish Department, the Agriculture Commissioner may enter agreements with the Game and Fish Department and federal agencies for methods of control and destruction, supervision, and the use and expenditure of funds.

The Wildlife Services program is administered and operated by APHIS. The North Dakota Agriculture Commissioner has a cooperative service agreement with this entity for the program and is responsible for the primary monitoring of the program by the state. However, while the primary monitoring responsibility is with the Agriculture Commissioner, the primary state funding source is the North Dakota Game and Fish Department. The Game and Fish Department relies on the Agriculture Commissioner to monitor the use of the funds being provided. The audit report recommended a review of the monitoring and funding of the program.

State funding for the program is identified in the following table:

Wildlife Services Program State Funding

Biennium	Game and Fish Department (Special Funds)	Department of Agriculture (General Fund)	Total
2003-05[1]	$550,000	$250,000	$800,000
2005-07[2]	$680,000	$250,000	$930,000
2007-09[3]	$680,000	$240,000	$920,000
2009-11[3]	$768,000	$298,600	$1,066,600

[1]Expenditure amount.

[2]Expenditure amount, including emergency appropriation from the 2007 Legislative Assembly.

[3]Appropriated amount.

According to the cooperative service agreement between APHIS and the Agriculture Commissioner, state funds are used to reimburse APHIS for expenditures of the Wildlife Services program. Expenditures include salaries for 10 wildlife specialists and 1 pilot (or as many personnel as dictated by funding levels and need), miscellaneous expenses for the repair of equipment and supplies needed in performing official duties, and costs of vehicle and aircraft operations. Total amounts are identified for salaries, vehicle fuel/oil, vehicle repairs, vehicle tires, aircraft fuel, aircraft labor, aircraft parts, aircraft hangar rent, and miscellaneous vehicle/all-terrain vehicle.

Federal funding for the Wildlife Services program is obtained from the APHIS regional office. Federal funds are made available every federal fiscal year (October 1 through September 30). Federal funding of the program is used to pay for federal retirement, insurance, and health care programs for the wildlife specialists and pilot. Federal funding also is used to replace vehicles used in the operation of the wildlife damage management program. Additional federal funding is provided to the APHIS office in Bismarck for other projects. Federal funding for the program is identified in the following table:

Federal Funding[1]			
Federal Fiscal Year	**Wildlife Services Program North Dakota**	**Blackbird Directive**	**Cattail Directive**
2003	$399,790	$320,201	$87,011
2004	$387,136	$318,603	$86,577
2005	$612,913	$285,614	$77,612
2006	$624,360	$303,121	$78,041
2007	$635,614	$314,873	$78,896

[1]Federal funding can be used by the APHIS office in Bismarck for activities in both North Dakota and South Dakota.

As a result of the performance audit, the State Auditor made the following 11 recommendations:

1. The Department of Agriculture pay salaries of the Wildlife Services' field specialists and other costs which can be verified in a timely and efficient manner.
2. The Department of Agriculture review the time of the pilot charged to the Wildlife Services program and determine what percentage of the pilot's salary will be paid by the state.
3. The Department of Agriculture require travel time of the Wildlife Services' field specialists be adequately documented.
4. The Department of Agriculture monitor field specialists' time charged to office, bad weather, miscellaneous, or similar categories. Appropriate action should be taken if time charged to these categories is excessive.
5. The Department of Agriculture periodically verify the Wildlife Services program billed amounts are adequately supported and reasonable.
6. The Department of Agriculture require the Wildlife Services' field specialists dedicate a certain amount of time in the fall to the state blackbird problem.
7. The Department of Agriculture improve monitoring of cooperative service agreements to ensure compliance with requirements.
8. The Department of Agriculture ensure appropriate changes are made to the cooperative service agreements to address recommendations included in this audit report as well as to:
   a. Approve or require information be provided for salary increases of field specialists prior to being effective;
   b. Establish performance measures to evaluate the program;
   c. Require only necessary reports or information regarding the program; and
   d. Identify if, when, and where state funds are to be used for issues arising in urban areas.
9. The Department of Agriculture, with assistance from the Attorney General's office, review North Dakota Century Code requirements related to the Wildlife Services program. Appropriate action should be taken to modify or clarify sections to make requirements clear and up to date.
10. The Department of Agriculture and the Game and Fish Department formally identify advantages and disadvantages for the current monitoring and funding of the Wildlife Services program. A determination should be made as to whether the primary monitoring and/or primary funding of the program need changing.
11. The Department of Agriculture obtain necessary federal budget and expenditure data for monitoring and budgeting purposes.

In response to Recommendation No. 9, the Legislative Assembly enacted House Bill No. 1125 (2009). This bill authorized the Agriculture Commissioner to cooperate with APHIS in controlling and destroying specifically listed animals. The bill broadened the authorization to include not just coyotes, wolves, bobcats, and foxes, but all fur-bearers; not just injurious field rodents in rural areas, but all such rodents; and not just certain nongame species of birds that cause crop damage or substantial economic loss, but all birds that cause crop damage or substantial economic loss or which threaten human health. In addition, the bill extended the authorization to control and destroy big game that threatens human health or domestic livestock.

In addition, since the performance audit and the 2009 legislative session, a new workplan between the Department of Agriculture, Game and Fish Department, and APHIS has been entered by the parties.

Wildlife Services in South Dakota

South Dakota is the only state to administer Wildlife Services programs through a natural resources agency, e.g., a game and fish department.

In the mid-1970s, all states were given the option of administering a predator control program. Several states took the option, all of which returned to federal administration within five years, except for South Dakota. In 1974 South Dakota Game, Fish and Parks accepted the option of responsibility for some federal Wildlife

Services duties. Some duties stayed with the federal Wildlife Services, e.g. blackbird control. With the duties came federal funding to the state. In the beginning, all that was required by the state to maintain the funding was an annual report.

The money provided to South Dakota was earmarked. The federal funding portion was very close to 100 percent in the early years, dropping to 30 percent by 2001. Although the state received the same amount of funding each year--$300,000--as grant-in-aid funding, inflation has affected what could be purchased with the funding. From 2002 through 2006, South Dakota received earmarked funds equaling the grant-in-aid funds. In 2007 Congress eliminated earmarked funding. However, in 2007 some funding--$277,000--was provided within the general operating budget of Wildlife Services.

In 2008 South Dakota and Wildlife Services entered a cooperative agreement and Wildlife Services funded the South Dakota predator control program through operational program funding--a more protected source of funding. In federal fiscal year 2008, an estimated $593,000 was appropriated for predator control in South Dakota and South Dakota Game, Fish and Parks received $402,000 of those funds. In fiscal year 2009, $426,000 was appropriated for South Dakota. However, the federal Wildlife Services now administers and pays for the aerial component of the program. As such, these expenses are paid first and it is expected South Dakota Department of Game, Fish and Parks will receive approximately $35,000.

Testimony and Discussion

The committee received testimony from APHIS. The committee was informed that the performance audit recommendations were addressed by Wildlife Services. In particular, the billing process has been streamlined and there is more accountability. The committee was informed that the Department of Agriculture, Game and Fish Department, and federal Wildlife Services agree that the new arrangement is working well.

The committee was informed that all money for blackbird control is federal earmarked money, and there are not enough funds to address blackbird control. Although the number of acres of sunflowers has decreased, the workload of Wildlife Services has not decreased. The committee was informed that it is difficult to address the problem of 72 million blackbirds that pass through this state and that blackbirds need to be addressed where they nest--Canada--not where they feed in North Dakota.

The committee was informed that coyote problems are addressed by request. When a producer calls during calving or lambing season, an immediate response is triggered by Wildlife Services. The program is meant to address problem coyotes and not kill all coyotes. Wildlife Services has not done any work with the Game and Fish Department in addressing coyotes killing native wildlife.

The committee was informed that it is impossible for Wildlife Services to go onsite in every case. Wildlife Services has nine field staff and seven part-time individuals working on blackbirds. Some of the service is direct and some is indirect through the provision of advice or traps. Live traps are used on small animals like raccoons. Wildlife Services strongly recommends a person euthanize the animal after catching the animal. Wildlife Services uses lethal control on coyotes, foxes, and beavers.

The committee was informed that Wildlife Services has a response plan for mountain lions with the Game and Fish Department. However, for wolves, the United States Fish and Wildlife Service is the management agency. If wolves were removed from the endangered species list, wolves would be under the control of the Game and Fish Department in the western part of the state like wolves are in the eastern part of North Dakota. Wildlife Services has a contingency plan with the United States Fish and Wildlife Service for wolves if the wolves have an impact on livestock or human safety. The committee was informed that the United States Fish and Wildlife Service has made a good-faith effort to deregulate wolves.

The committee was informed that Wildlife Services does not conduct formal customer satisfaction surveys, but it is a seldom occurrence to have a call from someone who is not happy. The greatest complaint is that the public wants more services.

Conclusion

Based on testimony received by the committee, the agriculture producers in southwest North Dakota generally think that Wildlife Services provides an excellent response to complaints. The committee makes no recommendation as a result of this study.

WEED CONTROL PROGRAMS OF THE ARMY CORPS OF ENGINEERS STUDY

Section 4 of House Bill No. 1459 (2009) directed the study of weed control programs of the corps on federal land under its control. The bill required the study to include:

1. Whether the corps is in compliance with federal and any applicable state weed control laws.
2. Whether the corps sufficiently budgets funds to address weed control on corps land.
3. Whether Congress provides proper funding for weed control on corps land.

Section 1 of House Bill No. 1459 contained legislative findings. These findings stated:

- The economy and well-being of the residents of this state are dependent on agriculture.
- The corps has acquired land around Lake Oahe.
- The corps has failed to control weeds and properly manage this land.
- The failure to control weeds by the corps on its land creates a public nuisance and jeopardizes the public health, safety, and general welfare of the citizens of this state.

Section 2 of House Bill No. 1459 urged Congress to transfer lands of the corps around Lake Oahe to North Dakota, excluding lands adjoining the Standing Rock Reservation.

Section 3 of House Bill No. 1459 required the Agriculture Commissioner to attempt to arrange a noxious weed control program with all state and federal agencies with jurisdiction over land in this state.

As introduced, House Bill No. 1459 required the Governor to direct the state's attorney of each county with lands adjacent to Lake Sakakawea or Lake Oahe to seize that land and transfer it to the Board of University and School Lands.

The legislative history reveals that the problem of weeds on corps land results from receding water. When the water recedes, weeds grow. One way to control the weeds is by the introduction of cattle early in the growing cycle of the weeds. If cattle are introduced too late, however, the weeds are too developed and the cattle will not eat the weeds. The corps recently moved the date that cattle can be introduced from May 15 to July 15. The testimony included that the reason for the change was overgrazing by certain ranchers. There was testimony that the July 15 date may be modified to an earlier date with an approved rotational grazing plan from the Natural Resources Conservation Service.

Variables that make weed control more difficult is that the amount of weeds is dependent on the water level. When the water level is up, there are not many weeds. In addition, the grazing of corps land below the takings line is in conjunction with privately owned land. If cattle are placed on the adjacent land before the takings land is open to grazing, the rancher is forced to fence out the corps land. Because Lake Oahe rises and falls, fencing is not an economical method of separating private land from corps land.

State and Federal Law

The present weed law in this state was rewritten in 2009. House Bill No. 1026 (2009) moved the provisions of weed law from Title 63 on weeds to a new Chapter 4.1-47 in the agriculture title. The bill was the result of an interim study by the Agriculture Committee to eliminate provisions that are irrelevant or duplicative, clarify provisions that are inconsistent or unclear, and rearrange provisions in logical order.

House Bill No. 1026 clarified that it is the duty of each person to control the spread of noxious weeds. The bill provided authority for the Agriculture Commissioner to enter land to assess situations and take samples. In addition, law enforcement agencies were required to enforce noxious weed laws. The bill clarified quarantine authority and provided for the imposition of an emergency quarantine. The bill clearly separated the targeted assistance program for cost-share with county and city weed boards and the landowner assistance program for cost-share assistance with landowners through weed boards that historically have provided assistance for herbicide purchases.

In general, state weed law provides for oversight by the Agriculture Commissioner to designate and control noxious weeds and invasive species. Each county must have a county weed board and must employ a weed control officer. The cost of weed control may be paid from the county general fund or the noxious weed fund. In addition, state funding is provided through the Agriculture Commissioner's office. Cities may have a weed board and weed control officer as well. The law allows for entry onto land for weed control, providing notice to landowners, and controlling the weeds with the expense made part of the taxes to be levied against the land. In addition, the commissioner may quarantine land to prevent the spread of noxious weeds. It is a Class B misdemeanor to willfully disseminate weeds by transporting weeds. In addition, there is a civil penalty for the violation of the weed chapter or any rule made under the chapter of an amount not to exceed $80 per day of violation, not to exceed $4,000.

In Letter Opinion 2003-L-62, the Attorney General addressed the duty of federal agencies, specifically the corps, to control noxious weeds. The first question addressed was whether federal agencies that own or manage land must comply with state weed laws. Although the plain language of the state laws applies to federal agencies, the federal agency may be insulated from state laws through the supremacy clause of the United States Constitution. The letter opined:

> [F]ederal agencies owning or managing public land in North Dakota are only required to comply with state noxious weed law where state law is not preempted under the Constitution's Supremacy Clause. "Federal preemption of state law may occur if: (1) Congress explicitly preempts state law; (2) Congress impliedly preempts state law by indicating an intent to occupy an entire field of regulation; or (3) state law actually conflicts with federal law."
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> Congress, in various laws, has addressed a federal agency's duty to eradicate or control noxious weeds on federal lands. The Carlson-Foley Act (43 U.S.C. § 1241 et seq.) authorizes and directs federal agencies to permit a state agriculture commissioner, or other proper agency head, to enter federal land to destroy noxious plants growing on such land if the state has in effect its own noxious plants control program for privately owned land. 43 U.S.C. § 1241.
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> . . .
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> A statutory duty is also found in the Federal Noxious Weed Act of 1974 (7 U.S.C. § 2814). Under it, each federal agency has a duty to develop and coordinate an undesirable plants management program, establish and adequately fund such program through its budgetary process, enter into cooperative agreements with state agencies, and establish integrated management systems for controlling noxious weeds under such cooperative agreements. 7 U.S.C. § 2814. Similar to the Carlson-Foley Act, the Federal Noxious Weed Act does not require federal agencies to carry out noxious weed control programs on federal lands unless similar programs are being implemented on state or private lands in the same area. 7 U.S.C. § 2814(d).
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> . . .

> Congress, in enacting the Carlson-Foley Act and the Federal Noxious Weed Act, directed federal agencies to control or eradicate noxious weeds on public lands. However, those Acts do not provide mechanisms allowing states to enforce state noxious weed laws against federal agencies. Rather, the Acts express a congressional intent to "occupy the field," and thereby prevent application of state law under the Supremacy Clause. See Billey v. North Dakota Stockmen's Ass'n, 579 N.W.2d 171, 178 (N.D. 1998).

Another question addressed in the letter opinion was whether a political subdivision had any remedies against a federal agency that refuses to comply with noxious weed laws. The Attorney General's letter opined that if the Agriculture Commissioner finds that a federal agency is not complying with relevant federal noxious weed control laws, the Agriculture Commissioner or county could explore litigation, including bringing a declaratory judgment seeking a court order forcing compliance.

In short, the opinion states that federal law imposes requirements on federal agencies to control noxious weeds, but these laws do not provide a mechanism for states to enforce noxious weed laws against federal agencies.

Transfer of Land to the State of South Dakota

Under Title VI of the Water Resources Development Act of 1999, most corps-managed lands on Lake Oahe in South Dakota were transferred to the state of South Dakota except for lands within the Standing Rock Reservation and dam operational areas.

The law transferring federal land to South Dakota states:

> The Secretary shall transfer to the Department of Game, Fish and Parks of the State of South Dakota (referred to in this section as the "Department") the land and recreation areas described in subsections (b) and (c) for fish and wildlife purposes, or public recreation uses, in perpetuity.

Under the uses of the land section, South Dakota is to maintain and develop the land outside the recreation areas for fish and wildlife purposes in accordance with fish and wildlife purposes in effect on the date of enactment of the Act or plan developed to restore terrestrial wildlife habitat. In addition, the corps retained the right to inundate with water the land transferred to South Dakota or draw down a project reservoir, as necessary to carry out an authorized purpose of a project.

The following are excerpts from a memorandum drafted by the South Dakota Legislative Research Council on the Missouri River Wildlife Habitat Mitigation Bill. This bill also is referred to as the Missouri River Land Transfer Act. The memorandum encompassed the land transferred to the tribe as well as the state. The following focuses on the transfer to South Dakota. The memorandum states:

> In 1944, Congress passed the 1944 Flood Control Act, establishing the Pick-Sloan Program, one of the most significant events in South Dakota's economic history, resulting in the construction of four large dams and reservoirs on the Missouri River and an end to much of the area's flooding problems, not only in South Dakota and the upper Missouri Basin states, but in the downstream states as well.
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> In the course of constructing the dams and planning for the creation of the Missouri River reservoirs, the Corps of Engineers acquired lands to create a zone or "take line" outside the expected new shoreline of the reservoirs. This land, which was acquired from adjacent tribes and from private owners, both Indian and non-Indian, has been in federal ownership ever since.
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> Since the late 1970s, when the Oahe Project, the largest of the proposed Pick-Sloan irrigation projects in South Dakota, was halted, the state has pressed the federal government for an appropriate substitute for the loss of inundated lands and the failure of the proposed federal irrigation projects.
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> . . .
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> The Missouri River Wildlife Habitat Mitigation bill was drafted primarily as an attempt to seek additional compensation for South Dakotans for the loss of lands under the Pick-Sloan Program and the failure of many Pick-Sloan projects to materialize, as discussed above. The basic concept is that Corps of Engineers "take land" along the Missouri River that is adjacent to Indian reservations would be returned to the respective tribes, and Corps take land adjacent to non-Indian land would be ceded to the state for public use.
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> Of particular interest was the opportunity for additional public hunting areas, given the controversies that have intensified in recent years over the increasing commercialization of hunting and declining opportunities for South Dakota residents to hunt.
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> . . .
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> In general terms, the legislation turns over Corps of Engineers land along the Missouri River that is located within reservation boundaries to the affected tribes that agree to the transfer. Corps of Engineers land that lies outside reservation boundaries would be transferred to the state of South Dakota to be used for public recreational and wildlife habitat purposes.

According to a representative from South Dakota Game, Fish and Parks, the following points are important to consider in determining whether North Dakota would desire similar treatment as South Dakota as to corps land:

- The transfer in South Dakota was property between the high watermark and the takings line. Most of the weed problem in South Dakota is below the high watermark, i.e., the lake bed, and a similar transfer in North Dakota would not address the weed problem.

- South Dakota Game, Fish and Parks' first obligation under federal law is to manage the property for wildlife mitigation. The mitigation is for the wildlife habitat taken when Lake Oahe was created.
- South Dakota Game, Fish and Parks manages the property for the same purposes as the corps did in the past. (Although, in the opinion of the representative, the state may be more responsive to citizens of South Dakota than the corps, the addition of the state creates an additional layer of government for a neighboring landowner to work with for grazing.)
- The land transfer was moved through Congress under the supervision of the Senate majority leader who was from South Dakota.
- The transfer was accompanied by funding to the state for 10 years followed by funding from a trust fund that was funded with $150 million.

Actions by the Agriculture Commissioner

The North Dakota Agriculture Commissioner held a hearing on weed control on corps land on March 3, 2009. The hearing was between the Emmons County Weed Board and the corps. A representative from the corps said under the master plan (1961), grazing is an "interim use" and not an "authorized project purpose" in support of changing the grazing date to July 15. The grazing restriction was implemented in 1998 in response to the drought conditions. In fiscal year 2007, the corps spent almost $400,000 on weed control. Seventy-nine percent was spent through contracts with Emmons County. At the time of the hearing, the corps was requesting a similar amount of money for fiscal year 2009. The main solution offered by the corps was for landowners to develop acceptable grazing plans with the corps.

The Agriculture Commissioner, as part of the comment on the corps' efforts to update its master plan, has suggested that the corps:

- Seek additional funding or reprioritize funding (especially when water levels are low), or both, for the control of noxious weeds.
- Regularly map treated and untreated infestations of noxious weeds and prioritize accordingly. This may also aid in a stronger argument for additional funding for weed control in addition to the fact that the corps is mandated to comply with the Federal Noxious Weed Act.
- Place noxious weed control higher on its priority list and categorize noxious weed control as an authorized project not only to protect critical habitat but to stop the spread of invasive species to other lands.
- Implement early season grazing, at least in or near weed-infested areas, as a management tool to further control noxious weeds. Grazing restrictions on weed-infested lands will add to weed-related problems given that noxious weeds deplete resources, potentially harm habitat, encroach on recreation areas, and decrease the value of land.
- Recognize studies that have shown that livestock grazing does not significantly impact least tern and piping plover nests. A July 15 grazing restriction on noxious weed-infested lands will allow weed infestations to increase, thereby causing least tern and piping plover nesting habitat to be potentially harmed or lost. Work cooperatively with local county weed boards and the Natural Resources Conservation Service to control noxious weeds on corps leased and managed property to prevent weed problems from spreading and causing further harm.
- Work with local lessees to develop an acceptable grazing plan.
- Enforce lease requirements with regard to weed control and provide guidance and incentives to lessees to manage noxious weeds on project lands.
- Implement an integrated pest management program for the control of noxious weeds and utilize such methods as biological control and aerial spraying in areas considered inaccessible. However, please note that biocontrol will be ineffective in those areas that are flooded regularly for long periods of time.
- Distribute a greater portion of resources for noxious weed control to northern Lake Oahe project lands and maintain weed control along property borders to further prevent the spread of noxious weeds to neighboring property and areas downstream.

Testimony and Discussion

Landowners

The committee received testimony from landowners on the problems with weed control by the corps around Lake Oahe, especially in Emmons County. The landowners focused on a narrow strip of land between the high watermark and the take line. The committee was informed the corps will not build a fence or take care of the strip. It was argued that the corps controls private land with corps policies over this strip of land. However, because it is impossible to limit grazing to the high watermark, the corps allows livestock to graze all the way to the water.

The committee was informed that if the corps allowed the weeds to be grazed earlier, the cattle would knock down the weeds and make the weeds more accessible and visible for control. The committee was informed there were not any problems until the last few years when the corps changed the grazing date to July 15. Some landowners ignored the change, and the corps threatened to revoke leases. The committee was informed not being able to graze the corps land until July 15 prevents a landowner from grazing the landowner's own land because the two parcels are not separated by a fence. The committee was informed that it would be cost-prohibitive for the landowner to build the fence. One example would require 30 cornerposts to

fence over two miles of land adjacent to corps land due to the steep hills.

To graze earlier, the corps was requiring a grazing plan approved by the Natural Resources Conservation Service, which would require rotational grazing. The rotational grazing required by the corps requires multiple fences. The committee was informed that the Natural Resources Conservation Service has rules that are too broad and that every situation is different and the rules do not always fit the situation. In addition, for grazing of Canada thistle to be effective as a control measure, the grazing needs to be done early and only a portion of the weeds would be grazed with a rotational grazing system. Not only does the corps delay grazing, the corps also requires cattle to be removed by a certain time. This prohibits a landowner from the landowner's land that borders corps land because the two portions are not separated by a fence. In one example a landowner was prevented from feeding cattle and calving a long distance from the corps land in the winter.

The committee was informed of the problems caused by inadequate weed control by the corps. One problem is that seed farmers grow high-value crops that need to be free from noxious weeds. The weed seeds from the corps property require neighboring farmers to spend more money on chemical control of weeds.

Landowners supported the return of all land above the flood line of the corps to the landowners. This return could be accomplished by sale of the land. It was argued that landowners would take better care of the land and wildlife than the corps. The positives of public ownership, e.g., public access, could be addressed through easements.

Committee discussion included that this problem is not limited to the corps but also is a problem with the United States Fish and Wildlife Service. It was argued the best solution would be to give the land back to landowners; however, this would be the hardest solution to effectuate. Another solution was to provide landowners compensation. An adjacent landowner may incur $2,000 to $4,000 per year to control weeds. Another solution would be to return the land to the state.

County

The committee was informed that the weed control board of Emmons County has good cooperation with the corps. The committee was informed that the corps had never turned down funding to the county weed board in the past, but the corps only provided $5,000 to $10,000 at one time. Although the county weed control board receives funding from the corps, the county weed boards are very short on funds. One problem is that the weed board must submit a bill to get reimbursed and does not receive funding up front. However, the committee was informed that recently the board began receiving funding in advance.

The committee received testimony on weeds in Morton County. In Morton County, some land was taken by the corps and licensed to the Game and Fish Department. The committee was informed that the Game and Fish Department leases corps land for farming in Morton County. Weed control on cropland is done by the landowner, and the Game and Fish Department controls the weeds elsewhere. The corps does not give the Game and Fish Department any funds for weed control. The committee was informed the land that is not farmed goes to weeds.

The committee was informed that it took many years for there to be full payment in lieu of taxes from the federal government to counties. However, the taxes are based on the takings price, which is based on average property values. The land that was taken was the land of highest production. The committee was informed that if the land were sold at private sale and taxed by the county, the county would receive five times the payment in lieu of taxes. The committee was informed that the present land does not have much value because it is being used as a noxious weed patch.

Certain weed boards supported returning the land around Lake Oahe back to private ownership for the purposes of weed control. One reason is the weed board can penalize a landowner that does not control weeds but does not have jurisdiction over federal land. In addition, certain county weed boards supported early grazing because it is impossible to spray the weeds unless there is access, and early grazing makes better access.

Corps

The committee received testimony on Lake Oahe from the corps. The committee was informed that the corps must manage the land for wildlife, and grazing is a management tool. In 2004 a task force, including members from the state, counties, and private individuals, was created to address the noxious weed problem. As a result of the task force, the corps focused on saltcedar, but the corps now focuses on other species. The corps spends $300,000 to $350,000 for noxious weed control through funding counties for weed control because the counties are experts for their area. However, Morton and Burleigh Counties do not cooperate with the corps, and in these counties the corps uses contractors.

The largest problem with weed control contractors is that there are very few companies that do spraying, and usually there are two bidders on the projects. As a result, Lake Sakakawea and Lake Oahe use the same contractor, and the contractor is very busy. So even with more money, there may be no one to do the work in some areas.

The committee was informed the largest problem with biocontrol is that below the high watermark there is a risk of loss of the control because of flooding. However, the corps supports anything that controls the weed problem as recommended by county weed boards.

The committee was informed that the corps is in compliance with the law, has a viable program, and is addressing the problem, although it is a large problem. Water has gone up in 2010 to within three feet of the high watermark, and the only take land left is the side slopes of cut banks, which do not grow that many weeds. It is difficult to budget for weed control because when the lake is up, there is no problem and when the lake is down, there is a large problem, and in either case

the corps has to budget two years to three years out. A major impediment to weed control by the corps is funding. If the corps receives enough money to control the weeds and then does not receive enough funding in one year, the problem starts over. Because the funding for weeds competes with other corps projects, weed control can have a lower priority than more imminent concerns. For example, the locks in Mississippi have to be replaced, and this will compete with weed control.

The corps receives baseline funding and nonroutine funding which are dependent on the President and Congress.

The committee was informed that the corps will listen to any plan for grazing and work with local ranchers; however, the corps has data that shows that the earlier the grazing, the more conflicts with wildlife. These conflicts with wildlife depend on the grazing intensity, and determining the proper amount of grazing is a balancing act. The corps will evaluate any plan offered by a landowner and take into account the topography and exceptions to broad rules. The committee was informed the corps understands the negative impacts the weeds have on landowners and will work with landowners to make the future better.

The committee received testimony on Lake Sakakawea from the corps. Around Lake Sakakawea grazing is not an authorized purpose, and grazing is used as a management tool for wildlife. Grazing was never an authorized purpose and no other reservoir has grazing as an authorized purpose. For the acres above the flood line, 30 percent are managed for grazing, and the majority of these acres are grazed by the Bureau of Indian Affairs. The remaining acres are managed for grazing through 50 to 100 leases. The lands are made available using the best management practices and for the benefit of wildlife. The corps has a few proprietary leases with original owners or spouses, and these leases allow grazing.

The committee was informed the corps works collaboratively with lessees, and the corps provides an offset for fencing, food plots, and weed control. The funding for weed control was $25,000 in 2001 and $645,000 in 2009. The routine budget provides $125,000 per year. Nonroutine funding provided the remainder up to $645,000. Nonroutine funding has to compete with higher priorities.

South Dakota

The committee received testimony from South Dakota Game, Fish and Parks. The committee was informed that transfers of recreation areas from the federal government to South Dakota began in 1999, immediately after the passage of the federal law transferring the land to South Dakota. The department is funded for weed control through money in a trust fund created by Congress. The department owns the take land but not the floodplain. Because the department manages the take land for wildlife purposes, grazing is used as a management tool.

The committee was informed there are approximately 100 leases for grazing. In South Dakota, the department stresses a personal relationship with leaseholders. The department meets with each leaseholder every year, and the lease system works well. The committee was informed by the department there is not a fence between the private land and the public land, but the department does not dictate how an adjoining landowner can graze a landowner's own property.

Committee Consideration

The committee considered a concurrent resolution draft urging Congress to return to the state of North Dakota land controlled by the corps which is not necessary for flood control.

Committee discussion included that the land to be returned should be land not used for "authorized purposes," because land not used for "flood control" may exclude land used for other authorized purposes, e.g., power generation.

Committee discussion included that the property should be returned to the landowners, not the state. It was argued that returning the land to the riparian landowner is a good opening position and that the fallback position should be return of the property to the state. It was argued that the return to the landowner is the right thing to do.

To the contrary, committee discussion included that the land be returned to the state. It was argued that the corps giving the land back to the landowner will not be seriously considered. However, there is precedent for the return of land to the state because that happened in South Dakota. In addition, if the land were returned to the state, the state would work with landowners to address the concerns of the landowners. It was argued that it would be administratively burdensome to return the land to landowners because the landowners lost the land in the 1950s, and some original landowners have sold neighboring land between that time and now. This raises the issue of whether the old owner or new owner should receive the land. In addition, the federal government paid for the land and may want the money paid returned.

In rebuttal, committee discussion included that the rights relating to changing courses of water are determined all the time and can be done in this instance. The draft resolution was amended to return the land not necessary for authorized purposes to the riparian landowner.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4002 to urge Congress to return to the riparian landowner land controlled by the corps which is not necessary for authorized purposes.

LEASING OF STATE LANDS STUDY

Senate Concurrent Resolution No. 4027 (2009) directed the Legislative Management to study the leasing of state lands. In particular, the legislative history and resolution focus on the leasing of school lands by the Land Department, generally to ranchers, at public auction for a maximum term of five years. The main concerns with the present practice relate to:

1. The limited term of five years for the lease.

2. The practice of leasing and not selling the land.
3. Not giving a preference to the present lessee in the bidding process.

The resolution and legislative history suggest that the term of 5 years is too short, and a term of 7 years or 10 years may be more appropriate. A longer term would reduce the costs of land auctions and encourage lessees to make improvements. Improvements would be encouraged because a longer term would allow for more time to recover the cost of the improvement. The legislative history is silent on the reasons for studying the sale of school lands.

The major arguments against expanding the term of lease, providing a preference for the present lessee, or allowing the sale of land included:

- The bidding process allows for the adjustment of price and the shorter the term of the lease, the more responsive the price is to the market.
- School lands are managed to provide income for public schools and leased land provides a stable income.
- The state constitutional provisions limiting the term of lease to five years and not providing a preference to a person due to occupation or cultivation or improvement of any public lands by that person.

State-Owned Trust Lands

In 1889 Congress passed the Enabling Act. The Enabling Act divided the Dakota Territory into North Dakota and South Dakota and granted the 16th and 36th sections of land in each township to the state "for the support of common schools." In addition, the Enabling Act granted lands for the support of colleges, universities, the State Capitol, and other public institutions. The other public institutions include North Dakota Vision Services - School for the Blind, the School for the Deaf, the State Hospital, the Youth Correctional Center, and the Veterans' Home.

Generally, original grant lands are governed by Article IX of the Constitution of North Dakota and Chapters 15-04 through 15-06. Article IX, Section 3, of the Constitution of North Dakota provides in pertinent part that "[s]ubject to the provisions of this article and any law that may be passed by the legislative assembly, the board [of university and school lands] has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law." The term "original grant lands" is defined in Section 15-06-01 as "all of the public lands which heretofore have been or hereafter may be granted to the state by the United States for the support and maintenance of the common schools or for the support and maintenance of the university, the school of mines, the North Dakota youth correctional center, North Dakota state university, the school for the deaf, any normal school, or any other educational, penal, or charitable institution, and any lands which have been obtained by the state through a trade of any such lands for other lands."

The Board of University and School Lands consists of the Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Treasurer. Under Section 15-02-01, the board appoints a commissioner to manage the Land Department.

Sale of Land

Article IX, Section 5, of the Constitution of North Dakota, provides that original grant lands may be sold at any time after the first 10 years of statehood and that the Legislative Assembly is required to provide for the sale of all school lands subject to the provisions of Article IX. The Legislative Assembly has done so in Chapter 15-06. Other constitutional provisions governing the sale of original grant lands include Article IX, Section 6, which prohibits "original grant school or institutional lands" from being sold for less than fair market value or for less than $10 per acre. Article IX, Section 1, requires the proceeds from the sale of original grant lands to be deposited in the common schools trust fund and all proceeds from sales and all proceeds from bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands must be deposited in the appropriate permanent trust fund, which might include a trust fund for a specific educational or charitable institution.

Chapter 15-06 sets out the appraisal, notice, manner, and terms under which original grant lands may be sold. Section 15-06-22 provides that when an offer to purchase a tract of original grant land is made to the Board of University and School Lands, the commissioner must request the county board of appraisers to appraise the tract. Because the constitution and Section 15-01-02 give the board full control over rental and sale of original grant lands, the board is empowered to choose not to entertain offers to purchase those lands. The board has adopted a policy to retain most of its land holdings. According to the board's website:

> By the 1970s the Board realized that continued sales would forever deplete the trusts of their land holdings. Since 80% of the original congressional grant had been sold, a decision was made to restrict sales to small, difficult to manage tracts and to retain the remainder.

Section 15-06-25 requires the Board of University and School Lands to publish notice of any proposed sale of a tract once each week for three weeks prior to the sale in the official county newspaper where the land is located and such other newspapers as the board deems appropriate. The notice must describe the land and state the bid amount and the terms and conditions of sale. Under Section 15-06-26, the sale of the land must be at public auction to the highest bidder but not for less than the fair market value of the property.

Sale and lease of nongrant lands obtained by the Board of University and School Lands is governed by Chapter 15-07. Any nongrant lands sold must be by public auction or sealed bids, except purchases under Section 15-07-10, which allows a mortgagor or member of the mortgagor's immediate family to repurchase land lost through foreclosure.

Lease of Land

Chapter 15-04 governs the leasing of grant lands for agricultural purposes. Agricultural leases are limited to no more than five-year terms under Article IX, Section 8, of the Constitution of North Dakota and Section 15-04-01. Agricultural leases must be awarded to the highest bidder at public auction under Section 15-04-10, but the bid may not be less than the minimum rental set by the board after appraisal under Sections 15-04-06 and 15-04-07.

The Land Department has approximately 708,000 surface acres, and approximately 632,400 acres are school lands. The department has over 4,500 leases of school lands that consist of 97 percent pasture and 3 percent crop or hay. Because the land is mostly pasture, the acreage increases as one travels from the east to the west in this state. Over the last five years, over 99.5 percent of the land has been leased to farmers and ranchers.

In 1990 the fair market value method of determining the opening bid for leased land was adopted. The fair market value is determined based on cash rents for grassland in the region and adjusted for differences between school land and private land. Using United States Department of Agriculture statistics, the lowest average county rent in the region is averaged over the last five years and reduced by 10 percent to find the rental value. Deducted from the rental value of private property is $1.50 per acre for fencing and one-half the cost of leafy spurge control. The other one-half of spurge control may be recovered as a cost-share. The Land Department has paid 100 percent of the cost of controlling saltcedar, yellow star thistle, knapweed, and Canada thistle. The land is adjusted for potential forage productivity. Using United States Department of Agriculture rental value survey statistics for 2007 and lease amounts for 2008, if the high rental value statistics are used, the approximate average reduction is approximately 44 percent. This reduced value is the minimum opening bid.

The lease prohibits a number of activities by the lessee without consent. The lessee may not:

1. Assign the lease.
2. Cultivate additional land.
3. Use the land for storage or dumping.
4. Make permanent improvements or major repairs. This does not include fences or water tanks. Permanent improvements and major repairs may be depreciated or used as a rent credit with approval.
5. Prohibit public access.

The lessee is required to:

1. Control weeds, avoid erosion, and not overgraze.
2. Mow ditches.
3. Allow mineral exploration.

The income on surface leases was $6,287,748 in fiscal year 2009. The appreciation on the property was $2,096,568. The expenses for the surface management division were $616,849. These expenses include payments to counties for roads and bridges in lieu of property taxes under Section 15-04-23. In addition, these expenses include land expenses under Section 15-04-24. These land expenses include appraisal fees; survey costs; surface lease refunds; weed and insect control costs; cleanup costs; capital improvement rent credits; rural fire district reimbursements for fire protection; land rental or land value survey costs; and other costs to manage, preserve, and enhance the property. In comparison to total expenses, the costs for lease auctions are relatively minimal. Lease auctions are held four years out of five years. The lease auction process is electronically automated. The advertisements are generated electronically. The expiring leases are sorted electronically. The lease auctions are conducted by one person with a laptop computer. The results of the auction are uploaded electronically and the leases printed from the electronic files. The actual costs include:

1. Approximately 3,000 miles on a state vehicle.
2. Fourteen days for one person to conduct the auctions with meal and lodging expenses.
3. One day for one person to issue the leases.
4. Approximately $400 postage to mail leases.
5. Advertising for approximately 40 auctions at approximately $150 per auction.

Previous Study

During the 2005-06 interim, the Budget Committee on Government Services was directed to study state-owned real estate under House Concurrent Resolution No. 3305 (2005). That committee received information identifying state-owned real estate and studied the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate. A survey was sent to state agencies requesting them to provide the following information to the committee regarding any state-owned real estate and vacant buildings:

- Restrictions on the use of the property.
- Restrictions on the use of proceeds from the sale of the property.
- Mineral rights.
- Easements.
- Leases and lease income.

From the results of the survey of 38 state agencies and institutions that own land and buildings, that committee learned total state-owned land as reported by state agencies and institutions totals 1,057,333 acres with an estimated value of $405.6 million. The 1.1 million acres of state land comprise 2.4 percent of all land in North Dakota compared to federally owned land that totals 1.9 million acres, or 4.2 percent of all land in the state. Agencies and institutions own 1,820 buildings totaling 21.8 million square feet with a total estimated value of $1.675 billion. Agencies reported total debt on these buildings of $207.5 million.

That committee learned the Land Department is reviewing small tracts of land that it owns as part of state trust fund lands and that, upon approval of the Board of University and School Lands, the land may be sold and any proceeds would be deposited into the trust fund that owns the land. The Land Department reported the state

has sold 1.8 million acres of the 2.5 million acres originally granted to the state, leaving 700,000 acres. The Land Department provides 5 percent of any income earned on state lands to the county in which the land is located.

Other States

The committee reviewed laws in other states. In Minnesota, leases are for a maximum of 10 years with no automatic right of renewal, but the lessee does have an option to renew. Generally in Montana, a lease or license for agricultural or grazing lands is for 5 years or 10 years and expires on February 28, 10 years or less from the beginning date of the lease or license. Leases are issued on a competitive bid basis subject to a preference right of the current lessee to match the highest bidder.

Concerning the preference right, Administrative Rules of Montana Section 36.25.117 provides that the Board of Land Commissioners retains the right to select the best lessee possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessee possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the lease promotes good stewardship of the land. This security of land tenure encourages the lessee to place and develop improvements, which, in turn, increases the productivity of the land and improves its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing a preference right to meet the high bid and retain the lease.

In South Dakota, the term of the lease may not exceed five years; however, at the expiration of the initial five-year term, the lessee is entitled, at the lessee's option, to a new lease for the land included in the lessee's original lease for a period of five years. In Wyoming, leases for grazing or agricultural purposes are for a term of 10 years. Preference must be given to applicants who are bona fide resident citizens of Wyoming and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land, and who are the owners, lessees, or lawful occupants of adjoining lands who offer to pay an annual rental not less than fair market value as determined by economic analysis for the use of the forage and other commodity available annually on the land for a period of 10 years. This section provides further that an applicant that is the holder of an expiring lease, has paid the rental when due, and has not violated the provisions of the lease is qualified to have a preferred right to renew the lease by meeting the highest bid offered by another qualified applicant who has actual and necessary use for the land and available forage and whose bid is based on the fair market value using a formula developed by the board.

Testimony and Discussion

The committee received testimony from the Land Department. The committee was informed that the Board of University and School Lands has sold 80 percent of the original property. Every state is different in its portion of sold land. For example, Kansas and Minnesota have sold most of their land. Nebraska has sold approximately 60 percent. Montana and Wyoming have sold 10 percent to 20 percent. In 1998 the board worked with Northern Trust to see the impact keeping land had on the investment portfolio. Northern Trust recommended keeping the present level of land to provide stability and reduced risk. The holding of land provides long-term stability, which is not subject to the stock market.

In the early 1970s, the Legislative Assembly requested by resolution that the board sell land, and the board responded to the resolution by selling land. The committee was informed that by the mid-1970s there was a public outcry and the opinion of the Legislative Assembly was reversed. The committee was informed the Legislative Assembly can encourage the sale of land; however, the board must consider the sale of land as a fiduciary of a trust.

The committee was informed it is rare to receive a request to sell land because people know the board is not selling. However, there have been two recent situations in which the board has tried to sell land. One parcel was east of Bismarck and one was on the west side of Minot. The land was offered for sale because the land was high-value development property.

The committee was informed that the sale of school land would remove public access. The committee was informed that generally the public likes access to school land. Ninety-nine percent of the school land is open to hunting, and this does not impact most landowners.

The committee was informed that providing a preference to the present lessee is unpopular except with a few lessees. As a matter of fact, the present lessee usually retains the property. At present, there is about an 8 percent turnover of lessees. In addition, over time there has been less competitive bidding. The committee was informed that when the board adopted minimum bids, there became less competition because there was less spite bidding to prevent a neighbor from getting the land cheap.

One of the arguments for a preference is that a longer term of the lease as a result of the preference would reduce the risk to make investments in improvements on the property. The committee was informed the lessee owns the fence, and all other improvements are owned by the state. The lessee can sell the fence or remove the fence at the end of the lease.

The committee was informed the Land Department provides incentives to fix and improve property. The Land Department provides assistance with wells, noxious weed control, dams and dugouts, and prairie dog control. In addition, lessees are protected on permanent improvements for 10 years. If the land is rented to another lessee before the end of 10 years, the next lessee must pay the previous lessee for the improvement.

The committee was informed the Land Department has paid a portion of fencing as part of the environmental quality improvement program so that the

lessee does not have more into the fence than the lessee will get out of the fence. The committee was informed that the Natural Resources Conservation Service does not have a problem with lessees taking the fence at the end of the lease. In addition, most county Natural Resources Conservation Service offices do not care that the lessee does not have control of the land for five years when funding rotational grazing fences.

The committee was informed that five-year leases are short enough to have fixed terms. Having the lease at five years allows the Land Department to lock the lease rate for that time period. The committee was informed that if the lease term were longer, the lease rate would have to be adjusted during the term of the lease.

Committee discussion included that the lease of land is unfair to low-population school districts. If the land were sold it would be taxed and that money would go to local schools. Large counties, like Cass County in the east, receive taxes from the land in the east, which mostly has been sold, and receive a per student payment from the state school trust fund, which is funded through land leased mostly in the west.

Conclusion

The committee makes no recommendation as a result of this study.

MINERAL RIGHTS STUDY

House Concurrent Resolution No. 3045 (2009) directed the Legislative Management to study severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota. The resolution suggested addressing concerns with:

1. The high number of mineral rights owners for certain parcels of property.
2. The burden on the surface owner who may not own any mineral rights.
3. Determining the mineral rights owners.
4. The operation of Chapter 38-18.1, termination of mineral interests.
5. The discount for North Dakota oil and incentives to reduce the discount.

The legislative history reveals the impetus for the study was a desire to have abandoned minerals return to the surface owner. A return to the surface owner would make location of the mineral owner easier. The means to return the minerals to the surface owner which were discussed included taxing mineral interests and Chapter 38-18.1. Taxation would place an expense on ownership of minerals. Presently, a person may retain mineral interests at very little cost and have the opportunity to have a large income if the minerals are developed. The impetus for the study of the oil discount came from an uncertainty as to which factors, in what proportion, affect the discount.

Mineral Law

Under common law whoever owns the soil, owns to the sky and down to the depths. Property rights have been characterized as a bundle of sticks. A person may own a bundle of all the sticks with fee simple absolute ownership. However, a person may take that bundle and sever some sticks by conveying them to another person. A mineral interest is an interest in real property. The severance of mineral interests is done through a grant, a mineral deed, or through a reservation in a deed. The prime characteristic of a mineral interest is the right to enter the land to explore, drill, produce, and otherwise carry on mineral development activities. The mineral estate is dominant, and inherent in the right are surface rights to find and develop the minerals. Without the dominant rights, the mineral rights would be meaningless. Under Chapter 38-18.1, the mineral owner must cooperate with and pay compensation to the surface owner. The practice of severing mineral interests from surface interests creates two sets of potentially conflicting rights. Even if not exercised, the greatest value of a mineral interest may be its impairment of the surface estate, which may have a ransom value to a person who wants an unencumbered fee interest.

Termination of Mineral Interests

Chapter 38-18.1 deals with termination of mineral interests. Section 38-18.1-01 defines the term "mineral interest" for purposes of the chapter to include oil, gas, coal, clay, gravel, uranium, and all other minerals. Section 38-18.1-02 provides that a mineral interest is, if unused for a period of 20 years immediately preceding the first publication of the notice required by Section 38-18.1-06, deemed to be abandoned unless a statement of claim is recorded. Title to the abandoned mineral interest vests in the surface owner in the land in or under which the mineral interest is located on the date of abandonment. In addition, the surface owner may record a statement of succession in interest on the date of abandonment.

Section 38-18.1-03 provides that a mineral interest is deemed to be used if:

- There are any minerals produced under that interest;
- Operations are being conducted for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;
- In the case of solid minerals, there is production from a common vein or seam by the owners of the mineral interest;
- The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located;
- The mineral interest on any tract is subject to any order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located;
- Taxes are paid on the mineral interest by the owner or the owner's agent; or
- A proper statement of claim is recorded.

Section 38-18.1-04 governs what a statement of claim must contain and when it must be recorded.

Section 38-18.1-05 provides that failure to record the statement of claim within the time period provided in

Section 38-18.1-04 will not cause a mineral interest to be extinguished if the record owner does one of the following within 60 days of the first publication of notice:

- Files a statement of claim; or
- Files a document showing the mineral interest is deemed used under Section 38-18.1-03 during the last 20 years.

Section 38-18.1-06 governs the method by which surface estate owners intending to succeed to the ownership of a mineral interest upon its lapse must give notice of lapse of the mineral interest.

Section 38-18.1-06.1 provides for the perfection of the title in the surface owner. The surface owner may maintain an action in district court to obtain a judgment in quiet title. If a surface owner follows the procedures in the statute, the district court is required to issue findings of fact, conclusions of law, and enter a judgment perfecting title in the surface owner.

Although the term mineral interest, as used in Chapter 38-18.1, includes clay and gravel, these substances are often reserved by the surface owner and are not included in a conveyance of oil, gas, or coal. The reason is that oil and gas resources can be developed with minimal use of the surface estate while clay and gravel extraction usually results in destruction of the surface estate. To determine whether clay and gravel have actually been severed from the surface estate, one would have to review the relevant instruments. A number of different substances have been classified under North Dakota law as "minerals" within the meaning of instruments conveying or reserving an interest in "minerals." The question whether certain substances constitute "minerals" for that purpose depends upon the type of instrument, applicable statutes, and the date of the instrument. Due to various statutory changes and a series of decisions of the North Dakota Supreme Court over a number of years, the question of what constitutes a "mineral" or "minerals" in an instrument dealing with severed mineral interests depends upon the date of the instrument and whether the instrument is a conveyance by mineral deed or other instrument, a reservation or exception of minerals in a conveyance of the surface, or a mineral lease.

In short, to succeed to a mineral interest, one must follow the procedure outlined in Chapter 38-18.1. However, if gravel is involved, one would want to review the instruments severing the minerals from the surface estate and the relevant mineral title standards to determine whether the gravel has actually been severed from the surface estate.

Dormant mineral Acts, such as Chapter 38-18.1, have been enacted in several states and subjected to several legal challenges. The North Dakota Supreme Court has not addressed the constitutionality of Chapter 38-18.1. Dormant mineral Acts have been found unconstitutional in Wisconsin, Nebraska, and Illinois but have been found not to violate either federal or state constitutional guarantees in Indiana and Michigan. In *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), the United States Supreme Court reviewed the Indiana Dormant Mineral Act and upheld it. The Court found that because it was the owner's failure to make any use of the property, rather than action by the state, that caused the loss of the property interest ownership, there was not a taking of property that required compensation under the 14th Amendment of the United States Constitution.

Taxation of Severed Mineral Interests

For more than 100 years, periodic attempts have been made in North Dakota to tax severed mineral interests. In 1907 the Legislative Assembly enacted a law that required assessors to list and assess severed mineral interests for property tax purposes. The law was in existence until 2009; however, the law was not followed because it was impossible as a practical matter to locate the owners and to assess the value of minerals in place in the earth.

In 1923 the Legislative Assembly enacted an annual state tax of three cents per acre for severed mineral interests. The revenue from the tax was to be paid into the state general fund. If the tax was delinquent for three years, proceedings were instituted to declare the title to the mineral interest forfeited to the state. The North Dakota Supreme Court in *Northwestern Improvement Co. v. State*, 220 N.W. 436 (N.D. 1928) ruled that the tax on severed minerals was unconstitutional. The court concluded that the law provided an unreasonable and arbitrary classification for property tax purposes based on severance of ownership of minerals. The court concluded that the statute violated the uniformity of taxation within a class of property requirement of Article X, Section 5, of the Constitution of North Dakota.

In 1947 the Legislative Assembly again attempted to tax severed mineral interests. The 1947 law attempted to avoid the Supreme Court objections from 1928 by not imposing a "property" tax. The 1947 law provided for an "excise tax" of three cents per acre on severed mineral interests. The tax did not apply when mineral rights are developed or for mineral leases held for development purposes. The North Dakota Supreme Court in *Northwestern Improvement Co. v. County of Morton*, 47 N.W.2d 543 (N.D. 1951) ruled the 1947 legislation unconstitutional. The court ruled that the standard of uniformity under Article X, Section 5, of the state constitution is substantially the same as the standard of equality under the 14th Amendment to the United States Constitution. The court concluded that the limitation on the power of the Legislative Assembly to classify property is equivalent to the limits of the 14th Amendment to the United States Constitution which, by requiring equal protection of the laws, precludes purely arbitrary classification. The court stated "[i]t is obvious to this court that the manner or method by which mineral rights are severed from the surface of the land cannot be made the full basis of the classification of such mineral rights for taxation purposes."

In addition to the constitutional impediments to imposing a tax on severed minerals, numerous practical problems exist. According to an attorney engaged in oil and gas title work, there are more than 70,000 square miles of property in the state for which title work would be required if severed mineral interests were taxed, and there are approximately 2.5 million severed mineral

interest owners who would need to be identified and taxed by county officials. The potential existence of severed mineral interests under city lots, rights of way, lakes and streams, and platted lands would further complicate the title work and administrative problems. In addition to administrative problems for county officials, title attorneys working for the oil and gas industry would face an increased workload because it would be necessary to check the status of paid or unpaid taxes on severed mineral interests. This increase in title work and the resulting increase in costs probably would cause counties and the oil and gas industry to oppose legislation to impose taxes on severed mineral interests.

The Dominant Mineral Estate and the Accommodation Doctrine

Minerals and the surface to lands may be separated or severed by several means, including by mineral deed or by reservation of minerals from a grant of surface. When the minerals in land are severed from the surface, the mineral estate becomes a separate property interest in the land. The severance of the mineral estate and surface estate requires that an easement in favor of the mineral estate be implied to assure access to the surface. Consequently, the mineral estate includes an implied easement to the surface, limited by reasonable necessity. In general, reasonableness of use has been determined by industry practices.

The accommodation doctrine was developed by the courts to temper the dominant rights of the mineral estate to reasonably accommodate the surface owner's existing use of the surface. Without the accommodation doctrine, if there were a conflict between the rights of the mineral owner and the rights of the surface owner, the mineral owner's rights prevailed over the interests of the surface owner. Under the accommodation doctrine, limits are placed on a mineral owner's right to use the surface by requiring the mineral owner, in exercising the mineral owner's rights to use the surface, to act with due regard for the interests of the surface owner. The accommodation doctrine requires the mineral owner to consider the rights of the surface owner and to accommodate the existing uses of the surface if those uses do not unreasonably interfere with the mineral owner's operations.

The common law generally provides that the mineral owner is liable for damage to the surface if the surface owner can show negligence, unless there is a contractual arrangement providing for damages. Under the common law, the surface owner generally can recover the diminution in value to the surface for permanent damage and restoration costs for temporary damage not to exceed the value of the land.

Oil and Gas Production Damage Compensation in North Dakota

Chapter 38-11.1 provides for compensation for surface damage caused by oil and gas production. Section 38-11.1-02 provides that it is the purpose of Chapter 38-11.1 to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of the development of minerals. Section 38-11.1-03.1 provides that upon request of the surface owner or adjacent landowner, the State Department of Health is to inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the State Department of Health is required to issue appropriate orders under Chapter 23-25 to protect the health and safety of the surface owner.

Section 38-11.1-04 provides for payments to the surface owner for damage and disruption caused by oil and gas development. This section requires the mineral developer--the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes--to pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations.

Section 38-11.1-05 requires the mineral developer to give the surface owner written notice of drilling operations contemplated at least 20 days before commencement of operations, unless waived by mutual agreement of both parties. The notice must officially disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property.

Section 38-11.1-06 concerns the protection of surface and ground water.

Section 38-11.1-09 provides that if the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court is required to award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced.

Surface Owner Protection in Other States

Illinois, Indiana, Kentucky, Montana, New Mexico, Oklahoma, South Dakota, Tennessee, West Virginia, and Wyoming have enacted surface owner protection legislation. Generally, the purposes of surface owner protection statutes are to minimize damage suffered by surface owners, to prevent harm to the general public by potential loss of available surface for agricultural or other beneficial purposes, to promote settlement of disputes between surface owners and mineral owners, and not to prevent or delay exploration and development of minerals.

North Dakota was the first state to enact a surface owner compensation statute, and the Montana, Tennessee, and West Virginia statutes are modeled on North Dakota. Illinois and Kentucky have similar statutes that apply only when the surface owner has not consented to the mineral owner's operations. The Indiana statute is similar to the other statutes in that it

imposes liability for surface damages, regardless of fault, but differs from the other statutes in that it does not require notice or bonding.

Testimony and Discussion

State Legislation and Action

The committee received testimony on dormant mineral statutes. The committee was informed that a dormant mineral statute is a balancing of what is truly abandoned and at what point does that abandonment justify a taking of private property. Dormant mineral statutes typically require dormancy for 20 years to 30 years. If the period of time were reduced to 10 years, there would be more of an issue of taking. The committee was informed that a 2007 North Dakota State University study showed that 20 to 25 percent of mineral owners are surface owners. The study showed that 51 percent of mineral owners are North Dakota citizens, and 49 percent are from out of state. Most of the owners are individuals and not land companies.

The majority of surface owners own some minerals, but most mineral rights are severed. This is because of the common practice of keeping one-half of the mineral rights on transfer, combined with passing mineral rights to children through inheritance. The committee was informed that mineral interest owners in a family should use an irrevocable trust that stops the continual severance of mineral interests. Another reason mineral rights are severed is because of speculators who have purchased large quantities of mineral rights and have broken up and sold those rights. There may be as few as five or six mineral owners per well, and there have been 300 to 400 mineral owners per well.

The committee was informed that Chapter 38-11.1 is a model for the other states. It was the first surface owner damages Act and is one of the most stringent in the United States. The committee was informed that Chapter 38-18.1 is a second chance act. The committee was informed that reclaiming dormant mineral acres can be timely and costly. For example, one landowner used a private investigator that looked for the mineral owners for three years. The private investigator found the mineral owners so the landowner did not get the mineral rights and incurred the cost of the private investigator.

The committee was informed that the 2009 amendments to Chapter 38-18.1 resolved much uncertainty that resulted from the old law. There were four major changes in the law in 2009. The person making a statement of claim must list from which person that person took mineral rights as an heir. The person that files a statement must file an affidavit under oath and provide documentation of being an heir. Because the owner must make reasonable inquiry to find the mineral owner, the reasonable inquiry standard was defined. Judgments are deemed conclusive if there was not any fraud or misrepresentation. Before 2009 there was a problem because courts would set dormant mineral judgments aside, and this did not provide certainty as to title. It was argued that Chapter 38-18.1 should stay in effect for a few years without change to monitor the effectiveness of the chapter.

The committee was informed that dormant minerals place oil companies in the middle of a dispute between a surface owner and a mineral owner. Although the oil industry likes the certainty of having the title to minerals be with the surface owner, if the surface owner were required to sell the minerals as part of any surface sale, few farmers or ranchers would be able to purchase the property.

The committee reviewed the boilerplate oil and gas lease surface damage agreement of the Land Department. The committee was informed that compensation received by the Land Department is the same as private landowners. The department asks the company what it is paying private landowners and accepts the same payment in nearly all cases. Payments are generally $1,600 to $2,000 per acre for the well pad and road. All of the Land Department's well sites are on grasslands. Companies pay an additional $25 per rod for roads if the road is relatively long. Similar to what is offered many private surface owners, within the past year or two many companies started paying an annual fee. The annual fee ranges from $1,000 to $2,000 per well site.

Surface Owner Compensation

The committee received testimony from surface owners who are displeased with the current compensation. The main complaints are that there is not any negotiation or good neighbor policy, there is not a term of duration to the damages agreement, and there is not an annual payment. In addition, generally the agreements offered by the oil company absolve the oil company from liability. The committee was informed that generally what is paid to the surface owner is to determine the value of the land and multiply it by three. The committee was informed that the amounts paid to surface owners have escalated due to the market. Some companies multiply the land value by four. It was argued that the company overcompensates surface owners by paying the actual land value multiplied by four.

The committee was informed that it is very difficult to come to an agreement with an oil company for surface rights. The committee was informed that certain companies will not negotiate, and there is a lack of education and landowners are scared into accepting the company's offer. The committee was informed that 75 percent of surface owners settle on the first offer. The committee was informed that generally a company will make a one-time take-it-or-leave-it offer based on land value, give the 20-day notice as required by law, and start building. In one instance, one landowner had not entered an agreement and the oil company has been on his property for three years and any offer to the oil company is ignored or rejected. The landowner has given the oil company loss of value and income figures, but the oil company's response is that the money it is offering is more than market value. However, the committee was informed that one company does not issue a take-it-or-leave-it ultimatum early in negotiations, and the company would consider a different value if a landowner could show above-average property value.

The committee received testimony on the use of mediation and arbitration in disputes between surface owners and oil companies. The committee was informed that negotiation, mediation, and arbitration create an atmosphere of cooperation. The consensus in Alberta and Manitoba is that mediation is a great process. There are differences between the United States and Canada. In particular, there is 100 percent split estates in Alberta and all minerals belong to the Crown. However, Wyoming has had positive results with arbitration.

It was argued that the free market needs to be brought to surface owner and oil company relationships. In addition, it was proposed that the law require a written agreement between oil companies and landowners before drilling of wells and disposal of waste on a landowner's property.

It was argued that comparing the price per acre for large quantities of land to six-acre parcels is not a fair comparison. The committee was informed that most surface owners would not sell a small portion of land under ordinary circumstances. The committee was informed that there is not an incentive for the oil company to negotiate. The committee was informed that it is difficult to take on an oil company over these amounts of money.

The committee was informed that a fair price would include surface use, loss of use, lost value, and loss of production. It was argued that the biggest problem is that the landowner is told what is fair by the company making the offer. In one instance, a surface owner was offered $1,500 an acre for a six-acre site. The land would sell for $400 to $600 an acre. However, the landowner provided information that the loss of production would be $25,000.

The committee was informed that usually the payments for damages are one-time payments. The committee was informed oil companies do not provide a term for the period of time in the lease of surface rights. It was argued that a one-time payment is not fair because some wells last for 60 years. Annual payments would allow for the transfer of that payment to a new landowner to cover taxes. The committee was informed that some surface owners would like to see terms of duration for leases of surface rights that are renewed on a regular basis. The committee was informed by an oil company there would be an inflation adjustment in an annual payment; however, a landowner has never wanted annual payments rather than a one-time upfront payment.

The committee was informed that not every oil company is a large company, and some run stripper wells and marginal wells. If costs increase through the payment of more damages, these businesses may go out of existence.

The committee was informed of the 17 incidents in which one oil company had not settled with surface owners and has explored or was exploring for oil on that land. In these cases, the majority of surface owners do not own any mineral interests. Although money is a part of the issue, some surface owners do not want oil development, e.g., a surface owner with a hunting preserve. It was argued that leases with oil companies are not solely about the money but about protecting the property for the future. Of these 17 incidents, one is in litigation.

The committee received testimony that compared payments for wind towers to payments for well sites. The committee was informed that the reason that a wind tower easement receives $5,000 to $8,000 per year and a surface owner agreement for oil development receives $5,000 to $8,000 one time is because the surface owner owns the surface as to a wind tower and an easement must be obtained by the wind developer. In a mineral lease the surface owner cannot deny access because of the shared right and receives statutory damages. Surface owner payments are different from easements for wind towers and because the payments are for damages. The mineral owner has the right to access minerals and, therefore, is not paying for access.

The committee was informed that there should be fewer surface owner and oil company disputes because newer wells allow multiple wells from the same location. Traditional-style development was for 40 acres or 80 acres. One well now reaches two miles from the well site. New pads will drill up to eight wells from one site. The committee was informed that there are at least seven of these pads coming into the state.

Committee discussion included that the surface owner is burdened with many of the impacts of oil development, including road traffic, loss of production, and many other little things. The committee was informed that oil wells do more than take property. Oil wells devalue the surrounding property and reduce the aesthetic value. The committee was informed that the negative impacts of oil wells will be felt much more severely as the Bakken Formation is developed. It was argued that surface owners should be paid for all impacts to the land.

Another impact is the dust from truck traffic. It was argued that there needs to be studies of the impact of dust on livestock, forage, crops, and people. Without this evidence, it is difficult to bring a nuisance claim. It was suggested North Dakota State University could do this research. There are other impacts of mineral development on farmers and ranchers. Farmers and ranchers cannot move machinery unless at night or on Sunday in some places. The roads are rough and hard on machinery.

Waste Pit and Well Site Issues

The committee was informed by surface owners of the danger of the waste pit. The committee was informed that oil companies are not required to clean up the waste pits. The waste in the pit would be under the jurisdiction of the State Department of Health if moved, but not if buried on the site. The committee received testimony on the disposal of the materials in the waste pit. The committee was informed that an oil company will dig waste pits and dump diesel fuel, benzene, and other hazardous substances on the soil. Waste removed from the well site cannot be directly buried if taken offsite. If the material were buried offsite, it would need to be monitored for 30 years. The committee was

informed that the pit devalues the land and there is no long-term plan to manage the risk created by the pits. It was proposed that the state hold oil companies responsible for any cleanup over the lifetime of the reserve pit. In the alternative, it was argued that a closed-loop system should be mandated so that there are not any reserve pits. Closed-loop system drilling rigs do not have a pit.

The cuttings and mud, which are left in the pit, are Class 2 waste and are not hazardous waste under federal law. It was argued that the consolidation of all waste from all pits would be a hazard. All the oil and water is removed from the pit before being buried. The pit has to be clay soil-lined. Fly ash is added to solidify the matter in the pit. Fly ash makes a solid material that is impervious to water. The State Department of Health regulates what type of fly ash can be used to reclaim a pit. The oil from the pit is placed in a tank and taken to a waste oil treater and the water is taken to a saltwater disposal site. The Oil and Gas Division, Department of Mineral Resources, allows one year for reclamation because the pit needs at least one good drying season before being reclaimed. The committee was informed that in the future there will be no liquids in the pits due to regulation. The committee was informed that the Oil and Gas Division has found diesel in a reclaimed pit and made the operator dig out the pit matter at a cost of approximately $250,000.

The committee received testimony on sites that had not been properly reclaimed. Most of the issues presented about site cleanup came from the last oil boom. Although the problems are real, the problems are 10 years or more old. The committee was informed that the Oil and Gas Division has updated the rules to address these problems, and the office has addressed these problems when allowed to by law.

The committee received testimony on inspections of well sites. Visits to well sites are based on a risk-based data management system. During the siting, cementing, and surface casings portion, a well site is checked one time per week for a vertical well and two times per week for a horizontal well. Once a well is in production, it is checked one time per month and then one time per quarter. Injection wells are checked one time per month. If there is a problem with the well, the Oil and Gas Division first calls the pumper and allows the company to take care of the problem, and if the problem is not fixed, a letter is sent to the pumper. The Oil and Gas Division can file a complaint through the Attorney General's office, but this process moves slowly. Most companies negotiate stipulated agreements to forgive part of the fines as part of this process. The committee was informed that a couple of operators cause most of the problems, and these operators have dwindled over the years as a result of enforcement. The committee was informed that there is a lot of animosity in certain areas as to a couple of oil companies.

The committee received testimony on the impact of fracture jobs on water. The Environmental Protection Agency and the Interstate Oil and Gas Compact Commission have studied fracture jobs twice. There has not been any incident of contamination of freshwater due to fracture jobs. The tests were driven by problems with the development of coalbed methane, and the Environmental Protection Agency has adopted rules on coalbed methane. North Dakota has very strict cement rules and requires multiple pressure tests. It was argued that any additional regulation by the Environmental Protection Agency would only add time to the process.

The state of North Dakota ultimately is responsible for cleaning up abandoned wells. There is an abandoned well restoration fund and a cash bond fund with approximately $600,000 total in these funds to pay for cleanup. It was suggested the $600,000 may not be enough because of the increase in oil activity. The Oil and Gas Division is looking at the issue and considering legislation.

The committee was informed that the largest concern received by the Oil and Gas Division from surface owners is when a surface owner discovers that a well has been surveyed and staked on the surface owner's land without notification. The committee was informed that staking without notification is disruptive to the surface owner, and something could be done legislatively to address this issue.

Taxation of Mineral Interests

The committee received testimony on the taxation of mineral interests. In favor of taxation was the argument that no one would keep two acres for 60 years if there were a cost. In opposition was the argument that the taxation of severed mineral interests is not workable because of the large number of mineral owners. It would place an undue burden on the county to find and update mineral owners. The potential upside of a database of mineral owners would be easier searches in the way that digitizing records has made searches easier at some courthouses.

Oil Discount

The committee received testimony on the discount for oil. The committee was informed that one cause of the discount is transportation. The committee was informed that in the short term the pipeline capacity will be tight; however, in the long term things look good. The industry is addressing pipeline capacity. There are two challenges--quantifying the need for space and time. In short, building a pipeline is the process of building the right size at the right time.

The committee received testimony on the extracted costs and profits in the supply chain from the cost of production to the pump by state taxes, purchasers/aggregators, transporters, refiners, product shippers, jobbers, and retailers. The purchase price at the well is a private sale and there is fluctuation. However, there is a set price for pipelines, and refiners pay the posted price. The state is the No. 1 extractor from the revenue stream for oil from production to consumer. There can be gouging if there is a refinery or a pipeline capacity upset which creates opportunities, especially for purchasers. The Tesoro refinery shutdown caused a recent increase in the oil discount.

Discussion

The committee debated whether to consider legislation to address the concerns of surface owners or whether safety issues and surface owner damages are within the scope of the study. Committee discussion included that the study is of severed and abandoned mineral rights, and the legislative history reveals the impetus for the study was a desire to have abandoned minerals returned to the surface owner.

Committee discussion included that there are landowner concerns that do not alter fundamental mineral rights--prior notification of staking and mediation. Committee discussion included that 50 percent of the complaints are because of surveyors staking land without giving notice. Committee discussion included that a mediation board bill will be introduced during the legislative session because of the positive testimony on the mediation process in Manitoba and Alberta.

Committee discussion included that 96 to 97 percent of surface owners settle. This leaves approximately 3 percent who appear to not be happy no matter how much money is offered. To the contrary, it was argued that although 3 percent do not settle immediately, there are many people who settle immediately and are not happy. In addition, although there are some habitual complainers and there are some people with legitimate concerns, if there were some way to minimize the issues between landowners and oil companies, it was argued that the committee should address the issues. However, it was argued that the industry is working on the issues and the committee did not have enough time left in the interim to address a surface owner's bill because of the magnitude of the issues.

Conclusion

The committee makes no recommendation as a result of this study.

REPORT ON LINKING AND IMPROVING SITES ALONG THE SIBLEY AND SULLY HISTORIC TRAILS

The committee received a report from the Parks and Recreation Department on the study mandated by Senate Bill No. 2309 (2009) on the linking and improving of public sites along the Sibley and Sully historic trails. The report had three basic options--do nothing; simple development of enhancements and signage; and significant development, including property purchases. The study provided an estimate of cost but did not investigate funding sources. The study did not include interpretive centers because of maintenance costs.

By way of example, approximately 400,000 tourists come to the state each year, and if one-half spend $10 more, that is $2 million. The Custer Battlefield has 400,000 to 500,000 visitors per year. The Sibley and Sully routes have great potential for people coming from the east to the Big Horn Battlefield and produce a significant economic impact.

The committee was informed that Ducks Unlimited may be interested in partnering in the eastern portion of the state, and the federal government may be interested in cooperating on federal lands. Basin Electric Power Cooperative has provided 320 acres around Long Lake and might be able to provide funding to preserve the view shed for the battle sites. Tying tourism and hunting together for these trails brings in more money for the project from nongovernmental organizations. The committee was informed that the report is not subterfuge to buy hunting land under the appearance of preserving history.

The committee was informed that the State Historical Society owns a small portion of some battlefields and these sites need better signage. The Whitestone Hill site is approximately 40 acres, and the Killdeer Mountain site is approximately 1 acre.

Committee discussion included that the hunting, tourism, and conservation groups need to work together with the landowners. It was argued incentive programs for landowners work the best.

PUBLIC SAFETY AND TRANSPORTATION COMMITTEE

The Public Safety and Transportation Committee was assigned the following responsibilities:

1. A study of options to match federal highway funds as provided in Section 25 of 2009 Senate Bill No. 2012. This study was revised by the Legislative Management to provide for a study of potential options for highway construction funding.
2. A study pursuant to Section 5 of 2009 Senate Bill No. 2050 regarding emergency medical services funding within the state, including state and local emergency medical services and ambulance service funding and the feasibility and desirability of transitioning to a statewide funding formula.
3. A study pursuant to Section 2 of 2009 House Bill No. 1412 regarding emergency services communications, including a review of the following areas:
   - Equity of the 911 fee structure.
   - A review of fees, taxes, and assessment for services.
   - Equity of services.
   - Payments among residents within service areas.
   - Fee collection methods.
   - Current and future funding of emergency communications in the state.

   The Legislative Management chairman directed that the portion of the study relating to fees and taxes be assigned to the Taxation Committee with the portion of the study relating to services and infrastructure retained by the Public Safety and Transportation Committee.
4. Receive a report from the State Department of Health pursuant to Section 6 of 2009 Senate Bill No. 2004 regarding the use of funding provided for grants to emergency medical services operations during the 2009-11 biennium.
5. Receive a report from the Emergency Services Communications Coordinating Committee pursuant to North Dakota Century Code Section 57-40.6-12 regarding the use of assessed communication service fee revenue and recommendations regarding changes to the operating standards for emergency services communications.
6. Receive a report from the Department of Transportation pursuant to Section 13 of 2009 Senate Bill No. 2012 regarding any transfer between the operating expenses and capital assets line items when it is cost-effective for the construction and maintenance of highways.
7. Receive reports from the Department of Transportation pursuant to Section 11 of 2009 Senate Bill No. 2012 regarding the use of state, federal, emergency, and other highway funding during the 2009-10 interim. The Legislative Management directed the Public Safety and Transportation Committee to receive the reports in addition to the Budget Section.
8. Receive a report from the Department of Emergency Services pursuant to Section 7 of 2009 Senate Bill No. 2012 regarding emergency snow removal grants distributed to counties, townships, and cities. The Legislative Management directed the Public Safety and Transportation Committee to receive the report in addition to the Budget Section.
9. Receive reports from the Department of Emergency Services pursuant to Section 8 of 2009 Senate Bill No. 2012 regarding emergency disaster relief grants awarded to political subdivisions. The Legislative Management directed the Public Safety and Transportation Committee to receive the reports in addition to the Budget Section.
10. Receive a report from the Tax Commissioner regarding information provided annually by counties, cities, and townships pursuant to Section 54-27-26 regarding funding and expenditures relating to transportation projects and programs. This report was assigned to the Public Safety and Transportation Committee as a Legislative Management directive.

Committee members were Senators David O'Connell (Chairman), Dwight Cook, Gary A. Lee, Elroy N. Lindaas, Richard Marcellais, and George Nodland and Representatives Edmund Gruchalla, Bob Hunskor, Jerry Kelsh, James Kerzman, Matthew M. Klein, William E. Kretschmar, Bob Martinson, Michael R. Nathe, Todd Porter, Arlo Schmidt, Elwood Thorpe, Gerry Uglem, Don Vigesaa, and Robin Weisz.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

STUDY OF HIGHWAY CONSTRUCTION FUNDING

The Public Safety and Transportation Committee was assigned responsibilities relating to highway funding. These responsibilities include:

- A study of options to match federal highway funds as provided in Section 25 of 2009 Senate Bill No. 2012. This study was revised by the Legislative Management to provide for a study of potential options for highway construction funding.
- Receive a report from the Department of Transportation pursuant to Section 13 of 2009 Senate Bill No. 2012 regarding any transfer between the operating expenses and capital assets line items when it is cost-effective for the construction and maintenance of highways.
- Receive reports from the Department of Transportation pursuant to Section 11 of 2009

Senate Bill No. 2012 regarding the use of state, federal, emergency, and other highway funding during the 2009-10 interim. The Legislative Management directed the Public Safety and Transportation Committee to receive the reports in addition to the Budget Section.

- Receive a report from the Tax Commissioner regarding information provided annually by counties, cities, and townships pursuant to Section 54-27-26 regarding funding and expenditures relating to transportation projects and programs. This report was assigned to the Public Safety and Transportation Committee as a Legislative Management directive.

Background Information

North Dakota has approximately 86,842 miles of roads, including the state highway system, county roads, rural roads, and city streets. Of the total amount, 7,385 miles are part of the state highway system. Included in the state highway system are 2,727 miles of roads on the national highway system, including 571 miles of interstate roads. The table below summarizes the miles of roads in North Dakota:

Miles of Roads in North Dakota - 2007	
State highway system	7,385
County roads	18,969
Other rural roads	56,621
City streets	3,867
Total	86,842

Maintenance and Construction Costs

Maintenance and construction costs for roads vary depending on road types and materials used. The table below summarizes 2008 highway construction costs compared to 2004 costs:

Estimated Highway Construction Costs Per Mile		
	2004	2008
Interstate concrete paving (two lanes in one direction)	$1,300,000	$1,700,000
Two-lane road reconstruction (includes grading and asphalt surfacing)	$675,000	$985,000
Asphalt surface reconstruction (includes subgrade repair and resurfacing)	$450,000	$780,000
Three-inch asphalt overlay	$150,000	$350,000
Interstate seal coat	$21,000	$31,000
Noninterstate seal coat	$16,000	$28,000

Highway Funding

Article X, Section 11, of the Constitution of North Dakota provides that revenue from gasoline and other motor fuels taxes and motor vehicle registration fees, except for those attributable to aviation, be used solely for the construction, reconstruction, repair, and maintenance of public highways and the payment of obligations related to those activities. Motor fuels taxes and motor vehicle registration fees provide the majority of state funds used for state highway purposes.

Revenue Sources for Transportation

The committee received information regarding sources of revenue for transportation-related purposes.

Gasoline/Gasohol and Special Fuels Taxes

The committee learned the state tax on motor vehicle fuels has varied from less than 1 cent per gallon in 1919 to the current rate of 23 cents per gallon. Recent changes in motor vehicle fuel tax rates include an increase from 20 cents to 21 cents per gallon in 1999 and an increase from 21 cents to 23 cents per gallon in 2005.

The table below details revenues from motor fuels taxes since 1999:

Gasoline/Gasohol and Special Fuels Tax Collections (Amounts Shown in Millions)						
	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
Gasoline/ gasohol tax	$141.7	$142.6	$145.9	$155.2	$158.6	$161.6
Special fuels tax	$65.7	$67.6	$75.0	$87.1	$95.5	$96.6

Based on February 2010 estimates, a one-cent increase in the gas tax is estimated to generate an additional $3.4 million per year or $6.8 million for a biennium. A one-cent increase in the special fuels tax is estimated to generate an additional $1.9 million per year or $3.8 million per biennium. The federal tax rate per gallon is 18.4 cents for gasoline and 24.4 cents for diesel fuel.

The committee learned special fuels excise taxes apply to dyed diesel fuel, kerosene, compressed natural gas, and liquid petroleum gas that is not sold for use in automobiles. Recent changes made to the special fuels excise tax rates and uses include:

- 2007 - The special fuels excise tax rate for all special fuels, except liquid petroleum gas, was changed from 2 percent of the value of the fuel to four cents per gallon. The special fuels excise tax rate for heating fuel was reduced from 2 percent to 1 percent of the value for liquid petroleum gas and from 2 percent of the value of the fuel to two cents per gallon for all other special fuels from January 1, 2008, through June 30, 2009. Beginning July 1, 2009, heating fuels became exempt from special fuels excise taxes.
- 2009 - The Legislative Assembly in Senate Bill No. 2338 established a highway-rail grade crossing safety projects fund. The bill provides that up to $1.6 million of special fuels excise tax collections from sales of diesel fuel to railroads be deposited in the highway-rail grade crossing safety projects fund.

The table below details special fuels excise tax collections since 1999:

Special Fuels Excise Tax Collections (Amounts Shown in Millions)					
1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
$11.2	$11.1	$15.5	$25.9	$26.9	$15.0[1]

[1]Does not include $1.6 million of special fuels excise tax collections deposited in the highway-rail grade crossing safety projects fund.

Motor Vehicle Registration Fees

The committee learned motor vehicle registration fees are assessed based on Chapter 39-04 and vary by vehicle type and vehicle weight. Recent changes made to the collection and allocation of motor vehicle registration fees include:

- 1999 - Most motor vehicle registration fees, except for farm trucks, were increased by $1 per vehicle and the additional fee for the public transportation fund was raised from $1 per vehicle to $2 per vehicle.
- 2001 - Most motor vehicle registration fees were increased by $7 per vehicle.
- 2003 - Most motor vehicle registration fees were increased by $3 per vehicle.
- 2005 - Most motor vehicle registration fees were increased by $10 per vehicle and registration rates for pickup trucks were modified to align with the fees for passenger vehicles. The additional fee for the public safety transportation fund was increased from $2 per vehicle to $3 per vehicle. A change was also made to provide that $13 of each vehicle registration fee be deposited in the state highway fund rather than the highway tax distribution fund.
- 2009 - Senate Bill No. 2012 provided that $13 from each registration fee that was deposited in the state highway fund instead be deposited in the highway tax distribution fund, provided that the $3 public transportation fund fee be deposited in the highway tax distribution fund, and adjusted distributions from the highway tax distribution fund to provide the public transportation fund with a distribution.

The table below details motor vehicle registration fee collections since 1999:

Motor Vehicle Registration Fee Collections (Amounts Shown in Millions)					
1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
$77.1	$82.5	$80.7	$108.9	$132.7	$122.6

Motor Vehicle Excise Tax

The committee learned that the 2007 and 2009 Legislative Assemblies provided that a portion of motor vehicle excise tax collections, after distributions to the state aid distribution fund, be deposited in the state highway fund rather than the general fund. House Bill No. 1012 (2007) allocated 10 percent of motor vehicle excise taxes to the state highway fund only during the 2007-09 biennium while 2009 Senate Bill No. 2012 allocates 25 percent of motor vehicle excise taxes to the state highway fund only during the 2009-11 biennium. From 1989 through 2007, all motor vehicle excise taxes were allocated to the general fund. Beginning July 1, 2011, all motor vehicle excise taxes will be deposited in the general fund.

The table below provides information regarding motor vehicle excise tax collections:

Motor Vehicle Excise Tax Revenue (Amounts Shown in Millions)			
	2007-09	2009-11 Original Estimate	2009-11 Revised Estimate
Estimated deposits in state highway fund	$14.1	$30.5	$39.8
Estimated deposits in general fund	126.9	88.4	119.4
Total motor vehicle excise tax revenue[1]	$141.0	$118.9	$159.2

[1]After distributions to the state aid distribution fund.

General Fund Transfers

The 2009 Legislative Assembly provided for a transfer of $4.6 million from the general fund to the state highway fund in Senate Bill No. 2012. The funding is to be used to match federal funding for roadway projects in the Devils Lake area.

Total Revenues

The committee reviewed the following table detailing total highway funding revenues:

Total Highway Funding Revenues (Amounts Shown in Millions)						
	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
Gasoline/ gasohol tax	$141.7	$142.6	$145.9	$155.2	$158.6	$161.6
Special fuels tax	65.7	67.6	75.0	87.1	95.5	96.6
Special fuels excise taxes	11.2	11.1	15.5	25.9	26.9	15.0[1]
Motor vehicle registration fees	77.1[2]	82.5[2]	80.7[2]	108.9[2]	132.7[2]	122.6
Motor vehicle excise tax					14.1[3]	39.8[3]
General fund						4.6[3]
Total	$295.7	$303.8	$317.1	$377.1	$427.8	$440.2

[1]Does not include $1.6 million of funding allocated to the highway-rail grade safety projects fund.

[2]Includes motor vehicle registration fees deposited directly into the state highway fund and public transportation fund.

[3]Funding deposited directly into the state highway fund.

Through August 2011, revenue collections from motor fuels taxes and motor vehicle registration fees for the 2009-11 biennium exceeded estimates by 11.1 percent.

Highway Funding Distributions

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund for allocation to the state highway fund and political subdivisions. Prior to the 2009-11 biennium, revenue equivalent to one cent per gallon of motor fuels taxes was deposited in the township highway aid fund, $13 of each motor vehicle registration fee was deposited in the state highway fund, and $3 of each motor vehicle registration fee was deposited in the public transportation fund. The 2009

Legislative Assembly approved changes that provide for these funds to be deposited in the highway tax distribution fund and that the township highway aid fund and public transportation fund receive a distribution from the highway tax distribution fund.

The following table details the changes in the distribution rates:

Highway Tax Distribution Fund - Distribution Rates	2007-09 Biennium	2009-11 Biennium
State highway fund	63.0%	61.3%
Counties	23.0%	21.5%
Cities	14.0%	13.0%
Township highway aid fund	0.0%	2.7%
Public transportation fund	0.0%	1.5%
Total	100.0%	100.0%

The highway tax distribution fund also provides funding for selected other state agencies and programs. This funding is allocated prior to any distributions being made using the distribution funding formula.

The table below summarizes the other state agencies and programs that receive funding from the highway tax distribution fund:

	2007-09 Biennium Estimate	2009-11 Biennium Estimate
Highway Patrol	$4,200,000	$4,500,000
Ethanol production incentive fund	3,200,000	3,400,000
Tribal fuel agreements	1,000,000	0
Motorboat program and safety account	200,000	200,000
State snowmobile fund	200,000	200,000
Total	$8,800,000	$8,300,000

The table below details funding provided to the state highway fund and political subdivisions from the highway tax distribution fund, township highway aid fund, and public transportation fund:

Distributions From the Highway Tax Distribution Fund, Township Highway Aid Fund, and Public Transportation Fund (Amounts Shown in Millions)

	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
State highway fund	$176.9	$180.4	$185.7	$208.2	$240.3	$239.7[1]
Counties	66.2	67.0	69.0	77.0	89.9	82.1
Cities	37.7	38.9	40.0	44.6	51.3	49.7
Township highway aid fund[2]	10.3	10.3	10.8	10.8	11.3	10.3
Public transportation fund[3]	2.9	3.0	3.1	4.6	4.6	5.7
Total	$294.0	$299.6	$308.6	$345.2	$397.4	$387.5

[1]Includes $5.5 million allocated from the highway tax distribution fund to the state highway fund for administrative costs.

[2]Prior to the 2009-11 biennium, the township highway aid fund received one cent per gallon from motor fuels taxes. For the 2009-11 biennium, the township highway aid fund receives an allocation from the highway tax distribution fund.

[3]Prior to the 2009-11 biennium, the public transportation fund received an additional fee from motor vehicle registration fees. For the 2009-11 biennium, the public transportation fund receives an allocation from the highway tax distribution fund.

Other State Sources of Highway Funding

The committee learned that in addition to funding provided from the highway tax distribution fund, township highway aid fund, and public transportation fund, highway funding is also received from other state sources, including driver's license fees, truck regulatory fees, and the sale of road materials.

Section 3 of 2009 Senate Bill No. 2012 provided a 2007-09 appropriation of $59.9 million from the general fund to the State Treasurer for weather-related cost-sharing distributions. Of the total appropriation, $7.5 million was to be distributed to the state highway fund, $41.4 million to counties and cities in accordance with the formula used to distribute funds to counties and cities under Section 54-27-19(2), $10 million to townships in accordance with provisions used to distribute funds to townships under Section 54-27-19.1, and $1 million to the public transportation fund to be distributed to public transit programs in accordance with Section 39-04.2-04.

Section 4 of 2009 Senate Bill No. 2012 established a state disaster relief fund to provide funding for defraying the expenses of state disasters, including funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Sections 5 through 8 of Senate Bill No. 2012 provided for a transfer of $43 million from the general fund to the state disaster relief fund and the appropriation of the funding to the Adjutant General for emergency snow removal grants and emergency disaster relief grants.

Total State Funding for Highways

The table below details total highway funding provided to the state and political subdivisions from all state funding sources for the 2007-09 and 2009-11 bienniums:

Summary of State Highway Funding Provided to State and Political Subdivisions (Amounts Shown in Millions)

	2007-09 Statutory Funding	Weather-Related Cost-Sharing and Disaster Funding	2009-11 Statutory Funding (Estimated)
State highway fund	$274.3[1,2]	$7.5[3]	$284.1[1,4]
Counties	89.9[1]	26.4[3]	82.1[1]
Cities	51.3[1]	15.0[3]	49.7[1]
Townships	11.3	10.0[3]	10.3[1]
Public transportation fund	4.6	1.0[3]	5.7[1]
Disaster relief funding		43.0[5]	
Total	$431.4	$102.9	$431.9

[1]Funding provided from the highway tax distribution fund.

[2]Includes $19.9 million of motor vehicle registration fees deposited in the state highway fund and $14.1 million of motor vehicle excise taxes deposited in the state highway fund.

[3]Funding of $59.9 million from the general fund was appropriated by the 2009 Legislative Assembly to the State Treasurer for distribution to the state highway fund and political subdivisions for weather-related cost-sharing before June 30, 2009.

[4]Includes a $4.6 million transfer from the general fund to the state highway fund for Devils Lake area highway projects, $39.8 million of motor vehicle excise taxes deposited in the state highway fund, and $5.5 million from the highway tax distribution fund for administrative costs.

[5]Senate Bill No. 2012 (2009) provided a $43 million transfer from the general fund to the state disaster relief fund before June 30, 2009, and appropriated the funds to the Adjutant General for disaster relief funding during the 2007-09 and 2009-11 bienniums.

Federal Highway Funding

The committee learned that the state receives federal funding for the construction and maintenance of highways, emergency road repairs, safety projects, and other programs. For the 2009-11 biennium, the state is estimated to receive $603.5 million of federal funding for transportation-related projects.

In addition to regular federal highway funding, the state is also receiving transportation funding through the American Recovery and Reinvestment Act (ARRA) of 2009. The 2009-11 legislative appropriation for the Department of Transportation includes $176,082,671 of federal fiscal stimulus funds from ARRA for highway infrastructure projects ($170,126,497) and grants to rural transit programs ($5,956,174).

The schedule below details the amount of federal funding estimated to be received by the state for the 2007-09 and 2009-11 bienniums:

Estimated Federal Highway Funding (Amounts Shown in Millions)

	2007-09 Biennium	2009-11 Biennium Regular Highway Funding	2009-11 Biennium Federal Fiscal Stimulus Funding	Total 2009-11 Funding
Federal Highway Administration funding	$453.7	$500.9	$0	$500.9
Emergency relief funds	2.5	33.7	0	33.7
Federal rail funds	8.6	2.3	0	2.3
National Highway Traffic Safety Administration	5.6	10.0	0	10.0
Federal transit funds	11.2	12.8	0	12.8
Funding for Devils Lake area projects	0	43.8	0	43.8
Federal fiscal stimulus funding - Highway infrastructure	0	0	170.1	170.1
Federal fiscal stimulus funding - Transit programs	0	0	6.0[1]	6.0
Total	$481.6	$603.5	$176.1	$779.6

[1]Does not include $5,041,000 of federal fiscal stimulus funding distributed directly to transit programs in metropolitan planning areas.

Transportation Needs

The committee conducted tours of transportation infrastructure needs in both eastern and western North Dakota. The committee conducted a tour of various roadway projects in the Fargo area. Committee members viewed an interstate road reconstruction project in progress near Harwood and a completed project near Mapleton that involved a concrete thin lift overlay constructed on top of an existing asphalt roadway. The committee also toured the Department of Transportation Fargo district office facility, including the vehicle maintenance area, storage buildings, and highway incident command post area. While conducting the tour, the committee received information regarding the Fargo district office location. The current Fargo district office facility contains 12.66 acres and contains space for roadway maintenance personnel, highway construction personnel, a driver's license office, and also serves as the Fargo office for the Highway Patrol. The Department of Transportation reviewed options for relocating the Fargo district office and determined the current location best serves the needs of the department and the public. However, the current location does need additional indoor storage space for department equipment.

While meeting in Fargo, the committee received the following comments and information from representatives of counties, cities, and highway construction companies regarding transportation infrastructure:

- Energy and business development, including the construction of an ethanol plant, construction of large grain terminals, and traffic from manufacturing businesses, has affected roadways.
- The increasing costs of highway construction materials present challenges to counties and cities. The price of a ton of asphalt has increased by 90 percent over the past five years from $31.38 per ton in 2005 to $59.53 per ton in 2009.
- Federal transportation funding for cities may be reduced in the future.
- The number of miles of roadways maintained by cities is increasing. The lane miles of roadways in West Fargo have increased from 110 miles in 1990 to 296 miles in 2009.
- The use of roundabouts at intersections may provide better traffic flow and reduce the number of accidents.
- Concrete roadways generally provide better traction than traditional asphalt roads in adverse weather conditions. Concrete roadways do not pool water that may cause a vehicle to hydroplane.
- Concrete roadways have a longer lifespan than asphalt roadways, and the material used on concrete roadways can be recycled. Even though concrete roadways may require a greater initial investment than asphalt roadways, concrete roadways are generally more cost-effective when considering maintenance costs and the lifespan of the roadway.

The committee conducted a tour of energy development sites and related impact to transportation infrastructure in the Dickinson and Killdeer areas. The committee conducted a tour of an oil drilling rig near Dunn Center. Committee members toured various areas of the oil drilling rig site, including the drilling operator control area and material storage areas. The committee also toured areas of the drilling rig site used for analyzing the drilling operations. The committee also viewed roadways in these areas which had been damaged due to energy development and oilfield activity.

The committee received the following comments and information regarding infrastructure concerns in areas affected by oil development:

- Increased oilfield traffic has resulted in additional maintenance costs for roadways. Dust created by increased oilfield traffic is a concern for rural residents.

- There is a lack of housing for oilfield workers. It would be beneficial if the state would provide financial assistance for developing new housing projects in cities affected by oil and gas development.
- Energy and business development has affected the city of Dickinson through increased traffic and accelerated deterioration of infrastructure.
- Additional funding for the energy development impact fund grant program may be needed. Requests totaling $27 million were received in 2009, but only $4 million of grant funding was available.
- Energy development has resulted in increased maintenance costs for school vehicles. Increased traffic resulting from energy development has created a safety concern for students riding schoolbuses.

The committee also received comments regarding transportation needs while meeting in Bottineau. Comments received include:

- Traffic associated with oil and gas development has a significant impact on local roadways. Bottineau County is reviewing options to limit oilfield traffic to certain roadways based on the location of oil wells and other oil infrastructure.
- Bottineau County obtains funding for roadways from five main sources that include a property tax levy for farm-to-market roads, a property tax levy for a county road and bridge fund, a property tax levy for a county road repair fund, funding received from services provided to cities and townships, and funding received from the state highway tax distribution fund.

Overweight Vehicles

The committee learned that overweight vehicles significantly reduce the lifespan of roadways, and heavier vehicle axles reduce pavement life. A 36,000-pound axle weight does 24 times as much damage to roadways as an 18,000-pound axle weight. A 20,000-pound truck axle consumes 1,000 times as much pavement life as a 2,000-pound automobile axle. The committee learned that roadways in Canada have a maximum gross vehicle weight of 138,000 pounds and the following schedule details maximum gross vehicle weights in North Dakota and surrounding states:

State	Maximum Gross Vehicle Weight
North Dakota	105,000 pounds unless posted for 80,000 pounds
Montana	131,000 pounds
South Dakota	129,000 pounds
Minnesota	80,000 pounds for raw and unprocessed product but up to 90,000 pounds with a permit

The committee learned the amount of truck traffic in the state has been increasing. The following table details annual average daily traffic (AADT) counts for vehicles and trucks on selected highways in the years 2000 and 2009:

	2000		2009	
Highway	AADT	Truck AADT	AADT	Truck AADT
United States Highway 83 north of Washburn	3,580	616	5,146	697
United States Highway 52 north of Jamestown	2,740	468	2,993	688
I-94 at Fargo Red River bridge	49,794	4,742	64,435	4,626
I-29 south of Buxton	9,144	2,114	10,979	2,377

The committee learned overload permit fees for a single trip range from $20 for weights up to 150,000 pounds to $70 for a weight of 200,000 pounds. The single trip permit cost for an oil well workover rig is $100. Overload permit fee collections were $5.4 million in 2009. The following table details total overload permits issued by the Highway Patrol:

Year	Total Overload Permits Issued
2007	34,126
2008	46,117
2009	41,047

The committee received information regarding automated permitting systems for overweight vehicles. The committee learned an automated overweight vehicle permitting system allows users to obtain permits online and choose an allowable route to transport the overweight load. An automated permitting system may also allow for improved overweight vehicle routing among states.

The committee learned extraordinary road use fees charged to an overweight vehicle operating without the proper permit typically do not provide for the cost of the additional estimated damage caused to the roadway. Chapter 39-12 allows a county state's attorney to file a civil complaint against an overweight vehicle to collect extraordinary road use fees. During the 2007-09 biennium, $997,340 of extraordinary road use fees were deposited in the state highway fund. The following schedule details extraordinary road use fees charged on overweight vehicles in North Dakota and adjacent states:

Excess Vehicle Weight	North Dakota	South Dakota	Minnesota	Montana
1,000 pounds	$20	$50	$10	$30
5,000 pounds	$220	$1,125	$310	$125
10,000 pounds	$655	$3,750	$1,210	$250
20,000 pounds	$3,000	$15,000	$3,210	$600
30,000 pounds	$6,000	$22,500	$5,210	$2,000

The committee received information regarding an Attorney General opinion issued in December 2009 discussing the ability of a county to enact an overweight vehicle ordinance. The committee learned a county may enact a weight restriction ordinance and issue permits under an ordinance. A county may also retain fees for a permit issued under a weight restriction ordinance. However, a county that is not under home rule jurisdiction may not retain fines for a violation of a weight restriction ordinance. The letter opinion indicates the statute is unclear if a home rule county may keep the fines for a violation of a weight restriction ordinance. Violation fines that are not retained by a county are to be

deposited in the common schools trust fund pursuant to Section 29-27-02.1.

Department of Transportation Line Item Transfers

Section 13 of 2009 Senate Bill No. 2012 allows the Department of Transportation to transfer funding between the operating expenses and capital assets line items when it is cost-effective for the construction and maintenance of highways for the 2009-11 biennium. The Department of Transportation is to provide a report to the Legislative Management regarding any transfer made. The committee learned the department transferred $8,417,500 from the capital assets line item to the operating expenses line item in September 2009. The transfer was necessary to provide additional funding for routine highway maintenance activities, such as pavement patching and roadway markings.

Department of Transportation Report on the Use of Highway Funding

Section 11 of 2009 Senate Bill No. 2012 requires the Department of Transportation to provide periodic reports on the use of highway funding. The committee learned the Department of Transportation has a 2009-11 biennium budget of $1.24 billion. That amount includes $170.1 million of spending authority authorized by the 2009 Legislative Assembly for funds to be received for highway infrastructure projects through ARRA. The following chart was reviewed by the committee regarding the anticipated distribution of funds received through ARRA:

Distribution of ARRA Funding (Amounts Shown in Millions)				
	State	Cities	Counties	Total
Roads	$119.1	$25.1	$12.8	$157.0
Bridges	4.0		4.0	8.0
Transportation enhancement	2.55	1.7	0.85	5.1
Total	$125.65	$26.8	$17.65	$170.1

Report on County, City, and Township Transportation Funding

Section 54-27-26 requires counties, cities, and townships to provide an annual report to the Tax Commissioner regarding funding and expenditures related to transportation projects and programs. The committee received a report from the Tax Commissioner which is summarized below:

	Cities Total	Townships Total	Counties Total
Transportation fund balance - January 1, 2009	$14,779,812	$26,148,945	$64,401,096
Add transportation funding received			
Local funding	$133,032,269	$18,432,522	$60,419,288
State funding	38,344,206	13,270,661	85,839,393
Federal funding	9,943,848	7,020,799	46,386,959
Total transportation funding received	$181,320,323	$38,723,982	$192,645,640
Total funding available for transportation	$196,100,135	$64,872,927	$257,046,736
Less total transportation expenditures	186,116,803	34,781,275	147,349,651
Transportation fund balance - December 31, 2009	$9,983,332	$30,091,652	$109,697,085

Other Transportation Information Received

Nonresidents Employed in the State

The committee received information regarding motor vehicle registration requirements for nonresidents employed in the state. Section 39-04-18 provides that nonresidents generally do not need to license motor vehicles in the state except if the owner or operator is gainfully employed in the state. Section 39-04-21 provides that temporary motor vehicle registrations are to be issued in a manner as prescribed by the director of the Department of Transportation. Current fees charged for a North Dakota temporary license permit are $10 per month plus a $3 fee for passenger vehicles and trucks under 22,000 pounds.

The committee learned that a nonresident employed in the state is allowed to use a noncommercial driver's license for a total of 150 days each year. A nonresident employed in the state may use a commercial driver's license for commercial purposes for a total of 120 days each year.

Federal Rear-End Protection Requirements

The committee learned motor vehicles manufactured after December 1952 are required to have rear-end protection if the bottom edge of the vehicle body is greater than 30 inches from the ground. Senate Bill No. 2092 (2009) repealed Section 39-21-55 which related to exemptions for rear-end protection of motor vehicles. The repeal of the section brought the state into compliance with federal requirements, but the state still did not receive $488,990 of federal funding it was entitled to as a penalty for the portion of time in which the state was not in compliance.

Commercial Motor Vehicle Inspections

The committee received information regarding annual inspections for commercial motor vehicles. Federal safety regulations require annual inspections for interstate commercial vehicles that exceed 10,000 pounds and for intrastate commercial motor vehicles that exceed 26,000 pounds. The inspection of the motor vehicle must be conducted by a qualified inspector who has either completed an inspection training program or has a combination of training or experience totaling at least one year. Proof of the annual inspection must be provided either through an inspection sticker on the vehicle or a copy of the inspection form kept inside the vehicle.

Federal Acts Affecting Travel

The committee received information regarding the federal Western Hemisphere Travel Initiative and the federal REAL ID Act. The federal Western Hemisphere Travel Initiative became effective on June 1, 2009, and affects United States citizens returning to the country from Canada, Mexico, or the Caribbean. Citizens returning to the United States from these countries by sea or land are required to have a passport, passport card, or enhanced driver's license.

The federal REAL ID Act requires state driver's licenses to meet certain requirements in order for the licenses to be used as identification at airports and

federal buildings. The Department of Transportation has received an extension of time to meet the requirements of the REAL ID Act. The state's deadline for full compliance is May 10, 2011.

Theodore Roosevelt Expressway

The committee received information regarding the Theodore Roosevelt Expressway. The committee learned 2009 Senate Bill No. 2012 designated parts of United States Highways 2 and 85 in North Dakota as the Theodore Roosevelt Expressway. The Theodore Roosevelt Expressway Association is working with the Heartland Expressway Association and Ports-to-Plains Alliance to establish a high-priority north/south transportation corridor across the country to improve economic development.

Public Transportation Pilot Projects

The committee learned the Department of Transportation is currently working on two public transportation pilot projects pursuant to 2009 Senate Bill No. 2223. The pilot projects will be with South Central Transit in Valley City and West River Transit in Bismarck. Public input meetings on the projects were held in July 2010 with projects completed in early 2011.

Oil and Gas Production Tax Allocations

The committee received information regarding the distribution of oil and gas gross production taxes. Distributions of oil and gas gross production taxes are made to counties based on the state's fiscal year with the first distribution of each year paid to counties in September. The oil and gas gross production tax collections are provided to counties for use by counties, townships, and schools.

The committee received information regarding the process used by counties to distribute funding from county oil and gas gross production tax infrastructure funds. The committee learned a survey was conducted by the McKenzie County Auditor of oil and gas-producing counties to determine how each county allocates funds from its infrastructure fund to townships and schools. Of the 14 counties that responded to the survey, 7 counties reported deposits in their infrastructure fund. Five of the seven counties reporting deposits allocated funding from their infrastructure fund to townships and schools, one county is waiting until December 2010 to allocate the funding, and one county did not have any organized townships or have schools that provide bus services. Four counties have adopted a policy for the allocation of funding from their infrastructure fund.

Fees Collected From District Court Activities

The committee learned that several types of fees are remitted from district courts to the State Treasurer for deposit in the state general fund. The following schedule details the remittance of district court fees to the State Treasurer for deposit in the state general fund:

Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010 (Through May 2010)
$4,707,044	$4,575,964	$4,038,324

Section 29-27-02.1 provides that all statutory fees, fines, forfeitures, and pecuniary penalties for a violation of state law must be added to the state school fund. The table below details the collections of fees, fines, forfeitures, and pecuniary penalties for a violation of state law by the State Treasurer for deposit in the state school fund:

Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010 (Through May 2010)
$4,691,548	$4,452,073	$4,135,302

Committee Considerations

The committee considered, but did not recommend, a bill draft to provide transfers from the permanent oil tax trust fund to the highway tax distribution fund and state highway fund. The bill draft would have provided for a $50 million transfer from the permanent oil tax trust fund to the highway tax distribution fund and an additional $50 million transfer from the permanent oil tax trust fund to the state highway fund. The bill draft also would have appropriated the $50 million transfer to the state highway fund to the Department of Transportation for the construction and maintenance of state highways in counties affected by oil and gas development.

Committee Recommendations

The committee recommends House Bill No. 1042 to allocate extraordinary road use fee collections to be deposited in the general fund of the county where the overweight vehicle violation occurred if the violation did not occur on a state or federal highway. The bill provides that extraordinary road use fee collections for a violation occurring on a state or federal highway would continue to be deposited in the state highway fund.

The committee recommends Senate Bill No. 2044 to provide that a violation of an overweight vehicle permit issued under a county home rule ordinance is considered a violation of state law.

The committee recommends Senate Bill No. 2045 to create an infrastructure grant program for taxing districts affected by oil and gas development. The grants require matching funds from the local taxing district as well as matching funds from a private sector participant. The bill provides the grant program with a $100 million appropriation from the permanent oil tax trust fund and requires the grants to be distributed in the 2011-13, 2013-15, and 2015-17 bienniums.

The committee recommends House Bill No. 1043 to provide that after June 30, 2011, motor vehicle excise tax collections, after distributions to the state aid distribution fund, are to be deposited in the highway tax distribution fund rather than the general fund. The bill is estimated to have the following fiscal effect based on the Office of Management and Budget's 2011-13 preliminary revenue forecast:

Estimated 2011-13 Biennium Motor Vehicle Excise Tax Collections (Amounts Shown in Millions)			
	Allocation Under Current Law	Allocation Under Recommended Bill	Change
State aid distribution fund	$15.4	$15.4	$0
General fund	176.5	0	(176.5)
Highway tax distribution fund	0	176.5	176.5
Total	$191.9	$191.9	$0

STUDY OF EMERGENCY MEDICAL SERVICES FUNDING

The committee was assigned the following responsibilities relating to emergency medical services funding:

- A study pursuant to Section 5 of 2009 Senate Bill No. 2050 regarding emergency medical services funding within the state, including state and local emergency medical services and ambulance service funding and the feasibility and desirability of transitioning to a statewide funding formula.
- Receive a report from the State Department of Health pursuant to Section 6 of 2009 Senate Bill No. 2004 regarding the use of funding provided for grants to emergency medical services operations during the 2009-11 biennium.

Background Information

Chapter 23-27 provides that the State Department of Health is the licensing authority for emergency medical services operations. The section defines "emergency medical services" as the prehospital medical stabilization or transportation of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless, or in a real or perceived acute medical condition, by a person that holds oneself out to the public as being in that service or that regularly provides that service. The term includes assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions or transporting a patient who is in a real or perceived acute medical condition to a hospital emergency room.

Emergency Medical Services Licensing

The State Department of Health is responsible for licensing emergency medical services operations. Section 23-27-03 provides that the fee for an emergency medical services operation license to operate an emergency medical services operation or a substation ambulance service operation must be set by the Health Council at a sum not to exceed $25 annually. This fee is to defray the administration costs of the licensing program. All license fees must be paid to the State Department of Health, deposited with the State Treasurer, and credited to the state general fund. Emergency medical services personnel are not subject to a license fee.

The Health Council is also responsible for establishing rules for licensure. These rules must include:

- Time when operators' services must be available.
- Type of motor vehicle operator's license needed for drivers of ground vehicles.
- Training standards for operation personnel.
- Equipment and ground vehicle standards.
- Number of personnel required for each emergency response.
- The scope of practice for uncertified drivers, certified personnel, and emergency medical services professionals.
- Performance standards, which may include response time standards.
- Other requirements as necessary.

The state has two levels of ground ambulance licensure--basic life support and advanced life support. Basic life support ambulances must have a minimum training level of emergency medical technician, while advanced life support ambulances must have a minimum training level of paramedic. The state currently has 122 basic life support ambulance services and 19 advanced life support ambulance services. The state also has 69 licensed quick response units.

Emergency Medical Services Training and Certification

Section 23-27-04.2 requires the State Department of Health to assist in the training of emergency medical services personnel of certain emergency medical services operations and to financially assist certain emergency medical services operations in obtaining equipment. This section provides:

- Assistance must be within the limits of legislative appropriation.
- The department is to adopt eligibility criteria for assistance in the training of emergency medical services personnel.
- To qualify for financial assistance for equipment, an emergency medical services operation is to certify, in the manner required by the department, that the operation has 50 percent of the amount of funds necessary for identified equipment acquisitions.
- The department is to adopt a schedule of eligibility for financial assistance for equipment.
- The department may establish minimum and maximum amounts of financial assistance to be provided to an emergency medical services operation. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria developed by the department.
- No more than one-half of the funds appropriated by the Legislative Assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

Section 23-27-04.3 requires the Health Council to adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel, instructors, and training institutions. Rules adopted must:

- Define minimum applicable standards.

- Define emergency medical services personnel.
- Provide for a mechanism for certifying or licensing persons who have met the required standards.
- Provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel.
- Define minimum standards for emergency medical services training institutions.

Previous Studies

The 2007-08 interim Public Safety Committee was directed to study the state's emergency medical services system, including the funding, demographics, and impact on rural areas. The committee recommended 2009 Senate Bill No. 2049 relating to emergency medical services programs. The bill was not approved by the 2009 Legislative Assembly but would have provided a $4,524,000 appropriation from the insurance tax distribution fund to the State Department of Health to provide emergency medical services operations grants, to implement an emergency medical services assessment process, to provide leadership training, and to develop a statewide emergency medical services recruitment drive.

Funding Sources for Emergency Medical Services

Property Taxes

The committee learned the 2001 Legislative Assembly approved House Bill No. 1405 which increased the maximum mill levy rate for ambulance services from 5 mills to 10 mills. The statutory references relating to property tax rates for ambulance services include:

- County - Section 57-15-06.7(23) provides that a county may levy a tax of up to 10 mills for county emergency medical services.
- Township - Section 57-15-20.2(7) provides that a township may levy a tax of up to 10 mills for emergency medical services.
- Rural ambulance service districts - Pursuant to Section 57-15-26.5, a rural ambulance service district may levy a tax not exceeding 10 mills on the taxable value of property within the district.
- City - Pursuant to Section 57-15-51, a city may impose a levy of up to 10 mills upon its taxable valuation for the purpose of subsidizing city emergency medical services. Whenever a tax for county emergency medical services is levied, any city levying a tax for emergency medical services may be exempted from the county tax levy.

The committee learned the amount of taxes levied by counties for emergency medical services varies from no taxes levied in several counties to approximately $960,944 of taxes collected from a six-mill emergency medical services levy in Grand Forks County. Seven counties provide emergency medical services funding from their county general fund. Walsh County levies a .25 percent county sales tax for emergency medical services. The following schedule details total collections by each tax levy based on 2008 property tax assessments:

Property Tax Levies for Ambulance Services - Based on 2008 Assessments

County	Township	City	Rural Ambulance District	Total
$2,607,907	$250	$19,665	$584,278	$3,212,100

The committee learned the 2009 Legislative Assembly made a statutory change regarding how tax revenue generated for emergency medical services is distributed. The entity collecting emergency medical services tax revenue must distribute the funding based on the response areas for ambulance services. The changes regarding the distribution of emergency medical services tax revenue will be reflected in 2010 county tax distributions to ambulance services.

Federal Homeland Security Funding

The committee learned the federal homeland security grant process requires the state to develop state investment strategies that align with national priorities established by the federal Department of Homeland Security. The Department of Emergency Services, with assistance from the Department of Emergency Services Advisory Committee, developed a state homeland security strategic plan to use in the homeland security grant submission process and the homeland security grant allocation process. The Department of Emergency Services Advisory Committee has 13 members that represent various emergency response and health groups.

The committee learned 80 percent of federal homeland security funds are mandated for local jurisdictions. Local entities submit regional applications for investments which are prioritized by regional advisory groups. The state policy network considers the applications and approves those that meet grant guidance and is considered a priority area as established by advisory groups. The regional advisory groups include members from each county in the region with members representing various response groups. The statewide homeland security policy committee includes one member from the Department of Emergency Services, one member from the National Guard, one member from Fargo, one member from Grand Forks, one member from Minot, and one member from Bismarck.

The committee learned total federal homeland security funding awarded to counties for ambulance services totaled $3,209,719 from 2002 through 2009. The schedule below details federal funding received by ambulance services each year:

Federal Homeland Security Funding Allocated to Ambulance Services

Year	Amount
2002	$117,553
2003	419,191
2004	592,980
2005	411,641
2006	489,563
2007	399,111
2008	415,380
2009	364,300
Total	$3,209,719

Medicaid Payments

The committee learned the 2009 Legislative Assembly rebased Medicaid ambulance rates to the level provided by Medicare. The estimated increased cost of rebasing the rates was $2,011,114, of which $743,710 was from the general fund. The table below provides information regarding the 2007-09 and 2009-11 biennium legislative appropriations for Medicaid reimbursement of ambulance services:

	2007-09 Biennium	2009-11 Biennium
General fund	$1,067,942	$1,855,093
Federal funds	1,896,077	3,794,061
Total	$2,964,019	$5,649,154

The committee received information regarding Medicaid reimbursement for ambulance services. Ambulance service providers must be enrolled as a North Dakota Medicaid provider in order to submit claims on behalf of North Dakota Medicaid clients. Ambulance providers are responsible for submitting and classifying claims to Medicaid. The following schedule details Medicaid reimbursement rates in effect on July 1, 2009:

Basic life support ambulance - Emergency transport	$304.79
Advanced life support ambulance - Emergency transport	$361.93
Ambulance response and treatment - No transport	$97.57
Ground mileage (per mile)	$6.87
Fixed wing ambulance service - One way	$2,623.22
Rotary wing ambulance service - One way	$3,049.87
Fixed wing ambulance service mileage (per mile)	$8.07
Rotary wing ambulance service mileage (per mile)	$21.53

Emergency Medical Services Operations Grants

The committee learned the 2009 Legislative Assembly provided funding of $2.25 million from the insurance tax distribution fund for emergency medical services operations grants. This represents a $1 million increase from the 2007-09 legislative appropriations for emergency medical services operation grants of $1.25 million. Eligibility requirements for these grants under Chapter 23-40 include the following:

- Emergency medical services operations must be licensed with the State Department of Health for a period of at least 12 months before the filing of the application.
- Emergency medical services operations must bill for services at a level at least equivalent to Medicare billing levels.
- Applications must be filed before November 1 of each year with the State Department of Health. Applications must include affirmation of the operations billing levels and document the availability of local matching funds.
- Emergency medical services operations must be in conformance with any additional requirements established by the Health Council.

The committee learned the Health Council has established the following administrative rules regarding eligibility requirements for emergency medical services operations grants under North Dakota Administrative Code Chapter 33-11-08:

- Applications for the grant must be made in the manner and timeframe prescribed by the department.
- The ambulance service must be based in North Dakota.
- The ambulance service must be licensed as a basic life support ground ambulance as described in Chapter 33-11-02 or licensed as an advanced life support ground ambulance as described in Chapter 33-11-03 for at least 12 months prior to the filing of the application.
- Criteria for grant approval includes consideration of the transportation distance to hospitals, size of the ambulance service area, the number of ambulance runs, and contributing factors that may affect the number of patient care providers on the ambulance service. Contributing factors considered may include age, population, service's location, size of the service area, and other personal commitments.

The committee learned that in fiscal year 2010 a total of 41 ambulance services of the 147 licensed with the State Department of Health applied for emergency medical services operating grants. A total of $1,104,259 in grants was awarded to 39 ambulance services. The grants ranged from $2,080 to $45,000 with an average grant award of $28,314. Ambulance services were required to provide matching funds that ranged between 10 percent and 90 percent based on the needs of the ambulance service.

Other Funding Sources for Emergency Medical Services

Other sources of revenue for ambulance services include donations, federal funds, state training grants, and user fees that include insurance payments. Ambulance services may directly bill patients who are not covered by a third-party provider. The process to bill a third-party provider varies due to the differences in processing methods and reimbursement rates.

The committee learned 2009 Senate Bill No. 2004 provided $1.24 million, of which $940,000 is from the general fund and $300,000 from the community health trust fund, for emergency medical services training grants. This is the same amount and source of funding as provided for emergency medical services training grants in the 2007-09 biennium.

The 2009 Legislative Assembly also provided the State Department of Health $500,000 from the insurance tax distribution fund for a grant to contract with an organization to:

1. Develop, implement, and provide an access critical ambulance service operations assessment process for the purpose of improving emergency medical services delivery;
2. Develop, implement, and provide leadership development training;
3. Develop, implement, and provide a biennial emergency medical services recruitment drive; and
4. Provide regional assistance to ambulance services to develop a quality review process for

emergency medical services personnel and a mechanism to report to medical directors.

The committee learned the State Department of Health awarded the rural emergency medical services improvement grant to study rural emergency medical services issues to SafeTech Solutions. Eight 1-day summits were held by SafeTech Solutions to receive input from local ambulance services regarding rural emergency medical services challenges. Information is being compiled and a final report, including recommendations for changes, is expected to be released in June 2011. The total grant award is $497,263, of which $15,883 has been distributed through September 2010.

Emergency Medical Services Concerns

The committee received testimony regarding challenges and suggested changes for emergency medical services. The committee received the following comments and information regarding emergency medical services personnel, training, and funding:

- An estimated 40 to 50 ambulance services in the state may potentially close due to a lack of personnel.
- The state should consider consolidating ambulance services to have a total of 80 to 90 ambulance services in the state.
- Many rural ambulance services encounter difficulties due to a lack of leadership and a lack of funding.
- Leadership is important to ensure that duties such as scheduling, training, maintenance, recruitment, and bookkeeping are properly completed.
- Funding is needed to ensure that an ambulance service has the proper training and equipment.
- The current emergency medical services operations grant program has been beneficial to rural ambulance services. It allows rural ambulance services to pay personnel to be on call during times when volunteers are unavailable.
- Areas affected by oil and gas development have experienced an increase in the number of emergency calls.
- The safety of emergency workers is a concern due to an increasing number of assaults on emergency workers.
- The recruitment of volunteers for rural ambulance services is difficult because of the amount of training needed and the dangers faced by ambulance personnel.
- Federal homeland security grant funding has not been adequately distributed to rural areas of the state.
- Rural areas of the state are not represented on the statewide homeland security policy committee.
- The response areas of emergency medical services operations may be affected by boundaries of federal Indian reservations. Residents who have medical coverage through Indian Health Service generally prefer to be transported by ambulance services affiliated with Indian Health Service.

Funding Options for Emergency Medical Services

Increasing Funding for Medicaid

The committee learned the average reimbursement rate for an ambulance service is $530 per call, but actual expenses average $815 per call. The Medicare reimbursement rate for a basic life support ambulance call is $298, while the national average actual cost for a basic life support ambulance call is $400. The Medicare reimbursement rate for an advanced life support ambulance call is $354, while the national average actual cost for the advanced life support ambulance call is $650. The current Medicaid reimbursement rate is approximately $350 per call.

The committee received information regarding the amount of funding needed to fully reimburse ambulance services for the cost of providing services to Medicaid recipients. Additional funding of approximately $2.8 million would be needed for the 2011-13 biennium to fully reimburse ambulance services for the cost of providing services to Medicaid recipients. Of the total amount of $2.8 million, $1.2 million would be from the general fund.

Statewide Funding Plan for Emergency Medical Services

The committee received suggestions for implementing a statewide funding plan for emergency medical services. The North Dakota EMS Association suggested a plan for emergency medical services funding in which ambulance services will continue to receive funding from a combination of state and local funds. State funding for emergency medical services would be provided to an area of the state rather than to specific ambulance services. Each funding service area would allow ambulance services to collaborate and reduce redundancies, maintain local decisionmaking, and facilitate the integration of ambulance services if needed. A total of 88 primary service areas would be created to provide service that meets the definition of reasonable emergency medical services. At least one transporting ambulance service would serve each area, but local communities could determine if more ambulance services are needed in a service area.

The North Dakota EMS Association statewide funding plan provides that a funding formula be used that is based on service costs and revenue. All ambulance services would be eligible for funding if they demonstrate need. Estimated state funding needed to sustain all 88 service areas would be $6 million per year, which is approximately $9.86 per citizen. Each service area would also provide matching funds of approximately $10 per person which could be from sources as determined by the local area.

Other Information Received

The committee received information regarding issues affecting rural fire departments. The committee learned that many issues affecting rural emergency medical

services operations also affect rural fire departments, including training, funding, and personnel issues. There are 373 fire protection agencies in the state, and each agency may receive funding from various sources, including funding from the insurance tax distribution fund, property tax levies, and reimbursement for services provided. Section 26.1-03-17 requires the Insurance Commissioner to collect a premium tax on the gross amount of insurance premiums sold within the state at a rate of 2 percent for life insurance policies and 1.75 percent for other types of insurance. Chapter 18-04 provides for the disbursement of insurance premium tax collections to qualifying fire protection agencies. The 2009 Legislative Assembly appropriated $6.2 million from the insurance tax distribution fund for payments to fire departments for the 2009-11 biennium.

Chapter 18-10 and Section 57-15-26.3 authorize a county auditor to levy a tax of up to five mills for the maintenance of a fire protection district. The fire protection district's board of directors may increase the tax levy to 13 mills if 20 percent of the qualified electors in the district petition for it. During 2009, $4.6 million was collected under the rural fire protection district property tax levy. Rural fire departments may enter contracts with state and local government agencies to provide fire protection service. The reimbursement for fire protection must be based on a reasonable annual fee, and the fee may not be greater in amount than if the property protected had been subject to a rural fire district tax levy.

Committee Recommendations

The committee recommends House Bill No. 1044 to provide:

- The State Department of Health establish an emergency medical services advisory committee to provide advice to the department regarding emergency medical services issues.
- The State Department of Health establish and biennially update a plan for emergency medical services in the state. The plan must identify ambulance operations areas, emergency medical services funding areas that require state financial assistance to operate a reasonable level of emergency medical services, and a minimum reasonable cost for an emergency medical services operation.
- The State Department of Health allocate state financial assistance for each emergency medical services funding area based on the financial needs of each emergency medical services funding area and require local matching funds of at least $10 per capita.
- The State Department of Health ensure all areas of the state are covered by reasonable ground ambulance response.
- An appropriation of $12 million from the insurance tax distribution fund to the State Department of Health for providing state financial assistance for emergency medical services.
- That Chapter 23-40 relating to the current process of providing financial assistance to emergency medical services is repealed.

STUDY OF 911 SERVICES AND INFRASTRUCTURE

The Public Safety and Transportation Committee was assigned a study of emergency services communication pursuant to Section 2 of 2009 House Bill No. 1412, including a review of the following areas:

- Equity of the 911 fee structure.
- A review of fees, taxes, and assessments for services.
- Equity of services.
- Payments among residents within service areas.
- Fee collection methods.
- Current and future funding of emergency communications in the state.

The Legislative Management chairman directed that the portion of the study relating to fees and taxes be assigned to the Taxation Committee with the portion of the study relating to services and infrastructure be retained by the Public Safety and Transportation Committee.

The committee was also assigned the responsibility to receive a report from the Emergency Services Communications Coordinating Committee pursuant to Section 57-40.6-12 regarding the use of assessed communication service fee revenue and recommendations regarding changes to the operating standards for emergency services communications.

Previous Studies

The 2007-08 Public Safety Committee conducted a study of the Department of Emergency Services, including the Division of State Radio. The committee recommended several bill drafts, including a bill draft to provide a $7.2 million general fund appropriation to the Adjutant General for purchasing or leasing infrastructure and equipment for up to eight additional radio towers to expand coverage of the State Radio system. The bill failed to pass, but 2009 House Bill No. 1016 included a general fund appropriation of $500,000 to study the effects of Next Generation 911 ($100,000), alternatives to constructing new State Radio towers ($75,000), and implementing a new State Radio tower site near Wales ($325,000).

Emergency Communications and Infrastructure

The committee learned Chapter 37-17.3 provides for the State Radio broadcasting system, managed by the Division of State Radio, for the purpose of transmitting state business and information. The Division of State Radio provides voice and data communications to federal, state, local, and tribal public safety entities through a number of different systems, including:

- The State Radio emergency services communications system - Provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
- Mobile data terminal services - Provides law enforcement with mobile communications

(primarily laptop computers in vehicles) to access databases and vehicle information.

- Law enforcement telecommunications system - Provides information on wanted felons, state-to-state information on crimes, and everyday police activities.

The committee learned the Division of State Radio operates a public safety answering point, which is a 24-hour-a-day communications center that receives 911 calls from individuals within a 911 service area and, as appropriate, directly dispatches public safety services or extends, transfers, or relays 911 calls to appropriate public safety agencies. State Radio serves as the public safety answering point for 22 small population counties. A 911 call made in one of these counties is routed to State Radio. State Radio staff is responsible for collecting the necessary information and dispatching appropriate units and personnel. State Radio serves as the state dispatch center for the Highway Patrol and provides dispatching services for other state entities, such as the Game and Fish Department and the Attorney General's office. State Radio provides dispatching services for various federal entities, such as the National Park Service, the United States Border Patrol, and the United States Marshals Service. In addition, State Radio coordinates road closures, answers the security line for the Governor's residence and office, and answers "report all poachers" calls.

In addition to the public safety answering point operated by State Radio, there are 22 locally operated public safety answering points. The majority of the 22 locally operated public safety answering points are physically located and operated within law enforcement buildings, and others are located in courthouses and commercial buildings. The public safety answering point operated by the Division of State Radio is located at Fraine Barracks in Bismarck.

The committee learned that each public safety answering point in the state either has a written or verbal agreement in place with another public safety answering point to be used as an alternate during an emergency. Each county maintains information regarding response areas for emergency services. The public safety answering point that receives an emergency call determines the appropriate agencies to respond to the emergency.

The committee learned that improvements to the 911 infrastructure in the state should focus on implementing common infrastructure that can be used to create compatibility among public safety answering points. Improved interoperability can be achieved through a common baseline map, a common telephone and response database, the ability for public safety answering points to dispatch and contact responding agencies, and a more redundant system utilizing future technology.

The committee learned the type of cellular phone used in an emergency call determines the amount of information provided to an emergency dispatcher. Some cellular phones have the capability to provide an emergency dispatcher with the location of the caller.

The committee learned that the State Radio system consists of 36 tower locations to provide emergency communications. The Department of Transportation currently owns and maintains all radio towers that are utilized by State Radio. The transmission towers for the State Radio system were recently converted from an analog format to a digital format. A new State Radio tower site was constructed near Wales in northeastern North Dakota which is expected to be operational in November 2010.

The current mobile radio coverage along state highway corridors is approximately 90 percent to 95 percent, while hand-held radio coverage is approximately 55 percent. Terrain features, such as hills and valleys, have a significant impact on radio coverage, and the terrain in western North Dakota creates additional coverage gaps. The Department of Emergency Services is reviewing options to implement six additional State Radio tower sites over the next four years. Equipment upgrades at State Radio headquarters will be needed to support the additional towers.

State Radio Fees for Services Provided

The committee learned Section 37-17.3-08 provides the requirements relating to the establishment and charging of fees for mobile data terminal and 911 emergency services provided by State Radio. The Division of State Radio may charge fees to the 22 small population (less than 20,000 residents) counties for providing 911 emergency dispatching services. The fees to be paid by the political subdivisions are to be consistent with the actual costs of providing the service per telephone access line and wireless access line for 911 services provided to political subdivisions. As of July 1, 2009, the monthly fee charged to counties was 38 cents per telephone and wireless line.

The fees for providing mobile data terminal services to participating local law enforcement agencies must be based on actual costs incurred by the division in providing the service. The Division of State Radio's fee for mobile data terminals is $12.32 per month for each user.

Section 37-17.3-08 establishes the fees that the Division of State Radio is to charge for the law enforcement telecommunications system. Counties are responsible for approximately 50 percent of the system's cost based on the following schedule of charges per terminal:

- Counties with a population of less than 5,000 are to pay $30 per month.
- Counties with a population of 5,000 to 9,999 are to pay $60 per month.
- Counties with a population of 10,000 to 14,999 are to pay $90 per month.
- Counties with a population of 15,000 to 24,999 are to pay $100 per month.
- Counties with a population of 25,000 or more are to pay $160 per month.

The fee for other law enforcement agencies to participate in the law enforcement telecommunications system is to be based on the actual cost of providing this service. During 2008 the cost of providing the service was $298.48 per terminal per month.

The committee received the following schedule detailing the calculation of fees for the State Radio services:

	911 Services - Line Fee Per Month	Mobile Data Terminal System	Law Enforcement Teletype System
Annual direct salaries	$1,925,845	$61,921	$96,821
Annual indirect salaries	89,993	28,331	28,331
Annual direct operating expenses	426,280	31,576	331,551
Annual indirect operating expenses	21,822	1,617	48,330
Total annual costs	$2,463,940	$123,445	$505,033
Annual costs after adjustment	$561,039[1]	$123,445	$505,033
Total lines or users	74,276 telephone lines	835 users	141 users
Fee per month	62.9 cents	$12.32	$298.48
Discounted fee	37.7 cents[2]		$149.24[3]
Current fee per line or user	38 cents	$12.32	$149.24

[1]The adjusted cost is based upon the calculation that 22.77 percent of time spent by communications specialists is for incoming 911 calls and mitigation for the 22 counties that use State Radio as a public safety answering point.

[2]The discounted fee reflects a 40 percent reduction in cost based on the estimated percentage of incoming nonemergency or duplicate 911 calls.

[3]Section 37-17.3-08(2) provides that fees to access the law enforcement teletype system shall be 50 percent of actual costs incurred.

The committee received comments from local emergency communications representatives regarding fees charged by State Radio. Several local law enforcement agencies are implementing a mobile data system that uses cellular carriers to connect to the Information Technology Department through a virtual private network. The only state resource that is needed is access to the switch that provides national driver's license and criminal information. The local emergency communications representatives suggested the state provide funding for the costs associated with local law enforcement agencies that connect to the state message switch using their own infrastructure rather than State Radio infrastructure.

Next Generation 911

The committee received information regarding Next Generation 911. The committee learned Next Generation 911 will allow the public to use any mobile communication device to request help or send information to the appropriate public safety agency. The following schedule details the differences between the current 911 system and Next Generation 911:

Current 911 System	Next Generation 911 System
Legacy technology Difficult to change Proprietary	Future-oriented Based on open standards
Analog	Digital
Primarily voice Limited data capability	Advanced data capability Can use text and images
Local access Limited transfer and backup	Long-distance access Expanded transfer and backup

The committee learned that L. Robert Kimball and Associates, Inc., prepared a report for the North Dakota Association of Counties to develop a strategy to implement Next Generation 911 services in the state. Two selective routers serve the majority of public safety answering points and deliver most wire line and wireless calls. There are several answering points that are served by direct lines from the wire line central offices and do not have the benefits of selective routing.

The L. Robert Kimball and Associates, Inc., report provides a preliminary design for Next Generation 911 that would use two geographically diverse data centers to provide border control function, emergency services routing, location validation, and a legacy gateway. The data centers would provide functions traditionally performed by controllers at each public safety answering point as well as the more advanced functions of Next Generation 911. The system design covers the needed connectivity for each public safety answering point, and each location would have two connections for reliability.

The following is a timeline for the potential implementation of Next Generation 911 services in the state:

Action	Timeframe
Legislative development, including the establishment of a project governance structure and necessary statutory revisions	2009-10
Develop request for proposal	2009-10
Request for proposal process	2010
Contract negotiation	2011
ESInet services build out	2011-12
Provision 911 entities	2012-13
System maintenance	2013-14

The following schedule details the estimated costs for implementing Next Generation 911 services in the state:

	2009	2010	2011	2012	2013	2014
Nonrecurring equipment costs	$0	$0	$5,200,000	$6,775,000	$1,575,000	$0
Recurring service costs	0	0	1,377,600	4,364,400	4,364,400	4,364,400
Professional services	184,880	101,179	209,006	114,475	57,238	0
Total	$184,880	$101,179	$6,786,606	$11,253,875	$5,996,638	$4,364,400

Emergency Services Communications Coordinating Committee

Section 57-40.6-12 provides that the governing body of each city or county which has adopted a fee on assessed service for 911 services is to make an annual report of income, expenditures, and status of its emergency services communication system. The annual report is submitted to the Emergency Services Communications Coordinating Committee to analyze the reports with respect to appropriate guidelines. The Emergency Services Communications Coordinating Committee compiles the reports and then files a report with the Legislative Management by November 1 of each even-numbered year regarding the committee's findings.

The Emergency Services Communications Coordinating Committee is composed of four members--one appointed by the North Dakota 911 Association, one appointed by the North Dakota Association of Counties, one appointed by the Chief Information Officer of the

state, and one appointed by the Adjutant General representing the Division of State Radio. Duties of the committee include:

- Recommending changes to the operating standards for emergency services communications, including training of certification standards for dispatchers.
- Developing guidelines regarding the allowable uses of fee revenue collected under Chapter 57-40.6 (Emergency Services Communication Systems).
- Periodically evaluating Chapter 57-40.6 and recommending changes.
- Serving as the governmental body to coordinate plans for implementing emergency 911 services and Internet protocol-enabled emergency applications for 911.

The committee received updates from the Emergency Services Communications Coordinating Committee regarding the use of 911 fee revenue by counties. The emergency communications system in the state costs just over $16 million per year to operate and approximately 50 percent of the funding to operate the system is from 911 fees, while the remainder is primarily from property tax collections. The following schedule details emergency communications revenues and expenditures:

	Counties Using State Radio as a Public Safety Answering Point (22 Counties)	Counties Using Other Public Safety Answering Points (31 Counties)	Total
Fund balance - January 1, 2009	$1,418,962	$7,582,604	$9,001,566
Landline/Voice over Internet Protocol revenue	417,936	2,988,039	3,405,975
Wireless telephone revenue	442,657	4,520,734	4,963,391
Funding from property tax and other sources	69,857	6,814,394	6,884,251
Total	$2,349,412	$21,905,771	$24,255,183
Less 2009 expenditures	944,480	15,281,113	16,225,593
Fund balance - December 31, 2009	$1,404,932	$6,624,658	$8,029,590

The committee learned the Emergency Services Communications Coordinating Committee is continuing to develop plans to implement Next Generation 911 in the state, including the most cost-effective ways to implement the system. The Emergency Services Communications Coordinating Committee may issue a request for information in an effort to determine the best implementation method.

The committee received a report from the Emergency Services Communications Coordinating Committee regarding the activities of the committee and recommended statutory changes pursuant to Section 57-40.6-12. The report included the following recommendations for emergency services communications in the state:

1. Support the efforts of the governing body of the wireless 911 project to ensure there is no loss of services from cellular companies as a result of changes made to local jurisdiction funding responsibilities for routing and transport charges.
2. Work with other states and organizations to ensure compliance by telecommunications companies remitting 911 fees on prepaid cellular phones.
3. Continue current efforts to indentify and contact Voice over Internet Protocol providers operating in the state.
4. Continue to monitor the ongoing development of national standards and evaluate available information to provide for the development of Next Generation 911 services.
5. Implement the statutory changes recommended by the committee for emergency services communications.
6. Discuss standards for the charging of fees by telecommunications providers to update 911 databases for telephone service changes.
7. Continue to encourage local cooperation and equipment sharing between public safety answering points.
8. Remove the sunset clause on the statute that provides that up to $1.50 per device may be charged for emergency communications and allow all jurisdictions to charge this amount subject to certain public voting requirements.

The Emergency Services Communications Coordinating Committee held several meetings to determine the changes that are needed for emergency communications operating standards. The recommended changes make the standards and guidelines easier to understand with emphasis placed on standardizing public safety answering point operations. Some of the recommended changes do not become effective until a later date to allow time for local public safety answering points to make necessary budget and personnel adjustments.

The committee learned some public safety answering point employees have duties not related to emergency communications. The Emergency Services Communications Coordinating Committee is recommending that by July 1, 2013, each public safety answering point have at least one staff member on duty at all times that is dedicated to emergency communications duties. The delayed effective date of July 2013 is to allow for budget planning and to allow for implementation of potential changes resulting from Next Generation 911.

Local Public Safety Answering Points

The committee reviewed the operations of local public safety answering points. The committee conducted a tour of the Red River Regional Dispatch Center in Fargo. The committee learned the center provides public safety emergency and nonemergency dispatch services for 56 different emergency services entities in Cass County, North Dakota, and Clay County, Minnesota. The dispatch center is a private entity governed by a board comprised of representatives from various emergency services entities.

The dispatch center generally experiences large call volumes between 3:00 p.m. and 6:00 p.m. with the

months of June, July, and August being the busiest months during the year. Over 60 percent of calls received by the dispatch center originate from cellular phones. The dispatch center has 35 employees, of which 32 are emergency dispatchers. The majority of dispatcher training is completed while on the job.

The committee also conducted a tour of the Stark County and City of Dickinson public safety answering point. Committee members viewed the technology used by dispatchers to receive calls and dispatch emergency services. The committee learned a major challenge facing rural 911 systems is implementing new 911 dispatching technology and maintaining existing equipment. Currently, few 911 calls are received from callers using Voice over Internet Protocol services.

The committee received information regarding Bottineau County 911 infrastructure. The committee learned Bottineau and Renville Counties have a joint 911 system with a public safety answering point at the Bottineau County Sheriff's Department. Each county has its own 911 coordinator.

Recommendations

The committee recommends House Bill No. 1045 to provide for changes in emergency communications operating standards as recommended by the Emergency Services Communications Coordinating Committee.

The committee recommends Senate Bill No. 2046 to provide $110,302 of funding for the operational costs of providing access to the state message switch for entities that utilize wireless access for mobile data systems and to increase fees charged for the use of the law enforcement teletype system. The bill also includes a $5.5 million general fund appropriation to the Department of Emergency Services for the construction of up to 12 new State Radio towers and related equipment needed at State Radio headquarters with an emphasis placed on forming partnerships to use existing towers and infrastructure when feasible for the new tower sites.

REPORTS ON EMERGENCY SNOW REMOVAL GRANTS AND EMERGENCY DISASTER RELIEF GRANTS

Section 4 of 2009 Senate Bill No. 2012 established a state disaster relief fund to provide funding for defraying the expenses of state disasters, including funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Sections 5 through 8 of Senate Bill No. 2012 provided for a transfer of $43 million from the general fund to the state disaster relief fund and appropriate the funding to the Adjutant General for emergency snow removal grants and emergency disaster relief grants. Sections 7 and 8 of Senate Bill No. 2012 direct the Department of Emergency Services to provide reports to the Budget Section regarding the distribution of emergency snow removal and disaster relief grants. The Legislative Council directed the Public Safety and Transportation Committee to receive the reports in addition to the Budget Section.

Emergency Snow Removal Grants

Up to $20 million of the $43 million appropriated from the state disaster relief fund to the Adjutant General was allowed to be used for emergency snow removal grants prior to June 30, 2009. A county, township, or city was allowed to apply to the Department of Emergency Services for an emergency snow removal grant for reimbursement of up to 50 percent of the costs of snow removal incurred by the entity for the period January 2009 through March 2009 that exceeds 200 percent of the average costs incurred for these months in 2004 through 2008. Each entity requesting reimbursement was to submit the request in accordance with the rules developed by the Department of Emergency Services. The Department of Emergency Services was to distribute the emergency snow removal grants prior to June 30, 2009.

The committee learned the department distributed $5,376,784 of emergency snow removal grants through June 2009 to eligible counties, cities, and townships.

Emergency Disaster Relief Grants

Up to $23 million of the $43 million appropriated from the state disaster relief fund to the Adjutant General was allowed to be used for emergency disaster relief grants. Any political subdivision receiving federal emergency relief funding relating to disasters occurring from January 2009 to June 2009 was allowed to apply to the Department of Emergency Services for an emergency disaster relief grant of up to 50 percent of the local match required to receive the federal emergency relief funding. Each political subdivision requesting an emergency disaster relief grant was to submit the request in accordance with rules developed by the Department of Emergency Services. The Department of Emergency Services was authorized to provide up to $13 million of emergency disaster relief grants and to seek Budget Section approval to distribute additional grants. Any funding not distributed to political subdivisions was authorized to be used to match federal disaster relief funds received for state purposes, subject to Budget Section approval. The Department of Emergency Services reported during the fourth quarter of calendar year 2009 and the third quarter of calendar year 2010 regarding emergency disaster relief grants awarded.

The committee received the following schedule detailing distribution of emergency disaster relief grants by the Department of Emergency Services:

Disasters prior to 2009	$473,399
2009 flood	1,270,786
January 2010 winter storm	1,506,693
2010 flood	576,395
April 2010 ice storm	2,793,454
Total grants distributed	$6,620,727

The committee learned that an additional $8,807,719 of emergency disaster relief grants are expected to be distributed during the remainder of the 2009-11 biennium. The estimated balance of the state disaster relief fund on June 30, 2011, is $22,343,521.

TAXATION COMMITTEE

The Taxation Committee was assigned four studies. Section 2 of Senate Bill No. 2051 (2009) directed a study of mineral production impact and taxation issues, including development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale and impact, infrastructure maintenance, employment issues, tax structures in North Dakota and other states, and water demands relating to mineral production. Section 13 of Senate Bill No. 2032 (2007) directed a continuing study of property tax reform and relief for taxpayers, with the goal of reduction of each taxpayer's annual property tax bill to an amount not more than 1.5 percent of the true and full value of property. Section 34 of House Bill No. 1324 (2009) directed a study of the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The chairman of the Legislative Management assigned to the committee a portion of the study under Section 2 of House Bill No. 1412 (2009), which is the portion of the study relating to the equity of the 911 fee structure, including fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state.

In addition to the study assignments, the Legislative Management assigned to the committee the responsibility under North Dakota Century Code Section 57-51-15 to receive a report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended. The Legislative Management also assigned to the committee the responsibility under Section 5 of Senate Bill No. 2035 (2009) to receive a report from the Tax Commissioner's cost-benefit analysis of the coal severance tax exemption for coal used in agricultural commodity processing facilities or for beneficiation and subsequent use in agricultural commodity processing facilities or a facility owned by the state or a political subdivision.

Committee members were Senators Dwight Cook (Chairman), John M. Andrist, Jim Dotzenrod, Joe Miller, George Nodland, Tracy Potter, Bob Stenehjem, and Constance Triplett and Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Robert Frantsvog, Glen Froseth, Craig Headland, Jim Kasper, Scot Kelsh, Louis Pinkerton, Arlo Schmidt, Gary R. Sukut, Dave Weiler, Lonny Winrich, and Dwight Wrangham.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

MINERAL RESOURCE IMPACT AND TAXATION STUDY

Section 2 of Senate Bill No. 2051 (2009) directs a very broad study of impact and taxation issues relating to production of mineral resources in North Dakota, specifically including:

1. Development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale;
2. Environmental, economic, and governmental impact of mineral production;
3. Infrastructure maintenance and development relating to mineral production;
4. Employment opportunities and issues relating to mineral production;
5. Comparison of mineral tax structures in North Dakota and other states; and
6. Water supplies and demands relating to mineral production.

Background

Oil and Gas Gross Production Tax

As enacted in 1953, the oil and gas gross production tax was a tax of 4.25 percent of gross value at the well of oil and gas. In 1957 the rate of the tax was increased to the current rate of 5 percent of gross value at the well of oil and gas. The total net proceeds collected from the gross production tax increased from $306,000 in fiscal year 1954 to more than $430 million in the 2007-09 biennium.

Oil and Gas Gross Production Tax Allocation

From 1957 to 1981, the gross production tax distribution formula remained unchanged. During that time, the first one percentage point of the tax was credited to the state general fund. After deduction of the state general fund's one percentage point share in each county, the balance was distributed as follows:

1. The first $200,000, 75 percent to the producing county and 25 percent to the state general fund.
2. The next $200,000, 50 percent to the producing county and 50 percent to the state general fund.
3. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

A 1981 amendment did not change the disposition of the state general fund's one percentage point but adjusted allocation of remaining revenue to give each producing county an increase of up to $600,000 per year.

In 1981 caps, or maximums, were introduced to restrict revenue the producing counties could receive from the gross production tax for each year of the 1981-83 biennium. The caps were based on the population of each county and increased in the second year of the biennium. At the close of fiscal year 1983, these caps were scheduled to expire. The amounts

allocated to a county which exceeded the cap imposed were instead deposited in the state general fund. The maximum amount that a producing county could receive in fiscal year 1983 was:

1. For counties with a population of 3,000 or fewer - $3.8 million.
2. For counties with a population from 3,001 to 5,999 - $4 million.
3. For counties with a population of 6,000 or more - $4.5 million.

Revenue allocation within a county also was changed in 1981. Before 1981, Section 57-51-15 provided for allocation of 40 percent of county revenues to the county road and bridge fund, 45 percent to school districts within the county, and 15 percent to incorporated cities within the county. After the 1981 amendment, county revenues were distributed 45 percent to the county general fund, 35 percent to the school districts within the county, and 20 percent to the incorporated cities within the county. The 1981 amendment also imposed caps upon revenues that may be received by school districts and cities. School districts were limited to a maximum of 70 percent of the county per student cost times the number of students in attendance or in the school census, whichever was greater, unless the district had an average daily attendance or school census fewer than 400, in which case that district could receive up to 120 percent of the county average per student cost times the number of students in attendance or in the school census, whichever was greater. Incorporated cities were limited to a distribution not exceeding $500 per capita in any fiscal year. Amounts exceeding the caps for school districts or cities reverted to the county general fund.

In 1983 caps for county revenues from oil and gas gross production taxes were extended through the 1983-85 biennium and the maximum amounts that a producing county could receive in a fiscal year were adjusted as follows:

1. For counties with a population of 3,000 or fewer - $3.9 million.
2. For counties with a population from 3,001 to 5,999 - $4.1 million.
3. For counties with a population of 6,000 or more - $4.6 million.

A 1985 amendment made the caps on county revenue from oil and gas gross production taxes permanent at the rates established in the 1983 bill.

A 1989 amendment diverted up to $5 million per biennium to the oil and gas impact grant fund from the first 1 percent of oil and gas gross production tax revenues previously allocated to the state general fund and provided a continuing appropriation of the amount for allocation by the Energy Development Impact Office based on applications from oil and gas-impacted political subdivisions.

A 2005 amendment increased the allocation for the oil and gas impact grant fund from $5 million to $6 million per biennium beginning with the 2007-09 biennium.

In 2007 the distribution formula was changed to allocate $1 million entirely to the producing county before the revenue division between the state and county was applied. The overall effect of the 2007 amendment was to give each producing county an increase of up to $750,000 per year. Another 2007 amendment allowed a county that reaches the annual cap on oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any of the additional $1 million received by the county must be credited entirely to the county general fund.

A 2009 amendment by House Bill No. 1304, as amended by House Bill No. 1324, significantly increased allocation of oil and gas gross production taxes to political subdivisions and the oil and gas impact grant fund. From the tax equal to the first one percentage point of gross production tax revenues previously allocated to the state general fund, a direct allocation of $500,000 was created for a city in an oil-producing county which has a population of 7,500 or more and more than 2 percent of its employment engaged in the mining industry. The allocation is increased to $1 million if the city's population exceeds 7,500 and employment in the mining industry exceeds 7.5 percent of its employment. From the tax equal to the first one percentage point of gross production tax revenues, the biennial allocation to the oil and gas impact grant fund was increased from $6 million to $8 million per biennium. Several other 2009 changes were made in allocations of oil and gas gross production tax revenue to political subdivisions. The initial amount of tax revenue allocated 100 percent to the producing county was increased from $1 million to $2 million. Caps were removed on tax revenue allocations to counties, but a new allocation category provided that any amount exceeding $18 million of annual revenue to a county is allocated 10 percent to the county and 90 percent to the state general fund. A county was required to levy at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes to receive any allocation of oil and gas gross production tax revenues. Allocation of revenues within counties was restructured to hold school district allocations at approximately the level provided under previous law, and a county infrastructure fund was established for deposit of a portion of funds exceeding $5.35 million allocated to the county. Revenues allocated to a county infrastructure fund were allocated to the county and to cities in the same proportion as existing law, but the 35 percent share allocated to school districts under previous law was allocated to the board of county commissioners to provide grants to or for the benefit of townships or school districts. Grants are available on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration

attributable to travel on oil and gas development-impacted roads. The board of county commissioners may expend an appropriate portion of county infrastructure fund revenues to offset oil and gas development impact to unorganized township roads or infrastructure. The bill provided that within 60 days after the end of each fiscal year, the board of county commissioners of a county that has received oil and gas gross production tax revenue allocations must file a report with the Tax Commissioner showing the amount received by the county, the amount expended for each purpose to which the funds were devoted, the share of county property tax revenue expended for each of those purposes, and the amount of unexpended funds remaining at the end of the fiscal year. The report also must show the amount available in the county infrastructure fund, the amount allocated to each organized township or school district and the amount expended from that allocation by that township or school district, the amount expended on behalf of unorganized townships, and the amount in the county infrastructure fund which remained unexpended at the end of the fiscal year. The bill required the Tax Commissioner to compile the information from the reports and provide a report to the Legislative Management. It was estimated that the 2009 legislative changes would result in approximately $28 million more revenue directly allocated to political subdivisions from oil and gas taxes per biennium. The actual net increase for the first year of the biennium totaled more than $24.9 million, including increases of $11 million to counties, over $6 million to cities, and $7.8 million to county infrastructure funds.

Oil Extraction Tax

On November 4, 1980, the voters of the state approved initiated measure No. 6 on the general election ballot and established an oil extraction tax as a companion tax to the oil and gas gross production tax. The oil extraction tax rate was established at 6.5 percent of the gross value of oil at the well and has remained at that rate, except for full or partial exemptions. The initial extraction tax law provided exemptions for oil exempt from gross production taxes, up to 100 barrels per day of oil owned by a royalty owner, and oil from a stripper well, defined as a well producing 10 barrels or less of oil per day.

In 1987 the 10-barrel-per-day limitation for stripper well properties was left in place for wells of a depth of 6,000 feet or less, but the limit was increased to 15 barrels per day for wells of a depth of 6,000 feet to 10,000 feet and 20 barrels per day for wells of a depth of more than 10,000 feet. For wells drilled and completed after April 27, 1987, and for qualifying secondary or tertiary recovery projects, the rate of tax was reduced from 6.5 percent to 4 percent of gross value at the well. In addition to the rate reduction, production from new wells completed after April 27, 1987, was given a full extraction tax exemption for the first 15 months of production. A trigger provision was included so that the rate would return to 6.5 percent if the average price of crude oil between June 1 and October 31 of any year was $33 per barrel or more. The royalty owner exemption was eliminated in 1987.

In 1989 an exemption was created for production during the first 12 months after a well has been worked over. The exemption required filing of a notice of intent to begin a workover project with the Industrial Commission before beginning the project. A qualifying project was required to cost at least $65,000, which was reduced to $30,000 if production increased by at least 50 percent during the first two months after completing the project. The exemption was limited to wells producing no more than 50 barrels of oil before beginning the project. The trigger mechanism was applied to the workover exemption.

In 1991 the trigger mechanism was adjusted to provide that if the oil price exceeded $33 per barrel for any period of five consecutive months, the exemptions and rate reductions would not apply, rather than being based on June to October prices. A reverse trigger was also instituted to reinstate the reduced rates and exemptions when the price for a barrel of crude oil is less than $33 for any consecutive five months. Other 1991 legislation provided for a 5-year exemption for oil produced from a secondary recovery project and a 10-year exemption for oil from a tertiary recovery project. The legislation required Industrial Commission certification of the project as qualifying for the exemption. The exemptions apply only to incremental production, defined as the total amount of oil produced minus the amount of oil that had been produced prior to the recovery project.

In 1993 the exemption for the first 12 months of production after a workover project was amended to eliminate the minimum investment of $30,000 if production is increased at least 50 percent in the first two months after completing the project. The change retained the $65,000 level of spending that would qualify the project for exemption if production is increased by less than 50 percent. The bill also reduced the tax rate from 6.5 percent to 4 percent for production from a worked-over well after the 12-month exemption period.

In 1995 a 24-month oil extraction tax exemption was created for production from a horizontal well. The bill created a 10-year exemption for production of oil from a well that has been inactive for two years and a 9-month exemption for production from a horizontal reentry well. The inactive well and horizontal reentry well exemptions were made subject to the trigger mechanism. The limit on stripper well classification for wells deeper than 10,000 feet was increased from 20 barrels to 30 barrels per day. Other 1995 legislation required certification by the Industrial Commission of qualifying status for wells eligible for exemptions or rate reductions.

In 1997 legislation was enacted to grant a five-year extraction tax exemption for production from new wells within the boundaries of an Indian reservation on tribal trust lands or land owned by a tribe.

In 2001 the trigger provision for exemptions and rate reductions was amended to clarify when the trigger was to become effective. All rate reductions and exemptions subject to the trigger provision would become ineffective

if the average price of a barrel of crude oil exceeded the trigger price for each month in any consecutive five-month period. Average price was defined as the monthly average of the daily closing price for a barrel of West Texas intermediate Cushing crude oil minus $2.50. Trigger price was defined as $35.50 per barrel, as indexed for inflation.

In 2003 an Oil and Gas Research Council was created, and an oil and gas research fund was established with a continuing appropriation provided. A temporary exemption from gross production tax was provided for gas produced from shallow gas wells, with an expiration date of June 30, 2007. The two-year inactive well exemption was amended to clarify the definition of a two-year inactive well and to provide an 18-month provision to qualify the well for an exemption. The workover well exemption was amended to remove the requirement that a notice of intention must be filed before a workover project is commenced to qualify for an exemption.

In 2005 a sales and use tax exemption was created for carbon dioxide used for the enhanced recovery of oil or natural gas.

In 2007 an oil extraction tax rate reduction to 2 percent was created for the first 75,000 barrels of oil during the first 18 months after completion from a horizontal well drilled and completed in the Bakken Formation from July 1, 2007, through June 30, 2008. The gross production tax exemption for shallow gas was made permanent for the first 24 months of production. An increase was provided from $1.3 million to $3 million per biennium in the amount of oil extraction tax revenues to be deposited in the oil and gas research fund.

The Governor was given authority by Senate Bill No. 2419 (2007) to enter agreements with the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. The Governor entered an agreement with the Three Affiliated Tribes in compliance with the statutory requirements, effective July 1, 2008. It appears the legislation and agreement has had the desired effect. Before July 1, 2008, there was no drilling activity on the Fort Berthold Reservation. Since July 1, 2008, 163 drilling permits have been issued, 131 wells have been completed, and of 56 drilling rigs operating in the state as of October 2009, 11 were operating on the Fort Berthold Reservation.

A 2009 amendment by House Bill No. 1235 provided a contingent rate reduction in the oil extraction tax, under a separate price trigger created by the 2009 legislation, which reduces the oil extraction tax rate for horizontal wells from 6.5 percent to 2 percent during the time the rate reduction is in effect. Existing law provides a complete oil extraction tax exemption that triggers into effect if the price of oil for five consecutive months remains below the trigger price. April 2009 would have been the fifth consecutive month below the trigger price, but the average price for April rose to an amount exceeding the trigger price which meant that the exemptions under existing law did not trigger into effect. Because the exemptions did not trigger into effect, the rate reduction provided by the separate price trigger under House Bill No. 1235 became effective May 1, 2009, and remained in effect until the separate price trigger eliminated the rate reduction on the first day of November 2009. The rate reduction can trigger into effect again if the average price for a month drops below $55. The rate reduction applies to oil produced during the first 18 months after completion for a horizontal well and is limited to the first 75,000 barrels or the first $4.5 million of gross value at the well of oil produced from the well. If the rate reduction is effective on the date of completion of a well, the rate reduction applies to production from that well for up to 18 months after completion, even if the price of oil rises to more than $70. If the rate reduction is ineffective on the date of completion of a well, the rate reduction does not apply to production from that well at any time.

A 2009 amendment by Senate Bill No. 2051 increases from $3 million to $4 million per biennium the share of oil and gas tax revenues deposited in the oil and gas research fund.

Oil Extraction Tax Allocation

In 1980 initiated measure No. 6, oil extraction tax revenues were to be allocated 45 percent to the state general fund, 45 percent to education funding, and 10 percent to water pipeline and resources trust fund uses. The allocation formula was amended in 1981 to allocate 30 percent to the state general fund, 60 percent to education funds, and 10 percent to water pipeline and resources trust fund uses. In 1983 the formula was amended to allocate 90 percent to the state general fund and 10 percent to education funds. In 1995 the allocation was changed to 60 percent to the state general fund, 20 percent to education funding, and 20 percent to water and resources trust fund uses.

In 1997 a statutory permanent oil tax trust fund was established. The provision required that all general fund revenue from oil and gas gross production tax and oil extraction tax exceeding $71 million in a biennium must be transferred to the permanent oil tax trust fund.

In 2003 an oil and gas research fund was established to be allocated up to $500,000 in the 2003-05 biennium. The fund was to be allocated up to $1.3 million per biennium after the 2003-05 biennium. In 2007 the allocation to the fund was increased to a maximum of $3 million per biennium, and in 2009 it was increased to $4 million per biennium.

In 2007 a constitutional amendment was placed on the 2008 general election ballot to make the permanent oil tax trust fund a constitutional trust fund. The measure would have provided that any general fund revenue from oil and gas taxes exceeding $100 million during a biennium must be deposited in the permanent oil tax trust fund. The measure would have required a vote of three-fourths of the members elected to each house of the Legislative Assembly to approve expenditures from the permanent oil tax trust fund. The measure was disapproved by the voters with about 64 percent voting for disapproval.

In 2009 a constitutional amendment (House Concurrent Resolution No. 3054) was placed on the 2010 general election ballot to establish the legacy fund as a constitutional trust fund. The constitutional amendment--measure No. 1 on the general election ballot--was approved at the 2010 general election. The measure requires 30 percent of total revenue derived from taxes on oil and gas production or extraction to be transferred to the legacy fund. The principal and earnings of the legacy fund cannot be expended until after June 30, 2017. An expenditure of principal after June 30, 2017, requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly, and not more than 15 percent of the principal of the legacy fund may be expended during a biennium. The measure provides for transfer of earnings of the legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium. The measure will become effective for oil and gas production after June 30, 2011.

Oil and Gas Tax Collections

During the 2007-09 biennium, total oil and gas tax collections for North Dakota totaled more than $799 million, of which over $430 million was collected from gross production taxes and over $368 million was collected from oil extraction taxes. The state's share of oil and gas taxes was over $555 million, with more than $334 million from gross production taxes and more than $220 million from oil extraction taxes. Of the state's share of oil and gas taxes, $71 million was deposited in the general fund and over $484 million was deposited in the permanent oil tax trust fund.

During the first four months of the 2009-11 biennium, oil production and tax revenue was running in excess of projections and the state general fund received its maximum of $71 million for the biennium by the end of October 2009. By the end of August 2010, more than $354 million was deposited into the permanent oil tax trust fund during the 10 months after the state general fund reached its cap. This is an average of more than $35 million per month.

Coal Severance Tax

Enactment of Senate Bill No. 2031 (1975) created a coal severance tax and a coal impact aid program. In 1975 the Legislative Assembly also passed House Bill No. 1221, which created a privilege tax on coal conversion facilities.

Coal industry taxes were restructured in 2001 to place a greater tax emphasis on burning coal in North Dakota generating plants and reduce severance taxes for coal mined in North Dakota. The coal severance tax rate was reduced from 75 cents to 37.5 cents per ton, and the two cent per ton tax for the lignite research fund was retained. The bill increased by .4 mill per kilowatt-hour the coal conversion tax for electrical generating plants, adjusted the coal severance and coal conversion tax allocation formulas to retain approximately equal allocations among state and political subdivision recipients as were allocated under previous law, and reduced the generation capacity of an electrical generating plant to be classified as a coal conversion facility from 120,000 kilowatts to 10,000 kilowatts. The bill provided that each county may receive not less than it received in the previous calendar year under the coal conversion tax, and for a county in which is located a facility that was not a coal conversion facility before the effective date of the change, that county must receive an additional amount that is at least as much as was received in property taxes for that facility for taxable year 2001.

The coal severance tax is in lieu of sales or use taxes. Any coal that is exempt from the severance tax is subject to sales and use taxes unless a sales or use tax exemption exists. Severance tax exemptions are provided for coal used primarily for heating buildings and coal used by the state or any political subdivision. Purchases by the state or a political subdivision are exempt from the sales tax, but coal used for heating privately owned buildings is not exempt from the sales tax. An additional severance tax exemption was created in 1985 by enactment of Section 57-61-01.4, which provides an exemption for coal used in agricultural processing or sugar beet refining plants located in North Dakota or adjacent states. Coal exempted for these purposes is exempt from sales and use taxes under Section 57-39.2-04(44). Section 57-61-01.3, also created in 1985, provides that the severance tax rate is reduced by 50 percent if the coal is to be burned in a cogeneration facility. Under Section 57-61-01.7, coal mined for out-of-state shipment is subject to 30 percent of the severance tax rate and is eligible for waiver by the county of all or part of the 70 percent local share of the tax.

All severance taxes, penalties, and interest collected by the Tax Commissioner are transferred to the State Treasurer within 15 days of receipt and are credited to a special fund in the state treasury called the coal development fund. The revenue in the coal development fund is allocated under Section 57-62-02. Seventy percent of the revenue in the coal development fund is allocated to coal-producing counties in the proportion that the number of tons of coal severed in each county bears to the total number of tons of coal severed in the state. Thirty percent of the revenue in the coal development fund is to be deposited in a permanent trust fund in the state treasury known as the coal development trust fund. This fund is held in trust and administered by the Board of University and School Lands and is available for loans to coal-impacted counties, cities, and school districts. Under Section 57-61-01.5(2), 70 percent of deposits in the trust fund are to be transferred to the lignite research fund.

Of the 70 percent portion of coal development fund money which is distributed to coal-producing counties, 30 percent goes to incorporated cities of the county based upon population, 40 percent goes to the county general fund, and 30 percent goes to school districts within the county based on average daily membership. If the tipple of a currently active coal mining operation in a county is within 15 miles of another county in which no

coal is mined, revenue apportioned from that coal mining operation is apportioned according to the same formula as county revenues with inclusion of cities, school districts, and the general fund of the non-coal-producing county within certain geographical limits. An amendment in House Bill No. 1015 (2009) provides for payment from legislative appropriation beginning in 2011 to a coal-producing county for 50 percent of the severance tax revenue loss because of payments required to a non-coal-producing county under the "tipple" provision.

Coal Conversion Facilities Privilege Tax

The privilege tax on coal conversion facilities is imposed for an electrical generating plant that converts coal into electrical power and has a capacity of 10,000 kilowatts or more, a facility that uses over 500,000 tons of coal per year to be converted into other products, a coal beneficiation plant, or a gas-fired electrical generating facility powered by gas produced from coal. Tax rates differ for different types of coal conversion facilities.

As enacted in 1975, the coal conversion facilities privilege tax on electrical generating plants was at a rate of one-fourth of one mill per kilowatt-hour of electricity produced, and the tax on coal gasification plants was the greater of 2.5 percent of gross receipts or 10 cents per 1,000 cubic feet of synthetic natural gas. In 1983 an additional one-fourth of one mill per kilowatt-hour tax was imposed on electrical generating plants. In 1985 the floor on the tax for coal gasification plants was increased from 10 cents to 15 cents per 1,000 cubic feet of synthetic natural gas. In 1987 the basis of the tax for electrical generating plants was changed from kilowatt-hours of electricity produced to 60 percent of the installed capacity of each generating unit times the number of hours in the taxable period, and for damaged units a reduced tax rate based on cost of repairs was established to be in effect until the unit is capable of generating electricity. Other 1987 legislation reduced the alternative tax for coal gasification plants from 15 cents to 7 cents for each 1,000 cubic feet of synthetic natural gas and provided an exemption for any synthetic natural gas production in excess of 110 million cubic feet per day. In 1989 separate tax treatment was provided for coal beneficiation plants, providing an alternative tax of 20 cents per ton of beneficiated coal or 1.25 percent of gross receipts, whichever is greater. In 1991 legislation was enacted to provide a five-year exemption for new electrical generating plants from all but 35 percent of the one-fourth of one mill tax based upon production capacity of the generating unit, and the 35 percent share of the remaining tax is allocated entirely to the county and may be eliminated by the board of county commissioners.

For electrical generating plants, the conversion tax was at a rate of one-half of one mill on each kilowatt-hour of electricity produced for the purpose of sale. This tax was divided into two separate one-fourth of one mill taxes, revenues from each of which were subject to different allocations. For coal gasification plants, the rate of tax was either 2.5 percent of gross receipts or seven cents per 1,000 cubic feet of synthetic natural gas, whichever was greater. A provision enacted in 1985 provided that gross receipts from the sale of a capital asset are not included in gross receipts for purposes of the coal conversion tax. Provisions added in 1985 exempted from gross receipts any financial assistance provided by the federal government. A 1987 amendment exempted byproducts of the gasification process, to a maximum exclusion of 20 percent of all gross receipts of a facility. The maximum exclusion for byproducts was increased 20 percent to 35 percent from 1997 through 2000. Senate Bill No. 2196 (1997) also exempted sales of carbon dioxide for oil and gas recovery from the gross receipts tax. Senate Bill No. 2339 (1997) extended the property tax exemption for a pipeline to transport carbon dioxide to 10 years after initial operation, rather than commencement of construction, and allowed the exemption to apply to a pipeline carrying carbon dioxide outside the state.

Under the coal conversion tax, each coal conversion facility is classified as personal property and is exempt from property taxes, except taxes on the land upon which the facility is located. The coal conversion tax is in lieu of property taxes on the facility.

Allocation of coal conversion tax revenues is made annually on or before July 15 of each year. Revenue from one-fourth of one mill of the tax on electrical generating plants is deposited in the state general fund. Revenue from all remaining coal conversion taxes is allocated 15 percent to the producing county and 85 percent to the state general fund. Coal conversion tax revenues to the state general fund are estimated to be approximately $45 million for the 2009-11 biennium.

Revenue allocated to counties from the coal conversion tax is allocated within the county 40 percent to the county general fund, 30 percent to cities in the county according to population, and 30 percent to school districts in the county on an average daily membership basis.

Potential New Development of Other Minerals

Activity in the state indicates an interest in development of uranium, potash, and perhaps other minerals that previously have not been produced in significant amounts in North Dakota. Current North Dakota law does not provide a taxation framework for new mineral industries. The Industrial Commission adopted rules effective January 1, 2009, governing in situ leach mining for uranium. The rules provide a thorough regulatory framework for uranium mining to protect water supplies, protect the environment and public, and provide for land reclamation while allowing optimum recovery of mineral resources. The Industrial Commission adopted rules effective March 1, 1984, governing injection mining of a range of minerals, including potash, but those rules may require updating before injection mining of potash begins. However, there is no law or rule relating to taxation of potash or

uranium extraction or for extraction of any minerals other than oil, gas, and coal.

Representatives of business entities in the initial stages of establishing mining operations in North Dakota for potash and uranium provided information to the committee. It was estimated to be three years to five years before potash production would begin in North Dakota and five years before uranium mining would begin.

Potash operations in North Dakota would be conducted via solution mining. Potash deposits in North Dakota are located at a depth of 6,000 feet to 9,000 feet. Extraction of potash would be similar in many respects to oil and gas drilling operations. A solution would be injected into the potash deposit to dissolve and suspend the potash in a solution which would be brought to the surface and processed to extract the potash. The impact of potash mining would be similar to oil and gas production impact because drilling rigs would be similar and many truckloads of water would have to be hauled by road for solution mining. However, the impact of potash production would initially be confined to a concentrated area. Initial potash extraction operations would be focused in Divide, Burke, Renville, and Bottineau Counties.

Unless a property tax exemption is provided, the pipelines and processing facility associated with potash mining would be subject to local property taxes. The processing facility would allow extraction of potash from the solution drawn from the well, but the potash then would have to be shipped to a fertilizer processing facility to make it commercially marketable. It appears processing potash into fertilizer is not done in the United States or Canada, and the potash is shipped to China for processing into fertilizer. The committee expressed hope that a fertilizer processing facility could eventually be located in North Dakota.

Water needs for mining potash are substantial, but it appears wastewater from oil extraction operations could be used in potash mining. Potash mining was described as environmentally safe and that almost all of the water used in operations could be recycled.

The Tax Department and Industrial Commission staff spent time examining potash taxation laws and rates of other states. The group recommended a bill draft to the committee for consideration that would have imposed a 5 percent extraction tax for potash and a 4 percent extraction tax on byproducts of potash production. The bill draft was intended to also cover taxation of uranium but was amended by the committee to tax only potash and byproducts from potash production at a rate of 4 percent.

Uranium deposits in North Dakota have been identified at significant depths below the surface and at locations very near the surface. An industry representative informed the committee of plans to reopen a site near Belfield as an open pit mining operation for uranium. The committee removed the taxation of uranium from the bill draft under consideration by the committee because uranium mining could be done at significant depths or by open pit mining. It appears a different taxation approach will have to be developed when it is determined how uranium mining operations will be conducted. It appears existing reclamation rules for lignite would apply to the open pit mining project. The committee makes no recommendation on a tax structure appropriate for uranium mining at this time.

Pending Federal Legislation and Rules

The primary concern of the North Dakota Lignite Energy Council at this time relates to the potential impact of pending federal legislation and regulations. Proposed cap and trade legislation in various forms was described as a threat to the viability of the lignite industry. Another potential threat would arise from Environmental Protection Agency (EPA) regulation of the lignite industry. In December 2009 the EPA made the "endangerment finding" that carbon dioxide is a greenhouse gas. The EPA also has identified as greenhouse gases sulfur dioxide, ozone, and nitrogen oxide. These EPA findings were described as setting the stage for EPA regulation of the coal industry, which was described as likely to cause dramatic increases in compliance spending by the coal industry. The lignite industry already has spent substantial amounts to reduce emissions and is scheduled to make further expenditures to reduce emissions and capture carbon dioxide. At some point, there are diminishing returns on these investments by the coal industry in North Dakota.

The North Dakota Petroleum Council is concerned with potential negative impact of federal legislation and regulation under consideration. Proposed federal legislation would impose substantial cost increases for refiners and result in an estimated increase of 70 cents per gallon for retail gasoline sales in North Dakota. A proposal for EPA regulation of hydraulic fracturing in oil drilling would reduce industry investment in North Dakota drilling, resulting in diminished employment, diminished tax revenue, reduced production of wealth, and reduced energy production.

Oil Production and Marketing

North Dakota oil production is expected to peak in the range of 300,000 barrels to 400,000 barrels of oil per day and remain in that range for several years. Drilling activity has not peaked. The Industrial Commission continues to set new records for annual action on drilling permits. At some point, the decline in production from existing wells will be equal to production from new wells and total production will level off. The oil industry continues to improve its efficiency in drilling. Each drilling rig in the state could complete 15 wells per year, and 100 to 120 drilling rigs could complete 1,500 to 1,800 new wells per year. That rate of drilling new wells could continue for the next 10 years to 15 years.

Capacity for movement of crude oil out of North Dakota was a concern. North Dakota currently has excess export capacity. Pipeline and rail carrying capacity and projects in planning and development should keep transportation capacity for oil ahead of projected oil production.

Just over 200 wells have been completed in the Three Forks Formation. The Department of Mineral Resources has concluded the Three Forks Formation contains the same quality of oil as the Bakken Formation, but the Three Forks Formation is a separate oil reserve. A recent assessment estimates the ultimate recovery of oil from the Three Forks Formation at 1.9 billion barrels compared to the estimated ultimate recovery of 2.1 billion barrels from the Bakken Formation. Higher oil prices or improved technology could enhance recovery rates and substantially increase the current estimated recovery of 4 billion barrels of oil from the Bakken and Three Forks Formations.

Water Issues

The substantial number of new oil and gas wells to be drilled in the next 10 years to 15 years will increase water demands in oil production counties. Each new well requires an estimated 1.5 million to 4 million gallons of water. The water needed does not have to be treated water, but it must be uniform in mineral and sediment content. Ground water is unsuitable because of variable mineral and sediment content.

The oil industry hopes to use Lake Sakakawea as a water resource. A three-phase regional water supply project is in the planning stages with an intended capacity of 4 million gallons of water per day to be drawn from Lake Sakakawea. The total cost of the project is estimated to be $24 million. The project is designed to serve long-term residential needs of McKenzie County and to meet the water supply needs of the oil industry. The State Water Commission estimates the water demand of the oil industry at 4.3 billion gallons per year. The State Water Commission believes the water supply in Lake Sakakawea is plentiful to meet oil industry needs. Use of Lake Sakakawea as a water source would require approval from the State Water Commission and the Corps of Engineers.

Employment Opportunities and Issues

Oil and gas industry employment rose sharply beginning in 2007, reached a peak in November 2008, and declined during the harsh winter of 2008-09. Oil industry employment resumed growth in 2009-10. The lowest unemployment rates among North Dakota counties are in oil-producing counties.

The number of drilling rigs in the state has substantially increased. Operators of drilling rigs moved into the state try to hire employees locally but also bring their own crews because experienced operators are necessary.

The influx of oilfield employees has had several effects for oil-producing counties. A housing shortage has developed. Oil industry employers have established crew camps as a short-term solution to housing shortages. Long-term solutions are needed and the Governor, Department of Commerce, Bank of North Dakota, Public Finance Authority, Housing Finance Agency, and other state agencies are gathering information and considering solutions. This group has not completed consideration of the housing issue during the committee study but hopes to bring recommendations to the Legislative Assembly in 2011.

Oil industry wages have impacted non-oil-related employment in oil-producing counties. Employers, including political subdivisions, have been forced to raise wages for non-oil-related employment because wages available in the oil industry are more attractive.

Impact

The North Dakota Association of Oil and Gas Producing Counties commissioned a study of effects of oil industry activity on county government costs. The study estimated a total impact cost increase of $3.6 million per year for county general offices and road impact cost increases of $51.8 million to $54.2 million per year for transportation infrastructure, for a total impact of $55.4 million to $57.8 million per year total impact county costs. The association intended to contract with the Upper Great Plains Transportation Institute for a more detailed study on road maintenance and upgrade costs for oil-impacted counties.

The Mountrail County road budget has increased from $1 million in 2006 to $12 million in 2010. County officials welcomed the establishment of the infrastructure fund for counties under 2009 legislation. The use of the infrastructure fund has brought mutual benefit to counties and townships. It was suggested more revenue is needed to meet needs, especially in high-impact counties.

School district officials said school districts are impacted by student increases from the influx of employees but are restricted from receiving increased oil tax revenues under the 2009 legislative changes. Funds received are imputed against state aid allocations to schools. School officials requested consideration of enhanced revenues for school districts in impact areas.

The committee received information from oil-producing counties on impact costs but did not receive information on how enhanced revenues from 2009 legislation are being used and where those counties stand in terms of current struggles to meet impact costs.

An assessment is underway by the Department of Commerce, Office of Management and Budget, Department of Transportation, Housing Finance Agency, and Bank of North Dakota to obtain quantifiable data on impact in transportation, housing, workforce, and technical assistance issues. The Upper Great Plains Transportation Institute is compiling an assessment of current traffic counts on key county and township arteries. The data will be used to project traffic patterns for the next 10 years to 20 years. The Housing Finance Agency, Department of Commerce, and Bank of North Dakota are funding a comprehensive housing assessment, intended to identify opportunities and barriers to housing development. The North Dakota Petroleum Council and the Department of Commerce are conducting a workforce needs assessment to determine short-term housing demand. A $300,000 technical assistance matching grant program through the Department of Commerce will assist cities and counties

in oil development areas to develop plans for water, sewer, zoning, and other infrastructure needs. The participating entities intend to help the state develop more effective policies on training, demand for skills, impact funding, and transportation spending. It is intended that findings of the assessment will be provided to all legislators before the 2011 Legislative Assembly.

The Department of Transportation provided information showing that road construction and maintenance costs continue to increase. The Department of Transportation plans more than $60 million for improvement of United States Highway 85 and additional projects for maintenance and improvement of North Dakota Highways 8 and 23.

The committee reviewed the 2009-10 oil impact grants awarded by the Energy Development Impact Office. The flexibility of the impact grant program has allowed impact grants to be shifted among counties to follow development activity. The flexibility in the program also allowed the 2010 grant round to adapt to changing circumstances and 2009 legislative fund allocation changes. Direct allocations to counties were increased by 2009 legislation so impact funding for counties declined somewhat. Corresponding increases were available for townships, fire protection, and ambulance services, all of which received increased funding because no direct funding is allocated. The establishment of the infrastructure fund within counties allowed counties to make grants to assist townships. The Energy Development Impact Office attempted to coordinate its grant efforts with infrastructure fund grants to townships. The Energy Development Impact Office reported that $7.8 million was available for county infrastructure fund grants, which is almost double the $4 million available for Energy Development Impact Office grants for the 2010 grant round.

Historically, 85 percent to 95 percent of grants have gone to political subdivisions for transportation infrastructure, fire protection, and ambulance service funding. In 2010 the Energy Development Impact Office received 378 grant requests seeking $31.9 million of funding. Four million dollars was available for grants and was awarded. Sixty percent of grants went for transportation-related projects, 29 percent for fire and ambulance service grants, and the remainder for other political subdivision impact needs.

The director of the Energy Development Impact Office suggested the committee review the statutory allocation of federal mineral leasing revenue allocations because of a substantial influx of funds in certain areas in oil-producing counties.

Federal Flood Control Mineral Lease Revenue Allocation

The federal flood control plan for the Missouri River resulted in construction of the Garrison Dam and creation of Lake Sakakawea. The project required the federal government to acquire rights to thousands of acres of land presently lying along and under Lake Sakakawea. Recent rapid development of oil exploration, drilling, and production in the area and the feasibility of horizontal drilling beneath the lake have made leasing of the federal mineral rights for those lands feasible and valuable. The federal government has leased mineral rights underlying a substantial part of those lands and collected substantial lease and bonus revenues. Federal law provides that 75 percent of revenue collected from leasing of lands acquired by the United States for flood control is to be paid out annually to the state in which the property is located. The amount received by the state is to be expended as the state legislature may prescribe for the benefit of public schools and public roads of the county in which the property is located or for any expenses of county government. North Dakota adopted a statutory provision--Section 21-06-10--in 1979 to allocate federal flood control revenues. The provision requires that one-half of the county allocation goes to school districts in the county which lost land acquired by the federal government, one-quarter goes to the county for road purposes, and one-quarter is to be allocated among organized townships that lost land acquired by the federal government or to the county for the benefit of unorganized townships.

Beginning in 2009, counties along Lake Sakakawea in areas of leasing activity began to receive very substantial payments. During the 17 months from February 2009 through July 2010, Mountrail County and townships and school districts in Mountrail County received more than $51 million. During the 17 months of allocations, one township has received more than $4 million, and two other townships have each received more than $1 million. For those 17 months, the Mountrail County road and bridge fund received almost $12.8 million, and the New Town School District received almost $22.5 million. When oil production and royalty payments begin on the federal lands, it is likely the payments generated will substantially increase.

The committee agreed that it is time for the Legislative Assembly to reconsider the allocation within affected counties for federal flood control mineral revenues. The committee also agreed that it will be necessary to monitor federal flood control mineral revenues and state oil and gas tax revenue allocations to oil counties. The committee considered a bill draft to accomplish these objectives.

Tax Rate Comparisons

Oil tax rate comparisons by the Tax Department show combined tax rates for oil at 11.5 percent in North Dakota, 12.7 percent in Wyoming, and 10.23 percent in Montana. However, because various exemptions and rate reductions apply in each state, it is difficult to compare effective tax rates. In North Dakota the effective tax rate for all oil production is approximately 9.8 percent to 10 percent.

Recommendations

The committee recommends House Bill No. 1046 to establish a 4 percent tax on extraction of potash and potash byproducts. The bill provides that the tax is in lieu of property taxes on a potash processing plant,

mining facility, or satellite facility. The bill provides that 20 percent of tax revenues are to be allocated to the producing county and 80 percent are to be dedicated to state income tax reduction.

The committee recommends Senate Bill No. 2047 to revise the allocation of federal flood control lease revenues to eliminate dedicated shares for school districts and townships. The bill also requires the State Treasurer to report to the chairman of the Legislative Management by the 10th working day of each month the amount distributed in the preceding month to each political subdivision for oil and gas production tax allocation, federal flood control lease revenues, or any other oil and gas allocations made by the State Treasurer.

ASSIGNMENT TO RECEIVE REPORTS

The Taxation Committee was assigned to receive a report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports of counties receiving allocations from oil and gas gross production tax revenues. Under Section 57-51-15, the reports are to describe oil and gas gross production tax funds received, expended, and unexpended. The first fiscal year of the new allocation of funds under 2009 legislation ended June 30, 2010. This means the Tax Commissioner's first report was due at the end of October 2010, after the time the Taxation Committee completed its interim activities. The report will be available for consideration by the Legislative Assembly in 2011.

Senate Bill No. 2035 (2009) requires the Tax Commissioner to conduct a cost-benefit analysis during the 2009-11 and 2011-13 bienniums of coal severance exemptions for coal used in agricultural processing facilities or facilities owned by a political subdivision, including facilities using beneficiated coal. The bill requires the Tax Commissioner to report the findings of the analysis to an interim committee designated by the Legislative Management during the 2013-14 interim.

PROPERTY TAX REFORM AND RELIEF STUDY

Property Tax Relief Legislation

Senate Bill No. 2032 (2007)

Senate Bill No. 2032 (2007) was enacted to provide property tax relief through the income tax system and contained the following provisions regarding property taxes, income taxes, and funding:

Property Tax

1. Homestead property tax maximum income eligibility for persons 65 years of age or older or permanently and totally disabled was increased from $14,500 to $17,500. The maximum value of property exempt under the homestead property tax credit was increased from $67,511 to $75,000.
2. The amount of an assessment increase for property which triggers the requirement for written notice to a property owner was reduced from a 15 percent increase to a 10 percent increase. The time the notice of assessment increases must be delivered to property owners was increased from 10 days to 15 days before the meeting date of the local board of equalization.
3. After June 30, 2007, in any school district election for approval by electors of unlimited or increased general fund levy authority, the ballot must specify the number of mills, percentage increase in dollars levied, or that unlimited levy authority is proposed for approval and the number of taxable years for which the approval is requested. Approval by electors of unlimited or increased school district general fund levy authority may not be effective for more than 10 taxable years. The number of petition signatures required to place the question of discontinuing increased or unlimited school district general fund levy authority on the ballot was reduced from 20 percent of the persons in the school census to 10 percent of the number of electors who cast votes in the most recent school district election.
4. Real estate and mobile home tax statements must include, or be accompanied by a separate sheet with, three columns showing for the year of the tax statement and the two preceding tax years the property tax levy in dollars against the property by the county and school district and any city or township that levied taxes against the property.

Income Tax

1. An income tax marriage penalty credit of up to $300 per couple was provided to offset any marriage penalty incurred for couples with incomes up to $154,200. The credit is determined by comparing the tax on the couples' joint North Dakota taxable income and the tax that would apply if the couples' income were separated and taxed at the single filer rate.
2. A homestead income tax credit was provided for individuals for taxable years 2007 and 2008 in the amount of 10 percent of property taxes or mobile home taxes that became due during the tax year and have been paid on the individual's homestead. This credit was effective only for the 2007 and 2008 taxable years and was not extended by any 2009 legislation. Property taxes eligible for the credit do not include special assessments. For purposes of the credit, "homestead" means the dwelling occupied as a primary residence in this state and any residential or agricultural property owned by the individual in this state. The amount of the homestead income tax credit for a year may not exceed $1,000 for married persons filing a joint return or $500 for a single individual or married individuals filing separate returns.

The amount of the homestead income tax credit exceeding the taxpayer's income tax liability may be carried forward for up to five years or the taxpayer may request that the Tax Commissioner issue the taxpayer a certificate in the amount of the excess. A certificate issued to a taxpayer may be used by the taxpayer against property or mobile home tax liability during the ensuing taxable year by delivering the certificate to the county treasurer of the county in which the taxable property or mobile home is subject to taxes. The county treasurer is to forward certificates redeemed in payment of tax obligations to the Tax Commissioner, who will issue payment to the county in the amount of the certificates.

Persons owning property together are entitled to only one credit for that parcel of property, so the credit may be shared between or among them. Persons owning property together are each entitled to a percentage of the credit for a single individual equal to their ownership interests in the property. There is no limit on the number of parcels of taxable property for which an individual may claim the credit.

3. A commercial property income tax credit was provided for an individual or corporation for taxable years 2007 and 2008 in the amount of 10 percent of commercial property taxes or commercial mobile home taxes that became due during the income tax year and have been paid. This credit was effective only for the 2007 and 2008 taxable years and was not extended by any 2009 legislation. Property taxes eligible for the credit do not include any special assessments. The amount of the credit for commercial property for a year may not exceed $1,000 for any taxpayer and is limited for individuals to $1,000 for married persons filing a joint return or $500 for a single individual or married individual filing separate returns.

   The amount of the commercial property income tax credit exceeding the taxpayer's tax liability may be carried forward for up to five years.

   Persons owning property together are entitled to only one credit for that property, so the credit may be shared between or among them. Persons owning property together are each entitled to a percentage of the credit equal to their ownership interests in the property. There is no limit on the number of parcels of taxable property for which a corporation or individual may apply.

   A passthrough entity entitled to the commercial property income tax credit will allocate the amount of the credit to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

Funding

1. An appropriation of $3,604,000 was provided to the Tax Commissioner for enhanced funding for the expansion of the homestead tax credit for the 2007-09 biennium.
2. An appropriation of $1.1 million was provided to the Tax Commissioner for the administrative costs related to the property tax and income tax changes made by the bill.
3. A transfer of $115 million was made from the permanent oil tax trust fund to the state general fund to offset the anticipated revenue loss to the state general fund from the income tax credits provided by the bill for the 2007-09 biennium.

Administrative Difficulties

The 2007-08 interim Taxation Committee monitored the delivery of property tax relief under Senate Bill No. 2032. The Tax Department was given the responsibility of administering the income tax credits. During the interim, the Tax Department expressed the opinion that the department does not believe that the income tax is the proper vehicle to provide property tax relief. The Tax Department identified the following difficulties:

1. Property tax was restricted to individuals with a primary residence in North Dakota. Residential and agricultural property held by a trust, estate, or corporation or other entity other than an individual was ineligible for relief. The homestead income tax credit did not provide statutory language to allow owners or members of a passthrough entity to claim a credit. Many property owners in the farming industry did not receive property tax relief for agricultural property because partnerships, S corporations, or limited liability companies owning agricultural property were ineligible for the credit.
2. Individuals residing outside North Dakota were not eligible for the property tax relief even though they own residential or agricultural property in this state, pay property taxes, and pay income taxes in this state. Many negative comments were received from nonresidents. A nonresident was allowed to claim the credit for commercial property in North Dakota.
3. For individuals not subject to a North Dakota income tax filing requirement or whose income tax liability is exceeded by the property tax relief credit, certificates had to be developed to be redeemed by the county treasurer. This certificate was available only for residential or agricultural property owners and not for commercial property owners. Administration of the certificate and redemption process was complicated and for property consisting of a combination of commercial and agricultural or residential property, eligibility for the credit was uncertain.
4. Property owned by joint owners created difficulty because property tax statements are mailed to

only one of the owners of jointly held property. As a result, one or more owners may not have had access to the information they needed to claim the credit for their share of the property taxes.

5. Property tax classification issues created confusion for taxpayers and administrators of the credit.
6. Tax Department efforts to notify taxpayers of potential eligibility for the homestead credit were complicated for those individuals owning property in the state and paying property taxes but not subject to an income tax filing requirement. Because these individuals had not filed income tax returns in the recent past, they were not in the Tax Department "system," so it is likely the Tax Department was unable to advise these individuals directly of the possible eligibility for the credit.

The 2007-08 interim Taxation Committee made no recommendation on extending property tax relief. During the interim, the Governor announced the intention to introduce legislation to provide $200 million or more for statewide school district mill levy reductions in 2009-11.

Remedial legislation--House Bill No. 1448--was enacted in 2009 to allow estates and passthrough entities to claim the credit to which they would have been entitled under the 2007 legislation by claiming the credit against 2009 tax liability. There was no legislation considered in 2009 to extend the income tax credit for property tax payments other than the remedial legislation.

Senate Bill No. 2199 (2009)

Senate Bill No. 2199 (2009) was not introduced at the request of the Governor but was the product of the Governor's previously announced intention to introduce legislation to provide funding from the state for statewide school district mill levy reductions.

Senate Bill No. 2199 provided property tax relief by appropriating $295 million for the 2009-11 biennium for allocation to school districts to reduce school district property taxes. The bill provided for a reduction of up to 75 mills in school district property tax levies and replacement of the revenue to school districts through mill levy reduction grants. The bill eliminated authority for unlimited levy approval for school districts. The bill established a deadline of 2015 for school districts with existing voter-approved excess levies or unlimited levies to obtain voter approval for continuation of a levy of up to a specific number of mills. If voter approval is not obtained by 2015, the school district levy limitation will be subject to statutory provisions allowing the option of a levy based on the number of dollars levied by the school district in the highest of the most recent three years or a levy within the 185-mill general fund levy limitation.

The bill also provided for transfer of $295 million in 2010 from the permanent oil tax trust fund to the property tax relief sustainability fund to be used for property tax relief allocations after the 2009-11 biennium.

2009 Property Tax Relief Effects

The committee reviewed comparison of 2009 and 2010 school district data on taxable valuation, general fund, tuition, and transportation levies in mills. There was a 7 percent increase in statewide taxable valuation from 2009 to 2010 and a 37 percent decrease in school district general fund and combined education mill levies. The 2009 legislation was intended to compress mill rates of school districts into a lower range. It appears the intended effect has occurred and for 2010, 73 percent of school districts levied a general fund mill rate from 100 mills to 110 mills. Only 14 school districts (8 percent of the total) levied more than 110 mills for general fund purposes in 2010.

School district property tax levies were decreased by 28.3 percent from 2008 to 2009. City taxes increased by 4.3 percent and county taxes increased by 8 percent. Total property taxes levied in North Dakota were decreased by 12.6 percent for taxes levied in 2009, the first year of application of the 2009 property tax relief legislation.

From 2008 to 2009, statewide agricultural values increased 4.19 percent, residential values increased 6.33 percent, and commercial values increased 6.02 percent. It appears that residential and commercial property value growth has moderated after 2006.

The effective tax rate is determined by dividing taxes levied by market value of property as determined by the sales ratio study. For 2009 taxes levied, effective tax rates were .48 percent for agricultural land, 1.47 percent for residential property, and 1.75 percent for commercial property. These represent significant reductions from the effective tax rate for 2007 property tax levies of .81 percent for agricultural property, 1.90 percent for residential property, and 2.21 percent for commercial property.

2011-13 Property Tax Relief

The committee obtained estimates from the Tax Department and Department of Public Instruction regarding the estimated funding required to extend property tax relief for the 2011-13 biennium on the same basis provided in Senate Bill No. 2199 (2009). The Tax Department and Department of Public Instruction each estimated approximately $341 million to extend property tax relief under the same formula for the 2011-13 biennium. The estimates were based on assumptions using average annual taxable valuation growth and school funding increases.

The committee began consideration with a bill draft based on the 2009 legislation. It was determined that adjustments were necessary to accommodate inclusion of property tax relief for certain types of property that do not pay customary property taxes but instead are subject to special taxation methods, such as payments in lieu of taxes of flat rate taxes. An adjustment was made to clarify that if voters do not approve extension of excess general fund levy authority, the school district would not

be forced to reduce its mill rate to 110 mills but would be allowed to use a levy based on the highest levy in dollars of the most recent three years under Section 57-15-01.1. The bill draft appropriated $341,790,000 for the 2011-13 biennium, which is funded by transfers of $295 million from the property tax relief sustainability fund established in 2009 and $46,790,000 from the permanent oil tax trust fund. The bill also provided for transfer of $341,790,000 from the permanent oil tax trust fund to the property tax relief sustainability fund to set aside revenue needed to fund 2013-15 property tax relief at the base level of the appropriation for the 2011-13 biennium.

Some committee members expressed a preference for the income tax approach to providing property tax relief, similar to 2007 legislation. The committee considered the approach and the administrative difficulties described by the Tax Commissioner relating to the 2007 legislation. The majority of committee members voted to disapprove the income tax approach. Several committee members said they have received more positive comments from constituents about the 2009 property tax reduction approach.

Tax Increment Financing

The committee examined tax increment financing (TIF) as used in North Dakota. Creation of a TIF district freezes property valuations in that district for any political subdivision except the city. A pool of money from existing funds or issuance of bonds is created to finance improvements within the TIF district as property valuation from development within the TIF district, the amount of valuation exceeding the "frozen" valuation, is subject to valuation only by the city, and the tax revenues from this incremental valuation are segregated in a special fund to repay the bonds or other financing for the TIF project. Other taxing districts, such as a school district, continue to collect property taxes on property in the TIF district but only up to the amount of the "frozen" valuation of the property.

The committee obtained information on TIF districts used in North Dakota in recent years. The TIF district that drew the most attention from committee members is a Bismarck TIF district that has a cash balance on hand exceeding $16 million. There are several TIF districts in the state that have completed projects and payment of indebtedness. Committee members agreed that while TIF districts are generally operated responsibly, there are areas of concern.

The committee considered a bill draft that prohibited property from being located in both a renaissance zone and a TIF district. The committee considered a bill draft to impose restrictions on TIF districts that excluded raw agricultural land from being incorporated in a TIF district, limited duration of a TIF district to not more than 20 years, and required approval from a joint review board to establish or extend a TIF district. The joint review board consisted of one representative of the governing body of each city, county, school district, and other political subdivision having tax authority over the property, plus one member chosen to represent the public.

Federally Subsidized Low-Income Housing

For a number of years, there has been disagreement on how subsidized housing should be assessed and what method is best for valuing those properties. Legislation has been considered in North Dakota and defeated which would have reduced assessed values for subsidized housing. In a 2003 letter opinion, the Attorney General concluded if a housing project is used exclusively for charitable or other public purposes the project is exempt from property taxes and that it is a question of fact for cities whether low-income subsidized housing is used exclusively for charitable or other public purposes. Since this opinion, cities in the state have come to differing conclusions, and it was suggested that legislation be considered to make uniform the statewide treatment of these properties.

It appears federally subsidized low-income housing results in federal subsidies that allow the owner to operate the property at a profit. The state supervisor of assessments expressed the opinion that it is not a charitable use of property when federal subsidies are the only charitable component of ownership and use of the property.

The committee considered a bill draft that established a statutory interpretation that residential rental property is not used for a charitable purpose if the owner receives a federal low-income housing income tax credit.

Soil Survey Implementation

Soil survey implementation in agricultural assessments is required by Section 57-02-27.2. Failure to implement soil surveys in agricultural assessments by 2012 is subject to a penalty of 5 percent withheld from the county allocation from the state aid distribution fund until soil survey use is implemented.

Of the 53 counties, 21 counties have the soil survey method of valuation in place, and 1 county is implementing surveys for 2010 assessments. The remaining 31 counties are more than halfway through the process. About one-half of noncomplying counties expect to implement soil survey use in 2011, and the remainder expect to implement soil survey use in 2012.

The committee received testimony of county assessment officials requesting a delay in the imposition of penalties for failure to implement soil surveys. Some cited lack of staff or funding for the project.

The committee considered a bill draft that changed the statutory penalty provision. The current provision requires withholding from monthly allocations of county state aid distribution funds, which are made on a quarterly basis, and the bill draft changed the statutory reference accordingly.

Recommendations

The committee recommends House Bill No. 1047 to provide property tax relief by appropriating $341 million for the 2011-13 biennium for allocation to school districts to reduce school district property taxes. The bill

provides for a school district levy reduction of up to 75 mills, restrictions on school district property tax levies, and replacement of the revenue to school districts through mill levy reduction grants.

The committee recommends Senate Bill No. 2048 to prohibit a parcel of property from being located within a renaissance zone and a TIF district.

The committee recommends Senate Bill No. 2049 to provide that property is not used for charitable purposes if the property is residential rental units for which the owner receives a federal low-income housing income tax credit.

The committee recommends Senate Bill No. 2050 to provide that agricultural property may not be incorporated in a TIF district, to limit the duration of a TIF district to 20 years, and to provide for a joint review board consisting of representatives of taxing districts for approval of a TIF district.

The committee recommends House Bill No. 1048 to provide that failure to implement soil surveys in agricultural assessments, when subjected to withholding from state aid distribution allocations, is to be made on a quarterly basis to match the statutory allocation times for those payments.

HOMESTEAD CREDIT STUDY

Section 34 of House Bill No. 1324 (2009) directs a study to examine the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. Since 1969 North Dakota has provided a homestead property tax credit for persons age 65 or older with limited income. Several states provide similar homestead property tax credits. Several states also provide a homestead property tax credit available to all homeowners without regard to income or age restrictions.

This study was intended as a companion to the property tax relief study, intended to be considered if the effective property tax rate for residential property could not be reduced to 1.5 percent under the property tax relief allocations. Because the 2009 property tax relief legislation reduced the residential property effective tax rate to 1.47 percent, the committee did not pursue a homestead property tax credit to further reduce the effective tax rate for residential property.

Conclusion

The committee makes no recommendation as a result of its study.

911 FEES AND FUNDING STUDY

The chairman of the Legislative Management assigned to the Taxation Committee a portion of the study under Section 2 of House Bill No. 1412 (2009), which is the portion of the study relating to equity of the 911 fee structure, including fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state.

The Legislative Assembly allowed counties to implement 911 service in 1985 and authorized a monthly 50 cent per telephone fee if approved by the voters of the jurisdiction. In 1991 the Legislative Assembly increased the allowable monthly fee to $1 per telephone.

The Federal Communications Commission mandated cellular telephone companies to provide Phase 1 and Phase 2 wireless 911, if requested by the local 911 jurisdiction. Phase 1 service routes the caller's number and cellular tower location, and Phase 2 adds the latitude and longitude of the calling device. North Dakota became the sixth state in the country to have statewide Phase 1 and Phase 2 wireless 911 services in 2005. The state's wireless system was composed of 200,000 cellular telephones and 300 cellular sites in 2005 but has now increased to over 400,000 cellular telephones and more than 600 cellular sites, and the system grows each month.

Prepaid cellular telephones have captured a growing share of the market estimated at 16 percent of cellular telephones in the United States. These products do not generate a monthly bill, and vendors are resistant to traditional 911 fee collections. Legislation approved in 2007 made it clear that prepaid cellular companies are to collect the fee by either deducting value each month from active accounts or simply collecting an upfront 2 percent sales tax. Given these options, the major prepaid providers have refused to collect and remit the fees in North Dakota and most other states.

In 2007 the Legislative Assembly extended the 911 fee to apply to Voice over Internet Protocol providers. This Internet-based telephone service is offered by at least 800 different companies, none of which need permission, a license, or a certification to offer service in North Dakota. One Voice over Internet Protocol provider collects and remits 911 fees, but the remainder do not. There is no information on how many Voice over Internet Protocol customers there are in North Dakota.

Fee revenues to 911 jurisdictions from landline telephone service have been declining for several years. In addition, fees from cellular services, after a period of growth, began to drop off for some rural counties. Costs to operate 911 jurisdictions have continued to increase, while some of the revenue was decreasing. In 2009 the Legislative Assembly authorized jurisdictions in multicounty 911 efforts to increase the monthly fee to $1.50 per month for three years.

Efforts to establish next generation service are underway nationwide. One of the technological shortcomings on the 911 system is that text messages are not routed to a public safety answering point. Incorporation of this technology would require replacement of voice lines and low-speed data links with a high-speed system of interconnected fiber optic and other broadband technologies. Other existing and developing technologies could transmit valuable information to a public safety answering point but for the fact that the existing 911 system can only handle voice transmission. The Legislative Assembly enacted a directive to the Emergency Services Communications

Coordinating Committee to coordinate plans for implementing Next Generation 911. Estimated transition costs to a Next Generation 911 plan are more than $13 million.

Transition to Next Generation 911 means more funding will be required, at least during implementation. The current 911 fee covers less than two-thirds of the overall 911 system costs, and for some jurisdictions the revenue is declining. A growing number of new technologies that will eventually be communicating directly with public safety answering points do not pay a monthly device fee and it will likely be difficult, if not impossible, to impose and collect fees on those devices.

The North Dakota Association of Counties expressed the opinion that it may be premature to make significant changes to the current 911 fee structure. The association believes things could change quickly if Congress moves streamlined taxing proposals, but at this time the association has no alternatives to propose to generate necessary revenues and be politically feasible.

The Emergency Services Communications Coordinating Committee met frequently throughout the interim under its statutory directives to coordinate planning and make recommendations to the Legislative Assembly. The Emergency Services Communications Coordinating Committee adopted guidelines January 1, 2008, regarding allowable uses of fee revenues for 911 jurisdictions. Reports from 911 jurisdictions indicate all jurisdictions have been in compliance with the guidelines. It is anticipated that the Emergency Services Communications Coordinating Committee will continue to plan and recommend changes as necessary in the transition to Next Generation 911.

The committee obtained and reviewed information on federal fees and taxes incorporated in telecommunications service bills of consumers. Nine fees and taxes are authorized or required by federal law, including an administrative fee, extended area service fee, federal access fee, federal excise tax, federal communications relay service fee, federal universal service charge, interstate service fee, local number portability fee, and a regulatory charge. North Dakota imposes state and local sales and use taxes, gross receipts taxes, a telecommunications relay service fee, and a 911 emergency services fee. The City of Fargo imposes a franchise fee. Pending federal legislation contains provisions for uniform taxes among states for communications services.

There is difficulty sourcing telecommunications services. Prepaid calling cards and other technologies are subject to taxes sourced to the point of sale even though the card or device may be used in a different jurisdiction. In some areas of the state, a large number of local 911 calls that are received do not come from local residents but from residents of other 911 jurisdictions. The county in which the call is placed bears the cost of handling calls for emergency services but does not receive an equivalent share of fee revenues.

There was a significant degree of support among committee members for elimination of the current 911 fees and replacement of revenues to counties from state sources. The committee examined available options, including increasing the telecommunications gross receipts tax. This would not spread costs to all users, however, because the gross receipts tax would not apply to technology such as Voice over Internet Protocol and Magic Jack. The gross receipts tax would have to be nearly doubled to generate replacement revenue for 911 fees. Another problem with replacing funding for 911 jurisdictions is that there is a broad range of the amount of property tax revenue raised by counties for support of 911 systems. Allocation of state revenues based on current revenues of 911 jurisdictions would permanently incorporate any inequities and differences in local effort into the allocation formula.

The committee did not develop a consensus on how to proceed with replacement of funding sources. The perceived problems are that some counties need more funding than is available, some devices and technologies are not subject to 911 fees, and some 911 fees being collected are not going to the location where the devices are being used.

Conclusion

The committee makes no recommendation as a result of its study.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 establishes the Tribal and State Relations Committee. The committee is composed of the Legislative Management chairman or the chairman's designee; three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate. The Legislative Management chairman, or the chairman's designee, serves as chairman of the committee.

Section 54-35-23 directs the committee to conduct joint meetings with the Native American Tribal Citizens' Task Force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee is to meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Management.

The Native American Tribal Citizens' Task Force is composed of six members, including the executive director of the Indian Affairs Commission, or the executive director's designee; the chairman of the Standing Rock Sioux Tribe, or the chairman's designee; the chairman of the Spirit Lake Tribe, or the chairman's designee; the chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the chairman's designee; the chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and the chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the chairman's designee.

Senate Bill No. 2402 (2007) extended the expiration date of the committee from July 31, 2007, to July 31, 2009. The bill also provided that if the executive director of the Indian Affairs Commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian Affairs Commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

House Bill No. 1060 (2009) extended the expiration date of the committee from July 31, 2009, to July 31, 2011. The bill also changed several tribal names of tribes whose chairmen are members of the Native American Tribal Citizens' Task Force.

In addition to the committee's statutory responsibilities, the Legislative Management assigned to the committee responsibility under Section 57-51.2-04 to receive a report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Resevation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation.

Committee members were Representatives Merle Boucher (Chairman), Kari L. Conrad, Jim Kasper, and Don Vigesaa and Senators Stanley W. Lyson, Tim Mathern, and Dave Oehlke.

Members of the Native American Tribal Citizens' Task Force were Scott J. Davis, Executive Director, Indian Affairs Commission; Marcus Levings, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Richard J. Marcellais, Chairman, Turtle Mountain Band of Chippewa Indians; Charles Murphy, Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairman, Spirit Lake Tribe; and Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

FEDERAL INDIAN LAW AND POLICY

Indian law is a very complex area of law. Due to the sovereign character of Indian tribes, most Indian law is necessarily federal in nature. Under the federal system, there have been several distinct eras of federal-tribal relations.

During the initial era of federal-tribal relations--1789 to approximately 1820--known as the non-intercourse era, the federal government sought to minimize friction between non-Indians and Indians by limiting the contacts between these groups. This era was followed by the Indian removal era--approximately 1820 to 1850--when the federal government sought to limit friction between non-Indians and Indians by removing all Indians from east of the Mississippi River to open land in the Oklahoma Territory. This era was followed by what may be called the reservation era--1850 to 1887--when, as non-Indians continued to move westward and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a smaller portion to itself. This is the origin of the term reservation.

With the enactment of the General Allotment Act of 1887, or Dawes Act, United States-Indian relations entered a new era. This era is known as the allotment era because the General Allotment Act authorized the President to allot portions of reservation land to individual Indians. Under this system, allotments of

160 acres were made to each head of a family and 80 acres to others, with double those amounts to be allotted if the land was suitable only for grazing. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allottee free of all encumbrances. The General Allotment Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. The General Allotment Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 1934.

The allotment era was followed by the Indian reorganization era--1934 to 1953--during which the land base of the tribes was protected by extending indefinitely the trust period for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. The Indian reorganization era was followed by the termination and relocation era--1953 to 1968--when the federal government sought to terminate tribes that were believed to be prosperous enough to become part of the American mainstream, terminate the trust responsibility of the federal government, and encourage the physical relocation of Indians from reservations to seek work in large urban centers.

The policy of termination and relocation was regarded as a failure and the modern tribal self-determination era began with the Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 also amended Public Law 280 so that states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. There have been a number of federal Acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the Secretaries of the Interior and of Health, Education, and Welfare to enter contracts under which the tribes would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

Probably the most important concept in state-tribal relations is the concept of sovereignty. The states and the Indian tribes are sovereigns in the federal system. In *Johnson v. McIntosh*, 21 U.S. 543 (1823), the United States Supreme Court stated "[T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil . . . but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." In *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), the Supreme Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Supreme Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In *Worcester v. Georgia*, 31 U.S. 515 (1832), the Supreme Court further discussed the status of Indian tribes. The Court stated that "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed . . . ." The Court concluded that the laws of Georgia have no force in Cherokee territory. Based upon these early cases, the tribes are sovereign and free from state intrusion on their sovereignty. Thus, state laws generally have been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter 54-40.2 provides for agreements between public agencies and tribal governments. Public agency means any political subdivision, including a municipality, county, school district, and any agency or department of North Dakota. Tribal government means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. The term does not include an entity owned, organized, or chartered by a tribe that exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

Section 54-40.2-02 provides that any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. Section 54-40.2-03.1 provides that after the parties to an agreement have agreed to its contents, the public

agency involved is required to publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice also must be published in any newspaper of general circulation for the benefit of any members of the tribe affected by the agreement. The notice also must be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice.

Section 54-40.2-03.2 provides that if the public agency involved receives a request pursuant to Section 54-40.2-03.1, the public agency is required to hold a public hearing before submitting the agreement to the Governor. Notice of the time, place, and purpose of the hearing must be published before the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice also must be published in a newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice also must be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.

Section 54-40.2-04 provides that as a condition precedent to an agreement made under Chapter 54-40.2 becoming effective, the agreement must have the approval of the Governor and the governing body of the tribes involved. If the agreement so provides, it may be submitted to the Secretary of the Interior for approval.

Section 54-40.2-05 provides that within 10 days after a declaration of approval by the Governor and following approval of the agreement by the tribe or tribes affected by the agreement and before commencement of its performance, the agreement must be filed with the Secretary of the Interior, the clerk of court of each county where the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

Section 54-40.2-05.1 provides that upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission must make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the commission must provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The commission is required to prepare a written report of its findings and to submit copies of the report to the affected political subdivision or public agency, the Governor, and the affected tribes. The findings of the commission are for informational purposes only. In an administrative hearing or legal proceeding in which the performance of a party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

Section 54-40.2-06 provides that an agreement made pursuant to Chapter 54-40.2 must include provisions for revocation. Section 54-40.2-08 enumerates specific limitations on agreements between public agencies and Indian tribes. This section provides that Chapter 54-40.2 may not be construed to authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota; authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; authorize a public agency or tribal government to enter an agreement except as authorized by its own organizational documents or enabling laws; nor authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States. Finally, Section 54-40.2-09 provides that Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2009 LEGISLATION

The 61st Legislative Assembly enacted several bills relating to Indian issues.

House Bill No. 1059 authorized the Indian Affairs Commission to accept gifts, grants, donations, and services and provided continuing appropriation authority to the commission to use any gifts, grants, and donations for the purposes of the commission.

House Bill No. 1060 extended the Committee on Tribal and State Relations through July 31, 2011.

House Bill No. 1090 included the requirements of the child care assistance program. The bill provided that an individual who is in need of child care assistance may apply in writing to a county social services office. The bill also provided that the Department of Human Services is required to pay child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families (TANF) household. The bill also provided that the department is required to pay a portion of child care costs required as a result of participation in allowable activities by the caretaker based on family size and countable income by applying a sliding fee schedule established by rules adopted by the department.

House Bill No. 1394 appropriated $700,000 from the permanent oil tax trust fund to the State Board of Higher

Education for the purpose of providing to tribally controlled community colleges $5,304 per full-time equivalent nonbeneficiary student. A nonbeneficiary student is a student who is a resident of this state, is enrolled in a tribally controlled community college, and is not an enrolled member of a federally recognized Indian tribe nor a biological child of a living or deceased member of an Indian tribe.

The bill also extended from 2007 to 2009 the provision providing for transfer of the first $700,000 of the state's share of tax revenues from oil production within the Fort Berthold Reservation to the permanent oil tax trust fund.

House Bill No. 1399 created the American Indian Language Preservation Committee to develop a process for the orderly preservation of American Indian languages. The bill also appropriated $18,000 from funds available to the Governor under the American Recovery and Reinvestment Act of 2009 (ARRA) for the purpose of providing the committee with 3-to-1 matching funds.

House Bill No. 1540 provided that the formula for the state reimbursement of locally administered economic assistance programs in counties in which the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation lands is 10 percent or more.

House Bill No. 1566 required the state commissioner of higher education to study the interplay between the North Dakota University System and tribally controlled community colleges during the 2009-10 interim. The commissioner is to address ways in which the University System as a whole and the individual campuses can better interact with tribally controlled community colleges through improved communication, collaboration, and relationship-building activities. The commissioner is required to focus on ways in which tribally controlled community colleges can encourage American Indians to pursue options in higher education, thereby bringing economic benefit to their families and communities and ways in which the University System and the individual campuses can work with tribally controlled community colleges to provide tutoring, mentoring, and other types of assistance necessary to ensure that the retention rates and graduation rates of American Indian students are increased. The commissioner is required to report any findings and recommendations, together with any legislation required to implement the recommendations, to the 62nd Legislative Assembly.

Senate Bill No. 2005 appropriated $682,585 for the operation of the Indian Affairs Commission. The bill included an appropriation of $40,000 for the reestablishment of the summer North Dakota Indian Youth Leadership Academy.

Senate Bill No. 2053 extended the sales and use tax exemption for purchases by federal, state, and local governments to also include sales to an Indian tribal government agency, instrumentality, or political subdivision that performs essential government functions.

Senate Bill No. 2054 allowed cooperation with tribal governments for the construction and maintenance on highways in the state highway system. Any agreement must be limited to that necessary to meet federal highway program spending requirements.

Senate Bill No. 2134 provided that all products made in prison industries may be purchased directly by governmental agencies, including federal, state, and tribal agencies and political subdivisions, for use in official business.

House Concurrent Resolution No. 3003 directed the Legislative Management to study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members. This resolution was prioritized for study and assigned to the Health and Human Services Committee.

House Concurrent Resolution No. 3004 directed the Legislative Management to study Indian education issues. This resolution was prioritized for study and assigned to the Education Committee.

House Concurrent Resolution No. 3061 directed the Legislative Management to study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery. This resolution was prioritized for study and assigned to the Education Committee.

HATE CRIMES ISSUES

The committee discussed the issue of hate crimes. The committee was made aware of the vandalism of an eagle sculpture--"Rising Eagle" in Bismarck's Pioneer Park. This public art was created by art students from United Tribes Technical College in Bismarck.

The president of United Tribes Technical College testified that to build a healthy respect for the diversity of the population in North Dakota, the state needs to research studies to indicate how Native Americans are treated in North Dakota, develop an educational curriculum that treats Native Americans and the cultures of the state's tribes with respect, develop state-mandated policies that will require better treatment of Native Americans by state agencies and that can encourage participation of Native Americans in state government, develop leadership, and improve hate crimes legislation. The president noted that under the present criminal code, an individual convicted of a hate crime does not receive an additional penalty. The president urged the committee to review changes in North Dakota's hate crimes legislation that will make people aware that hate crimes are unacceptable, and that if a hate crime is committed, the perpetrators will be punished severely.

The committee reviewed the *Fargo/Moorhead Hate Crime Prevention and Response Plan*. The purpose of this plan is to establish a procedure for appropriate and timely local responses to hate crimes and incidents in the Fargo-Moorhead area. The goal is to show strong support for victims of hate and zero tolerance for such

incidents. In addition, the plan tries to raise awareness of hate-related issues in the community.

The committee reviewed Minnesota hate crimes legislation. Under Minnesota law, a hate crime is a criminal act committed against a person, institution, or property which the primary motivation is the victim's affiliation with a protected class. Criminal acts such as arson, assault, vandalism, threats, harassment, and physical acts of violence are included in the legislation. Under Minnesota law, race, color, religion, gender, sexual orientation, age, disability, and national origin are protected classes. In Minnesota, convictions resulting from hate crimes carry enhanced penalties.

Committee Considerations

The committee considered a bill draft to make conviction of simple assault or criminal mischief a Class A misdemeanor when the actor caused the injury because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin. Under the bill draft, disability was defined as a condition or characteristic that renders an individual a disabled individual. A disabled individual is an individual who has a physical, sensory, or mental impairment that materially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The in-house attorney for the Standing Rock Sioux Tribe noted that the general penalty for criminal mischief is a Class B misdemeanor and that the bill draft proposed to make criminal mischief involving a hate crime a Class A misdemeanor. However, it is also a Class A misdemeanor if the actor recklessly causes pecuniary loss in excess of $2,000, while it is a Class C felony if the actor intentionally causes pecuniary loss in excess of $2,000. The in-house attorney for the Standing Rock Sioux Tribe recommended that criminal mischief involving a hate crime have a greater penalty than a Class A misdemeanor and suggested that criminal mischief involving a hate crime be a Class C felony.

The committee considered a bill draft to extend the definition of protected class to the sections of the criminal code dealing with discrimination in public places and harassment and to make aggravated assault and criminal mischief Class C felonies if the actor caused the injury because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, age, disability, or national origin.

The committee discussed whether the definition of disability for purposes of the hate crimes bill draft should be based on Minnesota law or federal Social Security law. Under the federal Social Security disability definition, disability means an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which lasts or can be expected to last for a continuous period of not less than 12 months.

A member of the committee recommended that the criminal mischief issue be considered in a separate bill draft.

Recommendations

The committee recommends Senate Bill No. 2051 to standardize the definition of an individual who may be the victim of discrimination in public places; provide it is harassment if an actor communicates bias based on race, color, religion, sex, sexual orientation, disability, age, or national origin; and make it aggravated assault--a Class C felony--if the actor causes injury because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, and national origin. For purposes of the bill, disability means a condition or characteristic that renders an individual a disabled individual, and a disabled individual is an individual who has a physical, sensory, or mental impairment that materially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

The committee recommends Senate Bill No. 2052 to provide an enhanced penalty for conviction of criminal mischief involving a hate crime. The bill provides that the offense of criminal mischief is a Class C felony if the actor's conduct shows bias based on race, color, religion, sex, sexual orientation, disability, age, or national origin. For purposes of the bill, disability means a condition or characteristic that renders an individual a disabled individual, and a disabled individual is an individual who has a physical, sensory, or mental impairment that materially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

TAXATION IN INDIAN COUNTRY

The committee reviewed the tax collection agreements with the state's Indian tribes in effect as of September 1, 2010. There are five tax collection agreements with North Dakota Indian tribes. The state through the Tax Commissioner has entered a cigarette and other tobacco products agreement and a motor fuel and special fuel agreement with the Standing Rock Sioux Tribe. The effective date of the cigarette and other tobacco products agreement is July 1, 1993, and the effective date of the motor fuel and special fuel agreement is January 1, 1999. Revenue is allocated 75 percent to the tribe and 25 percent to the state under both agreements. There is an administration fee of 3 percent on the cigarette and other tobacco products agreement and 1 percent on the motor fuel and special fuel agreement. Fiscal year 2010 revenue under the cigarette and other tobacco products agreement was $64,692 and under the motor fuel and special fuel agreement was $340,570.

The state has entered a motor fuel and special fuel agreement with the Spirit Lake Tribe effective September 1, 2006. Under this agreement, revenue is allocated 76 percent to the tribe and 24 percent to the state with a 1 percent administration fee. Fiscal year 2010 revenue under the agreement was $296,346.

On September 1, 2007, the state entered a motor fuel and special fuel agreement with the Three Affiliated Tribes of the Fort Berthold Reservation. Under this agreement, revenue is allocated 70 percent to the tribe and 30 percent to the state with a 1 percent

administration fee. Fiscal year 2010 revenue under the agreement was $1,022,803.

On September 1, 2010, the state entered a motor fuel and special fuel agreement with the Turtle Mountain Band of Chippewa Indians. Under this agreement, revenue is allocated 96 percent to the tribe and 4 percent to the state with a 1 percent administration fee.

TRANSPORTATION IN INDIAN COUNTRY

Several committee members expressed concern with motor vehicle registration requirements for nonresidents temporarily employed in the state. Section 39-04-18 provides that nonresidents generally do not need to license motor vehicles in the state except if the owner or operator is gainfully employed or stationed in the state. Section 39-04-21 provides that temporary motor vehicle registrations are to be issued in such manner as prescribed by the director of the Department of Transportation. Current fees charged for North Dakota temporary license permits are $10 per month plus a $3 permit fee for passenger vehicles and trucks under 22,000 pounds. Permits may be issued for one month up to one year and can be renewed as often as is necessary. If a nonresident establishes residency in the state, the permit is no longer valid. The committee learned that nonresident motor carriers may be licensed under the International Registration Plan, which prorates fees based on miles traveled in the jurisdiction. The license plate and cab card indicate whether the truck is registered under the International Registration Plan. Also, the international fuel tax agreement allocates funds based on where fuel is burned. A truck will have an international fuel tax agreement decal on its doors and an international fuel tax agreement paper credential. The Unified Carrier Registration program is a federal motor carrier safety program the carrier must be enrolled in through its base state. Nonresident motor carriers have the option of purchasing trip and fuel permits from the Highway Patrol.

Representatives of the Department of Transportation Motor Vehicle Services informed the committee that merely because a vehicle has an out-of-state license does not necessarily mean that the operator has not paid the requisite fees. The operator may have a temporary permit, a trip permit, or the vehicle may be prorated. The vehicle must be stopped before the status of the vehicle can be determined.

Throughout the interim, the Department of Transportation officials briefed the committee on transportation issues in Indian country. The Department of Transportation has been aggressive in the energy area of the western part of the state, with recent pavement preservation projects and many transportation investments planned to be completed, including projects in the Fort Berthold Reservation area of Highway 23, as well as other highways in this area. Current construction projects in this area include adding turn lanes at a number of intersections east of New Town, overlay and rumble strips east of New Town, regrading and new asphalt surfacing west of the Four Bears Bridge, and reconstruction of Highway 23 in the city of New Town. Highway 22 is also scheduled for an overlay project this year. Department of Transportation staff has begun scoping Highway 23 and Highway 8 corridors to address traffic growth.

The Department of Transportation has been working on several challenges with the rising lake levels affecting roads in the Devils Lake area. The department has expended over $190 million from 1994 through November 2009 to raise roadways that have been impacted by high-water levels. Eighteen projects are planned for 2010-11 on state highways in the Devils Lake Basin. The total cost of these projects is estimated to be approximately $168.4 million. Currently, the department is constructing grade raises on Highways 57 and 20.

Over the years, the Department of Transportation has made significant investments in United States Highway 281 in the Turtle Mountain Reservation area. Current projects include adding turning lanes at various intersections on United States Highway 281 in the Belcourt area.

The Department of Transportation has been working closely with the Standing Rock Sioux Tribe on adding improvements to Highway 24 in the Fort Yates area. Current projects include adding turn lanes at various intersections on Highway 24 through Fort Yates near schools and the college, as well as a preventive maintenance overlay on Highway 31.

The Department of Transportation also has implemented several safety projects, including lowering the speed limit on Highway 23 and installation of center line and edge line rumble strips in the Williston district in 2010 and on all two-lane state highways as funding becomes available.

ELEMENTARY AND SECONDARY EDUCATION IN INDIAN COUNTRY

The committee reviewed the activities of the North Dakota Indian Advisory Council. The council was formed to advise the Superintendent of Public Instruction in educational matters affecting the education of Indian students and to promote equal educational opportunity and improve the quality of education provided to American Indian students throughout the state. Core issue areas include teacher issues, tribal college issues, public policy and legislative change issues, cultural issues, challenges particular to Indian education, partnership issues, and technology and development issues.

The committee reviewed the activities of the American Indian Language Preservation Committee. This committee is tasked with developing a process for the orderly preservation of American Indian languages spoken by members of tribes located in North Dakota, including the creation or acquisition of audio recordings, picture dictionaries, and pronunciation guides; translation of existing material; and the acquisition, development, and dissemination of instructional materials for elementary and high school students, individuals enrolled in institutions of higher education, and other adults. The committee is also to pursue working relationships aimed at American Indian language preservation with public and private sector entities, including institutions of higher education, in this

state and in other states and provinces and to seek the active participation of American Indians residing in this state on an individual and tribal basis.

The tribal education manager, Education Department, Standing Rock Sioux Tribe, testified that several superintendents of schools with large Indian enrollments had been led to believe that allocation of fiscal stabilization funds under ARRA would be made based on the poverty and free/reduced lunches formula of Title I, but that ultimately the funds were distributed on a per student basis. The tribal education manager testified that this formula resulted in several schools receiving substantially less money than anticipated. The committee reviewed state allocation of ARRA funding to local education agencies. The committee determined that the ARRA funds were allocated in compliance with the Act.

Committee Considerations

The committee considered a concurrent resolution draft calling for a study of Indian education issues, including a fair and equitable allocation of all state and federal educational funding. Representatives of the Department of Public Instruction and Indian Affairs Commission testified that a quality education is essential for Indian youth to develop personal and family self-efficiency, to develop fully their talents and contribute to the general welfare of the state, and to prevent social problems and lessen the need for correctional services and recommended that the resolution be approved.

Representatives of the Department of Public Instruction discussed an initiative to authorize the Superintendant of Public Instruction to study Indian education issues and make grants to low-performing schools selected based upon criteria developed under the study. The initiative was developed by the Department of Public Instruction in conjunction with the North Dakota Indian Education Advisory Council. Under the proposal, the council would assist the Department of Public Instruction in conducting the study. The study would identify the factors and barriers that are preventing the state's lowest-performing schools from achieving at a higher level. The goal would be to move the performance level of these schools upward. Representatives of the department testified that to develop an effective program, the department needs the time, expertise, and resources to develop and implement the grant program.

The committee considered a bill draft providing that between July 1, 2011, and July 1, 2012, the Superintendant of Public Instruction conduct a study of Indian education issues to develop criteria for grants to low-performing schools. The bill draft authorized the Superintendant of Public Instruction to make grants to low-performing schools based upon the criteria developed under the study and appropriated $50,000 for the study and $500,000 for the grants. The committee was concerned whether the Department of Public Instruction would be able to complete the study during the first year of the biennium and thus use the grant money effectively. Several committee members testified that the study should be expanded to two years, and then the Superintendant of Public Instruction could seek an appropriation during the 63rd Legislative Assembly to fund grants based upon criteria developed pursuant to the study. Committee members discussed whether if the study is expanded to two years, the amount of money allocated for the study should be increased.

Recommendations

The committee recommends House Concurrent Resolution No. 3004 directing the Legislative Management to study Indian education issues, including a fair and equitable allocation of all state and federal educational funding.

The committee recommends House Bill No. 1049 to provide for a Superintendant of Public Instruction study, reports to the Legislative Management, and appropriation of $100,000 to the Superintendant of Public Instruction to conduct the study.

HIGHER EDUCATION IN INDIAN COUNTRY

The committee visited the Turtle Mountain Community College in Belcourt, Sitting Bull College in Fort Yates, and Cankdeska Cikana Community College in Fort Totten. The committee held meetings at each of the tribal colleges and toured the tribal college facilities. The committee reviewed House Bill No. 1394 (2009) relating to financial assistance to tribally controlled community colleges and House Bill No. 1566 (2009) requiring the commissioner of higher education to study the interplay between the University System and tribally controlled community colleges. The committee learned the state's tribal colleges have between 2,500 to 3,000 students, of which 10 percent to 15 percent are non-Indians.

INDIAN HUMAN SERVICES ISSUES

The committee reviewed the status of Medicaid-funded targeted case management services for American Indian elders. The director of social services for Rolette County testified that issues facing the state's Indian counties are similar. These include a lack of jobs, lack of transportation, lack of housing, inadequate health care, and drug and alcohol abuse. The committee learned that one-third of Rolette County residents receive food stamps, and 550 families in Rolette County receive TANF benefits.

The committee also reviewed memorandums of understanding between the Department of Human Services and tribal entities concerning child welfare.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

The committee received briefings throughout the interim from the director of Child Support Enforcement concerning child support enforcement in Indian country. The Three Affiliated Tribes has a comprehensive program in place which means its program has grown to where it provides the 14 services required by the federal government for a viable child support program. Child Support Enforcement signed an amendment to its cooperative agreement with the Three Affiliated Tribes' Title IV-D program to submit tribal cases for federal

income tax refund offset, administrative offset, and passport denial. The initial submission involved approximately 50 obligors and, to date, has resulted in $21,000 of collections. Under current federal law, a tribal program is required to work through a state Title IV-D program to access the Internal Revenue Service offset process.

The Standing Rock Sioux Tribe is in the process of applying to Child Support Enforcement for startup funding to implement a comprehensive child support enforcement program on the Standing Rock Reservation. The committee received testimony from a tribal judge of the Standing Rock Sioux Tribe and Sisseton-Wahpeton Oyate of the Lake Traverse Reservation that tribal courts are working closely with the state child support enforcement program and have a very good working relationship with the state, and child support enforcement is an example of the tribes and the state working together.

LICENSING OF TRIBAL ADDICTION COUNSELORS

A tribally licensed addiction counselor certified by the National Association for Alcoholism and Drug Abuse Counselors testified he has been unable to obtain a license from the North Dakota Board of Addiction Counseling Examiners. Due to his certification and experience, he testified he should be able to obtain a license from the board without sitting for the licensing examination.

The president of the North Dakota Board of Addiction Counseling Examiners testified that if tribal or federal government standards by which tribal addiction counselors are recognized are substantially similar to the North Dakota Board of Addiction Counseling Examiners' standards, reciprocity may be granted. However, if the standards are substantially dissimilar, licensure may not be granted. The board examines each individual situation on a case-by-case basis to determine whether reciprocity should be granted. The committee learned that the issue in question was resolved to the satisfaction of both the tribal member and the board.

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

The committee received updates throughout the interim from the cochairmen of the Commission to Study Racial and Ethnic Bias in the Courts--Justice Carol Ronning Kapsner and Judge Donovan Foughty. The commission was established by the North Dakota Supreme Court and is tasked with ensuring that the rule of law is applied fairly and equally to all who seek redress in the courts and to ensure that the court system and its procedures and processes are administered to ensure equality of treatment free of any racial or ethnic bias for all persons. The representatives of the commission informed the committee of the methodology of the commission's study and reported that the commission is in the data collection phase and sending and tabulating surveys. The commission is holding a series of meetings to obtain subjective analysis and is targeting Native Americans because they comprise the largest minority group in North Dakota. The committee learned the goal of the commission is to generate a report on the status of racial and ethnic bias in the courts and to correct any disparities that may exist, such as in jury pools and use of legal services. The final report will contain a discussion addressing the disproportionate number of Native Americans in the prison and juvenile systems and recommendations or ideas on how this problem may be alleviated. Representatives of the commission reported that the commission is on track to deliver a preliminary report during the upcoming legislative session, and the final report should be submitted to the Supreme Court within 18 months.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

The committee received reports from Prairie Consulting Group throughout the interim concerning economic development initiatives in Indian country. The Department of Commerce awarded Prairie Consulting Group a contract to promote economic development on the state's Indian reservations. Prairie Consulting Group reported it divided the contract into two segments--the first to provide an assessment of American Indian businesses in North Dakota and the second to design an outreach and business consultation program for American Indian businesses in North Dakota. The focus of the contract is to assist the private sector to develop businesses that are not dependent on federal contracts.

Representatives of Prairie Consulting Group reviewed obstacles to economic development on Indian reservations with the committee. Representatives of the group said it has been active in matching Indian-owned businesses with business opportunities and trying to promote long-term, sustainable business development on the state's reservations.

INDIAN EMPLOYMENT ISSUES

The committee received testimony from the director of Human Resource Management Services, Office of the Management and Budget, on the number of American Indians employed in state government and efforts by the state to recruit and retain American Indian employees. The director reported that Human Resource Management Services would like to see more American Indian applicants for positions in state government. The director reported that Human Resource Management Services is working with United Tribes Technical College to increase the number of applicants and to make students aware of opportunities in state government.

HERITAGE CENTER EXPANSION

The executive director of the Indian Affairs Commission and staff of the State Historical Society updated the committee throughout the interim on expansion of the Heritage Center. The committee learned expansion of the Heritage Center will provide an opportunity for the state's tribes to tell their stories to the visitors of the Heritage Center. The original gallery, collection storage, laboratories, and offices were

designed for a 20-year plan and designed to be expanded. Phase 1--the expansion of the state archives--began in 2005 and was completed in 2007.

The second phase of the expansion will double the existing exhibit, visitor services, programming, collection storage, laboratories, and office space by adding 97,000 square feet of space. One-half of the expansion will provide more public space and exhibit galleries, and one-half will be on the lower level for daily agency operations. In 2005 and 2007 the Legislative Assembly allocated planning dollars, and in 2009 the Legislative Assembly authorized $40 million toward the $52 million project. The remaining $12 million is being raised by the State Historical Society of North Dakota Foundation from private and federal sources, corporations and foundations, and other groups. One of the new galleries will be the Early Peoples Gallery which will cover over 10,000 years of the earliest human history in what is now North Dakota. The gallery will highlight early occupation and exploration up to the establishment of the Dakota Territory in 1861.

Representatives of the State Historical Society of North Dakota Foundation testified that a resolution of support for the Heritage Center expansion project from the committee would assist the State Historical Society and the State Historical Society of North Dakota Foundation in its fundraising efforts.

Resolution of Support

The committee adopted a resolution of support for expansion of the Heritage Center.

BUSH FOUNDATION

The vice president and native nations team leader of the Bush Foundation reviewed initiatives of the Bush Foundation for Indian country. The foundation was founded in 1953 and focuses its efforts on the 23 tribes within the states of Minnesota, North Dakota, and South Dakota, as well as entities within those states. The committee learned the Bush Foundation has invested a tremendous amount of resources in Indian country and is supporting self-determination of Indian nations by actively rebuilding the infrastructure of nationhood. The Bush Foundation emphasizes collaboration and self-determination for the region's Indian nations. The foundation is active in three areas--developing a core strategy and partnerships, building the public will, and developing and supporting courageous public leadership. Leadership development emphasizes best practices for Indian country. The Bush Foundation sponsors a native nations rebuilders program designed to train native tribal leaders. This training emphasizes governance systems, as well as constitution drafting. The vice president and native nations team leader noted that many tribal constitutions were drafted and adopted soon after passage of the Indian Reorganization Act and are outdated and do not address the contemporary needs of tribes.

"INDIAN PRIDE"

The executive producer of the Prairie Public Broadcasting program "Indian Pride" briefed the committee on the program, as well as efforts to secure funding for season two of "Indian Pride." The executive producer reported that "Indian Pride" showcases the unique lifestyles of North America's 562 Indian nations, and that while honoring the historical past, and with enthusiasm for contemporary culture, "Indian Pride" creates a national forum for tribal members while raising awareness of a broader audience. Each 30-minute "Indian Pride" episode includes a minidocumentary shot on location; in-studio discussion of current issues with nationally known American Indian guests; and traditional and contemporary performers, artists, and storytellers.

The executive producer is an enrolled member of the Turtle Mountain Band of Chippewa Indians and said a resolution of support for "Indian Pride" from the committee would assist her in obtaining funding for season two of "Indian Pride."

Resolution of Support

The committee adopted a resolution of support for Prairie Public Broadcasting's and Circle of Nations Publishing's "Indian Pride" program.

OIL AND GAS EXPLORATION AND PRODUCTION IN INDIAN COUNTRY

The committee reviewed the oil and gas tax and regulatory agreements with the Three Affiliated Tribes of the Fort Berthold Reservation and oil and gas development in Indian country.

Under the tax agreement, the Tax Commissioner establishes for each reservation well the mineral acres of trust land and non-trust land. The wells are subject to gross production tax of 5 percent and an oil extraction tax of 6.5 percent; however, non-trust land is exempt for 60 months from the extraction tax. The tax agreement calls for oil and gas tax revenue sharing from production on trust lands. Fifty percent of the total is allocated and paid to the tribe, and 50 percent of the total is allocated and paid to the state and political subdivisions based on statutory distribution formulas. Concerning oil and gas tax revenue sharing from production on non-trust land, 20 percent of gross production taxes are allocated and paid to the tribe, and 80 percent of gross production taxes and 100 percent of oil extraction taxes are allocated and paid to the state and political subdivisions based on statutory distribution formulas. The tax agreements provide for a one-time $60,000 tribal employment rights office fee and a $40,000 tribal application fee per well. These fees are payable to the tribe and are not collected or administered by the Tax Commissioner. The fees are applicable if the well spacing unit is composed of a majority of trust land.

A representative of the Governor's office reported that before the agreement with the Three Affiliated Tribes of the Fort Berthold Reservation was signed only one well was drilled on the reservation and none was on trust land. Since the agreement was signed, 2,337 leases have been approved by the Three Affiliated Tribes, 65 wells are producing on the Fort Berthold Reservation, and as of September 9, 2010, 23 rigs were drilling on the reservation, mostly on trust land. The tribe has received $13,289,150 and the state has received

$32,442,549 under the tax agreement. In addition, the tribe has received $181,227,968 in lease payments. In August 2010, $3.1 million in royalties were paid to the tribe and allotees on the reservation.

The regulatory agreement defines the cooperative process to approve permits and spacing rules on the Fort Berthold Reservation. Under the agreement, the Bureau of Land Management will adopt statewide well location rules and setback requirements. These are the most important aspects of the agreement as they ensure that the state and tribe will be able to develop the reservation's mineral resources in an orderly fashion without land stranded between spacing units. Concerning orders, if the order only concerns trust land, the Bureau of Land Management issues the order and the Industrial Commission may cosign the order. If the spacing unit includes both trust and non-trust land, the Bureau of Land Management and Industrial Commission will cosign the order. If no trust lands are involved, the Industrial Commission issues the order and the Bureau of Land Management will not cosign the order. This agreement is still subject to approval by the Bureau of Land Management.

INDIAN CORRECTIONS ISSUES

The committee learned the Indian Affairs Commission is concerned with the high number of Native American inmates in North Dakota correctional facilities, as well as recidivism once these inmates are released. The executive director of the Indian Affairs Commission testified that tribes lack resources to assist tribal members when they leave the corrections system and return to their home reservations. The commission is seeking guidance to bring these numbers down. One issue that should be pursued is treatment versus incarceration.

The director for Transitional Planning Services, Division of Adult Services, Department of Corrections and Rehabilitation, reported that the Transition from Prison to Community Initiative has been in effect since 2003. Through this initiative, the Department of Corrections and Rehabilitation attempts to collaborate with other stakeholders in order to increase public safety by improving outcomes for the offender population.

Several committee members noted that successful treatment is dependent upon adequate transitional facilities in the state's major cities as well as reservations. These committee members urged the department to establish a transitional facility in Minot, as it is center to two of the state's reservations.

MILITARY ONESOURCE

Representatives of North Dakota Military Onesource briefed the committee on the program. The mission of Military Onesource's Joint Family Support Assistance program is to provide mobile outreach services to military service members and their families throughout North Dakota and to build local networks of support by educating communities on challenges faced by military families.

COMMITTEE ON TRIBAL AND STATE RELATIONS

The Committee on Tribal and State Relations is effective through July 31, 2011. The committee discussed whether the committee should be allowed to expire, extended, or made a permanent interim committee of the Legislative Management. Committee members expressed concern with participation by members of the Native American Tribal Citizens' Task Force in committee meetings. Several committee members noted the committee performs a valuable service in enhancing communication between the Legislative Assembly and the tribes of North Dakota.

Committee Consideration

The committee considered a bill draft to extend the Committee on Tribal and State Relations and to make it a permanent interim committee of the Legislative Management. Under current law, the chairman of the Legislative Management or the chairman's designee is the chairman of the committee. The committee considered whether the chairman of the Legislative Management should be the chairman of the committee or whether the chairman should be appointed in the same manner as chairmen of other Legislative Management interim committees.

The jurisdiction of the committee includes the delivery of services, case management services, and child support enforcement. Members of the committee said the jurisdiction of the committee should be expanded to include human services, education, and corrections, and the committee should work to educate all citizens of the state, native as well as non-native, on Indian issues and tribal sovereignty. Another issue that should be studied during the 2011-12 interim is whether members of the Native American Tribal Citizens' Task Force should be voting members of the committee. The statute governing the committee provides that if the executive director of the Indian Affairs Commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. Several committee members said this may hinder participation, and if the executive director or tribal chairmen were allowed to appoint more than one designee, it might broaden participation and awareness of the committee's activities. A member of the committee said the Native American Tribal Citizens' Task Force does not fully reflect the membership and should be changed to the North Dakota Tribal Governments Task Force.

Recommendation

The committee recommends Senate Bill No. 2053 to make the Committee on Tribal and State Relations a permanent interim committee, change the name of the Native American Tribal Citizens' Task Force to the North Dakota Tribal Governments Task Force, and expand the duties of the committee to include study of human services, education, corrections, education of citizens on Indian issues and tribal sovereignty, and whether members of the North Dakota Tribal Governments Task Force should be voting members of the committee.

WATER-RELATED TOPICS OVERVIEW COMMITTEE

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management, during each interim, to appoint a Water-Related Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters and for any necessary discussions with adjacent states on water-related topics. The committee consists of nine members, and the Legislative Management designates the chairman of the committee. The committee operates according to the statutes and procedure governing the operation of other Legislative Management interim committees. Section 54-35-02.7 is effective through November 30, 2013.

Committee members were Senators Tom Fischer (Chairman), Arden C. Anderson, Joan Heckaman, and Gary A. Lee and Representatives Rick Berg, Duane DeKrey, Curt Hofstad, Jon Nelson, and Darrell D. Nottestad.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

WATER IN NORTH DAKOTA

North Dakota is located in a region of central North America that bridges the divide between "too wet" and "too dry." The 100th meridian line of longitude roughly splits the state in half. East of this line, there is generally more precipitation in the form of snow and rain than west of the 100th meridian. North Dakota's extreme climate is largely driven by air masses from three areas--the Rocky Mountains, where the mountains block much of the Pacific moisture; the polar region, which brings much of the state's cold weather; and the Gulf of Mexico, which brings much of the state's precipitation. Several studies of lake sediment in North Dakota have demonstrated that the state is subject to long-term climatic variation, alternating between extended wet and dry cycles.

Surface Water Resources

North Dakota is separated into two major drainage basins by a continental divide running from the northwest to the southeast corners of the state. The northeastern portion of the state falls generally within the Hudson Bay drainage, while the southwestern part is drained by the Missouri River to the Gulf of Mexico. For planning purposes, the State Water Commission has divided the state into five major watersheds--the Missouri River Basin, James River Basin, Souris River Basin, Red River Basin, and Devils Lake Basin.

The Missouri River drainage system includes the major subbasins of the Missouri and James Rivers. The tributaries on the south and west sides of the Missouri River typically occupy small but sharply defined valleys. This area is well-drained with few natural lakes. The topography is characterized by rolling, hilly plains with numerous flat-topped, steep-sided buttes. The most prominent are located in the Badlands along the Little Missouri River. Areas east of the Missouri River include glaciated areas that are characterized by many small lakes and wetlands.

The James River, which is a major tributary of the Missouri River, begins in the drift prairie of central North Dakota but does not join the Missouri River until it reaches Yankton, South Dakota. The James River system is poorly to moderately drained with a large number of wetlands.

The Hudson Bay drainage includes the Souris River and Red River systems and the Devils Lake Basin. The Souris River (officially designated the Mouse River by Section 61-01-24) originates in Saskatchewan and then loops through North Dakota before it reenters Canada west of the Turtle Mountains. The topography is varied within the basin with hilly terrain in the southwest, a flat glacial Souris Lake plain in the east, and forested hills of the Turtle Mountains in the northeast.

The Red River winds northward almost 400 miles, forming the border between North Dakota and Minnesota. From the international boundary with Canada, the Red River flows another 155 river miles to Lake Winnipeg in Manitoba. The valley through which the river flows is the former bed of glacial Lake Agassiz. The ancient lakebed is extremely flat and is home to some of the most productive farmland in the world.

The Devils Lake Basin is currently a noncontributing subbasin of the Red River Basin. The drainage system is formed by chains of waterways and connecting lakes, many of which ultimately terminate in Devils Lake itself.

The flow in all North Dakota streams and rivers is seasonably variable. Runoff is greatest in early spring as a result of snowmelt water and spring rainfall. Many smaller streams experience little or no flow for extended periods during summer months, although dramatic flow variations in river discharges can be caused by changes in weather patterns, isolated storm events, evaporation rates, and snowpack conditions.

According to information in North Dakota's assessment database provided by the State Department of Health to the United States Environmental Protection Agency, there are 138 manmade reservoirs and 109 natural lakes in North Dakota. Reservoirs comprise approximately 71 percent of North Dakota's total lake and reservoir surface acres, accounting for a surface area of 543,156 acres. Of this total, 480,731 acres, or 62 percent, of the state's entire lake and reservoir acres are contained within the two main stem Missouri River reservoirs--Lake Sakakawea and Lake Oahe. The remaining 136 reservoirs share 62,425 acres with an average surface area of 459 acres.

The 109 natural lakes in North Dakota cover 218,616 acres with approximately 132,246 acres, or 60 percent, attributed to Devils Lake at an elevation of 1,446 feet mean sea level. The remaining 108 lakes average 800 acres with one-half being smaller than 250 acres.

There is an estimated 59,607 miles of rivers and streams in the state. These estimates are based on rivers and streams entered into the assessment database.

Ground Water Resources

Ground water underlies the land surface throughout the state. Ground water generally occurs in two major types of rock--unconsolidated deposits and bedrock. Unconsolidated deposits are loose beds of gravel, sand, silt, or clay of glacial origin. Bedrock consists primarily of shale and sandstone.

Aquifers of glacial origin are generally more productive to wells than aquifers found in the underlying bedrock. Bedrock aquifers underlie the entire state and tend to be more continuous and widespread than aquifers in the unconsolidated deposits. It is estimated that 60 million acre-feet of water is stored in the major unconsolidated aquifers in the state. The amount of water available in the major bedrock aquifers is estimated to be approximately 435 million acre-feet.

Water Permitting

North Dakota follows the prior appropriation doctrine for water appropriation. Prior appropriation also is known as the "first in time, first in right" appropriation system with the first entity to put water to a beneficial use acquiring the right to use the water over later or junior water appropriators.

When there are multiple water permit applications for water from the same source and that source is insufficient to supply all the applications received by the State Engineer within a 90-day time period, the following order is used to determine priority, from first to last: domestic; municipal; livestock; irrigation; industrial; and fish, wildlife, and recreation. In 2008 there were a total of 3,628 water use permits in North Dakota. Irrigation represents the largest proportion, 62 percent; followed distantly by industrial, 9 percent; fish and wildlife, 8 percent; municipal, 8 percent; recreation, 5 percent; rural water, 3 percent; stock, 2 percent; and flood control, 1 percent; with the remaining comprising less than 1 percent each.

Water Project Funding

North Dakota funds the majority of its water projects through the State Water Commission. Funding funneled through the State Water Commission for water development has come from several sources, including the state's general fund; the Dakota Water Resources Act; the municipal, rural, and industrial water supply program; the resources trust fund; and the water development trust fund. In addition to these sources, the State Water Commission is authorized to issue revenue bonds for water projects, and the commission has shared control of the drinking water state revolving loan fund.

Municipal, Rural, and Industrial Water Supply Program

A major source of grant funding for water supply development in North Dakota is the municipal, rural, and industrial water supply program. This program's funding was authorized by Congress through the Garrison Diversion Unit Reformulation Act of 1986. Federal funding channels through the Bureau of Reclamation to the state's federal fiscal agent--the Garrison Diversion Conservancy District. This program is administered jointly by the conservancy district and the State Water Commission. The Rural Development Agency provides funding through the United States Department of Agriculture for a majority of loans to cover the local share for municipal, rural, and industrial water supply projects.

The 1986 Garrison Diversion Unit Reformulation Act authorized a federal municipal, rural, and industrial water supply grant program of $200 million. This funding has been exhausted. Additional federal funding was authorized for the municipal, rural, and industrial water supply program with passage of the Dakota Water Resources Act of 2000. That Act provided resources for general municipal, rural, and industrial water supply projects, the Northwest Area Water Supply Project, the Southwest Pipeline Project, and a project to address water supply issues in the Red River Valley. An additional $600 million, indexed for inflation, was authorized which includes a $200 million grant for state municipal, rural, and industrial water supply programs; $200 million for North Dakota tribal municipal, rural, and industrial water supply programs; and a $200 million loan for the Red River Valley Water Supply Project.

Annual municipal, rural, and industrial water supply funding is dependent upon congressional appropriations. As of September 2008, $228 million in federal funds has been approved for North Dakota's municipal, rural, and industrial water supply program with $30 million for federal fiscal years 2007 and 2008.

Resources Trust Fund

The resources trust fund was created pursuant to passage of measure No. 6 in the November 1980 general election. Measure No. 6 created a 6.5 percent oil extraction tax, 10 percent of which was to be allocated to the resources trust fund. In June 1990 the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and provide that the principal and income of the fund could be spent only upon legislative appropriations for constructing water-related projects, including rural water systems, and energy conservation programs. In November 1994 the voters of North Dakota approved a constitutional amendment, which is now Article X, Section 24, of the Constitution of North Dakota, to provide that 20 percent of oil extraction taxes be allocated as follows: 50 percent to the common schools trust fund and 50 percent to the foundation aid stabilization fund. Section 57-51.1-07 provides that oil extraction tax revenues be distributed as follows: 20 percent to the resources trust fund; 20 percent allocated as provided in Article X, Section 24, of the Constitution of North Dakota; and 60 percent to the general fund.

Water Development Trust Fund

Section 54-27-25 establishes a water development trust fund to be used for the long-term water development and management needs of the state. This section creates a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund must be transferred within 30 days of its deposit in the fund with 10 percent going to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. In the November 2008 general election, voters approved initiated measure No. 3 that amended Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in this new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continues in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Beginning in 2009, tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement relating to strategic contribution payments will be deposited in the newly created tobacco prevention and control trust fund. The measure also provides that if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the Tobacco Prevention and Control Executive Committee to adequately provide for the comprehensive plan. In 2009 the Legislative Assembly provided that any money deposited in the water development trust fund under Section 54-27-25 may be spent only pursuant to legislative appropriation.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the agreement. This payment was received before the approval of the initiated measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in Section 54-27-25 before amendment by the measure. Future tobacco settlement payments will be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25 as amended by the measure.

Section 61-02.1-04 provides that the principal and interest on bonds issued for flood control projects, the Southwest Pipeline Project, and an outlet to Devils Lake must be repaid with money appropriated from the water development trust fund.

Bonding

Section 61-02-46 authorizes the State Water Commission to issue revenue bonds of up to $2 million per project. The Legislative Assembly must authorize revenue bond authority beyond $2 million per project. In 1991 the Legislative Assembly authorized full revenue bond authority for the Northwest Area Water Supply Project. In 1997 the Legislative Assembly authorized $15 million of revenue bonds for the Southwest Pipeline Project. In 2001 the Legislative Assembly raised the Southwest Pipeline Project bonding authority to $25 million. As of June 30, 2008, the State Water Commission has outstanding bonds totaling $18.7 million for the Southwest Pipeline Project. There are no outstanding bonds for the Northwest Area Water Supply Project.

In 1999 the State Water Commission was authorized to issue up to $84.8 million in appropriation bonds under the provisions of Senate Bill No. 2188. The Legislative Assembly's intent was to partially fund flood control projects at Grand Forks, Devils Lake, Wahpeton, and Grafton and to continue funding for the Southwest Pipeline Project. In March 2000 the State Water Commission issued bonds generating $27.5 million, thus reducing available bonding authority to $57.3 million. Recognizing the need for water development projects in addition to those identified in Senate Bill No. 2188, the 2003 Legislative Assembly allowed authority for the unissued $57.3 million to expire but then authorized $60 million of bonding authority for statewide water development projects. In June 2005 the State Water Commission issued bonds generating $60 million. As of June 30, 2008, the State Water Commission has outstanding bonds totaling $87.7 million for other statewide water projects.

Because tobacco settlement dollars are not projected to remain uniform each year, the State Water Commission has established a repayment schedule to correspond with the projected tobacco receipts. Although repayment amounts are based on the projected receipts, the scheduled repayments must be made regardless of the actual receipts. Payments for existing water development and bonds will be $16.9 million for the 2009-11 biennium; however, funds must be available to make the August 1, 2011, payment. This payment occurs the second month of the new biennium before the receipt of any of that biennium's tobacco settlement dollars. That repayment will be $8.4 million.

Drinking Water State Revolving Loan Fund

An additional source of funding for water supply development projects is the drinking water state revolving loan fund. Under this program, funding is distributed in the form of a loan program through the Environmental Protection Agency and administered by the State Department of Health. The fund provides below market rate interest loans of 3 percent to public water systems for capital improvements aimed at increasing public health protection and compliance under the federal Safe Drinking Water Act.

The State Water Commission's involvement with the fund is twofold. First, the State Department of Health must administer and disburse funds with the approval of the State Water Commission. Second, the State Department of Health must establish assistance priorities and expend grant funds pursuant to the priority

list for the drinking water treatment revolving loan fund after consulting with and obtaining the commission's approval. The process of prioritizing newer modified projects is completed on an annual basis. Each year the State Department of Health provides an intended use plan, which contains a comprehensive project priority list and a fundable project list. The 2008 comprehensive project priority list includes 91 projects with a cumulative total project funding need of $326.7 million. The funding list of 18 projects includes $36.4 million in loans from the total federal grants of $100 million for fiscal years 1997 through 2008. Available funding for the program for 2009 is anticipated to be approximately $8 million.

GARRISON DIVERSION CONSERVANCY DISTRICT

The Pick-Sloan Missouri Basin Program

On December 22, 1944, the United States Congress authorized the Flood Control Act of 1944, later renamed the Pick-Sloan Missouri Basin program. The primary purpose of the Pick-Sloan Missouri Basin program was for flood control, navigation, irrigation, and hydropower which would be facilitated by the construction of dams on the main stem of the Missouri River. These dams include Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point.

Under the plan, North Dakota was originally to receive its irrigation from water diverted from the Fort Peck Dam in eastern Montana. Originally known as the "Missouri-Souris Project," the project included 1.275 million acres of irrigation.

Between 1944 and 1965, soil surveys and studies were conducted to assess the feasibility of irrigating the 1.275 million acres originally planned for North Dakota. The studies indicated that the soil in northwestern North Dakota was not suitable for irrigation according to federal irrigation standards. Drainage problems caused by the unusual high density of glacial subsoil was a primary factor. As a result, the Bureau of Reclamation revised the diversion plan proposing instead to take water from the Garrison Dam and Reservoir and irrigate other lands to the east. With the new name "Garrison Diversion," the Bureau of Reclamation 1957 feasibility study on the redesigned project recommended irrigation of 1.007 million acres and other water development in central and eastern North Dakota.

Garrison Diversion Unit

Because of changes to the original plan and the language in the 1964 appropriations act requiring specific reauthorization for all units of the Pick-Sloan Missouri Basin program, the Bureau of Reclamation returned to Congress for reauthorization. During the process of reauthorization, supporters of the project pointed to the many benefits for North Dakota and the need to compensate the state for land inundated by the construction of the Garrison Dam and Reservoir. Others in Congress criticized the large cost of even the scaled-down project, the conflict with federal farm policies, and the relatively small amount of money to be repaid by water users.

On August 5, 1965, Congress addressed these concerns by enacting legislation for the Garrison Diversion Unit. The primary focus of the plan was to include in the initial stage municipal and industrial water, fish and wildlife development, recreation, and flood control along with irrigation of 250,000 acres. Between 1968 and 1984, construction and preparatory activities progressed on many features.

Garrison Diversion Unit Commission

Even as construction advanced on Garrison Diversion throughout the 1970s and 1980s, it became increasingly apparent that major issues, such as the environment, acquisition of land, economics of irrigation, and Canadian concerns about water flowing from the Missouri River Basin into the Hudson Bay Basin, would require reformulation of the project if it were to be completed. In 1984 construction was halted and a high-level commission was appointed by the Secretary of the Interior to study and recommend a change in direction.

The Garrison Diversion Unit Commission, in its final report issued December 20, 1984, recommended development of a Garrison Diversion Unit significantly different from the project described in the 1957 feasibility report and the project authorized in 1965.

The major recommendations were:

- Irrigation of 130,940 acres of land, none of which drains to the Hudson Bay. Of these, 17,580 acres would be located on the Fort Berthold and Standing Rock Indian Reservations.
- A grant program of $200 million to facilitate municipal, rural, and industrial water service for as many as 130 towns and cities, rural areas, and three Indian reservations.
- A water treatment facility to treat Missouri River water that would be transferred into the Hudson Bay drainage via the Sheyenne River and then the Red River. This would provide municipal, rural, and industrial water for Fargo, Grand Forks, and other cities and rural systems. The cost of building and operating the treatment plant was declared nonreimbursable.
- Mitigation of wildlife impacts on a new basin with specific wildlife features authorized beyond the mitigation requirements.
- Recreation development on a 50-50 cost-share basis.
- The cost of the commission plan was estimated at a total of $1.12 billion in capital costs, including expenditures to date, and $15.8 million in annual operation, maintenance, and replacement costs. Of major concern to North Dakota and the Garrison Diversion Conservancy District was the proposed elimination of the Lonetree Dam and Reservoir and replacement with the Sykeston Canal. The Lonetree Reservoir was to be the project's principal regulating reservoir; without it, future expansion was limited. The Lonetree Dam and Reservoir remained an authorized feature of the commission plan, but construction funds may only be requested after a finding of need by the

Secretary of the Interior and satisfactory consultation with the government of Canada.

Garrison Diversion Unit Reformulation Act

As a provision of the fiscal year 1986 appropriation, Congress stipulated that new construction contracts not be awarded or additional land acquired unless the project was reauthorized by March 31, 1986. The state and the Garrison Diversion Conservancy District subsequently elected to support reauthorization of the project. The Garrison Diversion Unit Reformulation Act of 1986 was signed into law May 12, 1986, to authorize the recommendations of the Garrison Diversion Unit Commission's final report. In conjunction with the new Act, a "statement of principles" was signed by all the primary stakeholders in the previous project conflicts.

Following the 1986 Act, activities began on municipal, rural, and industrial water supply projects; mitigation of wildlife habitat; and construction continued on some of the water delivery features. The continuing evaluation of a smaller Lonetree Reservoir as a project feature and further analysis of the recommended Sykeston Canal deferred progress with construction of the principal water delivery facilities. In 1990 the President failed to include any funding for the Garrison Diversion Project in his submitted fiscal year 1991 budget.

In connection with the administration's decision to terminate Garrison Diversion funding in fiscal year 1991, the Secretary of the Interior established a task group to develop a policy on support for future funding of the authorized project. The task group's decision was to continue funding only those features of the reformulated project which are consistent with the contemporary water needs, national priorities, and the history of Garrison Diversion, but not to fund features which would be used for mitigation. The recommendations also included continuation of the municipal, rural, and industrial water supply grant program; Indian municipal, rural, and industrial water supply programs; irrigation development on 17,580 acres to include two Indian reservations; continued operation of the Oakes Test Area research activities; recreation, fish, wildlife mitigation, and enhancement initiatives; and a minimum level of operation and maintenance on the already constructed main supply system facilities. Funding for these features would be considered by the administration within the context of national priorities.

Collaborative Process

In November 1993, the North Dakota Congressional Delegation and the Governor requested that the Bureau of Reclamation initiate a collaborative process to find a consensus plan that would meet the contemporary water development and stewardship needs of the state. The collaborative process included representatives of the Standing Rock Sioux, Devils Lake Sioux, Three Affiliated Tribes, the Congressional Delegation offices, and the Governor's office. The Bureau of Reclamation provided technical and administrative support. Under the guidance of the collaborative group, the bureau began a series of studies for the water supply needs of the state. In 1995 the North Dakota Legislative Assembly repealed a portion of the state laws dealing with the preservation of wetlands. The National Wildlife Federation interpreted this action as withdrawal of state support for the statement of principles and withdrew from the collaborative process.

Garrison Diversion Today

Garrison Diversion has turned part of its focus toward supplying the Red River Valley with a reliable supply of quality drinking water. Research suggests that a strong possibility for a drought, such as the one that occurred in the 1930s, could hit the Red River Valley at some point in the next five decades. This drought could be of the same magnitude as the 1930s drought or maybe worse. With the rising population of cities such as Fargo and Moorhead, the water demand during a drought would be even greater than in previous decades.

The Dakota Water Resources Act calls for $200 million of federal appropriations for the Red River Valley Water Supply Project. A study began in 2000 with a memorandum of understanding signed between the state, represented by the Garrison Diversion Conservancy District, and the federal government, represented by the Bureau of Reclamation.

Also included in the Dakota Water Resources Act were appropriations for a $200 million increase in a municipal, industrial, and rural water supply fund; $200 million to meet Indian water needs; and $32.5 million for environmental and recreational needs.

RED RIVER VALLEY WATER SUPPLY PROJECT

The Dakota Water Resources Act of 2000 authorized the Red River Valley Water Supply Project to provide a reliable supply of quality drinking water for the Red River Valley. The Act also mandated the preparation of an environmental impact statement with joint leadership between the federal government and the state. The Governor designated the Garrison Diversion Conservancy District to represent the state in the Red River Valley Water Supply Project. The purpose of the environmental impact statement was to evaluate alternatives to meet the long-term water needs of the Red River Valley in North Dakota and three cities in Minnesota--East Grand Forks, Moorhead, and Breckenridge.

A draft environmental impact statement was released by the Bureau of Reclamation and the state in December 2005. The draft environmental impact statement evaluated eight alternatives to meet the water supply needs of the Red River Valley. Of these, three utilized existing surface water and ground water sources in North Dakota and Minnesota, four imported water from the Missouri River, and one included the future of the Red River Valley if no project were built. The four import alternatives included water treatment plants to reduce the risk of transferring invasive species. A supplemental draft environmental impact statement was released on January 31, 2007, which contained revisions to the draft environmental impact statement and was written to incorporate responses to substantive comments related to environmental issues received on the draft

environmental impact statement. New information became available, and additional analyses relevant to environmental concerns and issues were conducted in response to the comments. After the additional analyses, the supplemental draft environmental impact statement eliminated two of the alternatives contained in the draft environmental impact statement from further consideration and identified the Garrison Diversion Unit import to the Sheyenne River as the state and federally preferred alternative.

The Bureau of Reclamation and the state released the final environmental impact statement on December 21, 2007. This document includes responses to public comments received on the draft and supplemental draft environmental impact statements. The document also contains a final biological assessment prepared in compliance with the Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

After due consideration and evaluation of technical, hydrologic, and design aspects and water permitting and environmental impacts, the state and the Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative.

Proponents of this alternative note the Garrison Diversion Unit import to the Sheyenne River alternative provides positive benefits to the environment and harbors no significant negative environmental impacts. It meets the water needs of the Red River Valley now and in the future. This option also provides the core infrastructure for all water systems in the Red River Valley, thus offering the flexibility of future expansion. It has no technical constructability issues and is the least costly of the three Missouri River import alternatives. The Garrison Diversion Unit import to the Sheyenne River alternative would transport water through the McClusky Canal, then utilize a buried pipeline from a biota treatment facility to the Sheyenne River north of Lake Ashtabula. Lake Ashtabula would act as a regulating reservoir. From there, water would be released in the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water.

GARRISON DIVERSION PROJECT

Red River Valley Water Supply Project

The committee reviewed the history of the Garrison Diversion Project and the status of the Red River Valley Water Supply Project. Concerning the Red River Valley Water Supply Project, the committee learned that the Garrison Diversion Conservancy District submitted a comprehensive report to Congress in December 2008. The report identified selected alternatives, summarized the environmental impact statement, outlined effects on Minnesota-Missouri states, and indicated compliance with the Boundary Waters Treaty of 1909. The selected alternative to deliver water to the Red River Valley is the Garrison Diversion import to the Sheyenne River alternative. The Garrison Diversion Conservancy District is obtaining right of way for the selected alternative, performing permitting and environmental services, developing an operational plan, and working on the preliminary design. The next steps are to obtain a record of decision and congressional authorization for use of Missouri River water. In the future, a master repayment contract must be developed as well as a Red River Valley Water Supply Project construction contract. Representatives of the Garrison Diversion Conservancy District reported that as of December 7, 2009, $21,416,987 has been expended on the Red River Valley Water Supply Project. These funds include $17,217,560 in reclamation funds, $2,223,428 in state funds, $1,302,343 in conservancy district funds, and $673,657 in Lake Agassiz water authority funds.

Municipal, Rural, and Industrial Water Supply Program

The committee reviewed the municipal, rural, and industrial water supply program. As of November 30, 2009, $178,462,347 in funds have been approved for the program. As of that date, $18,774,659 in state grant funds remain, and $75,079,427 in federal municipal, rural, and industrial water supply program funding remain. Representatives of the Garrison Diversion Conservancy District briefed the committee on current municipal, rural, and industrial water supply program projects. These projects include the All Seasons Water Users District System I (Upham Water Supply), the City of Garrison Water System, the North Central Rural Water Consortium, the Northwest Area Water Supply Project, the South Central Regional Water System, the Southwest Pipeline Project, the Traill Rural Water District Regional Water Supply Project, the Tri-County Water District (Lakota Water Supply) Project, and the Walsh Rural Water District Water Supply Project. The committee also reviewed all applications that have been submitted for municipal, rural, and industrial water supply program funds and projects that have been approved for funding.

STATE WATER COMMISSION

Testimony and Committee Activities

The committee reviewed the operations of the State Water Commission and State Engineer's office. The State Engineer's office was created in 1905 to regulate and administer matters concerning the allocation of North Dakota's water resources. The State Water Commission was created in 1937 in response to the 1930s drought and for the specific purpose of fostering and promoting water resource development throughout the state. The State Engineer's office is a regulatory agency that regulates drainage, water rights, and the appropriation of water while water development is promoted by the State Water Commission.

The committee reviewed specific water projects. The committee learned the current primary project of the State Water Commission is Fargo flood control. The Fargo flood control project is a United States Army Corps of Engineers project to develop a plan for flood damage reduction in the Fargo-Moorhead metropolitan area. The State Water Commission is a cooperating

agency in the environmental impact statement and National Environmental Policy Act process. The Fargo flood control project consists of two projects--a state flood control project in south Fargo and a main project in the center and northern portions of the city. The committee learned the United States Army Corps of Engineers has estimated the total cost of Fargo flood control at between $650 million and $1 billion, depending on which alternative is selected.

The committee learned the State Water Commission has committed $74 million--$45 million during the 2009-11 biennium--for the south Fargo flood control project. In addition, the Legislative Assembly has appropriated $500,000 to the State Water Commission to conduct a Red River Basin long-term solutions study. This study will consist of three phases--inventory of potential solutions, an analysis of solutions and how the solutions might be integrated, and development of an implementation strategy.

The committee reviewed State Water Commission expenditures for the 2007-09 biennium from the resources trust fund and municipal, rural, and industrial water supply funds. There are three projects owned by the state of North Dakota--the Northwest Area Water Supply Project, the Southwest Pipeline Project, and the Devils Lake Outlet Project. During the 2007-09 biennium, $26,823,628 was expended on the Northwest Area Water Supply Project, including $9,895,651 from the City of Minot and $14,521,638 in federal funds. A total of $15,905,336 was expended on the Southwest Pipeline Project during this period, of which $6,650,910 was federal funds and $3,005,000 was bond proceeds. Expenditures on the Devils Lake Outlet Project during this period were $1,357,552, including $51,837 from political subdivisions. Total State Water Commission project expenditures during the 2007-09 biennium were $64,086,525. The committee also reviewed the resources trust fund, the contract fund, and the list of State Water Commission anticipated projects for the 2009-11 biennium.

2009 State Water Management Plan

The committee reviewed the *2009 State Water Management Plan*. The State Water Commission is required by Sections 61-01-26 and 61-02-14 to develop and maintain a comprehensive water plan for the sound management of North Dakota's water resources. Over the years, the commission has developed numerous state water management plans to identify statewide water resource management and development project needs and funding required for implementation. The most recent comprehensive plan prior to 2009 was completed in 1999.

Since 1999 the state water management plan has been updated with supplements every biennium with water development reports published prior to the Legislative Assemblies. Reports serve to assist the Legislative Assembly in the decisionmaking process in appropriating funds for water management and development.

The purpose of the *2009 State Water Management Plan* is to provide information regarding current and projected water use, identify areas where water is generally available for new beneficial uses, identify goals and objectives for water resource management and development, identify potential water resource management and development projects and programs, provide current information regarding North Dakota's revenue sources for water resource management and development, serve as a formal request for funding from the resources trust fund, and broadly identify water resource management and development opportunities and challenges as well as recommendations to address them. One of the most important components of this plan is to identify where water may be available for new development and use. The State Engineer appropriates water for beneficial use in North Dakota. Some aquifers and streams in North Dakota are on the brink of becoming fully appropriated, meaning that much of the state's available water resources have been permitted for municipal, agricultural, industrial, and recreational purposes. The *2009 State Water Management Plan* provides general information and assists development interests in identifying potential water uses when locating facilities. The plan also assists development interests in the very early planning stages of project development, thus avoiding unnecessary expense and delay in project implementation.

The *2009 State Water Management Plan* identifies six goals to more clearly define where North Dakota's long-term water management and development efforts will be directed in the future. These goals are to:

- Regulate the use of water resources for the future welfare and prosperity of the people of North Dakota;
- Develop water resources for the future welfare and prosperity of the people of North Dakota;
- Manage water resources for the future welfare and prosperity of the people of North Dakota;
- Educate the public regarding the nature and occurrence of North Dakota's water resources;
- Collect, manage, and distribute information to facilitate improved management of North Dakota's water resources; and
- Conduct research into the processes affecting the hydrologic cycle to improve the management of North Dakota's water resources.

The plan identifies North Dakota's water resources, contains a vision for the 21st century, and reviews special water topics. The plan identifies several recommendations for future study intended to serve as a starting point in addressing long-term water management issues. These water management recommendations include:

- Funds must be secured to address dam safety issues and dam repairs.
- Drought planning, including monitoring, impact assessment, and mitigation planning efforts, must be implemented.
- Reliable quality water to eastern North Dakota must be provided during drought conditions.
- Conservation measures must be evaluated and implemented so that water requirements for all water users and interests can be met.

- The State Engineer should continue to study and collect water resource data that is essential in identifying available water sources for agricultural and industrial users, for meeting municipal demands, and for fish and wildlife and recreation purposes.
- The state must continue to protect and preserve North Dakota's right to Missouri River water now and for future generations.
- Climate change and the possible effect on the state's water resources is an unknown factor that should be monitored and assessed closely in the future.
- The state must continue to work to address the flooding crisis involving the rise of Devils Lake.
- Several counties do not have the revenue or capability of raising revenue to meet their local cost-share requirements in funding much-needed water development projects, and the commission should study the ability-to-pay concept to determine if a more equitable cost-share policy may be developed and implemented for local entities that have difficulty in complying with their cost-share requirement based upon current policy.
- New partnerships involving cooperative and collaborative efforts should be sought to resolve water management problems and issues.
- Water resource managers at all levels should be encouraged to partner in efforts not only to educate the public about the potential problems involving aquatic nuisance species but to monitor and mitigate for the occurrence of aquatic nuisance species in North Dakota's waters.
- The commission should continue to educate potential future industrial water users about the quality and availability of North Dakota's surface and ground water resources.
- In response to declining water levels in the Fox Hills aquifer, the State Engineer should continue to direct large-scale ground water diversions to other sources.
- The summer advanced watershed applications workshop should be designed through Project WET to provide up to 20 secondary educators per year the tools they would need to connect their classroom students with practicing watershed scientists and scientific methods and techniques.
- A youth technology and career exploration program should be designed through Project WET for a select group of grades 9 through 12 students whose teachers have been involved in the summer advanced watershed applications workshop.
- Project WET, with a cooperative effort of many organizations, associations, and government agencies, should develop water and natural resource education programs that involve individuals in their own communities.

North Dakota Sovereign Land Management Plan

The committee reviewed the *North Dakota Sovereign Land Management Plan*. The plan was published in January 2007. North Dakota's sovereign lands are those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams. The state plays an important role in the management of sovereign land through the State Engineer, who is responsible for administering the state's nonmineral interests in North Dakota's sovereign land.

The goal of the State Engineer in managing this vital resource is to manage, operate, and supervise North Dakota sovereign land for multiple uses that are consistent with the public trust doctrine and are in the best interest of present and future generations.

On January 3, 2005, the Attorney General issued an opinion regarding the ability of land developers to construct wildlife habitat on sovereign land to satisfy federal mitigation requirements. In that opinion, the State Engineer was advised to issue sovereign land permits only when they are consistent with a comprehensive sovereign land management plan. The State Engineer's authority to manage sovereign land is derived from Section 61-33-05, which states the State Engineer is to manage, operate, and supervise sovereign land. The State Engineer has adopted administrative rules to create a framework to follow legislative directives. However, the Attorney General has indicated management of sovereign land requires the State Engineer to incorporate the public trust doctrine into any management scheme. Specifically, the State Engineer is to create a plan pursuant to the public trust doctrine to manage sovereign land. In response to this directive, the State Engineer has developed the sovereign land management plan to continue to fulfill the State Engineer's duty to manage sovereign land pursuant to the public trust doctrine, satisfy requirements of opinions issued by the Attorney General, provide approved consistency in the management of sovereign land and administration of regulations, serve as a complement to administrative law concerning sovereign land management, and generally improve management of the state's sovereign land for present and future generations. The committee reviewed the sovereign land management plan recommendations and action strategies and advancements that have occurred as a result of the recommendations included in the plan.

SOUTHWEST PIPELINE PROJECT

The Southwest Pipeline Project is a state-owned project administered by the State Water Commission and operated and maintained by the Southwest Water Authority. The Southwest Pipeline Project transports raw water from Lake Sakakawea to Dickinson where it is treated and delivered to customers throughout southwest North Dakota and Perkins County, South Dakota. In 1983 the Legislative Assembly authorized the State Water Commission to construct and operate the Southwest Pipeline Project. Construction of the project began on the main transmission lines in Mercer County in 1986. In October 1991, water delivery began to Dickinson. The Legislative Assembly established the

Southwest Water Authority in 1991 to manage, operate, and maintain the Southwest Pipeline Project. The authority is governed by a board of directors. Today the pipeline serves 28 communities, more than 4,000 rural service locations, 14 small businesses, and 15 raw water customers.

The committee learned construction is substantially complete for Phase 3 of the Medora-Beach regional service area. Recent construction included providing rural service to residents in the north Fairfield service area, the Grassy Butte service area, as well as the west Killdeer Mountain pocket in northern Dunn County. The Fairfield Reservoir, a 197,300-gallon potable water reservoir, located northwest of Fairfield, was placed into service in 2009.

With the completion of the Medora-Beach regional service area, the focus for the Southwest Pipeline Project has turned to completion of the Oliver, Mercer, and north Dunn regional service area. Construction of the main transmission line from north of Zap to Hazen is underway.

To date, $177.48 million has been expended on the Southwest Pipeline Project. Of this total, $54.83 million is from the resources trust fund; $73.92 million is from municipal, rural, and industrial water supply funds; $.93 million is from the Natural Resources Conservation Service; $7.04 million is from revenue bond proceeds; $15.70 million is from United States Department of Agriculture Rural Development loans; $15.09 million is from United States Department of Agriculture Rural Development grants; $1.5 million is from the drinking water state revolving loan fund; and $8.47 million is from the water development trust fund.

DEVILS LAKE

The Devils Lake Basin is a 3,810-square-mile subbasin of the Red River of the North. At current water levels, the lake itself has no natural outlet. A natural surface water connection from the northeast edge of the Devils Lake Basin boundary to the Red River Basin has been documented during several years since 1997. On April 2, 2010, Devils Lake reached a new record level, surpassing the previous record of 1,450.73 feet mean sea level, set on June 22, 2009. Since that time, the lake has continued to rise to 1,451.71 feet mean sea level. Devils Lake naturally spills into Stump Lake at 1,446.5 feet mean sea level. Since water began trickling into Stump Lake in 1999, Stump Lake has been filling and has become part of Devils Lake--rising 43.5 feet in the process. From its lowest 1993 elevation of 1,422.62 feet mean sea level to its end of April 2010 elevation of 1,451.5 feet mean sea level, Devils Lake has risen 28.88 feet.

Devils Lake naturally overflows into the Sheyenne River at 1,458.0 feet mean sea level. The Sheyenne River is a tributary of the Red River of the North, which flows into Canada. Since glaciation, Devils Lake has been fluctuating from overflowing to dry. This variability is the normal condition of the lake reflecting climate changes. Devils Lake has reached its spill elevation of 1,458.0 feet mean sea level and overflowed into the Sheyenne and Red Rivers at least twice during the past 4,000 years. The last Devils Lake spill into the Sheyenne River occurred less than 2,000 years ago. At its spill elevation, Devils Lake will cover more than 261,000 acres. In March 1993, Devils Lake had a surface area of 44,230 acres. As of April 30, 2010, Devils Lake covered approximately 177,100 acres, or about 208 square miles. During that same period, the volume of water in Devils Lake has grown more than six times.

In response to forecasted lake levels in 2009, the United States Army Corps of Engineers began working on another levy raise and extension for the City of Devils Lake. The cost of this project is estimated at approximately $100 million. The City of Minnewaukan continues to be threatened by Devils Lake. The community's school, which is currently at or above capacity, is at an elevation of 1,458 feet mean sea level, but the city's sewer, water lines, and water tower are expected to start experiencing problems with ground water and soil saturation at the lake's current elevation.

The state completed construction of an outlet to the Sheyenne River in the summer of 2005. The original outlet pumps were designed for a maximum operating capacity of 100 cubic feet per second. Modifications constructed in early 2010 increased that capacity to 250 cubic feet per second. Representatives of the Devils Lake Joint Water Resource Board and State Water Commission testified that the flooding of Devils Lake has cost approximately $655,978,408. These costs include $341,702,941 in transportation infrastructure costs, $172,987,729 in construction costs of the Devils Lake levee, $44.4 million in Federal Emergency Management Agency costs, $42 million for the Devils Lake Outlet, $26,215,000 in United States Army Corps of Engineers' expenditures, $25,672,737 in rail transportation repairs, and $3 million in Housing and Urban Development expenditures.

Representatives of the Devils Lake Joint Water Resource Board testified on the agricultural impacts of Devils Lake flooding. For every foot of elevation increase, 9,000 acres to 10,000 acres of farmland is lost. The annual agricultural economic impact of Devils Lake flooding is estimated at $83 million and 530 jobs lost.

The committee received testimony from resort owners concerning the economic impact to recreational interests of Devils Lake flooding and from Lake Region Human Service Center personnel concerning the emotional impact of Devils Lake flooding. The committee also received testimony from representatives of the Greater Ramsey Water District concerning challenges facing the district in supplying water and sewer services in the face of rising lake levels. The committee received testimony from Lake Region regional law enforcement representatives concerning problems of emergency responders, law enforcement, and fire departments responding to emergencies in the face of closed roads and roads that are underwater.

The committee learned the State Department of Health recently increased the allowable sulfate level for the upper reach of the Sheyenne River to Baldhill Dam from 450 milligrams per liter to 750 milligrams per liter for all designated uses except municipal use. However,

there are no municipal water users on the upper reaches of the Sheyenne River. The standard on the Red River is 250 milligrams per liter, and the objective at the Canadian border is also 250 milligrams per liter. The federal Environmental Protection Agency is reviewing this determination.

The committee learned the State Department of Health has requested that the Environmental Protection Agency allow the state to amend stream standards for sulfate downstream of the Baldhill Dam and along the Red River. The state supported this request by noting above-normal precipitation, saturated conditions in the upper basin, and the ever-increasing risk of an uncontrolled discharge from Stump Lake necessitates immediate government action. An uncontrolled discharge from Stump Lake through the Tolna Coulee to the Sheyenne River would result in the loss of all designated water quality uses in the Sheyenne River as well as a substantial reach of the Red River of the North.

The state noted that in order to accommodate increased flows from Devils Lake and greatly reduce the risk of an uncontrolled discharge of very poor quality water, a change in the numeric criterion in the lower Sheyenne River for sulfates from 450 milligrams per liter (30-day arithmetic average) to 750 milligrams per liter is necessary. Furthermore, the Environmental Protection Agency must work with the state to adjust the sulfate water quality standard for the Red River which could, up to 500 milligrams per liter, accommodate moving water out of Devils Lake.

In addition to Devils Lake flooding, the committee reviewed proposed studies of the James River watershed, Knife River watershed, Red River Basin long-term flood solutions, and the Sheyenne River watershed. The committee also reviewed several studies that are currently underway, including the Antelope Creek feasibility study, Beaver Creek watershed study, Boise de Sioux River water retention feasibility study, Devils Lake Basin studies, Fargo-Moorhead upstream area study, Fargo-Moorhead metropolitan area study, Fargo southside flood control project study, Pembina River Basin study, and the Red River Basin watershed study.

Committee Consideration

The committee considered a bill draft to authorize construction of a Devils Lake east end flood control structure. The bill draft provided that in order to protect the health, safety, and general welfare of the people of the Devils Lake Basin, Sheyenne River drainage basin, and Red River drainage basin, the State Water Commission shall design and construct a structure on the east end of Devils Lake to prevent a catastrophic, uncontrolled release of water from Devils Lake. The bill draft was declared to be an emergency measure.

Members of the committee determined that an appropriate source of funding would be the resources trust fund, and the amount of the appropriation for the project should be $5 million.

Recommendation

The committee recommends Senate Bill No. 2054 to appropriate $5 million from the resources trust fund for construction of a Devils Lake east end flood control structure as an emergency measure.

WATER RESOURCE DISTRICTS IN NORTH DAKOTA

The committee reviewed the organization and operation of water resource districts in North Dakota. The Legislative Assembly enacted authority to establish legal drain boards in 1895. In 1935 the Legislative Assembly established water control and conservation districts separate from legal drain boards. In 1973 the Legislative Assembly determined that each county should have a water conservation and resource district and also changed the name of these districts to water management districts. In 1977 the Legislative Assembly authorized joint boards under which authority two or more water management districts could do what one board could do alone. The first joint board was the Red River Joint Board, which was created in 1979.

During the 1979-80 interim, the Legislative Council studied water organizations. At that time, there were drain boards, water management districts, and joint boards, all of which were designed to manage water. The Legislative Council reviewed the Nebraska system under which one district does all of the functions done by separate water organizations and which are organized on watershed boundaries as opposed to political boundaries. The result of this study was to change the name of water management districts to water resource districts and to change the name of legal drains to assessment drains. Also, legal drain boards were abolished, and authority for drainage was placed with water resource districts.

The committee learned that rural water systems patterned after the rural electrification movement in the 1930s began to be established in the 1970s. These systems were developed to supply water to underserved rural areas. Today there are 31 rural water systems in North Dakota. The Legislative Assembly next authorized water districts with additional powers, and most rural water systems have converted to water districts. The committee received testimony that North Dakota has an excellent water management system that is nonduplicative, effective, and serves the people with an emphasis on local governance.

RED RIVER BASIN MAPPING INITIATIVE

The committee reviewed the Red River Basin mapping initiative. The objectives of the initiative are to collect high-resolution data for the Red River Valley, establish third-party quality assurance and control, establish a web-based data archival and dissemination vehicle, and engage in public outreach.

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-22 establishes the Workers' Compensation Review Committee. Under this law, the committee is directed to review workers' compensation claims brought to the committee for the purpose of determining whether changes should be made to the workers' compensation laws. Section 54-35-22 establishes the membership of the six-member committee as follows: two members of the Senate who are appointed by the majority leader of the Senate, one member of the Senate who is appointed by the minority leader of the Senate, two members of the House of Representatives who are appointed by the majority leader of the House of Representatives, and one member of the House of Representatives who is appointed by the minority leader of the House of Representatives. In addition to this statutory charge to review workers' compensation claims, under Section 65-02-30 the committee was charged with selecting up to four of the elements to be included in the biennial performance evaluation of Workforce Safety and Insurance (WSI). Under this same law, the committee was charged with receiving a presentation of the performance evaluation report and any actions taken resulting from the performance evaluation report.

In addition to the statutory charges, under House Concurrent Resolution No. 3008 (2009) the Workers' Compensation Review Committee was charged with conducting a study of workers' compensation laws in this state and other states with respect to prior injuries, preexisting conditions, and degenerative conditions and was charged with receiving the following three additional reports:

1. Receive a biennial report from WSI regarding compiled data relating to safety grants issued under NDCC Chapter 65-03 (Section 65-03-05);
2. Receive an annual report from WSI which includes reports on pilot programs to assess alternative methods of providing rehabilitation services (NDCC Section 65-05.1-06.3); and
3. Receive a report from WSI before August 1, 2010, on the results of WSI's study of postretirement benefits available to an individual whose disability benefits end at the time of Social Security retirement eligibility (2009 S.L., ch. 613, § 1).

Committee members were Representatives Dan Ruby (Chairman), Bill Amerman, and Francis J. Wald and Senators Richard Marcellais, Terry M. Wanzek, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

CLAIM REVIEW

General Background

The state laws addressing workers' compensation in North Dakota are primarily found in NDCC Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code Title 92. Additionally, Article X, Section 12, of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, essentially providing for a constitutional continuing appropriation to the workmen's compensation fund for the purpose of paying workers' compensation benefits.

Section 54-35-22 became effective August 1, 2005, and was originally set to expire August 1, 2007; however, this expiration clause was repealed in 2007. The committee must meet once each calendar quarter unless the committee chairman determines a meeting that quarter is not necessary because there is no claim to review. The committee is required to operate according to the laws and procedures governing the operation of other Legislative Management interim committees. The committee followed the typical interim calendar.

2005-06 Interim

During the 2005-06 interim, the Workers' Compensation Review Committee reviewed 11 workers' compensation claims. The committee recommended the following three bills:

House Bill No. 1038

This bill addressed workers' compensation benefits by increasing coverage for specially equipped motor vehicles for catastrophically injured employees; creating an alternative calculation of additional benefits payable to address employees who were injured before July 1, 1995, but did not receive a determination of permanent and total disability until after July 1, 1995; increasing death benefits to cover a catastrophically injured employee who dies more than six years after the date of injury; expanding who may qualify for a WSI educational loan and decreasing the interest rates for these loans; and decreasing the period an injured employee is required to wait before receiving supplementary benefits. This bill passed.

Senate Bill No. 2042

This bill expanded the presumption of compensability for full-time paid firefighters and law enforcement officers to provide coverage, not to exceed 56 days, if a medical examination produces a false positive result for a condition covered under the presumption. This bill passed.

Senate Bill No. 2043

This bill provided that for purposes of claims brought under the presumption of compensability of full-time paid firefighters and law enforcement officers, a party to a notice of decision has 45 days to request a reconsideration, a party to an administrative order has to request the assistance of the Decision Review Office, and a party to an administrative order or Office of

Decision Review Office notice of completion has to request a rehearing. This bill failed to pass the Senate.

2007-08 Interim

During the 2007-08 interim, the Workers' Compensation Review Committee reviewed 15 workers' compensation claims. The committee recommended the following nine bills:

Senate Bill No. 2055

This bill clarified the burden of proof under the workers' compensation law that provides a presumption for firefighters and law enforcement officers. The bill provided the presumption that the impairment is work-related can be overcome by clear and convincing evidence, rather than by competent evidence, the impairment is not work-related. This bill passed.

Senate Bill No. 2056

This bill amended the workers' compensation calculation for medical travel mileage reimbursement to an injured employee so actual mileage is used to compute the reimbursement instead of using city-limit-to-city-limit mileage. This bill passed.

Senate Bill No. 2057

This bill provided a scheduled workers' compensation permanent partial impairment (PPI) award for impairment of vision. The bill provided a graduated schedule for vision impairments beginning at 20/80 corrected visual acuity. This bill passed as amended to provide coverage for vision impairment beginning at 20/200 corrected visual acuity.

Senate Bill No. 2058

This bill provided a distinction between a WSI independent medical examination, which contemplates an actual examination of an injured employee, and an independent record review, which contemplates a file review of an injured employee's medical records. This bill passed.

Senate Bill No. 2059

This bill provided for WSI to pay an injured employee's attorney's fees and costs for a case review. The bill allowed an injured employee who uses the services of the Decision Review Office to be eligible for payment of $500 for attorney's fees and $150 for costs associated with an attorney consultation before an administrative hearing is held. This bill passed.

House Bill No. 1061

This bill expanded the workers' compensation coverage of artificial members. The bill extended the definition of "artificial members" to include a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. This bill passed.

House Bill No. 1062

This bill expanded the workers' compensation rehabilitation awards by allowing WSI to provide an additional 20 weeks of benefits for injured employees participating in retraining programs and provided an additional two months of benefits while the injured employee is participating in work search and directed WSI to implement a system of pilot programs to assess alternative methods of providing rehabilitation services. This bill passed.

House Bill No. 1063

This bill limited the circumstances under which WSI may deny medical coverage or recoup medical payments. This bill passed.

House Bill No. 1064

This bill shortened to three years the period of time after which an injured employee receiving temporary total disability benefits or permanent total disability benefits qualifies for supplementary benefits and shortened to three months the period of time an injured employee is required to be off wage-loss benefits before WSI recalculates benefits. This bill passed.

Review Procedure

The committee began the interim by establishing a procedure and protocol for conducting its charge of reviewing claims. Minor revisions were made to the application packet used during the 2007-08 interim. The revised application packet included a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

The committee discussed how best to notify the public of the committee's activities in order to solicit injured employees to have their claims reviewed and how to deal with the possibility of an injured employee seeking a second review by the committee. The committee published the application packet on the legislative branch website and notified legislators and the following organizations of the online applications: WSI, North Dakota Chamber of Commerce, North Dakota Medical Association, AFL-CIO, and the State Bar Association of North Dakota.

The committee adopted the following procedure, which was used during the previous interims to determine eligibility for a claim review and to prepare the injured employee for the committee meeting at which the claim was reviewed:

1. An injured employee would submit to the Legislative Council office a complete "Release of Information and Authorization" form. In addition, the applicant could submit a "Review Issue Summary" form on which the applicant could summarize the issues the applicant wanted the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwarded a copy of the application information to an assigned ombudsman at WSI, who reviewed the

application to make a recommendation regarding whether:
   a. The applicant was an injured employee or the survivor of an injured employee;
   b. The workers' compensation claim was final; and
   c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.
3. Following this review, the ombudsman contacted the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacted the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the injured employee was contacted by Legislative Council staff and the ombudsman to begin the case preparation.
5. Regardless of whether the injured employee accepted the assistance of the ombudsman, the ombudsman prepared a summary of the case to present at the committee meeting.
6. At the injured employee's discretion, the ombudsman assisted the applicant in organizing the issues for review.
7. The ombudsman prepared a case review packet and included this in a binder of information prepared for each committee member, Legislative Council staff, and the WSI representative. Although these binders were distributed at each committee meeting, they remained the property of WSI and were returned at the completion of each committee meeting.
8. Before each committee meeting, the ombudsman met with Legislative Council staff to review the case summary and workers' compensation issues being raised.
9. Upon receipt of these workers' compensation issues, Legislative Council staff notified the WSI representative of the identity of the injured employee who would be appearing before the committee for a case review, and, as appropriate, the basic issues being raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for each of the four claims reviewed by the committee:

1. Committee members had an opportunity before and during each committee meeting to review the binder of claim review packets and to review each injured employee's WSI electronic records.
2. The ombudsman summarized the injured employee's case.
3. The injured employee presented the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues were presented by the ombudsman, the injured employee, a representative of the injured employee, or more than one of these individuals.
4. One or more representatives of WSI commented on the workers' compensation issues raised.
5. Interested persons were invited to comment on the workers' compensation issues raised as part of the claim review.
6. The committee members had an opportunity to discuss the issues raised.

Each of the four claims reviewed was allocated a half day--either the morning or afternoon portion of a committee meeting--during which the initial review was conducted. Following the initial review, the committee retained the authority to continue to discuss issues raised as part of the review. Periodically, the committee would request additional information on specific issues and review this information at one or more future meetings. During each committee meeting at which claims were reviewed, a WSI representative was available to access the injured employee's WSI records electronically.

First Claim

Case Summary

This injured employee was assisted by his wife and an attorney in presenting the information. The injured employee is a new American and because English is not his first language, the Legislative Council staff arranged to have an interpreter available telephonically.

The following is a chronological list of events of the injured employee's workers' compensation case:

- March 10, 2008 - The injured employee filed an application for workers' compensation benefits. The workplace injury resulted in a proximal tibia fracture and multiple metatarsal fractures. Workforce Safety and Insurance found the claim compensable, and benefits were paid accordingly.
- June 9, 2008 - Rehabilitation services were assigned to the case in an effort to determine what type of rehabilitation services would be necessary to assist in his return to gainful employment.
- June 18, 2008 - The injured employee informed WSI's medical case manager and his physician that his mother was ill, and he planned to return to Kosovo to see her. The injured employee stated he planned to be gone for approximately six weeks. The injured employee's treating physician indicated it was okay for the injured employee to travel and wrote a prescription for physical therapy in the event the injured employee required treatment while in Kosovo. Workforce Safety and Insurance verified the injured employee's mother was in fact ill. The WSI claims adjuster made the injured employee aware of the importance of his early return to the United States, preferably in three weeks, to continue with the rehabilitation process and to participate in physical therapy.
- June 20, 2008 - The injured employee and his family left the United States for Kosovo.
- June 27, 2008 - A WSI rehabilitation consultant sent the injured employee a letter requesting that he contact her to schedule a time to meet.
- July 20, 2008 - Workforce Safety and Insurance issued a notice of intention to discontinue/reduce benefits (NOID) informing the injured employee he

was in noncompliance with WSI's vocational rehabilitation program. The NOID indicated the injured employee was in noncompliance with vocational rehabilitation, and according to NDCC Section 65-05.1-04(6) if the period of noncompliance continued for 30 days or a second instance of noncompliance with vocational rehabilitation occurred without good cause, no further disability or vocational rehabilitation benefits will be paid on this claim, regardless of whether he sustains a significant change in a medical condition due to the work injury. The NOID further provided the injured employee had 30 days to contact his claims adjuster to request reconsideration. If the request for reconsideration was not received within 30 days, the decision would become final.

- July 29, 2008 - The rehabilitation consultant submitted a closure report on the claim.
- September 12, 2008 - The injured employee and his family returned to the United States. Because the injured employee had missed the 30-day appeal period, he was no longer eligible for wage-loss benefits.
- September 15, 2008 - The injured employee's wife contacted WSI and reported the return to the United States.
- September 19, 2008 - The injured employee contacted WSI and requested further consideration for the reinstatement of wage-loss benefits. Over the course of the next couple of months, the injured employee was unsuccessful in pursuing appeal of the loss of wage-loss benefits.

Issues for Review

The attorney who assisted the injured employee at the claim review raised the following issues for review:

- The actions and mindset of WSI employees are brought into question in this case. The purpose of WSI is to provide relief to injured employees, but this situation calls into question whether this is actually being done. Workforce Safety and Insurance employees are sophisticated and knowledgeable regarding the state's workers' compensation system. In this case, it appeared as though WSI waited for an opportunity to take this action to close the injured employee's case while he was out of the country. The behavior of the WSI employees seems to be that they can act as a standard insurance company, with the goal of limiting liability. Employee retraining is necessary to change this mindset. Workforce Safety and Insurance's goal should not be to limit liability but instead should be to offer relief to injured employees as appropriate.
- The WSI claims analyst's notes regarding the June 19, 2008, discussion with the injured employee were not drafted until two days following the discussion. It was two days later that these notes indicated WSI's preference the injured employee limit his time away from the country to three weeks.
- The WSI claims analyst's notes did not make any reference to discussion relating to vocational rehabilitation, which is relevant because the actual denial of services was based upon the injured employee's failure to comply with vocational rehabilitation. Instead, the claims analyst's notes stressed the importance of the injured employee complying with his medical treatment, and if he was not compliant with his medical treatment, it may jeopardize his benefits. The injured employee did stay in compliance with his medical treatment, as he continued to receive physical therapy while in Kosovo.
- The vocational rehabilitation worker initially did not attempt to make contact with the injured employee because she understood he was out of the country. However, it was only after the vocational rehabilitation consultant received a telephone call from WSI that contact was attempted.
- In looking at the different dates relative to this claim, although the injured employee stayed overseas more than six weeks, he thought he had permission to be out of the country, and even if he had returned within six weeks, WSI had already issued the NOID within that time.
- The 30-day statutory appeal has an element of finality that prevents an injured employee from taking any other actions. In the case of vocational rehabilitation, the injured employee has no ability to cure noncompliance.
- Although WSI's guidelines need to be clear and need to be followed fairly, on occasion guidelines can result in arbitrary decisions. The finality and complicated nature of our state's workers' compensation system require that WSI provide clear explanations and that injured employees are not put into a situation like the one this injured employee was put in. The finality results in harsh consequences for injured employees, and a change to consider might be to allow WSI more discretion in reopening the appeal in cases of hardship.
- Possible legislative action might be to change the law to direct WSI to send written correspondence to a designated interpreter in order to address language issues when English is not the injured employee's first language.

The injured employee and his wife raised the following additional issues:

- The information provided by WSI to injured employees regarding obligations of the injured employee is inadequate.
- In all their conversations with the WSI claims analyst, at no time did the claims analyst ever provide the injured employee with the level of detailed information that the committee received by WSI in the course of the claim review.

Workforce Safety and Insurance Response

The WSI representative testified that every time WSI makes a decision that affects benefits, a notice is issued. In addition to issuing a notice, the North Dakota

Supreme Court has issued a decision requiring that WSI pay 21 days of wage-loss benefits to allow the injured employee to appeal the decision with minimal impact on loss of benefits.

The WSI representative testified the North Dakota workers' compensation vocational rehabilitation law and process are very clear. The injured employee's goal is to get better and return to work. When WSI is unable to proceed with vocational rehabilitation, WSI needs to be able to take the necessary steps. In the case of an injured employee who is out of touch with WSI for three months, it would be unbelievable for WSI not to require vocational rehabilitation for that individual. Failure of WSI to provide these vocational rehabilitation services would be a failure of WSI to do its job.

The representative of WSI testified that given the large volume of cases and the complexity of the workers' compensation law, it would be impossible to explain all possibilities and all conceivable impacts to every injured employee. Workforce Safety and Insurance is facing a constant balancing act. It is very important that WSI provide clear guidelines that are applied evenly to everybody because if WSI is authorized to exercise significant judgment in making these decisions, WSI is at risk of being perceived as discriminating against individuals.

Comments by Interested Persons

The committee received testimony from a representative of an injured employee support group that although it appears that technically WSI followed the law, WSI does have the authority to exercise continuing jurisdiction under Section 65-05-04. By exercising its continuing jurisdiction, WSI could change the outcome of the injured employee's case. If WSI chooses not to use the continuing jurisdiction law, the law could be amended to make it clearer that WSI is directed to use this continuing jurisdiction law to deal with special circumstances such as those raised by this injured employee. The standard WSI follows in determining whether to utilize the continuing jurisdiction law was questioned.

The committee received testimony from a representative of an injured employee support group that during the 2009 legislative session, the North Dakota Senate considered amending NDCC Section 65-05-04, but because the proposed amendments were too broad, the legislative measure did not pass. Under existing law, WSI can open any case at any time for any reason. However, WSI appears to be unwilling to admit that it has made any mistakes or that there could be a better outcome and, therefore, does not exercise continuing jurisdiction.

Second Claim

Case Summary

The injured employee was assisted by Representative David Monson in presenting her case. The following is a chronological list of events of the injured employee's workers' compensation case:

- April 15, 2007 - The injured employee filed an application for workers' compensation benefits for an injury to her coccyx (tailbone) which occurred while she was employed as a security guard. Workforce Safety and Insurance accepted the claim, and benefits were awarded accordingly.
- May 2, 2007 - The injured employee returned to work with no restrictions with the same employer.
- May 16, 2007 - The injured employee was terminated from her job. The injured employee believed she was terminated for reasons associated with the workplace injury; however, her employer indicated the termination was for some other reason.
- May 22, 2007 - Workforce Safety and Insurance issued a notice of decision (NOD) informing the injured employee her temporary total disability benefits were being discontinued effective April 29, 2007, as she had been released to return to work without restrictions. This NOD was not appealed and, therefore, it became final.
- September 7, 2007 - The injured employee obtained employment with a different employer doing security work; however, she worked for this firm for four hours and then terminated the job, claiming the job caused her too much pain to perform the required duties.
- October 29, 2007 - The injured employee accepted a part-time temporary job working as a convenience store clerk, and she continued this work until December 10, 2007, at which time her employment with the store ended.
- January 15, 2009 - The injured employee reapplied for disability benefits with WSI.
- February 6, 2009 - Workforce Safety and Insurance issued a NOD denying disability benefits on reapplication, indicating the injured employee had not proven that she had sustained an actual wage loss caused by a significant change in her compensable medical condition. The injured employee was not employed and had not worked since December 10, 2007, and, therefore, did not have an actual loss of earnings. The injured employee appealed this decision.
- September 11, 2009 - The administrative law judge issued his findings of fact, conclusions of law, and order, determining the injured employee failed to prove by a preponderance of the evidence that she sustained actual wage loss caused by a significant change in her compensable medical condition. The order further stated the general written statements by the injured employee's doctor that the injured employee tried to go back to work but her coccyx pain worsened significantly over the next six weeks while trying to do her job was not supported by the medical record and therefore not persuasive. The order also stated this is not to say the injured employee's physical condition did not significantly worsen since April 30, 2007, but simply put, she failed to show that her physical condition worsened when she was employed mainly because she was rarely employed during this time period. Before the injured employee's

employment at the convenience store, her condition was already significantly worse and her brief employment since then may have caused her pain while doing the job, but that did not make her physical condition worse. The injured employee did not appeal this administrative order to district court and, as such, the order became final.

Issues for Review

The injured employee raised the following issues for the committee to consider:

- There are problems with the state's workers' compensation system and the way employers are able to treat employees following a workplace injury. For example, the employer commented to the injured employee that her workforce injury was going to cost the company a significant amount of money and due to her concern of losing her job following the injury, the injured employee returned to work without restrictions because if she had any restrictions placed on her by her physician, her employer would have refused to allow her to return to work.
- Workforce Safety and Insurance does not tell injured employees all of their options. When she returned to work, WSI did not take any effort to tell her what to do if her condition worsened or if her employer fired her. An improvement to the system may include having WSI provide one-on-one contact with the injured employee. For example, the information she learned from WSI in preparing for this claim review was very informative and would have been useful to know at the time of the injury and while her claim was active.
- If an injured employee gets fired after returning to work, there should be some sort of red flag raised at WSI. In her case, WSI never took any notice of the fact that shortly after returning to work following the workplace injury, her employer fired her.
- Under the workers' compensation system, WSI does not take the time to clearly explain an injured employee's eligibility for reimbursement for meals and miles.
- When an employee is injured on the job, WSI needs to be very careful to listen to the unique situation of each injured employee. Her workplace injury impacted all facets of her life; however, her WSI case analyst did not seem interested in taking the time to understand this. Additionally, the WSI claims analyst never took the time to explain what a PPI award is, and she had no idea that she might be eligible for one.
- The WSI treatment plans are very complicated, and it is very challenging for an injured employee to understand all the nuances of these treatment plans. Additionally, the approval plan to receive care and pharmaceutical policies can be too cumbersome and time-consuming.
- There should be some link between the receipt of Social Security disability benefits and the eligibility for workers' compensation benefits.
- The system does not result in common sense outcomes, for example, in her case there appears to be no doubt that her inability to work is related to her workplace injury, but due to the way the system works, she is not eligible for wage-loss benefits. There is something wrong with a system that allows this to happen.
- Pursuit of an appeal of a WSI order is difficult due to the injured employee's legal expenses.

Representative Monson testified that up until the injured employee's workplace injury, she earned approximately $32,000 a year. However, under our workers' compensation system, it has been determined that she does not have a loss of wages. The system has let her down in part because she did not know the system, and she missed deadlines for appeal or did not understand the repercussions of letting an order stand and not appealing.

Workforce Safety and Insurance Response

The committee received testimony from a representative of WSI indicating that NDCC Section 65-05-08 addresses reapplication for benefits. Under this section, the basic two-prong test is determination of whether there has been a significant change in the injured employee's medical condition and, if so, whether this change has resulted in a loss of wages. Workforce Safety and Insurance's interpretation of this law has been upheld by the North Dakota Supreme Court.

The committee received testimony regarding the circumstances under which WSI pays for an injured employee's attorney's fees. If an injured employee wins on appeal, WSI pays that injured employee's attorney's fees. As a result of legislation recommended by this committee last interim, there is a new program that allows for an injured employee to receive funds to consult with an attorney; however, this funding is available only after the injured employee has used the services of the WSI Decision Review Office and before the case is heard by an administrative law judge. The maximum funds WSI will provide on appeal for an injured employee's attorney are $3,000 at the administrative hearing level, $5,000 at the district court level, and $8,000 at the Supreme Court level. These amounts are cumulative.

A representative of WSI testified that the federal Social Security disability program differs from the state's workers' compensation program in several important ways, including that there are different standards in order to qualify for Social Security disability versus being able to qualify for workers' compensation benefits and there are different interested parties. It is possible for an injured employee to qualify for both programs or for an injured employee to qualify for one program but not the other.

The committee received testimony from a representative of WSI that once an injured employee stops receiving benefits from WSI, WSI no longer tracks the injured employee's employment status; therefore,

WSI would not be aware of an injured employee's termination following a workplace injury.

Comments by Interested Persons

The committee received testimony from a representative of an injured employee support organization that it is not uncommon for an injured employee to be fired following a workplace injury. In these instances, technically an employee is not told the employee is being fired due to the injury, but realistically this is often the reason for the termination. It was recommended that NDCC Section 65-05-33 relating to fraud be amended so that it has a greater impact on employers. Employers should be penalized for making false statements when the result prevents the injured employee from receiving benefits.

A representative of an injured employee support organization testified that the process for reapplication for WSI benefits seems problematic because it does not allow for a reevaluation of the injured employee's status. The workers' compensation system allows WSI to make presumptions regarding an injured employee's earning ability and, therefore, it seems there should also be presumptions regarding an injured employee's loss of wages.

The committee received testimony from a representative of an injured employee support organization stating how in the criminal arena there is recognition of how important it is for defendants to receive legal counsel, but in workers' compensation there is not. An injured employee has difficulty finding legal representation.

Third Claim

Case Summary

The following is a summary of events of the injured employee's workers' compensation case:

April 30, 1958 - The injured employee filed an application for workers' compensation benefits in connection with a workplace injury to his bilateral lower leg, left lower arm, lumbar spine, left knee, and right shoulder. The injured employee's injuries occurred when a boom truck came in contact with a power line, and he sustained an electrical shock and burn injury resulting in a right below the knee amputation and above elbow amputation. Workforce Safety and Insurance accepted liability of the injury and paid the associated medical benefits and disability benefits.

Issues for Review

The injured employee's primary issue was the denial of payments for medical treatments he felt were directly related to his workplace injury. Workforce Safety and Insurance denied payment for the following treatment provided between 1997 and 2000:

- Laryngeal cancer;
- Infected cysts and impotence;
- Upper gastrointestinal bleeding testing and symptoms of abdominal pain;
- Hiatal hernia with reflux esophagitis, peptic ulcer disease, and gallbladder condition;
- Acne rosacea and conjunctivitis;
- Treatment of hypertension; and
- Bladder and kidney problems.

Workforce Safety and Insurance denied payment for these treatments as being unrelated conditions to the injured employee's workplace injury. The letters of denial for these services were not appealed by the injured employee in a timely manner and, as such, became final.

Another issue raised by the injured employee was WSI's denial of payment for placement of a feeding tube.

- September 21, 2009 - The injured employee's treating physician provided WSI with a letter indicating that the injured employee had lumbar spine problems and had been on long-term Tramadol, which ultimately created a problem swallowing and he had to have a permanent feeding tube placed in his stomach. The physician further stated the physician felt the injured employee's case needed to be given strong consideration to provide the injured employee with some help from WSI. The issue relating to the use of long-term Tramadol was reviewed by WSI's director of pharmacy, and it was his opinion the Tramadol did not contribute significantly to the injured employee's need for a feeding tube.
- September 25, 2009 - Workforce Safety and Insurance sent a letter to the injured employee asking him to provide additional medical information that he might have from any other treating doctors and have this information forwarded to WSI for review. Workforce Safety and Insurance did not receive any additional medical information regarding the feeding tube, except for a letter dated September 28, 2009, by the injured employee's treating physician indicating the injured employee has had multiple problems over the years, including significant problems with his stomach and esophageal stenosis. The physician went on to state the injured employee had gone through a lot of stress over the years and this had created problems on his stomach, and it was the physician's belief the injured employee's lungs were weak and his voice was weak due to the toll that everything was taking on his body over the years. The treating physician stated "I feel that everything that has pretty much gone on since electrocution is related to the electrocution and it is all injury related and I feel consideration needs to be given to that fact."
- October 23, 2009 - The injured employee's attorney drafted a letter for the injured employee to sign suggesting the injured employee ask WSI to accept liability for the problems he has with his stomach, esophagus, and lungs. The injured employee sent a copy of this draft letter to WSI for review and consideration.
- November 3, 2009 - WSI sent a letter to the injured employee indicating it had received his

request for reconsideration of WSI's earlier decisions dated May 1, 2000, and December 6, 2000. However, due to the fact the request was not received within the 30-day appeal period, WSI's decision remained final.

Workforce Safety and Insurance Response

A representative of WSI testified that the issues raised by the injured employee primarily focus on medical denials that occurred in 2000. Upon receipt of the request for coverage, the WSI claims adjuster did not make the link to the work injury that occurred 42 years earlier. The claims adjuster requested additional information, but that information was not provided.

The committee received testimony from a representative of WSI that WSI does recognize that medical technology has changed significantly over the years, and WSI did exercise continuing jurisdiction in 2009 to determine whether the injured employee's treating physician's claim that his secondary medical problems were related to his work injury. However, WSI's pharmacist made a determination that the secondary injuries were not related to the medications the injured employee was taking for his work-related injury.

Comments by Interested Persons

The committee received testimony from a representative of an injured employee support organization that the representative meets with many injured employees who do not understand the 30-day appeal period or who had a valid reason for not appealing within the 30 days. It was recommended that WSI should exercise the authority it has for continuing jurisdiction more often. It may be helpful to pass legislation giving WSI more concrete guidelines regarding when to exercise continuing jurisdiction.

The committee received testimony that the current workers' compensation system results in hard feelings and finger pointing. The system feels very impersonal to injured employees and, therefore, it would be beneficial to have a system in which WSI has more discretion in order to make the system more personal and more responsive to the needs of injured employees. Perhaps it would be possible to keep the 30-day appeal period and then have a six-month opportunity to establish extenuating circumstances for not complying with that 30-day appeal period.

The committee received testimony from an injured employee that it is not uncommon for an injured employee to suffer from depression due to a workplace injury. When an individual is depressed, it is difficult for that individual to get things done to meet deadlines. The current system needs to be changed, such as separating the WSI Decision Review Office from WSI entirely.

Fourth Claim

Case Summary

The injured employee was accompanied by her daughter and a representative of an employee support organization. The following is a chronological list of events of the injured employee's workers' compensation case:

- February 20, 1995 - The injured employee filed an application for workers' compensation benefits in connection with an injury to her right knee, left wrist, and cervical spine which occurred when she slipped on some ice while carrying out the garbage while working as a manager of the American Legion Club. Workforce Safety and Insurance accepted liability, and benefits were paid accordingly.
- May 1, 1995, through August 24, 1995 - The injured employee was paid temporary total disability benefits, after which she was released to return to work without restrictions and WSI terminated wage-loss benefits. The injured employee appealed the order.
- August 27, 1996 - The order terminating wage-loss benefits was affirmed at the administrative hearing level. The order was not appealed and became final.
- August 4, 1996 - The injured employee filed a reapplication for benefits.
- September 11, 1996 - Workforce Safety and Insurance issued an order denying disability benefits upon reapplication. The injured employee appealed this order and on April 10, 1997, the administrative law judge issued recommended findings of fact, conclusions of law, and an order indicating "it is ordered that the order denying disability benefits upon the reapplication dated September 11, 1996, is reversed in so far as it held as a matter of law that the claimant had not proven actual wage loss attributable to the work injury in connection with her reapplication for disability benefits. It is further ordered the claim be remanded to the bureau for determination of whether the claimant has sustained a significant change in medical conditions as set forth in Section 65-05-08(2)(a), N.D.C.C." Temporary disability benefits were reinstated retroactive to May 4, 1996, and the injured employee was paid temporary total disability benefits from May 4, 1996, through May 3, 2007, at which time she was declared permanently and totally disabled.
- The injured employee was notified by WSI that she would receive permanent total disability benefits until she reached full retirement age as determined by the Social Security Administration. The injured employee appealed the notice indicating she did not agree that her permanent total disability benefits should end at the time she reached retirement age.
- August 2, 2007 - The injured employee requested the services of the Decision Review Office, which issued a certificate of completion indicating no change to the order.
- February 6, 2008 - The administrative law judge issued her recommended findings of fact, conclusions of law, and order affirming WSI's order. The injured employee appealed this order.

- June 26, 2008 - The district court judge issued her decision affirming the WSI order.
- September 8, 2008 - The injured employee appealed the district court judge's decision to the North Dakota Supreme Court.
- May 27, 2009 - The Supreme Court issued a decision in this case, affirming the district court decision, concluding WSI did not err in determining the retirement presumption statute. NDCC Section 65-05-09.3(2) applied to the injured employee's claim. The Supreme Court decision went on to indicate the injured employee did not receive disability benefits for the eight-month period between August 24, 1995, and May 4, 1996. Although she now suggests she remained disabled and unable to work during that period, the injured employee did not appeal from WSI's final order finding that she had been released to return to work, was no longer disabled, and was not eligible for further disability benefits. Furthermore, the injured employee applied for and received unemployment compensation benefits from October 1995 until April 1996. An individual is eligible for unemployment compensation benefits only if she is able to work, available for work, and actively seeking employment. The decision went on to state where, as in this case, a claimant receiving total disability benefits experiences an improvement in her medical condition, is released to return to work, and is found to be no longer disabled, resulting in termination of her disability benefits, the claimant no longer has a reasonable expectation, or right to rely upon, continued disability benefits.
- August 31, 2009 - The injured employee reached full retirement age as determined by the Social Security Administration and effective September 1, 2009, began receiving additional benefits payable under NDCC Section 65-05-09.4. The injured employee will be entitled to receive this additional benefit payable from September 1, 2009, through March 17, 2023.

Issues for Review

The injured employee, her daughter, and the representative of the injured employee support organization raised the following issues for review:

- The documentation WSI used to determine the injured employee could return to work was limited to one document. This document was faulty--not only did the injured employee have no recollection of her doctor ever discussing this release to return to work, but the return-to-work confirmation form itself was not signed by the doctor and the doctor did not have any recollection of having authorized the return to work.
- Workforce Safety and Insurance was not forthcoming in providing the injured employee or her attorney with a copy of the doctor's return-to-work confirmation form.
- The injured employee's doctor did not take any steps to contact WSI in October 1995 when her medical condition deteriorated even further. The injured employee thought a medical provider should update WSI each time a patient is treated.
- It is very difficult for an injured employee to navigate through the workers' compensation system.
- There are some redundancies in the system, and there may be ways to improve the system.
- Injured employees undertake a very emotional journey, which can take over that injured employee's life. It was recommended the workers' compensation program be changed to provide mental health support to help injured employees deal with issues such as anger management.
- If a person were to look at the facts of the case instead of focusing on the process, there would have been a different outcome.
- It is inappropriate for WSI to have an advocate who attends medical consultations of the injured employee. A medical consultation is private, and it is unacceptable for WSI to interject that advocate into the process unless the patient authorizes that participation.
- When the original deal was struck with the injured employee in 1919 and the workers' compensation system was enacted, it was not intended that benefits be terminated at retirement age.

Workforce Safety and Insurance Response

The committee received testimony from a representative of WSI summarizing the law relating to the workers' compensation retirement presumption. The retirement presumption law was enacted in 1995 and when initially enacted, the legislation clarified that workers' compensation is a wage-loss benefit. Initially the intent was that the law would apply retroactively to all claims regardless of the date of injury. In 1997 the additional benefits payable law was enacted. The additional benefits payable law was intended to compensate injured employees for the loss of their contribution to Social Security retirement. However, in 1998 there were two Supreme Court cases that recognized an injured employee has a vested interest or an expectation interest in workers' compensation benefits; therefore, the 1995 law does not apply to an injured employee who has a 1995 injury and receives uninterrupted wage-loss benefits.

The representative of WSI testified that since 1995, legislation has been introduced each legislative session to repeal the retirement presumption. In 2009, Senate Bill No. 2426 and House Bill No. 1525 would have repealed the retirement presumption. The fiscal impact of such a repeal is estimated at $20 million to $27 million with an approximate $4 million per year rate impact.

Comments by Interested Persons

The committee received testimony from a representative of an injured employee support organization that it is important for the system to

recognize the mental health of an injured employee. A workplace injury can consume an injured employee, and support should be provided to support the injured employee as well as the injured employee's family.

A representative of an injured employee support organization testified that an injured employee needs to know how to request a complete file, as there are very specific things that need to be specified in the request. Overall, requesting a copy of the injured employee's file is very complicated to a layperson.

Considerations

The committee considered whether steps could be taken to improve communication between WSI and the injured employee. The committee received information regarding the reading level of WSI forms. The application of an online readability application for a WSI notice to discontinue or reduce benefits indicated the number of years of education a person needs to be able to understand the text easily on the first reading ranged from grade 10.69 to grade 12.96.

The committee was informed that WSI continues to evaluate and revise WSI forms, outgoing communications, and publications. Workforce Safety and Insurance is in the process of addressing the reading levels of these communications. There are approximately 1,200 form letters that WSI sends to injured employees and employers; therefore, this review likely will take at least one year to complete.

The committee considered whether steps could be taken to improve the injured employee's understanding of the possible consequences of WSI actions. The committee was informed that WSI recently put together a Claims Committee that will review how best to convey actions to claimants. Annually, WSI issues approximately 30,000 decisions. The Claims Committee is considering how WSI can follow up with the most important communications to improve the effectiveness of this communication.

The committee considered requiring that WSI notices be mailed using certified mail return receipt requested instead of by first-class mail. The North Dakota Century Code specifies that WSI use first-class mail. When WSI has experimented with certified mail with return receipt requested, this method of mail had the unintended consequence of decreasing the number of notices that were actually received by the injured employees.

WORKERS' COMPENSATION LAW STUDY

Background

House Concurrent Resolution No. 3008 (2009) was introduced by Representatives George J. Keiser and Francis J. Wald and Senator Jerry Klein. The legislative history indicates WSI supported the resolution and that the resolution was introduced in response to a recommendation of the 2008 WSI performance evaluation report. Recommendation 6.6 of the report, which was rated as a high priority, provided in part:

> In our work, BDMP observed that the North Dakota statute is more conservative than most other jurisdictions as it relates to prior injuries, pre-existing or degenerative conditions, triggers and aggravations and impairment rating percentages. BDMP recommends that a study group formed of all the stakeholder groups be brought together to review how other jurisdictions' statutes handle these important Workers' Compensation issues.

Study Approach

The committee selected this study as one of the four elements included in the WSI performance evaluation. The performance evaluation was presented to the committee on Friday, August 13, 2010. The portion of the performance evaluation addressing the workers' compensation law study is addressed in the **PERFORMANCE EVALUATION** portion of this report, including recommendations relating to this study.

SAFETY GRANTS REPORT

The committee received the biennial report from WSI regarding compiled data relating to safety grants issued under NDCC Chapter 65-03.

REHABILITATION SERVICES PILOT PROGRAM REPORT

Report

The committee received the first annual report on WSI's system of pilot programs to allow WSI to assess alternative methods of providing rehabilitation services. The report indicated WSI is in the initial stages of collecting and analyzing data regarding WSI rehabilitation services.

The report indicated the two issues that have been recognized as perceived rehabilitation services needs are:

1. There may be value in enhancing the scholarship program. These enhancements, coupled with the loan program, may have positive outcomes.
2. There often are unfulfilled needs to allow adults to gain the skills required outside the two-year training. Typically this skills training role is filled by the Adult Learning Centers; however, WSI is looking at whether there may be private providers who would also fulfill this need.

Recommendation

The committee recommends House Bill No. 1050 in response to the information provided as part of the rehabilitation services pilot program report. The bill creates a vocational rehabilitation grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The program uses funds already in the WSI educational revolving loan fund.

POSTRETIREMENT BENEFITS STUDY

Under House Bill No. 1525 (2009 S.L., ch. 613, § 1), WSI was charged with providing a report to the committee on the results of WSI's study of postretirement benefits available to an individual whose disability benefits end at the time of Social Security

retirement eligibility. Workforce Safety and Insurance requested that the committee include this study topic as one of the four elements the committee selects to be addressed in the biennial performance evaluation of WSI. The performance evaluation recommendations related to this postretirement benefits study are included under the **PERFORMANCE EVALUATION** portion of this report.

PERFORMANCE EVALUATION

In accordance with NDCC Section 65-02-30, at the beginning of the interim, the committee selected four elements to be included in the WSI performance evaluation, and the State Auditor selected four elements to be included in the performance evaluation. The elements selected by the committee included a study of the adequacy of North Dakota postretirement benefits to fulfill WSI's study requirement under House Bill No. 1525 (2009) and a comparison of other state's workers' compensation laws with respect to prior injuries, preexisting conditions, and degenerative conditions to fulfill the committee's study charge under House Concurrent Resolution No. 3008 (2009).

The State Auditor awarded the contract for the performance evaluation to Sedgwick Claims Management Services, Inc. (Sedgwick CMS). The performance evaluation addressed the following eight elements:

1. Claims.
   a. Evaluate denied claims.
   b. Analyze the percentage of claims adjudicated within 14 days.
   c. Evaluate the PPI threshold.
2. Contracts.
   a. Review large contracts with vendors in effect during the period covered by the evaluation and conduct an analysis of the performance and cost-effectiveness of the vendors for these contracts.
   b. Determine if the costs of the services performed by the vendors are reasonable in comparison with other workers' compensation organizations. Evaluate if the outside vendor's performance is reasonable in relation to the contract and to the performance of similar duties in other workers' compensation organizations. Determine if contracting the services with outside vendors is more efficient or effective than performing the service in house.
   c. Determine if the contracts were appropriately bid and awarded in compliance with state laws, rules, and regulations as well as WSI policies. If contracts were extended rather than rebid, determine if this was appropriate and if the extension was beneficial to WSI versus rebidding the contract.
3. Evaluate the Internal Audit Division.
4. Study of adequacy of North Dakota's postretirement benefits and additional benefits payable.
   a. Evaluate the additional benefits payable benefit structure.
   b. Determine how current additional benefits payable recipients' total benefits received are impacted when Social Security retirement benefits are considered in conjunction with additional benefits payable.
   c. Make recommendations as to whether any changes are necessary and indicate the corresponding fiscal impact to the premium rate structure as a result of the proposed changes.
5. Compare other states' workers' compensation laws with respect to prior injuries, preexisting conditions, and degenerative conditions.
6. North Dakota narcotic utilization by injured employees.
   a. Evaluate North Dakota prescription narcotic utilization trends.
   b. The evaluation should determine if North Dakota's profiles are outside the national trends after adjustment for our labor force.
   c. The evaluation should include recommendations for methods to control and address any variations in narcotic prescription rates and treatment methodologies.
7. Evaluate the impact of moving to the sixth edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides).
   a. Evaluate the impact of potential adoption of the sixth edition of the AMA Guides to rate PPI in North Dakota.
   b. Identify complications and methods for addressing them within any implementation and project the potential financial impact implementation would have.
8. Evaluate the implementation of the most recent performance evaluation recommendations.

For the eight elements of the performance evaluation, the report prepared by Sedgwick CMS included recommendations that were identified by priority level, WSI's response to the recommendations, and Sedgwick CMS's replies to WSI's responses. The material in this report is limited to the recommendations and does not include WSI's responses or Sedgwick CMS's replies.

Claims Denial

Report Recommendations

The WSI performance evaluation recommendations relating to claims denial stated:

> *Recommendation* 1.1: WSI has a current metric (see Recommendation 1.4) which it consistently cannot reach. The primary reasons for this shortcoming pertain to additional investigative processes that are needed to make correct compensability determinations. These additional processes typically pertain to claims where additional information is needed, most frequently either from injured workers or medical providers. For all claims in this delayed group, we

recommend that WSI target a decision date no later than 60 days from date of registration.

Recommendation 1.2: Standardize the claim denial processes among the WSI claim supervisors, particularly where those denials pertain to North Dakota statutes and administrative codes. As supervisors provide the first level of claim denial oversight, denial consistency can be enhanced if supervisors view denial rationale in a consistent fashion.

Recommendation 1.3: Utilize the IME process to obtain the necessary responses to the questions asked in FL332 if the treating physician does not reply timely or does not provide answers to the medical/legal questions contained in the document. Use of the WSI Medical Director's internal medical review to deny a claim continues to support the public perception that WSI possesses an unfair advantage.

Committee Recommendation

The committee does not make any legislative recommendation regarding this element of the WSI performance evaluation.

Adjudicated Claims

Report Recommendations

Recommendation 1.4: Because of legitimate reasons for adjudication determinations to be delayed, as noted in Recommendation 1.1, we recommend that the timely adjudication metric be changed from 75% to 60%.

Recommendation 1.5: When the injured worker has not completed or signed a C1, WSI should seek information in its employee contact calls whether the injured worker has or intends to seek medical treatment for the alleged injury. Employer level contacts should be encouraged to solicit this information at the time the claim is filed so that it is available for claims adjusters within 1-2 days after registration. If no medical treatment is going to be sought, the claim can be denied expeditiously. Should the employee have a change of mind later, the claim can be reopened and a new decision made based upon more current information and the appropriate form submission.

Recommendation 1.6: For claims that require extended questionnaire requests, WSI should obtain the information required in the questionnaires via three-point contact calls. After internal completion of the form, send a copy of the completed form to the injured worker with a document requesting that they confirm the information by signature within five business days. In the interim, medical records requests may be generated and records returned and evaluated without delay.

Recommendation 1.7: Encourage policyholder use of business facsimile and electronic mail options to facilitate the return of injured worker completed forms when the employee has not returned them within a reasonable timeframe.

Committee Recommendation

The committee does not make any legislative recommendation regarding this element of the WSI performance evaluation.

Permanent Partial Impairment Threshold

Report Recommendations

Recommendation 1.8: Develop a process whereby WSI initiates the PPI evaluation process on its own initiative rather than requiring that the injured worker request the evaluation. As part of this process, WSI could send its appointment letter via certified mail. Once WSI receives notice that the appointment letter has been received by the injured worker, it can contact the injured worker to confirm he/she will attend the appointment and travel arrangements (when required) can be finalized as well.

Recommendation 1.9: Develop a revenue neutral model for the PPI threshold given the expected reduced frequency of PPI awards should a shift occur from the 5th Edition of the AMA Guides to the 6th Edition, as recommended in Element Seven. We have provided one option (reducing the threshold to 10%) for achieving that objective that is admittedly a rough estimate based on available information at the time of this performance evaluation.

Recommendation 1.10*:* Prior to closing a case that is not in the auto adjudication claim set, we recommend that WSI note in a consistent place in the claims system whether the injured worker had no PPI or may have had an undetermined level of PPI that did not rise to the level of a PPI evaluation. For those with no PPI, the note can read "zero PPI." For those with an uncertain level of PPI, the note can read, "unknown PPI." Cases in the unknown grouping should then be considered for review in conjunction with subsequent injuries to determine if the overall effect of combining injuries will produce a ratable impairment.

Committee Consideration and Recommendation

The committee consideration and recommendations relating to the PPI threshold element of the performance evaluation are addressed under the **Committee Considerations and Recommendation** portion of the seventh element of the performance evaluation--**Evaluation of Move to Sixth Edition of AMA Guides**.

Evaluation of Contracts

Report Recommendations

Recommendation 2.1: WSI should pursue the option of retaining its own staff to manage the vocational rehabilitation services in the State of North Dakota. We further recommend that WSI partner with CorVel in an orderly transition of services. This could result in an agreement

between the parties that WSI phase the transition to cause as little disruption to current injured workers participating in the vocational process as well as to the consultants providing vocational services, many of whom may wish to seek employment with WSI. WSI should develop a business plan that includes staffing, expenses, places of operation, position requirements, and training. The plan should also include how the new staff will be managed and by whom, including whether or not any additional management, supervisory or administrative staff need to be retained to meet service objectives.

Recommendation 2.2: WSI should develop a metric that evaluates Return to Work Case Managers' effectiveness based upon the ODG mid-range days. The metric would be based on the mid-range day count and would capture how many claims are resolved within the mid-range as a percentage of all claims in each case manager data set. The metric would not only include an evaluation of the outliers (cases exceeding the at-risk days) but also include an evaluation of some of the cases between the mid-range date and at-risk date to see what could be done to shorten disability periods between those two dates. To establish the metric it will be necessary to capture cases by the following:

- Onsite Return to Work Case Manager
- Injured Worker Name and Claim Number
- ICD9 Code
- ODG Mid Range Days
- ODG At Risk Days
- Actual TTD Days
- Total number of cases that hit Mid Range Days by Return to Work Case Manager as a % of all claims in the data set

Once WSI has had this metric established for a period of six months to a year, WSI should develop an incentive program for its case managers to achieve higher levels of RTW performance.

Recommendation 2.3: Audit the results of the Return to Work Case Mangers so a determination can be made on their effectiveness in Return to Work. WSI should develop a metric that would look at all reported losses in 2008, actual TTD being paid in 2008 and compare to all reported losses in 2009 and actual TTD being paid in 2009. Take this analysis year over year and make sure cutoff periods are the same. This should allow WSI to ensure the effectiveness of the Return to Work Case Managers to facilitate return to work and decrease the need for TTD.

Recommendation 2.4: Utilize the ODG Benchmarking Facility Report to determine which facilities are performing better than others at keeping the TTD days below the ODG at risk days. This report allows for WSI to review performance of Return to Work Case Managers to determine if spikes are due to unusual claim activity, if the employer is unable to accommodate return to work restrictions, or if there are areas of concern with a designated case manager or medical facility.

Recommendation 2.5: Files with complex medical issues are being referred to triage. As part of the triage process the files are reviewed by the triage team including in-house medical staff as appropriate. A recommendation for further plans of action should be documented in the claim file under the "Triage" notepad entry. The plan of action should consist of a synopsis of the claim, issue being reviewed in triage, and the plan of action that would include plans to address complex medical issues, pharmacological issues, and other mitigating medical factors in the claim.

Recommendation 2.6: WSI should determine whether Temporary/Incidental insurance is in the best interests of its policyholders given the fact that in the six years the coverage has been in place no claims have been managed through this out-of-state program. As part of this evaluation, we recommend WSI canvas other state regulators about the need for this coverage given the jurisdictional requirements that exist in their respective states. Further, WSI should consider this coverage in the context of the number of claims that actually do occur out of state, and there are hundreds annually, as one factor in its determination about whether this coverage is actually needed.

Recommendation 2.7: WSI should more adequately document the full scope of its consultative/broker arrangement with Trean Corporation (Trean). To the extent Trean provides consultative services that are beyond those performed in conjunction with Accident Fund, those services and associated professional fees should be well-defined in a separate service agreement.

Recommendation 2.8: WSI should evaluate its commitment to the utilization of the MIRA II product before investing any additional resources into creating management processes surrounding its use and future application in the new claims management system.

Recommendation 2.9: WSI should identify at least one management level report that will be run at least quarterly to identify any shifts in the organization's incurred values, and to identify trends in reserving amongst the claim units.

Recommendation 2.10*:* Develop a metric which measures the work product of the Physician Advisors. Measurements would include number of reviews being performed, types of requests being reviewed, timeframe for completion of reviews, outcome of request, appeals generated, outcome of appeal (upheld or overturned), and if overturned, was additional medical information received that supported the subsequent approval. The audit results could be reviewed to ensure performance expectations are being met and

would be useful when contracts are being reviewed for renewal.

Recommendation 2.11: Create surveys which would be completed by DR Department and Claims Team prior to Physician Advisor contract renewals that would solicit information about provider performance and satisfaction scores amongst the DR and Claims Departments. These surveys could be utilized as training tools for the Physician Advisor if areas were discovered where the satisfaction score may have declined. These surveys would also become part of the contract renewal record that could benchmark performance and satisfaction over time.

Recommendation 2.12: As part of the expansion of service for the Medical Advisor it was suggested that he come to the WSI office in Bismarck for training in January 2009. WSI should confirm that this was completed. We also recommend that regular meetings are held with the Medical Director and DR Director and staff on a regular basis so any issues can be addressed and to further the development of the team and DR processes.

Recommendation 2.13: In evaluating patterns of care, we expect to see different cost outcomes and utilization patterns depending on the specialty of the provider involved. In our review of the data elements being transmitted by WSI to CGI, we did not see a specialty indicator. We recommend that this field be captured so provider analysis can be part of the suite of report offerings available to WSI.

Recommendation 2.14: Extract standard key performance indicators from the service contract and create a more formalized performance evaluation process for both field and fraud investigations.

Recommendation 2.15: Utilize outside counsel to provide semi-annual training for WSI departments, providing case law updates and strategies to improve claims handling processes and outcomes and manage risk on the policyholder side.

Recommendation 2.16: When it is time to re-bid this contract, you might consider whether there would be a financial advantage to outright purchasing and owning the content of the system. It may cost more up front to own the content, but if the content would be in use for a number of years, it could be less expensive for WSI overall. One important consideration in this process would be whether you anticipate that the content would need frequent updates. If so, who (within WSI or outside of WSI) would be capable of updating the content and how much expense would be associated with it? Would that added expense still mean a savings to WSI?

Committee Recommendation

The committee does not make any legislative recommendation regarding this element of the WSI performance evaluation.

Evaluation of Internal Audit Division

Report Recommendation

Recommendation 3.1: The Decision Review Office (DRO) and Internal Audit both report to the Board Audit Chair. Opportunities may well exist in the future for the Board Audit Chair to recommend audit topics that grow out of potentially adverse trends observed by DRO staff. We recommend that the Board look for such opportunities in the future.

Committee Recommendation

The committee does not make any legislative recommendation regarding this element of the WSI performance evaluation.

Evaluation of Adequacy of Postretirement Benefits

Report Recommendations

Recommendation 4.1: WSI should review retirement presumption statutory language in the context of the Merrill decision in Utah to determine if that case may have relevance in North Dakota. Our concern is the unequal application of the statute predicated on whether or not a person is entitled to SSR benefits or a retirement benefit in lieu of SSR.

Recommendation 4.2: We recommend that WSI propose language to the 2011 Legislature with changes relating to the ABP benefit statute that address those workers who are injured close to their retirement age (as more fully described earlier in this section) such that they may receive benefits prior to ABP entitlement for up to two years.

Recommendation 4.3: If Recommendation 4.2 is not adopted by the legislature, then we recommend that an ABP benefit be made available to injured workers whose disabling injuries occur within one year of their retirement and that the ABP for these workers would extend for up to one year.

Committee Consideration and Recommendation

The committee considered, but does not recommend, a bill draft that would have made workers' compensation additional benefits payable available to an injured employee who received workers' compensation wage loss benefits for less than one year before reaching the retirement presumption.

The committee recommends House Bill No. 1051 to provide up to two years of workers' compensation disability and rehabilitation benefits to an employee who is injured within the two years preceding the employee's presumed retirement age.

Comparison of Other States' Workers' Compensation Laws

Report Recommendations

Recommendation 5.1: Amend the existing internal WSI Claims Procedure 120 to require claims adjusters to send a questionnaire to the

treating physician and/or an IME to inquire as to whether the employment substantially accelerated the progression or substantially worsened the severity of the pre-existing injury, disease or condition. Provide training to all affected WSI Claim and DRO staff.

Recommendation 5.2: At the time a compensability decision is made for a claim with a preexisting/trigger defense, WSI claims adjusters and supervisors should determine if the underlying condition would have progressed similarly absent the work injury, per WSI Claim Procedure 120.

Recommendation 5.3: In case circumstances where there is a prior medical condition or preexisting work restriction, WSI should obtain this information to determine if there is a substantial objective baseline from which to proceed, such as input from treating physicians familiar with the patient's medical condition(s). This would allow WSI to establish an objective baseline and an accurate fact basis from which to proceed. The injured worker and the treating physician should be asked to provide documentation outlining any change in the injured worker's functional level of activity (including activities of daily living, if appropriate), change in any prior level of physical impairment, and/or a change in treatment frequency or severity attributed to the work incident.

Recommendation 5.4: Utilize the IME process to resolve disputes arising out of claim denials for pre-existing conditions, prior conditions and degenerative conditions.

Recommendation 5.5: We recommend that WSI prepare legislation for consideration by the legislature which repeals the aggravation statute for injuries on or after a date in 2011 to be determined by the legislature.

Committee Consideration

The committee considered, but does not recommend, a bill draft that would have repealed NDCC Section 65-05-15, the workers' compensation aggravation law. The committee received testimony that repeal of the aggravation law without additional clarification would result in a gap in how the state's workers' compensation system would address coverage of preexisting conditions.

Evaluation of Narcotics Utilization

Report Recommendations

Recommendation 6.1: WSI should develop an early intervention program for narcotic utilization. The process should include the following steps:

- A review of the case by WSI medical staff to determine whether the second narcotics fill seems reasonable.
- If the second fill seems reasonable, then the medical staff should document when a subsequent review of prescribed narcotics would be warranted.
- If the second fill does not seem reasonable, then a peer-to-peer conversation should occur between the WSI Pharmacy Director or comparably qualified doctor and the prescribing physician.
- Whenever contact is made by the Pharmacy Director or his designee, the outcome of the call should be a clear understanding of why the narcotic is needed and a target date for concluding reliance on narcotics. Alternative medications for treatment of pain should be considered as part of this process.
- To the extent WSI may establish through treatment guidelines or other evidence based methods that the ongoing use of narcotic medicines may not be necessary, WSI should arrange for independent medical evaluations to assess medication needs. Depending on the results of those evaluations, WSI may make medical payment authorization decisions in keeping with established case law in North Dakota concerning the relative weight of medical evidence.

Recommendation 6.2: Related to the first recommendation above, WSI should institute a policy that no later than 30 days after the treating physician begins treating the injured worker with the opioid medication(s) for chronic pain, the treating physician must submit a report to WSI which includes the following:

- A treatment plan with time limited goals
- Relevant prior medical history that should explain the rationale for ongoing use of narcotic medicines
- A statement that the physician has conducted appropriate screening factors that may significantly increase the risk of abuse or adverse outcomes
- An opioid treatment agreement that has been signed by the worker and the attending physician that must outline the risks and benefits of opioids use, the conditions under which opioids will be prescribed, the physician's need to document overall improvement in pain and function, and the injured workers responsibilities. Included in this agreement should be language that indicates that the injured worker may be required to submit to blood and urine screens at the physician's discretion or upon a reasonable request from WSI

Recommendation 6.3: When narcotic medications are being prescribed in chronic pain cases for more than ninety days, we recommend a collaborative review by claims and medical staff to evaluate the ongoing need for these medicines and the reasonableness of the current treatment plan. The team would conference to review the narcotics being dispensed, physician progress reports as it relates to those cases, demonstrated functional improvement of injured worker, decrease in pain of the injured worker, results of

any drug screenings and an assessment of the ongoing need for opioids along with a determination if opioid tapering appears appropriate.

Recommendation 6.4: In those instances where opioid medications can be expected to be prescribed beyond ninety days, WSI should require supplemental Functional Progress Reports from the treating physician no less than quarterly and the report should document the following:

- Pain summary (perception of pain)
- Functional progress summary

Recommendation Note: Guidelines for the treatment of pain suggest that for the ongoing use of narcotic medicines, some reduction in pain should be obtained by the injured worker or there should be some demonstrable improvement in function.

Recommendation 6.5: Prior to participation of an injured worker with a pain management provider, WSI should consider on a case-by-case the value of a comprehensive assessment of the injured worker. This assessment may involve physicians or other medical specialists from physical or mental health disciplines and should seek to establish baseline functionality and pain complaints. Blood and urine testing should be included in this assessment. WSI should also investigate whether there are existing or emerging medical technologies that may assist in the assessment of functional capabilities and compliance.

Recommendation 6.6: A process for the profiling of pain management providers should be developed. Cases in the sampling should track medical costs and disability days from the date of the first visit with the pain management provider. A data sub-set of the medical spend should include the cost of narcotic medicines, including the comparative costs for dispense as written, generic and brand medicines. Profile results should be shared with the providers in the sample and with other interested stakeholders around the state. Injured workers should never be identified in the profiling.

Recommendation 6.7: WSI may have adequate information currently to retrospectively develop data that meets the profiling characteristics suggested in recommendation 6.6 above. Regardless, if outcomes are so varied among providers that WSI believes it is in the best interest of policyholders and injured workers to limit pain management providers, WSI should develop a preferred provider network for that purpose.

Recommendation 6.8: We recommend that WSI have the authority to require that generic medicines be dispensed when they are available. WSI may, at its discretion, allow medicines to be dispensed as written. Dispense as written (DAW) medicines are an expensive component of current pharmacy expenses. Barring a reasonable and compelling medical reason for a brand medication to be prescribed, such as an adverse reaction to the generic or an ineffective outcome, generic medicines should be used when they are available.

Recommendation 6.9: WSI should consider the adoption of a Model Policy for the Use of Controlled Substances for the Treatment of Pain. The Model Policy for the Use of Controlled Substances for the Treatment of Pain was developed in collaboration with pain experts around the country to provide guidance to state medical boards in developing pain policies and regulations. Written in the form of a model policy document, the guidelines provide model language that may be used by states to clarify their positions regarding the use of controlled substances to treat pain, alleviate physician uncertainty about such practice and encourage better pain management. This policy can be found at www.fsmb.org.

Committee Recommendations

The committee recommends House Bill No. 1052 to make previously confidential information of WSI data regarding medical providers relating to medical prescriptions and patterns of treatment open to public inspection.

The committee recommends House Bill No. 1053 to limit workers' compensation coverage of prescription medication to the payment for a pharmaceutical treatment not to exceed the cost of the generic treatment if the generic is available, unless the use of the generic would create a life-threatening side effect.

The committee recommends House Bill No. 1054 to provide a protocol for workers' compensation coverage of pain therapy during the acute stage of an injury and coverage of pain therapy relating to long-term therapy.

Evaluation of Move to Sixth Edition of AMA Guides

Report Recommendations

Recommendation 7.1: The most recent Edition, i.e. the Sixth Edition, of the AMA *Guides to the Evaluation of Permanent Impairment* should be used to determine impairment, including physical, pain and mental health and behavioral impairments.

Recommendation 7.2: Implementation of the Sixth Edition should include training of the evaluating physicians and others to understand how to perform accurate ratings. Training should be followed by testing of competency on the use of the Sixth Edition.

Recommendation 7.3: The assessment and any rating of pain should be consistent with the processes defined in the most recent Edition of the *Guides* (currently the Sixth Edition), If pain accompanies objective findings of injury or illness that permits rating using another chapter in the Guides, than pain-related impairments are not used as "add-ons" and pain impairments are

limited to a maximum 3% whole person permanent impairment.

Recommendation 7.4: Mental and behavioral impairments, when rated, should be performed consistent with the processes defined in the most recent Edition of the *Guides* (currently the Sixth Edition).

Committee Considerations and Recommendation

The committee reviewed two bill drafts relating to the issue of the proposed change from using the fifth edition of the AMA Guides to using the sixth edition. One bill draft provided for the transition from the fifth edition to the sixth edition of the AMA Guides, and the other bill draft amended the workers' compensation PPI multiplier schedule to provide for qualification of a PPI award beginning at 10 percent whole body impairment.

The committee received testimony from representatives of Sedgwick CMS that North Dakota's workers' compensation benefit structure is unique in that it sets a threshold for PPI benefits. Most other states start paying benefits at 1 percent impairment, whereas North Dakota does not pay benefits until 16 percent whole body impairment is reached. More than 40 states use the AMA Guides; however, the states vary regarding the edition used.

The committee received testimony from representatives of injured employees in opposition to transitioning from the fifth edition to the sixth edition of the AMA Guides due to lack of solid information on the impact of the transition. Representatives testified that if the transition to the sixth edition is made, the transition should be implemented in a way to be "person-neutral."

The committee recommends House Bill No. 1055 to provide for the transition from the fifth edition to the sixth edition of the AMA Guides and amends the workers' compensation PPI multiplier schedule to provide for qualification of a PPI award beginning at 14 percent whole body impairment.

Prior Recommendations

Report

The table below sorts the prior recommendations by priority level and by degree of implementation:

Recommendation Priority Level	Implemented	Partially Implemented	Not Implemented
High	12	6	4
Medium	6	5	4
Low	4	3	2
Total	22	14	10

Committee Recommendation

The committee received testimony from a representative of Sedgwick CMS that there is no need to decrease the frequency of the WSI performance evaluations; however, perhaps fewer items could be addressed in the performance evaluations. However, the committee received testimony from a representative of WSI that in 2010, WSI is still in the process of implementing performance evaluation recommendations from 2008; therefore, it might be valuable to increase the time between performance evaluations in order to allow WSI the necessary time to implement the recommendations.

The committee recommends House Bill No. 1056 to decrease the frequency of WSI performance evaluations from once each biennium to once every four years.

WORKFORCE COMMITTEE

The Workforce Committee was assigned the following seven studies:

- Section 19 of Senate Bill No. 2018 (2009) directed a study of the state's system for addressing workforce needs through a workforce system initiative, including a review of the alignment of taxpayer investment with programs, coordination of programs, and the North Dakota workforce strategic plan;
- Senate Concurrent Resolution No. 4002 (2009) directed a study of the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly;
- Section 34 of Senate Bill No. 2003 (2009) directed a study of the establishment of a higher education student trust fund, including available funding sources;
- Section 18 of Senate Bill No. 2018 (2009) directed a study of technology-based entrepreneurship and economic development best practices, including a review of best practices implemented by the Department of Commerce and the effectiveness of the North Dakota Economic Development Foundation;
- Section 6 of Senate Bill No. 2038 (2009) directed a study of the means by which the North Dakota University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs;
- Section 1 of Senate Bill No. 2390 (2009) directed a study of the establishment and development of certified technology parks; and
- By the Legislative Management chairman directive, the committee was directed to study the recommendations of the State Auditor's performance audit report of the Department of Commerce.

In addition to the seven committee studies, the Workforce Committee was charged with receiving the following five workforce-related reports:

- A report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system (North Dakota Century Code Section 15.1-02-18);
- Annual reports from the Department of Commerce Division of Community Services on renaissance zone progress (Section 40-63-03);
- A report from the North Dakota Youth Council before September 1, 2010, regarding its list of issues and concerns pertinent to residents of this state under age 25 and any recommendations (Section 54-07-11);
- Annual reports by the Department of Commerce of filed compilations and summaries of state grantor reports and the reports of state agencies that award business incentives for the previous calendar year (Section 54-60.1-07); and
- A report from the State Board of Higher Education on its study of the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state (Section 2 of Senate Bill No. 2019 (2009)).

Committee members were Senators Tony S. Grindberg (Chairman), Tim Flakoll, Ray Holmberg, Karen K. Krebsbach, Dave Nething, Larry J. Robinson, Mac Schneider, Tom Seymour, and Ryan M. Taylor and Representatives Donald L. Clark, Eliot Glassheim, Nancy Johnson, Lee Kaldor, Lisa Meier, Corey Mock, Lee Myxter, Michael R. Nathe, Ken Svedjan, and Clark Williams.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2010. The Legislative Management accepted the report for submission to the 62nd Legislative Assembly.

REPORTS

Statewide Longitudinal Data System Committee

The committee received a report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system. The report included a review of the history of the committee; a review of the committee's subcommittees, including the activities of the kindergarten through grade 12 subcommittee relating to creation of a kindergarten through grade 12 data warehouse; and a statewide longitudinal data system progress report indicating the project is on time and under budget.

Renaissance Zone

The committee received a report from the Department of Commerce Division of Community Services on renaissance zone progress. As part of this report, the committee received a copy of the *2009 North Dakota Renaissance Zone Program Assessment*, which the Division of Community Services contracted with a third party to conduct in order to evaluate satisfaction levels and expressed program interest for the renaissance zone program.

North Dakota Youth Council

The committee received the report of the North Dakota Youth Council. The council reported that it split into four subcommittees to address issues relating to education; job opportunity; recreation and entertainment; and health, wellness, and safety. The council made the following recommendations and implementation recommendations for each of the subject matters:

Education

Virtual High School for Scholars

Recommendation: Create a "Virtual High School for Scholars" to offer online dual credit and AP

opportunities to meet the demand of students who desire a higher level of achievement.

Implementation: Expand and reorganize the Center for Distance Education to offer additional online AP and dual credit course offerings.

Student-to-Student Retention Advice

Recommendations:

1. Implement or modify retention efforts for college students to be driven by peer-to-peer education.
2. Integrate student services activities with academic credit to create connections between co-curricular activities, academic coursework and career preparation.
3. Encourage partial credit to be awarded to mentors in peer education programs in high school and college.
4. Require a first year experience course for college freshmen that includes a peer mentoring component and approval of a plan of study by an academic advisor.

Implementation:

1. Campuses and schools implement student-to-student peer education programs to increase the retention rate of students in high school and college.
2. North Dakota University System directs campuses to focus retention efforts through peer-to-peer strategies, as supported by the North Dakota University System Strategic Plan 2009-2013, Goal 3, Objective 3.1: Increase completions in targeted high potential programs by ___% (percentage is in process of being defined).

Campus Advising and Tutoring Center

Recommendations:

1. Each college campus shall create access to a central "Advising Center" that is staffed with trained academic and career advisors with hours extending into the evening. The centers should include representation from Job Service North Dakota to create career connections to academic and student life activities.
2. Establish a "Tutoring Center" for remedial needs on each campus that has access in the evenings and also with online capabilities and a focus on peer-to-peer education within residence life.

Implementation:

1. North Dakota University System financially requires advisement support in addition to common outcomes and assessments to understand successful strategies.
2. North Dakota University System implements online degree auditing software.
3. North Dakota University System establishes a student satisfaction accountability measure with specific attention to academic advising.

ND College Awareness

Recommendation: Create awareness of the quality of education and the strengths of ND higher education, including national and regional stature.

Implementation:

1. North Dakota University System encourages campuses to implement recruitment strategies that emphasize the quality of education to North Dakota high school students. Implementation of the program should involve current students speaking to prospective students in settings outside of campus.
2. North Dakota Youth Office receives quarterly talking points about North Dakota college programs from the North Dakota University System Public Affairs professionals.

Sustainable Scholarship Funds

Recommendation: Identify and define a long-term funding structure for North Dakota students to receive scholarship funding.

Implementation: Legislation to ensure sustainability of the North Dakota Career and Technical Education scholarship program and the North Dakota Academic Scholarship. A potential funding source is the interest income from the Foundation Aid Stabilization fund which currently is deposited into the general fund.

Financial Literacy

Recommendations:

1. Require a full disclosure in lending clause for in-state student loans that will detail what the total cost of the loan will be and an estimated monthly payment.
2. Encourage personal finance to be embedded in academic curriculum in elementary, secondary, and post-secondary education.

Implementation:

1. Legislation to require a truth in lending clause for all student loan acceptances.
2. Campuses incorporate personal finance into freshmen orientation classes.

Job Opportunity

K-12 Career Advancement

Recommendations:

1. Promote career planning classes in the 7th and/or 8th grade through a course.
2. Require plans of study for all 9th grade students and require they are updated annually.
3. Encourage college and university campuses to include careers and occupations that the degree would qualify a student for on the college department websites.

Implementation:

1. Local schools offer a required 9 week, credit earning career planning course in the 7th and/or 8th grade that includes career exploration and life skill development.

2. Legislation to require a plan of study for every student in grades 9-12 effective August 2012.

Online Advanced Degrees and Continuing Education

Recommendations:

1. North Dakota University System increases online course offerings in the masters and PhD coursework.
2. North Dakota University System and other continuing education entities increase the amount of Continuing Education Units offered online at a competitive price for the student.

Implementation: The State Board of Higher Education includes an accountability metric in the *North Dakota University System Strategic Plan 2009-13* that relates to online graduate level coursework. [Goal 1: The North Dakota University System is accessible, a view held by all North Dakotans, Objective 1.2: Increase the percentage of North Dakota's total young adult population (25-34) enrolled in North Dakota University System institutions for credit to 6% and Objective 1.5 Increase the total number of graduate and professional degrees awarded by 3%.]

Internship and Scholarship Opportunities

Recommendation: A single-source student website that offers only internship opportunities, job shadowing and other beginning career opportunities readily available to North Dakota students.

Implementation:

1. The North Dakota Youth Office in conjunction with Career Services offices and Job Service North Dakota, North Dakota University System and the Young Professionals network, creates one portal website that encompasses internship opportunities, scholarships, and other resources for young people and career advisors/counselors. Legislation should be developed to fund and structure the single information source.
2. The North Dakota University System strongly encourages campuses to create a singular process for employers to connect with campuses to promote internship offerings. This may include a communication plan that includes social media strategies between faculty, career services and other supporting entities to share internship postings that will result in a clear process for the employer and the student.

Career and Technical Education Course

Recommendation: Increase the number of available Career & Technical Education courses for high school students.

Implementation:

1. Local school districts increase the number of Career & Technical Education courses available through traditional course offerings, collaborative efforts, and online/distance education.
2. Center for Distance Education offers supplemental curriculum to allow for lab time for hands on activities.

Recreation and Entertainment

Entertainment and Transportation

Recommendation: Increase the availability of transportation for young people to metropolitan areas.

Implementation: Local communities coordinate "fun buses" to major events or shopping days to the metropolitan areas that are targeted for young people. This should be done in cooperation with existing Senior Citizen and other Department of Transportation programs.

After School Activities

Recommendation: Create incentives for young people to become involved in planning community events and school activities.

Implementation:

1. Local city councils and other community organizations embrace youth leadership through creating a voting youth position in board structure, or creating a separate entity such as a youth council.
2. Youth Office provides technical assistance for communities to find ways to involve young people in community planning and activities.

Technology Infrastructure and Environment

Recommendations:

1. Workplaces create and adopt social networking policies with input from younger professionals.
2. Communities work to ensure adequate cell and wireless internet services.
3. Assure online services are functional using wireless mobile devices.

Implementation:

1. North Dakota professional industry associations and businesses take the lead in creating sample social networking policies that business and government agencies can modify and adopt.
2. Communities create and implement technology satisfaction surveys with age demographic breakdowns to understand access satisfaction.

Health, Wellness, and Safety

Depression and Suicide Prevention

Recommendations:

1. Increase and focus on training for K-12 teachers and staff on identifying at-risk behaviors and signs of depression, and procedures for notifying qualified professionals.
2. Implement a local awareness mental health initiative in schools to educate students on the warning signs of suicide and depression.

Implementation:

1. Local school districts implement training and professional development opportunities on behaviors of depression and suicide prevention.
2. Department of Public Instruction, Indian Affairs Commission, Department of Health, North Dakota Education Association, Regional Educational Associations, and other North Dakota teacher professional organizations focus on providing informational materials and professional development to teachers.

Sports Participation

Recommendations:

1. Student athletes should be provided a portion of a physical education credit.
2. Lifestyle skills should be emphasized as a separate classroom activity.

Implementation: Local schools, with guidance from the Department of Public Instruction, explore awarding credit for athletic participation, and expanding curriculum to lifelong wellness skill development.

Wellness Initiatives

Recommendation: Implement targeted informational campaigns on wellness with a focus on fitness for young people.

Implementation:

1. The North Dakota Department of Health, in conjunction with campus wellness centers, leads the effort to provide health and wellness information to North Dakota young people.
2. Local schools should create more rigor in physical education curriculum and include wellness/preventative health education to teach lifelong skills.
3. Colleges, communities and high schools implement a specific initiative on physical fitness for young people that include competitions that model the "Biggest Loser", community/social activities and the application of technology such as the "Wii Fit."
4. School boards evaluate the a-la-carte offerings to ensure that school lunch offerings are healthy.

Substance Abuse

Recommendations:

1. Parental education on alcohol with child participation.
2. Increase awareness of professional consequences to alcohol abuse through presentations from employers.
3. Address teen alcoholism directly--especially on reservations through peer-to-peer strategies.
4. Change the social culture of drinking. One way this can be accomplished is by providing alternative social activities that are more enjoyable than activities based on alcohol consumption.

Implementation:

1. Local middle schools, high schools, and colleges focus on peer-to-peer programs that promote positive role models.
2. College campuses are encouraged to support safe ride programs. (supplemented taxi cab or bus services from a business to a residence)
3. Local district judges are encouraged to assign responsibility jointly to parents and minors under the age of 18 for alcohol violations.
4. Local school boards are encouraged to emphasize the importance of enforcing suspension rules for alcohol violations, including violations during the summer.

Fitness Centers

Recommendation: Communities assess, review, and discuss the use of existing fitness centers, local school facilities, and policies to ensure fitness facilities and programming are available for young people.

Implementation: Communities develop accessibility to facilities for individual and group fitness (baseball, volleyball leagues, flag football, and aerobics).

Business Incentives

The committee received a business incentive report from the Department of Commerce which provided a compilation and summary of state grantor reports and reports of state agencies that award business incentives under Chapter 54-60.1 covering calendar years 2006 through 2009.

TrainND

In accordance with Section 2 of Senate Bill No. 2019 (2009), as representatives of the Legislative Assembly, the committee members participated in the State Board of Higher Education's Workforce Training Forum, which was held as part of the State Board of Higher Education's study of the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state (TrainND), including:

1. Effectiveness in meeting training needs of business and industry in the respective regions;
2. Responsiveness, results achieved, financial performance, and other performance measures; and
3. Review of an appropriate funding mechanism.

The report recommendations to the committee were:

1. Create a funding pool to address immediate, critical workforce training needs within the state; and
2. Support continued investment in and potential expansion of the workforce enhancement grant program that was created in 2007, with at least

$2 million funding and consideration given to redefining the types of funds that can be used as matching funds under the program.

In addition to receipt of this report, the committee addressed issues relating to the TrainND program in the **WORKFORCE STUDIES** portion and the **UNIVERSITY SYSTEM STUDY** portion of this report.

WORKFORCE STUDIES

The committee conducted two workforce studies. The study directive under Senate Concurrent Resolution No. 4002 (2009) stemmed from the activities of the 2007-08 Workforce Committee, with the goal of further pursuing the issues identified in the 2007-08 Workforce Committee's consultant's report and tracking the workforce initiatives enacted by the 61st Legislative Assembly. The study directive under Section 19 of Senate Bill No. 2018 (2009) was very similar in scope, with the inclusion of studying the alignment of taxpayer investment with programs, the coordination of programs, and the North Dakota workforce strategic plan.

The committee's study charges overlapped with study charges of other committees, including the Higher Education and Education Committees; therefore, the three committees held a joint meeting to receive testimony and to review the charges and activities of the other committees.

The committee's two workforce study activities overlap with the committee's other five studies. The committee addressed the subject matter of the seven studies holistically, recognizing that the issues of workforce, technology, and higher education are all interrelated. Therefore, although for purposes of this report, the background, testimony, and recommendations are organized by study. The substance, testimony, and recommendations of these studies overlap, and the studies should be considered together as a whole.

Previous Studies

During the previous three interims, beginning with the 2003-04 interim, the Legislative Management has been conducting a comprehensive series of studies that initially focused on economic development and then during the 2007-08 interim sharpened to focus on workforce-related issues.

2003-04 Interim

During the 2003-04 interim, in accordance with House Bill No. 1504 (2003), the Legislative Management's interim Economic Development Committee conducted a primary sector business climate study--the first study of the three-interim business climate initiative. The committee recommended Senate Bill No. 2032 (2005), which under Section 17 provided for a two-interim continuation of the activities begun under House Bill No. 1504.

2005-06 Interim

During the 2005-06 interim, in accordance with Section 17 of Senate Bill No. 2032 (2005), the Legislative Management's interim Economic Development Committee conducted a business climate study--the second study of the three-interim business climate initiative. The recommendation of the 2005-06 Economic Development Committee was to expand the 2007-08 interim focus group activities to include young professionals. Through the course of the 2007 legislative session, the committee's recommendation was replaced with a repeal of the 2007-08 interim business climate study and the creation of the workforce system study. In effect, the workforce system study took the place of the third of the three-interim business climate initiative.

2007-08 Interim

During the 2007-08 interim, the Workforce Committee conducted several workforce-related studies. However, in addition to the activities of the Workforce Committee, during the 2007-08 interim there were several other committees with workforce-related charges. Several of these study charges were the same or similar to ongoing study charges during the 2009-10 interim.

Recognizing the fact that several committees were charged with addressing workforce-related issues, the Education Committee, Higher Education Committee, and Workforce Committee held a joint meeting to stay apprised of the workforce-related activities of the other committees. The three committees came to agreement on how to distribute the workforce-related issues between the three committees.

During the 2007-08 interim, the Workforce Committee studied the state's system for addressing workforce needs through a workforce system initiative. The workforce system initiative included receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, active participation in focus groups across the state, and active participation in a Workforce Congress.

The committee's consultant identified the following top three priorities for each of the four identified groups as prioritized by the Workforce Congress:

Employers

1. Tax incentives for employer automation and innovation tied to productivity increases;
2. An employer-sponsored school-to-work initiative to reach out and engage non-college-bound youth; and
3. An aggressive statewide career awareness initiative.

Employees

1. More affordable higher education in North Dakota through low-tuition strategies and strategies for tuition reimbursement (without creating new bureaucracies);
2. A statewide structure for a comprehensive curriculum for career exploration and decisionmaking; and
3. Alignment of educational standards for moving throughout the P-16 system, including promotion of two-year opportunities and strengthened articulation agreements.

Schools

1. Higher education funding aligned with growth sectors of the economy;
2. Early career awareness education aimed at parents and children; and
3. A rapid response mechanism for "hot needs" of higher education--a streamlined "minuteman" process for meeting needs in a timely manner.

Government

1. A Bank of North Dakota tuition loan program for all demographics (traditional and nontraditional students);
2. A career advising and training initiative at the community level--involvement of industry leaders, education leaders, and teachers to increase awareness; and
3. Leadership in expanding timeframes of existing, successful pilot programs that are already in place in North Dakota.

Following the Workforce Congress, the consultant analyzed the suggestions gathered from the focus groups and the priorities defined at the Workforce Congress and clustered the information into five policy idea suites. In each suite the aim was to define a common goal linked to comments from North Dakotans with policy options that work to collectively promote positive change in the behavior of employers, employees, schools, and government.

The five policy idea suites that resulted from the focus groups and Workforce Congress and the corresponding recommendations of the consultants were:

1. Retain talent - The consultant identified the following immediate-term and long-term recommendations:
   a. Immediate-term - More broadly scaled and aggressively marketed Operation Intern through increased public and private support and tax credits for college graduates who remain and work in North Dakota.
   b. Long-term - Structure for tuition reimbursement for identified high-priority skills gaps.
2. Attract talent - The consultant identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Targeting of out-of-state talent with ties to North Dakota which includes a special website and an aggressive and timely catch-and-referral mechanism and waiver of state income tax for high-priority talent attracted to the state.
   b. Long-term - Structure for tuition reimbursement for identified high-priority skills gaps.
3. Incentivize employer productivity, innovation, and entrepreneurship - The consultant identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Technology investment tax credit and low-interest loan program to encourage employer technology investments and a study that identifies key regional business clusters and associated investment priorities for increased productivity.
   b. Long-term - Prairie Innovation Zone structure for ongoing business-education collaborations for innovation, research, and technology transfer.
4. Connect education and employers - The consultant identified the following immediate-term and long-term recommendations:
   a. Immediate-term - "Work ready" work ethic certification for high school students as defined by employers; "fast track" approval process for new courses and curricula tied to emerging employer needs; and expanded statewide internship program that prioritizes science, technology, engineering, and mathematics disciplines.
   b. Long-term - Core curriculum for high school graduates tied to employer demand--expanded to related idea of "core tech" curriculum for higher education; work ethic certification in high school connected to broader framework for career track identification and resume building--include high school internships, community service, and other opportunities that expose students to the meaning of working and living in North Dakota; and social network-based models to create grassroots engagement of diverse groups in North Dakota regions.
5. Promote higher education - The consultant identified the following immediate-term and long-term recommendations:
   a. Immediate-term - Stipend for students to complete two-year postsecondary "core tech" curriculum, and tax credit structure for state residents who pursue higher education in state universities.
   b. Long-term - Structure for Lifetime Education Accounts, and "Seniors to Sophomores" program tied directly to established core high school standards and postsecondary "core tech" standards.

2009 Legislation

House Bill No. 1202 removed the July 31, 2009, expiration date from the law authorizing the Bank of North Dakota to invest its funds in alternative and venture capital investments and early-stage capital funds and expanded the authorization to allow the investments to be used for entrepreneurship awards. The bill modified the powers and duties of the North Dakota Development Fund, Inc., allowing the scheduled August 1, 2009, expiration of the corporation's authority to borrow funds from the Bank to invest in North Dakota alternative and venture capital investments and early-stage capital funds; extending the previously planned August 1, 2009, expiration of the corporation's authority to provide management services for the Bank's alternative and venture capital investments and early-stage capital funds; and directing the corporation to

administer an entrepreneurship award program that provides funding awards to entrepreneurial centers and to entrepreneurs with an August 1, 2015, expiration date.

Senate Bill No. 2100 modified the maximum amount of guarantees the Bank of North Dakota may have under the beginning entrepreneur loan guarantee program from allowing the Bank to guarantee up to $8 million in loans outstanding to providing the outstanding guarantees at the time of issuance may not exceed 5 percent of the Bank's Tier 1 capital.

Senate Bill No. 2110 modified the powers and duties of the North Dakota Development Fund, Inc., allowing the scheduled August 1, 2009, expiration of the corporation's authority to borrow funds from the Bank of North Dakota to invest in North Dakota alternative and venture capital investments and early-stage capital funds and removing the previously planned August 1, 2009, expiration of the corporation's authority to provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

Senate Bill No. 2103 removed the July 31, 2009, expiration date from the law authorizing the Bank of North Dakota to invest its funds in North Dakota alternative and venture capital investments and early-stage capital funds.

Senate Bill No. 2225 authorized the North Dakota Development Fund, Inc., to provide financing to early childhood facilities and to make grants or loans to match grants or loans made by county-authorized or city-authorized development corporations, job development authorities, and regional planning councils for the purpose of acquiring, leasing, or remodeling of real estate facilities or for acquiring equipment for establishing or expanding a licensed early childhood facility. The bill also expanded the definition of "business" and thereby the authorized recipients of funding under the partnership in assisting community expansion (PACE) program by including a person that provides child care.

Senate Bill No. 2018 limited an institution of higher education under the control of the State Board of Higher Education from submitting more than two applications per campus for each round of centers of excellence funding.

Senate Bill No. 2266 directed that the University of North Dakota's Nursing Education Consortium advise University of North Dakota officials regarding strategies to address common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, the specific needs of rural communities, and the development of a strategic plan for the ongoing activities of the simulation laboratory initiative. The bill also appropriated $500,000 from funds made available to the Governor under the federal American Recovery and Reinvestment Act of 2009 to the University of North Dakota for the purpose of funding the costs of a simulation laboratory initiative.

Senate Bill No. 2077 made loans from the School of Medicine and Health Sciences loan fund available to all eligible medical students enrolled at the University of North Dakota School of Medicine and Health Sciences and to all eligible dental students enrolled at an accredited school of dentistry, not just to upperclassmen. The bill also raised the loan cap from $6,000 to $10,000 per year.

Senate Bill No. 2166 extended the student financial assistance program to students enrolled in for-profit as well as nonprofit private postsecondary institutions located in this state and offering programs of instruction at least equal in length to two academic years.

Senate Bill No. 2019 appropriated $25,891,008 from the general fund to the State Board for Career and Technical Education and directed that the State Board of Higher Education study the status of the training activities provided by the four institutions of higher education assigned primary responsibility for workforce training in the state (TrainND).

House Bill No. 1400 increased the length of the school calendar; required career advisors, counselors, and student performance strategists; required professional development plans; created a national board certification fund; established high school graduation requirements; provided scholarships; required various assessments; repealed the North Dakota Commission on Education Improvement as of December 31, 2010; created the North Dakota Early Childhood Education Council; provided for the distribution of grants from federal and state sources; provided approximately $110 million in new state funding for kindergarten through grade 12 education; and established the funding formula for kindergarten through grade 12 education. The bill also directed the State Board for Career and Technical Education to develop a program leading to a certificate in career development facilitation. Certificate holders are to be known as "career advisors."

House Bill No. 1475 appropriated $50,000 to the Department of Career and Technical Education for the purpose of providing additional funding for innovation grants.

Senate Bill No. 2060 expanded the renaissance zone law to include tax incentives for repair or remodeling of public utility infrastructure and for leasehold improvements to property. The bill removed the half-mile requirement for the three-block island provision for renaissance zones. The bill allowed a property owner that is not participating in a renaissance zone project to claim state income tax credits equal to an amount of an investment made by the property owner to complete changes in utility services or a building structure necessary because of changes made to property that is part of a renaissance zone project. The provisions of the bill relating to tax incentives are effective for taxable years beginning after December 31, 2008.

House Bill No. 1428 provided that if a city finds that renaissance zone projects have satisfactorily completed one or more blocks within the renaissance zone, the city may apply for and the Department of Commerce may approve withdrawal of those blocks from the renaissance zone and replacement of those blocks with other blocks. The bill allowed the Department of Commerce, upon application by a city, to extend the duration of renaissance zone status in increments up to five years.

The bill increased the total amount of income tax credits allowed for renaissance zone investments to $7.5 million. The bill is effective for taxable years beginning after December 31, 2008.

Senate Bill No. 2358 created a loan repayment program for dentists who practice in public health and nonprofit dental clinics and provided a $180,000 appropriation to the State Department of Health for the purpose of providing grants under the program.

Senate Bill No. 2227 modified the medical personnel loan repayment program increasing the maximum award from $10,000 to $30,000, removing the limitation on the number of recipients who participate in the program, and modifying the eligibility requirement limitations relating to practice within the state before application.

House Bill No. 1030 increased the state employee performance bonus limitation from $1,000 per biennium to $1,000 per fiscal year and authorized Human Resource Management Services to approve pay bonuses above the 25 percent limitation upon a showing of special circumstances.

House Bill No. 1031 defined "hard-to-fill occupation" for purposes of the state recruitment and retention bonus program as an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement costs, the position is filled by key personnel, or the position has other unique recruitment or retention issues identified and documented by the appointing authority.

House Bill No. 1463 established a North Dakota Youth Council consisting of 16 individuals appointed by the Governor, 4 members of the Legislative Assembly, and the Lieutenant Governor. The bill required the Youth Council to develop a list of issues and concerns pertinent to residents of the state who have not yet reached the age of 25. The Youth Council was required to provide a report and recommendations to the Legislative Management before September 10, 2010. The bill is effective until July 1, 2011.

House Bill No. 1165 provided that the mobile home and manufactured housing finance program may provide assistance in the development of low-income to moderate-income housing or to otherwise assist a developing community address an unmet housing need or alleviate a housing shortage.

Senate Bill No. 2018 required the Department of Commerce, Job Service North Dakota, the Department of Career and Technical Education, and the State Board of Higher Education to submit annual reports to the Department of Commerce Division of Workforce Development which relate to the current workforce initiatives and activities of each agency and the agency's plan for future workforce initiatives and activities. The bill also required those agencies to present workforce-related budget initiatives for the upcoming biennium to the North Dakota Workforce Development Council by November 1 of each even-numbered year. The bill authorized the Commissioner of Commerce, during the 2009-11 biennium, to designate a nonprofit corporation in the state which has the primary purpose of assisting North Dakota exporters for the provision of services for the International Business and Trade Office. The bill required the Department of Commerce to maintain records of the number of internship, apprenticeship, and work experience opportunities subsidized by the department and establish a base level of funding for each recipient.

Senate Bill No. 2372 required the Commissioner of Commerce to promote the development of life science industries in the state, including biotechnology, biomedical sciences, and biopharmaceuticals.

Senate Bill No. 2110 removed the statutory requirement that the Department of Commerce Division of Economic Development and Finance include a finance office and an international business and trade office. The bill required the director of the Division of Economic Development and Finance to identify and coordinate sources of capital and financial assistance and administer programs for financial assistance placed under the administration of the division. The bill also made revisions to the mission of the Division of Economic Development and Finance and the Division of Tourism. The bill required the director of the Division of Tourism to work with industry groups to prepare a long-term strategic plan each biennium, coordinate designing the tourism side of the state highway map, and organize and coordinate other marketing activities and events aimed at increasing visitor volume. The bill removed statutory requirements that the Commissioner of Commerce and the Commerce Cabinet develop a list of economic development money included in the budget request of cabinet agencies. The bill required the Commissioner of Commerce to administer a Rural Development Office to assist in the development of rural communities. The bill created a North Dakota Rural Development Council composed of between 9 and 17 members. The bill eliminated the Motion Picture Development Office and removed the requirement that the Commissioner of Commerce report biennially to the Legislative Management regarding the process used and factors considered in identifying and updating target industries.

House Bill No. 1202 provided that an entrepreneurial center award granted by the North Dakota Development Fund, Inc., between August 1, 2009, and July 31, 2015, is not considered a business incentive.

Senate Bill No. 2260 required the Department of Commerce Division of Community Services to allocate state funds to participating community action agencies to provide matching funds for eligible individual development accounts. The bill provided eligibility requirements and permissible uses for participating households.

Senate Bill No. 2269 imposed additional requirements to qualify for the angel fund investment income tax credit. The new requirements include that the angel fund must be headquartered in North Dakota and invest in a portfolio of at least three early-stage and mid-stage private and nonpublicly traded enterprises, the fund must consist of at least six accredited investors,

one individual may not own more than 25 percent of the capitalized investment assets, the fund must have at least $500,000 in commitments from accredited investors, the fund must be member-managed and certified by the Department of Commerce, and the fund must be in compliance with securities laws. The bill prohibited an angel fund from investing in an enterprise if one angel fund investor owns more than 49 percent of the enterprise. The bill limited credits for one angel fund to not more than $5 million during the life of the angel fund.

Testimony

Consultant Recommendations

The committee began the interim by reviewing the issues identified and recommendations made in the 2007-08 Workforce Committee's consultant's report and reviewing the workforce initiatives enacted by the 61st Legislative Assembly.

North Dakota Workforce Strategic Plan

The committee reviewed the North Dakota talent initiative, with the three supporting pillars of talent expansion, talent attraction, and talent retention which are designed to further the goals of increasing the quantity and quality of the workforce, transitioning from a workforce model to a talent force model which is focused on still development, and reducing unemployment in areas of the state which are above the state average.

The committee received information that the workforce delivery system in the state consists of the following eight state agencies that administer more than 18 separate federal and state-funded programs--Department of Commerce, Job Service North Dakota, Department of Public Instruction, Department of Career and Technical Education, North Dakota University System, Department of Human Services, Department of Corrections and Rehabilitation, and Workforce Safety and Insurance. In addition, tribal and other nonstate agencies administer additional workforce programs targeted to specific segments of the population.

Department of Commerce Economic Development Strategic Plan

The committee reviewed the Department of Commerce's economic development strategic plan. The key functions of the economic development strategic plan are to assess the current economic situation and target industries, identify key areas of opportunity, and establish goals and performance measures for economic development. Strategies for continued economic growth in the state include:

1. Investing in university-based research and development conducted with the private sector.
2. Fostering a culture of entrepreneurship where innovating companies can thrive.
3. Addressing education, training, recruitment, and retention to provide a steady supply of skilled workers.
4. Promoting export trade.

TrainND

The committee received an overview of the status and activities of each of the four institutions of higher education assigned primary responsibility for workforce training. The substance of this testimony is also included in the report from the State Board of Higher Education on the TrainND program.

North Dakota Area Health Education Centers

The committee received a report on the activities of the North Dakota area health education centers. The primary purpose of the centers is to get health care services to rural North Dakota.

Recommendation

The committee recommends Senate Bill No. 2055 to create two new manufacturing income tax credits. Based on a review of bill drafts recommended by the Workforce Committee during the 2007-08 interim, the committee revisited 2008 House Bill No. 1066, which failed in the first house. House Bill No. 1066 would have created three manufacturing tax credits. The bill creates an income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes available to primary sector businesses equal to 20 percent of the expenses of the purchase. The bill creates an income tax credit for qualified expenditures necessary for implementing lean manufacturing available to primary sector businesses equal to 20 percent of the expenses. Each tax credit program is limited to $2 million per taxable year.

Additional recommendations relating to the two workforce studies are addressed in the recommendations for the committee's other studies.

UNIVERSITY SYSTEM STUDY

Background

The University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate and technical degrees. Each institution is unique in its mission to serve the people of North Dakota.

During the 2007-08 interim, the Workforce Committee was charged with studying the means by which the University System fulfills North Dakota's workforce needs. The 2007-08 Workforce Committee conducted this study as part of the workforce system study, and the recommendations of the workforce system study include the recommendations of the University System study. The 2009-10 interim study was a continuation of the study begun in the 2007-08 interim.

Testimony

2009 Legislative Review and Strategic Plan

The committee reviewed the *2009-13 NDUS Strategic Plan and Objectives*. The reported goal is to have the individual institutions' strategic plans harmonize with the University System's strategic plan and

objectives. The University System plan will be reviewed and updated annually.

The committee reviewed 2009 legislation impacting the University System as that legislation relates to workforce and economic development. Additionally, the committee received information on the following Higher Education Roundtable cornerstones:

- Economic development connection;
- Education excellence;
- Flexible and responsive system;
- Accessible system;
- Funding and rewards; and
- Sustaining the vision.

Testimony was received that during the 2009 legislative session, strides were made in addressing the issue of affordability of education and of particular interest the University System will be working on marketing the two-year community colleges. The University System reported the state is realizing continued increases in the number of North Dakota higher education graduates retained following graduation. This retention includes non-North Dakota residents as well as international students. However, there are areas in which the state could improve, including retention activities and improved funding of technical education.

Experimental Program to Stimulate Competitive Research

The committee received background information on the history of the Experimental Program to Stimulate Competitive Research (EPSCoR). The Experimental Program to Stimulate Competitive Research arose after an inquiry at a National Science Foundation hearing in 1978. By 1980, five of the seven states that applied were funded at relatively low levels; however, North Dakota and South Dakota did not receive funding at that time. States were allowed to reapply after a five-year waiting period and the North Dakota Legislative Assembly supported the state match for research funds in 1985. Research directors were put in place at North Dakota State University and the University of North Dakota. Although 27 states are now involved with EPSCoR, North Dakota is the only state that has had continuous funding since 1985. All EPSCoR proposals are competitive and are evaluated when the funding decisions are made. The program has produced terrific results. In 1990, North Dakota was ranked 50th in its ability to compete for research funds from the National Science Foundation; however, the state is rising quickly and now ranks 27th. State funding to the University System was $5,650,000 for 2007-09 and was $7,050,000 for 2009-11, with $400,000 earmarked for the National Aeronautics and Space Administration EPSCoR.

E-Folio

The committee received information regarding the electronic portfolio (e-folio) system used by Minnesota State Colleges and Universities. An e-folio is a multimedia website used to organize, manage, and showcase education, skills, career achievements, and experience.

E-folios could be used to benefit educational systems in a variety of ways, including:

- Meeting the growing need for online portfolios in higher education;
- Utilization in certification, licensing, and documenting competencies;
- Delivering technology to all schools at lower costs than multiple systems for different schools; and
- Providing a statewide approach to enable the creation of a powerful database of knowledge workers for workforce and economic development.

E-folios could be used in the workforce and economic development arena to:

- Provide lifelong, personal e-folios to students, job seekers, and professionals to advance careers in the state;
- Integrate with current state workforce tools and systems;
- Allow economic development officials and employers to search online 24/7/365 to determine the workforce potential by geographic region, skill, education, and experience; and
- Help to build a "talent bank" to showcase former North Dakotans and North Dakota graduates who have migrated to other states but retain their lifelong e-folio and have a desire to return if suitable employment opportunities arise.

The committee received a matrix of the e-folio systems being utilized by state entities.

Recommendation

The committee recommends Senate Bill No. 2056 to amend the laws relating to TrainND, the new jobs training program, and Operation Intern; create an e-folio pilot program and a student opportunity website; and provide the measure is an emergency measure. The new jobs training program is amended and the TrainND program is amended to provide the TrainND community colleges are included under the definition of "community" under the new jobs training program, thereby allowing TrainND to issue new jobs training loans and receive funds in the same way as local economic development corporations. The Operation Intern program law is amended to remove the provision that was added in 2009 to provided that employers are only eligible for funding under the program for new or expanded internship, apprenticeship, and work experience opportunities. A higher education e-folio system pilot program is created. The Department of Commerce, Division of Workforce Development would administer the pilot program and the Division of Workforce Development, the University System, Job Service North Dakota, and representatives of the institutions of higher education under the control of the State Board of Higher Education are directed to work together to establish the program. The e-folio product would be an online system that would be used to address the needs of higher education students and faculty as well as employers. A student opportunity website is created which would act

as a single portal through which users can search for internship opportunities and scholarship opportunities available at or through the institutions of higher education under the control of the State Board of Higher Education.

Additional recommendations relating to the University System study are addressed in the recommendations for the committee's other studies.

TECHNOLOGY-BASED ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT BEST PRACTICES STUDY

Background

Department of Commerce

The committee was charged with studying the technology-based entrepreneurship and economic development best practices implemented by the Department of Commerce. The Department of Commerce is created by Section 54-60-02, which provides the department consists of a Division of Community Services, a Division of Economic Development and Finance, a Division of Tourism, a Division of Workforce Development, and any division the Commissioner of Commerce determines necessary to carry out Chapter 54-60.

The Commissioner of Commerce is provided for under Section 54-60-03, which provides the commissioner's duties include:

- Assuming central responsibilities to develop, implement, and coordinate a working network of commerce service providers;
- Advising and cooperating with departments and agencies of the federal government and of other states; with private businesses, agricultural organizations, and associations; with research institutions; and with any individual or other private or public entity; and
- During each regular legislative session, reporting to a standing committee of the House of Representatives and Senate and annually reporting to the North Dakota Economic Development Foundation:

  On the department's goals and objectives since the last report;

  On the department's goals and objectives for the period until the next report;

  On the department's long-term goals and objectives;

  On the department's activities and measurable results occurring since the last report; and

  On commerce benchmarks, including the average annual wage in the state, the gross state product exclusive of agriculture, and the number of primary sector jobs in the state.

North Dakota Economic Development Foundation

The committee is charged with studying the effectiveness of the North Dakota Economic Development Foundation. The North Dakota Economic Development Foundation is created by Section 54-60-04, which provides:

> **54-60-04. North Dakota economic development foundation - Executive committee - Duties.** The North Dakota economic development foundation is created.
>
> 1. The foundation is composed of a minimum of fifteen and a maximum of thirty members appointed by the governor for two-year terms, except the governor shall appoint approximately one-half of the initial foundation members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the foundation members must ensure a cross section of business, tourism, and economic development representation, and must ensure that at least one member represents rural concerns.
> 2. The foundation members shall elect an executive committee with a minimum of five and a maximum of seven foundation members, which shall include a chairman, vice chairman, secretary, treasurer, and up to three members at large.
> 3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities of the state.
> 4. The foundation shall:
> a. Provide the governor advice and counsel in selecting the commissioner.
> b. Serve in an advisory role to the commissioner.
> c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the strategic plan.
> d. Develop a strategic plan for the development of value-added agriculture in the state.
> e. Monitor tourism and economic development activities and initiatives of the department.
> f. Recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population.
> g. Monitor state and federal legislation and initiatives that may impact the state's economy and population.
> h. Serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population.

Testimony

Technology Best Practices

The committee received an overview of technology-based economic development best practices and activities of other states, including Alaska, Connecticut, Florida, Illinois, Kentucky, Kansas Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, Texas, Vermont, Virginia, Wisconsin, and Wyoming.

The committee received a report from a representative of the United States Department of Commerce Economic Development Administration on research and technology best practices, as well as information regarding the role of the Economic Development Administration as it relates to support for technology-based economic development and trends in technology-based development.

The committee received testimony indicating one step universities can take to help with research and technology is to make sure the universities continue to provide technical assistance outside their walls. It is important for institutions of higher education to work with the private sector and to encourage their staffs to act in entrepreneurial ways. It may not be necessary to take legislative or policy actions in order to attract federal research in the state; however, it may be helpful to look across the federal research realm to see where there are expanding opportunities, to consider what has worked well for other states, and to consider the unique assets of North Dakota.

The committee received testimony that, as it relates to technology-based economic development, one of the primary priorities for the state should be leveraging assets of higher education as they relate to technology and entrepreneurial development. Programs existing in North Dakota that will help further technology and entrepreneurial development include Innovate ND, North Dakota Ambassadors Program, Experience North Dakota, investment tax credits, programs to link entrepreneurial and existing enterprises, assistance in identifying markets that might exist for entrepreneurs, and Bank of North Dakota programs. Upcoming programs that may assist technology and entrepreneurial development include using North Dakota Development Fund, Inc., money for entrepreneurial centers, technology-based entrepreneurial development, upgrading the Innovate ND program, and progressively promoting entrepreneurship programs.

Two of the most important elements in assisting entrepreneurship are:

1. Supporting incubators that can provide broad levels of support; and
2. Providing upfront capital such as investment tax credits for angel investment, seed capital investment, and agricultural business investment.

The committee received testimony from a representative of Southern Valley Innovation Center regarding technology-based entrepreneurship opportunities in the Red River Valley area. Some of the elements already in place to help entrepreneurship move forward include experienced talent; equity investment incentives, such as the angel fund investment tax credit and the seed capital investment tax credit; a business friendly policy, such as research and development tax credits, the North Dakota Development Fund, Inc., and the Bank of North Dakota; a growing innovation community; and university research and talent. Resistances that must be overcome include a cultural resistance to innovation and collaboration; a shortage of experienced business builders; a lack of commercialization experience; and a need for a deeper understanding of the technology message.

Community Colleges

The committee held a meeting at the State College of Science and was informed of the steps the State College of Science is taking to strengthen a culture of entrepreneurship, including steps to develop a business incubator, joint efforts of the State College of Science and the Center for Business Development, and steps The State College of Science is taking to address the state's workforce needs.

The committee received testimony that the strategic plan for North Dakota's community colleges must address the challenges related to the decline in the number of high school graduates in North Dakota, the need for career and technical education programs in population centers, the difficulty of gearing up to provide training to address the shortage of workers in certain fields, and the effort required to develop new programming for emerging high-growth occupations. Actions being proposed to address the challenges of becoming more accessible and responsive are:

- Provide population centers with greater accessibility to community college services, particularly associate degrees and career and technical education;
- Develop processes that facilitate greater collaboration with the state's universities;
- Create higher education centers where appropriate;
- Assign each community college to a specific region within which to focus its efforts;
- Provide programming that will focus upon growing occupations in the respective regions;
- Provide programming to meet the needs in smaller communities;
- Increase the flexibility of program offerings to meet the varying schedules and needs of a diverse clientele; and
- Increase the career and technical education program development pool to allow funding for new and emerging programs.

North Dakota Technology Development Corporation Proposal

The committee received a proposal to create a North Dakota Technology Development Corporation (ND TEDCO), based on a similar program in Maryland. The ND TEDCO would help to address the gap between research done by university scientists and the translation of that research into the form of a product that can be manufactured and sold commercially. Typically, it is not

the case that either the university researchers or the private sector have both the necessary scientific expertise and a knowledge of real-world production and financial constraints.

The mission of ND TEDCO would be to facilitate the creation of businesses and foster their growth in all regions of the state through the commercialization of technology. The role of the ND TEDCO in meeting this mission would be acting as North Dakota's leading source of funding for technology transfer and development programs and entrepreneurial assistance.

In Maryland the program works by providing one-year grants of $50,000 to $75,000 to fund joint research by the university and the private sector partner. The university must have a workplan, commercialization plan and intellectual property analysis, milestones, and budget. Funds may support salaries and benefits, supplies, equipment, overhead, and patent costs. The university shares with the program any revenues generated from the commercialization until the recipient has paid back twice the amount of the grant.

Tax Credits

The committee was provided an overview of the seed capital investment tax credit and angel fund investment tax credit programs, including comparisons of North Dakota's programs to the programs of other states.

The committee received testimony that because the seed capital investment tax credit and angel fund investment tax credits are available only to investors with North Dakota state income tax liability, the investors are typically limited to those individuals in the community. If the tax credits were expanded to be available to people who do not have a North Dakota state income tax liability, the range of investors would likely expand to include out-of-state investors.

The committee received testimony that transferability of tax credits is a current issue being addressed in venture capital circles. In theory, transferability of income tax credits makes the investment pool larger by bringing in more investors and allowing the funding of more businesses.

The committee received testimony that regionally and nationally there is an early-stage funding gap that occurs between angel investments and venture capital investments. Although it might be desirable to bridge this gap through some sort of public-private partnership, in reality it is more likely this gap will be addressed through economic incentives.

Centers of Excellence Best Practices

With the centers of excellence program law set to expire August 1, 2011, the committee spent a considerable amount of time studying this program. The committee received testimony regarding programs of other states which are similar to North Dakota's centers of excellence program. Approximately 44 states have programs similar to North Dakota's centers of excellence program which are designed to act as technology deployment programs.

The committee received a report on the best practices review of North Dakota's centers of excellence program. The report made the following recommendations:

1. Pursue a focused technology-based economic development strategy;
2. Build and assign a metrics working group to report new performance measurements for the centers of excellence program which aligns with state-level technology-based economic development metrics;
3. Educate, train, and provide services in intellectual property practices and technology transfer;
4. Monitor federal funding;
5. Adopt a more integrated statewide technology management program that can serve all campuses and centers of excellence;
6. Develop a center of excellence-based "proof-of-concept" program;
7. Add independent peer review to the center of excellence proposal process;
8. Reassess matching requirements;
9. Allow for modest overhead;
10. Review reporting requirements;
11. Create a targeted eminent scholar program;
12. Create a small business-focused grant program;
13. Create a federal funding match initiative; and
14. Strengthen collaboration and build commercialization and entrepreneurial networks.

The committee received testimony that the Centers of Excellence Commission recommends that the Legislative Assembly amend Section 15-69-04(2) in order to reflect the current practice of utilizing third-party accountants for agreed-upon procedures engagement instead of full fiscal audits. In the course of the Department of Commerce performance audit, the State Auditor found that North Dakota law requires a full fiscal audit be conducted annually of each center of excellence. However, an agreed-upon procedure, which includes a review of the centers' finances, has been utilized since the beginning of the program. The main difference is that a fiscal audit requires that an accountant express an opinion on the financial statements, whereas in an agreed-upon procedure the accountant presents on the findings from the procedures performed.

The Department of Commerce received $20 million for the centers of excellence program in 2007-09 biennium and $20 million in 2009-11 biennium.

Economic Development Foundation

The committee reviewed the history of the formation of the North Dakota Economic Development Foundation, received information regarding the activities of the foundation, and reviewed the foundation's strategic plan benchmarks for the following six goals:

1. Develop a unified front for economic development based on collaboration and accountability;
2. Strengthen linkages between the state's higher education system and economic development organizations and private businesses;

3. Create quality jobs that retain North Dakota's current workforce and attract new skilled labor;
4. Create a strong marketing image on the state's numerous strengths, including workforce, education, and quality of place;
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy; and
6. Strengthen North Dakota's business climate to increase global competitiveness.

Recommendations

The committee recommends House Bill No. 1057 to amend the angel fund investment tax credit to allow for transferability of the tax credit and to allow passthrough entities to claim the credit. The bill includes a Tax Commissioner report to the Legislative Management. The bill is applicable to the first four taxable years beginning after December 31, 2010, and is thereafter ineffective.

The committee recommends House Bill No. 1058 to create the "Innovation 2020 Award" program administered by the Department of Commerce and provide a $500,000 appropriation to the Department of Commerce for the program. The program provides proof of concept funding awards of up to $50,000 per qualified entrepreneur to help move a new technology from academia to the commercialization cycle. The entrepreneur is expected to repay the award.

The committee recommends House Bill No. 1059 to create a technology award grant program administered by the North Dakota Development Fund, Inc., and provide a $500,000 appropriation to the North Dakota Development Fund for the program. The program provides matching grants of up to $50,000 to technology-based businesses that are in the startup stage.

The committee recommends Senate Bill No. 2057 to provide for centers of workforce excellence (CWE), centers of entrepreneurship excellence (CEE), and centers of research excellence (CRE); provide funding for the CWE, CEE, and CRE; and provide funding for the EPSCoR program. The existing Workforce Enhancement Council grants are renamed CWE grants, and $2 million is appropriated for the CWE grants. The bill creates a CEE grant program administered by the Department of Commerce which provides grants to department-certified entrepreneurial centers to be used to assist entrepreneurs in accessing capital, assisting entrepreneurs through providing marketing assistance, supporting building of entrepreneur infrastructure, and developing entrepreneurial talent. An appropriation of $5 million is made for grants under the CEE program. The bill creates a CRE grant program administered by the Department of Commerce which is based on the current centers of excellence program but is limited to research universities. An eminent researcher recruitment challenge grant program is included as part of the CRE program. Appropriations are made as follows--$10 million for the CRE grants and $2 million for the eminent researcher recruitment challenge grant program. The bill provides for CRE infrastructure grants, based on the infrastructure grants created in 2009. The CRE grants would be available to research universities and to nonprofit university-related foundations for use in infrastructure or enhancement of economic development and employment opportunities. The bill provides an appropriation of $4 million for CRE grants and an appropriation of $10 million to the University System for the purpose of funding the EPSCoR program.

The committee recommends House Bill No. 1060 to modify the centers of excellence postaward monitoring requirements. The bill allows a postaward fiscal audit at the half-way point of the postaward monitoring period as well as at the completion of the postaward monitoring period and allows for an agreed-upon procedures engagement for all other years of the postaward monitoring period.

The committee recommends Senate Concurrent Resolution No. 4003 to support the Northern Tier Network Technology Initiative and the related activities of the Legislative Management's Information Technology Committee.

Additional recommendations relating to the technology study are addressed in the recommendations for the committee's other studies.

HIGHER EDUCATION STUDENT TRUST FUND STUDY

Background

House Bill No. 1400 (2009) created a North Dakota career and technical education scholarship program and a North Dakota academic scholarship program for resident students who graduate from a high school during or after the 2010-11 school year. Under Section 15.1-21-02.6, a qualified student may qualify for $750 per semester, not to exceed $6,000, during which the student is enrolled full time at an accredited institution in the state and maintains the required grade point average. The estimated fiscal impact of the two scholarship programs is $3 million for the 2009-11 biennium; $10 million for the 2011-13 biennium; and $16 million for the 2013-15 biennium. The committee as well as the North Dakota Youth Council focused on whether steps could be taken to institutionalize funding of the scholarship programs.

Testimony

Wyoming's Hathaway Scholarship Program

The committee received an overview of Wyoming's Hathaway scholarship program. The Hathaway scholarship program is funded through the creation of the Hathaway student scholarship endowment fund, as well as any other funds appropriated by the Wyoming Legislature to the expenditure account. The endowment account is a $4 million trust funded through the state's income from minerals. The state plans to retain the corpus of the endowment. The primary purpose for the creation of the Hathaway scholarship program was to increase the number of Wyoming high school graduates attending school in Wyoming. An additional goal was to retain these college graduates in Wyoming.

The Hathaway scholarship program is modeled on a Louisiana scholarship program. Wyoming high school

graduates were eligible for the Hathaway scholarship program for the first time in 2006. In the 2006-07 school year, there were 5,399 high school graduates in Wyoming, and of those graduates 1,897 initiated the Hathaway scholarship program the following school year. By the 2008-09 school year, this number increased to 2,326 students initiating the Hathaway scholarship program. In evaluating these statistics regarding how many students are eligible for the Hathaway scholarship program and how many students have initiated the program, it is important to recognize that eligible students have some discretion in when to initiate the program. Approximately 37 percent of the students activate the program immediately following graduation.

Under the Hathaway scholarship program, there are four levels of scholarships for which a high school graduate may apply. Each of these levels has corresponding educational requirements.

Wyoming is conducting a five-year longitudinal study to track the impact of the Hathaway scholarship program. As part of the program, the state of Wyoming has undertaken providing American College Test (ACT) testing for all high school juniors in the state. As a result of increasing the number of Wyoming students taking the ACT, the state's ACT composite scores have decreased. This decrease is to be expected due to students taking the test who otherwise would not take the test. High school students wishing to pursue a trade may qualify for the Hathaway scholarship program by taking the ACT WorkKeys job skills assessment test.

Foundation Aid Stabilization Fund

The committee reviewed the history and current status of the foundation aid stabilization fund. The foundation aid stabilization fund is a constitutionally created fund dating back to July 1, 1995. Article X, Section 24, of the Constitution of North Dakota provides 20 percent of oil extraction tax revenue is allocated as follows:

- Fifty percent (of the 20 percent) to the common schools trust fund; and
- Fifty percent (of the 20 percent) to the foundation aid stabilization fund.

The principal of the foundation aid stabilization fund may only be spent upon order of the Governor to offset foundation aid reductions made by executive action due to revenue shortfall.

During the 2001-03 biennium, funding of $5,500,639 was transferred from the fund to the Department of Public Instruction to offset a reduction in state school aid and special education payments resulting from a 1.05 percent budget allotment ordered by the Governor in July 2002.

Money in the foundation aid stabilization fund is invested by the State Treasurer. Article X, Section 24, of the Constitution of North Dakota provides that the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. At the end of the 2007-09 biennium, the ending balance of the foundation aid stabilization fund was approximately $63 million, and the ending balance by the end of 2010 is estimated to be approximately $100 million. The interest rate on the fund balance from July 2009 through August 2010 ranged from .25 percent to .40 percent, with the monthly interest averaging approximately $21,000.

Recommendations

The committee recommends Senate Bill No. 2058 to declare legislative intent that the funding of higher education scholarships come from the interest and other income transferred from the foundation aid stabilization aid fund to the state general fund.

The committee recommends Senate Concurrent Resolution No. 4004 draft to provide for the amendment of Article X, Section 24, of the Constitution of North Dakota relating to the distribution of income from the foundation aid stabilization fund for use in funding higher education scholarships.

CERTIFIED TECHNOLOGY PARK STUDY

Background

As introduced, Senate Bill No. 2390 (2009) would have created a new chapter to Title 40 providing for the establishment and development of certified technology parks. The bill was reported out of the Senate Finance and Taxation Committee amended and with a do not pass recommendation. The Senate adopted the committee's amendment and then through a floor amendment adopted a hoghouse amendment replacing the bill with the Legislative Management study.

As introduced, Senate Bill No. 2390 was based on Indiana law. The Indiana certified technology park program is a tool available to local governments to help attract and retain high-technology businesses.

The basic framework of the Indiana program is that a certified technology park is similar to a tax increment financing (TIF) district. Like a TIF district, a certified technology park is able to capture incremental tax revenue on property tax; however, unlike a TIF district, a certified technology park has the added ability to capture incremental sales and income taxes for specified uses within the park. Under the Indiana program, each certified technology park has a lifetime limit of $5 million in retail and use taxes and income tax deposits into the park's incremental tax financing fund.

Since the creation of the program in Indiana in 2002, approximately 19 technology parks have been certified. In 2006 a Certified Technology Park Summit was held in Indiana, and data was requested through a survey in an attempt to evaluate the economic impact of the program. In 2007, recognizing the need for more data, the Indiana General Assembly provided certified technology parks are subject to the review of the Indiana Economic Development Corporation and must be recertified every four years.

Testimony

The committee received testimony from a representative of the Purdue Research Park and from a representative of the Indiana Economic Development Corporation regarding the Purdue Research Park and Indiana's certified technology park program. Indiana has

19 certified technology parks, which is a high number compared to other states. The testimony indicated certified technology park designation does not automatically attract business. Sixteen of Indiana's certified technology parks were certified between 2003 and 2004, and only three additional parks have been certified since that time. The Indiana Economic Development Corporation established clear parameters for certification after 2004. Because the level of university involvement has varied among the technology parks, it is important to be clear on the role of the institutions of higher education as a partner. Many of Indiana's technology parks are not succeeding to the extent hoped, in part due to the lack of participation of higher education institutions.

The committee received testimony that under Indiana's certified technology park program, an entity applying to be certified is an entity of local government but often is not the entity responsible for the administration of the technology park. There is a disconnect that may weaken accountability and leadership in those instances. The funds associated with the certified technology park program flow through a redevelopment commission, which can also lead to a disconnect between what is the best use of funds between the city and the administrator of the technology park. Therefore, when establishing a certified technology park program it is important to consider the involvement of the applying entity.

Testimony indicated the Indiana certified technology park law requires a commitment by at least one technology-based company to locate in a facility and to create a significant number of jobs. However, the law contains no specific number of jobs to be required. The role of businesses locating in the technology park is especially critical, and a state may consider establishing a specific number of jobs required or a specific capital investment. In an application from an entity to become certified, a community indicates that a business is willing to locate in the technology park. However, the level of commitment is varied, and some businesses have not followed through on the commitment to locate in the technology park. In designing a certified technology park program, the process should require a demonstration of at least one business willing to locate in the technology park.

A representative of the Association of University Research Parks testified the United States is currently facing the following technology challenges:

- National governments abroad are building large research parks and science centers, attracting top United States researchers and corporate research dollars;
- Science and technology are now global commodities;
- United States private corporate research centers are greatly downsized or no longer exist;
- Corporate and federal support (*sans* stimulus funding) for research and development at universities is declining; and
- We are in the midst of global economic turmoil.

Statistics regarding North American research parks include:

- Direct employment of more than 300,000;
- Every research park job generates an average of 2.57 additional jobs, supporting over 750,000 jobs; and
- Only 13 percent of research park graduates failed, compared to 40 percent of technology startups nationally.

Although the United States invented the research park and 100 percent of the research parks in the world were in the United States in 1951, currently United States research parks make up only 70 pages of the 500 pages describing research parks around the world.

Recommendation

The committee recommends Senate Bill No. 2059 to create a technology impact zone program administered by the Department of Commerce. The program allows a local government, or one or more local governments working together, to qualify for a specified amount of sales tax reimbursement. The reimbursement would be for support of regional technology-based economic development efforts. Caps built into the program include a recipient lifetime cap of $3 million as well as a limit of eight zones in the state. The program would be effective through July 31, 2023, and after that date would be ineffective.

DEPARTMENT OF COMMERCE PERFORMANCE AUDIT STUDY

Background

The State Auditor conducted a performance audit of the Department of Commerce under the authority of Chapter 54-10. The performance audit covered the time period from July 1, 2005, through December 31, 2008; audit field work was conducted from mid-January 2009 through mid-August 2009; and the final report was dated August 11, 2009.

The four objectives of the performance audit of the Department of Commerce were addressed in the four chapters of the report as follows:

1. Chapter 1 addresses the centers of excellence program, with the objective of determining whether the application process and monitoring of the centers of excellence program provides adequate accountability for the use of state funds.
2. Chapter 2 addresses the monitoring operations of the Department of Commerce. The objective was whether an adequate system for monitoring operations of the Department of Commerce has been established.
3. Chapter 3 addresses the North Dakota Development Fund, Inc. As part of the performance audit, the State Auditor selected certain grant and loan programs to review. The review included:
   a. A review of applicable laws, policies, and procedures;

b. A review of the application evaluation process;
c. A review of documentation for 17 selected investment files;
d. A review of applicable studies and reports;
e. A review of contract management practices; and
f. Interviews of selected personnel.

4. Chapter 4 addresses the Agricultural Products Utilization Commission grant program. As part of the performance audit, the State Auditor selected certain grant and loan programs to review. The review included:
   a. A review of applicable laws, policies, and procedures;
   b. A review of the application evaluation process;
   c. A review of documentation for 30 selected grant files;
   d. A review of applicable studies and reports;
   e. A review of contract management practices; and
   f. Interviews of selected personnel.

The final performance audit report provided 50 recommendations--15 recommendations relating to the centers of excellence, 22 recommendations relating to the monitoring operations, 7 recommendations relating to the North Dakota Development Fund, Inc., and 6 recommendations relating to the Agricultural Products Utilization Commission.

Testimony

The committee reviewed the State Auditor's performance audit report of the Department of Commerce and received testimony regarding performance audits conducted by the State Auditor. The committee received testimony from the State Auditor regarding generally accepted auditing standards pertaining to performance audits; how performance audits are selected; and the phases of a performance audit, including the preliminary survey phase, field work phase, reporting phase, and followup phase.

The committee received testimony that there is no set standard regarding the timeframe within which a performance audit must be conducted; however, the State Auditor typically shoots for a six-month timeframe. However, in the case of the Department of Commerce performance audit, due to open positions and hirings that took place on the audit team, the performance audit took longer than expected.

The committee received testimony that the Department of Commerce has taken steps to address 49 of the recommendations in the performance audit with which the department agreed, including 41 recommendations that have been fully implemented. Of the 50 recommendations of the performance audit, the Department of Commerce disagreed with one recommendation and disagreed in part with one recommendation.

The Commissioner of Commerce testified he was frustrated with the timelines followed in conducting the performance audit. The performance audit took place during a legislative session, which is a very demanding time for Department of Commerce staff. The Commissioner of Commerce testified he understands the need and the importance of the performance audit; however, from an administrative perspective, the performance audit was a real challenge.

Recommendation

The committee recommends House Bill No. 1061 to require the State Auditor to complete a performance audit within 90 days from the date of commencement of the performance audit.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2009-10 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Management for study during the 2009-10 interim under the authority of North Dakota Century Code Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1003 § 7	Study whether penalties for felonies are suitable to the felonious behavior (Judiciary Committee)
1005 § 4	Study the salaries of state elected officials (Government Services Committee)
1009 § 6	Study the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services program, including a review of program funding sources and a review of wildlife damage control programs in other states, including South Dakota (Natural Resources Committee)
1012 § 9	Study the Department of Human Services' child support enforcement program (Judicial Process Committee)
1012 § 10	Study long-term care services in the state (Long-Term Care Committee)
1012 § 16	Study the impact of individuals with traumatic brain injury, including veterans who are returning from wars, on the state's human services system (Long-Term Care Committee)
1129 § 4	Study the structure and requirements of the State Auditor's office necessary to carry out its auditing of political subdivisions, as required by law, including how such audits should be adequately self-funded (Legislative Audit and Fiscal Review Committee)
1263 § 2	Study how the state laws and administrative rules regulate basic care and assisted living facilities (Long-Term Care Committee)
1269 § 3	Study any steps necessary to enable the State Department of Health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons and examine the possibility of one registry and a potential location for that registry (Long-Term Care Committee)
1280 § 1	Study application by administrative agencies of standards from other than state or federal law which have not been adopted as administrative rules (Administrative Rules Committee)
1322 § 3	Study issues related to the development of livestock feeding facilities and the use of byproducts from biofuels production as a feedstock (Agriculture Committee)
1324 § 34	Study the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants (Taxation Committee)
1338 § 1	Study solid waste management, with an emphasis on the siting and zoning of landfills on a statewide or regional level while allowing adequate protection for political subdivisions and property owners in the siting and zoning process (Advisory Commission on Intergovernmental Relations)
1341 § 1	Study the feasibility and desirability of an appropriation to the Office of Management and Budget for a state employee tuition reimbursement pool program (Employee Benefits Programs Committee)
1391 § 1	Study unmet health care needs in the state (Health and Human Services Committee)
1400 § 61	Study statutory criteria for the approval of public and nonpublic schools, regulatory criteria for the accreditation of schools, and the consequences to schools and school districts that fail to meet the criteria (Education Committee)
1400 § 63	Study longer term elementary and high school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic (Education Committee)
1403 § 1	Study the utilization of all facilities on the State Capitol grounds, including an evaluation of facility needs by state agencies and a review of the Capitol complex master plan (Government Services Committee)
1412 § 2	Study the equity of the 911 fee structure, including consideration of fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state (Public Safety and Transportation Committee)
1449 § 3	Study the development of wind resources and other natural resources in the same location (Energy Development and Transmission Committee)
1459 § 4	Study the weed control programs of the Army Corps of Engineers on federal land under its control, including whether the Army Corps of Engineers is in compliance with federal and any applicable state weed control laws, whether the Army Corps of Engineers sufficiently budgets funds to address weed control on Army Corps of Engineers' land, and whether Congress provides proper funding for weed control on Army Corps of Engineers' land (Natural Resources Committee)

Bill or Resolution No.	Subject Matter (Committee)
1497 § 1	Study the feasibility and desirability of transferring from the county to the state the responsibility for the cost of and responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals under Chapter 25-03.3 (Judicial Process Committee)
1509 § 2	Study wind easements and wind energy leases (Energy Development and Transmission Committee)
1562 § 1	Study the feasibility and desirability of an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency (Employee Benefits Programs Committee)
1573 § 1	Study of voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services (Health and Human Services Committee)
1577 § 1	Study the factors impacting the cost of health insurance (Industry, Business, and Labor Committee)
2001 § 7	Study the classified state employee compensation system, including a review of the development and determination of pay grades and classifications (Government Services Committee)
2003 § 31	Study options for funding higher education institutions (Higher Education Committee)
2003 § 32	Study the impact of tuition waivers on institutions under the control of the State Board of Higher Education (Higher Education Committee)
2003 § 34	Study the establishment of a higher education student trust fund, including available funding sources (Workforce Committee)
2004 § 10	Study the state immunization program (Health and Human Services Committee)
2012 § 25	Study the potential options for highway construction funding - Revised by Legislative Management directive (Public Safety and Transportation Committee)
2018 § 18	Study technology-based entrepreneurship and economic development best practices, including a review of best practices implemented by the Department of Commerce and the effectiveness of the Department of Commerce Foundation (Workforce Committee)
2018 § 19	Study the state's system for addressing workforce needs through a workforce system initiative, including a review of the alignment of taxpayer investment with programs, coordination of programs, and the North Dakota workforce strategic plan (Workforce Committee)

Bill or Resolution No.	Subject Matter (Committee)
2032 § 13 (2007)	Study the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than 1.5 percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty (Taxation Committee)
2038 § 6	Study the means by which the University System can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs (Workforce Committee)
2038 § 9	Study issues affecting higher education (Higher Education Committee)
2050 § 5	Study the emergency medical services funding system within the state, including state and local emergency medical services and ambulance service funding and the feasibility and desirability of transitioning to a statewide funding formula (Public Safety and Transportation Committee)
2051 § 2	Study mineral production impact and taxation issues, including development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale and impact, infrastructure maintenance, employment issues, tax structures in North Dakota and other states, and water demands relating to mineral production (Taxation Committee)
2267 § 2	Study the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection (Industry, Business, and Labor Committee)
2336	Legislative overview of water-related topics and related matters and for any necessary discussions with adjacent states on water-related topics (Water-Related Topics Overview Committee)
2370 § 1	Study the feasibility and desirability of transferring from the county to the state the responsibility for the cost of expert examinations and the cost and responsibility for providing legal counsel in mental health commitment cases (Judicial Process Committee)
2390 § 1	Study the establishment and development of certified technology parks (Workforce Committee)
2394 § 2	Study existing services for minors who are pregnant and whether additional education and social services would enhance the potential for a healthy child and a positive outcome for the minor (Health and Human Services Committee)

Bill or Resolution No.	Subject Matter (Committee)
2401 § 1	Study public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers (Advisory Commission on Intergovernmental Relations)
2420 § 1	Study child support determination of income and support obligations, the feasibility and desirability of the establishment of an ombudsman program, and coordination of services and resources for parents (Judicial Process Committee)
2420 § 2	Study the establishment of an ombudsman program for consumers of child and family services (Judicial Process Committee)
2421 § 3	Study the involuntary mental health commitment procedures under Chapter 25-03.1 (Judicial Process Committee)
3001	Study Century Code provisions that relate to agriculture for the purpose of recommending changes to laws that are found to be irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction (Agriculture Committee)
3003	Study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members (Health and Human Services Committee)
3004	Study Indian education issues (Education Committee)
3005	Study the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act (Judiciary Committee)
3006	Study the feasibility and desirability of adopting the Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would impact existing state laws, and what issues other states have addressed in enacting the Act (Judiciary Committee)
3008	Study workers' compensation laws in this state and other states with respect to prior injuries, preexisting conditions, and degenerative conditions (Workers' Compensation Review Committee)
3023	Study the criminal offenses in the Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in Chapter 12.1-23 (Judiciary Committee)
3044	Study the allocation of wind rights (Energy Development and Transmission Committee)
3045	Study severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota (Natural Resources Committee)

Bill or Resolution No.	Subject Matter (Committee)
3048	Study the bonding requirements placed on grain warehouses and buyers, including ethanol plants and grain processors; and ways to reduce further the financial risk of participants in the sale, purchase, handling, and processing of grain, including the sale of grain to ethanol plants and processors, the payment for grain by such entities, and whether there exists a need for new or increased bonding and indemnification options to reduce financial risk (Agriculture Committee)
3051	Study imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule (Administrative Rules Committee)
3061	Study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery (Education Committee)
4001	Hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress (Budget Section)
4002	Study the state's workforce system, the feasibility and desirability of enacting legislation to address the issues identified in the 2007-08 interim Workforce Committee's consultant's report, and the implementation of workforce initiatives enacted by the 61st Legislative Assembly (Workforce Committee)
4027	Study the leasing of state lands (Natural Resources Committee)
4028	Study the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate - Revised by Legislative Management directive (Judiciary Committee)

Citation	Subject Matter (Committee)
4-01-23	Receive report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities (Agriculture Committee)
4-02.1-18	Receive annual audit report from the State Fair Association (Legislative Audit and Fiscal Review Committee)
4-05.1-19(8)	Receive report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures (Agriculture Committee)
4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education (Budget Section)
4-24-10	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees (Legislative Procedure and Arrangements Committee)

Citation	Subject Matter (Committee)
4-35.2-04	Determine when the Agriculture Commissioner must submit a biennial report to a joint meeting of the House of Representatives and Senate Agriculture Committees on the status of the pesticide container disposal program (Legislative Procedure and Arrangements Committee)
10-19.1-152	Receive annual audit report from a corporation receiving an ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
10-32-156	Receive annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state (Legislative Audit and Fiscal Review Committee)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner (Budget Section)
15-10-12.1	Authorize the State Board of Higher Education to authorize construction of any building, or campus improvements and building maintenance of more than $385,000, if financed by donations (Budget Section)
15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project (Budget Section)
15-10-44	Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects (Information Technology Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate (Employee Benefits Programs Committee)
15-52-04	Receive biennial report and recommendations from the University of North Dakota School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the School of Medicine and Health Sciences (Higher Education Committee)
15-62.2-05	Receive annual report from the State Board of Higher Education regarding the number of North Dakota academic scholarships and career and technical education scholarships provided and demographic information pertaining to the recipients (Higher Education Committee)
15-69-02	Approve, reject, or rerefer, upon receiving a recommendation from the Emergency Commission and in conjunction with the State Board of Higher Education and the North Dakota Economic Development Foundation, designation of a center of excellence recommended by the Centers of Excellence Commission (Budget Section)
15-69-05	Receive annual audits from a center of excellence that is awarded funds under Chapter 15-69 on the funds distributed to the center, until completion of four years following the final distribution of funds (Budget Section)
15-70-05	Receive report from any tribally controlled community college receiving a grant under Chapter 15-70 detailing the expenditures of the grant funds, a copy of the institution's latest audit report, and documentation of the enrollment status of students (Higher Education Committee)
15.1-02-09	Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts (Education Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Committee)
15.1-02-18	Receive report from the Statewide Longitudinal Data System Committee on the status of the plan for a longitudinal data system (Education Committee; Information Technology Committee; Workforce Committee)
15.1-06-08	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools (Education Committee)
15.1-06-08.1	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of Section 15.1-21-03 (Education Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics, given annually to students in three grades statewide (Education Committee)
15.1-27-35.3	Receive report from any school district having more than $50,000 excluded in the determination of its ending general fund balance (Education Committee)
15.1-27-41	Receive periodic reports from the North Dakota Commission on Education Improvement on its examination of high school graduation requirements, curricular standards, and assessment, and its examination of the measures enacted by the most recent Legislative Assembly to improve student performance and the quality of instruction and its recommendations on future measures for continued improvement (Education Committee)

Citation	Subject Matter (Committee)
15.1-37-03	Receive biennial report from the North Dakota Early Childhood Education Council regarding its activities (Education Committee)
17-02-01	Receive statement from an ethanol plant in operation before July 1, 1995, and receiving a production incentive from the state indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under the section (Budget Section)
17-07-01	Receive biennial report from the Energy Policy Commission regarding its comprehensive energy policy for the state (Energy Development and Transmission Committee)
18-11-15	Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs Committee)
18-13-02(6)	Receive report from the State Fire Marshal each interim on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes (Industry, Business, and Labor Committee)
19-03.1-44	Receive report from the Attorney General before July 2 of every even-numbered year on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state (Judicial Process Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding $10,000 by the Game and Fish Department (Budget Section)
20.1-02-16.1	Authorize the Game and Fish Department to spend money in the game and fish fund if the balance would be reduced below $15 million (Budget Section)
25-04-02.2	Authorize the Developmental Center at Westwood Park to provide services under contract with a governmental or nongovernmental person (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at the Developmental Center at Westwood Park (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund (Legislative Audit and Fiscal Review Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)
36-22-09	Receive audit report of the North Dakota Stockmen's Association (Legislative Audit and Fiscal Review Committee)
38-22-15	Receive, along with the Governor, report from the Industrial Commission in December 2014 and every four years thereafter discussing whether the amount in the carbon dioxide storage facility trust fund and fees being paid into the fund are sufficient to satisfy the fund's objectives (Energy Development and Transmission Committee)
40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes (Budget Section)
40-63-03	Receive annual reports from the Division of Community Services on renaissance zone progress (Workforce Committee)
40-63-07	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations (Budget Section)
45-10.2-115	Receive annual audit report from a limited partnership receiving an ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws (Legislative Procedure and Arrangements Committee)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency (Budget Section)
47-30.1-24.1	Receive report from the commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency (Budget Section)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly (Budget Section)
49-24-13	Receive written report from the North Dakota Transmission Authority each biennium (Energy Development and Transmission Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)
50-06-31	Receive report from the Department of Human Services before March 1 of each even-numbered year on services provided by the Department of Corrections and

Citation	Subject Matter (Committee)
	Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services (Judicial Process Committee)
50-06-32	Receive autism spectrum disorder plan from the Autism Spectrum Disorder Task Force before July 1, 2010, and an annual status report thereafter (Education Committee)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)
50-29-02	Receive annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan (Health and Human Services Committee)
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years (Budget Section)
52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)
53-06.2-04	Receive biennial report from the Racing Commission and recommendations for legislation which address the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Judiciary Committee)
53-12.1-03	Receive report, as requested, from the director of the North Dakota Lottery regarding the operation of the lottery (Judiciary Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session (Legislative Procedure and Arrangements Committee)
54-03-26	Determine the fee payable by legislators for use of personal computers (Legislative Procedure and Arrangements Committee)
54-03-26	Establish policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council (Legislative Procedure and Arrangements Committee)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment (Health and Human Services Committee)

Citation	Subject Matter (Committee)
54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Procedure and Arrangements Committee)
54-06-30	Receive report from Human Resource Management Services on the number of employees receiving bonuses above the 25 percent limitation (Budget Section)
54-06-31	Receive periodic reports from the Central Personnel Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions (Employee Benefits Programs Committee)
54-06-32	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing service awards to employees in the classified service (Administrative Rules Committee)
54-06-32	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing service awards to employees in the classified service (Employee Benefits Programs Committee)
54-06-33	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing state agencies to provide employer-paid costs of training or educational courses to employees in the classified service (Administrative Rules Committee)
54-06-33	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service (Employee Benefits Programs Committee)
54-06-34	Receive biennial report from the Office of Management and Budget summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state (Employee Benefits Programs Committee)
54-07-11	Receive report from the North Dakota Youth Council before September 1, 2010, regarding its list of issues and concerns pertinent to residents of this state under age 25 and any recommendations (Workforce Committee)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)

Citation	Subject Matter (Committee)
54-10-01	Determine necessary performance audits by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-10-13	Determine when the State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)
54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)
54-10-28; 54-35-15.4	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Information Technology Committee)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
54-16-04	Approve transfers exceeding $50,000 from one fund or line item to another unless necessary to comply with a court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)
54-16-04	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's acceptance of federal funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's expenditure of federal funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.1	Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's acceptance of funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's expenditure of funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.3	Approve, on the advice of the Office of Management and Budget and the recommendation of the Emergency Commission, a state officer to employ full-time equivalent (FTE) positions in addition to those authorized by the Legislative Assembly (Budget Section)
54-16-09	Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of $50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-17.7-13	Receive biennial report from the North Dakota Pipeline Authority on its activities (Energy Development and Transmission Committee)
54-23.3-09	Receive report from the director of the Department of Corrections and Rehabilitation on any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of $100,000 during a biennium (Budget Section)
54-27-22	Approve use of the capital improvements planning revolving fund (Budget Section)
54-27-23	Approve use of cashflow financing (Budget Section)
54-27-26	Receive report from Tax Commissioner regarding information provided annually by counties, cities, and townships on funding and expenditures relating to transportation projects and programs (Public Safety and Transportation Committee)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)
54-35-02	Review uniform laws recommended by the Commission on Uniform State Laws (Judiciary Committee)
54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Procedure and Arrangements Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Procedure and Arrangements Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)

Citation	Subject Matter (Committee)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)
54-35-02.6	Study and review administrative rules and related statutes (Administrative Rules Committee)
54-35-02.7	Overview of water-related topics and related matters and any necessary discussions with adjacent states on water-related topics (Water-Related Topics Overview Committee)
54-35-02.8	As the Legislative Ethics Committee, consider or prepare a legislative code of ethics (Legislative Procedure and Arrangements Committee)
54-35-11	Make arrangements for 2011 session (Legislative Procedure and Arrangements Committee)
54-35-15.2	Receive a project startup report and a project closeout report from the affected legislative or judicial branch agency regarding any information technology project with a total cost of $250,000 or more (Information Technology Committee)
54-35-15.2	Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues (Information Technology Committee)
54-35-15.2	Receive and review information received from the Information Technology Department relating to higher education information technology projects with a cost of $250,000 in one biennium or a total cost of $500,000 and receive and review information from the department regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $250,000 (Information Technology Committee)
54-35-15.2	Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Information Technology Committee)
54-35-15.2	Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition (Information Technology Committee)
54-35-18	Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries, through August 1, 2011 (Energy Development and Transmission Committee)
54-35-22	Review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation (Workers' Compensation Review Committee)
54-35-23	Study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development, until August 1, 2011 (Tribal and State Relations Committee)
54-35-24	Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues, until August 1, 2013 (Commission on Alternatives to Incarceration)
54-35.2-02	Study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments (Advisory Commission on Intergovernmental Relations)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Government Services Committee)
54-44-04	Receive report from the director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)
54-44-04(24)	Receive report from the director of the Office of Management and Budget by October 1, 2010, on the location, expenses, and square footage requirements of all facilities occupied by each state agency and recommendations for relocation of any entity to achieve improvements in service and efficiencies in usage of space and cost (Government Services Committee)
54-44-16	Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels (Budget Section)
54-44.1-07	Prescribe form of budget information prepared by the director of the budget (Budget Section)
54-44.1-12.1	Object to any allotment by the director of the budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent (Budget Section)

Citation	Subject Matter (Committee)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-44.4-02.2	Receive report from the Office of Management and Budget in December of even-numbered years regarding commodities and services exempted from state procurement requirements (Budget Section)
54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements (Employee Benefits Programs Committee)
54-56-03	Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs (Budget Section)
54-59-02.1	Receive from the Chief Information Officer recommendations of the department's advisory committee regarding major software projects for consideration and the drafting of appropriate legislation to implement the recommendations (Information Technology Committee)
54-59-05(4)	Approve execution by the Information Technology Department of proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million (Budget Section)
54-59-12	Receive report from the Chief Information Officer regarding the coordination of services with political subdivisions, and from the Chief Information Officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education (Information Technology Committee)
54-59-13	Receive report from the Information Technology Department regarding any executive branch state agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards (Information Technology Committee)
54-59-19	Receive summary of annual report from the Information Technology Department (Budget Section)
54-59-19	Receive annual report from the Information Technology Department (Information Technology Committee)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the department's goals and objectives, its long-term goals and objectives, and on commerce benchmarks (Legislative Procedure and Arrangements Committee)

Citation	Subject Matter (Committee)
54-60.1-07	Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce beginning in 2007 and the reports of state agencies that award business incentives for the previous calendar year (Workforce Committee)
54-61-03	Receive annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Judicial Process Committee)
57-38-01.29	Receive report (for review) from the Tax Commissioner regarding any reduction the Tax Commissioner makes in the homestead property income tax credit (Budget Section)
57-38-01.30	Approve any reduction the Tax Commissioner makes in the commercial property income tax credit (Budget Section)
57-40.6-12	Receive report from the Emergency Services Communications Coordinating Committee by November 1 of each even-numbered year regarding the use of the assessed communications services fee revenue; and receive recommendations regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers (Public Safety and Transportation Committee)
57-51-15	Receive report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended (Taxation Committee)
57-51.2-05	Receive report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation (Tribal and State Relations Committee)
57-60-02.1	Receive annual report from the operator of a coal conversion facility that receives a carbon dioxide capture credit for certain coal conversion facilities regarding the facility's carbon dioxide capture project (Energy Development and Transmission Committee)
65-02-30	Receive report from the director of Workforce Safety and Insurance, the chairman of the Workforce Safety and Insurance Board of Directors, and the audit firm regarding the biennial performance evaluation of Workforce Safety and Insurance and select elements for inclusion in the performance evaluation (Workers' Compensation Review Committee)

Citation	Subject Matter (Committee)
65-03-05	Receive biennial report from Workforce Safety and Insurance regarding compiled data relating to safety grants issued under Chapter 65-03 (Workers' Compensation Review Committee)
65-04-03.1	Receive periodic reports from Workforce Safety and Insurance and the Risk Management Division of the Office of Management and Budget on the success of a single workers' compensation account for state entities covered by Chapter 32-12.2 (Budget Section)
65-05.1-06.3	Receive annual report from Workforce Safety and Insurance which includes reports on pilot programs to assess alternative methods of providing rehabilitation services (Workers' Compensation Review Committee)
65-06.2-09	Review report from Workforce Safety and Insurance on recommendations based on safety audit of Roughrider Industries work programs and performance audit of modified workers' compensation coverage program (Industry, Business, and Labor Committee)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workforce safety and insurance (Budget Section)

2007 Session Laws Citation	Subject Matter (Committee)
Chapter 520 § 13	Study the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than 1.5 percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty (Taxation Committee)

2009 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 2	Approve, with the Emergency Commission, the Governor spending any additional federal stimulus or fiscal recovery funds in excess of funds appropriated for fiscal stabilization for education or other government services (Budget Section)
Chapter 1 § 3	Approve, with the Emergency Commission, the Governor spending any additional federal stimulus or fiscal recovery funds (Budget Section)
Chapter 2 § 3	Approve the Secretary of State borrowing up to $3,400,698 from the Bank of North Dakota to implement the North Dakota business development engine computer project (Budget Section)
Chapter 3 § 11	Approve, with the Emergency Commission, the Attorney General spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for Edward J. Byrne Memorial Justice Assistance Grants, Internet Crimes Against Children Grants, and Rural Law Enforcement Assistance Act funding (Budget Section)
Chapter 3 § 12	Approve, with the Emergency Commission, the Attorney General spending funds under the American Recovery and Reinvestment Act of 2009 for the Community Oriented Policing Services Grant program (Budget Section)
Chapter 8 § 3	Receive report from the Public Service Commission before July 1, 2010, on the status of the metrology program (Budget Section)
Chapter 9 § 8	Approve the Agriculture Commissioner leasing additional office space for department purposes (Budget Section)
Chapter 12 § 2	Approve, with the Emergency Commission, the Department of Human Services spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for certain human services programs (Budget Section)
Chapter 12 § 4	Approve the Department of Human Services borrowing $8.5 million from the Bank of North Dakota if the caseload/utilization of medical services, long-term care, and developmental disabilities services is more than anticipated for the 2009-11 biennium (Budget Section)
Chapter 12 § 7	Receive report from the Department of Human Services after June 30, 2010, on any transfers of appropriation authority in excess of $50,000 between line items within subdivisions and between subdivisions for the 2009-11 biennium (Budget Section)
Chapter 13 § 3	Approve, with the Emergency Commission, the Superintendent of Public Instruction spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for various education programs (Budget Section)
Chapter 15 § 38	Receive quarterly reports from the Tobacco Prevention and Control Executive Committee during the 2009-10 interim on the implementation of the comprehensive tobacco prevention and control plan and outcomes achieved (Budget Section)
Chapter 16 § 2	Approve, with the Emergency Commission, the Adjutant General

2009 Session Laws Citation	Subject Matter (Committee)
	spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for military energy-related maintenance and repairs (Budget Section)
Chapter 16 § 11	Receive report from the Adjutant General during the 2009-10 interim regarding reintegration program expenditures and the program's impact on service members (Budget Section)
Chapter 18 § 5	Approve, with the Emergency Commission, the State Historical Society spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for Camp Hancock, Fort Totten, and geographic information system projects (Budget Section)
Chapter 19 § 9	Approve, with the Emergency Commission, the Parks and Recreation Department spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for Turtle River, Turtle Mountain, and Fort Abraham Lincoln projects (Budget Section)
Chapter 20 § 2	Approve, with the Emergency Commission, the State Water Commission spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for the Southwest Pipeline Project (Budget Section)
Chapter 26 § 2	Receive report from the Department of Commerce at the Budget Section's first meeting after September 1, 2009, and its first meeting after March 1, 2010, regarding the status of the construction of the Great Plains Applied Energy Technology Center (Budget Section)
Chapter 29 § 5	Administer appropriation for legislative wing equipment and improvements (Legislative Procedure and Arrangements Committee)
Chapter 31 § 3	Approve, with the Emergency Commission, the North Dakota University System spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for the Lake Region State College wind energy project (Budget Section)
Chapter 31 § 4	Approve, with the Emergency Commission, the North Dakota University System spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for Minot State University Swain Hall and the University of North Dakota Education Building (Budget Section)
Chapter 31 § 30	Approve the State Board of Higher Education increasing any annual tuition for students attending institutions under its control for the 2009-10 and 2010-11 academic years of more than 4 percent for each year (Budget Section)

2009 Session Laws Citation	Subject Matter (Committee)
Chapter 32 § 3	Approve, with the Emergency Commission, the State Department of Health spending any additional federal stimulus or fiscal recovery funds in excess of funds appropriated for various department projects (Budget Section)
Chapter 32 § 6	Receive report from the State Department of Health on the use of funding provided for grants to emergency medical services operations during the 2009-11 biennium (Public Safety and Transportation Committee)
Chapter 35 § 3	Approve, with the Emergency Commission, the Veterans' Home spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for the thermal imager, electronic health records system, and Bobcat utility vehicle projects (Budget Section)
Chapter 35 § 8	Receive quarterly written summary reports from the Veterans' Home construction project manager regarding the status of the Veterans' Home construction project during the 2009-10 interim (Budget Section)
Chapter 38 § 4	Approve, with the Emergency Commission, the Council on the Arts spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for grants to arts organizations (Budget Section)
Chapter 39 § 7	Receive semiannual reports from the Highway Patrol regarding the status of implementation of the commercial vehicle information systems and networks (Budget Section)
Chapter 40 § 2	Approve, with the Emergency Commission, the Department of Transportation spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for highway infrastructure and rural transit program grants (Budget Section)
Chapter 40 §§ 6 and 8	Approve, after the first $13 million of grants by the Department of Emergency Services to political subdivisions for local match requirements for federal emergency relief funding, the remaining $10 million for matching federal disaster relief funds for state purposes (Budget Section)
Chapter 40 § 7	Receive report from the Department of Emergency Services regarding emergency snow removal grants distributed to counties, townships, and cities before June 30, 2009 (Budget Section)
Chapter 40 § 7	Receive, in addition to Budget Section, report from the Department of Emergency Services regarding emergency snow removal grants distributed to counties,

2009 Session Laws Citation	Subject Matter (Committee)
	townships, and cities before June 30, 2009 (Public Safety and Transportation Committee)
Chapter 40 § 8	Receive report from the Department of Emergency Services in the fourth quarter of 2009 and the third quarter of 2010 on emergency disaster relief grants awarded to political subdivisions (Budget Section)
Chapter 40 § 8	Receive, in addition to Budget Section, report from the Department of Emergency Services in the fourth quarter of 2009 and the third quarter of 2010 on emergency disaster relief grants awarded to political subdivisions (Public Safety and Transportation Committee)
Chapter 40 § 11	Receive periodic reports from the Department of Transportation regarding the use of state, federal, emergency, and other highway funding during the 2009-10 interim (Budget Section)
Chapter 40 § 11	Receive, in addition to Budget Section, periodic reports from the Department of Transportation regarding the use of state, federal, emergency, and other highway funding during the 2009-10 interim (Public Safety and Transportation Committee)
Chapter 40 § 13	Receive report from the Department of Transportation regarding any transfer between operating and capital assets line items when it is cost-effective for construction and maintenance of highways (Public Safety and Transportation Committee)
Chapter 41 § 6	Approve the Commissioner of University and School Lands filling one FTE position relating to minerals management (Budget Section)
Chapter 42 § 11	Receive summary report from the Industrial Commission during the 2009-10 interim on the results of a consultant's evaluation of the Mill and Elevator during the 2009-10 interim (Budget Section)
Chapter 42 § 20	Approve, with the Emergency Commission, the Housing Finance Agency spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for the HOME tax credit assistance and the housing tax credit exchange programs (Budget Section)
Chapter 43 § 8	Approve, with the Emergency Commission, the Department of Corrections and Rehabilitation spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for various purposes (Budget Section)
Chapter 44 § 2	Approve, with the Emergency Commission, Job Service North Dakota spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for certain Job Service North Dakota programs (Budget Section)
Chapter 46 § 2	Approve, with the Emergency Commission, the Department of Commerce spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for various grant and assistance programs (Budget Section)
Chapter 46 § 13	Receive report from the Department of Commerce in the third quarter of 2010 on the status of the technology-based entrepreneurship grant program (Budget Section)
Chapter 46 § 14	Receive report from the Department of Commerce during the third quarter of 2010 regarding compiled information identifying tax-exempt property by school district (Budget Section)
Chapter 46 § 28	Receive report from the Department of Commerce in the third quarter of 2010 on the status of the centers of excellence program and the centers of excellence fund (Budget Section)
Chapter 47 § 3	Approve, with the Emergency Commission, the Department of Career and Technical Education spending additional federal stimulus or fiscal recovery funds (Budget Section)
Chapter 48 § 5	Approve, with the Emergency Commission, the Main Research Center spending additional federal stimulus or fiscal recovery funds for the construction of the third phase of the Main Research Center greenhouse project (Budget Section)
Chapter 49 § 2	Approve, with the Emergency Commission, the Information Technology Department spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for the statewide longitudinal data system (Budget Section)
Chapter 49 § 3	Approve the contingent appropriation to the Information Technology Department if federal funds are not available for costs associated with a statewide longitudinal data system (Budget Section)
Chapter 49 § 9	Receive report from the Information Technology Department regarding the department's level of outsourcing information technology services, former employees who provide consulting services, and the department's efforts to assist in the creation of North Dakota technology-related companies (Information Technology Committee)
Chapter 56 § 4	Receive report from the Veterans' Home during the 2009-11 biennium, at the first Budget Section meeting scheduled after the projects are completed, regarding the

2009 Session Laws Citation	Subject Matter (Committee)
	status of the Veterans' Home exterior finishing construction projects (Budget Section)
Chapter 63 § 2	Receive accountability report from the North Dakota Fetal Alcohol Syndrome Center before September 1, 2010, with respect to the use of funds granted to the center by the State Department of Health (Health and Human Services Committee)
Chapter 64 § 5	Receive periodic reports from the Adjutant General on 2009 flood disaster-related expenditures, transfers, reimbursements, and general fund deposits for the period beginning April 9, 2009, and ending June 30, 2011 (Budget Section)
Chapter 108 § 4	Receive report from the Department of Commerce during the second quarter of 2010 on the status of financing and grants provided to early childhood facilities (Budget Section)
Chapter 157 § 5	Receive report from the State Board of Higher Education during the 2009-10 interim regarding its compilation by campus of information regarding the salaries, benefits, and total compensation of higher education instructional personnel, the number of students who are enrolled in courses delivered electronically to a site not on the campus, and the number of students who have not yet graduated from high school but who are enrolled in higher education courses offered for credit (Higher Education Committee)
Chapter 169 § 5	Receive report from the chairman of the American Indian Language Preservation Committee before September 2010 regarding the work of the committee and any recommendations for ongoing preservation efforts (Higher Education Committee)
Chapter 174 § 2	Receive report from the Superintendent of Public Instruction's Advisory Committee on Truancy before September 1, 2010, on its review of existing school district policies and responses to truancy and the advisory committee's findings and recommendations (Education Committee)
Chapter 175 § 2	Approve, with the Emergency Commission, the Office of Management and Budget spending additional federal stimulus or fiscal recovery funds in excess of funds appropriated for information technology, accounting, and verification (Budget Section)
Chapter 175 § 51	Receive report from the Superintendent of Public Instruction regarding notices received from boards of school districts which determine that providing at least 70 percent of all new money received for per student payments and supplemental operations grants to increase compensation paid to teachers, counselors, and career advisors would result in the school district having insufficient fiscal resources to meet the district's other obligations (Education Committee)
Chapter 175 § 52	Receive report from the Superintendent of Public Instruction compiling information from school districts receiving a one-time supplemental grant for certain uses describing the expenditures, obligations, or other commitments as a result of receiving a grant (Education Committee)
Chapter 192 § 2	Receive report from the State Water Commission before September 1, 2010, on its findings and recommendations resulting from its study of water resources for each sector of energy production (Energy Development and Transmission Committee)
Chapter 225 § 2	Receive periodic reports from the State Health Officer and the Regional Public Health Network Task Force during the 2009-10 interim on the protocol for the regional public health network (Health and Human Services Committee)
Chapter 302 § 4	Receive report from the board of county commissioners of each county by December 1, 2010, on the status of the county's compliance with the county veterans' service officer accreditation requirements (Government Services Committee)
Chapter 302 § 4	Receive report from the Commissioner of Veterans' Affairs by December 1, 2009, July 1, 2010, and December 1, 2010, regarding the number of county veterans' service officers accredited by the National Association of County Veterans' Service Officers and the use of funds for accreditation training for county veterans' service officers (Government Services Committee)
Chapter 409 § 1	Receive a report from the Department of Human Services before September 1, 2010, regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disability and home and community-based services providers (Long-Term Care Committee)
Chapter 412 § 2	Receive annual reports from the Department of Human Services during the 2009-10 interim regarding the status of the alternatives-to-abortion services program (Health and Human Services Committee)
Chapter 414 § 2	Receive report from the Department of Human Services during the 2009-10 interim but after June 30, 2010, regarding the outcomes of the dementia care services program (Long-Term Care Committee)

2009 Session Laws Citation	Subject Matter (Committee)
Chapter 425 § 3	Approve, with the Emergency Commission, the Department of Human Services spending funds in excess of federal stimulus or fiscal recovery funds appropriated for early childhood care programs (Budget Section)
Chapter 476 § 3	Receive report from the Department of Corrections and Rehabilitation regarding the short-term shelter and assessment pilot program for at-risk children and youth in the South Central Judicial District during the 2009-11 biennium (Judicial Process Committee)
Chapter 501 § 1	Approve, with the Emergency Commission, spending of federal funds made available to this state under the American Recovery and Reinvestment Act of 2009 for the 2009-11 biennium for expenditure of competitive grant awards and other funds that the Legislative Assembly has not indicated intent to reject (Budget Section)
Chapter 509 § 1	Receive report from Human Resource Management Services before July 1, 2010, on the outcome of its study and evaluation of steps the state could take to recruit and retain state employees in state government employment as those state employees reach retirement (Employee Benefits Programs Committee)
Chapter 519 § 7	Receive periodic reports from the Health Information Technology Office and the Health Information Technology Advisory Committee during the 2009-10 interim on the status of health information technology activities (Budget Section)
Chapter 519 § 7	Receive, with the Budget Section, periodic reports from the Health Information Technology Office and the Health Information Technology Advisory Committee during the 2009-10 interim on the status of health information technology activities (Information Technology Committee)
Chapter 523 § 1	Receive report from the Parks and Recreation Department by September 1, 2010, on the findings and recommendations of the study by the Parks and Recreation Department, State Historical Society, Game and Fish Department, and the Tourism Division of the Department of Commerce on linking and improving a series of public sites along the Sibley and Sully historic trails for historical education, heritage tourism, and access for public hunting (Natural Resources Committee)
Chapter 562 § 5	Receive report from the Tax Commissioner during the 2013-14 interim regarding the findings and recommendations of the commissioner's cost-benefit analysis during the 2009-11 and 2011-13 bienniums of the coal severance tax exemption for coal used in certain plants (Taxation Committee)
Chapter 613 § 1	Receive report from Workforce Safety and Insurance before August 1, 2010, on the results of its study of postretirement benefits available to an individual whose disability benefits end at the time of Social Security retirement eligibility (Workers' Compensation Review Committee)
Chapter 690	Receive report from the Industrial Commission by September 1, 2010, on the findings and recommendations of its study of the economic impacts of proposed federal, regional, and state carbon cap and trade systems, including the Minnesota Next Generation Energy Act of 2007 (Energy Development and Transmission Committee)

LEGISLATIVE MANAGEMENT ASSIGNMENTS

The following table identifies additional assignments by the Legislative Management or the Legislative Management chairman to interim committees.

Responsibility	Interim Committee
Review and report on budget data prepared by the director of the budget	Budget Section
Monitor federal health care reform legislation	Industry, Business, and Labor Committee
Statutory and constitutional revision	Judiciary Committee
Review legislative rules	Legislative Procedure and Arrangements Committee
Study the recommendations of the State Auditor's performance audit report of the Department of Commerce	Workforce Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2009-10 interim under authority of Section 54-35-02. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Management.

Bill or Resolution No.	Subject Matter
1011 § 3	Study the structure and appropriateness of the level of fees charged by the Securities Commissioner
1015 § 22	Study the Capitol complex master plan, including a review of parking needs on the Capitol grounds

Bill or Resolution No.	Subject Matter
1309 § 1	Study the Interstate Compact on Educational Opportunity for Military Children, as well as its administration, enforcement, cost, and its impact on North Dakota laws, school districts, schools, and children of both military and civilian families, with a view to determining whether North Dakota should become a participating member of the compact
1324 § 33	Study corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act
1400 § 62	Study the cancellation of school and early dismissal as a result of severe weather or other emergency conditions
1425 § 1	Study the feasibility and desirability of transferring from the county to the state the responsibility for the funding of nonfederal foster care and subsidized adoption costs
1489 § 2	Study the availability of tax incentives, grant programs, and any other direct or indirect public subsidization designed to encourage and promote value-added agriculture and any public and private benefits that accrue as a result of such availability
1545 § 1	Study the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company
2003 § 33	Study the feasibility and desirability of creating a department to oversee early childhood, elementary, secondary, and postsecondary education
2012 § 24	Study the feasibility and desirability of relocating the Fargo district office facility
2021 § 8	Study the value of the Information Technology Department's Criminal Justice Information Sharing Initiative
2324 § 31	Study the rules for determining residency status under state law, including an examination of the determination of residency for voting and higher education tuition purposes; for obtaining game and fish licenses, motor vehicle registrations, and motor vehicle operator's licenses; and for taxation purposes

Bill or Resolution No.	Subject Matter
2342 § 2	Study the impact of Johnes disease on livestock producers in the state
2355 § 4	Study the statewide need for short-term shelter, assessment, and intervention services for at-risk children and youth across the state and the feasibility and desirability of using such services instead of foster or group care for short-term placements
2417 § 1	Study the feasibility and desirability of the state facilitating the reduction of landfill waste in North Dakota through encouragement and coordination of public and private recycling programs and investigate the potential for development of methane processing from landfills for power generation
2422 § 1	Study Century Code provisions governing the purchase and procurement of goods and services by political subdivisions
3013	Study the availability of legal representation to assist injured employees in understanding and pursuing Workforce Safety and Insurance decisions
3019	Study Article X, Section 18, of the Constitution of North Dakota
4006	Study professional development opportunities for teachers and the most effective and efficient methods of providing professional development opportunities
4009	Study the adequacy of governmental services, including judicial services, to respond to issues related to an aging population, including veterans, and study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship services
4010	Study mass, public, and special needs transportation, including the creation of local passenger rail transportation and bus transportation within this state

2011 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1026 - Organizational Rules. This bill makes it optional, rather than mandatory, for an administrative agency to adopt and maintain an organizational rule. (Administrative Rules Committee)

House Bill No. 1027 - Seed Laws - Rewrite. This bill rewrites the laws pertaining to the State Seed Department. (Agriculture Committee)

House Bill No. 1028 - Offender Work and Education Release. This bill allows the Department of Corrections and Rehabilitation to authorize work release or education release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment with the opportunity for parole. (Commission on Alternatives to Incarceration)

House Bill No. 1029 - School Approval. This bill clarifies the requirements for the approval of public and nonpublic schools. (Education Committee)

House Bill No. 1030 - Weather- or Emergency-Related School Closures. This bill clarifies the conditions under which the Governor may waive statutorily required rescheduling of instructional days that were missed as a result of weather- or emergency-related school closures. (Education Committee)

House Bill No. 1031 - Classified Employee Compensation System Modifications. This bill implements recommendations from Hay Group's classified state employee compensation system study. The bill provides a state compensation philosophy statement, provides directives to the Office of Management and Budget (OMB) for the implementation of Hay Group's recommendations, and requires OMB to provide status reports on the implementation of the recommendations to a joint committee during the 2011 legislative session and to the Budget Section during the 2011-12 interim. (Government Services Committee)

House Bill No. 1032 - Mental Health and Substance Abuse Services Pilot Voucher Payment Program. This bill directs the Department of Human Services to establish a pilot voucher payment program to provide mental health and substance abuse services for the 2011-13 biennium in three human service regions of the state to improve access to mental health and substance abuse services, including addiction treatment, counseling services, transition services, attendant care, and safe beds. (Health and Human Services Committee)

House Bill No. 1033 - North Dakota University System Budget Request and Appropriation. This bill continues the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for an asset funding component through July 31, 2013. (Higher Education Committee)

House Bill No. 1034 - University System Unspent General Fund Appropriations. This bill provides for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations through July 31, 2013. (Higher Education Committee)

House Bill No. 1035 - University System Special Funds Continuing Appropriation. This bill extends the continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through June 30, 2013. (Higher Education Committee)

House Bill No. 1036 - Developmental Education Study. This bill directs the Legislative Management to study ways to alleviate developmental education, efforts to reduce developmental education, and the origin of students needing developmental education. (Higher Education Committee)

House Bill No. 1037 - Workforce Safety and Insurance Safety and Performance Audits. This bill removes the requirement that Workforce Safety and Insurance provide a report with recommendations based on the safety and performance audit to the Legislative Management no later than 30 days before the commencement of each regular session of the Legislative Assembly, unless either of the audits includes any recommendation for change. (Industry, Business, and Labor Committee)

House Bill No. 1038 - Debt-Settlement Providers. This bill provides for the licensure and regulation of debt-settlement providers. (Judiciary Committee)

House Bill No. 1039 - Constitutional and Statutory Revision. This bill makes technical corrections throughout the North Dakota Century Code. (Judiciary Committee)

House Bill No. 1040 - Basic Care and Nursing Facility Bed Moratorium. This bill extends the moratorium on the state's licensed basic care bed capacity and the state's licensed basic care bed capacity from July 31, 2011, to July 31, 2015. (Long-Term Care Committee)

House Bill No. 1041 - Registration of Health Care Professionals. This bill transfers registration of nurse aides, home health aides, and medication assistants I and II from the State Board of Nursing to the State Department of Health. (Long-Term Care Committee)

House Bill No. 1042 - Allocation of Extraordinary Road Use Fees. This bill requires extraordinary road use fee collections to be deposited in the general fund of

the county where the overweight vehicle violation occurred if the violation did not occur on a state or federal highway. (Public Safety and Transportation Committee)

House Bill No. 1043 - Motor Vehicle Excise Tax Collections. This bill provides that after June 30, 2011, motor vehicle excise tax collections, after distributions to the state aid distribution fund, are to be deposited in the highway tax distribution fund rather than the general fund. (Public Safety and Transportation Committee)

House Bill No. 1044 - Statewide Funding for Emergency Medical Services. This bill requires the State Department of Health to establish a statewide funding plan for emergency medical services and provides a $12 million appropriation from the insurance tax distribution fund to the State Department of Health to distribute through the funding plan. (Public Safety and Transportation Committee)

House Bill No. 1045 - Emergency Communications Operating Standards. This bill provides for changes in emergency communications operating standards as recommended by the Emergency Services Communications Coordinating Committee. (Public Safety and Transportation Committee)

House Bill No. 1046 - Potash Taxation. This bill establishes a 4 percent tax on extraction of potash and potash byproducts. The bill provides that the tax is in lieu of property taxes on a potash processing plant, mining facility, or satellite facility. The bill provides that 20 percent of tax revenues is to be allocated to the producing county, and 80 percent is to be dedicated to state income tax reduction. (Taxation Committee)

House Bill No. 1047 - Property Tax Relief. This bill provides property tax relief by appropriating $341 million for the 2011-13 biennium for allocation to school districts to reduce school district property taxes. The bill provides a school district levy reduction of up to 75 mills, restrictions on school district property tax levies, and replacement of the revenue to school districts through mill levy reduction grants. (Taxation Committee)

House Bill No. 1048 - Soil Survey Implementation Penalties. This bill provides that failure to implement soil surveys and agricultural assessments, when subjected to withholding from state aid distribution allocations, is to be made on a quarterly basis to match the statutory allocation times for those payments. (Taxation Committee)

House Bill No. 1049 - Superintendent of Public Instruction Indian Education Issues Study. This bill appropriates $100,000 from the general fund to the Superintendent of Public Instruction to conduct an Indian education issues study. (Tribal and State Relations Committee)

House Bill No. 1050 - Workers' Compensation Vocational Rehabilitation Grants. This bill creates a vocational rehabilitation grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The program uses funds already in the Workforce Safety and Insurance educational revolving loan fund. (Workers' Compensation Review Committee)

House Bill No. 1051 - Workers' Compensation Retirement Presumption. This bill provides for up to two years of workers' compensation disability and rehabilitation benefits to an employee who is injured within the two years preceding the employee's presumed retirement age. (Workers' Compensation Review Committee)

House Bill No. 1052 - Workers' Compensation Vocational Rehabilitation Grants. This bill provides that previously confidential information of Workforce Safety and Insurance data regarding medical providers relating to medical prescriptions and patterns of treatment is open to the public. (Workers' Compensation Review Committee)

House Bill No. 1053 - Workers' Compensation Coverage for Generic Medication. This bill limits workers' compensation coverage of prescription medication to the payment for a pharmaceutical treatment not to exceed the cost of the generic treatment if the generic is available, unless the use of the generic would create a life-threatening side effect. (Workers' Compensation Review Committee)

House Bill No. 1054 - Workers' Compensation Pain Therapy Coverage. This bill provides a protocol for workers' compensation coverage of pain therapy during the acute stage of an injury and for coverage of pain therapy relating to long-term therapy. (Workers' Compensation Review Committee)

House Bill No. 1055 - Workers' Compensation Permanent Partial Impairment Coverage. This bill provides for the transition from the fifth edition to the sixth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* and amends the workers' compensation permanent partial impairment multiplier schedule to provide for qualification of a permanent partial impairment award beginning at 14 percent whole body impairment. (Workers' Compensation Review Committee)

House Bill No. 1056 - Workforce Safety and Insurance Performance Evaluation Frequency. This bill decreases the frequency of Workforce Safety and Insurance performance evaluations from once each biennium to once every four years. (Workers' Compensation Review Committee)

House Bill No. 1057 - Angel Fund Investment Tax Credit. This bill amends the angel fund investment tax credit to allow for transferability of the tax credit and to allow passthrough entities to claim the credit. The bill includes a Tax Commissioner report to the Legislative Management, and the bill is applicable to the first four taxable years beginning after December 31, 2010, and is thereafter ineffective. (Workforce Committee)

House Bill No. 1058 - Innovation 2020 Award. This bill creates the innovation 2020 award program and provides a $500,000 appropriation to the Department of Commerce for the program. The program provides proof of concept funding awards of up to $50,000 per qualified entrepreneur to help move a new technology from academia to the commercialization cycle. (Workforce Committee)

House Bill No. 1059 - Technology Award Grant Program. This bill creates a technology award grant

program and provides a $500,000 appropriation to the North Dakota Development Fund, Inc., for the program. The program provides matching grants of up to $50,000 to technology-based businesses that are in the startup stage. (Workforce Committee)

House Bill No. 1060 - Centers of Excellence Postaward Monitoring. This bill modifies the centers of excellence postaward monitoring requirements. The bill allows for a postaward fiscal audit at the halfway point of the postaward monitoring period as well as at the completion of the postaward monitoring period and allows for an agreed-upon procedures engagement for all other years of the postaward monitoring period. (Workforce Committee)

House Bill No. 1061 - Performance Audit Timeframes. This bill provides the State Auditor shall complete a performance audit within 90 days from the date of commencement of the performance audit. (Workforce Committee)

House Concurrent Resolution No. 3001 - Agriculture Laws Rewrite Study. This concurrent resolution directs the Legislative Management to continue its study of laws pertaining to agriculture. (Agriculture Committee)

House Concurrent Resolution No. 3002 - Legislative Hearings for Federal Block Grants. This concurrent resolution authorizes the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 62nd Legislative Assembly through September 30, 2013. (Budget Section)

House Concurrent Resolution No. 3003 - Federal Health Care Reform Impact Study. This concurrent resolution directs the Legislative Management to continue studying the impact of federal health care reform legislation during the next interim. (Industry, Business, and Labor Committee)

House Concurrent Resolution No. 3004 - Indian Education Issues Study. This concurrent resolution directs the Legislative Management to study Indian education issues, including a fair and equitable allocation of all state and federal educational funding. (Tribal and State Relations Committee)

SENATE

Senate Bill No. 2024 - Inmate Medical Care Costs at Medicare Rates. This bill limits a correctional facility's liability for inmates' medical care costs to rates paid under the federal Medicare program. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2025 - Bid Threshold for Concessions. This bill increases the threshold for the requirement of bids for concessions from an amount of more than $500 to an amount of annual estimated gross sales of more than $25,000. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2026 - Public Improvement Construction Bid Threshold. This bill centralizes the public improvement construction threshold of $100,000 and separates bid and use of a design professional threshold. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2027 - Specifying Certain Materials in a Request for Bids for Existing Buildings Allowed. This bill allows a governing body to specify certain materials in a request for bids for the remodeling or expansion of an existing building that contains the specified material. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2028 - State Payment of Extraordinary Medical Expenses of a Correctional Facility. This bill requires the Department of Corrections and Rehabilitation to reimburse a correctional facility for an inmate's medical or health care expenditures paid by that facility which exceed $10,000. No reimbursement is made for federal or out-of-state inmates being housed in correctional facilities. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2029 - Short-Term Shelter Care. This bill continues the short-term shelter care and assessment program that was initiated during the 2009-11 biennium, appropriates $200,000 for that continuation, and provides an additional $200,000 in funding to expand the program to another area of the state. (Commission on Alternatives to Incarceration)

Senate Bill No. 2030 - Biodiesel Plant Production Incentive. This bill creates a biodiesel plant production incentive for a new facility and increased production at an existing facility. The bill creates a biodiesel production incentive fund with a continuing appropriation but does not identify a funding source for that fund. (Energy Development and Transmission Committee)

Senate Bill No. 2031 - Permanent Sales and Use Tax Exemption for Wind Towers. This bill removes the January 1, 2015, sunset on the sales and use tax exemption for production equipment and other property used for building, expanding, or upgrading wind facilities. (Energy Development and Transmission Committee)

Senate Bill No. 2032 - Oil and Gas Research Council Purposes. This bill expands the purposes of the Oil and Gas Research Council to allow the promotion of innovation in safety, enhancement of environment, an increase in education concerning the distribution of petroleum products and allows the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and petroleum marketing industry. (Energy Development and Transmission Committee)

Senate Bill No. 2033 - Energy Development Impact Office. This bill allows oil and gas impact fund grants to be given for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other essential needs that are impacted by oil and gas development. This bill changes the administration of the fund by having the commissioner of University and School Lands appoint the director of the Energy Impact Development Office, instead of the Board of University and School Lands, and requires this appointed director to make recommendations to the board regarding impact grants to political subdivisions so the board may make impact grants, instead of the director. (Energy Development and Transmission Committee)

Senate Bill No. 2034 - Green Diesel Parity. This bill treats green diesel the same as biodiesel with a clawback provision for the biofuel partnership in assisting community expansion program upon change in ownership within five years of the grant which negates the agricultural producer or resident ownership requirements. (Energy Development and Transmission Committee)

Senate Bill No. 2035 - Pharmacist Administration of Immunizations and Vaccinations to Minors. This bill allows pharmacists to administer influenza shots or influenza mist to children at least 5 years of age and other immunizations to children at least 11 years of age. (Health and Human Services Committee)

Senate Bill No. 2036 - Exchange of Information With the Health Information Exchange. This bill provides that the Information Technology Department may connect to a wide area network service for health information exchange in accordance with federal requirements for the health information exchange. (Information Technology Committee)

Senate Bill No. 2037 - Establishment and Participation in the Health Information Exchange. This bill provides for the confidentiality of health information under the health information exchange, participation in the health information exchange, and responsibilities of the Health Information Technology Office. (Information Technology Committee)

Senate Bill No. 2038 - Legal Counsel for Sexually Dangerous Individual Commitment Cases. This bill transfers from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subjects of sexually dangerous individual commitment proceedings. The bill includes an appropriation of $814,293 for the 2011-13 biennium. (Judicial Process Committee)

Senate Bill No. 2039 - Involuntary Commitment Examinations. This bill provides that for purposes of

conducting an examination under North Dakota Century Code Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status. (Judicial Process Committee)

Senate Bill No. 2040 - Involuntary Commitment Procedures. This bill amends Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order. (Judicial Process Committee)

Senate Bill No. 2041 - Use of Telemedicine Technology. This bill authorizes the use of telemedicine technologies for court-ordered examinations under Chapter 25-03.1. (Judicial Process Committee)

Senate Bill No. 2042 - Charitable Gaming Taxes and Allowable Expenses. The bill provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and the consolidation of all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund. (Judiciary Committee)

Senate Bill No. 2043 - Payment System Pilot Project. This bill provides that the Department of Human Services is to implement a prospective payment system pilot project for developmental disabilities service providers. (Long-Term Care Committee)

Senate Bill No. 2044 - Violation of County Overweight Vehicle Permits. This bill provides that a violation of an overweight vehicle permit issued under a county home rule ordinance is considered a violation of state law. (Public Safety and Transportation Committee)

Senate Bill No. 2045 - Oil and Gas Development Infrastructure Grant Program. This bill creates an infrastructure grant program for taxing districts affected by oil and gas development and provides a $100 million appropriation from the permanent oil tax trust fund for grant distributions during the 2011-13, 2013-15, and 2015-17 bienniums. (Public Safety and Transportation Committee)

Senate Bill No. 2046 - State Radio Fees and Infrastructure. This bill provides a $110,302 general fund appropriation to the Department of Emergency Services for the operational costs of providing access to the state message switch for entities that utilize wireless access for mobile data systems, provides for increases in fees charged for the law enforcement teletype system, and provides a $5.5 million general fund appropriation to the Department of Emergency Services for the construction of up to 12 new State Radio towers and related equipment needed at State Radio headquarters. (Public Safety and Transportation Committee)

Senate Bill No. 2047 - Federal Flood Control Mineral Leasing Revenues. This bill revises the allocation of federal flood control lease revenues to eliminate dedicated shares for school districts and townships. The bill also requires the State Treasurer to report to the chairman of the Legislative Management by the 10th working day of each month the amount distributed in the preceding month to each political subdivision for oil and gas production tax allocation, federal flood control lease revenues, or any other oil and gas allocations made by the State Treasurer. (Taxation Committee)

Senate Bill No. 2048 - Property Not to Be in Renaissance Zone and Tax Increment Financing District. This bill provides that after July 31, 2011, a parcel of property may not be included in a renaissance zone and tax increment financing district. (Taxation Committee)

Senate Bill No. 2049 - Subsidized Rental Property Not Eligible for Charitable Property Exemption. This bill provides that property is not used for charitable purposes if the property is residential rental units for which the owner receives a federal low-income housing income tax credit. (Taxation Committee)

Senate Bill No. 2050 - Tax Increment Financing District Restrictions. This bill provides that agricultural property may not be incorporated in a tax increment financing district, limits the duration of a tax increment financing district to 20 years, and requires a joint review board consisting of representatives of taxing districts for approval of a new tax increment financing district. (Taxation Committee)

Senate Bill No. 2051 - Hate Crimes. This bill provides for enhanced penalties for conviction of discrimination in public places, aggravated assault, and harassment involving a hate crime. (Tribal and State Relations Committee)

Senate Bill No. 2052 - Hate Crimes Involving Criminal Mischief. This bill provides for an enhanced penalty for conviction of criminal mischief involving a hate crime. (Tribal and State Relations Committee)

Senate Bill No. 2053 - Committee on Tribal and State Relations Extension. This bill makes the Committee on Tribal and State Relations permanent. (Tribal and State Relations Committee)

Senate Bill No. 2054 - Devils Lake East End Flood Control Structure. This bill appropriates $5 million from the resources trust fund to the State Water Commission to design and construct a Devils Lake east end flood control structure. (Water-Related Topics Overview Committee)

Senate Bill No. 2055 - Manufacturing Income Tax Credits. This bill creates two new manufacturing income tax credits. The income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes is available to primary sector businesses and is equal to 20 percent of the expenses of the purchase. The income tax credit for qualified expenditures necessary for implementing lean manufacturing is available to primary sector businesses and is equal to 20 percent of the expenses. Each tax credit program is limited to $2 million per taxable year. (Workforce Committee)

Senate Bill No. 2056 - Higher Education and Workforce. This bill amends the laws relating to TrainND, the new jobs training program, and Operation Intern; creates an electronic portfolio (e-folio) pilot program and a student opportunity website; and

provides the measure is an emergency measure. The new jobs training program and the TrainND program are amended to provide the TrainND community colleges are included under the definition of "community" under the new jobs training program. The Operation Intern program law is amended to remove the provision that was added in 2009 to provide that employers are eligible for funding under the program only for new or expanded internship, apprenticeship, and work experience opportunities. A higher education e-folio system pilot program is created. The e-folio product would be an online system that would be used to address the needs of higher education students and faculty as well as employers. A student opportunity website is created which would act as a single portal through which users can search for internship opportunities and scholarship opportunities available at or through the institutions of higher education under the control of the State Board of Higher Education. (Workforce Committee)

Senate Bill No. 2057 - Centers of Workforce Excellence, Centers of Entrepreneurship Excellence, Centers of Research Excellence, and Experimental Program to Stimulate Competitive Research. This bill provides for the centers of workforce excellence (CWE), centers of entrepreneurship excellence (CEE), and centers of research excellence (CRE); provides funding for the CWE, CEE, and CRE; and provides funding for the Experimental Program to Stimulate Competitive Research (EPSCoR) program. The existing Workforce Enhancement Council grants are renamed CWE grants, and $2 million is appropriated for the CWE grants. The bill creates a CEE grant program administered by the Department of Commerce. The CEE program provides grants to department-certified entrepreneurial centers to be used to assist entrepreneurs in accessing capital, assisting entrepreneurs through providing marketing assistance, supporting building entrepreneur infrastructure, and developing entrepreneurial talent. An appropriation of $5 million is made for grants under the CEE program. The bill creates a CRE grant program administered by the Department of Commerce. The CRE grant program is based on the current centers of excellence program but is limited to research universities. The eminent researcher recruitment challenge grant program is included as part of the CRE program. Appropriations are made as follows: $10 million for the CRE grants and $2 million for the eminent researcher recruitment challenge grant program. The bill provides for CRE infrastructure grants, based on the infrastructure grants created in 2009. The CRE infrastructure grants would be available to research universities and to nonprofit university-related foundations for use in infrastructure or enhancement of economic development and employment opportunities. The bill provides an appropriation of $4 million for these CRE infrastructure grants and appropriates $10 million to the University System for the purpose of funding EPSCoR. (Workforce Committee)

Senate Bill No. 2058 - Scholarship Funding Legislative Intent. This bill provides legislative intent that the funding of higher education scholarships comes from the interest and other income transferred from the foundation aid stabilization fund to the state general fund. (Workforce Committee)

Senate Bill No. 2059 - Technology Impact Zones. This bill creates a technology impact zone program administered by the Department of Commerce. The program allows a local government, or one or more local governments working together, to qualify for a specified amount of sales tax reimbursement. The reimbursement is for support of regional technology-based economic development efforts. Caps built into the program include a recipient's lifetime cap of $3 million as well as a limit of eight zones in the state. The program is effective through July 31, 2023, and after that date is ineffective. (Workforce Committee)

Senate Concurrent Resolution No. 4001 - Community Service and Other Fees Study. This concurrent resolution directs the Legislative Management to study the imposition of fees at the sentencing of an offender and other fees that are imposed upon offenders. (Commission on Alternatives to Incarceration)

Senate Concurrent Resolution No. 4002 - Certain Army Corps of Engineers Land Returned to Previous Owner. This concurrent resolution urges Congress to return to the riparian landowner land controlled by the Army Corps of Engineers which is not necessary for authorized purposes. (Natural Resources Committee)

Senate Concurrent Resolution No. 4003 - Northern Tier Network Technology Initiative. This concurrent resolution supports the Northern Tier Network Technology Initiative and the related activities of the Legislative Management's Information Technology Committee. (Workforce Committee)

Senate Concurrent Resolution No. 4004 - Scholarship Funding Constitutional Amendment. This concurrent resolution provides for the amendment of Article X, Section 24, of the Constitution of North Dakota relating to the distribution of income from the foundation aid stabilization fund for use in funding higher education scholarships. (Workforce Committee)